THE IDEA AND GENERAL PRINCIPLES
OF THE LAW OF NATIONS

FROM

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
MONSIEUR DE VATTEL.

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FROM THE NEW EDITION, BY

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§ 1. What is meant by a nation or state.

Nations or states are bodies politic, societies of men united together for the purpose of promoting their mutual safety and advantage by the joint efforts of their combined strength.

§ 2. It is a moral person.

Such a society has her affairs and her interests; she deliberates and takes resolutions in common; thus becoming a moral person, who possesses an understanding and a will peculiar to herself, and is susceptible of obligations and rights.

To establish on a solid foundation the obligations and rights of nations, is the design of this work.

§ 3. Definition of the law of nations.

The Law of Nations is the science which teaches the rights subsisting between nations or states, and the obligations correspondent to those rights.

IDEA AND GENERAL PRINCIPLES

In this treatise it will appear, in what manner States, as such, ought to regulate all their actions. We shall examine the obligations of a people as well towards themselves as towards other nations; and by that means we shall discover the Rights which result from these obligations. For, the right being nothing more than the power of doing what is morally possible, that is to say, what is proper and consistent with duty — it is evident that right is derived from duty, or passive obligation, — the obligation we lie under to act in such or such manner. It is therefore necessary that a Nation should acquire a knowledge of the obligations incumbent on her, in order that she may not only avoid all violation of her duty, but also be able distinctly to ascertain her rights, or what she may lawfully require from other nations.

§ 4. In what light nations or states are to be considered.

Nations being composed of men naturally free and independent, and who, before the establishment of civil societies, lived together in the state of nature, — Nations, or sovereign states, are to be considered as so many free persons living together in the state of nature.

It is a settled point with writers on the natural law, that all men inherit from nature a perfect liberty and independence, of which they cannot be deprived without their own consent. In a State, the individual citizens do not enjoy them fully and absolutely, because they have made a partial surrender of them to the sovereign. But the body of the nation, the State, remains absolutely free and independent with respect to all other men, and all other Nations, as long as it has not voluntarily submitted to them.

§ 5. To what laws nations are subject.

As men are subject to the laws of nature, — and as their union in civil society cannot have exempted them from the obligation to observe those laws, since by that union they do not cease to be men, — the entire nation, whose common will is but the result of the united wills
of the citizens, remains subject to the laws of nature, and is bound to respect them in all her proceedings. And since right arises from obligation, as we have just observed (§3), the nation possesses also the same rights which nature has conferred upon men in order to enable them to perform their duties.

§ 6. In what the law of nations originally consists.

We must therefore apply to nations the rules of the law of nature, in order to discover what their obligations are, and what their rights: consequently, the law of Nations is originally no other than the law of Nature applied to Nations. But as the application of a rule cannot be just and reasonable unless it be made in a manner suitable to the subject, we are not to imagine that the law of nations is precisely and in every case the same as the law of nature, with the difference only of the subjects to which it is applied, so as to allow of our substituting nations for individuals. A state or civil society is a subject very different from an individual of the human race; from which circumstance, pursuant to the law of nature itself, there result, in many cases, very different obligations and rights: since the same general rule, applied to two subjects, cannot produce exactly the same decisions, when the subjects are different; and a particular rule which is perfectly just with respect to one subject, is not applicable to another subject of a quite different nature. There are many cases, therefore, in which the law of Nature does not decide between state and state in the same manner as it would between man and man. We must therefore know how to accommodate the application of it to different subjects; and it is the art of thus applying it with a precision founded on right reason, that renders the law of Nations a distinct science. (2)

§ 7. Definition of the necessary law of nations.

We call that the Necessary Law of Nations which consists in the application of the law of nature to Nations. It is Necessary because nations are absolutely bound to observe it. This law contains the precepts prescribed by the law of nature to states, on whom that law is not less obligatory than on individuals, since states are composed of men, their resolutions are taken by men, and the law of nature is binding on all men, under whatever relation they act. This is the law which Grotius, and those who follow him, call the Internal law of Nations, on account of its being obligatory on nations in point of conscience. (3) Several writers term it the Natural law of Nations.

§ 8. It is immutable

Since therefore the necessary law of nations consists in the application of the law of nature to states, — which law is immutable, as being founded on the nature of things, and particularly on the nature of man, — it follows that the Necessary law of nations is immutable.

§ 9. Nations can make no change in it, nor dispense with the obligations arising from it.

Whence, as this law is immutable, and the obligations that arise from it necessary and indispensable, nations can neither make any changes in it by their conventions, dispense with it in their own conduct, nor reciprocally release each other from the observance of it.
This is the principle by which we may distinguish *lawful* conventions or treaties from those that are not lawful, and innocent and rational customs from those that are unjust or censurable.

There are things, just *in themselves*, and allowed by the necessary law of nations, on which states may mutually agree with each other, and which they may consecrate and enforce by their manners and customs. There are others of an *indifferent nature*, respecting which, it rests at the option of nations to make in their treaties whatever agreements they please, or to introduce whatever custom or practice they think proper. But every treaty, every custom, which contravenes the injunctions or prohibitions of the *Necessary* law of nations is unlawful. It will appear, however, in the sequel that it is only by the *Internal* law, by the law of Conscience, such conventions or treaties are always condemned as unlawful, and that, for reasons which shall be given in their proper place, they are nevertheless often valid by the external law. *Nations being free and independent, though the conduct of one of them be illegal and condemnable by the laws of conscience, the others are bound to acquiesce in it, when it does not infringe upon their perfect rights.* The liberty of that nation would not remain entire, if the others were to arrogate to themselves the right of inspecting and regulating her actions; an assumption on their part, that would be contrary to the law of nature, which declares every nation free and independent of all the others.

§ 10. Society established by nature between all mankind

Man is so formed by nature, that he cannot supply all his own wants, but necessarily stands in need of the intercourse and assistance of his fellow-creatures, whether for his immediate preservation, or for the sake of perfecting his nature, and enjoying such a life as is suitable to a rational being. This is sufficiently proved by experience. We have instances of persons, who, having grown up to manhood among the bears of the forest, enjoyed not the use of speech or of reason, but were, like the brute beasts, possessed only of sensitive faculties. We see moreover that nature has refused to bestow on men the same strength and natural weapons of defence with which she has furnished other animals — having, in lieu of those advantages, endowed mankind with the faculties of speech and reason, or at least a capability of acquiring them by an intercourse with their fellow-creatures. Speech enables them to communicate with each other, to give each other mutual assistance, to perfect their reason and knowledge; and having thus become intelligent, they find a thousand methods of preserving themselves, and supplying their wants. Each individual, moreover, is intimately conscious that he can neither live happily nor improve his nature without the intercourse and assistance of others. Since, therefore, nature has thus formed mankind, it is a convincing proof of her intention that they should communicate with, and mutually aid and assist each other.

Hence is deduced the establishment of natural society among men. *The general law of that society is, that each individual should do for the others every thing which their necessities require, and which he can perform without neglecting the duty that he owes to himself:* 

(4) a law which all men must observe in order to live in a manner consonant to their nature, and conformable to the views of their common Creator — a law which our own safety, our happiness, our dearest interests, ought to render sacred to every one of us. Such is the general obligation that binds us to the observance of our duties: let us fulfil them with care, if we would wisely endeavour to promote our own advantage. 

(5)

It is easy to conceive what exalted felicity the world would enjoy, were all men willing to observe the rule that we have just laid down. On the contrary, if each man wholly and immediately directs all his thoughts to his own *interest*, if he does nothing for the sake of
other men, the whole human race together will be immersed in the deepest wretchedness. Let us therefore endeavour to promote the general happiness of mankind; all mankind, in return, will endeavour to promote ours, and thus we shall establish our felicity on the most solid foundations.

§ 11. And between all nations.

The universal society of the human race being an institution of nature herself, that is to say, a necessary consequence of the nature of man,—all men, in whatever stations they are placed, are bound to cultivate it, and to discharge its duties. They cannot liberate themselves from the obligation by any convention, by any private association. When, therefore, the unit in civil society for the purpose of forming a separate state or nation, they may indeed enter into particular engagements towards those with whom they associate themselves; but they remain still bound to the performance of their duties towards the rest of mankind. All the difference consists in this, that having agreed to act in common, and having resigned their rights and submitted their will to the body of the society, in every thing that concerns their common welfare, it thenceforward belongs to that body, that state, and its rulers, to fulfil the duties of humanity towards strangers, in every thing that no longer depends on the liberty of individuals; and it is the state more particularly that is to perform those duties towards other states. We have already seen, (§ 5), that men united in society remain subject to the obligations imposed upon them by human nature. That society, considered as a moral person, since possessed of an understanding, volition, and strength peculiar to itself, is therefore obliged to live on the same terms with other societies or states, as individual man was obliged, before those establishments, to live with other men, that is to say, according to the laws of the natural society established among the human race, with the difference only of such exceptions as may arise from the different nature of the subjects.

§ 12. The object of this society of nations

Since the object of the natural society established between all mankind is— that they should lend each other mutual assistance, in order to attain perfection themselves, and to render their condition as perfect as possible,—and since nations, considered as so many free persons living together in a state of nature, are bound to cultivate human society with each other,—the object of the great society established by nature between all nations is also the interchange of mutual assistance for their own improvement, and that of their condition.

§ 13. General obligation imposed by it.

The first general law that we discover in the very object of the society of nations, is that each individual nation is bound to contribute every thing in her power to the happiness and perfection of all the others.¹

§ 14. Explanation of this observation.

But the duties that we owe to ourselves being unquestionably paramount to those we owe to others,—a nation owes herself in the first instance, and in preference to all other nations, to do every thing she can to promote her own happiness and perfection. (I say every thing she can, not only in a physical but in a moral sense,—that is, every thing that she can do lawfully, and consistently with justice and honour.) When, therefore, she cannot
§ 15. The second general law is the liberty and independence of nations.

Nations being free and independent of each other, in the same manner as men are naturally free and independent, the second general law of their society is, that each nation should be left in the peaceable enjoyment of that liberty which she inherits from nature. The natural society of nations cannot subsist, unless the natural rights of each be duly respected. No nation is willing to renounce her liberty; she will rather break off all commerce with those states that should attempt to infringe upon it.

§ 16. Effect of that liberty.

As a consequence of that liberty and independence, it exclusively belongs to each nation to form her own judgment of what her conscience prescribes to her, — of what she can or cannot do, — of what it is proper or improper for her to do: and of course it rests solely with her to examine and determine whether she can perform any office for another nation without neglecting the duty which she owes to herself. In all cases, therefore, in which a nation has the right of judging what her duty requires, no other nation can compel her to act in such or such particular manner: for any attempt at such compulsion would be an infringement on the liberty of nations. We have no right to use constraint against a free person, except in those cases where such person is bound to perform some particular thing for us, and for some particular reason which does not depend on his judgment, — in those cases, in short, where we have a perfect right against him.

§ 17. Distinctions between internal and external, perfect and imperfect obligations and rights.

In order perfectly to understand this, it is necessary to observe, that the obligation, and the right which corresponds to or is derived from it, are distinguished into external and internal. The obligation is internal, as it binds the conscience, and is deduced from the rules of our duty: it is external, as it is considered relatively to other men, and produces some right between them. The internal obligation is always the same in its nature, though it varies in degree; but the external obligation is divided into perfect and imperfect; and the right that results from it is also perfect or imperfect. The perfect right is that which is accompanied by the right of compelling those who refuse to fulfill the correspondent obligation; the imperfect right is unaccompanied by that right of compulsion. The perfect obligation is that which gives to the opposite party the right of compulsion; the imperfect gives him only a right to ask.

It is now easy to conceive why the right is always imperfect, when the correspondent obligation depends on the judgment of the party in whose breast it exists; for if, in such a case, we had a right to compel him, he would no longer enjoy the freedom of determination respecting the conduct he is to pursue in order to obey the dictates of his own conscience. Our obligation is always imperfect with respect to other people, while we possess the liberty of judging how we are to act: and we retain that liberty on all occasions where we ought to be free.
§ 18. Equality of nations.

Since men are naturally equal, and a perfect equality prevails in their rights and obligations, as equally proceeding from nature — Nations composed of men, and considered as so many free persons living together in a state of nature, are naturally equal, and inherit from nature the same obligations and rights. Power or weakness does not in this respect produce any difference. A dwarf is as much a man as a giant; a small republic is no less a sovereign state than the most powerful kingdom.

§ 19. Effect of that equality.

By a necessary consequence of that equality, whatever is lawful for one nation is equally lawful for any other; and whatever is unjustifiable in the one is equally so in the other.

§ 20. Each nation is mistress of her own actions, when they do not affect the perfect rights of others.

A nation then is mistress of her own actions so long as they do not affect the proper and perfect rights of any other nation — so long as she is only internally bound, and does not lie under any external and perfect obligation. If she makes an ill use of her liberty, she is guilty of a breach of duty; but other nations are bound to acquiesce in her conduct, since they have no right to dictate to her.

§ 21. Foundation of the voluntary law of nations.

Since nations are free, independent, and equal — and since each possesses the right of judging, according to the dictates of her conscience, what conduct she is to pursue in order to fulfil her duties the effect of the whole is, to produce, at least externally and in the eyes of mankind, a perfect equality of rights between nations in the administration of their affairs and the pursuit of their pretensions, without regard to the intrinsic justice of their conduct, of which others have no right to form a definitive judgment; so that whatever may be done by any one nation may be done by any other; and they ought, in human society, to be considered as possessing equal rights.

Each nation in fact maintains that she has justice on her side in every dispute that happens to arise; and it does not belong to either of the parties interested, or to other nations, to pronounce a judgment on the contested question. The party who is in the wrong is guilty of a crime against her own conscience; but as there exists a possibility that she may perhaps have justice on her side, we cannot accuse her of violating the laws of society.

It is therefore necessary, on many occasions, that nations should suffer certain things to be done, though in their own nature unjust and condemnable, because they cannot oppose them by open force, without violating the liberty of some particular state, and destroying the foundations of their natural society. And since they are bound to cultivate that society, it is of course presumed that all nations have consented to the principle we have just established. The rules that are deduced from it constitute what Monsieur Wolf calls "The voluntary law of nations"; and there is no reason why we should not use the same term, although we thought it necessary to deviate from that great man in our manner of establishing the foundation of that law.
§ 22. Right of nations against the infractors of the law of nations.

The laws of natural society are of such importance to the safety of all states, that, if the custom once prevailed of trampling them under foot, no nation could flatter herself with the hope of preserving her national existence, and enjoying domestic tranquility, however attentive to pursue every measure dictated by the most consummate prudence, justice, and moderation. Not all men and all states have a perfect right to those things that are necessary for their preservation, since that right corresponds to an indispensable obligation. All nations have therefore a right to resort to forcible means for the purpose of repressing any one particular nation who openly violates the laws of the society which Nature has established between them, or who directly attacks the welfare and safety of that society.

§ 23. Measure of that right.

But care must be taken not to extend that right to the prejudice of the liberty of nations. They are all free and independent, but bound to observe the laws of that society which Nature has established between them; and so far bound, that, when any of them violates those laws, the others have a right to repress her. The conduct of each nation, therefore, is no further subject to the control of the others, than as the interests of natural society are concerned. The general and common right of nations over the conduct of any sovereign state is only commensurate to the object of that society which exists between them.

§ 24. Conventional law of nations, or law of treaties.

The several engagements into which nations may enter produce a new kind of law of nations, called Conventional, or of Treaties. As it is evident that a treaty binds none but the contracting parties, the conventional law of nations is not a universal but a particular law. All that can be done on this subject, in a treatise on the Law of Nations, is to lay down those general rules which nations are bound to observe with respect to their treaties. A minute detail of the various agreements made between particular nations, and of the rights and obligations thence resulting, is matter of fact, and belongs to the province of history.

§ 25. Customary law of nations.

Certain maxims and customs, consecrated by long use, and observed by nations in their mutual intercourse with each other as a kind of law, form the Customary Law of Nations, or the Custom of Nations. This law is founded on a tacit consent, or, if you please, on a tacit convention of the nations, that observe it towards each other. Whence it appears that it is not obligatory except on those nations who have adopted it, and that it is not universal, any more than the conventional law. The same remark, therefore, is equally applicable to this customary law, viz. that a minute detail of its particulars does not belong to a systematic treatise on the law of nations, but that we must content ourselves with giving a general theory of it; that is to say, the rules which are to be observed in it, as well with a view to its effects, as to its substance; and with respect to the latter, those rules will serve to distinguish lawful and innocent customs from those that are unjust and unlawful.

§ 26. General rule respecting that law.

When a custom or usage is generally established, either between all the civilized nations in the world, or only between those of a certain continent, as of Europe, for example, or
between those who have a more frequent intercourse with each other; if that custom is in its own nature indifferent, and much more, if it be useful and reasonable, it becomes obligatory on all the nations in question, who are considered as having given their consent to it, and are bound to observe it towards each other, as long as they have not expressly declared their resolution of not observing it in future. (9) But if that custom contains any thing unjust or unlawful, it is not obligatory; on the contrary, every nation is bound to relinquish it, since nothing can oblige or authorize her to violate the law of nature.

§ 27. Positive law of nations.

These three kinds of law of nations, the Voluntary, the Conventional, and the Customary, together constitute the Positive Law of Nations. (10) For they all proceed from the will of Nations; the Voluntary from their presumed consent, the Conventional from an express consent, and the Customary from tacit consent; and as there can be no other mode of deducing any law from the will of nations, there are only these three kinds of Positive Law of Nations.

We shall be careful to distinguish them from the Natural or Necessary law of nations, without, however, treating of them separately. But after having, under each individual head of our subject, established what the Necessary law prescribes, we shall immediately add how and why the decisions of that law must be modified by the Voluntary law; or (which amounts to the same thing in other terms) we shall explain how, in consequence of the liberty of nations, and pursuant to the rules of their natural society, the external law which they are to observe towards each other differs in certain instances from the maxims of the internal law, which nevertheless remains always obligatory in point of conscience. As to the rights introduced by Treaties or by Custom, there is no room to apprehend that any one will confound them with the Natural law of nations. They form that species of law of nations which authors have distinguished by the name of Arbitrary.

§ 28. General maxim respecting the use of the necessary and the voluntary law.

To furnish the reader beforehand with a general direction respecting the distinction between the Necessary and the Voluntary law, let us here observe, that, as the Necessary law is always obligatory on the conscience, a nation ought never to lose sight of it in deliberating on the line of conduct she is to pursue in order to fulfil her duty; but when there is question of examining what she may demand of other states, she must consult the Voluntary law, whose maxims are devoted to the safety and advantage of the universal society of mankind.

N.B. The notes numbered [in parentheses] as 1, 2, 3, 4, &c., and in general concluding with C., are by the present Editor [Chitty] [unless indicated otherwise, as by the 1797 editor].

(1) The Law of Nations modifies the intercourse of independent commonwealths in peace, and prescribes limits to their hostilities in war. It prescribes, that in peace nations should do each other as much good, and in time of war as little harm, as may be possible, without injuring their own proper real interests. The laws of nations, in short, establish that principle and rule of conduct which should prevent the strongest nation from abusing its power, and induce it to act justly and generously towards other states, upon the broad principle that true happiness, whether of a single individual or of several, can only result from each adopting conduct influenced by a sincere desire to increase the general welfare of all mankind. (Post, § 13, 14; Mackintosh, Dis. 3, 4; Montesq. de l'Esprit des Lois, liv. 1, c. 3; and see 1 Bla. Com. 34 to 44; 4 Bla. Com. 66, 67.) In cases of doubt arising upon what is the Law of Nations, it is now an admitted rule among all European nations, that our common religion, Christianity, pointing out the principles of natural justice, should be equally appealed to and
is, that there is no general moral international code framed by the consent of the European powers, so desirable to be fixed, especially at this period, when harmony happily appears to subsist, and most of the nations of Europe have, by recent experience, become practically convinced of the advantages that would result from the establishment of fixed general rules, so as to reconcile the frequent discordancy of the decisions of their various prize tribunals and upon other contests. The statesmen of the higher powers of Europe would immortalize themselves by introducing such a code, and no period of history for the purpose has been so favourable and opportune. (See Atcheson's Report of the case of Havelock v. Rockwood, Preface 1.)

The law of nations is adopted in Great Britain in its full and most liberal extent by the common law, and is held to be part of the law of the land; and all statutes relating to foreign affairs should be framed with reference to that rule. (4 Bla. Com. 67.) But still there is no general code; and to the regret that none has been introduced, may be also added, the want of an international court or tribunal, to decide upon and enforce the law of nations when disputed; and consequently, although when states are temporarily inclined to ascertain and be governed by the law of nations, there will be little doubt upon the decision, or of the adoption of measures the most just; yet, if a state will not listen to the immutable principles of reason, upon the basis of which the imperfect law of nations is founded, then the only remedy is to appeal to arms; and hence frequently the just cause of war, which, if there were a fixed code, with a proper tribunal to construe it, would in general be prevented.

The sources from whence is to be gathered information — what is the positive Law of Nations generally and permanently binding upon all independent states? are acknowledged to be of three descriptions: First, the long and ordinary practice of nations, which affords evidence of a general custom, tacitly agreed to be observed until expressly abrogated. Secondly, the recitals of what is acknowledged to have been the law or practice of nations, and which recitals will frequently be found in modern treaties. Thirdly, the writings of eminent authors, who have long, as it were by a concurrence of testimony and opinion, declared what is the existing international jurisprudence.

Thus Lord Mansfield in Triquet v Bath, (3 Burr. Rep. 1481.) stated as the declaration of Lord Talbot, that the law of nations is to be collected from the practice of different nations, (and see per Sir William Scott, in The Fladoyen, 1 Rob. Rep. 115, post, lxiii. n. (7),) and the authority of writers, such as Grotius, Barbeyrac, Bynkershoek, Wicquefort, &c., there being no English writer of eminence upon the subject, and English elementary writers of high authority have also acknowledged that such foreign authors are authorities to ascertain the law of nations. (Comyn's Digest, tit. "Ambassador," B.; Viner's Ab. "Merchant," A. 1; and 3 Bla. Com. 273) To these are to be added Puffendorf, Wolf, Selden, Valen, Clerac, Pothier, Burlamaqui, Emerigon, Roccus, Casegis, Locenius, Santerna, Maline, Molloy, and above all, the present work of Vattel; to which may be added some modern works of great ability, but not yet acknowledged to be such high general authority as the former, viz. Ward's and Marten's Law of Nations, and the recent valuable French publication, Cours de Droit Public Interne et Externe, par le Commandeur Silvestre Pinheiro Ferreira, Ministre D'Etat au Paris, 1830, which embraces the French modern view of the law of nations upon most of the subjects discussed in Vattel and some others.

It was from the more ancient of these several authors, and other similar resources, that Lord Mansfield framed the celebrated letter of the Duke of Newcastle to the King of Prussia's Secretary, which is considered a standard of authority, upon the laws of nations, as far as respects the then disputed right to search for and seize enemies' property on board neutral ships in certain cases in time of war. (See Holliday's Life of Lord Mansfield, vol. 2, p. 424, &c., and Collectanea Juridica 1 vol. 129; see also Fifeash v. Becker, 3 Maule & Selwyn, 284, in which Lord Ellenborough quotes several of the above authors, to ascertain the law of nations upon the privilege of consuls.)

Upon some parts of the law of nations, especially that relating to maritime affairs, there are ancient codes, which either originated in authority, or were afterwards acknowledged to have become such; but still those codes in the present state of commercial intercourse are imperfect. Of those are the Rhodian Laws, being one of the earliest systems of marine law, but which was superseded by the collection entitled Consolato del Mare, Grotius, Book 3, ch. 1, s. 5, n. 6. Next in order are the Laws of Oleron, promulgated about the thirteenth century. Another system of international law was framed by the deputies of the Hanseatic League in 1597, and which was confirmed with additions in 1614, and has obtained much consideration in the maritime jurisprudence of nations. (See remarks on that code, 2 Ward's Law of Nations. 276 to 290.) But the most complete and comprehensive system of the marine law of nations is the celebrated Ordinance of Marine of Louis XIV., published in 1681, and which coupled with the commentary of Valin, Lord Mansfield always treated as of the highest authority. (See 1 Marshall on Insurance, Prelim. Dis. 18.)
In modern times, in order to prevent any dispute upon the existence or application of the general law of nations, either pending peace, or at or after the subsequently breaking out of war between two or more independent states, it has become the practice to enter into express treaties, carefully providing for every contingency, and especially modifying and softening the injurious consequences of sudden war upon the commercial and other intercourse between the two states, and sometimes even wholly changing the character of war or of alienage, and even enabling a foreign alien enemy during war to retain his interest in land in the opponent country. (See an illustrating instance in Sutton v. Sutton. 1 Russ. & My. Rep. 663.) (Society, &c. v. New Haven, 8 Wheat. R. 464.) In these cases, the treaty between the two contracting states either alters, or expressly declares the law of nations, and binds each. But still questions upon the general law of nations will frequently arise, and it will then become necessary to recur to the other evidence of what is the law of nations, viz. the previous ordinary and general or particular practice, or the opinion of the authors before alluded to.

In the latter part of the last, and in the present century, a great accession of learning, information, and authority upon the law of nations has been afforded by the valuable decisions of Sir W. Scott, (afterwards Lord Stowe) and Sir J. Nicholl in the Court of Admiralty and Prize Court, and by several decisions in our Courts of Law and Equity. The known learning and scrupulous justice evinced in those decisions, have commanded the respect, the admiration and adoption, of all the European states, and of that modern, enlightened, and energetic nation, America. To these may be added, Chalmer's Collection of Opinions, which contain great learning upon many subjects of the public affairs of nations. These have been fully published since Vattel wrote; and the editor has attempted to improve this edition, by occasionally referring in the notes to the reports and work alluded to. The editor has also, in his Treatise on Commercial Law, and in a Summary of the Law of Nations, endeavoured to take a more extended view of some of those branches of the law of nations, principally as it affects foreign commerce, and of the decisions and works subsequent to the publication of Vattel.

If the perfect general rights or law of nations be violated, then it appears to be conceded, that such violation may be the actual and avowed ground of a just war; and it is even laid down that it is the duty of every nation to chastise the nation guilty of the aggression. (Vattel, post, Book I. chap. xxiii. § 24, p. 144; § 65, 66, 67, p. 160, 161)

Unhappily, especially in modern times, we have found that the law of nations has sometimes been set at naught by over-powerful states, adhering (to use the words of an English monarch) rather to Common Law than stopping to inquire whether the law of nature and of justice had not become, and been declared in that instance, part of the law of nations. It may therefore be asked, of what utility is the law of nations, since it is of such imperfect and inefficient obligation? The answer is, that all nations, although for a time astounded and surprised by the unexpected aggression of an oppressive and ambitious conqueror, will yet ultimately feel, and endeavour to give effect to, the true law of nations, lest, by suffering its continued violations, they may individually be sacrificed; and consequently, as in the instance alluded to, they will ultimately coalesce and associate in one common cause, to humiliate and overcome the proud invader of all just rights and principles. It is therefore of the highest importance to collect all the principles and rules, which, in cases of doubt, must ever be consulted, at least by statesmen, in endeavouring to settle differences between differing states; and no authority stands higher in this respect than Vattel.

There is no permanent and general international court, and it will be found that in general the sovereign, or government of each state, who has the power of declaring war and peace, has also, as an incident, sole power of deciding upon questions of booty, capture, prize, and hostile seizure, though sometimes that power is delegated, as in Great Britain, as respects maritime seizures, by commission to the judge of the Admiralty Court, with an appeal from his decisions to the Privy Council. In these cases no other municipal court has cognizance in case of any hostile seizure. Elphinstone v. Bedreechund, Knapp's Rep. 316 to 361; and Hill v. Reardon, 2 Russ. Rep. 608, and further, post. p. 392. So there is no general international court in which a treaty can be directly enforced, although, collaterally, its meaning may be discussed in a municipal court; therefore, no bill to enforce a treaty can be sustained in equity. Nobob of Carnatic v. East India Company, 2 Ves. jun. 56; and Hill v. Reardon, 1 Sim. & Stu. 437; 2 Russ. Rep. 608.

Sometimes, however, especially in modern times, treaties, confirmed by temporary statutes in each country, appoint a temporary international court, with limited powers, to decide upon certain claims, and to be satisfied out of an appointed public fund. Thus, in the treaty of peace between Great Britain and France, and by the 59 G. 3, c. 31, certain commissioners were appointed to carry into effect the conventions for liquidating the claims of British subjects on the French government, with an appeal to the Privy Council. In these cases, the appointed jurisdiction is exclusive, and no other municipal court has any power as regards the adjustment of the claims between the two subjects of each country; — though, as between private individuals, if any claimant stand in the situation of an agent or trustee, then, in a court of equity, he may be compelled to act as a trustee of the sum awarded to him. Hill v. Reardon, Jac. Rep. 84; 2 Russ Rep. 608 to 633. overruling the
Vice-Chancellor's decision in 2 Sinc. & Stu. 437. — C, {Comegys v. Vasce, 1 Peters S.C. Rep. 193, decided upon the Treaty with Spain, which ceded Florida to the United States, dated May 2d, 1819. See also Lestapies v. Ingraham, 5 Barr, 71, and the cases cited.}

(2) M. de Vattel then proceeds to state the different heads of international law, which has been variously subdivided by other writers. The clearest division is under two principal heads — First, the natural law of nations; and secondly, the positive. The former is that of God and our conscience, and consequently immutable, and ought to be the basis of the positive laws of nations, The positive is threefold; First the universal voluntary law or uniform practice of nations in general; secondly, the customary law; and thirdly, the conventional law or treaties. (See 1 Chitty's Commercial Law, 25 to 47.) — C.

The following note of a former editor is deservedly retained.

**The study of the science of the law of nations presupposes an acquaintance with the ordinary law of nature, of which human individuals are the objects.** Nevertheless, for the sake of those who have not systematically studied that law, it will not be amiss to give in this place a general idea of it. The natural law is the science of the laws of nature, of those laws which nature imposes on mankind or to which they are subject, by the very circumstances of their being men; a science, whose first principle is this axiom of incontestable truth — "The great end of every being endowed with intellect and sentiment, is happiness." It is by the desire alone of that happiness, that we can bind a creature possessed of the faculty of thought, and form the ties of that obligation which shall make him submit to any rule. Now, by studying the nature of things, and that of man in particular, we may thence deduce the rules which man must follow in order to attain his great end, — to obtain the most perfect happiness of which he is susceptible. We call those rules the natural laws, or the laws of nature. They are certain, they are sacred, and obligatory on every man possessed of reason, independently of every other consideration than that of his nature, and even though we should suppose him totally ignorant of the existence of a God. But the sublime consideration of an eternal, necessary, infinite Being, that author of the universe, adds the most lively energy to the law of nature, and carries it to the highest degree of perfection. That necessary Being necessarily unites in himself all perfection: he is, therefore, superlatively good, and displays his goodness by forming creatures susceptible of happiness. It is then his wish that his creatures should be as happy as is consistent with their nature: consequently, it is his will that they should, in their whole conduct, follow the rules which that same nature lays down for them, as the most certain road to happiness. Thus the will of the Creator perfectly coincides with the simple indications of nature; and those two sources producing the same law, unite in forming the same obligation. The whole reverts to the first great end of man, which is happiness. It was to conduct him to that great end that the laws of nature were ordained: it is from the desire of happiness that his obligation to observe those laws arises. There is, therefore, no man — whatever may be his ideas respecting the origin of the universe — even if he had the misfortune to be an atheist — who is not bound to obey the laws of nature. They are necessary to the general happiness of mankind; and whoever should reject them, whoever should openly despise them would by such conduct alone declare himself an enemy to the human race, and deserve to be treated as such. Now, one of the first truths which the study of man reveals to us, and which is a necessary consequence of his nature, is, that in a state of lonely separation from the rest of his species, he cannot attain his great end — happiness: and the reason is, that he was intended to live in society with his fellow-creatures. Nature, herself, therefore, has established that society, whose great end is the common advantage of all its members; and the means of attaining that end constitute the rules that each individual is bound to observe in his whole conduct. Such are the natural laws of human society. Having thus given a general idea of them, which is sufficient for any intelligent reader, and is developed at large in several valuable works, let us return to the particular object of this treatise. — Note ed. A.D. 1797.

(3) See this position illustrated, Mackintosh, Dis. 7; 1 Chitty's Commercial Law 28 and n. (4) post lx — C.

(4) Ante, lvi. n. (2), post. lx. n. (4).

(5) See the same position, post, § 13, and post, chap. 11. § 2 and 88. The natural, or primary law, is that of God and our conscience, the law which enjoins us to do good to our neighbour, whether in literal strictness he may have a perfect right to demand such treatment from us or not. This is a law that ought to be as strong in obligation as the most distinct and positive rule, though it may not always be capable of the same precise definition, nor consequently may allow the same remedies to enforce its observance. As an individual is bound by the law of nature to deal honourably and truly with other individuals whether the precise acts required of him be or be not such as their own municipal law will enforce; just so a state, in its relations with other states, is bound to conduct herself in this spirit of justice, benevolence, and good faith, even though there be no positive rules of international law, by the letter of which she may be actually tied down. The same rules of morality which hold together men in families, and which form families into a commonwealth, also link together several commonwealths as members of the great society of mankind. Commonwealths, as well as private
men, are liable to injury, and capable of benefit from each other; It is therefore their duty to reverence, to practise, and to enforce, those rules of justice which control and restrain injury, which regulate and augment benefit, which preserve civilized states in a tolerable condition of security from wrong, and which, if they could be generally obeyed, would establish, and permanently maintain, the well-being of the universal commonwealth of the human race. (See Observations in 1 Chitty's Commercial Law, 28; Mackintosh, Disc. 7; Peake's Rep. 116; 2 Hen. Bla. 259; and see ante § 7; and see extract from Mr. Pitt's celebrated speech on concluding the commercial treaty between Great Britain and France In A.D. 1766, and in which he powerfully refuted the doctrine of national and hereditary antipathy between England and France, post, book ii. chap. ii. §21, p. 144. — C.

1. Xenophon points out the true reason of this first of all duties, and establishes its necessity. In the following words: — "If we see a man who is uniformly eager to pursue his own private advantage, without regard to the rules of honour or the duties of friendship, why should we in any emergency think of sparing him?" Note edit. A.D. 1797. See modern authorities in support of that position, ante, lv n. (1), lx, n. (5); Book ii chap. 11. § 21, p. 144 post,— C.

(6) Puffendorf, b. lii. c. 3. s. 6. p. 29, writes clearly and decidedly on this important subject; — he observes "The law of humanity does not seem to oblige us to grant passage to any other goods, except such as are absolutely necessary for the support of their life to whom they are thus conveyed." — C.

(7) The natural primary or internal law of nations which is thus binding in conscience, and immutable. It must be admitted, is mere theory, until it has been asssented to by a state as binding on her; but besides that law of conscience, which until so assented to, is imperfect, there is what is termed the positive or secondary law of nations, and which is threfold: first, the universal voluntary law, or those rules which are considered to have become law by the uniform practice of nations in general, and by the manifest utility of the rules themselves; — secondly, the customary law, or that which, from motives of convenience, has by tacit but implied agreement prevailed, not generally indeed among all nations, nor with so paramount utility as to become a portion of universal voluntary law, but enough to have acquired a prescriptive obligation among certain states, so situated as to be mutually benefited by it, as the customary law prevailing among different nations in the whale fishery, and illustrated by the decision In Fennings v. Lord Grenville 1 Taunt. Rep. 241, 248, upon the division of the profits arising from a whale when killed by the crews of several boats; and thirdly, the conventional law, or that which is agreed between particular states by express treaties, a law binding only upon the parties among whom such treaties are in force. See 1 Chitty's Commercial Law, 28, 29, and see post, § 27, p. 66.

In the case of the ship, Flad Oyen, 1 Rob. Rep. 115, Sir William Scott observed, "A great part of the law of nations stands on the usage and practice of nations, and on no other foundation; it is introduced, indeed, by general principles, but it travels with those general principles only to a certain extent; and if it stops there, you are not at liberty to go farther and to say, that mere general speculations would bear you out in a further progress; thus, for instance, on mere general principles, it is lawful to destroy your enemy, and mere general principles make no great difference as to the manner by which this is to be effected; but the conventional law of mankind, which is evidenced in their practice, does make a distinction, and allows some and prohibits other modes of destruction; and a belligerent is bound to confine himself to those modes which the common practice of mankind has employed, and to relinquish "those which the same practice has not brought within the ordinary exercise of war, however sanctioned by its principles and purposes:" so it has ever been the practice of nations to bring vessels captured by them into their own ports, and to condemn them as prize in their own Admiralty Courts; and therefore a sentence of condemnation in the neutral country would be illegal and void. Ibid. —; C.

2. Etenim si haec perturbare omnia et permiscere volumus, totam vitam, periculosam, insidiosam, infestamque reddemus, Cicero in Ver. ii. 15.

(8) From the authorities cited in Benest v. Pipon, Knapp's Rep. 67, It seems, that most nations agree, that twenty years’ uninterrupted usage (for twenty years is evidence as well of public and general customs or practices as of private rights) is sufficient to sustain the same. — C.

(9) As to this position, see further. Marten's L.N. 356, and Pennings v. Lord Grenville, 1 Taunton's Rep. 248. There must be a reasonable notification, in point of time, of the intention, not to be bound by the customary law. Ibid. and 1 Chitty's Criminal Law 29, 35, 92. — C.

(10) See Division of Laws of Nations, ante, lvii. n. (2). — C.