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.

First Published in 1758

FROM THE NEW EDITION, BY

JOSEPH CHITTY, Esq. Barrister At Law

WITH ADDITIONAL NOTES AND REFERENCES,
By EDWARD D. INGRAHAM, Esq.

PHILADELPHIA:
T. & J.W. JOHNSON & CO., LAW BOOKSELLERS,
No. 535 CHESTNUT STREET.

1883
§ 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: 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.

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

¹
contribute to the welfare of another nation without doing an essential injury to herself, her obligation ceases on that particular occasion, and she is considered as lying under a disability to perform the office in question. (6)

§ 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 fulfill 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. (8) 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