**Natural Law and Sovereign Obligations in Vattel’s Law of Nations**

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I

*Rethinking the Modern Paradigms of Sovereignty*

The subject of international relations and of international law is generally taken to be the sovereign state.[[1]](#footnote-1) The concept of sovereignty, its powers, privileges, status and immunities in many ways dictates the language and theoretical concepts that shape the normative commitments of the international system. This concept of sovereignty—largely layered on the nation-state—is the building block of the organizations, structures, and the written and unwritten rules of the modern international system. The most dominant conception of the sovereign nation-state is undoubtedly Max Weber’s—a recognized entity with a monopoly of legitimate use of violence within a certain territory.[[2]](#footnote-2) With this conception comes a bifurcated freedom, where the sovereign state is recognized as entirely free to do what it wishes within its territory, and free to act an individual upon the international stage.[[3]](#footnote-3) Within academic discourse, more nuanced views or troubling questions may be raised, but the questions are framed with these same assumptions.

As a result, international law, as it stands, is largely understood as a kind of positive law; obligations originate only in consent, and only insofar as the free individual—the sovereign state—has committed themselves to keep those promises. International obligations are conditional; they last only as long as the obliged choose to let them last. Legitimate enforcement is lacking; what enforcement there is itself is dependent largely on the suffrage of the state whose willingness to submit to that enforcement cannot itself be compelled outside of the extra-legal world of war, occupation, and unconditional surrender.[[4]](#footnote-4) International law can then look, as it did to Clausewitz, as simply an unimportant collection of flotsam that has accumulated around the overwhelming force of state interest and power[[5]](#footnote-5). At most it acts to add irrational friction or confusion to the otherwise rational pursuit of self-interest, handicapping those who worry about it and blinding theorists from properly understanding the real behavior of states; it perhaps forms a dangerous ideology that covers the power of those states who form it. At best, it constructs institutions and introduces regularities and explicit consensus to the interactions between states, but one born from and restricted by that same sovereignty and respect for its prerogatives.[[6]](#footnote-6)

Where international law seems needed, if not most frequently, most urgently, however, is where it appears weakest. The freedom of sovereign states to do what they wish within their territories establishes a world where moral horrors occur within borders and other states must look on helplessly in the name of respecting sovereignty. The only actual morality other states are bound by is the obligation to respect sovereign borders and authority. They become bystanders to slavery, ethnic cleansing, and genocide as long as their perpetrators keep such activities within the walls, so to speak, of their own house.[[7]](#footnote-7) Things that affect other states as a ‘secondary effect of domestic activities’, from energy production to respect intellectual property to labor rights and protections, only get policed within this paradigm. There is a careful division of purely domestic rights from their consequences and international obligations only come from a negotiated consensus on bulky, weak documents that minimize that same loss of sovereignty in order to gain passage.[[8]](#footnote-8) The fundamental rights of war and self-defense themselves stand as insurmountable obstacles to the most fervent goal of international diplomacy—the restriction, prevention and elimination of war and wartime activities.[[9]](#footnote-9)

In the last hundred years, the concept of sovereignty itself has seemed to become increasingly problematic as a result. Following the growth of human rights doctrine and the international concern with genocide, the invulnerable wall of the sovereign border has been called into question. There has been an urge to reconsider the concept of the freedom and immunity of the sovereign state.[[10]](#footnote-10) As the world has shrunk and problems that once stayed within borders no longer remain discretely domestic, theorists of global democracy and justice have suggested that the nation-state has become outmoded.[[11]](#footnote-11)

Yet whatever the merits of these concerns, in response we see a strengthening of a nationalistic rebellion we see around the world. This rebirth of nationalism is both resolutely ahistorical and often tied to the ethnonationalist myths romantic nationalism and scientific racism touted in the nineteenth century to such disastrous conclusions.[[12]](#footnote-12) The attempt to reground scientific racism in some sort of pseudo-scientific misapplication of evolutionary or genetic theory adds a dangerous edge to this nationalistic revival; but its appeal is also grounded in civic identification with the nation-state, and self-determination with national sovereignty. The nation-state may be a recent political form, but it is proving a resilient one.

Theoretically, there is a strong case to be made for the demise of the nation-state as the dominant political organization of the world. The interconnected world and the growth of super-national organizations, global enterprise, and a dedication to a language of human rights and human dignity is not ultimately compatible with the absolute legitimacy of the sovereign state. New doctrines such as Human Security and Responsibility to Protect have emerged as attempts to rethink the relationship between sovereign-state, the international community, sub-national groups, and individuals, to subvert borders and rights of ‘dominion’ and replace them with a more porous border.

Yet these new movements at times threaten the achievements of the nation-state itself. Nationalism has often been said to be necessary for the unification and generation of civic identity that supports political institutions. More significantly, the mutual forbearance and tolerance between nations established by the compromise created by “national sovereignty” limited the horrific wars that ravished Europe. The autonomy preserved by this compromise serves the function of allowing people blessed with a state the benefit of self-determination. It limits the sources of conflict that lead to war by a mutual recognition of rights and obligations. Suggestions to rethink sovereignty need to grapple with the problems which sovereignty minimized along with those it creates; often the proposals seem destined to move us backwards to the endless jousting between states in what are now considered internal problems.

The rise of modern popular nationalism also raises the question of motivations as well as obligations. It is one thing to ask what rights states have to interfere in each other’s affairs; it is another to ask what obligations they have to people other than their citizens and what will make them live up to those obligations. Literature on the ethics of globalization point to the construction of national identity and the growth of human rights concerns as evidence that human sympathy is both plastic and powerful—that the empathic community of pleasure and pain can grow from those of similar nationality to all of humanity as it has from tribes and localities to national identities. But even such a project implies a desire to educate and form this identity of global citizenship and identity. Although such formation often looks to the sentimental education of literature and art, its ultimate ground on which it seeks to make its case is interest—that global problems can only be dealt with globally. We already accept the particular obligations of states to their own citizens, and of citizens to each other. Though these obligations are often honored in the breech, they are generally conceded—particularly in contrast to those international obligations we are asked to fulfill to people of other states or to stateless refugees. “Shouldn’t we take care of our own, before helping others?” is the common refrain heard in response to proposals for foreign aid and reception of refugees. Even where obligations and commitments are constructed upon legal consent, the distinction between ‘us’ and ‘them’, self and other, maintains itself with a virulence that seems to be growing with globalization rather than being transcended.

The sovereign nation-state, for all its flaws, seems unlikely to become a relic in the way in which feudal authorities have any time soon; there is none of the will to violent occupation and transformation or authoritarian unification that forged nation-states from smaller regional groups and disputed territoryin Europe or the world.[[13]](#footnote-13) Attachment to self-determination of ‘peoples’ in their ‘territory’ is the foundation of the structures that we have. Local and national identities seem stronger than any emergent super-national or global identity.[[14]](#footnote-14) The nation-state is unlikely to be transcended anytime soon, and even discourse that suggests such things raises reactions both political and cultural against international efforts, global cooperation, and transnational institutions. So we seem left with a dangerous, perhaps catastrophic dilemma: problems that require the transformation of national sovereignty and social and political attachments to this concept of national sovereignty.

But the common understanding of the autonomous and independent sovereign nation-state is actually not how the sovereignty of the sovereign nation-state was conceived in the foundational ideas of international law in the work of Emer de Vattel. Vattel, although little read now, was the dominant authority for international law, which he conceived as the law governing (and therefore, defining) sovereigns in the late 18th century, when state-building, revolution, and imperial colonization became a self-conscious activity, including the American Founders.[[15]](#footnote-15) Although Vattel is insistent on the very language of absolute independence of the sovereign, these statements are best understood in a close analysis of his work rarely offered today. Vattel grounds international law in claims of obligations; far from being uncontrolled within one’s territory or free in interactions with the rest of the world, Vattel offers an analysis of obligations first to one’s own state and then to other states “to preserve and perfect them.” These obligations exist, primarily as obligations of a ‘necessary law of nations’ stemming from a theory of natural law that, although with a religious veneer in Vattel’s writings, stem from a theory of a natural social science, one which offers general laws based on interest and prudence, where the evidence of design and intent is the extent to which prudence and morality coincide.[[16]](#footnote-16) All of this is based on a conception of sovereign states not as self-sufficient but of interdependent states who form a community constructed by nature. Balancing the desire for freedom with the need for cooperation, the laws of international obligation are sketched in between the chaos of Hobbes’ lawless international sphere and the world of international organizations and global democracy. Vattel’s writings show that not only are the modern concerns with the dangers of absolute sovereignty not new, they were present in the origination of the legal conception of sovereignty and it is only in the dismissal of these concerns that international ethics and policy became dominated by realism and positive legal theories.[[17]](#footnote-17)

II

*Realism and Natural Law in Modern and Classical International Thought*

Written, as Vattel notes, for sovereigns and realistic wise men of politics,[[18]](#footnote-18) *The Law of Nations* is both a science[[19]](#footnote-19) and an aspirational text.[[20]](#footnote-20) In calling it a science, Vattel conceives of it as demonstrating laws of human behavior written in nature, founded upon natural principles. This science is normative—it dictates how sovereigns and states should act, based upon obligations established by nature. But as those obligations are only known through reason, it requires both reasoning and a willingness to listen to that reasoning. They are neither intuitive nor self-evident.[[21]](#footnote-21) Vattel however thinks his audience is unlikely to be responsive to the claims because they are already committed to a doctrine or power politics that allows them to pursue their interests and passions that he identifies with Machiavelli, one which we could relate to both the IR theory of Realism and to the doctrine of Real Politick.[[22]](#footnote-22)

Realism, like many doctrines in politics, claims to be descriptive of how states act; it rejects other claims as both factually untrue and dangerously confusing. If we think that states look to moral concerns rather than narrowly defined interests, we are incapable of seeing clearly why states act the way we do. But then an inevitable normative claim comes in—the problem is that since some political actors mistakenly concern themselves with such moral and legal obligations, they will inevitably compromise their actions in pursuit of their interests, and fail to assert them as readily or powerfully as states that reject such concerns and act on clear, unclouded principles of realism. Realism thus claims both that it describes how states act and how they should act.

In Vattel’s wake, Clausewitz would reject the dominant claims of the international law theorists as inconsequential. The concerns of diplomats and jurists failed to have much of an effect upon the contest of forces that dominate war. War being politics by other means, interests are pursued with the maximum amount of force limited only by the importance of the interest. That at least is the description of war in Book One of Clausewitz’ classic text. In it, he portrays the actions of states in the objective terms of mechanical forces, mimicking Newtonian physics. But in the last book, the normative project of Clausewitz emerges in the history of the growth of absolute war. The failure of Prussian efforts against Napoleon can be traced to a misconception of war which had been touted by theorists of statecraft who mistook the limits on warfare of the modern European system as a growth of Enlightenment thought rather than what it was—a reflection of the particular circumstances that made it impossible to employ the true centralized force of the new nation-states.[[23]](#footnote-23) The humane limits on warfare only seemed like the development of moral consciousness, when in fact they simply reflected the misalignment of government interests with those of the people. When states still under the spell of the international law jurists were faced with someone unconcerned by those rules, they fell rapidly to Napoleon. The rest of Europe, playing by rules of prior centuries, failed to match Napoleon’s remorseless science.

Clausewitz’ forecast that newly democratized nation-states would be far less likely to show such restraints suggested that the coming era would continue to be one of total warfare. Civilization made states more powerful; but not ‘more civilized.’[[24]](#footnote-24) In the coming century, international law and international organizations emerge in an unprecedented way. But their effect upon war, diplomacy, or the actions of colonial empire seem meagre. In the Civil War, the Union Army adopts the first code of ethical conduct in war; but Sherman’s march to the sea violates all of those laws.[[25]](#footnote-25) The Geneva conventions and other rules of diplomacy and warfare do nothing to prevent World War I or its brutality; the Cold War ostensibly was mitigated by the order of international law and institutions devised in the wake of World War II, but the behavior of both the United States and the Soviet Union was dictated more by the pursuit of national interests restricted by the fear of mutually assured destruction. International law as a field still has to deal with the Clauswitzian suggestion that its influence is only an epiphenomenal shadow cast by the interplay of interests of nations. Such suggestions have existed since the very start of the study of the politics of states and warfare in the work of Thucydides.

Famously, Thucydides offered the stated reasons for the Peloponnesian War in the debate in Sparta between the Corinthians and the Athenians, but puts forward the claim that the actual cause of the war was the fear the Spartans had of the Athenians—a view most nearly echoed when the Athenians excuse their behavior as what any society would do, motivated by the universal motives of fear, ambition, and advantage.[[26]](#footnote-26) The brutal foundations in pure power and short-term interest is expressed baldly by the Athenian description of this as a law of nature, that the strong do what they can and the weak suffer what they must in the Melian Dialogue.

This sense of natural law underlies the Hobbesian treatment. Man to man is a god, Hobbes notes, when found in domestic society; whereas man to man is an errant wolf when outside of the social contract and sovereign authority in the world.[[27]](#footnote-27) Between states there is only natural law. Natural law at best seems to be some sort of prudence for Hobbes, the rule of reason of the concupiscence of the soul, restraining it for the sake of survival. But it lacks the proper character of law if separated from a divine lawgiver.[[28]](#footnote-28) Without an authority to define it and with no punishment regular enough to maintain obedience to the law, its voice becomes silent.

The Natural Law tradition which originates in scattered suggestions of Greek philosophy and in the writings of the Stoics rests on such a divine reason that humans partake in. Cicero ties this natural law to the prosperity of Rome—Roman virtues and Roman fetial law led to Roman dominance.[[29]](#footnote-29) It was the abandonment of this natural law which led to the crumbling of the Roman Republic and its lost of status and acknowledged authority throughout the world. This parallel of interest and justice was central for Cicero’s natural law. In its Christian adaptation, the natural law continued to have that prudential character of being reason’s discovery of how to properly pursue the good.

This Natural Law tradition already mixed the revealed doctrine of dogmatic moral obligation authored by a divine power and the seeds of a science of politics discovered and nurtured by reason and experience. The first guaranteed both the stability of the law and the eventual punishment that enforced its authority. As Vattel wrote, the Natural Law theory of the Enlightenment originated in Grotius, universally acknowledged as the father of modern international law.[[30]](#footnote-30) Grotius both established a theory of international law and codified specific rules as pieces of it to be obeyed by every state. These obligations rested on the authority of its author and the examples he drew upon, often framed with claims of proper admiration or condemnation to show which behavior was consonant with natural law and which was opposed to it. This codification though was spoken of more reverently than followed—as has always been the case for theories of natural law.

The problem with realism is that the way in which the interest of states pursue those interests inevitably leads to war and undercuts cooperation. As a result, interests of each country are in fact undermined in the foolish ways they pursue those interests. Unwilling to restrain their policies by an understanding of and acknowledgement of natural laws, European states cause war to ravage their lands and their people. Inevitably, the understanding of Hobbes, of Machiavelli , and their followers in the courts of sovereigns lead to irrational outcomes; Vattel sees this as the natural outcome of ignorance and violation of natural law. Only an enlightenment built upon it can end the cycle of war.

III

*Natural Law in Vattel*

Vattel begins his work by situating it as both a continuation of the work sparked by Grotius, and continued with Wolf.[[31]](#footnote-31) He represents his work as a representation of the work of Wolf in particular, in a form both more digestible and separate from his philosophical system. But he also notes that Wolf’s treatment needs “general principles and leading ideas.”[[32]](#footnote-32) In his work, the general principles and leading ideas, too often ignored by writers such as Hobbes and Grotius, are the nature of the sovereign state and the characteristics essential to it, as well at the ways in which Natural Law changes whenapplied to the sovereign state.

Vattel himself offers no treatment of the Natural Law in the **Law of Nations**,[[33]](#footnote-33) taking it as a settled topic established in the philosophy of the day. “The study of this science [of the Law of Nations] presupposes an acquaintance with the ordinary laws of nature of which human individuals are the objects.”[[34]](#footnote-34) Looking at Hobbes, Grotius and Wolff, he draws on a vision of natural law as the obligations placed upon us by reason. These obligations are consonant with our nature; there fundamental form for individuals is “to preserve and perfect their natures.” Any people who act rationally would be obligated to seek these ends, and pursue all commensurate means. That not all humans act rationally is fully accepted by Vattel. Writing a book to instruct people in the science of those obligations is itself evidence that this natural law is not something intuitive or inherently known, but rather the fruits of thought and discovery—some of it the recent achievements of the new intellectual fervor of Europe. Though the ends of preservation and perfection should be apparent to any thoughtful person, even if not so clearly articulated, the actions and behavior necessary for that preservation and perfection can only be learned over time, often by trial and error, or by reflection upon the examples and recurrent events of history and current affairs. To an extent, natural law in the sense of Vattel is less dogmatic theology and more human and social science. “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 circumstance of their being men…*”[[35]](#footnote-35)* Sciences of nutrition and child development which look not at culture, but universal physical needs of a human individual would be examples of the discoveries of the laws that govern individual human thriving. Social science is the science that establishes the general behaviors of every sovereign state that wishes to thrive similarly. When we speak the language of economic reforms or legal regulations that foster growth or create stability, or political systems based on general laws of what manages to last or deal effectively with the creation of policies or the resolution of emergencies—or where the flaws in such systems lead to political paralysis or collapse---we speak the language of Vattel’s Natural Law. Such empirical discoveries of general laws and patterns governing human beings and human society are the work of historians, or social scientists, or legal theorists. Given the rationality of these ends, the discovery of how to achieve these ends has a lawlike quality.

But discovery itself is only part of Vattel’s project; his work is both aspirational and propadeutic—it seeks to persuade its readers to adopt the Law of Nature. The Law of Nature is, Vattel says, a law for sovereigns and those who are involved in the settling of public affairs. But Vattel is not unrealistic about the reception of his work. The developments of physical sciences might have to overcome the prejudices of superstition, the authority of scholastics, and the dogmas of religion; but doctrines touching on statecraft must deal with both the desires of those in power and their skepticism and cynicism. Vattel recognizes his doctrine as one which will be dismissed by those already committed to the power politics and the short sighted realism of his day, which he connects with the teachings of Machiavelli. The obligations of Natural Law are neither self-enforcing nor inherently persuasive.

But they are nevertheless true; only following certain doctrines will a society thrive, as is the case of Britain.[[36]](#footnote-36) In fact, there is an obligation to discover the law of nations; to learn from it; to acknowledge and obey it; and to arrange to have it spread.

Liberty is one of the fundamental attributes of the individual person and of the state. “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 consent.” The individual must relinquish some of this natural liberty; but part of the nature of the state is that it does not need to do so. “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, all other nations, as long as it has not voluntarily submitted to them.” [[37]](#footnote-37) This liberty is complete, entire; the state is independent. If that is the case, how can the state be bound to any kind of law or obligation? Yet Vattel, immediately after pronouncing this claim of sovereign independence suggests that they are in fact bound by natural obligations, not simply ones which they have consented to. “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…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.”[[38]](#footnote-38)

While modern theories of sovereignty may suggest that liberty is absolute and only restricted by laws we consent to—the fundamental claim underlying positive law—Vattel’s conception of this liberty is that it is only “with respect to all other men, all other nations” that their liberty is entire. The obligations of natural law are not under the authority of other nations, but of nature. He describes the science of natural law as resting on “an 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 submit to any rule.”[[39]](#footnote-39) This application of the traditional first principle of ethical thinking suggests we have a requirement to pursue happiness; it might be fair to call this a duty in Vattel’s language. Yet it is not a duty that all fulfill; rather it is, again, a voluntary act to live reasonably, and its result is happiness.

In setting up happiness as the goal of the law of nature, and its science as the discovery of laws consonant with our nature to find that happiness, Vattel seems at times to equate natural law with simple prudence in pursuit of the good. This is not, however, the case. Like Cicero, Vattel’s language of duty and obligation suggests a moral categorical imperative as Kant will adopt; but where Kant implies that any consideration of personal happiness undermines the moral character of a duty, Vattel suggests that the structure of nature equates the moral and the beneficial. Much as Cicero believes that the apparent opposition between the *honorable* and the *useful* is an error based on a corrupted view of society[[40]](#footnote-40), Vattel’s aspiration is to show that what is honorable, what leads to happiness, and what is good state policy all coincide, the product of the artistry and benevolence of the Creator behind creation:

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 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. It was to conduct them to that great end that the laws of nature: it is from the desire of happiness that his obligation to observe these laws arises.”[[41]](#footnote-41)

Yet while what is moral or in accord with the natural law leads to happiness, not all prudent decisions are moral. Vattel distinguishes decisions that are political or prudent from ones which are required or forbidden by the Law of Nature. The first are things which states may pursue, but are in no way bound to pursue. Happiness requires them to do what natural law requires, but it may require many things natural law is silent about.

IV

*The Sovereign State and the Sovereign in Vattel*

Natural law applies to states; it both directs them to their duties and establishes their rights. What it dictates is based on their nature. Vattel begins his work proper with a definition of the state—one which is not without its difficulties. “A nation or state is…a body politic, or a society of men united together for the purpose of promoting their mutual safety and advantage by their combined strength.”[[42]](#footnote-42) Writing as much to justify as to elucidate the rapidly hardening map of nation-states that made up Europe, Vattel adopts entirely the ahistorical and untroubled view of the state as identical with a nation and a result of a free agreement by individuals. This public state is by “design” establishing a “public authority” and “by the very act of the civil or political association, each citizen subjects himself to the authority of the entire body.”[[43]](#footnote-43) Many of the rules of sovereignty seem to come from a respect for this natural freedom:

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 shall be left in their 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...

As a consequence of that liberty and independence, it exclusively belongs to each nation to form her own judgment of what her conscience prescribes for her,--of what she can and cannot do,--of what it is proper or improper for her to do…[[44]](#footnote-44)

This liberty creates an obligation to not infringe on the freedom of other states; indeed, the settlement of borders and with it the domain and empire of that territory is meant to remove a constant threat of conflict between nations: “since the least encroachment on the territory of another is an act of injustice, ---in order to avoid the commission of any such act, and to prevent every subject of discord, every occasion of quarrel, the limits of those territories ought to be marked out with clearness and precision.”[[45]](#footnote-45)

The claim of sovereignty is tied directly to the sovereign territory and the country and nation are tied together by a matter of right—and an obligation for other nations to recognize and respect those rights. The right includes the rights to both ‘domain’ and ‘empire’ exclusively to all property within that territory. The right of domain is the right of “the nation alone may use this country for the supply of its necessities, may dispose of it as it thinks proper, and derive from it every advantage which it is capable of yielding.” All of the land and natural resources and property contained within are solely for the sovereign of territory to use, to sell, to offer in charity. The empire is the right of “sovereign command” in a territory, “by which the nation directs and regulates at its pleasure everything that passes in the country.”[[46]](#footnote-46)

The nation includes all the citizens who number among the group which has come together to form the state. Writing before the romantic and ethnic nationalism of Herder and Fichte, Vattel’s use of the word ‘nation’ is enough to suggest a people has some shared values and existence, but little attention to a cultural or linguistic heritage that unites them as a people.[[47]](#footnote-47) Questions of historical or political efforts that are required to forge a public identity are remarked only in passing, and often as violations of principles of free choice by thinking beings. The only legitimate bonds beyond those of natural law come from those they accept willingly. In framing the original sovereign state, citizens willfully submit themselves to the sovereign in its formation.[[48]](#footnote-48) “In the act of association, by virtue of which a multitude of men form together a state or nation, each individual has entered into engagements with all, to promote the general welfare; and all have entered into engagements with each individual…”[[49]](#footnote-49) Citizens may change the government; and when a majority seeks to change it in a radical way, where liberty is at stake, “those citizens who are more jealous of that privilege…though obliged to suffer the majority to do as they please,---are under no obligation at all to submit to the new government: they may quit a society which seems to have dissolved itself in order to unite again under another form: they have a right to retire elsewhere, to sell their lands, and take with them all of their effects.”[[50]](#footnote-50)Similarly, when a society submits itself to a foreign power, “the citizens who do not approve this change are not obliged to submit to it:---they ought to be allowed to sell their effects and retire elsewhere.”[[51]](#footnote-51) Yet when discussing the obligations that the state has to ‘provide for the Necessities of the Nation’, Vattel notes that this freedom is not so absolute, “Those workmen that are useful ought to be retained in the state; to succeed in retaining them, the public authority has a right to use restraint if necessary. Every citizen owes his personal services to his country; and a mechanic, in particular, who has been reared, educated, and instructed in its bosom, cannot lawfully leave it…unless his country has no occasion for him. Or he cannot obtain the just fruit of his labor and abilities.”[[52]](#footnote-52) When he treats of the rights of citizenship and naturalization, this upbringing take more of the place of the act of choice in committing citizens to obligations and duties. “The citizens are members of the civil society: bound to this society by certain duties and subject to its authority, they equally participate in its advantages…”[[53]](#footnote-53)

Vattel thus fits uncomfortably between legitimizing group identity within a nation solely through free choice and the constraints of birth, family, and socialization. When discussing the right of persons to quit their country, he contrasts the two demands bluntly:

The children are bound by natural ties to the society in which they are born; they are under an obligation to shew themselves grateful for the protection it has afforded their fathers, and are in a great measure indebted to it for their birth and education…But every man is born free; and the son of a citizen, when come to the years of discretion, may examine whether it be convenient for him to join the society for which he was destined at birth. If he does not find it advantageous to remain in it, he is at liberty to quit on making it a compensation for what it has done in his favor…[[54]](#footnote-54)

At adulthood, the son who “acts as a citizen…tacitly assumes that character; his obligations, like those of others who expressly and formally enter into engagements with society, become stronger and more extensive…” But the citizen “may also quit the state of which he is a member, provided it is not in such a conjuncture when he cannot abandon it without doing it visible injury.” He further suggests that though this right exists externally, the citizen is internally obligated by honor when it injures the welfare of the country. There is even an external obligation from the very nature of the social compact in times of danger to the state to defend the state as a united body.[[55]](#footnote-55)

The nation then is a mix between a voluntary compact and an organic, historical entity which imposes obligations in birth and upbringing. The right to emigrate—not to speak of immigration—is limited. There are absolute rights to immigrate when the social contract fails: when the individual cannot make a living in their country; when the body of society fails to live up to its contracted obligations towards a citizen; and when laws go beyond what the social contract can oblige people to, such as a mandate of religious belief.[[56]](#footnote-56) But other rights to emigrate are matters of conventional law, not natural right. [[57]](#footnote-57)

People and land being granted, the establishment of the sovereign power is a necessary act of a nation, the members of that territory. “…every political society must necessarily establish a public authority, to regulate their common affairs…This authority essentially belongs to the body of the society…and every society has a right to choose that mode which suits it best.”[[58]](#footnote-58) The nation has “the right to form, maintain, and perfect its constitution, ---to regulate at pleasure every thing relating to the government, ---and that no person can have a just right to hinder it.”[[59]](#footnote-59) These decisions are an obligation to themselves, “its first and most important duty to itself,”[[60]](#footnote-60) to establish the best constitution suited to their own happiness, and to form and reform it as they see fit. They must know themselves in order to do so, and pursue their interests carefully and prudently; but no other foreign power has a right to impose on them a constitution or form of government they feel is better. “..all these affairs being solely a national concern, no foreign power has a right to interfere in them, nor ought to intermeddle with them otherwise than by its good offices, unless requested to do it, or induced by particular reasons. If any intrude into the domestic concerns of another nation, and attempt to put a constraint on its deliberations, they do it an injury.”[[61]](#footnote-61)

In establishing the sovereign, the society pursues its own advantage and safety; from this, the sovereign is bound by duties and obligations originating in both natural law and in the social contract itself. “…the sovereign power is solely intrusted to him for the safety of the state, and the happiness of all the people---…he is not permitted to consider himself as the principal object in the administration of affairs, to seek his own satisfaction, or his private advantage…”[[62]](#footnote-62) Unfortunately, as in many things, flattery and passion cause many sovereigns to forget these duties and “He soon considers the kingdom as a patrimony that is his own property, and his people as a herd of cattle from which he is to derive his wealth, and which he may dispose of to answer his own views, and gratify his passions.”[[63]](#footnote-63) The sovereign may neglect these duties—but the duties still exist. Beyond duties to his people, the sovereign “becomes bound by the obligations of that nation”, as the representative and depository of the obligations of the people to other countries.[[64]](#footnote-64)

In return, the sovereign has the commensurate powers established by the constitution, whether limited or arbitrary. If the Constitution allows the sovereign to alter the fundamental laws, he has ‘regal prerogatives’; but if it establishes limits, the sovereign must consider those fundamental laws are “inviolable and sacred.”[[65]](#footnote-65) When he violates those laws, he violates obligations that exist. But the existence of those laws is not equivalent to being punishable. The sovereign may be governed by natural law and sovereign obligations but not punishable. Public law, family law, civil law as well as natural obligations may bind the sovereign, but “if the prince is invested with full, absolute, and unlimited sovereignty, he is above the laws, which derive from him all their force, and he may dispense with his own observance of them, whenever natural law and equity permit him.”[[66]](#footnote-66) In the case of the penal laws in particular—the laws of punishment, the sovereign is exempt. ”The majesty of a sovereign will not admit of his being punished like a private person…” Not only is the sovereign above punishment, the sovereign must “be…held in veneration by the people, and in perfect peace…”[[67]](#footnote-67) The sovereign is thus bound by laws and yet not punishable in most cases.[[68]](#footnote-68) The enforcement of these obligations rests upon, conscience, natural consequences, belief in God, and worries of rebellion.

Obligations of citizens to obey include force, but actually need to go beyond that force to a general commitment to obedience. Because of the needs of the state and the agreement made—explicitly or tacitly—the sovereign must have the ability to enforce rules; but obligation goes beyond simply the exertion of force. It must extend to the willing cooperation and submission to the sovereign.

As soon as a nation acknowledges a prince for its lawful sovereign, all the citizens owe him a faithful obedience. He can neither govern the state, nor perform what the nation expects from him, if he be not punctually obeyed. Subjects then have no right, in doubtful cases, to examine the wisdom or justice of their sovereign’s commands; this examination belongs to the prince: his subjects ought to suppose…that all his orders be just and salutary…[[69]](#footnote-69)

This combination of power and privilege of the sovereign and bound submission of the citizens seems a recipe for an oppressive and tyrannical government. The sovereign may be bound by natural law and obligations to his people, but these obligations without enforcement are only nominal. And the independence of sovereignty forbids any other people or state from interfering with this.

But this obedience is not unconditional; Vattel points to both sovereigns who have been unjustly executed in rebellions and great republics and tyrants that have been overthrown “But this high attribute of sovereignty is no reason why the nation should not curb an insupportable tyrant, pronounce sentence on him…and withdraw itself from obedience….As soon as a prince attacks the constitution of the state, he breaks the contract which bound the people to him: the people become free by the act of the sovereign, and can no longer view him but as an usurper who would load them with oppression. “[[70]](#footnote-70) Even an absolute sovereign is bound by the natural law and the end of civil society, the common happiness of all. “No engagement can oblige or even authorize a man to violate the law of nature.”[[71]](#footnote-71)

Still, this right to withdraw is hard to put into practice. The supposed liberty of choosing a sovereign then seems dangerously apt to turn into a real oppression in practice, especially when combined with the power and ability of the position to win partisans to his side through favors and to turn resistance into something dangerous, nearly impossible, even without the obligation that subjects have to submit.[[72]](#footnote-72) And subjects should be reluctant to question this. “The nature of sovereignty , and the welfare of the state, will not permit citizens to oppose a prince whenever his commands appear to them unjust or prejudicial. This would be falling back into a state of nature, and rendering government supportable.”[[73]](#footnote-73) But what he is suggesting is not ‘blind obedience’ but ‘moderation.’ There are in practical applications of principles no mechanical application of clear categories as in the sceinecs of physics and chemistry; what remains are judgments and habits. The error must be on the side of obedience; “But when the injuries are manifest and atrocious—when a prince, without any apparent reason, attempts to deprive us of life, or of those things, the loss of life irksome, who can dispute our right to resist him? Self-preservation is not only a right, but an obligation imposed by nature…”[[74]](#footnote-74) We have a duty to ourselves under nature to resist a tyrant who “divests himself of even the appearances and exterior conduct of a monarch…he no longer retains the sacred character of the sovereign and cannot retain the prerogatives of that exalted rank.”[[75]](#footnote-75) There is a division between sovereigns and tyrants or even ‘such monsters as Nero’ where the rules of obedience and power no longer apply in the same way. But this is not a judgment that can be made by private citizens alone, or by foreign powers. “…this judgment can only be passed by the nation, or a body that represents it….”[[76]](#footnote-76)No other nation can make this kind of judgment.

It does not then belong to any foreign power to take cognizance of the administration of that sovereign, to set himself up for a judge of his conduct, and to oblige him to alter it…The Spaniards violated all rules, when they set themselves up as judges of the Inca Athualpa…they accused him of having put some of his subjects to death, or having had several wives, & c.---things for which he was not at all accountable to them; and to fill up the measure of their extravagant injustice, they condemned him by the laws of Spain.[[77]](#footnote-77)

Vattel’s concern here goes far beyond the maintenance of European power structures. As his example shows, the entirety of the project of colonialism and imperialism is one which violates natural law. The autonomy of sovereignty applies equally to non-European peoples; in fact, it is this language which condemns colonial projects and protects the rights of each nation to determines its own way. Whatever the benefits that might be found in weakening the rights of sovereignty to allow more intervention, the projects of humanitarian intervention have never been able to escape the appearance of a resurgent colonial power where the civilized world judges what is inevitably a country in Africa, Latin America, or the Middle East.

But there is a clear case in which that internal interference may be allowed. As the sovereign has so much power practically, the people who find those obligations broken may turn to an outside power as an arbitrator. [[78]](#footnote-78) In this role, no perfect right is created to enforce their judgment; only the right to assist. When tyranny has become manifest, “every foreign power has the right to succor an oppressed people who implore their assistance.” [[79]](#footnote-79) This can of course become a matter of excuse—what Vattel will call a pretext[[80]](#footnote-80)--to violate the law of nations and “authorize odious mechanisms against the internal tranquility of states.”[[81]](#footnote-81) Creating an ‘apparently indigenous force, or identifying a group of malcontent citizens as freedom fighters is the kind of danger Vattel imagines. In the ultimate case of civil war, the sovereign state is entirely shattered, and then foreign powers have the right to interpose to help arbitrate peace, or “to take the merits of the cause into consideration, and assist the party which they shall judge to have right on it side...”[[82]](#footnote-82) But determining an authentic movement from an artificial one, a legitimate intervention on behalf of a newly recognized government from an intervention in interior security matters is, again, an application of judgment. This intervention is one which we should incline strongly against in all cases. It undermines the stability of government; it threatens the rights of self-determination; and in doing that it threatens the society of nations by insulting the dignity and honor of states.

Along with liberty, sovereignty has as a fundamental attribute ‘equality.’ But they are not equal in the same way humans are defined as equal in Hobbes—defined by equal vulnerability and equal intelligence.[[83]](#footnote-83) States, after all, are in no way equal in size or power; the billions of China or India are nominally treated as a single state in the same way Luxembourg or Trinidad-Tobago are. So this equality is a moral character, whether considered metaphysical or fictional. “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.”[[84]](#footnote-84) This is a matter of dignity.[[85]](#footnote-85) The protection of one’s own dignity, and respect for the dignity of others, serve as fundamental duties for Vattel.[[86]](#footnote-86) The equality of sovereignty is an equality of status and dignity.[[87]](#footnote-87) They are considered ‘equally sovereign’ and they deserve from this equal respect. This respect for equality is necessary for maintaining the society of nations in the world at large. Respect for liberty and sovereignty is ultimately a respect for national dignity. What this means is a limiting on the vainglory of nations and an urge to seek privileges or to apply rules to other nations one refuses to follow one’s self, or to seek special treatment or exemptions; what maintains this dignity is the Golden Rule as an application of that dignity. “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.”[[88]](#footnote-88)

V

*Obligations and Duties in Vattel*

Our modern conception of sovereignty often stresses the autonomy and with it the rights of those sovereign states. Obligations come generally reciprocally to respect that sovereignty from other sovereign states. Meanwhile, sovereign authority over a people and a territory restricts any demands that the global community may make upon actors in the domestic sphere. New doctrines such as human security[[89]](#footnote-89) or inconsistent employment of doctrines such as *jus cogens[[90]](#footnote-90)* attempt to whittle away at this absolute liberty. When all moral and ethical claims are based upon the consent of the sovereign state to those norms—when the enactment and enforcement of those rules is left at the national level—it becomes impossible to restrain a rogue state or a flouter of conventions of human rights or rules of war who has never consented to treaties or agreements or who has withdrawn from them. The treatment of rogue states or violators of human rights then becomes simply a matter of force without any legitimacy; or the norms become unenforceable where any nation refuses to submit to them; or, more often, a mixture of the two where powerful states play by whatever rules they prefer while masking their use of force in high minded moral rhetoric.[[91]](#footnote-91)

Vattel’s Natural Law theory rejects these claims that the rules of international law are founded on consent. Instead, the obligations are first and created by the nature of the subject; rights follow from these obligations, not the other way around. “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 those obligations.”[[92]](#footnote-92) Those obligations stem from the nature we are endowed with—to preserve it, but also to perfect it. It is true that we all do not live up to our obligations to ourselves—to do what is best for ourselves, what is most rational, to make of ourselves everything we could be. But the failure to live up to those obligations still reflects those obligations. It impacts us naturally, and makes us fail to thrive, individually or as a society.

The obligations of an individual are different from those of a state, as natural law orders different things based on their different natures. The differences of individual and state are threefold: the state is more self-sufficient and secure than an individual; the state is more rational and less impulsive in how it acts than an individual; and the representative nature of the sovereign means that as a trustee, the sovereign must put the obligations of the state to its own citizens first and foremost.

Individuals are so constituted, and are capable of doing so little by themselves, that they can scarcely subsist without the aid and the laws of civil society. But as soon as a considerable number of them have united under the same government, they become able to supply most of their wants; and the assistance of other political societies is not so necessary to them as that of individual to individual…States conduct themselves in a different manner from individuals. It is not usually the caprice or blind impetuosity of a single person that forms the resolutions determines the measure of the public: they are carried on with more deliberation and circumspection…independence is even necessary to each state, in order to enable her properly to discharge the duties she owes to herself, and to her citizens, and to govern herself in the manner best suited to her circumstances.[[93]](#footnote-93)

These obligations are tied to the happiness of the state and the end of civil society itself. The laws of nature which a state must follow in order to achieve its happiness form what Vattel calls the “necessary law of nations.” “It is necessary, because nations are absolutely bound to observe it.”[[94]](#footnote-94) But the interpretation of those obligations, how they are achieved, is left to the nation herself. We cannot order others to behave in a way which we think is best for them without interfering in their autonomy and thus insulting their equal dignity. There are things we can demand of others, where we have what Vattel will call imperfect rights and perfect rights, but these are not the obligations of the necessary law of nations. We have no right to deny a free and equal individual the right to make their own judgment through their own use of reason in matters that only affect themselves.[[95]](#footnote-95)

As a consequence of that liberty and independence, it exclusively belongs to each nation to form he own judgment of what her conscience prescribes to her,--of what she can and cannot 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 she owes to herself. In all cases, therefore, in which a nation has a 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.[[96]](#footnote-96)

Nations are free to follow their own conscience; but they are not free *from* conscience. They may ignore it or act in bad faith. Flattery, passion and corruption may quiet its voice; it may be uninformed and ignorant of what is just and honorable. But in doing so, an individual nation fails to follow its own interest, and the sovereign fails to live up to their obligations to their people. Being out of accord with natural law, evils necessarily follow their acts; the natural consequences of their actions keep them from thriving. Primarily, we have obligations to ourselves. In the case of the state, those obligations are what is comfortable to its nature “determined by its essential attributes…There are then actions of a nation as such, wherein it is concerned in its national character, and which are either suitable or opposite to what constitutes it as a nation; so that it is not a matter of indifference whether it performs some of these actions, and omits others.”[[97]](#footnote-97)

The basic principle of action for a society is to preserve and perfect its members. The preservation of the state is merely the continued duration of the political association itself; perfection, however adds another element to its duties, and dictates the greatest amount of them. Perfection is defined for a nation as its achievement of its end—“to procure for the citizens whatever they stand in need of, for the necessities, the conveniences, the accommodation of life, and in general whatever constitutes happiness…”[[98]](#footnote-98) In our own lives, we may fail our obligations to ourselves, and this may affect others around us; they may need to support us, to help us deal with effects of our failure to take care of our finances or health; but those obligations are only to ourselves. But there is a ‘double obligation’ in the world of politics, “the one proceeding from nature, and the other resulting from their reciprocal engagements…All the citizens who form a political society, reciprocally engage to advance the common welfare, and as far as possible promote the advantage of each member.”[[99]](#footnote-99) The failure of a state to live up to this would be a reflection of the sovereign to fail to live up to their trust.

The obligation to provide necessities, conveniences and the accommodation that lead to happiness does not mean that the state directly produces and distributes any of those goods, but it provides the legal and political environment for a flourishing economy and civil society, as well as the basis for security. Here what Vettel lays down as obligations are the duties to pursue policies of development and laws which provide “a happy plenty of all the necessaries of life.”[[100]](#footnote-100) The mundanity of these chapters may incline us to neglect the extent to which considerations of them as inherent moral obligations as well as laws of development creates a language for judging a sovereign’s dedication to their people and their attention to scientific policies that achieve the proper ends. Natural law demands that labor be encouraged and rewarded, the soil cultivated, and commerce encouraged. This means more than simple nostrums—it means providing an environment in which jobs are created and work is rewarded through “wise regulations and assistance properly granted” without improper constraint.[[101]](#footnote-101) The obligations of a nation to itself include the promotion of agricultural science and honoring of husbandry; the maintenance of a viable and trustworthy system of coinage, and the construction and preservation of roads, bridges and other public ways of communication.[[102]](#footnote-102) Failures of investment and development are failures of duties of the sovereign to their citizens. Although societies may favor certain values—may for instance, decide to prohibit foreign merchandise or establish monopolies--the end must always be the benefit of citizens.[[103]](#footnote-103) The nation is not to choose between security, prosperity and happiness, but to pursue them all—the balance of these pursuits may be left to a nation’s conscience, but the needs to promote them are imperatives of human nature, not of a particular culture. When societies fail to invest in instruction and enlightenment, the promotion of arts and science, or the freedom of philosophical discussion, to promote patriotism or offer honors to citizens who serve the state, the state fails to do things necessary to the practices that separate states that serve their citizens well to the ones which leave them in misery, fail to offer them security or a livelihood, and thus force them to seek another state as immigrants and refugees.[[104]](#footnote-104) This pursuit of happiness is not simply for an abstraction of the whole state; the obligation of the sovereign is to provide the necessities, security, and means to happiness for each individual citizen.[[105]](#footnote-105)

These obligations to one’s self are primary, and the primary provider is also the nation itself. Yet this autonomy and independence is limited by human nature. “Man is so formed by nature that he cannot supply 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 own nature.”[[106]](#footnote-106) We need others for both our security and our perfection, as well as our natural needs to be social.[[107]](#footnote-107) Because of these needs, we must maintain both our place in society and the society itself. This is not simply a matter of formal institutions, rules, and commitments—it is behavior that makes us acceptable or unacceptable to other people. In classical natural law thought, the practice of virtues such as justice and generosity were meant to bind the community together through gratitude, fellow-feeling, and goodwill.[[108]](#footnote-108) What makes that goodwill flourish is good behavior—politeness, respect and helping others. “the general law of [natural] society is, that each individual should do for the others every thing which their necessities should require, and which he can perform without neglecting the duties that he owes to himself…”[[109]](#footnote-109) This obligation is carried over into the society of nations:

The universal society of the human race being an institution of nature herself, that is to say a natural consequence of the nature of man, --all men, in whatever situation 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, they unite 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 to the rest of mankind…”[[110]](#footnote-110)

These duties of the state to others “depend very much on its duties to itself.”[[111]](#footnote-111) It is because the state may have need of aid in the future that it cannot simply look to ‘its own interests.’ Its interests include a neighborhood in which others are respected. The Melians challenge the Athenians in Thucydides, “Since you place your advantage in the place of justice, our view must be it is to your advantage not to subvert this rule which is good to all: that a pleas of justice should do some good for a man who has fallen into danger…And this rule concerns you no less than us; if you ever stumble, you might receive a terrible punishment and be an example to others.”[[112]](#footnote-112)The Athenian response to this, dismissing it, is belied by their eventually cries for mercy and the exhortations of Nicias when they do become victims of their own plans in Sicily.[[113]](#footnote-113) What the Melians appeal to is the form of the Golden Rule based upon prudence; what the Athenians exhibit is the kind of vainglory that Hobbes sees as a cause of war—the denial of equality, the over confidence of hubris. The interest we have in mutual aid depends on our awareness of the limits of hegemonic power; that nations fail to recognize this in no way implies that such power is as independent as they believe.

The obligation we have to our own interest is to maintain this goodwill; so “The first general law we discover in the very object of the society of nations, is that each individual nation is bound to contribute everything in her power to the happiness and perfection of all the others.”[[114]](#footnote-114) Because we are not self-sufficient, we must admit our interdependence. The tendency to see both the individual and the state as a caricature of autonomous self-sufficient individuals’ in much of the communitarian literature first falsifies what Vattel says and the refutes this inaccurate caricature. “The nature and essence of man—who without the assistance of his fellow men, is unable to supply all his wants, to preserve himself, to render himself perfect, and to live happily,--plainly shows us that he is destined to live in society, in the interchange of mutual aid, ---and , consequently, that all men are, by their very nature and essence, obliged to unite their common efforts for the perfection of their own being and that of their condition.”[[115]](#footnote-115)This interdependence is not an accident, but of our essence; it is not happenstance, but by design—what works for us, in our interest, also shows us what should be, what we are obliged to be—and that is communal.

The obligations that follow from this are not simply non-interference but mutual aid. “one state owes to another state whatever it owes to itself, so far as that other stands in real need of its assistance, and the former can grant it without neglecting the duties it owes itself. Such is the eternal and immutable law of nature.”[[116]](#footnote-116)Offering assistance to nations unjustly attacked, offering assistance during famines—these are duties, not supererogatory acts. The Lisbon earthquake is Vattel’s example of modern day disasters that require aid from outside borders as a necessary step to cementing worldwide humanity.[[117]](#footnote-117)

How happy would mankind be, were these amiable precepts of nature every where observed! Nations would communicate to each other their products and their knowledge; a profound peace would prevail all over the earth, and enrich it with invaluable fruits; industry, the sciences and the arts, would be employed in promoting our happiness, no less than relieving our wants; violent methods of deciding contests would be no more heard of: all differences would be terminated by moderation, justice, and equity; the world would have the appearance of a large republic; men would live every-where like brothers, and each individual would be a citizen of the universe. That this idea should be but a delightful dream! Yet it flows from the nature and essence of man.[[118]](#footnote-118)

This cosmopolitan vision is aspirational—“disorderly passions and private and mistaken interest, will forever prevent it being realized,” Vattel continues; and so prudent restraint and caution is necessary to “prevent the good from being dupes and prey of the wicked”. But the proper nature of sovereign states requires us to make good faith efforts to help others when we can do so safely, and to do all we can to create a stable and reliable community of goodwill among nations.

How much aid we require and what aid we can afford to offer—even what would be helpful or good for a state—are matters of judgment, reserved to each state, and thus matters different states will disagree on. How much aid each could afford for the victims of a tsunami, how many refugees a state could take, how much a state can afford to donate patented drugs or how much another state could afford to pay—each may, within their sovereign right, make their own call, excepting any treaty that turns an imperfect obligation into a perfect obligation. We cannot make judgments for each other, and no people can judge for another or require assistance or behavior from them. Our conscience is master of ourselves; but every person and every sovereign has their own conscience. Because of this, the necessary law of nations is a matter of individual conscience—or, if one is religious like Vattel, a matter for the sovereign to plead before a higher power. When it comes to what states can demand of each other, there is a considerably different standard. What we ask of ourselves requires we look at our duties and responsibilities with rigor; what we demand of others requires charity and acceptance of their right to set their own standards. The law a sovereign should apply to themselves is the necessary law of nations—asking what they can do, what they can spare, what sacrifices they can make. What we can ask of other sovereign states is only the Voluntary Law of Nations.[[119]](#footnote-119) Rights of conscience are internal. Our rights to each other are external.[[120]](#footnote-120) We have obligations to assist others with aid. “Every nation has a perfect right to ask another for assistance and those kind offices she conceives herself to stand in need of…A nation has a right to ask for these kind offices, but not to demand them.”[[121]](#footnote-121) The judgment of how much one nation stands in need and the other can afford may be made differently by both the nation that applies for assistance and the nation that is applied to. When they differ, neither can insist the other adopt its judgment, but the nation thinking itself in need must abide the judgment of the other what it can spare—it may not accept the judgment, but it cannot force the granting of assistance. “…the nation that is applied to has…a right of judging whether the case really demands them, and whether circumstances will allow her to grant them consistently with that regard which she ought to pay to her own interests.”[[122]](#footnote-122) Similarly, while refugees have a “right to dwell somewhere on this earth”, a right which itself is “necessary and perfect”, it is “imperfect with respect to each particular country….every nation has a right to refuse admitting a foreigner into her territory, when he cannot enter it without exposing the nation to evident danger, or doing her a manifest injury. What she owes to herself, the care of her own safety, gives her this right; and in virtue of her natural liberty, it belongs to the nation to judge, whether her circumstances will or will not justify the admission of that foreigner.”[[123]](#footnote-123)

Regarding most actions of other states, each state must accept their acts and actions as justified; only when they violate our rights do we have even a right to complain, let alone take action. Every complaint is a threat to the comity of the society of nations. In matters where we have no right, acceptance is the only civil course. But where we have rights, we may demand. Still, these demands should be in good faith—“if [a nation] makes an application without necessity, she is guilty of a breach of duty…”[[124]](#footnote-124) She has the right to make that decision, but asking where a nation has its own resources or refusing aid that could be afforded in the eyes of third parties, where the rationale is not plausible is a violation of the duty to cultivate the society of nations itself. [[125]](#footnote-125) Similarly, when we refuse refugees, “prudence should be free from unnecessary suspicion and jealousy;---it should not be carried so far as to refuse a retreat to the unfortunate, for slight reasons and on groundless and frivolous fears.”[[126]](#footnote-126) Such unwillingness to do one’s part or to look to others for aid one could provide one’s self inevitably damages the goodwill of the community and lays groundwork for resentment and conflict over those old resentments.

We can see the distinction between the duties a nation has under the Necessary Law of Nations and the duties they can be held accountable for in Vattel’s treatment of warfare. Under the necessary law of nations, a sovereign has the most serious duty to never go to war unjustly. “whoever…takes up arms without a lawful cause, can absolutely have no right whatever, every act of hostility he commits is an act of injustice. He is chargable with all the evils, all the horrors of the war..”[[127]](#footnote-127) But when it comes to other nations, each must accept the potential validity of the other’s claims.[[128]](#footnote-128) No war can be just in both sides—one must violate a right and the other defend from it.[[129]](#footnote-129) But the possibility of our judgment being wrong, or another judgment being wrong but made in good faith requires that even in the midst of war we accept an equivalence of rights and duties between the two sides. Even in the most manifest of moral conflicts—the American Civil War, World War II—the rules of rights of combat, occupation, treatment of civilians and prisoners still apply to both sides.

Not all rights are equal. There are perfect and imperfect rights. “…external obligation is divided into *perfect* and *imperfect*: and the right that results from it is also *perfect* and *imperfect*. The perfect right is that which is accompanied by the right of compelling those who refuse to fulfil the correspondent obligation; the imperfect right is unaccompanied by that right of compulsion.”[[130]](#footnote-130) Often this significant distinction Is ignored, or only the perfect right is truly a right. This is the view of Hobbes and Austin of positive law—that punishment must be attached to a law to truly be a law. Such authors claim only obligations that I am forced to follow by an external will with the ability to use force are real—all else is just counsel, dependent on my will. [[131]](#footnote-131) But Vatte; suggests beyond internal obligations, there are external obligations that are real, but which cannot be a ground for the use of force. Violations of imperfect rights are actual transgressions against us that we have the right to complain of; but they are not so essential to us that they justify the evils of war.[[132]](#footnote-132) Imperfect rights may turn into perfect rights by the establishment of treaties, however. In addition to these natural laws, there are positive law –those explicitly established by treaties and those informally understood as customs.[[133]](#footnote-133) Even here positive law follows natural law:

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 customs or practices they think proper. But every treaty, every custom, which contravenes the injunctions or prohibitions of the necessary law of nations is unlawful. [[134]](#footnote-134)

Those treaties must be held sacred, as faith in promises made are essential to “the common safety of mankind and the peace and security of human society” as “the only means of establishing fixed rules of conduct,--of ascertaining what they are entitled to expect.”[[135]](#footnote-135) Those who break even the most arbitrary of treaties thus violates the necessary law of nation “and inflicts a wound on the great society of mankind.”[[136]](#footnote-136)

VI

*Cosmopolitanism, Human Rights and the Interdependence of Sovereign States*

One could say that the entirety of the Law of Nations has as its goal the maintenance of the society of nations. If we think of the society as a neighborhood, what Vattel prescribes is to maintain that society through our respect for their sovereignty and dignity; by our own respect for rights and our duties and obligations; by our willing assistance to other nations for their needs with a generous understanding our resources; and through our behavior as a member of the society of nations. If we think of the society of nations as a neighborhood of equal citizens, the health of the neighborhood is maintained neither by neighbors who keep resolutely to themselves, nor by neighbors who are busybodies constantly involving themselves in the affairs of their neighbors, offering unsolicited advice on raising their children, training their dogs, or caring for their lawn. The dignified tolerant community with space for privacy and autonomy binds the neighborhood, offering aid and resources when illness or family troubles go beyond the abilities of a household to manage on their own. The society of nations is similar in each state being a household where neighbors exchange pleasantries, congregate at times for a strengthening of social bonds, and offer help at time of need. Like any neighborhood, the tenuousness of friendship rests upon a continuous series of careful interactions, where slights and wrongs –arguments over property lines, over the blowing of leaves across property lines or the use of too much on street parking or late night parties—can create bitter feuds and uncomfortable frosty relations. Our continued pursuit of happiness would say rationally that these neighborhood feuds should be moderated—even at times by the sacrifice of our own rights in the name of bonhomie and forgiveness. Where continual issues arise, stated agreements may take the place of both reliance on reasonable agreement and unwritten custom. Ultimately, the happiness of each individual rests, as a vulnerable social creature who can achieve neither security nor perfection without occasional aid from one’s fellows, on the health of the neighborhood—and that rests on the efforts of each member to be a good neighbor.

These social needs continue in the international community between states. Each society “considered as a moral person…is therefore obliged to live on the same terms with other societies or states , as individual man was obliged…with the difference only of such exceptions as may arise from the different nature of the subjects.”[[137]](#footnote-137) Vattel describes this as the surest way to succeed in pursuing happiness us “each individual should exert his efforts first for himself, and then for others.”[[138]](#footnote-138)

The International Sphere is a neighborhood; but it is one without police or other higher authority. Those who suggest a need for institutions with global authorities in order to check bad actors have done considerable work in the last century building institutions of law.[[139]](#footnote-139) But the empowerment of such nations depends on the relinquishing of the liberty and self-determination of smaller sovereign groups.[[140]](#footnote-140) When nations are unwilling to give up their self-determination to a global force—whether federal or a global democracy; when both the interest in local interests and the historical identity that people have in maintaining their liberty and dignity as sovereign states—the growth of such rationalized institutions will continue to be hampered as Kant suggested. The maintenance of the neighborhood must then be done by the neighbors themselves—and the interest that any has in becoming a hegemon is as dangerous to that peaceful flourishing society as an anarchy that allows bad actors. The line at which neighbors can police each other must of necessity be cautious and slow to act.

Yet nations may, by their disregard for the rules and bounds of society threaten to destabilize the entirety of the system of nations. “It is an evident consequence of the liberty and independence of nations, that all have a right to be governed as they think proper, and that no state has the smallest right to interfere in the government of another. Of all the rights that can belong to a nation, sovereignty is doubtless the most precious, and that which other nations ought the most scrupulously respect if they will not do her an injury.”[[141]](#footnote-141) A nation that flouts these rules—that violates territory, breaks treaties, seizing property unjustly—threatens the entire system by its disregard for sovereignty and for the community of nations. Although each nation has a right to use its own resources to pursue its own view of happiness, other nations have a right to restrain a threat to the society of nations.

If there were a people who made an open profession of trampling justice under foot,---who despised and violated the rights of others whenever they found an opportunity,--the interest of human society would authorize all the other nations to form a confederacy in order to humble and chastise the delinquents…if by her constant maxims and by the whole tenor of her conduct, a nation evidentially proves herself to be actuated by that mischievous disposition,--if she regards no right as sacred,--the safety of the human race requires that she should be repressed. [[142]](#footnote-142)

These rogue nations in every act strike against the stability of the society of nations by showing no respect for sovereignty. This alone demands that they be treated not as sovereigns but as “lawless robbers…enemies of the human race…All nations have a right to join in a confederacy for the purpose of punishing and even exterminating these nations.” [[143]](#footnote-143) This is the one freedom other nations cannot allow them to have. Sovereignty is not an absolute good, and respect for it is not an unconditional obligation. The point of respecting it is to pursue one’s own preservation and perfection. States that offer reciprocal respect for each other’s sovereignty and for law reward that respect. Rogue nations do not. This is not the judgment of a single nation, but of the whole society of mankind. “Such would be the just fruits of that policy which Machiavel praises in Cesare Borgia.”[[144]](#footnote-144)

But we cannot run to arms on every “trifling occasion” or “doubtful cause”. We may “anticipate machinations” and engage in preemptive war when the occurrence of war is immediate, but not on “vague and uncertain suspicions.”[[145]](#footnote-145) Such assumptions that all power and all growth is competition brings us into constant war, and rather than providing security, it makes us unjust and dangerous. A nation too quick to attack another sovereign state is itself a danger. The growth of power alone is not the same as hostility, and war is not simply policy by other means. What is a just accumulation of power is different from a violation of perfect rights, and an act of aggression needs to be justified.[[146]](#footnote-146) What can be done includes alliances, constructing a balance of power, and engaging in economic sanctions—al acts that involve a nation’s own freedom.[[147]](#footnote-147) This, of course, again requires nations to be reliant on each other—to recognize the interdependence for their security.

Vattel already suggests that the rights of sovereignty within territory are never absolute, but conditional. “…every foreign power has a right to succor an oppressed people who implore their assistance.”[[148]](#footnote-148) Sovereigns have obligations both to protect their people and make them flourish. The power of the sovereign is conditional on its proper use towards its end. While there is much variation and judgment of how to pursue those ends—judgments respect for sovereignty require not be second-guessed by other people—there is a line which passes beyond such respect: “As to those monsters who, under the title of sovereigns’ render themselves the scourges and horror of the human race, they are savage beasts, whom every brave man may justly exterminate from the face of the earth, All antiquity has praised Hercules for delivering the world from an Antaeus, a Busiris, and a Diomede.”[[149]](#footnote-149)

Here we have the same logic as humanitarian intervention and international human rights law; the germ of the genocide convention and the conventions on human rights. There is no suggestion of international institutions or legal codes or courts with universal jurisdiction; we should not pretend that simple pronouncements of high principles replace either the hard work of institutionalizing and applying such a broad claim, or sits comfortably with the many pronouncements strewn throughout about the sacred character of sovereign self-determination and respect for boundaries.

Nations are also interdependent for their perfection. Their autonomy is already mixed with a communal essence where they should always recall their interdependence. But this cosmopolitanism is never so universal as to not privilege their own interests and people. In providing aid to other countries, the duty to their own country for the sovereign. One cannot be as charitable or trusting as one might be in private life. The sovereign is in the position of responsibility as a trustee, placed with a particular obligation to one’s own people. “…the prince in particular…ought not…to obey without reserve all the suggestions of a noble and generous heart impelling him to sacrifice his own interests to the advantage of others or to motives of generosity; because it is not his private interest that is in question, but that of the state,--that of the nation who has committed herself to his care.”[[150]](#footnote-150) Vattel begins his second part of his volume, discussing these duties of nations to other nations, knowing that these doctrines will seem strange and almost dangerous:

The following maxims will appear very strange to cabinet politicians…Those who might be alarmed by this doctrine, as totally subversive of sound policy, will be relieved of these apprehensions by the two following considerations:

1. Social bodies or sovereign states are much more capable of supplying all their wants than individual men are; and mutual assistance is not so necessary for them, nor so frequently required. Now, in those particulars which a nation can itself perform, no succor is due to it from others.

2. The duties of a nation towards itself, and chiefly the care of its own safety, require much more circumspection and reserve, than need be observed by an individual in giving assistance to others.[[151]](#footnote-151)

Thus Vattel’s interdependent sovereigns still favor their nations. Seeking their own self-interest first is both necessary and an obligation. Their particular concern is their obligations to their own people; just as we may have obligations to every child who might be lost and abandoned, but in normal situations, our primary responsibility is to our own children first. In this way, universal care is best taken of by each locality looking out for itself first, and the rest of the world second—not absolutely, but not equaly either, “…the duties we owe to ourselves being unquestionably paramount to those we owe to others.”[[152]](#footnote-152) This suggests a cosmopolitanism that embraces a concept of subsidiarity00, where nation-states still exist so that each people has a chance to look to its own needs and resources first.[[153]](#footnote-153)

The literature of globalization and cosmopolitanism is already foreshadowed by the constant concerns that Vattel has about the interconnected duties we have of assistance and amity. The world may have grown smaller; but the idea that national interests were seen as largely discrete is never reflected in either Vattel’s concern. Nations are individuals who look after themselves predominantly, but look beyond their borders continually for their obligations to others.

Vattel has been accused of actually enforcing the colonial project. His ideas of sovereignty stand in the way of a new global law paradigm.[[154]](#footnote-154) What he takes as Natural Law reflects the cultural and legal practices of his particular era of Europe and universalizes it, while failing to think about the non-European applications sufficiently and making room in his moral theory for colonialism to still thrive.[[155]](#footnote-155) This is perhaps not entirely unfair; Vattel’s language often takes European standards of approval and disapproval as the standards of reason itself. In doing so, it frames the ways of life outside of Europe entirely in terms of European culture (and particularly in the post-Westphalian language of distinct nations and territories with legal rights to disposal of property). This is exactly what post-colonial theory in Fanon, Said, and Spivak suggest—that the language we use to categorize the world and to think about others replaces their actual existence with the ready-made concepts of European civilization.

But such views overly homogenize the multiplicity of discourse in European society in the 18th century, and unfairly undermine the substance of Vattel’s writing within the imperial discourse of the day. Much like Vitoria, Vattel writes from a European position that argues against colonialism from within that European discourse. He may use categories of European law and largely examples of European origin; in doing so the details of his work, the rules and judgments show marks of parochial thinking and a faith in the universalization of categories that we should rethink with appropriate caution. But he is clear that the rights of people outside of Europe do not differ from those of Europeans, and that the acts of Europeans against them should be condemned.

Vattel is guilty of underrating the violence of colonies. At times he pictures them as desert lands with much free land that the natives have no right to deny Europeans access to or prevent them from settling. “thus navigators going on voyages of discovery, furnished with a commission from their sovereign, and meeting with islands and lands in a desert state, have taken possession of them in the name of their nation…”[[156]](#footnote-156) This sentiment does not belong only to islands devoid of people.

There is another celebrated question, to which the discovery of the new world has principally given rise. It is asked whether a nation may lawfully take possession of some part of a vast country, in which there are none but erratic nations whose scanty population is incapable of occupying the whole? We have already observed…that those nations cannot exclusively appropriate more land than they have occasion for, or more than they are able to settle and cultivate. Their unsettled habitation in those immense reasons cannot be accounted a true and legal possession; and the people of Europe, too closely pent up at home, finding land of which the savages stood in no particular need, and of which they make no actual and constant use, were lawfully entitled to take possession of it and settle it with colonies…if each nation had from the beginning resolved to appropriate to self a vast country, that the people might live only by hunting, fishing, and wild fruits, our globe would not be sufficient to maintain a tenth part of its present inhabitants. We do not therefore deviate from the views of nature in confining the Indians within narrower limits.[[157]](#footnote-157)

It would be hard to craft a passage more contemptuous of other ways of life or the title of other people to their own lands. That Vattel praises the ‘moderation’ of the English puritans and of William Penn in purchasing land from the natives “notwithstanding their being furnished with a charter by their sovereign” in no way ameliorates the intended meaning.[[158]](#footnote-158) But this passage does not fit well with the rest of the work’s principles. In a footnote to the passage just prior to this one, he shows disdain for the papal bull of Alexander the VI giving Ferdinand and Castillo possession of the New World ”The pope excepts only what might have been in the possession of some other Christian prince before the year 1493,--as if he had a greater right to give what belonged to nobody, and especially what was possessed by the American nations.”[[159]](#footnote-159)

Whoever agrees that robbery is a crime, and that we are not allowed to take forcible possession of our neighbor’s property, will acknowledge, without any other proof, that no nation has a right to expel another people from the country they inhabit, in order to settle it herself…There are conquerors who aspiring after nothing more than the extension of the boundaries of their dominions, without expelling the inhabitants from a country, content themselves with subduing them; --a violence less barbarous, but not less unjust: while they spare the property of individuals, they seize all the rights of the nation and of the sovereign.[[160]](#footnote-160)

Vattel treats this violence as self-evidently unjust; it is a rule that is based on the only rule that allows us to live in mutual peace: “Let this sacred rule be entirely forgotten, and the peasant will quit his thatched cottage to invade the palaces of the great or the delightful possessions of the rich.”[[161]](#footnote-161) Nor is this a rule that applies only to European powers against violating the rights of other Europeans: “Those ambitious Europeans,” Vattel writes, “who attacked the American nations, and subjected them to their greedy dominion, in order as they pretended to civilize them, and cause them to be instructed in the true religion,--those usurpers grounded themselves on a pretext equally unjust and ridiculous.”[[162]](#footnote-162) His condemnation of the conquest of the Incas comes in for unequivocal condemnation. “The Spaniards violated all rules, when they set themselves up as judges of the Inca Athualpa.”[[163]](#footnote-163)

His rejection of the pretext of ‘civilization’, a hundred years before Renan wrote *La Réforme intellectuelle et morale*, is tied to that protection of sovereignty. “..though a nation be obliged to promote, as far as lies in its power, the perfection of others, it is not entitled to forcibly to obtrude those good offices on them. Such an attempt would be a violation of natural liberty.”[[164]](#footnote-164)Far from applying rights over commerce or missionaries only to European states, Vattel approves the expulsion of missionaries by China and even forbidding the entrance of all intercourse of strangers; “the maxims of a wise and singular government...salutary to the nation without violating the rights of any individual or even the duties of humanity…”[[165]](#footnote-165) He despises the attempted forced religious conversion of peoples: An independent people are responsible for their religion to God alone…What right have men to set themselves up as the defenders and protectors of the cause of God…The monstrous maxim of extending religion by the sword is a subversion of the rights of mankind, and the most terrible scourge of nations. Every madman will fancy he is fighting in the cause of God, and every aspiring spirit will use that pretext as a cloak for his ambition.”[[166]](#footnote-166) Missionaries can be offered, but “they should have a very express order from the King of kings, before they can lawfully disobey a sovereign…the prince, who is not convinced of the extraordinary order of the Deity…will do no more than exert his rights in punishing a missionary…” [[167]](#footnote-167) All of this is again demanded by rules of equivalence and equality: “”when Charlemagne was ravaging Saxony with fire and sword in order to plant Christianity there, the successors of Mahomet were ravaging Asia and Africa, to establish the Koran in those parts…..there is no person who does not believe his own religion to be the only true and safe one. Recommend, kindle in all hearts the ardent zeal of the missionaries, and you will see Europe inundated with Lamas, Bonzes, and Dervises, while monks of all kinds will over-run Asia and Africa.”[[168]](#footnote-168) Vattel privileges neither Europeans nor Christianity here, because he sees the beliefs of all similarly. The rights to be left unmolested, unrobbed, and unconquered are righst extended to “all the nations of the world.”[[169]](#footnote-169) The distance between this and medieval doctrines that differentiated rights of Christians and pagans, Christendom and the lands of heretics is clear. The rights of sovereignty depend only on humanity, not religion, culture, or geography.

There has always been a problem with what the positive goal of post-colonialism is as political project. It speaks an ethical language which condemns oppression, domination, suppression, occupation, and which champions emancipation, self-determination, autonomy, justice—in other words, it seeks to have the promise of a people self-defined, in control of their own course of life and their own lands and territory. It is not that post-colonial writers are not unaware of these difficulties—for some, this is a matter of unwriting and deconstructing what is there as a way of letting something new emerge that is undefined. But for those who want a substantial answer to what this would look like—who fear think that law is not just domination, but would need to still exist as a way of preserving that autonomy, that international personhood and recognition would still exist and even be desirable, the question becomes whether we are abandoning Vattel or going towards an understanding more consistent with what he wrote? What is emancipation, and what would anything un-oppressive look like? Just as American slavery was an abuse and a contradiction of the very principles of the Declaration of Independence, colonialism is an abuse and contradiction of the very principles of Vattel’s Law of Nations. Colonialism violates the very rights of sovereignty; if power, passion and interest meant they would be abused, this was no surprise to Vattel, nor was he blind to this. But if we acknowledge that Vattel violates his own principles in the above quoted passage, we should recognize that if they had been properly followed, colonization would not have happened, and that colonialism’s violence is the violation against the rights of people to their own land and way of life.

Sovereignty is not only still useful, but still necessary. Sovereignty, despite the changing world, should be understood as already having the resources to coexist with a world of global involvement, global problem, and need for global cooperation—what does Vattel offer us and what does he lack?

Vattel offers us a language for the interdependence of nations that goes beyond simple neutrality or mutual non-aggression. He gives us a language that not only allows us to treat problems as global problems, but a view that suggests sovereign states are inherently interdependent and living in a shared world full of shared problems with interests in—obligations and duties to—each other. He rejects as impossible for our nature the idea that isolationism is a truly tenable strategy, even if it is one we are free to mistakenly embrace. Human nature does not allow this. Globalization may have increased those interconnections and made purely national concerns rarer than they were in his day; but the interconnection of states was always already there.

At the same time, he recognizes that the locality of states requires local autonomy. Circumstances and capabilities are best judged by each individual and people for themselves; what seems like a minor sacrifice for you from my perspective may understand nothing about your needs or your position. Looking for a universal rule and deliberative judgment, a simple code that can applied mechanically ignores the fact that such things fail to understand the complexity of circumstances and interests, the need to apply prudence to distinguish threats, to know when to trust. But Vattel also reminds us on which sides to err and what to look for in making these judgments.

He reminds us that the concept of sovereignty itself is one which no substitute has been found for to protect the claims of liberty, rights and dignity of people or their claims to autonomy and respect from the world. Self-determination, Vattel tells us, is a need of humanity—as individuals and as groups of people who seek collective control of their own destinies. If Vattel’s understanding of sovereignty reminds us of anything it is that this good does not need to be sacrificed to adopt a language of interdependence and cosmopolitanism, but that these things can be best achieved with the guarantees of the sovereign state to each member of that community that their interests will not be sacrificed to the preferences of the rest of the world.

But what Vattel does not give us is a solution to the question of just what does compose a people or define a just territory. The language of free people establishing a social contract and forming a People or Nation; and the original justified acquisition of land left empty and unclaimed from a world shared in common with plenty of land for all—these were already illusory. If we are going to talk of the right s of people to a nation, to a territory and to a country, we need to answer questions that Vattel fails to answer. What is a nation; who forms a people; who deserves to be autonomous and have their own land; what makes a just claim on which territory? That a people deserves to have dignity as a collective nation only raises these questions, which the politics of power and interest make insoluble and which history with its many injustices—not least the colonial drawing of nation-state borders across the maps of the world—leave us unable to answer[[170]](#footnote-170)

1. Gerhard von Glahn and James Larry Taulbee, **Law Among Nations** (pearson 2007) Pg. 3, pp.103126 [↑](#footnote-ref-1)
2. “Today…we have to say that a state is a human community that (successfully) claims the *monopoly of the legitimate use of force* within a given territory.” (Weber, “Politics as a Vocation” in Gerth and Mills, ed. From Max Weber (Oxford 1946) pg. 78 [↑](#footnote-ref-2)
3. David Held, **Democracy and the Global Order** (Stanford 1995) pp.74-83 [↑](#footnote-ref-3)
4. On attempts at moving past this, consider Benjamin Schiff, **Building the International Criminal Court** (Cambridge 2008) pp.68-92; Glahn and Taulbee, pp. 663-696 [↑](#footnote-ref-4)
5. “Attached to force are certain self-imposed, imperceptible limitations hardly worth mentioning, known as international law and custom, but they hardly weaken it.” Clausewitz, **On War**, Ch. 1.2 [↑](#footnote-ref-5)
6. Sceptical views of the effectiveness of this law include Eric A. Posner, **The Twilight of Human Rights Law** (Oxford 2014) and Jack Goldsmith and Eric Posner, **The Limits of International Law** (Oxford 2005) [↑](#footnote-ref-6)
7. Patrick Hayden, “Repudiating Humanity: Cosmopolitan Justice and the Obligation to Prosecute Human Rights Atrocities” pp.277-287 in John K. Roth, ed. **Genocide and Human Rights** (Palgrave Macmillan 2005); Samantha Power**, A Problem from Hell** (Basic Books 2002); Samuel Totten and Paul Bartop, eds. **The Genocide Studies Reader** Routledge 2009) pp.287-314; Adam Jones, **Genocide** (Routledge2006) 572-594 [↑](#footnote-ref-7)
8. David Held, **Cosmopolitanism** (Polity 2010) pp.143-237 [↑](#footnote-ref-8)
9. Michael Walzer, **Just and Unjust Wars** (Basic 1977);Bruno Coppieters and Nick Fotion, eds., **Moral Constraints on War** (Lexington 2008) pp.27-70; Peter Rowe, **The Impact of Human Rights Law on Armed Forces** (Cambridge2006);Gary Solis, **The Law of Armed Conflict** (Cambridge 2010) [↑](#footnote-ref-9)
10. Kofi Annon, “Toward a New Definition of Sovereignty” pp. 683-693 in Gregory Reichberg, Henrik Syse, and Endre Begby, eds. **The Ethics of War** (Blackwell 2006); Buchanan, **Justice, Legitimacy and Self-Determination** (Oxford 2004); David Held, **Cosmopolitanism** (Polity 2010); Carol C. Gould, **Globalizing Democracy and Human Rights** Cambridge 2004) [↑](#footnote-ref-10)
11. See for instance, David Held, **Democracy and the Global Order** (Stanford 1995) and Held and Garrett Brown, eds. **The Cosmopolitanism Reader** (Polity2010) pp. 213-372 [↑](#footnote-ref-11)
12. Cas Mudde, ed. **The Populist Radical Right** (routledge 2016); Samuel P. Huntington, **Who Are We?** (Simon and Schuster 2004); James Mayall, “Irredentist and Secessionist Challenges” pp.260-279 in Hutchison and Smith, **Nationalism** (Oxford 1994) Nationalism should of course be carefully divided between ethno-nationalism and civic nationalism, as it is in the literature. [↑](#footnote-ref-12)
13. Ernest Gellner, **Nations and Nationalism**. (Cornell 1983); Hutchinson and Smith, **Nationalism** (Oxford 1994), particularly 132-159 [↑](#footnote-ref-13)
14. Martha C. Nussbaum, ed. **For Love of Country?** (Beacon 2002) Cosmopolitan institutions are often proposed as alternatives, as in Held (1995) 219-239 and Held (2010) 93-116; and Held and Brown (2010) 289-372 [↑](#footnote-ref-14)
15. William Ossipow and Dominick Gerber, “The Reception of Vattel’s Law of Nations in the American Colonies” **American Journal of Legal History** Vol. 57 (4) (Dec 2017) pp. 521-555 [↑](#footnote-ref-15)
16. Bk. 1 *Preliminaries* 6 *footnote* (Note Pitts pg.80) [↑](#footnote-ref-16)
17. On the rise of positivism as a theory in the place of natural law here, see Jennifer Pitts, **Boundaries of the International** (Harvard 2018) Ch. 3 [↑](#footnote-ref-17)
18. Preface, pg. 18 [↑](#footnote-ref-18)
19. “The natural law is the *science of the laws of nature*, of those laws which nature imposes on mankind…Now by studying the nature of things, and that of man in particular, we may thence deduce the rules which man must following order to attain his great end,---to obtain the most perfect happiness of which he is susceptible. We call these rules the natural laws, or the laws of nature.” (Bk.1, *Preliminaries* 6. *Footnote*) [↑](#footnote-ref-19)
20. “And why should we not hope still to find, among those who are at the head of affairs, some wise individuals, who are convinced of the great truth , that virtue is, even for sovereigns and political bodies, the most certain road to prosperity and happiness. There is at least one benefit to be expected from the open assertion and publication of sound maxims, which is, that even those who relish them the least are thereby laid under a necessity of keeping within some bounds, lest they forfeit their characters altogether. To flatter ourselves with the vain expectation that men, and especially men in power, will be inclined strictly to conform to the laws of nature, would be a great mistake; and to renounce all hope of making impression on some of them, would be to give up mankind for lost.” (Bk. II Ch.1.1) [↑](#footnote-ref-20)
21. They may be ‘self-evident’ as Aquinas says “to the wise, who understand what the proposition’s terms signify,” or similarly to those who understand the demonstrations, but not self-evident in the sense that everyone immediately grasps their truth and implications, or could articulate them. (Summa I-II Q.94.Art. 2) [↑](#footnote-ref-21)
22. Bk. 2 Ch.4.53 [↑](#footnote-ref-22)
23. “All Europe rejoiced at this development. It was seen as a logical outcome of enlightenment. This was a misconception. Enlightenment can never lead to inconsistency….So long as this was the general style of warfare with its violence limited in sych strict and obvious ways…Only from time to time someone of penetrating judgment—of real common sense—might suggest that with superior forces, one should achieve positive results; otherwise, the war …was being mismanaged…Once these imperfections were corrected by Bonaparte, this juggernaut of war, based on the strength of the entire people, began pulverizing its way through Europe…War, untrammeled by any conventional restraints, had broken loose in its elemental fury.” (**On War**. Bk. 8 Ch. 3) [↑](#footnote-ref-23)
24. “If, then, civilized nations do not put their prisoners to death or devastate cities and countries, it is because intelligence plays a larger part in their methods of warfare and has taught them more effective ways of using force than the crude expression of instinct. The invention of gunpowder and the constant improvement of firearms as enough in themselves to show that the advance in civilization has done nothing practical to alter or deflect the impulse to destroy the enemy…” (**On War** Bk. 1 Ch.1.3) [↑](#footnote-ref-24)
25. See George Solis, **The Law of Armed Conflict** (Cambridge 2010 )pp. 39-41 [↑](#footnote-ref-25)
26. Thucydides I.23, I.75 [↑](#footnote-ref-26)
27. “To speak impartially, both sayings are very true: that man to man is a kind of God; and that man to man is an errant wolf. The first is true if we compare citizens amongst themselves; and the second if we compare cities. In the one, there is some analogy of similitude with the Deity; to wit, justice and charity, the twin sisters of peace. But in the other, good men must defend themselves by taking to them for a sanctuary the two daughters of war, deceit and violence: that is, in plain terms, a mere brutal rapacity.” Hobbes, *Letter to the Earl of Devonshire* in **On the Citizen** [↑](#footnote-ref-27)
28. **On the Citizen** Ch. 3.33 [↑](#footnote-ref-28)
29. **On the Republic**, Bk. 2; **On Obligations**, Bk. 2 2-5; Bk 3 69 [↑](#footnote-ref-29)
30. Preface, pg. 7 [↑](#footnote-ref-30)
31. Preface pp. 9-16 [↑](#footnote-ref-31)
32. Preface pg.10 [↑](#footnote-ref-32)
33. There is in addition his “Essay on the Foundation of Natural Law and of the First Principle of the Obligations Men Find Themselves Under to Observe Laws”. [↑](#footnote-ref-33)
34. Bk. 1 *Preliminaries* 6, *footnote*. [↑](#footnote-ref-34)
35. Ibid. In this, he in no way departs from the Thomistic view of natural law as continual work of imperfect reason about the world. (*Summa Theologica* I-II. Q. 94, Art 4; Q.97. Art.1) [↑](#footnote-ref-35)
36. “On this subject the English furnish us with an example highly worthy of attention. That illustrious nation distinguishes itself in a glorious manner by its application to everything that can render the state more flourishing. (Bk. 1 Ch. 2.24) In comparison, the French are attached to a constitution that fails to serve them. This is not to say every society needs the same things. Each state will have its own nature according to Vattel, and what will work for one state will not work for others. “..the laws and constitutions of different states must necessarily vary according to the disposition of the people, and other circumstances.” (Bk. 1 Ch.3.29) It is the obligation of each state to maintain its liberty, so that it can decide for itself what is best (as in the case of trade restrictions and shore line sovereignty, [↑](#footnote-ref-36)
37. Bk. 1, *Preliminaries* 4. Note that Hobbes had suggested that states do not have to relinquish their freedom because a certain number of people collected as a group does not exhibit the same vulnerability as individuals. (*On the Citizen* 5.3) This is part of the essential difference in nature between the individual and the state which makes natural law’s application to the two differ. Note for both Hobbes and Vattel, liberty and self-determination are such high values that they are only relinquished when necessary, not simply for other advantages—which has some impact on the proposal to form a super-national or world government. “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.”(Vattel, *Preliminaries15*) Similarly, Kant in *On Perpetual Peace*, while suggesting this is the product of vanity, notes that “…each nation sees its majesty…to consist in not being subject to any external constraint, and the glory of its ruler…to command many thousands to sacrifice themselves for a matter which does not concern them.” (*Second Definitive Article for a Perpetual Peace*). It is for this reason that states can at most be expected to form a ‘federation of free states’ rather than “a nation consisting of nations.” [↑](#footnote-ref-37)
38. Bk. I, *Preliminaries* 5 [↑](#footnote-ref-38)
39. Bk. 1, *Preliminaries* 6, *footnote* [↑](#footnote-ref-39)
40. *On Obligations* Bk. 3.9 et. al. [↑](#footnote-ref-40)
41. Bk. 1 *Preliminaries* 6 *footnote* Again, this religious view he sees as contributing a kind of “lively energy to the law of nature” and carrying it “to the highest degree of perfection.” Without the author, the laws still exist, and the obligation to follow them in order to be happy still are part of the universe in which we live. “There is, therefore no man—whatever may be his ideas respecting the origin of the universe—even if he had the misfortune to be born 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 of the human race…” [↑](#footnote-ref-41)
42. Bk. I, Ch.1.1 [↑](#footnote-ref-42)
43. Bk. I, Ch.1.2 Unlike Hobbes, who acknowledges that the social contract is a theoretical construction and that authority is often the product of force and conquest (cf. Leviathan Bk. 1.13, Bk. II, Ch. 20, On the Citizen Ch.2.16; Ch. 5.12), Vattel is both unable and unwilling to suggest that conquest can justify obedience. He is, however, wiling to allow ‘voluntary submission’ to a more powerful nation when a nation “feels itself unable to resist its enemies” (Bk. 1 Ch. 16.193) There are conditions. The protector must actually guarantee and provide protection. Equally, it is conditional upon the protector keeping promises made to the submissive people; “encroachments by the protector” invalidate the contract and free the submissive people from their obligations to the new power. (Bk. 1 Ch. 16.198) [↑](#footnote-ref-43)
44. Bk. 1, *Preliminaries* 15-16 [↑](#footnote-ref-44)
45. Bk. II Ch. 7.92 [↑](#footnote-ref-45)
46. Bk. 1 Ch. 18.204 [↑](#footnote-ref-46)
47. See Fichte, **Addresses to the German Nation.** Gregory Moore, ed.,(Cambridge 2008); Herder, **Another Philosophy of History**, Evrigenis and Pellerin, trans. (Hackett 2004); Hutchison and Smith, eds. **Nationalism** (Oxford 1994); Ronald Beiner, ed. **Theorizing Nationalism** (SUNY 1999) [↑](#footnote-ref-47)
48. Bk.1 Ch.1.2 [↑](#footnote-ref-48)
49. Bk. 1 Ch.2.16 [↑](#footnote-ref-49)
50. Bk. 1 Ch.3 33 [↑](#footnote-ref-50)
51. Bk. 1 Ch. 16.195 [↑](#footnote-ref-51)
52. Bk. 1 Ch. 6.74 Note this is one of those cases where right does not include everything prudent”a very moderate use ought to be made of this right, and only in important or necessary cases. Liberty is the soul of abilities and industry…” (ibid.) [↑](#footnote-ref-52)
53. Bk. 1 Ch. 19.212 When discussing the definition of the term ‘country’ under the obligation of the state to promote patriotism, Vattel notes that “In a more confined sense…this term signifies the state, or even more particularly the town or place, where our parents had their fixed residence at the moment of our birth. In this sense, it is justly said, that our country cannot be changed, and always remains the same, to whatever place we may afterwards remove. A man ought to preserve gratitude and affection for the state to which he is indebted for his education, and of which his parents were members when they gave him birth.” (Bk. I Ch.11.122) [↑](#footnote-ref-53)
54. Bk. 1 ch.19. 220 [↑](#footnote-ref-54)
55. Ibid. [↑](#footnote-ref-55)
56. Bk. 1 Ch. 19.223 [↑](#footnote-ref-56)
57. Bk. 1 Ch. 29. 225 [↑](#footnote-ref-57)
58. Bk.1 Ch. 3. 26 [↑](#footnote-ref-58)
59. Bk. 1 Ch. 3.31 [↑](#footnote-ref-59)
60. Bk. 1 Ch.3 28 [↑](#footnote-ref-60)
61. Bk. 1 Ch. 3.37 [↑](#footnote-ref-61)
62. Bk.1 Ch. 4.39 [↑](#footnote-ref-62)
63. Ibid. [↑](#footnote-ref-63)
64. Bk. 1 Ch. 4.40 [↑](#footnote-ref-64)
65. Bk. 1 Ch. 4 45-46 While Vattel maintains that Natural Law and liberty allow a people to establish absolute monarchy, it is imprudent: “Every thing is uncertain, violent, and subject to revolutios, in those unhappy states where arbitrary power has placed her throne. (Bk. 1 Ch.4 48) [↑](#footnote-ref-65)
66. Bk. 1 Ch.4.49 [↑](#footnote-ref-66)
67. Bk. 1 Ch. 4.50 [↑](#footnote-ref-67)
68. This is of course absurd according to the foundation of most positive law theory, which follows Hobbes in his proclamation that “in vain is that law, which may be broken without punishment.” (On the citizen, Ch. 14.8; cf. Austin, **The Province of Jurisprudence Determined**, Lecture 6 pg.253 passim.) Vattel is again closer to the Thomistic view which takes penalties as being necessary for the law, but not of its *essence,* and where the there is a meaning to the authority being under a law even if they are bound immediately only by their conscience. (ST I-II Q.96 Art. 5). [↑](#footnote-ref-68)
69. Bk. 1 Ch. 4.53 [↑](#footnote-ref-69)
70. Bk. 1 Ch. 4.51 [↑](#footnote-ref-70)
71. Bk. 1 Ch. 4 54 [↑](#footnote-ref-71)
72. Bk. 1 Ch. 4.52 [↑](#footnote-ref-72)
73. Bk. 1 Ch.4 54 [↑](#footnote-ref-73)
74. ibid [↑](#footnote-ref-74)
75. ibid [↑](#footnote-ref-75)
76. Bk. I Ch.4.53 [↑](#footnote-ref-76)
77. Bk. II. Ch. 4.55 [↑](#footnote-ref-77)
78. Bk. 1 Ch. 4 52 [↑](#footnote-ref-78)
79. Bk. II Ch.4. 45 [↑](#footnote-ref-79)
80. Bk. III. Ch. 3.32 [↑](#footnote-ref-80)
81. Bk. II Ch.4.56 [↑](#footnote-ref-81)
82. Bk. 3 Ch. 18.296 [↑](#footnote-ref-82)
83. **On the Citizen** Ch.1 3-5 [↑](#footnote-ref-83)
84. Bk. 1 *Preliminaries* 13 [↑](#footnote-ref-84)
85. Bk. II, Ch. 3 48 Modern readings of Thucydides or Hobbes often fail to note the level to which honor and dignified treatment motivates the actions of states, or reduce it simply to a kind of soft power, a means to achieving other ends. But the Athenians list honor as equivalent to fear and advantage as movers of mankind (I.75), and the question of Athens’ desert and dignity or the lack of dignity motivates everything up to and through the Sicilian Expedition (6.16); while for Hobbes, it is the vainglory of some—the claim of superiority and disdain for equality which precipitates conflict and war. Ignoring this is to ignore the omnipresence and significance of diplomatic protocol—questions of reception, treatment of heads of state, placement at dinners, exchanges of gifts, and all sorts of signification of respect or contempt; given the way in which, along with security, the nation serves as a proxy for dignified standing in the world, often wat seems to be purely a matter of pursuit of power is actually as much power for the sake of dignity as the reverse—as in the motives of nations in pursuing ‘a place on the world stage’ through geopolitical influence and winning of wars, or the pursuit of nuclear weapons as evidence of modernity. See also von Glahn and Taulbee (2007) pg.17 [↑](#footnote-ref-85)
86. Bk. 1 Ch.15; Bk. 2 Ch. 3 [↑](#footnote-ref-86)
87. Although this manages to be an equality of non-equals—each should have the respect due to sovereignty, but at the same time: “The greatest monarch ought to respect in every sovereign the eminent character with which he is invested…But this precept does not extend beyond what is essential to the respect which independent nations show to each other…in matters merely ceremonial, and not derogatory to the equality of rights between nations, [a great monarch]should receive honors to which a petty prince can have no pretentions.” (Bk. 2 Ch. 3 47 [↑](#footnote-ref-87)
88. Bk. 1 *Preliminaries* 19 [↑](#footnote-ref-88)
89. Mary Martin and Taylor Owen, eds. **Routledge Handbook of Human Security** (Routledge 2013) [↑](#footnote-ref-89)
90. On *jus cogens,* see Erika de Witt, “*Jus Cogens* and Obligations *Erga Omnes*” pp. 41-561 in Shelton, Ed. **The Oxford Handbook of International Human Right Law** (Oxford 2013) [↑](#footnote-ref-90)
91. See for instance, Ramesh Thakur, “The Responsibility to Protect and the North-South Divide” pp.32-47 in Sanford R. Silverburg, ed. **International Law** (Westview 2011; [↑](#footnote-ref-91)
92. Bk. 1, *Preliminaries* 3 [↑](#footnote-ref-92)
93. Preface, pg. 15 [↑](#footnote-ref-93)
94. Bk. 1 *Preliminaries*, 7 [↑](#footnote-ref-94)
95. Part of the problem often brought up in such doctrines valuing ‘harmless liberty’ is whether ANY action can be said to only concern oneself. In the interconnected world where failed states harbor terrorism or drive immigration flows, where industrialization creates worldwide environmental impacts, where finances in any territory creates potential contagion everywhere, where worldwide transportation nets make world-wide epidemics of new diseases possible, the claim of cosmopolitanism is often that no such actions of limited impact exist. But Vattel does not think this class of ‘purely national interests’ is completely without effects on other states—he writes already of the effects of famines, trade, refugees and other globalized effects of domestic policy already. Vattel’s concern is to reduce the number of issues that can lead to conflict; the more cases where we mutually allow each other liberty to pursue our own courses, the fewer the cases of conflict. [↑](#footnote-ref-95)
96. Bk. 1 *Preliminaries* 16 [↑](#footnote-ref-96)
97. Bk.1 Ch.2.13 [↑](#footnote-ref-97)
98. Bk. 1 Ch.2.15 [↑](#footnote-ref-98)
99. Bk. 1 Ch.2.21 [↑](#footnote-ref-99)
100. Bk.1 Ch. 6.72 [↑](#footnote-ref-100)
101. Bk. 1 Ch. 6 73 [↑](#footnote-ref-101)
102. Bk. 1 Ch.7-10 [↑](#footnote-ref-102)
103. Bk. 1, Ch. 8. 90, 97 Note that these decisions are within the framework of *obligations* to cultivate the home trade and carry on foreign trade. (Ch. 8 86-87) [↑](#footnote-ref-103)
104. Bk. 1, Ch. 11 [↑](#footnote-ref-104)
105. “…none can justly be deprived of this union, and the advantages he expects to derive from it, while he on his side fulfils the conditions. The body of a nation cannot then abandon a province, a town, or even a single individual who is part of it, unless compelled to it by necessity, or indispensably obliged by the strongest reasons founded on the public safety.” (Bk. 1 Ch.2.17) [↑](#footnote-ref-105)
106. Bk. 1 *Preliminaries* 10 [↑](#footnote-ref-106)
107. On this, Vattel breaks from the Hobbesian position (On the Citizen (Ch.1.2 and footnote) and returns to the classical teaching. [↑](#footnote-ref-107)
108. “The broadest issue affecting them is the means by which the adhesion of members to the community and what we may call communal life may be preserved. Two elements are involved in this: the first is justice, that brightest adornment of virtue…and the second is its close companion beneficence, which we may also label kindness or generosity.” Cicero, On Obligations Bk. 1 20) Similarly, in **On the Citizen**, Hobbes’ 3rd and 4th laws (of gratitude and usefulness) are to make us wanted by our fellows; while the 5th through 9th—on such matters of forgiveness, humility, and respect are meant to eliminate sources of conflict. (Ch.3 8-14) [↑](#footnote-ref-108)
109. Bk. 1 *Preliminaries* 10 [↑](#footnote-ref-109)
110. Bk. 1 *Preliminaries* 11 [↑](#footnote-ref-110)
111. Bk.1 Ch.2. 13 [↑](#footnote-ref-111)
112. Bk. 5.90 [↑](#footnote-ref-112)
113. Bk. 7.77 [↑](#footnote-ref-113)
114. Bk. I *Preliminaries* 13 [↑](#footnote-ref-114)
115. Bk. II Ch.1.3 [↑](#footnote-ref-115)
116. Bk. 2 Ch.1.3 [↑](#footnote-ref-116)
117. Bk. 2. Ch.1 4-5 [↑](#footnote-ref-117)
118. Bk. 2 Ch.1 16 [↑](#footnote-ref-118)
119. Bk 1 *Preliminaries* 28 [↑](#footnote-ref-119)
120. Bk.1 *Preliminaries* 17 [↑](#footnote-ref-120)
121. Bk. 2 Ch. 1.8 [↑](#footnote-ref-121)
122. Bk. 2 Ch.1.9 [↑](#footnote-ref-122)
123. Bk. 1.19.229-230 [↑](#footnote-ref-123)
124. Bk. 2 Ch.1.8 [↑](#footnote-ref-124)
125. Bk. 2. Ch.1.12 [↑](#footnote-ref-125)
126. Bk.1. Ch.19.231 [↑](#footnote-ref-126)
127. Bk. 3 Ch.11 183-184 [↑](#footnote-ref-127)
128. Bk. 3 Ch.12 190-191 [↑](#footnote-ref-128)
129. Bk.3.Ch.3.39. Actually, technically, both could be unjust. [↑](#footnote-ref-129)
130. Bk. 2 Ch. 1.12 [↑](#footnote-ref-130)
131. *On the Citizen* 14.1; 14.8 *The Province of Jurisprudence Determined* Lecture VI pg. 284 [↑](#footnote-ref-131)
132. Bk. II Ch.18. 324-325;332 [↑](#footnote-ref-132)
133. Bk. 1 *Preliminaries* 24-26 [↑](#footnote-ref-133)
134. Bk. I *Preliminaries* 9 [↑](#footnote-ref-134)
135. Bk. II Ch.15.219 [↑](#footnote-ref-135)
136. Bk. II Ch. 15.221 [↑](#footnote-ref-136)
137. Bk. 1 *Preliminaries* 11 [↑](#footnote-ref-137)
138. Bk. II Ch.1.3 [↑](#footnote-ref-138)
139. See, for instance Dinah Shelton, ed., **The Oxford Handbook of International Human Rights Law** (Oxford2013) pp.587-697; Jack Donnelly, **Universal Human Rights** (Cornell 2103) pp.161-196); Steiner, Alston, and Goodman **International Human Rights in Context** (2008)669-1062 [↑](#footnote-ref-139)
140. Cf, Held, **Democracy and the Global Order** pg. 112; Schiff, **Building the International Criminal Court** (Cambridge 2008) Pp. 68-92, 165-192, 248-260 [↑](#footnote-ref-140)
141. Bk. 2 Ch.4.289 [↑](#footnote-ref-141)
142. Bk. II Ch.5.70 [↑](#footnote-ref-142)
143. Bk. III Ch.3 34 [↑](#footnote-ref-143)
144. Bk. II CH.4.53 [↑](#footnote-ref-144)
145. Bk. III Ch. 337-38; Bk. II Ch.4 50 [↑](#footnote-ref-145)
146. Even when it is justified (cf. Bk. II ch.4-5; Bk. 3 Ch 3) it is best to firsty relinquish rights, to engage in diplomacy and arbitration, and to engage in acts short of war. (Bk. II CH.18) War is such a dangerous thing inherently, it can never be a matter of prudent policy. [↑](#footnote-ref-146)
147. Bk. II Ch. 3 42-48 [↑](#footnote-ref-147)
148. Bk. 2 Ch.4 56 [↑](#footnote-ref-148)
149. Ibid. [↑](#footnote-ref-149)
150. Bk. II. Ch.1.17 [↑](#footnote-ref-150)
151. Bk. II Ch.1.3 [↑](#footnote-ref-151)
152. Bk. 1 *Preliminaries* 14 [↑](#footnote-ref-152)
153. Gerald L Neuman, “Subsidiarity” pp. 360-378 in Dinah Shelton, ed., **The Oxford Handbook of International**

     **Human Rights Law** (Oxford2013) [↑](#footnote-ref-153)
154. Rafael Domingo, “Gaius, Vattel, and the Global Law Paradigm” **European Journal of International Law** Vol 22 No 3 627-647 [↑](#footnote-ref-154)
155. Jennifer Pitts, **Boundaries of the International** (Harvard 2018) 68-91 [↑](#footnote-ref-155)
156. Bk.1.18.207 [↑](#footnote-ref-156)
157. Bk.1.Ch.18.209 [↑](#footnote-ref-157)
158. It is also in line with his general condemnation of non-agricultural ways of life also found in Bk.1 Ch.7.81 and Bk. Ch.7.97, including “the ancient Germans” , “modern Tartars”, and “savages of North America.” [↑](#footnote-ref-158)
159. Bk. I Ch.18.208 *footnote* [↑](#footnote-ref-159)
160. Bk II. Ch.7.90-91 [↑](#footnote-ref-160)
161. Ibid. [↑](#footnote-ref-161)
162. Bk. 2 Ch.1.7 [↑](#footnote-ref-162)
163. Bk. 2. Ch.4.55 [↑](#footnote-ref-163)
164. Bk.2 Ch.4. 7 [↑](#footnote-ref-164)
165. Bk.1.12.148; Bk. II Ch.7.94 [↑](#footnote-ref-165)
166. Bk. II Ch. 4.58-59 [↑](#footnote-ref-166)
167. Bk. II Ch.4.60 [↑](#footnote-ref-167)
168. Bk. II CH.4.59-61 [↑](#footnote-ref-168)
169. Vattel’s ideas about the Americas could be excused by the fact his knowledge of conditions in the land were only based on reports by Europeans; or we might note that his ideas of sovereignty are not attached to his belief that a singular life of agriculture and commerce is demanded by nature. They certainly stand in opposition to the rest of the tenor of his work. [↑](#footnote-ref-169)
170. Andrew A. Rosen, “The Flawed Foundations of Post-Colonial State Borders: Uti Possidetis Juris and Self-Determination” pp. 513-531 in Sanford R. Silverburg, **International Law: Contemporary Issues and Future Developments** (Westview 2011); Ronald Beiner, ed. **Theorizing Nationalism** (SUNY 1999) [↑](#footnote-ref-170)