GREAT JURISTS OF THE WORLD

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WITH PORTRAITS

BOSTON
LITTLE, BROWN, AND COMPANY
1914
ÉMERICH DE VATTTEL

The late Mr. Joseph Chitty in 1834, after his relinquishment of an enormous practice at the Bar, employed part of his unfamiliar leisure in re-editing for a world that was fast forgetting the terribleness of war the English anonymous edition of Vattel's *Le Droit des Gens*, issued in 1760 and amply revised in 1797, possibly by William Cobbett, who in 1795 had translated Marten's *Law of Nations.* Mr. Chitty's object was the object of every self-respecting lawyer: he desired to bring Vattel's work up to date, with special reference to the legal decisions that had sprung out of the Napoleonic and American wars. But this eminent lawyer in his retirement did not only look upon Vattel's honoured work as a book to be "noted up." The moral aspect of his labours particularly appealed to the most technical pleader that the English Bar has produced. He affirms in his preface, "without the hazard of contradiction, that every one who has attentively read this work, will admit that he has acquired a knowledge of superior sentiments, and more important information than he ever derived from any other work." Mr. Chitty indeed regarded Vattel's work not only as a book for sovereigns and statesmen but as a moral guide for every educated person. He says:

"It has been generally supposed that it is only adapted for the study of sovereigns and statesmen, and in that view certainly the author's excellent preface points out its pre-eminent importance. But it is of infinitely more extended utility. It con-

1 Mr. Chitty had already in 1812 published a work (dedicated to Lord Erskine) entitled *A Practical Treatise on the Law of Nations, relative to the Legal Effect of War on the Commerce of Belligerents and Neutrals, and on Orders in Council and Licenses.* It is a work of importance in the history of international law. Mr. Chitty's edition of Vattel is not included in the list of his works published in the *Dictionary of National Biography.* I may add here that I have used the copy of the 1760 English version of *Le Droit des Gens* in the Cambridge University Library. Lincoln's Inn Library possesses a copy (which I have also used for the purposes of this paper) of the *Questions de Droit Naturel, et Observations sur le Traité du Droit de la Natur de M. le Baron de Wolf* of 1762. The work is rare.
tains a practical collection of ethics, principles, and rules of conduct to be observed and pursued, as well by private individuals as by states, and these of the utmost practical importance to the well-being, happiness, and ultimate and permanent advantage and benefit of all mankind; and therefore ought to be studied by every gentleman of liberal education, and by youth, in whom the best moral principles should be inculcated. The work should be familiar in the Universities and in every class above the inferior ranks of society."

I have quoted Mr. Chitty's enthusiastic and profusely italicized dedication of the work as this, in a sense, prepares the way for an analysis of it. It is true that this eminent lawyer's desires failed. Vattel is not perused with eagerness by every gentleman of liberal education or even by youth, while it is to be doubted if his masterpiece is familiar in any English University or in any English grade of population. It may well be that women and the inferior ranks of society, the classes so thoughtfully excused by Mr. Chitty, know as much about the genial disciple of Christian von Wolff as is known by other general or special readers. Let us see what a new dedication, a new recommendation at large, can do for this famous and suave Swiss publicist.

Vattel's Life.—Émerich de Vattel was the son of David de Vattel, a minister of the Reformed Church, and his wife Marie de Montmollin, daughter of a Prussian Treasury official. He was born at Couvet in the principality of Neufchâtel on April 25, 1714. He early showed a taste for philosophic subjects, which, in common with general scholarship, he pursued at the University of Bâle. He passed on to the University of Geneva, where he finally specialized upon moral philosophy. He became an ardent student of Leibnitz and Wolff and published against Crousaz a luminous summary and defence of the Leibnitz position. This he dedicated to King Frederic II., and in 1742 he followed his book to Berlin in order to offer his services to the King whose subject he was by birth. He was rebuffed by the bluff monarch and passed on to Dresden, where his great abilities were at once recognized by the Prime Minister of Saxony, Comte de Brühl. The future jurist was placed in the diplomatic service, where his unique knowledge of the law of nations and of the history of treaties enabled him to perform services of considerable moment. It was, however, possible for him to spend some years at Neufchâtel, but in 1746 he returned to Dresden, where the King, Augustus III., appointed him adviser to the Embassy and sent him the next year to Berne.
as minister-plenipotentiary. He had long been composing his famous treatise *Le Droit des Gens*, and it was at Berne, amidst pleasing and congenial diplomatic duties, that he finished this work. He also during this period wrote widely on philosophy and literature, closely investigated the whole theory of natural rights and, as a relaxation, published some poems.\(^1\)

In 1758 he returned to Dresden, was made a Privy Councillor, and became the chief adviser of the Government on foreign affairs. During the same year *Le Droit des Gens* was printed at Neuchâtel and issued with the name London on the title-page. A second edition appeared in the same year bearing the impress of Leyden. In 1762 he issued his last work: *Questions de Droit Naturel, et Observations sur le Traité du Droit de la Natur de M. le Baron de Wolf*.\(^2\) This book, a volume of great importance, was written some years before publication and consists of material collected during the composition of *Le Droit des Gens*. We have, almost beyond doubt, further examples of Vattel’s work in three volumes (of quite the first importance as historical sources) published at Frankfort and Leipsic simultaneously in 1757 and 1758. These are volumes of essays par “un observateur Hollandois.” The first volume (1757) is entitled “Mémoires pour servir à l’Histoire de notre tems, par l’Observateur Hollandois, Rédigez et Augmentez par M. D. V.” The Lord Acton Library Catalogue suggests that M. D. V. is “Monsieur de Vattel,” and a careful consideration of the Preface and the Notes makes this certain. Following the preface is a “Dissertation sur la Raison de la Guerre,” by the jurist Strube, which was almost certainly selected for insertion by Vattel. Vattel’s preface is a wonderful piece of writing in which he advocates the formation of a United States of Europe, in which no single state is to be allowed to have a predominating power. This volume consists of twenty essays. The second volume (bound up, in Lord Acton’s collection, with the first) is entitled “Mémoires pour servir à l’Histoire de notre tems, par rapport à la Guerre Anglo-Gallicane, par l’Observ-

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\(^1\) In his *Observations* he included a chapter on Tragedy and Comedy.

\(^2\) A Berne, chez la Société Typographique MDCCLXII. I think that the first edition of *Le Droit des Gens* is clearly the “London” edition, for it has at the end of the second volume a list of *Errata* which in the “Leyden” edition have been duly corrected. Through the kindness of Dr. T. A. Walker, of Peterhouse, Cambridge, I have been able to compare the “London” edition in the Peterhouse Library with the “Leyden” edition (two volumes in one) in Dr. Walker’s fine collection of works on the Law of Nations. He also lent me Mr. Chitty’s work of 1812.
vateur Hollandois, Rédigez et Augmentez par M. D. V.” (1757). The third volume is entitled “Mémoires pour servir à l'Histoire de notre temps, où l'on deduit historiquement le Droit et le Fait de la Guerre Sanglante qui trouble actuellement toute l'Europe, par l'Observateur Hollandois, Rédigez et Augmentez par M. D. V.” (1758). From 1762 onwards his official position in the Court of Saxony and the new interests of his home life rendered further juridical work impossible.

It was not until late in life that he married, on January 27, 1764, at Dresden, Mademoiselle Marianne de Chesne, a member of a noble French family which had settled in Saxony. A son was born on January 31, 1765, who died in the year 1827. Vattel only lived for about four years after his marriage. The strain of his official work proved very great, and in 1766 he broke down and retired for rest to his native district, Neuchâtel. In the autumn, with characteristic energy, he returned to Dresden and resumed his duties. In the following year he broke down again and once more sought relief at Neuchâtel. But it was too late, and he died on December 28, 1767, in his sixty-fourth year. Vattel left behind him an annotated copy of the first edition of Le Droit des Gens, and an edition crudely incorporating these notes was issued from Neuchâtel in 1773. The volume, in the hands of a critic, is invaluable as reflecting the jurist's latest views, but it was issued in a form that would have revolted his fine sense of style and order. The editor of the edition of 1775 indeed comments in terms of great severity on this edition, and declares that it "devrait être abandonné à l'épicier comme vraie maculature."

Vattel's Works.—In considering Vattel's works it will probably be found convenient to make some detailed examination of the Questions de Droit Naturel, et Observations sur le Traité du Droit de la Natur de M. le Baron de Wolf, since this remarkable volume contains most of the material on which Le Droit des Gens was based and reveals the jurist at work collecting his materials, sorting his ideas, and criticizing the intellectual position of his great master Wolff. The work shows us the shrewd utilitarianism that was the salient intellectual characteristic of Vattel. There never was a shrewder mind. He has all the logical clearness and hardness of Bentham, and is as inelastic as that eminent thinker. He is in point of time and thought the predecessor of Bentham, whose doctrine of utility appears largely written throughout these Observations. Vattel indeed enunciates the aphorism of the
"greatest good of the greatest number," in almost similar words. Yet, reading Vattel, there seems a great gulf fixed between him and the English utilitarians. His doctrine is so wrapped up in elegant writing and precious sentimentalism that the bitter pill is swallowed before the victim has any knowledge of the fact. That was not Bentham's way. Bentham had to be translated into French by Dumont, and re-translated into English before the great British public would have anything to do with his philosophic nostrums. Vattel at once found his audience, and an English edition appeared, as we have seen, in 1760, within two years of the publication of the original work. A German edition (from the pen of J. P. Schulin) also appeared in 1760, simultaneously at Frankfort and Leipsic, thus recalling the "Acton" volumes referred to above. He, moreover, appealed directly to the religious sense, deliberately limiting his utilitarianism to the natural interrelations of men. He recognized, as standing out above and enveloping these relations, the love of God to which men could turn, and in the glow of which they could transform the pure selfishness of natural law into the pure altruism of supernatural law. The passage in which he describes this transition shows the idealism that underlay the utilitarianism of his philosophy. This idealism is continually in sight, and adds a vivid interest to almost every proposition that he advances. When we have a utilitarianism that is the necessary but not the last resort of the human soul, humanity feels that it can adopt it without a sense of shame. Indeed, as we have seen, Mr. Chitty adopted it with a sense of enthusiasm.

In considering the Observations we may dismiss Vattel's profuse apologies for venturing to criticize his great master, Wolff, without further comment than the remark that local anaesthetics of this type are very characteristic of our author. He does not spare the scalpel, but skilfully manages to convey the impression that it hurts the surgeon more than the patient. Indeed such was his respect for Wolff that probably this was true. The work opens with the end and aim of Being. Our first and most general obligation, the foundation of all other obligations, is to work for

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1 The English editions of 1760, 1797, and 1834 are not, it would seem, included in Klüber's Bibliography (Dans le Droit des Gens Moderne de l'Europe, édit. Guillaumin, 1861, p. 446). See M. P. Padiou-Fodéré's edition of Le Droit des Gens (Paris, 1833), vol. i., p. xiii (n.). This edition is probably the best and is largely followed here so far as the text and the facts of Vattel's life are concerned. But see also Hoffmann's edition of 1835, containing Sir James Macintosh's Essay on the Law of Nature and Nations.
our individual happiness and well-being. Now perfection alone can secure perfect happiness. Therefore, each must work for his own perfection, and this can only be done by acquiring and practising virtue. How near, he asks, does this natural ideal approach the Christian ideal? Have we, for instance, a natural duty to love our enemies? This is discussed in a remarkable passage:

"Nous nous aimons premièrement nous-mêmes, et nous nous devons, préféérablement à tous, le soin de notre conservation et celui d'avancer notre perfection. Mais l'homme ne pouvant se suffire à soi-même, se conserver et se perfectionner seul et sans le secours de ses semblables, la nature et l'essence des hommes les obligeant à s'aider réciproquement, et il faut qu'ils y soient sincèrement et constamment disposés : d'où il suit, qu'ils doivent s'aider les uns les autres. Mais l'amour que je dois aux autres ne dérivant que de celui que je me dois à moi-même, il cède à celui-ci et ne peut jamais lui nuire. Si un homme rompt les liens qui doivent nous unir, et se déclare mon ennemi, cherchant à me nuire, bien loin de m'aider, il m'est permis de faire contre lui tout ce qui est nécessaire à ma défense et à ma sûreté. Mais comme cette division est un mal dans la société humaine, et un mal pour moi-même, je dois faire mon possible pour empêcher qu'elle ne s'aggrise, et pour la finir entièrement ; et rien n'y contribuera davantage que ma modération dans ma juste défense, et la générosité avec laquelle je rendrai, dans l'occasion, à mon ennemi même les devoirs de l'humanité, et lui ferai tous les biens qui ne contribueront pas à le mettre mieux en état de me nuire, ou à lui donner, et à ses parois, plus de hardiesse à m'attaquer" (pp. 35-6).

We cannot go farther than that if we base our actions on the simple nature and essence of men in their mutual relations. If you desire more than this you must turn to the love of God. If the heart, Vattel adds, is actually inflamed with that love, then it is really possible to love your enemies. Morality can only be carried to its highest point of perfection by the aid of a just conception of the supernatural. Vattel then elaborates an utilitarian system of psychology based on the relations of men. The system is empirical, and Vattel entirely declines to adopt Wolff's great attempt to apply mathematical thought to the moral sciences. The basis of his system of humanitarianism is that the "right" of demanding help from other men is a "perfect right," inasmuch as there is joined to it the right of constraining those who refuse to allow a man to exercise this right.
The First Part of the book concludes with a discussion of the measure of damages caused by a wrongful act. There must be a certain proportion between the punishment and the crime. This proportion must be maintained even if the punishment will not prevent the wrongdoing. If capital punishment only will prevent apple-stealing from an orchard, the loss must be tolerated. A man has a duty to preserve and protect, not only himself but others, and if the loss in question is of less importance to a man's perfection than kindly conduct, then the loss must be suffered. If, however, it is found that certain offences become common it may be necessary to inflict penalties out of proportion to the offences in order to preserve society.

The Second Part deals with certain elementary propositions. Vattel discusses the difference in a primitive community between the gifts of nature and the fruits of industry. The first are held in common by the whole community, but each man has "un droit de préférence sur les fruits de son industrie et de son travail." The result, in the end, is the dissolution of primitive conditions. A man cultivates a piece of land; discovers that he has a special right to the fruits of the field, and appropriates them; insensibly he acquires a right to the field itself, and his successors continue to hold it. In this demonstration we see clearly enough the peculiar vice of eighteenth-century speculation. Had Vattel not been content to reason from the necessarily sophisticated outlook of his own age and class, but had turned to the examination of the village communities within his reach, he would have seen that, in fact, his theory was absolutely untrue; that the appropriation of the fruits of the soil had gone on for untold centuries without individual appropriation of the soil. Vattel attacks Wolff's theory of the origin of property and ownership as a result of the exercise of natural liberty and apparent needs, but his own generalization is far less convincing. It is as follows: As the race multiplied the simple products of the earth ceased to be sufficient; industry and art became necessary; foreseeing men began to provide against the future, and to cultivate fields instead of roaming at large. A general right to everything existed, so these men could not be restrained from taking a particular portion of land and renouncing the rest. They thereupon acquired the right to the produce of this soil. Others followed their example: "voilà la propriété et le domaine établis." In the light of modern investigations it is probable that Wolff's speculations are nearer
the truth than those of Vattel. But the subject is not one for speculation at all. It is a question of fact to be ascertained in accordance with correct laws of evidence.

The Third Part discusses some interesting questions of contract and lays down two propositions of natural law: first, that no one can be presumed to have abandoned property; and secondly, that a holder in good faith must be protected.

The Fourth Part continues the discussion of contracts, raising questions of curious interest such as, can a man accept an offer by silence? must a seller point out the patent faults of his goods? In the latter case Vattel is apparently guided by the maxim caveat emptor. The discussion as to accidental injury to a workman is interesting. The employer is responsible, in the case of a hired workman, but not where the work is done by a contractor.

The Fifth Part continues the discussion of special cases. Are lotteries allowable by the law of nature? Vattel, in opposition to Wolff, declares that they are allowable. Again Vattel upholds in principle contracts of insurance made in good faith after the event. He agrees that it is illegal to agree to terminate a difference by a duel. He declares that a vendor of land can reserve a right of passage over it for the use of a neighbour. Problems of these various types are, of course, familiar to English lawyers.

In the Sixth Part, after a discussion of certain questions relating to land (such as the right to the surface) Vattel proceeds to discuss the law of necessity. He is surprisingly and admirably uncompromising as to the limits of lawful action in cases of necessity. He lays down the definite principle: "qu'il ne nous est jamais permis de faire tort à quelqu'un, d'aller contre son droit bien établi." There is a right to do all things that are not illegal in themselves or contrary to the absolute right of another person. For instance, you may kill an aggressor because he began the evil, and has not an exclusive right to preserve his own life. But you must not kill a defenceless person for the purposes of food in a case of desperate necessity, unless he voluntarily consents to sacrifice himself for others.

Wolff denies this last position (s. 587) on the ground that a man has no right over his own life and therefore cannot consent to give it up. This, as Vattel points out, is illogical since the same argument would forbid a man to sacrifice his life for his country. Wolff, while declaring that a boatful of men ought rather to die of hunger than feed upon each other, yet allows a party to make
a hopeless sally to save a town. Vattel will have none of this. "Je ne voudrois donc pas dire qu'un homme n'est point le maître de sa propre vie; mais je dirois, qu'il est obligé de la conserver précieusement, à moins qu'il n'ait des raisons très-fortes et très importantes de l'exposer, ou même de la sacrifier." The general rule of necessity is stated as follows: "Il faut choisir le plus grand bien, ou le moindre mal; mais en considérant la chose dans toute son étendue, avec toutes les liaisons et toutes ses conséquences et dépendances. Car la décision ne doit pas se fonder seulement sur le cas présent, considérée en lui-même et indépendamment de ses conséquences dans le monde." Vattel proceeds to exemplify this doctrine by a protest against the use of poisoned weapons—a use that had been justified by Wolff. If the use established itself, "la guerre deviendroit atroce, ses maux n'auroient plus de bornes, et elle seroit capable de détruire le genre-humain" (p. 213). But does not this argument destroy itself and re-establish Wolff's position? The more terrible war is made, the less likely it is to be waged. The argument against poisoned weapons applies, if it applies at all, with renewed force to the use of airships from which explosives can be poured upon defenceless towns, involving combatants and non-combatants in irretrievable destruction. The whole tendency of war is to become more terrible and, in fact, less frequent and less destructive. War was far more bloody when it resolved itself into a vast number of single duels fought à entrave according to highly artificial rules. According to Vattel's own principles, the more terrible war is made the more likely is it to fulfil the laws of nature and secure peace.

The Seventh Part opens with an interesting discussion of the manner of counting votes. Here Vattel follows Grotius and not Wolff. The principle laid down is that those who have any opinion in common must be ranged together for the purpose of arriving at a decision. Thus if four judges condemn a man to death, two to banishment, two to a thousand crown fine, two to a hundred crown fine, and three are for an acquittal, we have nine in favour of life against four in favour of death; but ten are in favour of some form of punishment, while only three are in favour of freedom. So the man must live, but must be punished. Six are in favour of death or banishment, and seven in favour of something else. Therefore the punishment must be a fine, and the higher fine, since eight are in favour of that at least—for the greater includes the less. So the man is fined a thousand crowns.
It is an interesting discussion, but it leaves out of account the fundamental problem, why should a majority carry the day? Counting by heads is surely not the result of the law of nature, for, in fact, in nature it is always one head that dominates the rest. The rule is presumably a rule of convenience which in fact gives the law of intellectual dominance full play while it creates that illusory atmosphere of equality which is so dear to the human heart. But it is necessary to lay stress on the fact that there is no natural law which gives a special sanction to the decision of majorities, though possibly there are signs of conventions on the subject in the earliest stages of tribal life. The elemental man had no respect for liberty, equality, or fraternity outside his clan or kinship bond or hunting troop; while inside that fundamental unit ex hypothesi none of these things existed. In their place was chieftainship, the Manus, the system of slavery. The idea of equality was entirely remote from tribal life, and consequently the democratic idea of government by majorities was non-existent. But there was, as there is to-day, a primary force or passion (the existence of which is acutely recognized by Vattel) which tended to create a conventional recognition of human equality. I refer to the passion of jealousy. A force so disruptive had to be met by definite structural variations in social life. Consciously or unconsciously the fiction of equality was introduced to combat this universal force or passion. If men could be led to believe that they were equal, society could maintain stable equilibrium. Out of this transparent fiction an ideal of real equality emerged, and human society through long ages has made from age to age desperate efforts to realize on earth the platonic pattern of a divine society laid up in Heaven. To-day the fiction is as transparent as ever, but the ideal has at last descended from a transcendental Heaven into the heart of man, and to-day efforts, unprecedented in the history of mankind, are in progress to secure a real equality among the sons of men.

Vattel is full of interest when he turns from the doctrine of human equality to the subject of women. He sees here, at any rate, no equality, nor has he, despite his suavity, any illusions.

1 It is to be noticed that while Wolff denies that slavery existed in primitive communities, Vattel declares that the slave could come into existence as soon as other sorts of property. The right to kill involves the lesser right to enslave. Vattel's assertion that parents have no natural right over the lives and liberty of their children must be met by the answer that for untold years they, in fact, exercised such rights. No doubt this was wrong, but was it more unnatural than the right to die which is supported by Vattel?
He sees nothing fundamental in the doctrine of monogamy. He denies that the laws of nature forbid plurality of wives, though he admits the inexpediency, in most cases, of polygamy. In certain cases, however, he admits its use and possibly its necessity, while he thinks that concubinage can quite well be legalized. He claims that a man should be allowed a divorce for sterility, and asserts that marriage is never indissoluble in itself but that natural law imposes on us the obligation never to break it without strong and just reasons, especially if there are children. His treatment of this subject is a striking instance of the luminous way in which he applies the principle of utilitarianism to human problems. It is from the utilitarian standpoint that he goes on to inquire as to the person to whom authority belongs in marriage. It is curious that a question which is creating such unpleasant interest in the present day should have been discussed with such gusto more than a century and a half ago. M. de Vattel would not have been popular with the army of women who are demanding the franchise to-day. His cold reasoning and his uncompromising views on the superiority of the male sex would have caused pain in many sensitive hearts. Far otherwise would it be were M. Christian de Wolff suddenly to glide once more on to the platform of life with his thrilling declaration: “Le Droit Naturel établit une parfaite égalité entre le mari et la femme” and his emphatic repudiation of the predominance of the male sex. The text of Vattel’s disagreement with his great master deserves to be reprinted: He asserts that men are “plus capables des affaires importantes, plus fermes, plus forts et plus courageux. Il paraît donc que la nature a destiné la femme à vivre sous la protection du mari, et cette protection donne déjà une supériorité.” Some one, says this jurist, even then trembling on the verge of matrimony, must lead and that one must be the stronger. “Dans une pareille société, dis-je, celui qui est le plus capable ait le droit de décider, en cas de partage dans les sentiments.” Then follows the touch of sentiment that is intended to sweeten the bitter draught. The husband must use his superiority “avec douceur, avec sagesse et avec équité, pour l’avantage commun.” Vattel is not as wise as usual here; some things in life should be taken for granted. But he adds, to cure all, “outre l’amour et les soins que le mari lui doit, elle a ses droits, qu’il est obligé de respecter.”

1 It should be noticed that in the Eighth Part he asserts (against Wolff) that women are far less capable of public government than men (p. 355).
course, would have been that Vattel was begging the question, that he was constructing a universal argument from his own very imperfect knowledge of the past, when in fact the law of nature depends as much on the potentiality of women as on their actual achievement. You cannot, for instance, argue that there is a law of nature asserting that the negro is necessarily inferior to the Aryan. Wolff in asserting the equality of the sexes no doubt wrote as a theorist, while Vattel in denying the equality wrote as a practical utilitarian. But the weakness of the utilitarian position is that while it necessarily depends on the appeal to experience, it invariably appeals to a very limited experience. If experience were exhaustive, the idealist and the utilitarian would be at one. But as it is, there can be no finality about the utilitarian position, which shifts in the direction of idealism as the ages pass and knowledge increases.

It is very difficult to ascertain how Vattel formulated his laws of nature. We have seen that he holds it to be unnatural for a parent to enslave or kill his child. On the other hand, he holds that though the giving of a bad example by a parent is a great fault, it is not such an infringement of a natural law as to constitute a natural injury. Now no doubt this distinction does exist in municipal law. Until the year 1908 a drunken mother could carry her children with her to any tavern in the land, and they not infrequently shared her libations from their tenderest infancy. Moreover it was decided as long ago as February 25, 1796, in the deservedly immortal case of Hodges v. Hodges,¹ that the common law of England imposed upon parents no duty to educate their children. Lord Kenyon stated the legal position in the words, “A father was bound by every social tie to give the children an education suitable to their rank, but it was a duty of imperfect obligation, and could not be enforced in a court of law.” It was not until August 15, 1876, that the legislature turned this “duty of imperfect obligation” into a duty enforceable in a court of law by declaring that “it shall be the duty of the parent of every child to cause such child to receive efficient elementary instruction in reading, writing, and arithmetic, and if such parent fail to perform such duty, he shall be liable to such orders and penalties as are provided by the Act.”² The tendency of municipal law to-day is in the direction of enlarging the imperfect obligations of natural

¹ Peake’s Reports of Cases at nisi prius, vol. ii., p. 70.
² The Elementary Education Act, 1876 (39 & 40 Vict., c. 79), s. 4.
law; but still, of course, the distinction between the two is very
marked. Yet how natural law can regard as not naturally
injurious conduct on the part of a parent that leads a child
directly into the very mischiefs aimed at by the imperfect obliga-
tions of natural law as well as by municipal law it is not easy to
see, especially if we adopt as the basis of all natural law the dogma
that the ultimate obligation of man is so to acquire and practise
virtue as to secure that personal perfection which is essential to
complete personal happiness. The truth is that Vattel only
develops the premises on which he bases his theory of natural
law so far as that development does not interfere with his own
preconceived notions of what is likely to be useful in the evolution
of society. If his absolutely artificial utilitarian standard does
not square with the logical results of the premises from which he
starts in reconstructing the evolution of society, those results are
abandoned. This is the necessary and the vicious consequence of
the a priori method. It is all very well to have a Theory of
Evolution and check it and correct by historical tests, but it is
quite another thing to have a Theory of Evolution and a Theory
of Social Life and to attempt to check and correct one theory by
the other. The appeal to experience is the only test, and this
applies in the realm of natural juridical conceptions as truly as in
the realm of material energy and force.

It is interesting to see how Vattel is faced with these difficulties
when he tries to explain why marriages between ascendants and
descendants are contrary to natural law. He flings aside Wolff’s
theory that such marriages are forbidden by respect and reverence,
and says that they are inexpedient, against the law of perfection,
likely to be barren and occasion natural horror. His own theory
is not in the least convincing. He begins by saying that they are
contrary to the law or theory of utility; he goes on to say that
they infringe the law of perfection on which his social scheme is
based—thus attempting by mere assertion to bring his two
theories into accord; he then makes a desperate appeal to ex-
perience, without any knowledge that justifies the appeal; and
finally really falls back on Wolff’s theory, on the theory elaborated
in Oedipus the King. Now what Vattel failed to recognize was
that mere utilitarianism—natural utilitarianism—is incapable of
solving problems that involve the spiritual depths of human
nature. A transcendental element is involved which is not ex-
plained by a reference to “natural horror.” This element was no
doubt evolved from some utilitarian basis; but once in existence it regulates the behaviour of the whole scale of creation that possesses it in a way that does not apply to a lower scale. Love itself has its roots on earth though its flowers and fruits belong to a region of self-sacrifice that can only be called transcendental. The relation of human parent and child is regulated by this transcendental love; physical relations are in fact replaced by metaphysical relations, and any tendency to reverse the process long since became so impossible as to be unnatural even in the case of an adopted child. Vattel’s attempt to create a great gulf between the physical and the metaphysical has made it impossible for him to supply a metaphysic of social life. Wolff refused to cut himself off from this means of analysis, with the result that he finds the true solution.

Each of these jurists might well have based their discussion of the right of inheritance on the same ground—that the relationship of parent and child is such as to involve perfect continuity of possession. This is evidently in Wolff’s mind when he asserts that the right of inheritance is a complete right. Vattel, with singular lack of historical knowledge, denies this on the ground that such a theory destroys the natural right of will-making. He therefore compromises with his master by asserting that a child has a “perfect right” to succeed to a portion of the estate of his parent, a portion determined by circumstances; and that a parent has an equal right to the heritage of his childless child (p. 295). Here we have arbitrary utilitarianism running havoc among all analyses and all history. There is nothing elemental in the power of will-making. Primitive races know nothing of it. There is something primitive in the notion of transmission to children, and the practice of the earliest races coincides with what we might expect to be the case from the transcendental relationship of human parent and child or even adoptive child. Vattel’s law of perfection would indeed seem to involve this transmission of property from parent to child which Wolff asserts to be a “perfect right.”

In the Eighth Part Vattel turns to the question of sovereignty. He does not accept the divine right of kings. The only sovereign is the community itself, which is capable of delegating its power but not of finally parting with that power. The people, he asserts, always hold the reversion of power even if that reversion is not nominally reserved, and can resume, for just cause, their
rights. No man can possess a patrimonial kingdom. "Le peuple seul, j'entends le peuple entier et unanime, possède l'empire comme véritablement patrimonial" (p. 343). The patrimony is not in a majority of the people but in the whole people. The rights of a majority are merely rights of expediency, he in effect says. It is therefore necessary to submit to the majority in a state even if the fact involves some injustice. But this is not so if the majority becomes oppressive and destructive. It is curious to see how Vattel's mind is continually wavering between his theories of utilitarianism and perfection. Having made his doctrine of sovereignty clear, he goes on to state that if a people unanimously elect a despot, the contract will bind them but will not bind the children of the original electors. This, of course, is a compromise, but it is quite inconsistent with the original proposition that a reversion of power is always sleeping in gremio populi. That this latter proposition is the one that he finally holds is shown by his subsequent statement that the people have the right to decide between two pretenders to the crown. He has much that is very significant on the question of state religions. The priesthood must not be independent: "Mais si vous les rendez indépendantes de la puissance Civile, vous ouvrez la porte à mille désordres, à des troubles dangereux; et les Rois ne font pas fernes sur leur Trône" (p. 319). But while the State must control the priesthood it must not lend itself to acts of uniformity: "La Société, ou le souverain qui la représente, n'a done aucun droit de générer la conscience des citoyens" (p. 370). There we must leave Vattel's Observations, a work of originality and insight that deserves to be reprinted, for it contains the seeds of most of the thought that dominated Europe and England from 1789 to 1830.

The above analysis of Vattel's fundamental ideas will enable us to treat with brevity his great work Le Droit des Gens. It is not difficult to see how, from the premisses set out above, he would apply the laws of nature to the interrelations of sovereign peoples. His preface opens with the magnificent untruth which the Institutes of the Emperor Justinian enunciated for all time: jure enim naturali ab initio omnes homines liberi nascabantur; a legal fiction which in the evolution of things will at last become a natural

1 It should be noticed that here Vattel appreciates the fundamental difficulty discussed above of the question of natural rights residing in a majority.

2 Institutionum Libri Quattuor, lib. i., tit. 2.
truth. He refers to Thomas Hobbes as being the first to give a
distinct though imperfect notion of the rights of nations. But
Wolff and Vattel differ from Grotius, Hobbes, Pufendorf and
Barbeyrac in seeing that the law of nature dealing with indi-
viduals must be modified if it is to be applied to political societies.
Such societies are moral persons, but they differ in their nature
from the moral man. Closely as Vattel follows Wolff he is careful
to point out the many fundamental differences between them.
Wolff asserted the existence of patrimonial kingdoms; Vattel will
have none of them; Wolff justified the use of poisoned weapons;
Vattel will have none of them either. But a deeper difference
exists. Wolff derives the idea of a voluntary society from a kind
of mighty republic founded by nature herself, a universal society
of which all the nations of the world are members. Consequently
the civil law of the natural republic of men would be the law of
all its members. "Cette idée," writes Vattel, "ne me satisfait
point, et je ne trouve la fiction d'une parcellé république ni bien
juste, ni assez solide pour en déduire les règles d'un droit des gens
universel et nécessairement admis entre les États souverains."¹
He can recognize no other natural society among nations than
nature has established among all men. It is the essence of all
civil society that each member has ceded a part of his rights to the
whole body which possesses authority over all the members.
"On ne peut rien concevoir ni rien supposer de semblable entre
les nations. Chaque État souverain se prétend, et est effecti-
vement indépendant de tous les autres." The laws that apply to
nations differ from those that apply to men, since a nation is a
different type of moral being from a man. But it has, neverthe-
less, fundamental and necessary laws which are purely natural in
their origin, and these are supplemented by voluntary laws of
convenience. Vattel elaborates this position as follows (I use
Mr. Chitty's revised version):

"The necessary and the voluntary laws of nations are therefore
both established by nature, but each in a different manner:
the former, as a sacred law which nations and sovereigns are
bound to respect and follow in all their actions; the latter as
a rule which the general welfare and safety oblige them to admit
in their transactions with each other. The necessary law imme-
diately proceeds from nature; and that common mother of
mankind recommends the observance of the voluntary law of

¹ But it was his goal (see p. 19 above).
nations, in consideration of the state in which nations stand with respect to each other, and for the advantage of their affairs. This double law, founded on certain and invariable principles, is susceptible of demonstration, and will constitute the principal object of this work."

It is necessary before going on to deal with this demonstration to draw attention once more to the fact that Vattel's mind fails to appreciate the profundity of Wolff's intellect. Vattel, in his elegant, apologetic way which perhaps recalls the critical manner of Sainte-Beuve, spurns Wolff's fundamental assumption of a universal republic instituted by Nature herself of which all nations of the world are members. Far be it from me to assert, or to deny, the validity of such an assumption. I am certainly not prepared to deny the assumption, for it is, in fact, merely the traditional medieval form of asserting the universal brotherhood of man—an assertion which appeals with singular attraction to the modern mind. Vattel, however, repudiates the assumption, and he is undoubtedly at liberty to do so; but he proceeds to make a new assumption which involves every intellectual difficulty presented by Wolff's assumption and new difficulties as well. He assumes that a nation is a moral being, one and indivisible. I do not desire to challenge this assumption—if we are to be in the land of assumptions at all. It is certainly desirable that nations should be moral beings, and probably the best way to make them so is to assume that they are so. But Wolff's assumption is likely in the long run to prove nearer truth. The world is probably drifting or gliding in glacier-fashion towards the universal republic of which nations are the members, that the great German philosopher evolved from his inner consciousness. "M. D. V." in fact advocated the creation of such a Republic. And we must remember that those juridical thinkers who enunciated from the days of Augustine onwards the laws of nature in society were, in fact, looking towards the end and not the beginning, were looking for what should be when they thought that they were looking for what had been; that they were platonic idealists without knowing it; that the pattern laid up in the heaven of their high imaginings was what they saw, and that our modern investigations into actual primitive conditions had and could have no meaning or attraction for them. When they wrote of the law of nature they meant, each according to their respective spiritual insight and intellectual gifts, what Plato,
what Augustine, what Dante, what Sir Thomas More meant. No doubt they thought they were dealing with reality; but so, for the matter of that, did Euclid. If, then, Wolff and Vattel were dealing not with reality but with ideals that each desired to bring down into the realm of actualities, Wolff was incomparably the greater thinker. A universal republic is a higher ideal than a family of nations whose morality is exhibited in bloody feuds, in inextinguishable hatreds, in malice, jealousy and lust for power; in every possible telescopic magnification of the vices of petty tribal life. It is not unjust to make this criticism of Vattel's position, for that position is a persistent criticism of a nobler ideal than his own, a criticism adopted for the purpose of creating a purely utilitarian system of international relations, a system that to this hour has hampered a larger outlook on the relations of organized communities. Limited utilitarian ideals, that is to say, the hand-to-mouth wisdom of practical politicians, are the ideals that Vattel, a rather shame-faced follower of a much greater thinker of the same type, Machiavelli, crystallized for the use of the Foreign Offices of Europe for a century and a half after his death. Vattel was essentially a diplomat, and he chose, as his fundamental assumption, the highest ideals consistent with practical political life. Having done that, he plunges into current political problems and shapes his course in accordance with the apparent needs of the times. He takes a new and most useful attitude towards these problems. He is above all a practical man, and therefore he abandons the stale precedents of the classical ages and uses modern instances of the clearest kind. "I have quoted the chief part of my examples from modern history, as well because these are more interesting, as to avoid a repetition of those which have already been accumulated by Grotius, Pufendorf, and their commentators." But it cannot be said that his examples encourage reliance on his fundamental propositions.

Let me now briefly refer to Vattel's definitions in the realm of the law of nations. "Nations or states are bodies politic, societies of men united together for the purpose of promoting their mutual safety and advantage by the joint efforts of their combined strength." Such a society, we are told, is a moral person susceptible of obligations and rights. The law of nations is a science which teaches the rights subsisting between nations and the obligations corresponding to those rights. Nations are to be
considered as so many free persons living together in the state of nature. The entire nation (whose common will is but the result of the united will of the citizens) remains subject to the laws of nature: consequently the law of nations is originally no other than the law of nature applied to nations. This application gives us the necessary Law of Nations called by Grotius "the internal law of nations" and by other jurists "the natural law of nations." Every treaty and every custom which contravenes the injunctions or prohibitions of the necessary law of nations is unlawful and condemned by the law of conscience even if validated by the external law. A nation is obliged to live on the same terms with other nations as an individual man was obliged, before the establishment of nations, to live with other men. A man when he joins a nation is still bound by his duties to the rest of mankind. Men, adds Vattel, are naturally equal, and a perfect equality prevails in their rights and obligations, as equally proceeding from nature.

It would answer no purpose here further to dwell on the unscientific nature of these various assumptions. I pass at once to the general laws that Vattel derives from his definitions. He tells us that each individual nation is bound to contribute everything in her power to the happiness and perfection of all other nations. But each nation should be left in the peaceable enjoyment of that liberty which she inherits from Nature. It follows also from the natural equality of all men that nations, being composed of free persons living together in a state of nature, are naturally equal and inherit from Nature the same obligations and rights. It also follows that a nation is mistress of her own actions so long as they do not affect the progress and perfect rights of any other nation. These and their derivatives are the Natural Law of Nations. It is a necessary, a natural, an internal law binding the national moral conscience. The external law corresponding to this internal law is the Voluntary Law deliberately adopted by nations, which as supplemented by Conventional Law (that is to say, the law contained in treaties) and Customary Law, constitutes the Positive Law of Nations. This argument concludes with a characteristic passage: "As the Necessary law is always obligatory on the conscience, a nation ought never to lose sight of it in deliberating on the line of conduct she is to pursue in order to fulfil her duty; but when there is a question of examining what she may demand of other States, she must
consult the *Voluntary* law whose maxims are devoted to the safety and advantage of the universal society of mankind." This passage exhibits clearly enough the real difficulty that Vattel (and indeed his predecessors in thought) had not the courage to face. Vattel is in reality searching for a sanction to his law. He felt as strongly as Austin felt that a law involves a law-giver, and in fact he invents a sanction for the Positive Law of Nations by creating behind it the Interior Law of Nations. We see at once why he has to postulate a moral consciousness in a nation. It is necessary to find a sanction, and so in Kantian fashion, though in pre-Kantian days, he evolves his necessary laws that bind the consciousness of the moral beings that he has created. Unlike Frankenstein, he was not doomed to see these beings hurling aside their moral consciousness and their internal laws in the very name of the Natural Code that he, scarcely less than Rousseau, helped to frame: Napoleon Buonaparte was not yet rocking in his Corsican cradle when Émerich de Vattel was so complacently pondering on these things.

**Sovereignty.**—Having established what seemed to him the unimpeachable basis of the family of nations, Vattel with serene logic unfolded the necessary scheme of things. A nation, as he defines it, involves a Public Authority to order and direct what is to be done by each man in relation to the end of this association of men. "The political authority is the sovereignty; and he or they who are invested with it are the sovereign." There are three kinds of sovereignty—a Democracy or Popular Government, an Aristocratic Republic represented by a Senate, and a Monarchy represented by a single person. Since, "to preserve and to perfect his own nature" is the sum of all the duties of a moral being to himself, so it must be with a nation. "The preservation of a nation consists in the duration of the political association by which it is formed," and the perfection of a nation is found when everything in it must conspire "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—with the peaceful possession of property, a method of obtaining justice with security, and, finally, a mutual defence against all external violence." A nation is under an obligation to preserve itself and its members, and it has a right to everything necessary to its preservation and is not unjust in itself or absolutely forbidden by the law of nature. "The second general duty
of a nation towards itself is to labour at its own perfection and that of its state." The individual citizen must also strive towards the end. Vattel points to England as the nation that has realized his ideals, and there is not a flicker of his diplomatic eye as he does so. Indeed England, England in her eighteenth-century deadness and corruption, is to him a standard nation. "Heureuse constitution ! à laquelle on n’a pu parvenir tout d’un coup ; qui a coûté, il est vrai, des ruisseaux de sang, mais que l’on n’a point achetée trop cher." And he adds with a touch, one is tempted to think, of irony but more probably in sheer earnestness, "Puisse le luxe, cette peste fatale aux vertus mâles et patriotiques, ce ministre de corruption si funeste à la liberté, ne renverser jamais un monument honorable à l’humanité, monument capable d’apprendre aux rois combien il est glorieux de commander à un peuple libre." The praise of one’s friends is sometimes hard to bear. The second chapter of the First Book ends with a sentiment that goes deep indeed into the heart of national life: "Une nation doit se connaître elle-même. Sans cette connaissance, elle ne peut travailler avec succès à sa perfection." How few nations can answer to this test! Yet it is this self-knowledge that has kept the Jewish nation intact through two millennia of national misfortunes.

The sovereign represents the nation. "When . . . a people confer the sovereignty on any one person, they invest him with their understanding and will, and make over to him their obligations and rights, so far as relates to the administration of the State, and the exercise of public authority. The sovereign, or conductor of the State, thus becoming the depository of the obligations and rights relative to government, in him is found the moral person, who, without absolutely ceasing to exist in the nation, acts thenceforth only in him and by him." Such is the origin of the representative character attributed to the sovereign. He represents the nation in all the affairs in which he may happen to be engaged as sovereign. The Prince derives his authority from the nation; he possesses just so much of it as they have thought proper to entrust him with. He must respect and support the fundamental laws. "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." Here Vattel adopts the views of Grotius, who had declared that "France, Spain herself,
England, Sweden, Denmark, furnish instances of kings deposed by their people; so that there are at present few sovereigns in Europe whose right to the crown rests on any other foundation than the right which the people possesses of divesting their sovereign of his power when he makes an ill use of it."

It is very difficult, at any rate to the present writer, to follow in the light of history this class of reasoning. It is difficult to say more in the light of instances than that people always get rid of sovereigns that they (with good or bad reason) dislike if they have an organization capable of securing this result. If the sovereign is an able man he usually retains his seat. And conversely, if a man is sufficiently able he will attain the sovereign power in fact, if not in name, in the community to which he belongs. Vattel's theory of the origin of representative kingship leaves out of account men like Cæsar, Cromwell, and Napoleon. And the doctrine of representation is scarcely more real when it is applied to Parliamentary Government, though of course the swing of the pendulum to some extent secures to every man in the course of a long life some rough representation of his political notions. What in fact happens is that sovereignty tends to accommodate itself to a line of government that encounters the least resistance in the bulk of the people and secures the most stable equilibrium in the State. In practice rights and representation have little meaning. In England a Government could be in power for years after having been elected by a minority of the persons who actually voted.

However, sovereignty is and must be a fact however it is attained and retained. We approach a more practical matter when Vattel proceeds to discuss the business of a sovereign. It is his (or their) business to procure for the land a happy plenty of necessaries. For this there must be a sufficient number of workmen. Emigration should therefore be forbidden.¹ "L’état doit encourager le travail, animer l’industrie, exciter les talents, proposer des récompenses, des honneurs, des privilèges, faire en sorte que chacun trouve à vivre de son travail." The sovereign ought to neglect no means of rendering the land under his jurisdiction as well cultivated as possible. The labours of agriculture should be held in honour. Who "osez mépriser une profession qui trouvait le genre-humaine, la vocation naturelle de l’homme ?"

¹ It may be noticed here that this view has been from time to time favoured by the English Courts, which has never repudiated the argument that emigration is against public policy. See Hingeston v. Sidney [1908], 1 Ch., 126, 488.
Vattel even advocates the establishment of granaries as an excellent regulation for preventing scarcity, as an automatic regulation of prices. From agriculture he turns to commerce, by which—

"Les particuliers et les Nations peuvent se procurer les choses dont ils ont besoin et qu’ils ne trouvent pas chez eux. . . . Le commerce intérieur est d’une grande utilité; il fournit à tous les citoyens le moyen de se procurer les choses dont ils ont besoin, le nécessaire, l’utile et l’agréable; il fait circuler l’argent, excite l’industrie, anime le travail, et, donnant la subsistance à un très-grand nombre de sujets, il contribue à rendre le pays plus peuplé et l’État plus puissant."

Foreign trade has two additional advantages: it gives a country things she cannot herself produce and it may augment the wealth of a nation, and Vattel adds with respect to England, "Aujourd’hui c’est principalement le commerce qui met en sa main la balance de l’Europe."

The laws of nature with respect to commerce are based on the duty to assist and make others perfect. Every one has an imperfect right to purchase what he wants at a reasonable price from those who do not need the goods in question. But there is no such right to compel persons to buy, since everyone is at liberty to buy or not to buy. This clumsy analysis is an early statement of the law of supply and demand, obscured of course by the curious doctrine of imperfect obligation by which Vattel attempted to clarify his juridical ideas. Everyone is willing to sell what he does not want to keep, and is unwilling to sell what he does want to keep; while everyone is willing to buy what he needs and is unwilling to buy what he does not need. That is really Vattel’s position, and it is clearly a statement of the law of supply and demand. But Vattel goes on to justify the then current doctrine of protection on the ground that there is no duty to buy, though there may be to sell: "Tout état, par conséquent, est en droit de défendre l’entrée des marchandises étrangères; et les peuples que cette défense intéresse n’ont aucun droit de s’en plaindre, pas même comme si on leur cût refusé un office d’humanité."

We may seriously doubt if Vattel’s premises will stand the strain of this argument. His earlier argument of equal and reciprocal rights and duties seems inconsistent with a policy that tends to shut a nation out from its family obligations. However, the jurist feels no doubt on the subject:
“Comme donc il appartient à chaque nation de voir si elle veut exercer le commerce avec une autre, ou si elle ne le veut pas, et à quelles conditions elle le veut, si une Nation a souffert pendant quelques temps qu’une autre vint commercer dans son pays, elle demeure libre d’interdire quand il lui plaira ce commerce, de le restreindre, de l’assujettir à certaines règles, et le peuple qui l’exerçait ne peut se plaindre qu’on lui fasse une injustice.”

This no doubt is an excellent statement of the condition of things with which Vattel the diplomatist had to deal, but to derive or attempt to derive such a condition from the laws of nature as they obtain among moral beings seems more interesting than convincing. Few persons can doubt that protection is an interference, possibly a heaven-sent interference, with the laws of nature, with the law of supply and demand. However, Vattel was desirous of discussing commercial treaties, and it was perhaps natural to justify their existence. As soon as a Government has provided for national necessities and insured plenty, the second purpose of its being, that of procuring the true happiness of the nation, comes into sight. To secure national happiness the sovereign must instruct and enlighten the people. The education of youth is one of the most important matters for the attention of the Government. Vattel’s foresight in this question is very remarkable. He foresaw, indeed, in his shrewd, kindly way the whole social struggle of the nineteenth century. He was not to be blinded by the talk of the sacredness of preserving intact the sense of parental duty. If parents are unable by their circumstances to fulfil their duties, the State must intervene in the interest of the State. “Il ne doit point s’en reposer entièrement sur les pères.” But the Government ought not to stop at the education of the individual. It ought directly to encourage arts and sciences and freedom of philosophical discussion. It ought to make every effort to inspire the people with the love of virtue and the abhorrence of vice by direct example, by the distribution of favours, by the banishment of whatever is corrupt. Moreover it should inspire the people with patriotism. State railways even are foreshadowed by the statement that the maintenance of highways and canals is the business of the sovereign power. Vattel carries his socialism, as some people would call it, even into the realm of Religion: “Une Nation doit donc être pietue.” Religion, in so far as it is an external matter, is an affair of the State. He would, of course, constrain no one in the matter of
religion. Liberty of conscience, he tells us, is a natural and inviolable right. But a citizen must not openly do what he pleases without regard to the consequences that this may produce in society. It belongs to the nation at large to determine what religion she would follow and what public worship she thinks proper to establish. If necessary she can establish more than one religion; but if a particular sect is too small to demand a separate establishment, the dissenters may depart. There should, however, be "a universal toleration of all religions which contain no tenets that are dangerous either to morality or the State." The religion of the Prince himself does not matter so long as he carries out the behest of the community. Did not Joan of Hochberg remain ruler of Neufchâtel after that principality adopted the Protestant faith; and did she not, though still a Catholic, sign and sanction the ecclesiastical laws and constitutions? Here we have State control indeed; a State with rulers who are mere conduit-pipes of the popular will. Vattel is determined that the State shall be absolute master in its own house. He will have no Papal interference; no appeals to Rome; nothing that can limit in any fashion whatever the perfect freedom of the community. He amply justifies his position with elaborate instances.

Vattel turns from Religion to Justice, which he defines as the force which supports the laws with vigour and justly applies them to every case that presents itself. He carries justice farther than the Courts. He insists on the uses of distributive justice—the treatment in society of everyone according to his deserts. This principle ought to regulate the distribution of public employment and public rewards. His discussion of the right of punishment is full of interest. It is founded on the right of personal safety, the right to provide for security against any and every attack. When men unite in a society or nation, that society is charged with the duty of providing for the safety of its members. In this way the right of private war is merged in this public duty of protection. The nation, being a moral person, has also a right to provide for its own safety by punishing those who trespass against its laws. Thence arose both civil and criminal jurisdiction; the avenging both of private and public offences. The right of public war also exists, for the nation must protect itself against other nations as well as against individuals.

This leads us to the Third Object of Government, the duty to fortify the nation against external attacks. The strength of a
nation consists in the number of its citizens, their military capacity and their riches. It is the business of a Government to increase these three sources of strength, always remembering that "la puissance d'une nation est relative; on doit la mesurer sur celle de ses voisins, ou de tous les peuples dont elle peut avoir quelque chose à craindre."

The principle that lies behind all modern discussions of what is known as the two-power standard of naval strength has not often been stated with such lucidity. The remaining propositions of the book hardly call for notice here, though much might be written on the right of separation from a nation, on the doctrine of effective occupation, and on the right of Eminent Domain, the right on the part of the State in case of necessity to all the wealth within the State. This doctrine is of course a natural corollary of the duty of self-protection, but it is also a convenient instrument in the hands of a doctrinaire socialist or a Finance Minister.

I do not propose to do more than touch upon that portion of Vattel's great work which is restricted to what we call to-day International Law. The field in one sense is too vast, in another too restricted. I have indicated at some length the general principles that inspire Vattel's treatment of international relationships, and that is sufficient for my general purpose since I was chiefly anxious to consider this author as a jurist without reference to any special branch of law. But some additional reference must be made to his first principles as set forth in his Second Book, which treats "of a nation considered in its relation to others."

Whatever duties each man owes to other men, the same does each nation in its way owe to other nations. Therefore 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 that it owes to itself: "Telle est la loi éternelle et immuable de la Nature." Thus, he points out, the calamities of Portugal arising from the Lisbon earthquake gave England an opportunity of fulfilling the duties of humanity with that noble generosity which characterizes a great nation. But one nation must not force its good offices on another. Grotius asserted the general right to punish infamous behaviour by other nations, but Vattel denies this unless the behaviour directly affects the nation desiring to intervene. And again, you have no right to compel another nation to help you. But the law of love applies. It is the duty of nations to love one another. In
all this there is much that is interesting. The earthquake at
Messina and the misconduct of the Government responsible for
the Congo horrors, make Vattel’s remarks as modern as may be.

Again he asserts the general obligation of nations to trade with
each other and he advocates the utmost freedom of trade, though
he adds, with his usual caution, that each nation must decide if
the commerce in question is likely to be useful to it. He then lays
down the rule that every nation is entitled to security—namely,
to preserve herself from all injury and to prevent all intervention
or interference in her private affairs. He is careful, however, to
point out that the occupation of a nation does not exclude
absolutely all rights of other nations in the territory. Everyone
retains the right to obtain, if necessary, not only food and ships
and other goods at a fair price, but also the right of intermarriage
in order to secure the continuity of the nation. Women for this
purpose, he adds, may be carried off. It is in this book that the
subject of treaties, on which Vattel was the greatest living ex-
ponent in his age, is treated at length. It is not possible to deal
with his special branch of law here, but Vattel’s treatment of it
is not likely to be forgotten. His advocacy of Arbitration is
likewise of very real importance, and may be of more value in the
future than during the last century and a half.

The Third Book deals with War, which Vattel defines as “cet
état dans lequel on poursuit son droit par la force.” Public war
is carried on between nations; private war between individuals.
Private war comes within the law of nature. Nature gives men a
right to employ force when it is necessary for their defence, and
for the preservation of their rights. But as we have seen, society
takes upon itself this duty and so has, for the time being, ex-
tinguished the right of private war. Thus the sovereign power
alone has the right to make war. For this purpose he has the right
to raise troops, and every citizen is bound to serve and defend the
State so far as he is capable. No person is naturally exempt from
taking up arms in defence of the State. But war must be just.
The right of making war belongs to nations only as a remedy
against injustice. Here once more Vattel gives us the ideal for
the real. He knew well enough that wars on behalf of right and
justice have been rare enough. He tells us of no remedy against
unjust war. The only remedy is that great Republic of which
Wolff dreamed and which to-day is again in the minds of men.
But so insistent is Vattel on the necessity of maintaining peace
that he insists on the necessity of a formal declaration of war—a *Res Pénitentiae*, so to speak.

It is noticeable that this jurist gives us no lengthy discussion of the vexed problems of neutrality. His definition of contraband is, however, of real value: “les choses qui sont d’un usage particulier pour la guerre, et dont on empêche le transport chez l’ennemi, s’appellent marchandises de contrebande.” He goes on to deal with the rights of nations in war forbidding assassination and the use of poison; with faith between enemies, acquisition by war, the right of postliminium, the rights of private persons in war; and, lastly, convention in war.

The Fourth and last book deals with the Restoration of Peace and Embassies. The question of the asylum offered by an ambassador’s house is discussed with care.

*Le Droit des Gens* is certainly a work of the first magnitude. It modernized the whole theory and business of International Law, brought it out of the study into the field, the mart, the council chamber, and the palace. The law of nations was no longer a mystery. One of its most brilliant practical exponents became its popularizer. He did, indeed, much for nations, for he imposed upon them theories of moral rational development up to which it became, in a sense, necessary for them to live. I have ventured here and there in this paper to criticize Vattel’s premises, methods, and conclusions, and even to say that the ideals which he placed before the nations of the world, high though they are, might possibly have been higher. Certainly it appears to me that Wolff was by far the greater thinker of the two, and no doubt Vattel himself would have admitted this. But, on the other hand, Vattel was a practical man, and he brought Wolff’s doctrines, with certain modifications, into the domain of practical life. To have done this was in itself an achievement that will immortalize his name. But Vattel was far more than a practical man. He was a thinker of great distinction and of great honesty, and he possessed what few thinkers of that age possessed, a profound religious faith. If he has no other lesson for our age he has this: that the limits of human speculation are narrow while the range of faith is infinite, and that man may choose the range of faith with perfect reasonableness for the purpose of determining his conduct. The logical structure of human society stands within a larger and nobler house. But Vattel had, as we know, much else to teach, and the amity of nations to-day owes many things to the Diplomatist of Neufchâtel.