

LE DROIT DES GENS OU PRINCIPES DE LA LOI NATURELLE
[THE LAW OF NATIONS, OR PRINCIPLES OF THE LAW OF NATURE]

Digitised version (Gallica, BnF): <http://catalogue.bnf.fr/ark:/12148/cb346529913>

Keywords: law of nations, law of nature, public law

On the author

Emer de Vattel was born in Couvet (25 April 1714) and died in Neuchâtel, less than thirty kilometres further, fifty-three years later (20 December 1767). Son of a reformed pastor, he studied theology at Basel (1728-1732) and philosophy at Geneva (1733), where he got acquainted with the ideas of Burlamaqui, Leibniz and Wolff. From 1747 on, he acted as an agent for Augustus III, Elector of Saxony and King of Poland. In the beginning of the Seven Years' War (1756-1763), having lost hopes of an academic position, he wrote *Le droit des gens*, which gained him an appointment as a pricy councillor at Dresden.

Vattel's personal preferences run through *Le droit des gens*: "I was born in a country where Liberty has been the heart, treasure and most fundamental law" (Book I, § 27). Tossed around between France and Brandenburg-Prussia, his fellow countrymen's independence could count as an example of state equality, where even the seemingly most insignificant dwarf rose to the shoulders of giants. Likewise, minor states entering into treaties of protection with more powerful players were repeatedly asserted not to lose their sovereignty (Book I, § 192; Book II, § 155). Vattel overtly affirmed his convictions as a Protestant, and ridiculed Catholic doctrine, clergy and institutions.

On the book

Le droit des gens consists of five parts. Principles of the Law of Nature (Preliminary part) guide the reader through matters of both internal public law (Book I) and the law of nations (Book II: the Nation considered in its relations towards others; Book III: War; Book IV: the Reestablishment of Peace, Embassies).

On one hand, mirroring private and public international law, his work followed Grotius' structure in *De iure belli ac pacis libri tres*. Sovereignty and independence did not exclude reciprocal duties: men were not self-sufficient by nature. The goal of Natural Law was shared happiness, the ultimate motor of human behaviour (Book I, §110). States were deemed to cultivate their friendship, and demonstrate their mutual love by practical acts of assistance (Book II, §11). Internal rules, imposed on conscience by moral imperatives, had priority over obligations created by the subjects themselves (voluntary law of nations). Specific rules applying to bilateral relations were covered by the arbitrary law of nations, equally subjected to the Law of Nature. The three categories of positive law of nations (arbitrary, voluntary and customary law) generated external obligations of two kinds, perfect (enforceable) and imperfect (non-enforceable). For instance, exercising a perfect, internal Natural right to gather abroad anything missing within its own boundaries, a State was unable to force a vendor to sell, since the right to buy commodities was but an imperfect one (Book I, § 91).

On the other hand, the conduct of Nations or Sovereigns was set apart from the general Law of Nature: although rules were universal, their application took place between and not within Societies. The primary obligation of self-preservation dominated. Any Nation violating the laws of the inter-state Society was entitled to use force to guarantee its continuity. Yet, it could not judge its equals:

only the violation of its own security, as in the case of justified self-defence (Book II, § 66), could lead to the use of armed force (Book II, § 7; § 70). *Le droit des gens* is often seen as a translation of Wolff's works in Latin. Yet, Vattel discarded the idea of community or *Civitas Maxima*, which could impose rules on its members.

The terms Nation, State and Fatherland (Book I, § 122) carried his preference over Sovereign or Ruler. States were political societies wherein naturally free and independent subjects retained most attributions (General Principles, §1). Sovereign authority could only be established for the common good. Legitimacy was delegated by this Corpus of the Nation to a temporary "Conductor", who was a mere administrator (Book I, § 260) and in no way the absolute master. The Sovereign only represented the Nation (Book II, § 38). He could not encroach on the independence of integer and enlightened judges. Princes were both incapable to study legal cases and to sentence (Book I, § 163). When a ruler overturned a judgment, he was bound to refer it to another jurisdiction, and could not take over the judge's role (Book I, § 165). Only the executive power naturally belonged to the Sovereign (Book I, § 162).

Fundamental laws, guaranteeing individual liberty, delimited a ruler's external perimeter of action (Book I, § 29). Consequently, sovereigns could not cede any Province, City or subject, unless necessity or strong motives of public interest pressed them to do so (Book I, § 17). Only the Nation itself could change succession rules or partition its territory (Book I, § 66), although these questions were often settled by foreign powers in international agreements. Alienations out of necessity had to remain valid, a consequence of the classical definition of ownership, inconceivable without the ability to alienate (Book I, § 262). A Nation had to conserve and perfect itself, enabling its citizens to procure whatever was necessary for the commodity and pleasures of life, as well as their happiness (Book I, § 15, § 264). In order to ensure demographic continuity, Vattel agreed in principle to the abduction of women from neighbouring Nations (Book II, §122).

State behaviour was built on private law-analogies. In principle, only occupation of free territories constituted a valid title for state ownership. Yet, as the Americas were concerned, Vattel saw no problem in European expansion. Native non-sedentary savage tribes could not claim more than they strictly needed to exploit and cultivate (Book I, §209; Book II, § 97). No Nation could aggrandize itself to the detriment of another, just as private persons were not allowed to benefit from unjustified enrichment (Book I, § 184). State sovereignty consisted of *imperium* and *dominium eminens*, or the faculty to dispose of all goods, based on the original appropriation of all goods by the nation. Citizens only exercised *dominium utile*, or limited ownership of their goods (Book II, § 83).

State consent was at the basis of most norms in the positive law of nations. Perfidy was the worst of insults amongst sovereigns in a system where the faith of treaties formed the core of the normative order (Book II, § 163 and § 221). Vattel, however, was not consequent in his consensualism. At various moments across his work, the absence of a just cause formed a check on contractual liberty. Yet, in absence of a competent judge over princes, the parties themselves –or, occasionally, mediators (Book II, § 328), arbiters (Book II, § 329) or guarantors (Book II, §§ 236-239)- determined the legitimacy of their acts. Decisions were subject to unilateral assessment, which rendered Vattel's system arbitrary and non-committal. He legitimated the prevailing balance of power-politics in international relations. If a Nation built up military capabilities, appearances would determine if the others could find a just cause for war (Book III, § 40). Pragmatism and reliance on aphorisms

hampered coherence and enforceability. Sanctions for the unnecessary use of violence were either political, or a matter of conscience (Book III, § 24). Moreover, even if it was impossible for both contenders to wage war with a just cause, they could both be seen to act in good faith.

Vattel's immediate success with contemporaries was real. First published in Neuchâtel (1757), London and Leiden (1758) in two volumes, the book was re-edited 9 times in the 18th and 11 times in the 19th century, even before the standard edition in the *Classics of International Law* series (Washington, 1916). In the 19th century alone, *Le droit des gens* was translated 23 times in English, 6 times in Spanish, and also in German and in Italian. The young Republic of the United States took inspiration from Vattel's numerous arguments on problems of international life. In the nineteenth century, endorsed by the *Founding Fathers*, Vattel's synthesis of European inter-state law became a reference for US diplomacy and in the Supreme Court. Yet, doctrine criticized the inconsistency and abundance of superficially argued maxims. As a "classic of international law", *Le droit des gens* remains controversial.

Secondary literature

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