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A MORAL IDEAL FOR INTERNATIONAL LAW: VATTEL ON STATE AND TERRITORY

Master's Thesis in Intellectual History

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Contents

Abbreviations

DG: ***Le Droit des gens: Principes de la loi naturelle, appliqués à la conduite et aux affaires des Nations et des Souverains*** **(Vattel 2008a [1758])**

JN: ***Jus naturae Methodo Scientifica Pertractatum*** **(Wolff 1740-1748, 8 books) [Roman numeral after 'JN' in citations indicates book number]**

JG: ***Jus Gentium Methodo Scientifica Pertractatum*** **(Wolff 2017 [1749])**

OHC: ***De Officio Hominis et Civis*** **(Pufendorf and Barbeyrac 2003 [1753])**

Introduction

Emer de Vattel (1714-1767) was a Swiss (Neuchâtelian) diplomat, jurist, essayist and legal thinker. Educated in Basel and Geneva (studying natural law under jusnaturalist Jean-Jacques Burlamaqui), he started his public intellectual life as a writer concerned primarily with moral conduct, but quickly also engaged with more philosophical issues[1]. His literary and juristic work earned him an intermittent position in the court of Friedrich August II of Saxony. Having lived in Dresden and Berlin, Vattel settled back to Berne in 1747 and began what appears to be the most productive decade of his life in terms of literary output and quality.

This decade culminated in 1758 with the publication of his *chef-d'œuvre, The Law of Nations* (DG). It is a treatise of international law with a preface and preliminaries, followed by the main text, which is divided into four books: (I) *Of Nations Considered in Themselves*, (II) *Of a Nation Considered in its Relations to Others*, (III) *Of War* and (IV) *Of the Restoration of Peace; and of Embassies*. It should not come as a surprise that this structure follows and simplifies that of philosopher Christian Wolff's treatise on international law (JG), since Vattel's original intention had been to merely translate JG from the philosopher's Latin into the jurist's French. But DG formed into something notably more original, because Vattel considered Wolff's book cumbersome and not conveniently usable in legal practise. Furthermore, Vattel was at theoretical odds with Wolff's application and modification of natural law for the international sphere[2]. Vattel thus rethought some of Wolff's ideas and borrowed from sources other than JG to accomplish this, leading to comparably small but crucial differences between the two works' ideas.

Even though DG can indeed be called eclectic, unoriginal and superficial in some sense, its effect on the century following its publication is undeniable, as the text finds usage as a legal and political resource in Revolutionary France, the American Revolutionary movement, and the Congress of Vienna, to name a few. These different and sometimes contradictory legal applications that DG has received beg the question about the nature of

[1] A pertinent example of his philosophical interests might be his defence of Leibniz against accusations of atheism: *Défense du système leibnitzien contre les objections et imputations de Mr de Crousaz, contenues dans l'Examen de l'Essai sur l'homme de Mr Pope.* (1741).

[2] Vattel had completed a detailed critique of Wolff's JG in 1753, just four years after JG's publication, but this critique was published only in 1764: *Questions de droit naturel et observations sur le traité du droit de nature par le Baron de Wolf.*

the international legal system, which Vattel proposes. Broadly put, the system's guiding principle is an establishment and preservation of liberty, the "soul of the state" (DG: I 179). Clarifying the nature and corollaries of this liberty provides the problem situation for the present work. One way to start this clarification is to locate the Vattelian concept of liberty in its historical intellectual context.

"Hugo Grotius, Pufendorf, Vattel and the rest (sorry comforters as they are) […] their philosophically or diplomatically formulated codes have not and cannot have the slightest *legal* force, since states as such are not subject to a common external constraint" (Kant 1991: 103). This famous argument and accompanying epithet in Immanuel Kant's "Perpetual Peace: A Philosophical Sketch" (1795) capture one of the main intellectual watersheds in the history of international law: projects of peace (such as Kant's) and projects of liberty (such as Vattel's) [3]. Both sides generally see themselves as acquiring one through the other and the other side as sacrificing the other for the one. This fundamental contradiction still alive today, tradition has not entirely come to terms with the general problem, nor Vattel's contribution to it.

Owing to the widespread application of DG, Vattel has sometimes been seen as the architect of the modern system of international law – the historically discredited[4] "Westphalian system" has even been called the "Vattelian system"[5]. Vattel's historical influence has perhaps contributed to some over-contextualising and anachronistic accounts attributing faults and deficiencies from the practice of a "Vattelian" system to Vattel's work itself. Thus, my first and critical aim in the present work is to give grounds for doubting some claims, which judge the tree by its supposed fruit, so to speak[6]. I identify the general incoherence in Vattel that these claims point to as the contested relation between sovereign liberty and international welfare. This is complementary with my other aim of making a case for coherence in Vattel's DG, produced by a deliberate and productive mixing of law with morality: I propose that the liberty Vattel espouses is of a fundamentally moral nature, this inherent morality being complementary to the legal framework of liberty. All in all, these

[3] This way of conceptualising the tradition of international law is akin to Jouannet's assertion of a dual "liberal-welfarist" purpose of the tradition (Jouannet 2012).

[4] Piirimäe (2010) offers a very useful primer on this discredit.

[5] This phrase has been popularised by Stephen Krasner (2001).

[6] Cases with similar ambitions have been made for Pufendorf (Carr and Seidler 1996) and Grotius (Zagorin 2000).

two aims serve to present an interpretation of DG, which allows for accommodating and encouraging the pacific project precisely by means of the perfect liberty granted to sovereign states.

In summary, the present work explores and gives a tentative answer to the following research question:

What is the nature of state liberty in *The Law of Nations*?

The answer to this question is, of course, an interpretation conscious of its limitations, rather than an absolute claim. The breadth of the interpretation is defined by three hypotheses which I will substantiate and evaluate.

1. **In *The Law of Nations* a contradiction necessarily arises between states' sovereign liberty and their welfarist duties.**
2. **For Vattel the international order is fundamentally moral, as much as it is legal.**
3. **Vattelian state territoriality is derived from the state's body of people.**

Several secondary authors attribute to Vattel's system a casuistic motivation, which would fill the explanatory gap left by the contradiction suggested by first hypothesis. In 1.3. I summarise this contradiction as "The Vattelian paradox" and propose that it appears in argumentations for both colonialist and anti-imperialist interpretations of Vattel; in 3.1. and 4.1. respectively, I suggest how both interpretations fail to provide grounds for the truth of the first hypothesis. Rather, I intend to show how the contradiction is reconciled by the moral element of Vattel's system.

Thus, after I have presented a basic account of Vattel's system in 1.2. and drawn attention to some of its less-noticed characteristics in section 2, I present an interpretation of DG which favours the truth of the second hypothesis: in 3.2. I give an account of the moral nature of the state and its accord with Vattelian sovereignty and in 4.2. I show how this nature gives sufficient explanation for Vattel's rejection of a theoretical world government as fictive lawgiver for the international community. And as I argue that the state derives its moral nature from its constituents, I also accept this relation of derivation to hold between constituents and territory.

Accordingly, I argue for the truth of the third hypothesis in section 5, looking at how territory is made (5.2.), maintained (5.3.) and obtained (5.4). Applying the moral nature of the state in the analysis of territoriality as a specific example, I argue in 5.5. finally, that

when Benjamin Mueser interprets state territory as fundamentally national he is in a sense right – but in all the wrong ways.

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1. Approaching *The Law of Nations*

It is a well-received platitude and problem in the study of (intellectual) history that scholarly work ought to avoid applying concepts of the present to historical events and processes, but the work's merit is judged largely by its contribution to present scholarship. Since in the present text I identify and attempt to remedy errors I propose to be stemming fundamentally from over-contextualisation and presentist tendencies, I will devote this section to briefly specifying the kind of contextualism I will be employing (1.1.), to giving a brief overview of what DG proposes (1.2.) and to giving a form to the present scholarly debate to which I intend to contribute (1.3.).

1.1. Methodology

While the method of the present work could generally be called close reading or simply a return to the text itself, it is explicitly contributing to a contextualist tradition. Namely, I subscribe to a broadly Skinnerian approach concerned with understanding (rather than evaluating (Gordon 2012)) by recovering the intertextually contextualised intention (see Skinner 1972), while avoiding both a bare contextualism and support for naïve textual autonomy (see Skinner 1969). Still, my focus will be on the text of DG rather than the historical context. This basic updated Skinnerian methodology carries the interpretations of Vattel, which I make in subsections 2.1., 2.2., 3.2., 4.2. and throughout section 5.

In the critical perspective I attempt to address approaches, which, at their extreme, result in presentism[7]. And a vulgar presentism is, summing up Andrew Fitzmaurice, an ignorance about the friction that concepts and ideas generate in historical development, leading to misunderstanding the intention and context of a text and attributing contemporary attitudes to it (Fitzmaurice 2018).

However, in 1.3. Fitzmaurice represents a line of reasoning I aim to criticise. Without making any lofty claims about him or the other authors, I argue that what I perceive as a deficiency in their work can be remedied with attention toward the danger of over-contextualisation, an overestimation of what a given context contributes to a text's

[7] However, as Spoerhase (2008) has argued, a strict adherence to anti-presentism might be impracticable for some scholarly endeavours and might end up in histories for the sake of histories.

intention[8]. Of course, this is not to take an anti-contextual stance, such as Ian Hunter has recently rebutted (Hunter 2019).

I aim, however, to rebut Hunter's own characterisation of Vattel, which, I claim, relies to a critical extent on assumed context in some issues. And this is in fact the procedure of the present work's critical side. Put simply: I review Vattel's DG to see, whether certain interpretations and claims are supported by the text. This critical project is carried out primarily in subsections 1.3., 3.1., 4.1. and throughout section 5.

1.2. The Vattelian System

Writing in the tradition of natural law, Vattel's system of international law proposes a highly practicable concept of how states are to be seen by themselves and in relation to one-another. And as the rhetorical side of DG is rife with contemporary examples, the theoretical whole is sometimes overlooked. This subsection will briefly describe Vattel's flavour of contractarianism, his division of international law and his idea of statehood, before turning to the question of morality, which is the conceptual *Leitmotiv* of the present work.

In the preface and preliminaries to DG, Vattel states clearly the basic tenets of his system. This system is grounded in statehood as such, which derives its nature from the social contract. Vattel's brand of contractarianism is admittedly a synthesis of earlier thinkers, but it does boast the following qualities. First, the tacitly assumed contract is necessary because of imperfect moral behaviour on the part of a considerable proportion of "unenlightened" people. This idea is divergent from but inspired by both Hobbes and Pufendorf. For Vattel, human nature seems to be corrupted but sociable and – what's more important – capable of moral progress. The natural state is thus one of moral perfectibility and this means that the social contract becomes a necessity not naturally but due to unfortunate circumstances (i.e. the underdeveloped morality of too sizeable a portion of people). Second, while Hume had in his *Of Civil Liberty* solidified the idea of the consent of the governed as a dilemma between divine and popular legitimations (Hume 1985: 88ff), Vattel's social contract assigns divine assent to the will to be governed, reconciling the two legitimations. Third, similarly to Bodin and Hobbes, Vattel's contract seems to impose few enforceable limitations on a sovereign's power, but he diverges from them by laying on the sovereign a very strong obligation of the conscience: to act in the interest of its people and

[8] See Jay 2011 for an overview of the limits of contextualisation.

humankind as such. It is thus the morally perfectible nature, the will and the interest of the people that make a state.

States receive certain features from its constituents and are by analogy considered as moral persons, composed of the people united into the body of a nation, governed by a sovereign as its representative according to a constitution and form of government.

A further analogy appears already in the full title of Vattel's work: *The Law of Nations, Or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns*. It is the law of nature[9] which subsists between all humans, inherited from medieval tradition, which will form the law of nations. And the law of nature must therewith be modified for nations as subjects.

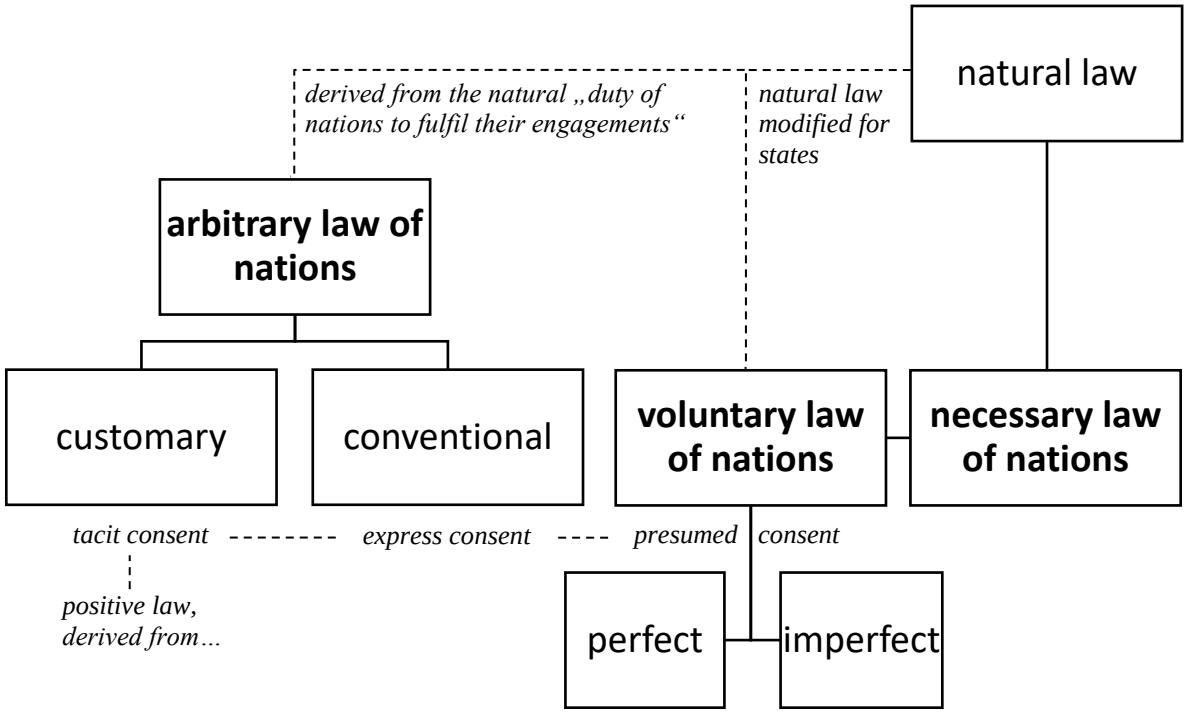

Figure 1:The three branches of the Vattelian law of nations

However, states are only internally bound to the immutable natural law as a necessary law. Externally, in relations between states, they are under the voluntary (stemming from the state's will) law of nations. While in Grotius voluntary law stems from contract or consent, Vattel is using and developing the Wolffian concept, which retains the natural character of the law and separates it from the arbitrary law of nations, which is founded merely on custom and consent. For Vattel, the voluntary law of nations is based on a presumed universal

[9] While Vattel seems to consider natural law a fixed and uniform collection of laws and does not specify his sources on natural law, he borrows explicitly from Wolff's JN II and likely owes his understanding of natural law to his teacher Burlamaqui.

consent, which is in turn derived from a moral analogy of states and individuals under natural law. In a move inherited from Pufendorf, Vattel divides this voluntary law into perfect rights and obligations accompanied by a right of compulsion and imperfect ones with no right of compulsion. The dividing line between the two is whether or not a right or obligation infringes on the self-preservation of a nation. This is because while all nations have an imperfect duty of assisting the other nation, the nation is first created for the sake and safety of the people who form it.

Vattel's system accommodates a surprisingly frank admission of surrendering power to the state on the part of citizens. It is here that we find the basic elements of dissent towards the Wolffian system, of which DG is a translation and reworking. Now, since Wolff's concept of perfection involves the Leibnizian metaphysical notion of harmony of all parts[10], state-making is not an act of submission for him. But Vattel's notion is more akin to Pufendorf's "union of wills and forces" (OHC: II, VI 5-6), in that the creation of a state entails the surrender of individuals' wills to the body of people. This is an important part of the nature of the state for Vattel and compels him to depart from Wolff by allowing only the state of nature to accommodate the society of nations (I develop this idea in 2.2 and 4.2.).

In addition to unifying the wills of the body of its people, a state receives from its constituents a sort of intellect or understanding – the will and understanding making up the capacities required for qualifying as a moral actor. Thus, the state is defined as "a moral person, who possesses an understanding and a will peculiar to herself," (DG: Preliminaries 2). Note, however, that while Vattel admits of this Pufendorfian union of the will and the understanding, he does not follow Pufendorf's suggestion that the two should be represented by separate entities, rather he prefers Hobbes' approach – both the will and the understanding should be vested in the legally singular sovereign[11]. This amounts to a very clear equivalency between the individual and state as subjects of morality. This morality is expressed and codified in natural law, but also includes an element of virtuous behaviour: the realm of what is morally possible for the state is defined by "every thing that she can do lawfully, and consistently with justice and honour" (DG: Preliminaries, 14).

[10] In a 1715 letter to Wolff, Leibniz writes "Perfection is the harmony of things, or the state where everything is worthy of being observed, that is, the state of agreement or identity in variety" (Leibniz 1989: 233).

[11] Quentin Skinner (2018: 367-368) makes this point but fails to emphasise the Vattelian distinction between a nation and state when arguing that in Vattel "[t]he state is the underlying authority in whose name sovereignty is exercised" (*ibid*: 367). Namely, for Vattel the sovereign is tasked with "administration of the state", but "[h]e represents the nation" (DG: I 40). This distinction in Vattel is very rarely observed.

1.2.1. Vattelian Morality

While *The Law of Nations* has a strong ethical undercurrent, it does not address the field of ethics systematically. Rather, it presents either very broad or very specific appeals to moralit: for example, appeals to justice as such on the one hand and an opposition to the use of poisoned weapons in war on the other. Since his handling of natural law is broadly similar in this respect, it might be reasonable to assume that Vattel does not recount moral or jusnaturalistic platitudes for the sake of convenience, assuming familiarity with the topic from the reader.

Now, one wide-spread interpretation sees the ethical structure as "the most derivative (Wolffian) part" (Whelan 1988: 64) of the work. And the notions of perfect and imperfect, external and internal moral obligations are indeed Wolffian in origin and character. But if we compare the foundation that Wolff and Vattel give for moral obligation, we start to see a marked difference.

For Wolff, the semantically dense notion of *perfectio* provides the basis for natural obligations to be formed – it is presumed that attaining the perfection of an actor ought to be that actor's duty. And while Vattel retains the notion in a narrower sense, he bases obligation not in perfection, but in self-interest. This self-interest governs both fundamental duties: that of self-preservation and self-perfection (see DG: I 14). But to discover the notion of self-interest in detail, one has to read Vattel's writings on morality.

In these works Vattel proposes a naturalised concept of perfection, contrary to the traditional (present in Wolff and Barbeyrac, for example) idea of perfection as normative teleology ordained by God. Vattel's natural notion of perfection still aims at the realm of ideas but these favourable ideas are conceived of as pleasures of the soul. And the other half of this admittedly non-Cartesian dualism is formed by the pleasures of the body, which constitute the aim of instinctive self-preservation. And as a "noble expediency", self-interest in the realms of ideas and instincts forms the ground for tendencies both of perfection and preservation, respectively. Self-interest accomplishes this by being an imitation of the divine and thus pleasurable in itself. Therefore, in the field of morality Vattel prefers a relation of analogy rather than subsummation or ordainment towards the divine. (Iurlaro 2019; Stapelbroek 2019)

Another analogy – between persons and states – enables Vattel to conceive of the moral person of the state as also fundamentally self-interested, its self constituted by its

people. This surprisingly sociable "individualism of states" and its underlying moral philosophy is highly specific even in its own historical period.

1.3. The Vattelian Paradox

Many contemporary accounts of Emer de Vattel's system of international law tend to take as one of their central narrative problem the discord between an anti-imperialist and a colonialist tendency in *The Law of Nations*.

This disparity in its various expressions has been characterised as a "dilemma"[12] (Pitts 2013: 142), a "paradox" (Anghie 2011: 237), Vattel as "not entirely consistent on the question[13]" and conscious of a "growing incoherence" (Fitzmaurice 2014: 143,144) and even connected to "a willingness to envisage international adventurism and exploitation" (Tuck 1999: 195).

Anthony Anghie is perhaps most incisive on this topic. His reinterpretation uncovers the imperialist roots and legacy of modern international law (see Angie 2005). The "paradox" he sees in Vattel is between anti-imperialism and support for colonial efforts. This support becomes manifest in Vattel's supposed commercialisation of sovereignty and its obligations to the people (Anghie 2011: 245-246). A commercial bent in the structure of law then provides the rationale behind Vattel's dismissal of the American natives' claim to large territorial holdings through a concept of territoriality based on economic utilisation (*ibid*: 248; see also 5.5.). Richard Tuck makes a less accusatory point grounded in a Lockeanising reading of Vattel, but Benjamin Mueser develops this point to its extreme.

Mueser (2012: 267-295) reaches a conclusion similar to Anghie: Vattel endorses an anti-imperial attitude within Europe and maximal colonial effort outside Europe. He also emphasises the use-based legitimation of territoriality, but, quite intriguingly, he claims that Vattel shifts in justificatory mood from use to nationality. And these two moods serve to, first, legitimate colonisation and, second, extend the European sphere of influence to these new territories.

The fundamental disjoint in Vattel which these assertions of incoherence point to, is a theoretical gap between defending the sovereign liberty of states on the one hand and

[12] This dilemma properly referring to a dilemma between „respect for absolute sovereignty versus protection of human rights" (*ibid*).

[13] This referring specifically to the example of native peoples' rights. I argue for coherence and consistency in Vattel concerning this question in a limited sense in subsection 5.5.

cultivating international welfare and pacifism on the other. This celebrated and perhaps somewhat endemic disjoint in modern philosophy of international law will not be reconciled in the present work. Rather, I make the more particular case that Vattel's system addresses the problem and does so in a coherent manner supported by theoretical reasons. If convincing, my interpretation then casts substantial doubt on certain claims colonialism and anti-imperialism in DG which rely on historical context as the basis of interpretation.

To be sure, *The Law of Nations* was used both to further and hamper colonialist action[14]. This does not, however, mean that what we determine as Vattel's textual motivations – problematic as determining a textual intention may be – necessarily allow a paradox to be formed between colonialist and anti-colonialist, or imperialist and anti-imperialist tendencies. The "paradox" thus relates rather to later interpretations of Vattel and perceptions of his legacy[15]. However, the line between text and legacy seems to sometimes blur together in scholarly accounts. And bringing this line into focus once again is one of the through-going aims and intended contributions of the present work.

Furthermore, I argue that this paradox can be resolved by conceptualising it as a theoretical problem or paradox about the relation between a non-enforceable natural law of nations and the absolute sovereignty bestowed on states. I consider this kind of interpretation from the side of allegations of colonialist reasoning (3.1.) and anti-imperialist considerations (4.1.) to show that a closer look at the text and theory of DG indicates clear ways to start resolving the theoretical paradox. Thus, I do conceive of the theoretical gap implied by the paradox to be, as Jennifer Pitts put it, a dilemma – a moral dilemma, to be precise.

This is to say that Vattel's seemingly colonialist natural law of nations receives legitimation from the idea of moral perfectibility (3.2.), which is in accord with the Vattelian state of nature (2.2.). Second, I suggest that the anti-imperialistic side of Vattel does not explicitly explain his rejection of a supreme state, but rather the rejection is based on a stipulation of perfect state liberty (4.2.), which is in accord with the Vattelian nature of the state (2.1.).

[14] The innumerable and often contradictory flavours of DG's reception and use have been made clear by Malaspina (2017) among others.

[15] Emmanuelle Jouannet speaks of a corollary paradox in international law – that between universalism and imperialism. She also criticises some tendencies of over-interpretation in this regard, but her line of reasoning is to try and recognise that paradox as fundamental to human nature. (Jouannet 2007)

2. Vattel's Man-Made State

The moral person of the Vattelian state is composed of three different persons, roughly according to a Hobbesian scheme: among the natural persons who form the body of the state, one person or a group of people are bestowed with the artificial person of the sovereign, which governs the fictional person of the state. Note, however, that this moral person – composed of persons, themselves perhaps composite – is conceived of as a single entity and unitary subject of international law. The reconciliation of the people's multitude and the state's singularity is a common theme in political and legal theory, but some aspects of Vattel's solution to this problem have been underappreciated. Namely, the artificial (rather than natural) genesis of a state (2.1.), which presumes a certain concept of the state of nature (2.2.).

2.1. The Nature of the State

Since both Vattel and Wolff consider the person of the state fundamental for the law of nations, it bears to give a short account of how either considers the state. Further, it is here – on the question of the nature of the state – that the two are at odds with one another, forcing Vattel to present argumentation that is identifiably his own. This provides some grounds to approximate the *sine qua non* of Vattelian international law.

Wolff says that, by analogy of individuals uniting into nations because alone they are not able to satisfy everything that the law of nature prescribes, "the condition of nations is such that one cannot completely satisfy in all details the natural rigour of the law of nations" (JG: Preface). Wolff's nation is just as non-autarkic as the individual. And he ascribes naturality to this origin: "nature herself has combined nations into a state" (JG: 9).

But since Wolff's nations are not self-sufficient and, developing a close analogy with individuals, "nature herself has united nations into one supreme state" (ibid), this supreme state (*civitas maxima*) gives legal force to the law of nature modified to subsist between nations.

Vattel makes a point about agreeing to the need to modify the law of nature for nations because their nature differs from individuals (DG: Preface viii). But he differs vehemently in that he considers the nation not natural (united by nature herself), but in fact artificial (simply "approved of by" the law of nature). Thus, made by humans not nature, states are seen "as the only adequate remedy against the depravity of the majority, — the only means of securing the condition of the good, and repressing the wicked" (DG: Preface

14). But this Hobbesian sentiment is developed with the assertion that when individuals unite into a state "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 individuals is to an individual" (ibid) – a state is by-and-large self-sufficient, thus not necessitating a perfect obligation of mutual assistance between states.

So, while Wolff sees the state as natural (created by nature) but not self-sufficient, Vattel sees the state as artificial (created by man, approved of by nature), but self-sufficient. And this difference about the nature of the state might be said to root in different stances on the state of nature.

2.2. The State of Nature

For Vattel, enlightened humans need nothing other than the law of nature informing their conscience for them to act for the common good. The perfect liberty of the state of nature is entirely proper to these enlightened people. Thus, Vattel rejects the pessimistic view of human nature that Hobbes put forward. But since evil intentions still exist, the state of nature is for Vattel a morally ambivalent state, where natural law weighs on every person with duties of respect and assistance, however not all individuals have achieved relative moral perfection or enlightenment to act in accordance with natural law. And while states are in a state of nature for Vattel, individuals in states need civil law to regulate morally underdeveloped conduct.

The state is for Wolff in a state of nature only "originally" (JG: 3), having thence formed a fictive international supreme state on the basis of the natural society among men and states (JG: 7). Now, this fictive *civitas maxima* lends some enforceability to the law of nations. And since the Wolffian nation is natural, the supreme state requires no surrender of liberties from its constituents – rather, their rights and obligations are aligned in harmony. Thus, the Wolffian international order is governed by a fictive quasi-civil law, not merely natural law.

But for Vattel, uniting in a state incurs a surrender of liberties (DG: Preliminaries 4) in accord with the artificiality of the state. This means that the sovereign has limited power over the people in the capacity of their own presumed consent[16] to this relation. This is in

[16] Here Vattel differs from examples such as Barbeyrac, who (amending Pufendorf) allows subjection without consent for the purpose of the welfare of the subjected (OHC: I, I 5).

line with the presumedly Pufendorfian kind of representation in which the sovereign embodies the collective moral person of the state (DG: I 40), becoming, as Pufendorf puts it, the author of the acts and laws of the nation (OHC: I, II 6). The state of nature is for Vattel then a state of perfect freedom, which is broken at the moment of subjection. This is perhaps the basic grounds for his rejection of the *civitas maxima* (see 4.2.)

It is a curiosity that Vattel devotes the first book of *The Law of Nations* to clarifying the nature of the state and its more internal questions, instead of the international. But since the state is for Vattel an artificial break from the state of nature, involving a surrender of liberties to the state, the state is fundamentally tasked with administering these liberties. This makes the state first and foremost an expression of its people – a nation. It therefore makes sense for Vattel to clarify how the nation or state is formed and conceived of, since this gives it the character it assumes in international affairs. And perhaps central to this character is how the moral liberty of a state is realised. It is realised in a specific and much-debated kind of sovereignty, which I discuss under the heading of exclusive sovereignty.

3. Vattel's Exclusive Sovereignty

A great influence for Vattel, Leibniz insisted that sovereignty implies both civil power and "power which wins authority also among foreigners". But adhering to the opposite tradition in this question, Vattel's sense of international sovereignty explicitly accomplishes merely the first – exclusion of other states from authority over itself (DG: Preliminaries 18).

But this does not mean that states are considered as subject to only their respective civil laws – a legal "state solipsism"[17]. Quite the opposite, Vattel encourages – through admittedly imperfect (unenforceable) laws – the mutual assistance of nations. And while this can cynically be viewed as an excuse for the unbridled pursuit of the interest of the state, one should note that Vattelian sovereignty is not conceived of in opposition to other states, but in a mutual and equal distinction. This is to say that sovereignty, while exclusive in nature, is expected to apply this nature to cooperate and strive for perfection. Hence, specifying how exclusive sovereignty achieves welfare is to explain the idea that puzzled Robert Frost: "Good fences make good neighbours" (Frost 1942:47).

One avenue of explanation would be to show how according to Vattel international legislation infringes on the nature of states and I will touch upon this in section 4. But first, the idea that certain exclusivity leads to cooperation can be and, I propose, is, explained in Vattel by a universal moral backdrop to international law. This perhaps outdated idea should, however, be preceded by considering the role it has in Vattel's system and the criticisms of incoherence it thereby helps to evade.

3.1. Colonialism in *The Law of Nations*

As the introduction to the English translation of DG points out, Vattel has received sustained criticism because of a perceived incoherence between his advocation of the natural law of nations and insistence on state sovereignty (Kapossy and Whatmore 2008: xvi)[18]. This more theoretical line of critique is also very much present in recent scholarship. And while I have doubts whether some of these criticisms would not be explained away, if one admits that DG is proposing that moral perfectibility reconciles these opposite tendencies

[17] This term is borrowed from Hans Kelsen (1961 [1945]: 379).

[18] Much of the present work is in agreement with Kapossy and Whatmore, giving a more developed account of what they characterise only in general terms.

(see 3.2.), these criticisms point to the very problem Wolff was trying to solve with his concept of a supreme state, which Vattel rejects (see 4.). As discussed in 1.3., this seems to leave a gap in the legal side of Vattel's theory.

That gap or incoherence has been given an explanation in a related but more specific critique: Vattel has enabled an unbridled *raison d'état* politics and "disguised his evil intentions through words of sublime charity" (Vollenhoven 1932: 99). This criticism aiming at an intention or underlying motive should be considered separately from the theoretical critique and divided, where possible, into arguments, which attempt to identify a textual undercurrent or "exoskeleton"[19], and into arguments, which attempt to identify Vattel's motive in a broader historical contextual frame.

One prominent allegation of casuistic reasoning levelled against Vattel interprets him as proposing a stable international system between (European) states, but at the same time enabling colonialist action (to support that international system)[20]. This colonialist tendency in DG is made manifest by reference to Vattel's assertion that the colonisation of natives' lands on the North American continent was "extremely lawful" (DG: I 81), since due to their nomadic culture "they were unable to inhabit the whole of those regions" (DG: II 97). The inability to inhabit is a result of the duty of agricultural cultivation as the legitimation for possession, as Anghie summarises:

> "For Vattel, the criticism of these 'wandering tribes' appears two fold [*sic*]: first, they offend against natural laws that prescribe the cultivation of the land; secondly, in any event, unless they cultivate the land, they are not in possession of it. This means, of course, that this land may be properly appropriated by other societies." (Anghie 2011: 248)

While this analysis of the attitude towards natives in DG appears persuasive, it misses the mark. Admittedly, Vattel does praise the need for agriculture, giving it the status of a natural duty – "[t]he whole earth is destined to feed its inhabitants" (DG: I 81) – but he frames it as a circumstantial necessity: "at present, when the human race is so greatly multiplied, it could not subsist if all nations were disposed to live in that [nomadic] manner" (*ibid*). Furthermore, Vattel allows international actors themselves to determine the reasonable criteria of possession. This is reflected in the resolution on nomadic Arabs: "in short, they possess their country; they make use of it after their manner" (DG: II 97). This is

[19] Annabel Brett (2016) has introduced this very useful term to the field.

[20] This is stated in very similar terms in, for example, Anghie (2014: 94) and Mueser (2021: 293).

to say that the reason why Vattel rejects certain natives' claim to territorial possession is not reducible to agricultural terms. Fitzmaurice recognises this caveat:

> *While Vattel was disdainful of the rights of nomadic peoples, he was not entirely consistent on the question. His recognition that property could be established outside a state left open the problem that states could not colonise territories where a person or people had not established sovereignty, but had established property*. (Fitzmaurice 2014: 143)

The dividing line between states and non-state actors here is political organisation which amounts to sovereignty (*imperium*, *l'empire*) in addition to some form of ownership (these forms are discussed in section 5.). And while a sovereign state receives much more recognition under Vattel's law of nations, the native community is not deprived of its rights. Indeed, Vattel recognises the Spanish colonisation of South America as a "notorious usurpation" (DG: I 81) and praises the quaker settlers who purchased land in North America from the natives (DG: I 209). Yet there appears to be a discrepancy among the subjects Vattel considers legitimate in their territoriality.

Developing Richard Tuck, Benjamin Mueser recounts Vattel's account of the Ansibarian argument: as the Roman Empire advance along the Rhine, it laid created large unproductive wastelands; when the Ansibari, represented by a German chief, asked for possession of this land on account of wastelands being the common heritage of mankind (see 5.2. on this point), the Romans declined, claiming the lands serving as "a rampart against savage nations" and "of considerable use to the empire" (DG: II 86)[21]. Vattel thus endorses the Romans' claim to determine the kind of use which legitimates territorial possession but does not extend the same courtesy to the "savages of North America," who "had no right to appropriate all that vast continent to themselves" (DG: II 97). Mueser sums this up as endorsing a sort of settler colonialism: "agricultural theory was inconsistently applied. European nations were insulated from dispossession, while indigenous were exposed" (Mueser 2021: 294).

Now, there are problems with the somewhat unclear concept of Vattelian territoriality that these allegations rely on, Mueser's account receiving attention in the final chapter of this work. Still, there are more general things to be said about these interpretations. Namely, as Vattel offers little material to work with –colonies are not a prominent theme in DG –, much of the explanatory power of these interpretations comes from historical contextualisation. For example, Tuck builds a Lockean exoskeleton around Vattel's remarks

[21] The classic source for the story is Tacitus's *Annals*, book XIII. See also Tuck (1999: 47f) and Mueser (2021: 289).

on natives to imply that the Vattelian state is belligerent in nature but gives only sparse and inconclusive references to theoretical similarities between the two to demonstrate this Lockeanism (Tuck 1999: 191-196). And Mueser assumes the rationale behind Vattel's inconsistent application of theory was either a "prejudice of the day" or a Euro-centric "discursive space"; his claim is founded on a description of Vattel's contemporary intellectual atmosphere and later juristic applications of DG (Mueser 2021: 293ff). I thus contend that in both Tuck[22] and Mueser we have signs of the present topic being over-contextualised, historical context playing perhaps too expansive a role in the interpretation..

And counter to the historical contexts that critiques of colonialism propose, Whatmore and Kapossy suggest that the appropriation of native lands ought to be seen in the context of extreme necessity[23] due to lack of resources, where "the perfect right of preservation of a potential donor nation was bound to clash with the equally perfect right of preservation of a state on the brink of starvation" (Kapossy and Whatmore 2008: xv). I agree with this and suggest that adding a colonialist element to the analysis is unwarranted by the text: there is a practical symmetry between native and state territorial legitimacy.

This symmetry concerns Vattel's claim that North American natives were "unable to inhabit" the entire continent. Namely, the counterpart to that claim is his stance on European exploration. Vattel criticises occupations that only involve a claim to title but no actual occupation (the parting of the world between "the crowns of Castile and Portugal" with the treaty of Tordesillas as its apex) by denying that a nation can "by the bare act of taking possession, appropriate to itself countries which it does not really occupy, and thus engross a much greater extent of territory than it is able to people or cultivate" (DG: I 208). This is to say that Vattel's dismissive attitudes toward explorers and natives seems to be governed by a singular principle. If this is correct, then it becomes difficult to talk about a Vattelian settler colonialism expressed in territorial justification, since the constraints on what qualifies as territorial possession in a legal sense can be read as coherently applied to both (European) states and (North American) natives.

[22] Another example of how Tuck's extremely individualistic Lockean notion of the Vattelian state conflicts with the text of DG: Tuck's assertion about Vattel's diffidence towards federations of states (Tuck 1999:194) is quickly overturned by Vattel's clear allowing for confederacies, his native Swiss (Helvetic) Confederacy being the prime and recurring positive example (DG: I 10).

[23]The terms vary (i.e. "pressing necessity"(DG II 97)), but it invokes the idea of the right of necessity, which is a right to circumvent certain law "to fulfil an indispensable obligation" (DG: II 119); see 5.4. on this point.

A different problematic comes with Ian Hunter's claim that Vattel is arguing against a cosmopolitanism of the Kantian kind. In Hunter's account, Vattel's system presents the interpretation of laws as "situational" and thus totally at the discretion of states themselves. Thus, the Vattelian law of nations "operates not as an applied moral philosophy but as a diplomatic casuistry" (Hunter 2013: 496; see also Hunter 2011). A detailed refutation of Hunter's argument has been given by Nardin (2012: 130ff). And while more examples could be given, it is this kind of textual and broader contextual argument, which I propose would be supplanted by viewing Vattel as a champion of a moral ideal subsisting between nations.

3.2. Vattel's Moral Ideal and Exclusive Sovereignty

The kind of sovereignty called exclusive because of its legal obligations (excluding foreign jurisdiction, as discussed in 2.2.) is, as shown, liable to be seen as a gap in reasoning. And while this gap has been explained with a colonialist intention, as seen in the previous subsection, I propose that it is here that Vattel breaks with a purely legal account and instead presses upon the morally perfectible nature of man.

We have seen that Vattel himself renounces and criticises the *raison d'état* tendency. Also, he is quite aware that his system of non-binding international law mandating reciprocal cultivation between nations might become a "subject of ridicule" (DG: II 1) among sovereigns and administrators. He is here acknowledging the broad problem of cynical rulers of states quite clearly. And I claim that his anticipating answer to problems of this kind is to present a moral ideal of international relations and law.

This moral ideal is first legitimated by the long-term usefulness of equitable relations and maintenance of just order for the state, relying on rhetorical points and quotes from Cicero (*ibid*). This is a staple of his style: a moralising and rhetorical turn when touching on questions, where the imperfect law of nations lacks force to compel.

Second, he legitimates the ideal by the force of inclusion into the international society. This is to say that those, who fall too far from the morally acceptable are considered "enemies of mankind" or simply "monsters" – these outliers have recently been detailed by Piirimäe (2019) with a notable emphasis on the moral nature of Vattel's argumentation on the topic. This means that the international community, as we call it, is also exclusive in a sense, but thus reinforcing the normative force of a common morality.

And third, since natural law is derived from God's act, Vattel follows tradition in grounding the moral ideal and subsequent obligation in divine will, quoting in his motto

again from Cicero, that "to the Supreme God who governs this whole universe nothing is more pleasing than those companies and unions of men that are called cities".

In an essay, he envisions also a community of people, "one thousand people of both sexes, chosen from the most rational and virtuous in Europe" (Vattel 2008b: XIII), who would be able to live in a community under no civil law, only natural law itself. Let us note, however, that this utopian community is what he expects of states[24], these "moral persons". And the foremost subjects (and intended audience) of Vattel's law of nations are sovereigns, who embody these moral persons and their administrators. Once again invoking Cicero, Vattel thus states the moral work that lies ahead of administrators, regarding sovereigns who become beholden to the idea of virtuous rule: "Let us not renounce the pleasing hope that the number of those wise conductors of nations will one day be multiplied; and in the interim let us, each in his own sphere, exert our best efforts to accelerate the happy period" (DG: preface xix)

Thus, as has been critically levelled at Vattel, he is mixing law with politics and morality, but this seems to be the very aim of Vattel. He has been accused (as many modern theorists) of giving an exploiting international order the semblance of being rooted in natural and eternal truths. But the implication here does not seem to be that he is legitimating *raison d'état* tendencies, as I have suggested. Instead, we might consider that the act of giving a natural grounding to international custom is modelling a normative or perhaps even utopian ideal for relations as they then stood. And this seems to also be in accord with his project in that he is attempting to ground the international system in a common morality.

As such, Vattel proposes, that the international community be held together not by legislation, but by a moral idea. This is in line with his morally perfectible nature of people and states. While allowing for national differences, he certainly advances a set of moral laws which mirror universal natural law – in fact, international law is for him derived from general natural law which is a sort of description of the natural laws of morality. So the main feature of a moral (rather than legal) ideal for Vattel's system might be that the ideal turns states into moral actors (capable of acting in a legal capacity). This is to say that as moral perfection and instinct are conceived of as essential to not only individuals but also states, then the limit of possible actions is moral – justice become the criterion of legitimacy not only in

[24] He argues (against Barbeyrac) for the possibility of organisation without subjection and derivation of obligation from consciousness and self-interest in his "Essay on the Foundation of Natural Law and on the First Principle of the Obligation Men Find Themselves Under to Observe Laws".

legislation but also government. This is to fundamentally change the intellectual environment in which states find themselves.

State-theories and theories of law are in a sense performative: they often enact by description. DG could thus be read as intending – "bodying forth", to use a Hobbesian term noticed by Sophie Smith – an international system of law grounded and aimed at a moral community. And this community might produce from disparate sovereign states a greater entity – the system does not preclude overarching international organisations or confederations. In fact, Europe is for Vattel, ironically, already a "kind of republic" (DG: III 47).

However, the question of states' morality is one to which Vattel offers very little concrete basis. To a large extent the skeletal system of ethics implied in DG consists of appeals to justice and virtue with little further theoretical specification. Moreover, these appeals seem to sometimes form circular arguments, as Jeremy Bentham once remarked:

> *Vattel's propositions are most old-womanish and tautological. They come to this: Law is nature — Nature is law. He builds upon a cloud. […] Many of his dicta amount to this: It is not just to do that which is unjust*. (Conway 1994: 584)

But this is hyperbolic in a sense. In perhaps the most direct characterisation, Vattel interprets Cicero to make the point that the ideal conduct of states is not limited to the principle of justice, which "consists in completely fulfilling the law of nature," but also includes virtue, which is aimed at "the benefit and preservation of all nations" (DG: II 1). Thus, the precepts of just action are clearly codified in the law of nations. And, notably, moral virtue seems to boil down to an attitude of international welfarism.

Complementarily, it might be observed that it was Vattel's explicit aim to omit philosophical argumentation in order to render DG palatable to the statesman and jurist. Yet one may ask, whether this omission perhaps has utility beyond ease of use. Namely, the non-specific character of Vattel's moral language might allow for more common ground between nations, who are thus more easily integrated into the international community of moral persons. This hypothesis is also supported by Vattel's emphasis on the importance of diplomacy, sovereigns' personal morality and their work in building the international community through international relations. Thus, the question of morality might have productive consequences precisely because it generates controversy; it is perhaps deliberate that the question of morality "easily lends itself to contradictory readings" (Jouannet 2011).

4. Vattel's Rejection of the *Civitas Maxima*

I have thus far recounted the story Vattel gives of states and states of nature in subsection 2. I proposed that those Vattelian principles contribute to making sense of a potential gap in Vattel's theory, from which critiques of Vattel have arisen which I summarised as addressing the "Vattelian paradox" (1.3.). Now, as the paradox is composed of two seemingly irreconcilable principles, I first looked at one side of the argument in chapter 3. There, I first considered the critiques of Vattel's exclusive sovereignty, summed up as allegations of colonialism; second, I gave a reading of certain passages in Vattel, which offers a coherent way of conceptualising Vattel's sovereignty as relying on a moral ideal.

In the present section I aim to address the other side of the "Vattelian paradox" and consider first certain anti-imperialistic readings of Vattel and, second, highlight the explicit theoretical reasons, which move Vattel to reject Wolff's notion of the *civitas maxima*. The argument here casts doubt on the anti-imperialistic interpretation of Vattel's intention in his famous rejection. Moreover, this completes a preliminary discussion of Vattel's system of sovereignties, forming the basis for a more directed account of Vattel's concept of territoriality in section 5.

4.1. Anti-Imperialist Intentions in *The Law of Nations*

It is a much-noticed hallmark of Vattel that he provides material for characterisations both as a supporter of colonialist and anti-imperialist thinking. His anti-imperialism broadly amounts to advancing an anti-imperial system of international law, perhaps designed to empower small states like his home state of Switzerland. The introduction to the recent English edition of DG sufficiently discusses the many exemplifications of Swiss political history (Kapossy and Whatmore 2008). Another explicitly anti-imperialist sentiment is Vattel's insistence on the basic formal and moral equality of nations (DG: Preliminaries 18[25]).

But these anti-imperial interpretations also sometimes miss the mark. While I have attempted to explain Vattel's insistence on states' perfect freedom in a natural society on theoretical grounds, there is a case to be made that we can also find traces of a campaign in the name of small states here. Most recently, Benjamin Mueser has claimed that Vattel

[25] This paragraph, including the often quoted metaphor "A dwarf is as much a man as a giant", is however a direct translation of Wolff (JG 16), illustrating how a literal translation may be an important part of Vattel's original argument.

rejects the *civitas maxima,* "which he saw as an imperial attempt to eliminate the sovereignty of small states" because of his opposition to Prussian, French and other imperial powers of the time (Mueser 2021: 270). This claim is made by inferencing from general historical perceptions and from second-hand accounts of Vattel's private letters, finding little explicit evidence in DG. That is to say that while an anti-imperialistic tendency could well be said to be a part of Vattel's *modus operandi*, there are no clear textual grounds to claim that this tendency is the reason for rejecting the idea of *civitas maxima*. Furthermore, Mueser seems to see Wolff's supreme state as a sort of actual world government (*ibid*: 271ff). But since the *civitas maxima* is clearly a fictive state and thus not capable of having a non-fictive sovereign, Mueser's assertion is in fact misidentifying the concept. But while Mueser's account is deficient on this question, his interpretations of the "extreme necessity" clause (see 5.4.) and a use-based territorial legitimation (see 5.2.) will receive further attention.

4.2. Vattel's State and Rejection of the *Civitas Maxima*

As Onuf has shown, the grounds for Vattel's famous rejection are convincingly found in theoretical rather than casuistic reasons (Onuf 1994: 297-299[26]). The most basic and general of these reasons is redundancy. Wolff postulates the *civitas maxima* as a necessary extension of the natural society of nations, both established by nature itself (JG: 8). But since Vattel bases his law of nations on that natural society and doesn't seek an enforceability of the kind that civil law has, he has no need of any fictional state encompassing nations. To this the Vattelian account might add the objection derived from the artificial nature of the state, which necessitates a surrender of liberties, rendering a supreme state impinging towards the members of its constituent states, as shown in subsection 2.2. And in any case, a supreme state would undermine the autonomous nature of states under the law of nations[27]. Furthermore, Vattel's moral ideal accounts for the solidarity of states, eliminating the need for a superior authority.

An inferential point may be added to this in order to explain the practical problem that the *civitas maxima* would entail. If a superior authority legislates or commands in a perfect fashion, the subject is bound to comply and thus is not accountable for the obliged

[26] This subchapter owes much to the insightful clarity of Onuf, which bears repeating, since this point is still overlooked, Mueser even citing Onuf in his assertion that Vattel's rejection is a casuistic anti-imperialist sentiment.

[27] While Kant's idea for a European federation securing perpetual peace can be perceived as contradicting Vattelian sovereignty, Kant similarly denies that a supreme state should be instituted in place of a federation because of the reason here stated (Kant 1991: 102).

action[28]. Accordingly, the state under the power of a supreme state by virtue of an implicit contract is by that contract not entirely free to discharge the duties it owes to its constituents. Thus, the lawgiver would be not accountable (cf. JG: 21) and the individuals who make up the nation are rendered impotent. A corollary of this impotence is the fact that since morality presumes liberty, states' moral personhood is stripped from them if the *civitas maxima* is allowed.

Now, the motto of Vattel's work is taken from *Somnium Scipionis*, a much-circulated passage from Cicero's *De Re Publica*, which explains states (*civitates*) as "gatherings and unions of men allied by laws"[29]. This general definition holding in Vattel, his notion of law is however more expansive than a mere legal concept. As I have shown, Vattel's law of nations creates a moral community between states (and their sovereigns), which serves as the basis for a project of pacific cooperation rooted in state sovereignty. Moreover, Vattel is open to the idea of legislative communities and even republics forming across collectives of nations (i.e. DG: III 47). And interpretations that claim a casuistic basis for Vattel's rejection of the *civitas maxima* may be obliged to give evidence as to why a theoretical rejection is not sufficient in explanatory power.

[28] This is perhaps a Pufendorfian influence: „For where an absolute Freedom of choice is wholly taken away, there not the Man who acts, but he that imposed upon him the Necessity of so doing, is to be reputed the Author of that Action, to which the other unwillingly ministred with his Strength and Limbs" (OHC: I, I 10).

[29] „concilia coetusque hominum jure sociati". Curiously, this very phrase is omitted from translation in the anglophone edition (Vattel 2008 [1758]).

5. Territoriality in *The Law of Nations*

In the preceding chapters I have given an account of the law of nations according to Vattel: motivated by the principles of welfare and liberty, it is derived first and foremost from natural law, separating into the necessary, arbitrary and voluntary law. The central topic and contribution of Vattel, voluntary law, is external (governing legal relations between subjects) and divides further into perfect (including the right to compel) and imperfect rights, according to the situation of application. We also saw that Vattel considers the subjects of this law, states, to be in a state of nature, that is, in a natural society[30].

I thus turn to the subject of territory and attempt to give an account of how Vattel treats the subject as an example of what his moral ideal has to achieve. His theory of territory has inconsistencies, which might seem unsolvable. The theory is underdeveloped and is not entirely consistently summarised and modified from Wolff's works. But ultimately, Vattel presents a viable, if amendable, ideal for the international stage regarding territory.

5.1. Vattelian Territoriality

According to Vattel, territory is, like any property or rights in general, subject to ownership – this called 'domain' for states. Accordingly, rights of both acquisition and preservation of domain derive from the principles of welfare and liberty. Taken together with the theoretical original state, these principles place upon the state duties and rights based on use and inalienability. These principles generate friction, but Vattel clearly attempts to smooth it where he can. In the following, I will make that attempt visible in spelling out how Vattel addresses the ways in which territory is originally acquired, maintained in its integrity and transferred between states. The section at hand gives an account of the tradition which influences Vattel with regard to the question of creating[31], preserving and transferring territory, in order to facilitate a close reading of Vattel in comparison with his textual source in Wolff.

Now Vattel's version of the common trope of how property and domain were first acquired, gives a certain flavour of the story: the division of what is originally given to all mankind is legitimated by need (the earth not being able to spontaneously furnish all the

[30] Where Wolff says *natura*, Vattel says *l'état de nature*-

[31] As Vattel uses the term 'territory' only to mean a state's land, it is reasonable to assume that he considers the right of territory being created (as opposed to acquired) in the genesis of the state.

needs of individuals) and use (one is entitled to what he can and does use). The story also grounds use as the basis of territorial ownership (DG: Preface 15; DG: I, 81). This effective occupation is thus not only a theoretical story, but also how terra nullius is transformed into private property. The trope, however, does not clearly specify the type of property rights that pre-civil communities possess, because Vattel omits the Wolffian notion of mixed-community holding. In 5.2. I will perform a close reading of the text and give evidence to support both the general interpretation and an interpretation of how Vattel differs from Wolff.

While use is the basis for territorial possession, Vattel argues that if a state has lawfully acquired a proper territory, it alone has the competence to stipulate how it is disposed. This is territorial sovereignty in essence. It has obvious potential to generate further friction with territory's being derived from use, but in 5.3. I argue that the two principles are theoretically consistent and Vattel attempts to reconcile these.

However, states' territories are lawfully mutually changeable by territorial transfer. These transfers can occur with the consent of the donor nation, either express or tacit, or by virtue of "extreme necessity", the latter a Grotian sentiment. I discuss the coherence of this picture in 5.4.

The rights which form the basis for appropriation due to necessity arise from the moral analogy of individuals and states –the extent of the state is determined by the extent of the needs of the people. This is the sense in which Vattelian territoriality might be called nationalistic: the nation, being the body composed of individuals, is made up of the agents of use – an agency which is acquired by the state through the civil union. Mueser, however, inflates this sense of national territory into something further, which I will be addressing in 5.5.

5.2. Original Possession

In 2.1. I demonstrated from a textual viewpoint that Vattel views individuals and states fundamentally different in their capacity for self-sufficiency. States are capable of relative self-sufficiency and thus a "civil" society (a *civitas maxima*) between them not necessary. Thus, Vattel's argument hinges on the idea of the original state of nature, from whence individuals had no power to exit, other than by means of surrendering their rights to states, but in which the state is able to remain in. He gives his account of how the original state is overcome in the beginning of his first chapter on territory.

Now, this chapter (DG: 203-210) being a reworking of the topic in Wolff[32], the story of how the state of nature was originally overcome is one of the irregular additions, which we cannot directly find in Wolff's JG. By identifying the textual sources which Vattel is channelling, we might obtain grounds to make inferences about the intention. Hence, I now give a detailed account of Vattel's account of the original institution of territory, which is encapsulated in the trope of the original state of man.

> "[a]The earth belongs to mankind in general; destined by the creator to be their common habitation, and to supply them with food, they all possess a natural right to inhabit it, and to derive from it whatever is necessary for their subsistence, and suitable to their wants. [b] But when the human race became extremely multiplied, the earth was no longer capable of furnishing spontaneously, and without culture, sufficient support for its inhabitants; neither could it have received proper cultivation from wandering tribes of men continuing to possess[33] it in common. It therefore became necessary that those tribes should fix themselves somewhere, and appropriate to themselves portions of land, in order that they might, without being disturbed in their labour, or disappointed of the fruits of their industry, apply themselves to render those lands fertile, and thence derive their subsistence. [c] Such must have been the origin of the rights of *property* and *dominion*: and it was a sufficient ground to justify their establishment. Since their introduction, the right which was common to all mankind is individually restricted to what each lawfully possesses." (DG: I 203)

In general, Vattel is here doing exactly what he set out to do in the beginning of his work: he is offering an account of the voluntary law of nations based on natural law as presented by Wolff in his treatise on natural law concerning individuals (DG: Preface 16); but he starts his account of the law of nations with a basic account (supported by "common truths which are acknowledged by every candid reader") of relevant natural law (DG: Preface 17-18)[34].

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[32] Sources in JG include paragraphs 85-88, 274-280, 290-291 and 309-313.

[33] 'Possess' translates the same '*appartenir*', which we find at the beginning of the quote translated as 'belong'. This confuses that French term (which, in turn, seems to translate the genitive case of the Latin and should indeed be translated as 'belong') with '*posseder'* (also present in the very end of the quote), which translates to 'possess'. Mixing these translations blurs the line between a simple belonging and a legal possession, thus not reflecting the Wolffean sense.

Furthermore, the English translation gives 'occuper' as 'possess' in the titles of the paragraphs on territory, concealing, that all methods of acquiring territorial possessions in primeval property are at bottom occupation according to Wolff (JN 175) and Vattel seems to accept this stance.

These inconsistencies have given rise to some of the (anglophone) debate on the subject, for example D.R Howland's (2020) claim that Vattel doesn't subscribe to Wolff's claim that people uniting into a political society "occupy the sovereignty of the territory" – Howland there references the very section in Vattel, which starts with (properly translated) "When a nation takes possession of a country to which no prior owner can lay claim, it is considered as occupying the *empire* or *sovereignty* of it" (DG: I 205; the underline marks my amended translation).

[34] Vattel's account is quite similar to how Wolff uses the trope of the fable bringing a moral immediateness to a treatise (see Harth 1978).

In [a] we seem to have Vattel's summary of themes found in Wolff's second book on natural law (i.e JN II: 179) and of course the principle of unoccupied land being originally in a primitive state of communion[35], based ultimately on the biblical account of the origins of property (Gen 1:28). Vattel thus does not subscribe to the idea of *res nullius*, but instead maintains that things which are not taken into possession are always commonly owned in either a primitive state of communion by all humans (DG: 234) or by the citizens of a state in common property (*Bien Communs*, DG: 235). Following Pufendorf, Wolff calls these two, correspondingly, negative and positive common ownership (JG: 87); Vattel seems to adhere to the same distinction but does not specify these terms at the proper juncture. All in all, this means that the creation of domain will be conceived of as an act of exclusion (DG: I 204) – an exclusion, initially, of all humanity, but no one in particular (since domain can only be created in what has not been legally claimed, excepting mutually unaware claims (DG: II 95)).

In [b] we find that Vattel has almost directly translated paragraph 72 of Wolff's JN II[36]. The only substantial modification he makes is that he does not conceptualise the movement from common holding (either by sedentary or nomadic peoples) to private ownership, as Wolff puts it, as "simple life emerging into products of labour"[37]. But this omission on Vattel's part is crucial because it begs the question, whether and to what extent Vattel can be said to subscribe to the three-tiered theory of possessions.

Namely, Wolff specifies the manner of possessing both unclaimed and civil areas, but he also admits of a third tier of possession: mixed community ownership (*communio mixta*[38]). This ownership is bestowed on the corporate proprietor, allowing its members to use as common anything that belongs to the proprietor, excluding non-members (JN II: 130). The proprietor in this case is a special society (*universitas*) which is formed on the basis of

[35] Vattel's *la communion primitive* translates Wolff's *communio primaeva* (see JN II 9ff). This distinguishes from 'res nullius' (not present in DG; JG 291; JN II 6) – things owned by no one. Wolff maintains,that while in the primitive state of communion things are indeed *res nullius* (JN II 7) – only capable of being used by people, not yet owned.

[36] This, it seems, has not been recognised or thematised in previous literature, which might contribute to interpretations asserting a complete non-Wolffianism in Vattel.

[37] „vitæ simplicitatem exigere res industriales". Note that while in JN II the theme of products of labour (*res industrialis*) is found throughout, then in JG we seem to have the sole mention of the term in paragraph 279.Wolff summarises the different types of possession and holding in LN: 87.

[38] This elusive term, rarely used by any writer other than Wolff, is more specifically a third type of *communio*, "between" the positive and negative types (JN II: 105, 126, 129), but in Wolff's usage it has the practical force of providing a legal framework for a third type of possessor – the nomad.

religion, place of living, interest or something else (JN II: 129). Here, in his account of natural law, Wolff is following the example of Roman law with precision but seems to deviate from it in his law of nations. Namely, in JG Wolff counts among the proprietors nomadic people, who „are understood to have tacitly agreed that the lands in that territory in which they change their abodes as they please, are held in common […] Therefore those lands are subject to a mixed community ownership[39]" (JG: 310, translation modified). Wolff's law of nations thus admits of three general tiers of ownership regarding the international perspective: primitive (negative) communion, mixed community ownership and ownership by states and citizens[40].

Vattel, however, views corporations (*communauté*) purely under the jurisdiction of a state and sovereign (DG: I 246), thus not including nomadic tribes, nor attributing to them a peculiar type of possession (DG: I 209). Vattel's theory thus does not seem to include a concept of mixed community ownership (or anything to the same effect) and is in this sense only two-tiered. But what then is the exact intended meaning, when in [b] we read that land belongs to wandering tribes "in common"? On the one hand we see from Vattel a deliberate omission and perhaps a even a rejection of the type of ownership, which would allow a pre-civil group to hold an area "in common" (not in the manner of private property, nor in primitive communion, which is non-exclusive), but on the other hand, the phrase seems to indicate some sort of exclusive possession (DG: II 97) not included in the two tiers of territorial possession here explicated.

In terms of territoriality, are nomadic people full subjects under Vattel's international law? Thus, this often discussed theme in Vattel remains somewhat ambivalent, but only now is it informed by the modification of that Wolffian element.

In [c] we see another rewording of Wolff's work on the law of nations and his underlying precepts of natural law (most likely JG: 87; JN II: 189). Now, while it doesn't serve the present purpose to amend Vattel's lack of definition with a discussion on the difference between *proprietas* and *dominium* by Wolff (JN II: 131), it should be remarked that the notion of achieving common domain implies a common will, so to speak, which

[39] Wolff justifies this kind of ownership with intended use: "the intention of wandering, which is governed by that intended use, gives sufficient evidence of the occupation of the lands subject to their use, although they have not established a permanent abode on them" (JG: 310).

[40] The complicated system of private and public property and community, which Vattel appropriates from Wolff can not be discussed here at length (see DG: I 234ff; JG: 88).

would direct action pertaining to what is possessed. Vattel is tolerant of different forms of government, but he has a specific view of what shape a state's constitution ought to be limited to (see DG: I 26ff). Part of that shape is the distinction of sovereignty from domain, the latter necessitating the former (DG: I 1), thus both being created at once (DG: I 204). And the institution of sovereignty (the right to command and legislate) – itself necessitating a sovereign – is thus the reason for a law of nations in the first place.

In conclusion, it is obvious that Vattel is writing with the method of a *bricoleur* – combining different parts from Wolff and elsewhere –, but achieves a concept of original possession that is basically coherent, albeit with a few loose ends. Appealing throughout DG to the trope of original settlement, Vattel thus bases the bulk of his law of nations – that part, which is derived from natural law – *in nuce* on this story. And the moral of the story is, of course, that political society is born out of a necessity to "derive from [the earth] whatever is necessary for [people's] subsistence, and suitable to their wants." This is in line with Vattel's moral ideal proposed in 3.2.

So, Vattelian occupation is based on use, or as Wolff put it, "[t]hings are occupied for the sake of their use." (JG: 310). But this principle – use legitimates occupation – is amended in the principle of territorial sovereignty.

5.3. Territorial Sovereignty

Barring any perfect external obligations, the Vattelian state is a "mistress of her own action" (DG: Preliminaries 20). This is to say that since duties of mutual perfection are, ironically, mostly imperfect, the state and its sovereignty is first and foremost tasked with the preservation and perfection of its own people. In this sense, the Vattelian state is, especially when considering the rejection of the *civitas maxima,* a project of externalising state sovereignty[41] constrained by internal obligations, conforming to what was said in section 2.

Since Vattelian sovereignty[42] is thus largely a matter of that state's moral "consciousness", states have little right to interfere in one another's territoriality if it is

[41] This is in reference Beaulac, who argues that Vattel contributes to an externalisation of sovereignty from the state level to the international level (Beaulac 2003).

[42] While Vattel's *souverain* seems to be translating Wolff's *superior*, Vattel employs the term with great independence from Wolff's usage. And Vattel's 'sovereignty' (*souveraineté*) doesn't seem to appear in Wolff and is possibly a Hobbesian influence borrowed from Pufendorf.

legitimately founded. Being thus obliged to non-interference, a state has a duty to not violate another's territory (DG: II 93) and, to that end, agree on very precise borders (DG: II 92). The reason for this care is that territory is owned by the nation in common by virtue of the nation's general domain or high domain (*haut domaine*[43]), which is ownership by the nation of everything its state and citizens possesses, derived from the original unity of domain and empire, which the nation vests (but does not alienate in perpetuity) in a sovereign (DG: II 83). And since territory is thus at once everywhere the seat of the nation's and sovereign's rights of domain and empire, then any violation of territory is "a violation of the safety of the state, and a trespass on the rights of empire or supreme authority vested in the sovereign" (DG: II 93).

Vattelian territory is thus, once lawfully established, the locus where domain and empire coincide to enable a state to follow the principles of liberty and welfare. This makes territory at once a sort of corporeal possession and the seat of rights of possession. Consequently, while the existence and scope of occupation was legitimated by productive use traced back to a divine ordainment of the earth, the principle of preservation of territory is derived from the indivisibility of the natural freedom a state enjoys as a moral person in a state of nature and, indeed, must enjoy, in order to fulfil its duties of welfare to the people it is composed of. Thus, there are two legitimations of territoriality in Vattel: it is productive use that legitimates occupation, and sovereignty that legitimates preservation of territory[44].

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[43] Of course, contrary to Mueser's supposition (2021: 292), "high domain" is not Vattel's own invention. Beginning as a theological doctrine enrooted in biblical interpretation (referring to e.g. Lev 25:23-24) , the Latin term *altum dominium* travelled into jurisprudential contexts, visible even in the works of scholastic authors . Now, for the medival theorist, what we might call the standard stance was that according to natural law, there can be no human dominium proper, only „use [*usum*] or possession for the sake of use" (this attributed to Connan). The „high domain" was here necessarily divine – mediated by the Papacy and its institutions. But in line with what we may call the general process of secularisation, the mediated divine dominium later became a facet of the state and the person. This is already visible in Suarez: „A republic is also said to have high domain (as jurists say), even though these goods lie under the individual domain of specific people." (Renoux-Zagamé 1987: 241-247)

The terms do sometimes vary, opening up space for argument, but by the European 17th century different forms of (relative) *dominium* in the state were all subject to the high domain of the nation's sovereign power, now largely separate from the church. A common conflating moment seems to be the use of *dominium altum* (or *superium* or *universale*) as shorthand for *dominium eminens*, while in fact the former serves as the legitimate grounds for the latter.

[44] The fact that occupation and preservation of territory are different instances of territoriality, is the reason, why Mueser's assertion about Wolff's theory that "[t]he assumption of 'perpetual use' in effect made the use criterion for territory irrelevant" (Mueser 2021: 234) is misleading. As Wolff's original indicates, the 'perpetual' or 'permanent' use is conceived of in contrast to temporary use. But temporary use is no grounds for occupation, which is what Wolff is intending (JG: 274). Mueser does not perceive the two legitimations of territory – or he doesn't perceive them as concomitant.

5.4. Territorial Transfer

While the original possession in state-formation was always occupation of unclaimed territory, there are also ways in which a state may acquire the territory of another state. Here, we might keep in mind that in a sense we are speaking of a transferring (*transporter*[45]) of rights and obligations similar to what I described in section 2 with regard to the forming of a state (the political society transferring its rights to the sovereign in accordance with the constitution), but the rights and obligation simply apply to a specific and special corporeal possession of the state – territorial possession.

The proprietor of this specific public and common possession (DG: I 234-235) is, however, the body of the nation by default (excluding eminent domain (DG: I 244)), holding a "full and absolute domain" (DG: I 257), which survives as high domain even when a sovereign is granted rights of use, property and domain over common possessions (DG: I 238-239). Thus, the nation is seen as the fundamental actor in questions of territorial transfer, which is accomplished either with the express or tacit consent of the donor nation.

"It has not then a right to traffic with their [(its citizens')] rank and liberty," says Vattel of the state, in connection to a right of alienation (DG: I 263). And the same idea serves as the basis for Vattel's rejection of patrimonial kingdoms, which fail to preserve the interest of the people of a state (DG: I 61, 68). Thus, giving up territory is not possible "without the express and unanimous consent of the citizens, with the right of really alienating or subjecting the state to another body politic" (DG: I 69). Alienation is thus the paradigm case of territorial transfer founded on express consent of the nation's members. But merely a sovereign's approval is needed for other transfers, such as purchasing and/or receiving territory, or just conquests finalised by peace treaty (DG: III 197).

Tacitly sanctioned transfers[46], on the other hand, include prescription, which is a transfer of territory on the basis of actual long-standing use by another state or its citizens (DG: II 140-151) and alluvion, which is a transfer of territory based on the change of landscape, especially border-rivers (DG: I 268).

[45] This word also suffers from a multiplicity of translations in English. For example, we ought to observe that property can be acquired by a state when it is 'transferred' not 'conveyed' (as the translation stands) the domain of it (DG: I 236).

[46] It seems that Beaulac (2003: 1343) does not admit of tacit territorial transfers.

But the state also has the right of appropriating certain territorial rights with presumed consent from a donor when pressed by circumstances thanks to the right of necessity (DG: II 119). This includes an amendment to the rule about alienation, legitimating it "in a case of extreme necessity" (DG: I 263). An exception to the principle of non-interference in territorial sovereignty, "[e]xtreme necessity revives the primitive communion, the abolition of which ought to deprive no person of the necessaries of life" (DG: II 120). In fact, extreme necessity even justifies temporary seizure of territory, but this seizure has to be returned when the danger has passed (DG: III 122)[47]. Thus, extreme necessity makes certain rights perfect or at least gives these rights greater weight in certain conditions, but does not itself legitimate permanent transfer. The legitimation of what a state may enjoy as its territory in perpetuity is, however, derived from the members of the nation and the nation itself.

5.5. National Territoriality

Vattel's greatest contribution to the history of international law might be considered the 'or' in his omnipresent and indeed DG's first phrase: "nation or state". The ambivalent meanings of the French '*ou*', capable of capturing the Latin '*aut*', '*seu*' and '*vel*' alike, might be the basis for a categorisation of many later thinkers in the tradition[48]. But here I would like to address a specific interpretation of the relation between nations and states presented by Benjamin Mueser.

Mueser's account of Vattel's territoriality attempts to show that the account 1) shifts in justificatory mode from a use-based (in cration of territory) to a nationalistic justification (in preservation of territory) and 2) is ultimately based on the nationalistic legitimation. These notions have merit but are misleading in an instructive fashion.

Mueser considers the original proprietors of territory wandering tribes, whom he calls nations (2021: 284). I have shown in 5.2 that while an important question, nomadic tribes are more of an afterthought in Vattel. Also in 5.2 I showed the nation to be – barring some

[47] This runs counter to what Whatmore and Kapossy seem to suggest: that extreme necessity might be the grounds for seizing permanent settlement (2008: xv).

[48] While the phrase appears sparsely in JG, Vattel is perhaps the first to sustainedly articulate the "nation or state" as two entities with an ambivalent connection like this. He is, of course and in another sense, simply slightly explicating the ambivalence traditionally present in *natio*, *gens*, *civitas*, *status* and their progenitors, which are all possible translations of *nation*. The relation of 'nation' and 'state' in Vattel has been judged as synonymous (e.g. Beaulac 2004: 135), but I distinguish it as as referring separately to a body of people and its political organisation (e.g. Remec 1960: 172).

cosmetic inconsistencies – created with the state, not at all a pre-civil entity[49]. And a further disagreement with Mueser (ibid) would be, that while Vattel has affinities with Locke, there is not yet any grounds to call his theory explicitly 'Lockean' (1.3., 3.1.).

Now, while it is true that Vattel shares with Locke an oblivious attitude towards contemporary native American society, it is a careless exaggeration to say that "[i]n Vattel's hands the agriculturalist account of private acquisition becomes a theory of territorial appropriation" (ibid: 285), since the use-based legitimation pertains to uninhabited lands. Indeed, Vattel does not go as far as Wolff to say in defence of nomads, that "[o]wnership is not lost by non-use" (JG: 312), but neither does he in any way endorse appropriation from natives. Thus, when, for example, Anthony Anghie summarises Vattel as justifying colonial appropriation by means of an agricultural criterion of territorial possession – "unless they cultivate the land, they are not in possession of it" (Anghie 2011: 248) –, he is presuming a single way of territorial legitimation and conflating the criteria of territory's creation, preservation and appropriation.

Furthermore, Mueser perceives Vattel's theory of property "grounded in unilateral occupation for sedentary agriculture" (Mueser 2021: 291), but then shifting "from agriculturalist to nationalist" (ibid). While not entirely wrong, Mueser's linear reading feeds into an argument about "proto-nationalism" (Mueser 2021: 301) in Vattel and others, which, in Vattel's case hinges on the notions of 'high domain' and 'native country'. And even though the case for a nation- or state-centrism has merit – where Wolff shifts from an original state of nature between states to the *civitas maxima*, Vattel remains steadfast on the liberty of nations –, there is very little grounds to indicate that Vattel's notion of the nation has any content other than what the fictionalist model of the state proposes (outlined in 2. and 2.1.). On a textual basis, Vattel's territorial proto-nationalism amounts at most to a prototype of constituent power, which legitimates both acquiring and preserving territory.

To clarify, Vattel's legitimations for territorial possession and preservation seem to be mutually complementary, one being the basis for the other, as shown in 5.3. Also mentioned there was the purely legalistic and traditional nature of the term 'high domain', which has a medieval background, not textually related to a nationalistic attitude. Finally, 'native country' (*Patrie*) which does indeed have connections to a patriotic love (DG: I 211),

[49] This is obfuscated also by the English translation, which sometimes translates the pre-civil or non-legal entity '*peuple*' as 'nation' (e.g. DG: I 81).

is little more than a translation of Wolff's '*Vaterland*' (JG: 140), which is itself a translation of the Latin '*Patria*', used to cultivate civil loyalty, not any expansive ethnic or other content for the nation.

This is also evident in that while Wolff explicitly says that a nation receives the characteristics (virtues and vices, interests and inclinations) of the majority of its people (JG: 43), Vattel does not. While sometimes characterising nations in a similar way, Vattel does not necessitate that states necessarily share characters with their peoples, rather focusing on the character of the sovereign, thus leaving the content of his supposed nationalism emptier and rather a formal moral-legal concept

In conclusion, there are serious textually founded reasons to accept that the theory of territory in Vattel's *Law of Nations* contributes to an empowerment of the nation's power on the international stage. More specifically, the work in itself addresses the problem of a disjointed international society. And it provides common but minimal grounds from whence a sovereign is inducted into a moral system of relations and laws which also have a territorial dimension.

Conclusion

Emer de Vattel has been often regarded as a rather derivative thinker, as his main work is to large extent a translation of Christian Wolff, but I have made the case that the translational nature of Vattel's work does not take away from originality and substance in its intention. Pitting this claim against recent interpretations, I have claimed that some scholarly accounts are suspect of over-contextualising interpretations and suggested that they can be remedied by recognising that the "Vattelian paradox" – the perceived problem between absolute state sovereignty and a non-enforceable international law – might be resolved by Vattel's reliance on moral perfectibility to create an international order based in morality. Applying this principle, I then argued against an anti-imperialistic interpretation of Vattel's rejection of a Wolffian *civitas maxima* and against a specific nationalist interpretation of Vattel's territoriality by Mueser.

Overall, I would characterise Vattel as an excellent example of a duck-rabbit, to use Koskenniemi's heuristic Wittgensteinianism: an ambivalent figure engaged at once with a political (rabbit-like) and a legal (duck-like) argument, neither of them being definitive, but rather depending on circumstances. Thus, while I argue against overly political interpretations of Vattel and propose legal explanations as alternatives, these alternatives should not be seen as assertions of fact, but rather "re-descriptions" aimed at a better understanding of Vattel by means of presenting an interpretation from another perspective (Koskenniemi 2018: 44). But what I do claim as non-circumstantial (i.e. different from the duck-rabbit, whose identity depends on the circumstances of perception) is that Vattel is to a large part writing not as a politician, not as a jurist, but as a moralist in the tradition of Cicero.

Lately, (thanks to the translation of the essays?) a number of works have been published on Vattel's ideas on morality outside *The Law of Nations*. I have here argued that the work does itself appeal to a very broad understanding of morality, which functions to facilitate welfarist and pacific tendencies in international relations. In a way then, I see this as a contribution to Jouannet's project of conceptualising the history of international law as an attempt to balance or reconcile the principles of liberalism and welfarism (Jouannet 2012). In particular, I suggest that Vattel attempts to find discord between these principles by appealing to the social aspect of morality.

All in all, the present work might seem to amount to a commonplace: law is inevitably tied to morality. But morality's role in law – in Vattel's international law – is not self-evident and becomes a question on its own. If successful, I have demonstrated that Vattel's *The Law of Nations* deploys morality as a feature of statehood. Namely, that states are fundamentally moral persons – this personhood accounting for all rights and obligations that a nation is capable of (see 1.2.). And since liberty is in DG defined by these rights and obligations, then my research question "What is the nature of state liberty in *The Law of Nations*?" tentatively receives an answer: in *The Law of Nations*, state liberty is moral in nature.

Note that in my analysis morality is a necessary but not necessarily a sufficient condition of state liberty. Vattelian liberty conceived legally is not necessarily reducible to liberty conceived morally. This is to claim the truth of my second hypothesis "For Vattel the international order is fundamentally moral, as much as it is legal".

As argued in 3.2., a moral ideal is also what seems to bridge the gap between Vattel's exclusive sovereignty and welfarist obligations. Along with refutations of specific allegations of incoherence in this regard (given in 1.3., 3.1. and 4.1.), the moral ideal serves to counterfactually disprove the first hypothesis "In *The Law of Nations* a contradiction necessarily arises between states' sovereign liberty and their welfarist duties".

Vattelian international morality, as empty as it is of specific ethical precepts, roots in the principle of self-interest (as mentioned in 1.2.1.). However, in Vattel's presentation, this self-interest, this "individualism of states", seems to be the very basis for a cooperative society of states (3., 4.2.). And Vattel bases this on an analogy between the individual and nation represented by a sovereign. Following this analogy, in section 5 I also demonstrate the truth of my third hypothesis: "Vattelian state territoriality is derived from the state's body of people". However, this nationalist basis of territory is more of an empty signifier: the individuals uniting into society bestow on the state the form of a person but not any expansive content other than natural law (modified for states).

Summary

Reconciling the tension between the principles of national liberty and international welfare has been one of the central problems in the history of international law. This thesis probes the apparent contradiction in Emer de Vattel's seminal work *The Law of Nations* (1758) and suggests that Vattel reconciles the two principles through a moral concept of statehood.

More specifically, the thesis claims that Vattel's concept of states as "moral persons" – the concept derived from a theoretical analogy of states and individuals – helps to disentangle three contested issues in Vattel-scholarship. First, Vattelian exclusive sovereignty, which has given rise to allegations of colonialism, can instead be understood as a facet of the moral community of nations. Second, that Vattel's rejection of a fictive global government (*civitas maxima*) can be explained as an expression of national moral liberty rather than casuistic sympathy for small states. And third, that state territoriality is derived from the state's body of people but does not entail a lofty notion of nationalism.

De Exemplare Morali Iuris Gentium: Vattelius de Civitate et Territorio

In historia juris gentium contentiones convenire inter principia nationis libertatis et prosperitatis gentium iam diu notissimarum quaestionum fuit. Haec tractatio contradictionem in *Ius Gentium* de Vattelio (MDCCLVIII) promptam investigat, et censet Vattelium duo principia per notionem civitatis moralem convenire.

Haec tractatio utpote enim putat notionem civitatum qua "personarum moralium" – ex proportione nationum et individuorum seu aequalitate adduxit – enodere aliquas causas in Vatteliano. Causae sunt hae divisa in partes tres. Prima, imperium proprium – accusationes *colonialismi* efficiens – etiam qua elementum societatis moralis gentium intellegi possit. Alia, recusationem Vattelii civitatis maximae fortasse significationem libertatis moralis nationis interpretatum possit, non defensionem civitatum minimarum. Et tertia, territorium civitatis per se ex corpore populi adductum est, sed adfert nullum latiorem *nationalismum*.

Moraalne ideaal rahvusvahelises õiguses: Vatteli käsitus riigist ja territooriumist

Rahvusvahelise mõtte intellektuaalajaloo keskseid probleeme on riigi suveräänse vabaduse ja rahvusvahelise heaolu printsiipide lepitamine. Käesolevas magistritöös esitan Emer de Vatteli teosest „Rahvaste õigus“ (1758) tõlgenduse, mille järgi Vattel lepitab selle vastuolu läbi moraalse arusaama riiklusest.

Täpsemalt väidan töös, et Vatteli arusaam riigist kui „moraalsest isikust“ see mõiste on tuletatud riigi teoreetilisest analoogiast üksikisikule – aitab lahti harutada kolme vastuolulist teemat senises uurimisloos. Esiteks, Vatteli esitatud eksklusiivset suveräänsust, mida on tõlgendatud kolonialismi-ilminguna, saab mõista hoopis kui rahvaste moraalse kogukonna omadust. Teiseks, seda, et Vattel lükkab tagasi idee kujuteldavast rahvusvahelisest valitsusest (*civitas maxima*), saab mõista rahvuse moraalse vabaduse väljendusena, mitte tingimata kasuistliku poolehoiuna vähem mõjukatele riikidele. Ja kolmandaks, Vattel tuletab riigi territoriaalsuse rahvast, ent sellega ei kaasne sisulist rahvuslust.

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