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THE DEVELOPMENT OF THE LAW OF NATIONS: WOLFF AND VATTTEL

Introduction

The debate over Emer de Vattel's originality as a thinker has a long history. He himself gave impetus to the question in the preface of his main work, the *Law of Nations*,¹ by emphasizing that the book owed a serious debt to Christian Wolff (1679–1754). Wolff was the leading German philosopher of the generation preceding Immanuel Kant. He was the main advocate of Prussian school philosophy also known as Wolffianism, or alternatively as Leibnizian-Wolffian philosophy. The irony is that when one then picks up almost any standard account on Wolff, one soon learns that scholars have spent decades debating Wolff's originality. Until relatively recently, Wolff was considered a mere follower and popularizer of Gottfried Wilhelm Leibniz's (1646–1716) philosophy.² Simultaneously, adding a touch of further irony, Wolff, 'Leibniz's popularizer', has been accused of being pedantic and boring. During the past three decades, Wolff has been increasingly recognized as an independent thinker with considerable originality, especially in the field of political thought, including his work on the law of nations.³ The aim of this chapter is to revisit Vattel's relationship to Wolff in a balanced manner with attention given to the similarities and differences between these two major advocates of natural law and the law of nations in the eighteenth century.

By the time of the publication of the *Law of Nations* in 1758, Vattel had engaged himself with Wolff's work for a good ten years. His original plan had been to translate Wolff's German and Latin pieces into the language of the diplomats, French, and to act as a kind of mediator between the German and French intellectual cultures. What started as a translation and compilation project grew

¹ Emer de Vattel, *The Law of Nations, or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury*, ed. B. Kapossy and R. Whatmore (Indianapolis, 2008).

² Matthew Stewart, *The Courtier and the Heretic: Leibniz, Spinoza and the Fate of God in the Modern World* (New Haven, 2005), 308.

³ N. G. Onuf, 'Civitas Maxima: Wolff, Vattel and the fate of republicanism', *American Journal of International Law* 88 (1994), 280–303; F. Cheneval, 'Auseinandersetzungen um die civitas maxima in der Nachfolge Christian Wolffs', *Studia Leibnitiana* 33/2 (2001), 125–144; On the relationship between Leibniz and Wolff see L. Strickland and J. Weckend, 'Making Waves: Leibniz's Legacy and Impact', in Julia Weckend and Lloyd Strickland (eds.), *Leibniz's Legacy and Impact* (New York, 2019), 1–19. According to Strickland and Weckend 'Wolff borrowed numerous definitions, principles, and doctrines from Leibniz, often without acknowledging his debt, such that Wolff's philosophy draws from and depends upon Leibniz's philosophy as much as it diverges from it', at page 7; see also J. Ecole, 'Des rapports de Wolff avec Leibniz dans le domaine de la métaphysique', in A. Heinekamp (ed.), *Beiträge zur Wirkungs- und Rezeptionsgeschichte von Gottfried Wilhelm Leibniz* (Stuttgart, 1986), 88–96.

to be a significant, independent, and, in fact, an original work by Vattel.⁴ The preface to the *Law of Nations* is a good starting point when assessing the affinities between Wolff and Vattel. While Vattel wrote, he held Wolff's work on the law of nations as precious and wanted to make it known to the wider intellectual world. What Vattel found problematic was Wolff's manner of presentation, finding his work dry and incomplete. However, according to Vattel, Wolff's general principles and definitions were approvable and worthy of serious attention. Although Vattel was clearly influenced by Wolff's work, he made sure to state that differences between his and Wolff's work were obvious to everyone who bothered to make a comparison (Vattel, *LN*, preface, 13).

I will show in this chapter that Vattel followed Wolff's act of transforming the law of nations into an independent discipline. In order to accomplish this, Vattel drew on Wolff's ideas of states as moral persons and as the main subjects in the international arena, but he distanced himself from Wolff in two ways. First, Vattel did not approve of Wolff's mathematical method, which Wolff himself considered his main contribution to philosophy. Second, he disagreed with Wolff on how the so-called voluntary law of nations that bound sovereigns in their actual relationships should be understood. Wolff wanted to deduce the law from the idea of the greatest republic (*civitas maxima*), whereas Vattel wanted to replace it with voluntary law derived from natural law. Vattel's voluntary law of nations consisted of a body of rules connected with the European state practice,⁵ leading to Vattel's rejection of Wolff's idea of 'the state of all states'.⁶

Vattel's Critique of Wolff's Method

Independent of his high praise of Wolff, Vattel first and foremost wanted to distance himself from Wolff's method, which he believed made Wolff's work inaccessible. Wolff's notoriety as a pedantic and dry writer was — and still is — bound with his mathematical way of proceeding deductively from axioms. No less a figure than the Prussian king Frederick II, known as Frederick the Great, wrote to Wolff and asked him to present truths in a shorter manner and with fewer proofs.

⁴ F. Ieva, "A poor imitation of Grotius and Pufendorf" biographical uncertainties and the laborious genesis of Vattel's *Droit des gens*, in K. Stapelbroek and A. Trampus (eds.), *The Legacy of Vattel's Droit des gens* (Cham, 2019), 53–76, 76.

⁵ P. Piirimäe, 'Men, monsters and the history of mankind in Vattel's *Law of Nations*', in S. Zurbuchen (ed.), *The Law of Nations and Natural Law 1625–1800* (Leiden, 2019), 159–85, 161.

⁶ Vattel pointed out further differences in Vattel, *LN*, preface, 13–16. Vattel's conception of political order and defence of freedom and independence of states made him reluctant to approve of Wolff's praise of patrimonial kingdoms. Furthermore, unlike Wolff, Vattel did not approve of the use of poisonous weapons in war. This was a difference in their understanding of *jus in bello* (Vattel, *LN*, III, VIII, §156).

According to Frederick II, this would be pleasant to the intellect of the reader.⁷ Although even Wolff's contemporaries at times ridiculed his pedantic presentation, it is worth noting that he was the most influential German philosopher of his lifetime and had followers in the whole of Europe, from Sweden to Italy.⁸ Wolff's philosophical system is best described by his method that had many descriptions, including mathematical, geometrical, demonstrative, philosophic and scientific. Wolff and his students preferred to call their favoured method mathematical.⁹ As a trained mathematician, Wolff wanted to make the chain of proofs the same way in psychology, ethics, politics and the law of nations as he did in mathematics, by deriving truths deductively.¹⁰ His method was the leading paradigm in German-speaking Europe until the second half of the 1770s.¹¹ Beginning in the 1750s, his work was increasingly challenged and criticized — including in the work of Vattel — which explains Hegel's exaggerated comment regarding Wolff having outlived his fame and seeing empty auditoriums during his final years before his death in 1754.¹²

As noted, Wolff's aim was to present all human knowledge in a mathematical method. His methodological starting point was that no principle was to be used unless it was fully proven. New principles could not be approved unless they were deduced from proven principles. Wolff strived for precision in his usage of concepts. If new concepts were to be introduced, they would need to be defined duly. In addition, previously accepted definitions of philosophical terms could not be changed.¹³ In short, axioms, definitions and distinctions formed the core of Wolffianism. Wolff sought to build a unified system of sciences in which the last conclusion related to the original axiom. By following the rules of philosophy and using a deductive method, philosophers should be able to arrive at timeless truths of reason. In this manner, philosophy could provide us with equally reliable truths as mathematics. In other words, Wolff universalized the claims of reason.

⁷ H-M. Bachmann, *Die naturrechtliche Staatslehre Christian Wolffs* (Berlin, 1977), 57.

⁸ Bachmann, *Die naturrechtliche Staatslehre*, 14, 50.

⁹ B. Stollberg-Rilinger, *Der Staat als Maschine. Zur politischen Metaphorik des absoluten Fürstenstaats* (Berlin, 1986), 89.

¹⁰ T. Ahnert, 'Introduction', in C. Wolff, *The Law of Nations Treated According to the Scientific Method*, ed. T. Ahnert, translated by J. H. Drake, translation revised by T. Ahnert (Indianapolis, 2017), xxi.

¹¹ Stollberg-Rilinger, *Der Staat als Maschine*, 95.

¹² G. W. F. Hegel, *Vorlesungen über die Geschichte der Philosophie, als Vorschule zur Encyklopaedie, mit einigen Ausführungen und Anmerkungen zur Erläuterung, Verteidigung oder Berichtigung, für den akademischen Gebrauch*, ed. G. J. P. J. Bolland (Leiden, 1908), 940; T. Kleinlein, 'Christian Wolff: System as an episode?', in S. Kadelbach, T. Kleinlein, and D. Roth-Isigkeit (eds.), *System, Order, and International Law: The Early History of International Legal Thought from Machiavelli to Hegel* (Oxford, 2017), 216–239, 218.

¹³ Stollberg-Rilinger, *Der Staat*, 89.

The content of Wolff's philosophy was defined by Leibnizian-Wolffian perfectionist metaphysics. Perfectibility was about the interconnectedness of the manifold (*Zusammenstimmung des Mannigfaltigen*). Perfectibility meant that complicated entities worked in harmony towards a common purpose. According to Leibniz and Wolff, the world that we live in is the best of possible worlds because all its parts work together to honour God, who is forever perfect. Wolff argued that the task of philosophy was to prove what the capacities of the soul can accomplish; this is to say, to show what is possible as human beings. Only after proving this could practical philosophy begin. Wolff began his inquiry into the soul by pointing out that we know from our experience that the soul has two capacities: the capacity of knowing and the capacity of willing.¹⁴ Wolff defined the soul as a non-bodily substance that gives us a representation of the world. The representations given by the soul can differ; some are clearer than others.¹⁵ The more precise our representations, the closer to perfection they are. Perceiving the world in a precise manner makes ourselves more perfect. Wolff explained that our recognition of perfection gives us pleasure, which connects to our wilful choice of perfection, this is to favour moral goodness.¹⁶ In this way, feeling pleasure was only a manifestation of perfection. The pleasure that we felt was relative to the degree of perfection derived from our perceptions. What made our state more perfect was morally good.¹⁷ When our actions were founded in such a manner that their aim was common (perfection and happiness), the path of a human being was perfect.¹⁸

For Wolff, practical philosophy was a science that guided the capacity of will to choose the good and shun the bad. In this way, psychological action defined morality in Wolff's philosophy.¹⁹ From psychology, Wolff proceeded to ethics and from there to politics. The overarching concepts that combined all of these fields to build a system of philosophy were the intertwined concepts of happiness and perfection.²⁰ When our intellect developed and we could distinguish elements of the world with more precision, we would act as we want. In this way, our profound inclination to seek perfection, or good, forms our will. In short, according to Wolff, to implement human nature is to

¹⁴ C. Wolff, *Der vernünfftigen Gedancken von Gott, der Welt und der Seele des Menschen, auch allen Dingen überhaupt* (Frankfurt, 1740 [1720]), §404, §873.

¹⁵ Wolff, *Der vernünfftigen Gedancken von Gott*, §745–746.

¹⁶ Wolff, *Der vernünfftigen Gedancken von Gott*, §404–5; J. Brückner, *Staatswissenschaften, Kameralismus und Naturrecht: Ein Beitrag zur Geschichte der Politischen Wissenschaft in Deutschland des späten 17. und frühen 18. Jahrhunderts* (München, 1977), 216.

¹⁷ Wolff, *Der vernünfftigen Gedancken von Gott*, §422.

¹⁸ Wolff *Der vernünfftigen Gedancken von Gott*, §152.

¹⁹ J. B. Schneewind, *The Invention of Autonomy: A History of Modern Moral Philosophy* (Cambridge, 1998), 435.

²⁰ Schneewind, *The Invention of Autonomy*, 436.

perfect. This was the same as to implement good, which again related to a lasting state of happiness.²¹ In that way, knowledge about morality was dependent on metaphysical and ‘psychological’ knowledge. It was possible for human beings to become happy if they possessed certain moral truths.²²

Wolff’s teleological vision of human destiny, as individuals and as a collective, was perfectibility. He treated the collective in the service of perfectibility in terms of ascending associations. They included marriage (*Ehestand*), family (*väterliche Gesellschaft*), master society (*herrschaftliche Gesellschaft*), state (*Staat*), and together they culminated in the greatest republic (*civitas maxima*), which was a collective formed by all states. All these collectives were based on social contracts that aimed for the perfectibility of the collective and of all its members. There was an undeniable paternalist trait in Wolff’s contractual theory, since those who governed the collective were to be the judges of the perfectibility and happiness of the collective.²³

The key concepts of Wolff’s natural law and the law of nations that derived from it were human perfection and happiness. Drawing heavily on scholastic predecessors, Wolff claimed that the principles of natural law (i.e. the duties and rights of men) could be derived from the correct definition of human nature, namely, that man ultimately seeks the realization of his natural abilities and attainment of happiness.²⁴ As Jerome Schneewind has argued, ‘in his metaphysics he [Wolff] refers back to his logic to explain the order of his argument, in the ethics back to the metaphysics for his principles, and so on through the series of expositions, as he reminds us each time he expounds the later stages. The whole constitutes a modern protestant scholastic system.’²⁵ Wolff’s law of nations was part of this system. Vattel’s original plan was to detach the law of nations from the scholastic detail of Wolffian metaphysics in order to make it accessible.²⁶ But at the end, as he himself recognized, Vattel ended up writing a completely new work.²⁷ This new work, however, did make significant use of the language of Wolff’s philosophy.

²¹ Brückner, *Staatswissenschaften*, 216–17.

²² M. Wundt, *Die deutsche Schulphilosophie im Zeitalter der Aufklärung* (Hildesheim, 1964 [1945]), 174–75; Schneewind, *The Invention of Autonomy*, 433.

²³ K. Haakonssen, ‘Christian Wolff (1679–1754)’, in B. Fassbender and A. Peters (eds.), *The Oxford Handbook of the History of International Law* (Oxford, 2012), 1106–09. On Vattel’s conception of social contract see Gabriella Silvestrini’s chapter in this volume.

²⁴ I. Hunter, *Rival Enlightenments: Civil and Metaphysical Philosophy in Early Modern Germany* (Cambridge, 2001), 12.

²⁵ Schneewind, *The Invention of Autonomy*, 433.

²⁶ Kleinlein, ‘Christian Wolff’, 237.

²⁷ Ieva, ‘A Poor Imitation’, 76.

Vattel subscribed to Leibnizian-Wolffian metaphysics, but he took a position of decisive distance from Wolff's method. He also found it problematic that Wolff's

law of nations is dependent on all those of the same author on philosophy and the law of nature. In order to read and understand it, it is necessary to have previously studied sixteen or seventeen quarto volumes which precede it. Besides, it is written in the manner and even in the formal method of geometrical works. [—] The method followed by Monsieur Wolf has had the effect of rendering his work dry, and in many respects incomplete. The different subjects are scattered through it in a manner that is extremely fatiguing to the attention [—]. (Vattel, *LN*, preface, 12)

Unlike Wolff, whose main audience were scholars, Vattel wrote to European sovereigns, ministers and diplomats with the aim of making a lasting impact on European political practice.²⁸ In a way, Vattel was responding to the wish that Frederick II had expressed to Wolff — to be more readable and concise. Vattel's preferred presentation was clear, crisp and fluent, which made him abandon what Wolff considered his own greatest achievement, his method.²⁹ What Vattel took from Wolff were the general principles and definitions. Above all, Vattel implemented in his own work Wolff's concept of the nation as a moral person and secondly to Wolff's conception of perfection, to the idea that we owe duties and rights of perfection to ourselves, others and God. These were key Wolffian principles in Vattel's political and international political thought, including the field of law of nations.

The Development of the Law of Nations into an Independent Discipline: Morality of the State

Despite his severe criticism of Wolff, Vattel considered Wolff the greatest of his predecessors in the field of the law of nations.³⁰ Vattel appreciated Wolff's attempt to transform the law of nations into an independent discipline. Whereas Wolff's predecessors treated the law of nations mainly in footnotes and side comments, Wolff dedicated a whole book to the topic, *Jus gentium methodo scientifica pertractatum*, in 1749.³¹ It was a follow-up to his eight-volume work on the law of nature, *Jus Naturae methodo scientifica pertractatum*, published between 1740 and 1748. Wolff's

²⁸ S. Zurbuchen, 'Emer de Vattel on the society of nations and the political system of Europe', in S. Kadelbach, T. Kleinlein, and D. Roth-Isigkeit (eds.), *System, Order, and International Law: The Early History of International Legal Thought from Machiavelli to Hegel* (Oxford, 2017), 263–82; Piirimäe, 'Men and monsters', 160.

²⁹ Kleinlein, 'Christian Wolff', 220–221; Ieva, 'A poor imitation', 54.

³⁰ B. Holland, *The Moral Person of the State: Pufendorf, Sovereignty and Composite Politics* (Cambridge, 2017), 123.

³¹ C. Wolff, *Jus Gentium Methodo Scientifica Pertractatum*, ed. O. Nippold, trans. J. H. Drake and F. J. Hemelt (Oxford, 1934 [1749]).

law of nature and law of nations were later compiled as *Institutiones Juris Naturae et Gentium*, which was prepared mainly for teaching purposes, and it was translated into German in 1754 under the title *Grundsätze des Natur- und Völkerrechts*.³² Vattel was interested in taking the autonomization of the law of nations even further by detaching it from Wolff's other works and giving it a new form in his *Law of Nations*. To accomplish this, Vattel built on Wolff's account of nations as moral persons.³³ For Wolff and Vattel, nations understood as moral persons were the main subjects of the law of nations.

Wolff's ideas concerning the law of nations that Vattel drew on had a prehistory.³⁴ The modern concept of the law of nations (*Völkerrecht*, *law of nations*, *droit des gens*, *jus gentium*), which considers free and independent states as the main legal subjects, originates in the political thought of Thomas Hobbes and Samuel Pufendorf. As Peter Haggenmacher has argued, Grotius and Suarez were the first scholars to redefine *jus gentium* — in Grotius' case, famously in conjunction *ius naturae et gentium* — as a properly international law. However, for these earlier thinkers, *jus gentium* bound individuals as opposed to states.³⁵ Some scholars have equally pointed to Alberico Gentili (1552–1608) as the father of the law of nations. However, Gentili regarded it as a form of private law that consisted of common rules used by different nations, which also applied to relations between states.³⁶ The modern understanding of the law of nations rests on two distinctions outlined in the political thinking of Pufendorf and Hobbes. They were the first theorists to make a clear distinction between universal rational natural law and the positive law based on the will of the legislator. This dualism paved the way for the modern understanding of the law of nations since it left no room for the older concept of *jus gentium*, understood as a law shared by all peoples. Even more significant, in terms of the contribution of Pufendorf and Hobbes, was the introduction of the idea of the state as a person.³⁷ According to Hobbes, the state is a fictional person (a person who only exists when represented) represented by an artificial person (one who acts in the name of another), who may or may not also be a natural person (an assembly of men can represent the state

³² C. Wolff, *Grundsätze des Natur und Völkerrechts, worinn alle Verbindlichkeiten und alle Rechte aus der Natur des Menschen in einem beständigen Zusammenhange hergeleitet werden* (Halle, 1754).

³³ B. Holland, 'The moral person of the state: Emer de Vattel and the foundations of international legal order', *History of European Ideas* 37 (2011), 438–445.

³⁴ On Vattel's relationship to Leibniz, Hobbes, and Pufendorf see the chapter by Ben Holland in this volume.

³⁵ P. Haggenmacher, 'Hugo Grotius (1583–1645)' in B. Fassbender and A. Peters (eds.), *The Oxford Handbook of International Law* (Oxford, 2012), 1098–1111.

³⁶ M. Scattola, 'Alberico Gentili (1552–1608)' in B. Fassbender and A. Peters (eds.), *The Oxford Handbook of International Law* (Oxford, 2012), 1092–97. On Gentili's role in law of nations see B. Kingsbury and B. Straumann (eds.), *The Roman Foundations of the Law of Nations: Alberico Gentili and the Justice of Empire* (Oxford, 2010).

³⁷ J. Schröder, 'Die Entstehung des modernen Völkerrechtsbegriffs im Naturrecht des frühen Neuzeit', *Jahrbuch für Recht und Ethik* 8 (2000), 47–71.

and therefore is an artificial person but not a natural person). For Pufendorf, the state was a moral entity in the form of a moral person imposed by men on themselves.³⁸ While both thinkers allowed for a theoretical distinction between the authority of the state and the person of the sovereign, this was not a clear feature of their writings, where one was often identified with the other.³⁹ With Wolff and Vattel, this changed.

The work of Hobbes and Pufendorf laid the groundwork for the establishment of state's legal personality as it became understood by Wolff and Vattel and the subsequent eighteenth-century thinkers in the field of the law of nations. Vattel alone is often credited with first formulating what we now know as 'classic international law', the law of nations as the law of independent and free states. The mentioned key move by Wolff, which foreshadowed what Vattel was to clearly distinguish as the body of the state, i.e. the body politic to whom the authority originally belonged, from the person or the persons who exercised this authority. In this way, nations or states as 'bodies politic' became the proper subjects of the law of nations. In *Jus Gentium Methodo Scientifica Pertractatum* (1749), Wolff had argued that 'By the Law of Nations we understand the science of that law which nations or peoples use in their relations with each other and the obligations corresponding thereto.' Since Wolff regarded nations as individual free persons living in the state of nature, 'nations also must be regarded in relation to each other as individual free persons living in the state of nature.' Wolff concluded that 'Since nations are regarded as individual persons living in a state of nature, moreover, as men in a state of nature use nothing except natural law, nations also originally used none other than natural law; therefore, the law of nations is originally nothing except the law of nature applied to nations.' The part of the law of nations that was based on the law of nature Wolff called the necessary law of nations, which was immutable.⁴⁰ Similar to individual men living in the state of nature, nations or states were governed by the law of nature. In other words, entire nations in their actions were subject to natural law. The starting point was that all nations were free, and no nation was entitled to restrain another from enjoying its freedom. However, according to Wolff, the states owed the duty of perfection to themselves and to other states. While

³⁸ Holland, *The Moral Person of the State*, 65–103. On the differences between Hobbes's and Pufendorf's conceptions of law of nature and law of nations see Kari Saastamoinen, 'Pufendorf on the law of sociality and the law of nations', in S. Zurbuchen (ed.), *The Law of Nations and Natural Law 1625-1800* (Leiden, 2019), 107–131, 119–120 and 123–124; On Hobbes see Quentin Skinner, 'Hobbes on persons, authors and representatives', in P. Springborg (ed.), *The Cambridge Companion to Hobbes's Leviathan* (Cambridge, 2007), 157–180.

³⁹ Schröder, 'Die Entstehung', 67 ff..

⁴⁰ Wolff, *Jus Gentium*, §1–§4.

self-preservation always came prior to aiding other nations in their endeavour to perfect themselves, the latter was nonetheless, for Wolff, a duty that had to be respected.⁴¹

Already in his German *Politik* (1721), Wolff had made use of the analogy between an individual in relation to a state and a state in relation to other states. He argued that every state was, in its relation to other states, a person.⁴² Once the state itself was understood as a person, it could be perceived as an actor in the international sphere in a way similar to that in which the individual was positioned in the ‘domestic sphere’.⁴³ Wolff deduced from this that states as moral persons had natural obligations that could be generated from general principles. These principles were deduced from the nature of the state, from the nature it had as a moral person.⁴⁴ In sum, the concept of the person of the state, as a moral person, offered Wolff a way of conceptualizing international relations in terms of rights and duties. He believed that states owed the same rights and duties towards one another as did individuals in the state of nature. For Wolff, the most important of these duties was the duty of perfection, and this was the most important general principle Vattel picked up from Wolff. Drawing heavily on Wolff, Vattel argued that the law of nation was the law of nature applied to the moral persons of nations (Vattel, *LN*, preface, 12). Vattel argued that ‘The first general law that we discover in the very object of the society of nations, is that each individual nation is bound to contribute every thing in her power to the happiness and perfection of all the others’ (Vattel, *LN*, preliminaries, §13, 73). Emphasizing the duties of nations as moral persons, Vattel argued that

Since the object of the natural society established between all mankind is that they should lend each other mutual assistance in order to attain perfection themselves and to render their condition as perfect as possible—and since nations, considered as so many free persons living together in a state of nature, are bound to cultivate human society with each other,—the object of the great society established by nature between all nations is also the interchange of mutual assistance for their own improvement and that of their condition. (Vattel, *LN*, preliminaries, §12, 73)

Wolff and Vattel were by no means unique in extending natural law to the implied law of nations. In fact, many eighteenth-century natural law theorists advocated the idea that natural law was at least to some extent applicable to the law of nations. Already Hobbes had famously made this point

⁴¹ Wolff, *Grundsätze*, §1088–1089.

⁴² C. Wolff, *Vernünfftige Gedanken von dem Gesellschaftlichen Leben der Menschen und Insonderheit dem Gemeinen Wesen* (Halle, 1721), §220.

⁴³ H. Suganami, *The Domestic Analogy and World Order Proposals* (Cambridge, 1989), 13.

⁴⁴ T.J. Hochstrasser, *Natural Law Theories in the Early Enlightenment* (Cambridge, 2000), 177–8.

in *Leviathan* when he stated that ‘Concerning the Offices of one Sovereign to another, which are comprehended in that Law, which is commonly called the Law of Nations, I need not to say any thing in this place; because the Law of Nations, and the Law of Nature, is the same thing.’⁴⁵

However, very few thinkers were ready to admit that states and humans were identical, preferring to highlight certain differences in their nature. According to Vattel, the states were moral persons, but they conducted themselves in a different manner from individuals. He praised Jean Barbeyrac (1674–1744), the French natural lawyer and famous translator and commentator of Pufendorf, for going beyond Hobbes in realizing that although the principles behind natural law and the law of nations were very similar, there were differences in application.⁴⁶ For Wolff and Vattel, the field that dealt with the differences in application was called voluntary law of nations. According to Wolff, the voluntary law of nations could be deduced from the idea of *civitas maxima*. Vattel again rejected the idea of *civitas maxima* as fictitious and at odds with state sovereignty,⁴⁷ and he emphasized that the voluntary law of nations could be deduced only from the natural liberty of nations (Vattel, *LN*, preface, 16).

The Voluntary Law of Nations: From *Civitas Maxima* to the Natural Liberty of Nations

The originality of Vattel’s intervention in relation to Wolff becomes clear if we analyse the conception of the voluntary law of nations elaborated by Wolff. Wolff divided the field of the law of nations into the necessary law of nations and of the voluntary law of nations. For Wolff, the concept of *civitas maxima* was central to the latter. Vattel subscribed to Wolff’s necessary law of nations, which was applied law of nature. However, Vattel attacked Wolff’s idea of the *civitas maxima* and consequently his notion of a voluntary law of nations. Vattel accused Wolff of making a confusing equation between civil law within a nation and voluntary law between nations, this is to say, with the voluntary law of nations.

Concerning the analogy between men in the state of nature and states as moral persons living in the state of nature, the question arose as to whether states should not also set a sovereign above themselves either to escape the insecurity of the state of nature or in order to reciprocally pursue

⁴⁵ Thomas Hobbes, *Leviathan*, ed. R. Tuck, rev. edn. (Cambridge, 1996 [1651]), 244.

⁴⁶ Hochstrasser, *Natural law theories*, 177–178.

⁴⁷ B. Kapossy and R. Whatmore, ‘Introduction’, in Emer de Vattel, *The Law of Nations*, ed. B. Kapossy and R. Whatmore (Indianapolis, 2008), xv. It is worth to point out that Wolff would have not denied that *civitas maxima* was fictitious.

greater perfection and happiness. If the states were assumed to be like humans in the state of nature, why did they not then become citizens of the greatest state? Why do they not form a universal state, for example, in the form of a republic or of a monarchy? Wolff gave a decisive answer to these questions. For Wolff the greatest state already existed:

All nations are understood to have come together into a state, whose separate members are separate nations, or individual states. For nature herself has established society among all nations and compels them to preserve it, for the purpose of promoting the common good by their combined powers. Therefore since a society of men united for the purpose of common good by their combined powers, is a state, nature herself has combined nations into a state.⁴⁸

According to Wolff, the states formed together the greatest republic (*civitas maxima*). Whereas a necessary law of nations was natural law applied on states, a voluntary law of nations was supposed to reflect the presumed consensus of the nations united in *civitas maxima*.⁴⁹ Wolff's distinction between necessary and voluntary law of nations recalls Grotius' distinction between a law of nations that follows directly from natural law and the voluntary law of nations, which was positive law. Wolff and Vattel have consequently been counted among Grotius' most prominent eighteenth-century followers.⁵⁰ Grotius understood the notion of a voluntary law of nations as customary, unwritten law applicable to the whole society of mankind. According to Grotius, the voluntary law of nations was based on the tacit convention of the majority of peoples.⁵¹

Despite the affinities between Grotius and Wolff, Wolff's greatest state was not inspired in the first place by Grotius. Rather, his *civitas maxima* issued from the unitary worldview Wolff took from Leibniz's metaphysical holism, which owed a large debt to stoic cosmopolitanism.⁵² For Leibniz, the world was a single community, the 'City of God'. Not unlike his mentor Leibniz, Wolff thought that the core of the natural world was a whole. The problems of this whole, of the community of nations, had already been resolved. It was the task of the philosopher to make the underlying

⁴⁸ Wolff, *Jus Gentium*, §9. R. Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford, 1999), 188.

⁴⁹ Gabrielle Silvestrini, 'Justice, war and inequality: The unjust aggressor and the enemy of human race in Vattel's Theory of the law of nations', *Grotiana* 31 (2010), 44-68, 51.

⁵⁰ P. P. Remec, *The Position of the Individual in International Law according to Grotius and Vattel* (The Hague, 1960), 69; J. Manz, *Emer de Vattel: Versuch einer Würdigung; unter besonderer Berücksichtigung seiner Auffassung von der individuellen Freiheit und der souveränen Gleichheit* (Zürich, 1971), 34.

⁵¹ S. Zurbuchen, 'Vattel's law of nations and just war theory', *History of European Ideas* 35 (2009), 409.

⁵² P. S. Onuf, *Federal Union, Modern World: The Law of Nations in an Age of Revolutions, 1776-1814* (Madison, 1993), 13.

harmony visible and unobjectionable through deductive reasoning.⁵³ Martti Koskenniemi has argued that it ‘was sheer scholastic nostalgia that made Christian Wolff, in his late excursus into the law of nations in 1749, speak of all nations joined together in a *civitas maxima* as a functional equivalent to civil society.’⁵⁴ Indeed, in his notion of *civitas maxima* Wolff presented the civil law of the world.⁵⁵ For Wolff, *civitas maxima* was the tool that helped to deduce the unobjectionable voluntary law of nations, laws that could be considered as the political laws of this universal state. Wolff’s *civitas maxima* had the same purpose for states as the state had for its citizens: to facilitate the pursuit of happiness and the perfection of the states and their members. With united powers the states would seek to make themselves and each other more perfect. An underlying assumption of Wolff’s international thought was that there is a common interest of everyone. As Francis Cheneval has argued, *civitas maxima* was a methodological innovation, which has a long history of misunderstanding it in the terms of tacit factual consensus whereby the innovative idea of presumed normative consensus (normative fiction of reason) was lost. To avoid this misunderstanding and the inadequate critique that followed from the misunderstanding, Wolff’s *civitas maxima* should be reduced neither to a natural nor a metaphysical reality.⁵⁶

Wolff followed the ‘domestic analogy’ further and argued innovatively that states were citizens, citizens of the greatest state.⁵⁷ Wolff’s analogy raises a further question about will formation in the greatest republic. Whose will was it that all nations were presumed to want to accept? Nicholas Onuf has argued that Wolff’s *civitas maxima* was a republic — not in the eighteenth-century sense of a generic term for any state but as a commonwealth governed by the citizens.⁵⁸ The republic of states would then be governed by the states that were members of the republic of states. It is true that Wolff stated that the laws of *civitas maxima* must correspond with the assumed wills of the states. In addition, he argued that *civitas maxima* was a democracy of free and equal nations: ‘The supreme state is a kind of democratic government.’⁵⁹ However, it is a very particular democracy:

Nevertheless, since in a democratic state it is necessary that individuals assemble in a definite place and declare their will as to what ought to be done, since moreover all the

⁵³ M. Koskenniemi, ‘“International community” from Dante to Vattel’, in Vincent Chetail and Peter Haggénmacher (eds.), *Vattel’s International Law in a XXIst Century Perspective – Le droit international de Vattel vu du XXIe siècle* (Leiden, 2011), 51–75, at 67–70.

⁵⁴ M. Koskenniemi, ‘The advantage of treaties: International law in the enlightenment’, *Edinburgh Law Review* 13 (2009), 52.

⁵⁵ Kapossy and Whatmore, ‘Introduction’, xv.

⁵⁶ Cheneval, ‘Auseinandersetzungen’, 125.

⁵⁷ Wolff, *Grundsätze*, § 1090.

⁵⁸ Onuf, ‘Civitas Maxima’.

⁵⁹ Wolff, *Jus Gentium*, §19.

nations scattered throughout the whole world cannot assemble together, as is self-evident, that must be taken to be the will of all nations which they are bound to agree upon, if following the leadership of nature they use right reason. Hence it is plain, because it has to be admitted, that what has been approved by the more civilized nations is the law of nations.⁶⁰

Wolff considered the ‘more civilized nations’, the ones that possessed ‘perfect intellect’ as the decision makers of the will of all nations, this is to say of the civil law of the greatest state (i.e. the voluntary law of nations). The civilized nations could therefore expect that less cultivated nations would oblige themselves to the voluntary law of nations.⁶¹ According to Wolff, non-civilized nations should accept the civilized states’ law of nations as the starting point of their relations. Not unlike the civil law of a state, Wolff considered the civil law of the *civitas maxima* obligating. This was because ‘if a state is established, individuals bind themselves to the whole, because they wish to promote the common good’. From this, Wolff concluded that ‘In the supreme state the nations as a whole have a right to coerce the individual nations, if they should be unwilling to perform their obligations’.⁶² We move from Wolff’s view of all nations as equal and free to the view that disobliging nations can be rightfully coerced. Hereby, Wolff’s voluntary law of nations was in a Hobbesian and Pufendorfian sense a law in the proper sense of the word: law implied obligation, which in turn presupposed the existence of a subject and of a superior.⁶³ For Wolff, states remain in a state of nature and nevertheless he argues for the existence of enforceable law between states. He does this to overcome Hobbes’s and Pufendorf’s argument. This was precisely what fictitious *civitas maxima* is there to legitimise in Wolff’s law of nations. In this sense Wolff is decisively anti-Hobbesian and anti-Pufendorfian, which does not come as a surprise considering that he was an essentially Leibnizian thinker.

For Vattel, independence and freedom of states could not be jeopardized in the name of *civitas maxima*. According to him, the alterations between the law of nature and law of nations could be deduced from the natural liberty of nations, similar to what Wolff had done in his treatise on natural law with respect of individuals (Vattel, *LN*, preface, 16). He prioritized the sovereignty of states and argued that independence was necessary for states to properly discharge the duties they owe to

⁶⁰ Wolff, *Jus Gentium*, §20.

⁶¹ I. Nakhimovsky, ‘Vattel’s theory of the international order: Commerce and the balance of power in the law of nations’, *History of European Ideas* 33 (2007), 161, footnote 13; Liliana Obregón Tarazona, ‘The civilized and the uncivilized’, in B. Fassbender and A. Peters (eds.), *The Oxford Handbook of the History of International Law* (Oxford, 2012), 917–939; For an Vattel’s rejection of this division, see Simone Zurbuchen, ‘Vattel’s ‘Law of Nations’ and the principle of non-intervention’, *Grotiana* 31 (2010), 69–84, 83.

⁶² Wolff, *Jus Gentium*, §11–§13.

⁶³ S. Zurbuchen, ‘Vattel’s Law of Nations’, 409.

themselves and their citizens and to govern themselves in the manner that best suited their circumstances. For Vattel, it was enough that nations conformed ‘to what is required of them by the natural and general society established between all mankind’ (Vattel, *LN*, preface, 15). States required full independence and freedom for their self-perfection. Vattel did think that there was unity among nations, but it did not go further than the ‘general society of mankind’. He directly refuted Wolff’s idea that the voluntary law of nations is, as it were, the civil law of the great republic:

This idea does not satisfy me; nor do I think the fiction of such a republic either admissible in itself, or capable of affording sufficiently solid grounds on which to build the rules of the universal law of nations which shall necessarily claim the obedient acquiescence of sovereign states. I acknowledge no other natural society between nations than that which nature has established between mankind in general. It is essential to every civil society (*civitati*) that each member has resigned apart of his right to the body of the society, and that there exists in it an authority capable of commanding all the members, of giving them laws, and of compelling those who should refuse to obey. Nothing of this kind can be conceived or supposed to subsist between nations. Each sovereign state claims and actually possesses an absolute independence on all the others. They are all, according to Monsieur Wolf himself, to be considered as so many individuals who live together in the state of nature, and who acknowledge no other laws but those of nature, or of her Great Author. (Vattel, *LN*, preface, 14)

It is worth noting that, as political theorists Vattel and Wolff differed significantly from each other, and this is reflected in their work on the law of nations. Vattel was a quintessentially republican thinker. Wolff’s political thought, on the other hand, was profoundly conservative and paternalistic. With justification, he can be regarded as an advocate of the political theory of enlightened absolutism. As Frank Grunert has demonstrated, Wolff’s political absolutism followed inevitably from his theoretical absolutism. Wolff’s theoretical absolutism morphed into political absolutism once the philosopher was called upon to give the right insight dependent on the truth of the *bonum commune*.⁶⁴ As Knud Haakonssen has argued, for Wolff, those who govern were judges of the perfectibility of the collective.⁶⁵ The theoretical and political absolutisms of Wolff’s international thought becomes apparent once he states that the *civitas maxima* can be thought of as having a ruler:

Since in the supreme state that is to be considered as the will of all nations, to which they ought to agree, if following the leadership of nature they use right reason, and since

⁶⁴ F. Grunert, ‘Absolutism(s): Necessary ambivalences in the political theory of Christian Wolff’, *Tijdschrift voor Rechtsgeschiedenis* 73 (2005), 141–52.

⁶⁵ Haakonssen, ‘Christian Wolff’, 1107.

the superior in the state is he to whom belongs the right over the actions of the individuals

[—] he can be considered the ruler of the supreme state who, following the leadership of nature, defines by right use of reason what nations ought to consider as law among themselves [—].⁶⁶

Wolff emphasized that the ruler of the greatest state was a fiction. Such a ruler was the hypothetical leader who could define by the right use of reason the law of nations that all nations should follow. Wolff's *civitas maxima* itself can be interpreted as an invention of reason. Indeed, Richard Tuck's remark that Wolff's treatise itself is the *civitas maxima* and that Wolff himself was the rector is convincing.⁶⁷ Since there was no mechanism for law in the greatest state, it was the task of scholars, also Wolff's task, to formulate the rules of the voluntary law. In other words, the greatest state and its rector were a very useful tool for Wolff in terms of deducing the voluntary law of nations.⁶⁸ In this way, the voluntary law of nations could form a coherent system whose principles were derived from the aim of the greatest republic — the happiness of the *civitas maxima*. Vattel's republican convictions and his insistence on the sovereignty and independence of states made it impossible for him to support Wolff's intellectualist idea of the state of the states.

Civilized Nations and the Enemies of Mankind

There has been much scholarly debate on whether Vattel, like Wolff, advocated a dichotomy between civilized and barbarous nations and whether this was a significant feature of his thought. Walter Rech has argued that Vattel advocated a hegemony of the civilized European nations.⁶⁹ Emmanuelle Tourme-Jouannet has questioned this view and pointed out that Vattel's law of nations was not intended and formulated in order to provide a backbone to the endeavour of colonial conquest.⁷⁰ Similarly, Ian Hunter has emphasized that Vattel was not a spokesman for colonial aims. Rather, his focus was intra-European and he aimed in the first place to draw the voluntary law of nations from the European state practice.⁷¹ As Pablo Kalmanovitz has shown in his chapter in this volume, Vattel did deploy nuanced distinctions to categorize savagery in Europe and elsewhere,

⁶⁶ Wolff, *Jus Gentium*, §22.

⁶⁷ Tuck, *Rights*, 188–9.

⁶⁸ Onuf, 'Civitas Maxima', 295.

⁶⁹ W. Rech, *Enemies of Mankind: Vattel's Theory of Collective Security* (Leiden: Martinus Nijhoff Publishers, 2013), 11.

⁷⁰ E. Tourme-Jouannet, 'Des Origines coloniales du droit international: à propos du droit des gens modern au 18^{ème} siècle', in P.-M. Dupuy/V. Chetail (eds.), *The Roots of International Law/Les fondements du droit international (Liber Amicorum Peter Haggemacher)* (Leiden, 2014), 649–671 ; in particular 655–61.

⁷¹ I. Hunter, 'Global justice and regional metaphysics: On the critical history of the law of nature and nations', in S. Dorsett and I. Hunter (eds.), *Law and Politics in British Colonial Thought* (Basingstoke, 2010), 11–29, at 19. For a convincing discussion of Rech's and Hunter's positions see Piirimäe, 'Men and monsters', 161–162.

but the issue was less about deploying a dichotomy between European and non-European. Rather Vattel tried to open up for a more diverse understanding of Europe.

It has been suggested that Wolff's contention about the superiority of the more civilized nations is in accordance with the claims of recent secondary literature that has regarded natural law theorists as Eurocentric and as theorists who justified colonialism.⁷² For example, Grotius has been accused of having had double standards, 'a dualistic or concentric conception of international society'.⁷³ According to Martin Wight, Grotius' society was a society established between civilized nations, which restricts the universality of Grotius' argument.⁷⁴ Richard Tuck has seen the role of Wolff differently. Tuck stressed that Pufendorf and Wolff should be seen as anomalous among the natural law thinkers in their relation to non-European nations. According to Tuck, Pufendorf and Wolff (both German) were against international punishment. Wolff's discussion of the question of conquering land from native peoples revealed a critical approach to Grotius' law of nations. Indeed, Wolff argued that families which 'have no settled abode but wander through uncultivated wilds' will have what he termed a 'mixed community holding' in the land.⁷⁵ I argue that in Wolff's case the appearance is deceptive. After all, his conviction was that the voluntary law of nations consisted of what had been approved by the more civilized nations. Wolff understood a cultured or civilized nation to consist of the following:

a cultural nation which cultivates intellectual virtues, consequently desires to perfect the intellect, and therefore develops the mind by training. And that is a civilized nation which has civilized usages or usages which conform to the standard of reason and politeness.⁷⁶

Wolff defined barbarous nations as nations that neglected the perfecting of intellect and cared little for intellectual virtues. Wolff argued that barbarous nations do not train their minds and only follow natural inclinations and aversions, on which most uncivilized usages depend.⁷⁷ Still, Wolff's intellectualism often led him to formulate conceptions of an international order that appear Eurocentric. Europeans could be regarded as representatives of civilized nations, whose reason

⁷² From the extensive literature see the historical chapters in S. J. Anaya, *Indigenous Peoples in International Law* (Oxford, 2004); and A. Anghie, *Imperialism Sovereignty and the Making of International Law* (Cambridge, 2005). For a rejection of this position see E. Tourme-Jouannet, 'Des Origines coloniales', 655–61.

⁷³ M. Wight, *System of States* (Leicester, 1977), 128.

⁷⁴ For this point see T. Christov, 'Liberal internationalism revisited: Grotius, Vattel, and the international order of states,' *The European Legacy* 10 (2005), 565.

⁷⁵ Tuck, *The Rights*, 188–189.

⁷⁶ Wolff, *Jus Gentium*, §53.

⁷⁷ Wolff, *Jus Gentium*, §52.

barbarous and uncivilized nations were to follow. Moreover, while he speaks of the Chinese as being prominent among the ‘more civilized nations’, he also noted that the Chinese had not made true advances in metaphysics or physics, not to speak of mathematics where they have not acquired the fame of Europeans.⁷⁸ Nevertheless, for Wolff the decisive criteria was whether the nation was civilized according to Wolff’s own standards mentioned above. It was not a question of the nation being European or non-European. Any state which strove to perfect itself qualified as civilized.

Vattel rejected a crude distinction between civilized and barbarian nations. He did not use such a distinction to justify European intervention in non-European states. For Vattel, the decisive criteria was sovereignty. According to him, states as sovereigns were free and equal, and therefore the law of nations was to be applied to all states in a reciprocal way.⁷⁹ However, there were exceptions. As discussed by Pärtel Piirimäe in his chapter of this volume and elsewhere, Vattel introduced the concepts of the enemy of mankind and monster as notions that could be applied in the international context. Monsters and enemies of mankind were not to be considered subjects of voluntary law, and the natural equality between nations ceased to exist between enemies of mankind and the civilized nations. Rights and duties deduced from the voluntary law of nations did not hold anymore.⁸⁰ An example of an enemy of a mankind was a state that attacked another without a formal declaration of war.⁸¹ Vattel’s distinction between monsters, enemies of mankind and civilized nations could be successfully applied to European as well as non-European nations. In this sense Vattel’s thought was not Eurocentric although there is no denying that he was concerned mainly with European state practice. According to Vattel, all states ought to perfect themselves and destroy barbarism through a process of civilizing. Vattel considered a nation that realised the duty of self-perfection – an obligation imposed by the nature of mankind – as a civilized nation. According to this minimalist notion of civilized Vattel could regard, for instance, Russia as an example of nation that had recently become civilized. Vattel recognised also that there was a danger that tyrants could rise among civilized European peoples.⁸² Once again, the question was not about being European or non-European.

Conclusion

⁷⁸ Wolff, *Jus Gentium*, §54. This said, passages in Wolff’s writing also criticize the capture of lands from the natives and reflect a negative view of punitive wars.

⁷⁹ Zurbuchen, ‘Vattel’s ‘Law of Nations’, 83.

⁸⁰ Piirimäe, ‘Men and monsters’, 163–4; Zurbuchen, ‘Emer de Vattel’, 279.

⁸¹ Zurbuchen, ‘Vattel’s ‘Law of Nations’, 83.

⁸² Piirimäe, ‘Men and monsters’, 163, 167, 176–7, 182.

Vattel wrote his *Law of Nations* for diplomats, ministers and European sovereigns. To secure their attention, he adopted a style of presentation that differed significantly from Wolff's. The success of Vattel's treatise was beyond his expectations. Vattel's departure from Wolff's method should not lead us to consider him as an anti-Wolffian thinker. The famous statement in the preface of the *Law of Nations* regarding his primary aim of making Wolff more approachable is to be taken seriously and not as a mere rhetorical framing of his book. The general philosophical framework of Vattel's thought remained true to Wolff. Vattel's law of nations relies on Wolff's principles and distinctions, most prominently on Wolff's conception of nations as moral persons. Vattel's political convictions led him away from the political theory of enlightened absolutism as advocated by Wolff's political and international thought. Wolff's notion of *civitas maxima* was incompatible with Vattel's understanding of independent, free and equal sovereign states. In sum, Vattel rejected what Wolff considered his main contribution to philosophy, namely, his method. Equally, Vattel dismissed Wolff's idea of *civitas maxima*, which scholars have considered Wolff's most original achievement. Still, Vattel managed to write a most original work, which owed a great debt to Wolff. Vattel detached himself from the Wolffian context, while still writing a Wolffian text. Vattel was much more influential outside of Germany in his own time than Wolff. His *Law of Nations* proved to be critical to the development of law of nations in the new states of North America. This could have been a point of transfer of the text from one context to another, by making the context of Wolff's philosophical writings obsolete for understanding the text.

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