

LL.M. Box  
PAPER 20

## International Law and International Revolution: Reconceiving the World

I want to think aloud about a question which is easy to state but very difficult to answer.

Why do we put up with it all?

That question reflects a dull pain, an anguish, an anger even, that many people feel in considering the state of the world. It would be uttered as a sentimental question, not expecting an answer, at least not expecting a practical answer. But let us, for a while, treat it as a question to be answered in practical terms.

Why do we put up with it all? Obviously it is a question which implies three other questions — and it is those implied questions that give rise to all the difficulty.

What exactly is it that so troubles us in the state of the world? What is the cause or origin of the things that trouble us? What could and should we do to change those things?

Let us consider a practical example.

You will have heard of the country called Nowhere, but you may not know much about it in detail. Nowhere is an independent sovereign state with a President, a government, a single political party called the Nowhere People's Party, a population of 12 million people, consisting of two ethnic groups — the Noes and the Wheres. The ratio of Noes to Wheres is two-to-one. The Nowhere People's Party is dominated by the Wheres, the smaller ethnic group. The Wheres arrived in the country in the early nineteenth century and soon came to dominate the indigenous No people.

Nowhere's economy has been a two-product economy — copper and tourism. The copper-mining industry is controlled by a multinational company centred in a country called Superpower One. The tourism industry is controlled by Where businessmen in cooperation with various foreign interests. The menial labour in tourism is provided by the No people. In recent years Nowhere has been flourishing as an off-shore financial centre, with foreign banks and holding companies establishing offices in the capital, Nowhere City. There has been a consumer boom, with great demand for imported video-tape recorders and cocaine. Next month there is to be a state-visit by Madonna Jackson, who is to be given the country's highest honour, for services to Nowenese culture.

Nowhere's immediate neighbour is No-man's-land, whose

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population consists almost entirely of No people. No-man's-land is a multi-party state with a Westminster-style parliament. It is a poorer country than Nowhere. It has a long-standing claim to the territory of Nowhere and supports a Nowenese Liberation Army which is seeking to overthrow the regime in Nowhere. The N.L.A. is also supported by a country called Superpower Two. A sum of money equivalent to one-third of its Gross Domestic Product is spent every year by each country on arms, which are obtained from Superpower One and Superpower Two and on the international arms market.

Nowhere has a written constitution containing a Declaration of Political and Social Rights. However, the President declared a State of Exception five years ago and the Declaration of Rights was suspended. The President's eldest son is the Chief Justice of the Supreme Court. His second son is Commander-in-Chief of the Nowhere Armed Forces. His youngest son is studying at Harford Business School.

I do not need to say much more. It is all very familiar. Nowhere is a member of many international organisations. It is also an object of interest to many international organisations, including the U.N. Security Council, the World Bank, the International Monetary Fund, leading international banks, Amnesty International, and the Church of Perpetual Healing, which has missionaries in Nowhere City, in the tourist resorts and in remote villages. The President's sister is an ardent Perpetual Healer.

You will not be surprised to hear that deforestation in the north of Nowhere has turned the fertile southern plain of No-man's-land into a virtual desert. Soil erosion in Nowhere is silting up the River Nouse which flows into No-man's-land, threatening a hydro-electric power-station on a tributary of the Nouse.

You react in one of two ways, when you come across news items about Nowhere and No-man's-land. Either — so what? Or — so why?

Those who react with *so what?* believe that the world is as it is, human nature is as it is, and human beings are as they are, corrupt or corruptible, sometimes decent, always long-suffering, patient of the miseries and follies of the world. And societies are as they are, some progressive and some not progressive, some successful and some not successful. So it has always been through all human history, and so, presumably, it will always be.

Those who react with *so why?* believe that *human beings are what they could be, not simply what they have been, and societies are systems*

*made by human beings for human survival and human prospering, not for human oppression and human indignity.*

I suppose that, from now on, I will be speaking to so-why people but hoping to be overheard by so-what people.

Let us make an abstraction of the world-situation of which Nowhere and No-man's-land are one small part. And we may thereby begin to answer the first of the three subordinate questions — what exactly do we object to in the present world situation?

Here is a possible short-list, containing five intolerable things.

(1) Unequal social development. That means that some human beings worry about the colour of the bed-sheets in their holiday-home in Provence or the Caribbean, while other human beings worry about their next meal or the leaking tin-roof of the hut which is their home.

(2) War and armaments. From time to time, human beings murder and maim each other in the public interest, by the dozen and by the million, and bomb each other's villages and cities to rubble. And, all the time, human beings make more and more machines for murdering and destroying in the public interest, and more and more machines to prevent other people from murdering and destroying in the public interest.

(3) Governmental oppression. In very many countries around the world, the ruling class are not servants of the people but enemies of the people, evil and corrupt and negligent and self-serving, torturing people, exploiting people, abusing people. And, in all countries, the people have to struggle to control the vanity and the obsessions of those who want to be their masters.

(4) Physical degradation. On the planet Earth are five billion human beings, one species of animal among countless other species of living things, a species which has taken over the planet, using the Earth's resources, irreversibly transforming the Earth as a physical structure and as a living system.

(5) Spiritual degradation. Human beings everywhere are being drawn into a single mass culture dominated by a crude form of capitalism, a mass culture which is stifling all competing values and all local cultures, a mass culture which is depraving human consciousness.

You may not like that list. You may worry about other things. You may want to challenge some item on my list, to defend something that I seem to be attacking.

You will have noticed that my list of five intolerable things consists of five clichés of so-called global anxiety. We have heard about them all

until we are sick and tired of them. The mass media of communication exploit them at regular intervals, enriching their everyday fodder with an occasional healthy supplement of moral fibre — the emaciated survivor of the concentration camp, the family sleeping in the street, the mutilated body, the starving baby, the napalmed countryside, the delirious crowd at the political rally or the rock concert, hooligans on the rampage, riot police with batons and water-cannon, drug addicts killing themselves slowly, dead fish floating on a polluted river, the television set in the mud-hut.

Banal images of a reality made banal. So-why made as tedious as so-what.

And, then again, you may object that, surely, we are not simply putting up with such things. On the contrary, a lot of effort is being devoted to facing up to such things, to alleviating them, even to solving them. There are dozens of organisations and foundations and charities and conferences and good-hearted individuals worrying about each and every one of them. Surely some part of our taxes and some part of our voluntary giving is going to deal with precisely such world social problems.

I will add that as a sixth cause of our anger — perhaps the most painful of all.

(6) Social pragmatism. We treat the symptoms of worldwide disorder, because we cannot, or dare not, understand the disease. We see the effects because we cannot, or will not, see the cause.

So that brings us to the second question. What is the origin or cause of the things we find intolerable?

You will say, especially if you are a so-what person, that we cannot comment on the causes of the situation of Nowhere and No-man's-land unless and until we know more of their territories and resources, their cultural characteristics, their history. Each is a sovereign independent state, with its own destiny to work out, its own possibilities, its own constraints. Who are we to know what is the best for them, let alone to do anything to bring about what is best for them?

I would ask you to notice three things about the two well-known unknown countries I have described, three features of their structural situation.

The first is that they are not very independent. The market-price of Nowenese copper is determined in London, where demand is related very directly to the general state of world manufacturing industry at any

particular time. Nowenese tourism depends on the international holiday companies which send their packaged tourists to fill the Nowenese hotels which have been built by foreign construction companies, using cement brought halfway round the world in ships controlled by foreign shipping-lines. The off-shore companies established in Nowhere City are there because taxes are low, because few questions are asked, because the climate is pleasant. They may leave as suddenly as they arrived. And the territory of No-man's-land, its physical environment, its climate even, depend on what is done in the territory of Nowhere. And even the minds of the Nowenese people are not their own. Their values and their wants are a function of forces far beyond their control — capitalism, foreign religions, international crime, world popular culture, militarism, materialism.

And, of course, Nowhere is not nowhere. It is everywhere. All the world is more or less Nowhere. Remember that the most economically successful countries in the world maintain their economies and their standard of living by selling goods and services to other countries. There must be other countries willing and able to buy. And even the most successful countries depend on the value of their currency, which depends on international economic relativities, as well as on internal economic realities. And they depend on investment which, particularly if they have a substantial budget deficit, may be foreign investment, created and terminable through decisions made elsewhere. And they depend on technology which may be originated and controlled abroad. And they depend on cultural tides which sweep across the world, shaping human wants and human expectations and human anxieties.

Every country, from the most prosperous to the least prosperous, is at an intersection of internalities and externalities. Our independence is a function of what we control and what we do not control.

The second thing to notice about Nowhere and No-man's-land is that their national identities do not coincide with their political identities. The No people in Nowhere feel more kinship with the No people in No-man's-land than with the Where-dominated state of which they are said to be nationals. The No people in No-man's-land feel that Nowhere and its incoming Where people have usurped some part of the No birthright. By the sound of it, they have taken the more valuable part of the traditional No territory, the part which contains the deposits of copper and the best beaches.

We know that this problem of national identity has been one of the

greatest social problems through all human history, giving rise to endless wars, endless struggle and suffering, endless oppression and exploitation. And, of course, it is very much with us today. It is hard to think of a single country in the world which is not significantly affected by one or more problems of national identity, including the United Kingdom of Great Britain and Northern Ireland.

The fact is that the political frontiers of the so-called nation-states have evolved under the pressure of forces other than merely those of national identity. And yet it is the political systems of the so-called nation-states which have, somehow, acquired the power to control the social development of all the peoples of the world, to determine the well-being of humanity, to determine the future of humanity.

The third thing to notice about the structural situation of Nowhere and No-man's-land is that their population consists of human beings. They share with us the species-characteristics of human beings. They think and want and hope and suffer and despair and laugh and weep as human beings. The mothers of their sons who are killed in their wars or their prisons or their hospitals have hearts as tender as the hearts of our mothers. Their children look to the future as our children look to the future. Whether we are so-what people or so-why people, we cannot stop ourselves from feeling *sympathy*.

And yet somehow we stop ourselves from feeling *responsibility* for them. They are aliens. As human beings, we know that we are *morally* responsible for all that we do, and do not do, to and for other human beings, a responsibility which we cannot think away, a responsibility which we owe to a billion human beings as we owe it to one human being. Every alien is also our neighbour. And yet as citizens, we have somehow been led to believe that we are not *socially* responsible for them — and that even our moral responsibility is qualified by their social alienation from us.

I have mentioned three structural features of the situation of two countries which are also structural features of the world situation. They are like geological fault-lines running through the world structure.

First, our single human destiny must nevertheless be pursued in isolated state-structures. Second, our national identity may be in conflict with our legal and political identity. Third, we are not able to take responsibility for human beings for whom we know we are responsible.

What I want to suggest to you is that there is a direct connection between the things which we find intolerable in the world situation and

these three structural faults in the world system.

And that direct connection is located nowhere else than in our own minds. It is not a matter of physics or biology or physiology or geography or history. It is a matter of philosophy — that is to say, of human self-conceiving and human self-creating.

What we have to discover is not how the present world structure came about as a story of historical events, but how the present world structure came to seem natural and inevitable. The question of causation I am considering is the question of what causes certain social and legal situations to be accepted within human consciousness. In particular, what is the origin of the consciousness which makes possible, which legitimates, which naturalises, the way in which we conceive of international society and international law?

Why do we put up with it all? We put up with it all because our consciousness contains ideas which cause us to put up with it all. Who makes our consciousness? We make our consciousness. And so, if we can change our consciousness of the world, we can change the world. It is as simple as that.

That is the revolution I am proposing to you. A reconstruction of our understanding of the world in which we live, a reconceiving of the human world, and thereby a remaking of the human world.

Let us treat it as a mystery to be solved, how we got into our present state of consciousness about international society and international law. If we treat it as a whodunnit for a moment, I can name one of the guilty parties and I can explain the *modus operandi*.

Whodunnit? It was *Emmerich de Vattel* in his study with an idea.

That sounds unlikely. One particular Swiss writer, writing in 1758, making a certain use of certain words. Let me put the evidence before you.

I can express the same thing almost as briefly, but in a more abstract form.

*Humanity, having been tempted for a while to conceive of itself as a society, chose instead to conceive of itself as a collection of states.*

State-societies have undergone a long process of internal social change since the end of the Middle Ages. That process has been conducted on two planes — the plane of history and the plane of philosophy. There has been the plane of historical events, power-struggles, wars and civil wars, revolutions, institutional change, legislative reforms, everyday politics. And there has been the plane of philosophy, as human consciousness has

sought ways to express what is and what might be in society, to legitimate what is, to bring about what might be.

On both planes — of history and philosophy — there have been two developments which have dominated all others in the evolving of the state-societies since the end of the Middle Ages: democratisation and socialisation. Democratisation and socialisation are words to describe two revolutions which have made the state societies we know today. So, returning to the mystery of international society, I can now reformulate the story as follows.

*International society, having chosen not to conceive of itself as a society, having chosen to conceive of itself as essentially different in kind from the state-societies in their internal aspect, has managed to avoid both forms of social revolution. The social world of humanity has been neither democratised nor socialised because humanity has chosen to regard its international world as an unsocial world.*

What have democratisation and socialisation meant within the state-societies?

*Democratisation* has meant that societies became able to conceive of themselves as composed of the people, as governed by the people, and as serving the people. *Socialisation* has meant that societies acquired the capacity to form socially their social purposes.

The development of the idea of *democracy* was a response to the greatly increasing energy of national societies at the end of the Middle Ages, as their economies and the international economy developed dramatically, as humanity rediscovered the self-ordering capacity of the human mind, and hence the world-transforming possibilities not only of philosophy but also of natural science and technology, and as new areas of the world were visited, offering new possibilities for the application of human energy, individual and social energy.

The response at the level of philosophy was to take up an old idea, the idea of *sovereignty*: the idea that a society is structurally a unity, and that that structure depends on an ultimate source of authority, an unwilled will, which is the ultimate source of social self-ordering, the source of law in society. The idea of *sovereignty* was structurally necessary to turn amorphous national societies into more and more complex self-organising systems.

But there was obviously an inherent anti-social danger in *sovereignty*, an anti-systemic, self-disabling uncertainty. Who was to be the sovereign? How was the sovereign to be controlled? The difficulty was

that the sovereign societies, as they developed, generated a particular sub-system which came to be known as *the state*.

The state came to be conceived as a public realm within society under the authority of the government. The public realm was loosely separated from the private realm, in which individuals remained, as it were, sovereign. But the state could determine for itself the limits of the public realm, by taking control of both physical power and law-making power. The development of democracy at the level of *philosophy* took place primarily in the development of various theories of social contract and in their sub-theory of constitutionalism. Sovereignty could be retained to provide the systematic structure of society, with its public realm under the government. But sovereignty would be reconceived to contain the idea of self-government. A society was to be a structure of *sovereignty*, but also a structure of self-government. And that structure came to be expressed in the new-old form of the so called *constitution*.

The development of democracy at the philosophical level was, of course, accompanied by dramatic developments at the historical level. Much blood was shed. Many suffered, in their person and their property, in the process of social change.

The new philosophy, of democratic constitutionalism, had the effect of increasing the actual power of those who controlled the power of government, who actually controlled the public realm. In other words, the constitution proved to be an excellent means of organising democratic power but it proved incapable by itself of *determining social purpose*, of deciding how the great power of the state-society would be used.

Society had to find some means, at the philosophical level and at the historical level, to organise, from day to day, social willing and acting. Democracy had to become something more than constitutional democracy. That was the historical function of *socialisation*.

Especially in the nineteenth century, society developed as a system for generating value. The public realm came to be not merely a realm of power but a realm of value. Through the development of a professional bureaucracy, through the reform of the legal system, through the reform of parliaments, through the universalisation of elementary education, through the reform of secondary education and the reform of the universities, through the development of mass communications (in public libraries, mass production of books, mass circulation newspapers, and then radio and television) — through such means society became not

merely a structure of political power but a system of shared social consciousness, a system for generating social values and social purposes. But communal values and social purposes would be generated not merely within the decision-making organs of government. They would be generated within the minds of the people. The social sharing of consciousness became the sharing of our most intimate consciousness. The application of science and technology to agriculture and industry meant that the increase in social wealth was able to keep ahead of the increase in population, so that there was more wealth to be distributed, so that there was the possibility of social improvement not merely as an ideal but as an actuality. Society became a means for human self-creating, human self-perfecting through human interaction. And we have seen the wonderful results in the improvement of the living conditions and the opportunities of the mass of the people in a number of countries.

The question is — what happened to the organising of the interaction between such societies, their international interaction, while all these developments were taking place internally?

What happened was that the sovereign was turned inside out and became the external manifestation of the society in question. What appeared on the international scene was not the totality of the evolved national societies. What appeared on the international scene was merely the internal *public realms* externalised. The internal public realms, the governments, were turned inside out like a glove.

Louis XIV is supposed to have said: *L'État, c'est moi* — *I am the state*, meaning that he was the embodiment of the French nation by being the embodiment of its public realm. He might have gone on to say: *Le monde, c'est nous, les états*, meaning that the international system should be regarded as consisting of the governments meeting each other externally.

The result was that we came to have an international system which was, and is, post-feudal society set in amber. Undemocratised. Unsocialised. Capable only of generating so-called *international relations*, in which so-called *states* act in the name of so-called *national interests*, through the exercise of so-called *power*, carrying out so-called *foreign policy* conducted by means of so-called *diplomacy*, punctuated by medieval entertainments called *wars* or, in the miserable modern euphemism, *armed conflict*. That is the essence of the social process of the international non-society.

It is as if the external life of our societies were still a reflection of the internal life of centuries ago, a fitful struggle among Teutonic knights or European barons or Chinese feudal lords or Japanese shoguns. It is as if Thomas Hobbes were the world's only social philosopher. It is as if there had never been Locke and Rousseau and Kant and Hegel and Marx, let alone Plato and Aristotle and Lao tzu and Confucius. It is as if the revolutions had never occurred — 1789 and 1917 and all the other dramatic and undramatic social revolutions.

Nowadays people believe that such an international system is natural and inevitable. Far from it. It is not necessarily natural and it was not simply inevitable. And this is where we get back to Emmerich de Vattel in his study. It is not difficult to unravel the story by which the misconceiving of international society was perpetrated. I will present it as a drama in five acts.

Act One. In the sixteenth century, a critical question for theologians and philosophers was the question of how there could be a law applying both to the nations of Europe and to the peoples of the lands which had been newly visited or revisited. It was necessary to reconsider the question, which had been familiar to ancient Greece and Rome and medieval Christendom, of whether there could be said to be a universal legal system. The idea was proposed, particularly in Spain and not for the first time in human history, that all humanity formed a sort of society and that the law governing the whole of humanity reflected that fact.

... international law has not only the force of a pact and agreement among men, but also the force of a law; for the world as a whole, being in a way one single State, has the power to create laws that are just and fitting for all persons, as are the rules of the international law.<sup>1</sup>

Francisco de Vitoria (1492-1546) took the view that the basis of a universal law for all human beings was found in natural reason, the rational character of human nature, which generated what he called a law of natural society and fellowship which binds together all human beings and which survives the establishment of civil power (*potestas*) over particular peoples (*gentes*). The rules of the law of nations were to be derived from natural law and from a 'consensus of the greater part of the whole world, especially in behalf of the common good of all.'<sup>2</sup>

Francisco Suarez (1548-1617) conceived of a moral and political unity of the human race.

The rational basis, moreover, of [the *ius gentium*, the law of nations] consists in the fact that the human race, into howsoever many different peoples and kingdoms it may be divided, always preserves a certain unity, not only as a species, but also a moral and political unity (as it were) enjoined by the natural precept of mutual love and mercy; a precept which applies to all, even to strangers of every nation.

Therefore, although a given sovereign state [*civitas*] commonwealth [*respublica*], or Kingdom [*regnum*] may constitute a perfect community in itself, consisting of its members, nevertheless each one of these states (*communitas*) is also, in a certain sense, and viewed in relation to the human race, a member of that universal society. . . .

Act Two. In the seventeenth century, Hugo Grotius (1583-1645) began the process of separating the law of nations from the law of nature, but he did so precisely in order to make clear to the new sovereigns that their will was not the sole test of what is right even if it was the practical basis of what is lawful under the law of nations. The nations are sovereign and independent of each other. But they are all equally governed by the law of nations which is the product of the common will of nations acting in the common interest of all nations. And they are governed by natural law, which is the product of human nature and hence indirectly is the work of God who made human nature to be as it is, including its sociability and its rationality. And they are governed by a moral order which comes directly from God.

But just as the laws of each state [*civisque civitatis*] have in view the advantage of that state, so by mutual consent it has become possible that certain laws should originate as between all states, or a great many states; and it is apparent that the laws thus originating had in view the advantage not of particular states, but of the great society of states [*magna universitatis*]. And that is what is called the law of nations, whenever we distinguish that term from the law of nature.<sup>4</sup>

Act Three. In the eighteenth century, an attempt was made by a German philosopher to construct a coherent and self-contained system of international law derived from natural law. That philosopher was Christian von Wolff (1679-1754). He proposed the view that the society of the whole human race continues to exist even after the creation of the nation-states.

If we should consider that great society, which nature has established among men, to be done away with by the particular societies, which men enter into, when they united into a state, states would be established contrary to the law of nature, inasmuch as the universal obligation of all toward all would be terminated; which assuredly is absurd. Just as in the human body individual organs taken together constitute one organ; so likewise individual men do not cease to be members of that great society which is made up of the whole human race, because several have formed together a certain particular society. And in so far as these act together as associates, just as if they were all of one mind and will; even so are the members of that society united, which nature has established among men. After the human race was divided into nations, that society which before was between individuals continues between nations.

. . . the purpose of the society therefore, which nature has established among all nations, is to give mutual assistance in perfecting itself and its condition, consequently the promotion of the common good by its combined powers.<sup>5</sup>

Act Four. And then a critical event occurred. The trouble with Wolff was that his book on international law was the last volume of a nine-volume work on natural law. And it was written in Latin. Only the learned-read it, among whom was Emmerich de Vattel (1714-67). He decided to communicate Wolff's Volume Nine to the world. But he decided not simply to publish a translation. He wrote his own book, using Wolff's ideas so far as he approved of them. On Wolff's essential theoretical point, Vattel explicitly parted company with Wolff.

Vattel agreed that there was a universal society of the human race governed by the law of nature, but the formation of the states made an important difference in the situation.

. . . when men have agreed to act in common, and have given up their rights and submitted their will to the whole body as far as concerns the common good, it devolves henceforth upon that body, the State [*L'Etat*], and upon its rulers, to fulfil the duties of humanity towards outsiders in all matters in which individuals are no longer at liberty to act and it

peculiarly rests with the state to fulfil these duties towards other States.<sup>6</sup>

On Wolff's idea of a society of the nations, Vattel said:

From the outset it will be seen that I differ entirely from M. Wolff in the foundation I lay for that division of the Law of Nations which he terms *voluntary*. M. Wolff deduces it from the idea of a sort of great republic [*civitas maxima*] set up by nature herself, of which all the Nations of the world are members. This does not satisfy me, and I find the fiction of such a republic neither reasonable nor well enough founded to deduce therefrom the rules of a Law of Nations at once universal in character and necessarily accepted by sovereign States. I recognise no other natural society among Nations than that which nature has set up among men in general. It is essential to every civil society [*civitas*] that each member should yield certain of his rights to the general body and that there should be some authority capable of giving commands prescribing laws and compelling those who refuse to obey. Such an idea is not to be thought of between Nations [*On ne peut rien concevoir, ni rien supposer de semblable entre les Nations*].<sup>7</sup>

Those words have determined the course of history. They have made the world we know. Vattel has used the sovereignty theory of the state to disprove the possibility of a natural society among states. It is fascinating to see, through the course of his book, the word *state* coming to have its modern double meaning. It comes to refer both to the internal organisation of the public realm of a society and to the whole of a society when seen externally.

Vattel's book was written in French, which was in those days the international language of the ruling class from London to St. Petersburg. The book was archetypally eighteenth-century — elegant, clear, rational, easy to understand, full of good sense and worldly wisdom. Vattel himself was the very model of an eighteenth-century gentleman — cultivated, leisured, occasionally leaving his study to take part in public affairs and diplomacy. And his book, unlike Wolff's, was read by everyone who mattered, was on the desk of every diplomat for a century or more. It was a book which formed the minds of those who formed

international reality, the international reality which is still our reality today.

Act Five. In the nineteenth century, natural law ceased to have any hold on the mind of most philosophers, let alone diplomats and politicians. Natural law was swamped by utilitarianism, positivism and marxism. Natural law was dead beyond resurrection.

Throughout the nineteenth century social and legal philosophers continued to emit streams of discordant ideas about the true nature of international law. They might have saved themselves the mental effort. Vattel-minus-natural-law filled comfortably the busy minds of those whose job it was to act internationally. And their seemingly rational reality became international society's actual reality.

The natural law framework of Vattel simply evaporated, leaving an international society consisting of so-called states interacting with each other in a social wasteland, subject only to a vestigial law created by their actual or presumed or tacit consent. International society would be, and would remain, an unsocial interstatal system.

It must have been an agreeable discovery for post-revolutionary ruling-classes when they found that, internationally, they could continue to deal with each other government-to-government, like in the good old days, free of the encumbrances of democracy and socialisation, and yet, oddly enough, sustained in the atavism of a permanent international *old regime* by such famously progressive words as *sovereignty* and *freedom* and *equality*.

In the course of the nineteenth century, the *law of nations* came to be known as *international law*, giving a veneer of spurious universalism to a law which knew itself now to be merely inter-statal.<sup>8</sup> The voice of invincible Anglo-American common sense became the representative voice of self-misconceiving international society and its law.

International law consists in certain rules of conduct which modern civilised states regard as binding on them in their relations with one another with a force comparable in nature and degree to that binding the conscientious person to obey the laws of his country, and which they also regard as being enforceable by appropriate means in case of infringement.<sup>9</sup>

Late in the nineteenth century there came to be newly unified and newly powerful states, bringing an immense increase of economic and political and military energy into an international system which was



undeveloped, unsophisticated, unable to socialise the overwhelming volume of the new social energy. We have lived with the consequences in the twentieth century. We are living with the intolerable consequences today.

It is a speculation which is not only of intellectual interest. It is a might-have-been of history with a significance which is still practical. If Christian Wolff had written in simple lucid French like Vattel, or in excited and exciting French like that other Swiss citizen of great influence, Jean-Jacques Rousseau, the world's conception of itself might have been fundamentally different, the history of the world might have been different, the story of the twentieth century might have been different.

Instead, we have the world as it is, a human world which human beings in general think is natural and inevitable but which requires each of us to be two people — with one set of moral judgments and social aspirations and legal expectations within our own national society, and another set of moral judgments and social aspirations and legal expectations for everything that happens beyond the frontiers of our national society.

And the post-Vattel ethos which supports this wretched spiritual and psychological dislocation has turned itself into an articulated system which is all-too-familiar. I will call it the *old regime* of the human world and of its law. I will epitomise it in eight principles. And then, finally and equally briefly, I will put before you a *new view* of the human world and its law.

The old regime, which subtends everybody's everyday view of the human world and its law, can be stated as follows:

1. The human world consists of a collection of states, approximately one hundred and seventy-five of them, together with a number of inter-governmental organisations (so-called international organisations).
2. International law is made by and for the states and international organisations, which are the only legislators and the only subjects of international law.
3. Individual human beings and non-governmental entities of all kinds, including industrial and commercial enterprises, are not subjects of international law.
4. International law organises the interaction of the states, that is to say, the interaction of their public realms, the governmental aspect of

their activity.

5. Other international transactions are a matter for international law only in so far as they involve action by governments, either international action, or consequential internal action.
6. The internal realms of the state are independent of each other, protected by a formidable series of defensive concepts — sovereignty, the sovereign equality of states, sovereignty over territory, domestic jurisdiction, political independence and territorial integrity, non-intervention. From behind these conceptual barricades, each state is free to formulate its own policies and pursue its own interests.
7. States are thus, as Vattel proposed, inherently free and equal and independent sovereigns. International law is accordingly conceived as an act of sovereignty by which states choose to accept limits on the exercise of their natural freedom.
8. The only international responsibility for governmental activity is thus a form of legal responsibility, called state responsibility, for a breach by one state of another state's rights. And that breach takes one of three forms — a breach of territorial rights (property wrong), a breach of a general duty owed to another state (delictual wrong), a breach of a treaty (contractual wrong).

Beyond this, there is no systematic conception of an international society at all — no international social purposes, no international morality, no international moral responsibility, no international social accountability, no systematic international economy, no systematic international culture. And the people of the world do not govern themselves internationally. If anything, they have only a marginal effect on the international activity of their own government.

International social progress comes, if at all, as an incidental external consequence of internal activities, and as a more or less random outcome of so-called development assistance, and, especially, as a by-product of the wealth-creating and wealth distributing effects of international capitalism, including rudimentary cooperation among some of the governmental managers of international capitalism (in G.A.T.T., the I.M.F., O.E.C.D., the European Community, the Group of Seven).

What can we do about it? What should we do about it?

You will not be surprised to hear that the solution I propose is conceptual. I do not propose institutional change, whether root-and-branch or Fabian. I do not propose that we take up arms to expropriate the expropriators. I do not propose that we use the power of the people

to disempower the powerful.

What we will take up is not the power of arms but the power of ideas. We will let our best ideas of society and law flow into our imagining and our understanding of the human world. By *best ideas* I mean ideas that are philosophically fruitful, psychologically empowering, morally inspiring, practically effective. Within ourselves we can find unrealised best ideas of society and law which are an inheritance secreted from more than five thousand years of intense social experience. We will, at last, take up our best ideas of society and law. We will make them into humanity's ideal. We will choose them as the programme of a revolution.

I will put a *new view of the human world and its law* also in the form of eight principles.

1. International society is the society of the whole human race and the society of all societies. In other words, everything human that happens in the world is part of the social process of international society. We, the people, are members of international society — as are all the countless subordinate societies that we form, including, among many others, the family, the industrial and commercial corporation, the state-societies, and non-governmental and intergovernmental international organisations.
2. International society has a constitution like every other society, which carries the systematic structure of society from its past to its future, determining the way in which all social power is created and distributed throughout the world.
3. The state-societies and intergovernmental organisations are constitutional organs of international society, with special functions and powers in relation to the world public-realm, functions and powers delegated by international society under the international constitution and under international law.
4. International law is the law of international society, the true law of a true society. It is made, like all other law, through the total social process of international society, in which we all participate, the people of the world and all our subordinate societies, including the state-societies.
5. The constitution of international society, like any other constitution, is not finally fixed. It is a dynamic thing, liable to unceasing change under the pressures of international society, constantly reformed by the ideas and aspirations of humanity. The era of unsocial interstitial society is ending — the era of international relations, state-power,

foreign policy, diplomacy, and war, the era of the old international law. The era of social international society has begun.

6. The responsibility of the state-societies, as organs of international society, is not merely a matter of property, delict, and contract. Nor is their responsibility merely legal responsibility. Their primary responsibility is for abuse of power. All governments everywhere are socially and legally responsible for the way in which they exercise the powers delegated to them by international society. And the same is true of all those individuals and societies, including industrial and commercial corporations, which exercise social power affecting human survival and prospering.
7. International law, like all law, is inherently dynamic — developing structurally and systematically, developing substantively, flowing into new areas, embodying and responding to the social development of the world — human rights law, environment law, natural resources law, sea law, space law, telecommunications law, intellectual property law, economic law of all kinds, and international public law to control the use and abuse of public power.
8. International society and international law embody the social purposes which humanity chooses for itself and which are realised in the social power, legal and non-legal social power, which human beings exercise with a view to human survival and prospering. Our consciousness extends throughout the world passing freely across political frontiers. Our sympathy extends to the whole of humanity. Our moral and social responsibility extends to the whole of humanity and to the whole of the physical world which we transform by our actions. But our social ideals and our social possibilities are trapped and stifled within the mental structures which divide and disable the human world, structures which human consciousness has made and which human consciousness can remake. The necessary revolution will free human consciousness from its self-subjection, from its self-disabling, from its self-destroying, allowing our ideas and our ideals, as well as our willing and our acting, to include the whole world, the physical world and the human world. The necessary revolution will leave us free to make and remake a human society which does not abolish our national societies but embraces and completes them. The necessary revolution is a world revolution. The world revolution is a revolution not on the streets but in our minds.

## Notes

1. Francisco de Vitoria, *Concerning Civil Power* (1528), §21; tr. G.L. Williams, in James Brown Scott, *The Spanish Origin of International Law*, (Oxford and London, 1934) App. C, p. xc.
2. *On the Indians lately discovered* (1532) III. 4; tr. J.P. Bate, in James Brown Scott, op. cit., App. A, p. xxxviii.
3. Francisco Suarez, *On Laws and God the Lawgiver* (1612) Bk. II, ch. XIX.9, tr. Williams, Brown, and Waldron (Oxford and London, 1944), pp. 348-9. The passage continues as follows:

Consequently, such communities have need of some system of law whereby they may be directed and properly ordered with regard to this kind of intercourse and association; and although that guidance is in large measure provided by natural reason, it is not provided in sufficient measure and in a direct manner with respect to all matters; therefore, it was possible for certain special rules of law to be introduced through the practice of these same nations. For just as in one state or province law is introduced by custom, so among the human race as a whole it was possible for laws to be introduced by the habitual conduct of nations. (loc. cit., p. 349.)

4. Hugo Grotius, *Of the Law of War and Peace* (1625) Prolegomena, 17. Edition of 1646, tr. F.W. Kelsey (Oxford and London, 1925) p.15. The continuation of Grotius' argument should also be noticed:

Many hold, in fact, that the standard of justice which they insist upon in the case of individuals within the state is inapplicable to a nation or to a ruler of a nation. The reason for this error lies in this, first of all, that in respect to law they have in view nothing except the advantage which accrues from it, such advantage being apparent in the case of citizens who, taken singly, are powerless to protect themselves. But great states, since they seem to contain in themselves all things required for the adequate protection of life, seem not to have need of that virtue which looks toward the outside, and is called justice . . .

If no association of men can be maintained without law, as Aristotle showed by his remarkable example drawn from brigands, surely also that association which binds together the

human race, or binds many nations together, has need of law; this was perceived by him who said that shameful deeds ought not to be committed even for the sake of one's country. Aristotle takes sharply to task those who, unwilling to allow anyone to exercise authority over themselves except in accordance with law, yet are quite indifferent as to whether foreigners are treated according to law or not. . . Bravery itself the Stoics defined as virtue fighting on behalf of equity. Themistius in his address to Valens argues with eloquence that kings who measure up to the idea of wisdom make account not only of the nation which has been committed to them, but of the whole human race, and that they are, as he himself says, not 'friends of the Macedonians' alone, or 'friends of the Romans',\* but 'friends of mankind'. The name of Minos became odious to future ages for no other reason than this, that he limited his fair-dealing to the boundaries of his realm. (Ibid., 21, 23; loc. cit., pp. 17-18.)

(\* Grotius' other notes cannot be reproduced here, but at this point he characteristically notes: 'Marcus Aurelius exceedingly well remarks: "As Antoninus, my city and my country are Rome; as a man, the world."' Porphyry, *On abstaining from Animal Food*, Book III: "He who is guided by reason keeps himself blameless in relation to his fellow-citizens, likewise also in relation to strangers and men in general; the more submissive to reason, the more godlike a man is."')

5. Christian von Wolff, *The Law of Nations treated according to a Scientific Method* (1749), Prolegomena, s. 7. Edition of 1764, tr. J.H. Drake (Oxford and London, 1934), p. 11. Wolff also argues as follows:

Nature has established society among all nations and binds them to preserve society. For nature herself has established society among men and binds them to preserve it. Therefore, since this obligation, as coming from the law of nature, is necessary and immutable, it cannot be changed for the reason that nations have united into a state. Therefore society, which nature has established among individuals, still exists among nations and consequently, after states have been established in accordance with the law of nature and nations

have arisen thereby, nature herself also must be said to have established society among all nations and bound them to preserve society . . .

Since nature herself has established society among all nations, in so far as she has established it among all men, as is evident from the demonstration of the preceding proposition, since, moreover, the purpose of natural society, and consequently of that society which nature herself has established among men, is to give mutual assistance in perfecting itself and its condition, the purpose of the society therefore, which nature has established among all nations, is to give mutual assistance in perfecting itself and its condition, consequently the promotion of the common good by its combined powers. (Ibid. ss. 7, 8; loc.cit., pp. 11-12.)

6. Emerich de Vattel, *The Law of Nations or the Principles of Natural Law applied to the Conduct and to the Affairs of Nations and Sovereigns* (1758), tr. C.G. Fenwick (Washington, 1916), Introduction, pp. 5-7.

Other parts of Vattel's argument expose the tension between the universalism of the law of nature and the incipient individualism of the law of nations:

Such is man's nature that he is not sufficient unto himself and necessarily stands in need of the assistance and intercourse of his fellows, whether to preserve his life or to perfect himself and lives as befits a rational animal. . . From this source we deduce a natural society existing among all men. The general law of the society is that each member should assist the others in all their needs, as far as he can do so without neglecting his duties to himself --- a law which all men must obey if they are to live conformably to their nature and to the design of the common Creator; a law which our own welfare, our happiness, and our best interests should render sacred to each of us. Such is the general obligation we are under of performing our duties; let us fulfil them with care if we would work wisely for our greatest good.

It is easy to see how happy the world would be if all men were willing to follow the rule we have just laid down. On the other hand, if each man thinks of himself first and foremost, if he

does nothing for others, all will be alike miserable. Let us labour for the good of all men; they in turn will labour for ours, and we shall build our happiness upon the firmest foundations.

Since the universal society of the human race is an institution of nature itself, that is, a necessary result of man's nature, all men of whatever condition are bound to advance its interests and to fulfil its duties. No convention or special agreement can release them from the obligation. When, therefore, men unite in civil society and form a separate State or Nation they may, indeed, make particular agreements with others of the same states, but their duties towards the rest of the human race remain unchanged; but with this difference, that when men have agreed to act in common, and have given up their rights and submitted their will to the whole body as far as concerns the common good, it devolves henceforth upon that body, the state, and upon its rulers, to fulfil the duties of humanity towards outsiders in all matters in which individuals are no longer at liberty to act, and it peculiarly rests with the state to fulfil these duties towards other states. We have already seen (s. 5) that men, when united in society, remain subject to the obligations of the Law of Nature. This society may be regarded as a moral person, since it has an understanding, a will, and a power peculiar to itself; and it is therefore obliged to live with other societies or States according to the laws of the natural society of the human race, just as individual men before the establishment of civil society lived according to them; with such exceptions, however, as are due to the difference of subjects.

The end of the natural society established among men in general is that they should mutually assist one another to advance their own perfection and that of their condition; and Nations, too, since they may be regarded as so many persons living together in a state of nature, are bound mutually to advance this human society. Hence the end of the great society established by nature among all nations is likewise that of mutual assistance in order to perfect themselves and their condition.

The first general law, which is to be found in the very end of of

the society of Nations, is that each Nation should contribute as far as it can to the happiness and advancement of other Nations.

But as its duties towards itself clearly prevail over its duties towards others, a Nation owes to itself, as a prior consideration, whatever it can do for its own happiness and advancement. . . .

Since Nations are free and independent of one another as men are by nature, the second general law of their society is that each Nation should be left to the peaceable enjoyment of that liberty which belongs to it by nature. . . .

In consequence of that liberty and independence it follows that it is for each Nation to decide what its conscience demands of it, what it can or can not do; what it thinks well or does not think well; and therefore it is for each Nation to consider and determine what duties it can fulfil towards others without failing in its duty towards itself. Hence in all cases in which it belongs to a Nation to judge the extent of its duty, no other Nation may force it to act one way or another. . . .

Since men are by nature equal, and their individual rights and obligations the same, as coming equally from Nature, Nations, which are composed of men and may be regarded as so many free persons living together in a state of nature, are by nature equal and hold from nature the same obligations and the same rights. . . .

Since Nations are free, independent, and equal, and since each has the right to decide in its conscience what it must do to fulfil its duties, the effect of this is to produce, before the world at least, a perfect equality of rights among Nations in the conduct of their affairs and in the pursuit of their policies. The intrinsic justice of their conduct is another matter which is not for others to pass upon finally; so that what one may do another may do, and they must be regarded in the society of mankind as having equal rights. (Ibid, Introduction; op. cit., pp. 5-7.)

7. Ibid., Preface; loc. cit., p. 9a.

8. Jeremy Bentham (1748-1832) had proposed the change of name in his

*Principles of Morals and Legislation* (1790), ed. 1823, vol. II, p. 256. Cf. Bentham's footnote in 1823 ed.:

The word *international*, it must be acknowledged, is a new one; though, it is hoped, sufficiently analogous and intelligible. It is calculated to express, in a more significant way, the branch of the law which goes commonly under the name of the *law of nations*: an appellation so uncharacteristic, that, were it not for the force of custom, it would seem rather to refer to internal jurisprudence. The chancellor d'Aguesseau has already made, I find, a similar remark: he says that what is commonly called *droit des gens*, ought rather to be termed *droit entre les gens* (*Oeuvres* (ed. 1773) vol. II, p. 337).

The substance of Bentham's proposal had also been anticipated by Zouche in his *Juris et iudicii fecialis, sive iuris inter gentes* (1650), explicitly substituting the phrase *iuris inter gentes* for the traditional *iuris gentium*. See Wheaton, *Elements of International Law*, Lawrence's 2nd annotated edition (1864) pp. 19-20, where Lawrence's note traces the gradual acceptance of Bentham's proposal in English and other languages.

9. William Edward Hall, *A Treatise on International Law* (Oxford, 1880) p. 1. Cf. L. Oppenheim, *International Law — a Treatise* (1905):

Since the Law of Nations is based on the common consent of States as sovereign communities, the member States of the Family of Nations are equal to each other as subjects of International Law. States are by their nature certainly not equal as regards power, extent, constitution, and the like. But as members of the community of nations they are equals, whatever differences between them may otherwise exist. This is a consequence of their sovereignty and of the fact that the Law of Nations is a law between, not above, the States. (Ch. II.14, at pp. 19-20.)