

**Title:** *The Law of Nations Shall be Founded on a Federation of Free States"*

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Peoples, as states, like individuals, may be judged to injure one another merely by their coexistence in the state of nature (i.e., while independent of external laws). Each of them, may and should for the sake of its own security demand that the others enter with it into a constitution similar to the civil constitution, for under such a constitution each can be secure in his right. This would be a league of nations, but it would not have to be a state consisting of nations. That would be contradictory, since a state implies the relation of a superior (legislating) to an inferior (obeying), i.e., the people, and many nations in one state would then constitute only one nation. This contradicts the presupposition, for here we have to weigh the rights of nations against each other so far as they are distinct states and not amalgamated into one.

When we see the attachment of savages to their lawless freedom, preferring ceaseless combat to subjection to a lawful constraint which they might establish, and thus preferring senseless freedom to rational freedom, we regard it with deep contempt as barbarity, rudeness, and a brutish degradation of humanity. Accordingly, one would think that civilized people (each united in a state) would hasten all the more to escape, the sooner the better, from such a depraved condition. But, instead, each state places its majesty (for it is absurd to speak of the majesty of the people) in being subject to no external juridical restraint, and the splendor of its sovereign consists in the fact that many thousands stand at his command to sacrifice themselves for something that does not concern them and without his needing to place himself in the least danger.<sup>7</sup> The chief difference between European and American savages lies in the fact that many tribes of the latter have been eaten by their enemies, while the former know how to make better use of their conquered enemies than to dine off them; they know better how to use them to increase the number of their subjects and thus the quantity of instruments for even more extensive wars.

When we consider the perverseness of human nature which is nakedly revealed in the uncontrolled relations between nations (this perverseness being veiled in the state of civil law by the constraint exercised by government), we may well be astonished that the word "law" has not yet been banished from war politics as pedantic, and that no state has yet been bold enough to

advocate this point of view. Up to the present, Hugo Grotius, Pufendorf, Vattel, and many other irritating comforters have been cited in justification of war, though their code, philosophically or diplomatically formulated, has not and cannot have the least legal force, because states as such do not stand under a common external power. There is no instance on record that a state has ever been moved to desist from its purpose because of arguments backed up by the testimony of such great men. But the homage which each state pays (at least in words) to the concept of law proves that there is slumbering in man an even greater moral disposition to become master of the evil principle in himself (which he cannot disclaim) and to hope for the same from others. Otherwise the word "law" would never be pronounced by states which wish to war upon one another; it would be used only ironically, as a Gallic prince interpreted it when he said, "It is the prerogative which nature has given the stronger that the weaker should obey him."

States do not plead their cause before a tribunal; war alone is their way of bringing suit. But by war and its favorable issue, in victory, right is not decided, and though by a treaty of peace this particular war is brought to an end, the state of war, of always finding a new pretext to hostilities, is not terminated. Nor can this be declared wrong, considering the fact that in this state each is the judge of his own case. Notwithstanding, the obligation which men in a lawless condition have under the natural law, and which requires them to abandon the state of nature, does not quite apply to states under the law of nations, for as states they already have an internal juridical constitution and have thus outgrown compulsion from others to submit to a more extended lawful constitution according to their ideas of right. This is true in spite of the fact that reason, from its throne of supreme moral legislating authority, absolutely condemns war as a legal recourse and makes a state of peace a direct duty, even though peace cannot be established or secured except by a compact among nations.

For these reasons there must be a league of a particular kind, which can be called a league of peace (*foedus pacificum*), and which would be distinguished from a treaty of peace (*pactum pacis*) by the fact that the latter terminates only one war, while the former seeks to make an end of all wars forever. This league does not tend to any dominion over the power of the state but only to the maintenance and security of the freedom of the state itself and of other states in league with it, without there being any need for them to submit to civil laws and their compulsion, as men in a state of nature must submit.

The practicability (objective reality) of this idea of federation, which should gradually spread to all states and thus lead to perpetual peace, can be proved. For if fortune directs that a powerful and enlightened people can make itself a republic, which by its nature must be inclined to perpetual peace, this gives a fulcrum to the federation with other states so that they may adhere to it and thus secure freedom under the idea of the law of nations. By more and more such associations, the federation may be gradually extended.

We may readily conceive that a people should say, "There ought to be no war among us, for we want to make ourselves into a state; that is, we want to establish a supreme legislative, executive, and judiciary power which will reconcile our differences peaceably." But when this state says, "There ought to be no war between myself and other states, even though I acknowledge no supreme legislative power by which our rights are mutually guaranteed," it is not at all clear on what I can base my confidence in my own rights unless it is the free federation, the surrogate of the civil social order, which reason necessarily associates with the concept of the law of nations--assuming that something is really meant by the latter.

The concept of a law of nations as a right to make war does not really mean anything, because it is then a law of deciding what is right by unilateral maxims through force and not by universally valid public laws which restrict the freedom of each one. The only conceivable meaning of such a law of nations might be that it serves men right who are so inclined that they should destroy each other and thus find perpetual peace in the vast grave that swallows both the atrocities and their perpetrators. For states in their relation to each other, there cannot be any reasonable way out of the lawless condition which entails only war except that they, like individual men, should give up their savage (lawless) freedom, adjust themselves to the constraints of public law, and thus establish a continuously growing state consisting of various nations (*civitas gentium*), which will ultimately include all the nations of the world. But under the idea of the law of nations they do not wish this, and reject in practice what is correct in theory. If all is not to be lost, there can be, then, in place of the positive idea of a world republic, only the negative surrogate of an alliance which averts war, endures, spreads, and holds back the stream of those hostile passions which fear the law, though such an alliance is in constant peril of their breaking loose again.

*Furor impius intus . . . fremit horridus ore cruento* (Virgil).