Spatialisations of Justice in the Law of Nature and Nations:  
Pufendorf, Vattel, and Kant

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Much recent historical discussion of the early modern law of nature and nations — that genre of texts conventionally labeled *de jure naturae et gentium* — is informed by logics of attack and defence regarding its relation to European colonialism and imperialism. The law of nature and nations is attacked by some for housing ‘Eurocentric’ cultural and political doctrines that were in some way complicit with the expansionist activities of missionaries, trading companies, and imperial states.¹ It is defended by others who claim that at least some of its versions contained the global normative resources needed to condemn such activities, whether on the basis of a universal natural-law morality,² or a cosmopolitan international law containing a principle of justice common to both European and non-European peoples.³ Despite their occasional internecine conflicts, the two positions share the fundamental assumption that a global spatialisation of justice exists in principle — that there is a universal normativity isomorphic with the global distribution of peoples — and differ only over the question of whether the law of nations and nations succeeded in realising this.

The existence of this shared assumption is shown by the fact that often the same writer will both attack and defend the law of nature and nations: attacking those versions whose particularistic (‘Eurocentric’) conceptions of justice are supposed to have permitted its complicity with colonialism and imperialism; and defending those versions whose global conception of right supposedly made it possible to include European and non-European peoples within a single global normative space. Some scholars, often working in the Catholic natural law tradition, thus posit a properly cosmopolitan *jus gentium* based in a universalistic early modern *jus naturalism*, arguing that this was then rendered state-centric and imperialist with the rise of a ‘positivist’ legal culture during the nineteenth century.\(^4\) Others, operating with (de facto Protestant) Kantian philosophy and philosophical history, argue that while a timeless and global principle of right was only capable of distorted (state-centric) realisation in early modern forms of *jus gentium*, history itself operates to unfold this principle in ever more global forms, as we can see in Kant’s own ‘universal history’ of a cosmopolitan international legal order.\(^5\)

In what follows, I shall argue that such attempts to write the history of the law of nature and nations — by including it within a global conception of justice and a universal history of its development — are untenable. Three initial considerations will guide our path. First, the law of nature and nations cannot be straightforwardly included in a universal ethics and global history, as *jus gentium* discourses have


themselves been responsible for the spatialisation and historicisation of ethical and juridical norms, making even universal ethics and global history into their creature. These spatialisations and temporalisations of norms were always based in particular European intellectual cultures, among the most important of which were neo-Aristotelian and later neo-Kantian moral and political philosophies. This raises the prospect that the critical histories of *jus gentium* incorporating these philosophies are themselves simply modern variants of the law of nature and nations itself.

Second, the intellectual cultures in which these spatialisations and historicisations were grounded — particularly the rival moral anthropologies, cosmologies and cosmographies that lie at their heart — were not only regional to Europe but were regional within Europe, as they assumed different and often opposed forms in regions divided along religious, cultural and political lines. Even, or perhaps especially the most ‘universal’ forms of *jus gentium* — such as the neo-scholastic *jus naturalist* universalism based on the Aristotelian anthropology of man’s ‘rational and sociable nature’, or Kant’s cosmopolitan justice based on a community of pure intelligences — thus display a distinctively regional European character, both in relation to each other, and to whatever non-European anthropologies and cosmologies might lie outside them. This raises the possibility that while the early modern law of nature and nations did not reach beyond the cultural borders of Europe, it was not ‘Eurocentric’ in the pejorative sense of failing to actualise a universal norm of justice within a global history. This is in part because the cultural borders of Europe enclosed no intellectual or moral core around which Europe could be ‘centric’, only archipelagoes of conflicting regional religious, political and juridical cultures. It is also because the ‘universal’ normative cultures that have purported to measure the particularism of European *jus gentium* against a global justice and history are

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themselves among this conflicting array, so that the ‘world’ outside Europe is not a unified normative or historical cosmos.

Third, the different ways in which particular *jus gentium* discourses spatialised and historicised justice depended not only on the diverse intellectual cultures that informed them, but also on a diversity of programs — religious, political, economic — whose interests anchored these discourses in concrete historical contexts. These programs included the use of the neo-scholastic law of nature and nations to provide a theocratic reception-context for the positive legal orders of early modern European confessional states; the development of a ‘Hobbesian’ natural-law political philosophy as part of a program to secularise and territorialise the early modern European state; and the use of a modified (rationalistic) neo-scholastic natural law as the basis for a *jus gentium* dedicated to regulating war and peace in a European ‘society of nations’. Among these programs we do indeed find specifically colonialist ones, such as Vitoria’s adaptation of ‘universal’ Thomistic natural law — with its Aristotelian moral anthropology — as a theological means of justifying and regulating the Spanish Catholic religious and military expansion in South America. For the reasons mentioned in the preceding paragraph, however, underlying none of these cases, including the last one, do we find a universal principle of justice, about which it might be said that it was distorted or subverted through its attachment to particularistic European religious, political or economic interests. If there is no global philosophical history, characterised by the temporal unfolding of a universal norm, then we will not be able to characterise the programmatic interests in which *jus gentium* discourses were anchored as distorting (ideologising) and limiting their otherwise rational form and universal scope. This suggests the need to abandon universal philosophical history as the frame for writing the history of the law of

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nature and nations, and for deploying a contextualist historiography. Such a historiography will treat the ‘interested’ character of *jus gentium* discourses not as the source of their ideological distortion but as the principle of their anchorage in historical reality and as the key to their historical understanding.

In order to explore these possibilities — and to avoid holding up *jus gentium* discourses for blame or praise on the basis of a global justice and universal history that is foreign to their intellectual constitutions and cultural-political contexts — then it will be necessary to approach particular *jus gentium* discourses along two other methodological paths: firstly, via a pluralistic empirical history of the intellectual infrastructure — the diverse philosophical anthropologies, cosmologies and cosmologies — informing these discourses; and, secondly, through a contextual account of the larger cultural and political interests that these discourses were articulated to address. This will not result in a global philosophical history of the law of nature and nations centred on the (negatively or positively) exemplary relation between European and non-European peoples. Rather it will issue in a local historical mapping of diverse European spatialisations of justice serving a variety of political, religious, military and economic programs, among which will be found programs for the colonisation of non-European lands. This is the kind of account sketched in the discussions of Pufendorf, Vattel, and Kant in the body of the paper. Before entering these early modern intellectual thickets, though, it is necessary to say something about how they have been seen from above, by those viewing them from the heights of nineteenth-century imperialism and twentieth-century postcolonialism.

**Decentering Eurocentrism**

A good deal of the academic discussion claiming the imperialist origins and character of the law of nature and nations takes place under the aegis of mid to late twentieth-century decolonising and postcolonial cultural politics. For the most part this discussion is grounded in social-theoretic, philosophical, or philosophical-historical disciplines, as distinct from either contextual historiography or historical ethnography.\(^{11}\) Despite the variety of empirical topics that it takes under its wing, this

\(^{11}\) On the need to replace universalist philosophical history with contextually specific historical ethnographies in order to understand colonial encounters, see John L. Comaroff and Jean Comaroff, *Ethnography and the Historical Imagination* (Boulder: Westview Press, 1992). For an exemplary instance of the combination of contextual historiography with ethnography, see J. G. A. Pocock, ‘Law, Sovereignty and History in a Divided Culture: the
discussion is unified by a tight body of claims and arguments. Centrally, it is claimed that the early modern law of nature and nations originated with the European expansion into the non-European world for which it provided the ideological justifications. The core intellectual components of *jus naturae et gentium* were thus ideas or doctrines declaring the intellectual and moral superiority of European nations over non-European ones, as a means of disguising hence facilitating the cultural and political domination of the former over the latter. Pre-eminent and continuous among these ideas is the identification of certain specifically European cultural and political concepts — state sovereignty, agricultural or commercial society, the rule of law — with the perfection of human civilisation. In allowing non-European peoples to be viewed as uncivilised (savage, barbarous) in these regards, this central *jus gentium* idea impaired their rights — or sometimes excluded them from the juridical society of nations altogether — thereby showing the effectivity of *jus gentium* theory in imperialist practice and displaying its indelibly Eurocentric character.

The philosophical underpinnings for this body of arguments differ between writers, but within a narrow range, resulting in much overlapping. Those writers advocating the self-determination rights of postcolonial or stateless nations tend to draw on anti-statist, solidarist and associationalist doctrines. While the ultimate source of these doctrines lies in Catholic natural-law conceptions of self-determining moral communities, they are typically mediated via twentieth-century sociologies and

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12 A founding statement is provided in Charles Henry Alexandrowicz, *An Introduction to the History of the Law of Nations in the East Indies* (Oxford: Clarendon Press, 1967). Alexandrowicz formulated the paradigm according to which the colonalisng role of *jus gentium* is effected through its ‘positivist’ treatment of law in terms of the commands of a territorial sovereign. This is supposed to have undermined the earlier universalism of *jus naturalism* which promised to included recognise the law and ‘sovereignty’ of non-European peoples.


communitarian philosophies.\textsuperscript{16} Those viewing the history of \textit{jus gentium} from the perspective of a postcolonial cosmopolitan federalism draw on Kant’s political metaphysics and principle of right, particularly as this has been reworked via Rawlsian or Habermasian constructions of democratic will-formation.\textsuperscript{17} Finally, those viewing decolonisation in terms of the merging or dissolution of opposed value-horizons ground their views in twentieth-century transcendental phenomenology and deconstruction. This enables them to think of Europe as a ‘self’ formed as a carapace of identity through the occlusion and exclusion of a protean non-European ‘other’, whose self-manifesting breach of the European carapace marks the postcolonial moment.\textsuperscript{18}

Despite their different metaphysics — or perhaps because of them — these positions converge in an ecumenical philosophical history, which maintains the universality of the human intellect as the condition of envisaging its spatial and temporal localisation in accordance with limiting cultural and political interests. This is what makes it possible to diagnose the Eurocentric character of \textit{jus gentium} as a spatio-temporal localisation of the human intellect produced by the intrusion of European imperialist political interests. Here the Eurocentrism of the law of nature and nations is framed by a universal or global philosophical history supposed capable of restoring its lost universality and recovering the occluded truth of the ‘non-European’. Once again this recovery is envisaged as taking place in characteristically different but related ways: as the restoration of a global natural-law conception of self-determining society formerly lost to the positivist imperialist imposition of state sovereignty;\textsuperscript{19} as the proleptic anticipation of an emerging cosmopolitan international

\textsuperscript{16} Alexandrowicz’s work relaunched this approach during the 1960s and 70s, which is now continued by Anghie and Anaya. For a revealing account of the central role played by solidarist sociological and natural-law doctrines in twentieth-century French international law thought, see Martti Koskenniemi, \textit{The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960} (Cambridge: Cambridge University Press, 2002), pp. 266-352.


\textsuperscript{19} Anaya, \textit{Indigenous Peoples}; Anghie, \textit{Imperialism, Sovereignty}. 

\textit{\textsuperscript{16} Alex}}
order driven by the dialectical-historical 'constitutionalisation' of international law;\textsuperscript{20} or (less frequently) as the sudden breakthrough of the excluded non-European 'other' into the carapace of the European 'self', bringing with it the prospect of a radical restructuring of international law in terms of resistance, fluidity and reciprocity.\textsuperscript{21}

In each case, then, the Eurocentric and imperialist character of the law of nature and nations is criticised via its localisation within a philosophical history. It is the global character of this philosophical history that is supposed to free the critics themselves from Eurocentrism and grant them access to the occluded non-European truth, even if the latter is rarely formulated via recourse to positive historical, ethnographic or enthropological studies. It should already be clear, though, that all three ways of specifying the Eurocentric and imperialist character of \textit{jus gentium} are deeply embedded in particular European philosophical doctrines, in fact in some of the central schools of European academic metaphysical philosophy: Catholic natural-law communitarianism, Kantian metaphysical cosmopolitanism, and the self-other dialectic of transcendental phenomenology. This raises the prospect that the postcolonial critique of a Eurocentric \textit{jus gentium} is not only deeply enmeshed in European academic philosophy, but that the global philosophical history through which it seeks to localise \textit{jus gentium} is itself local to those geointellectual regions in which European academic philosophy has been planted.

In characterising the regional European character of the philosophical critique of Eurocentrism, though, we must be careful not to slide into some kind of 'meta-critique', as if its European character could be specified in relation to some truly universal norm or history that this critique has still not realised. Rather, the point of showing that the 'universal' character of philosophical critique is actually a projection of regional European intellectual cultures — in fact of an array of philosophical anthropologies and philosophical histories — is to dispel the illusion that the relations between European and non-European peoples can be brought within a single compass of intelligibility formed by any kind of global justice or universal history. What emerges in the place of this universalistic picture is a view of the 'external' relations of European \textit{jus gentium} discourses as mediated solely through the concrete interests in which they were anchored, and a view of their 'internal' relations as governed by

\textsuperscript{20} Habermas, ‘Kant’s Idea of Perpetual Peace’; Habermas, ‘Does the Constitutionalisation of International Law Still have a Chance?’

\textsuperscript{21} Fitzpatrick, ‘Terminal Legality’.
the conflicting regional intellectual cultures that they embodied, and the European cultural and political programs whose interests they served.

With regards to their external relations, European *jus gentium* cultures were joined to extra-European cultural ensembles not via the universal philosophical-historical logic of occlusion and revelation, repression and emancipation, but via the specific interactional ‘beachheads’ formed by an array of contingent activities: missionising, military conquest, colony plantation. A ‘world’ or global history emerges from these activities only in the ironic form of their unforeseeable and uncontrollable consequences, and the piecemeal cultural adaptations to which these give rise, among which on the European side will be found the particular history of the law of nature and nations. Where these activities engaged rival imperialist cultures imbued with their own doctrines of civilisational supremacism — such as the Chinese and the Ottoman-Islamic — then Europeans encountered ways of spatialising the political cosmos quite unlike the forms of European *jus gentium*. These rival imperial cultures thus offer a perspective on the regional character of European *jus gentium* not in terms of a universalism that it supposedly fails to realise, but in terms of rival universalisms based on alien anthropologies and cosmographies.\(^{22}\)

Our main concern in this paper, though, is with the consequences that abandonment of universal philosophical history has for understanding the ‘internal’ relations among *jus gentium* discourses. In other words, our prime concern is with the diversity of European intellectual cultures that informed these discourses and the variety of (political, religious, military) programs in which they were articulated, and only thence with their extra-European relations, via particular colonialist and imperialist programs. In identifying the regional European intellectual doctrines that philosophical postcolonial critique shares with *jus gentium* itself — especially the Catholic natural-law doctrine of a world of self-determining moral nations, and the Kantian metaphysics of a cosmopolitan principle of justice — our objective is to undo

\(^{22}\) Cf., the perspective outlined in Onuma Yasuaki, ‘When was the Law of International Society Born? — An Inquiry of the History of International Law from an Intercivilisational Perspective’, *Journal of the History of International Law* 2 (2000), 1-66, where at p. 7 we find the comment: ‘What is critical is the question of the scope of a society in which a certain normative system is valid and applied. Whether “ancient international law”, the Islamocentric *siyar*, the Sinocentric tribute system or Eurocentric law of nations, they are nothing other than regional normative systems which were applied in only a limited area of the earth and lasted for a limited period of time’. This is a salutary observation, although Onuma’s ‘inter-civilisational’ perspective overunifies the rival ‘civilisations’ and thus fails to take into account the ‘acentric’ character of European *jus gentium* cultures.
a particular misunderstanding of them: namely, the over-unification and over-moralisation that arises when *jus gentium* discourses are understood in terms of these regional universalisations. This way of situating them as led to several significant misunderstandings regarding the historical forms and uses of *jus gentium* discourses — including their colonialist and imperialist uses — whose clarification requires a pluralistic contextual historiography that incorporates a history of philosophy and a ‘history of historiography’.

Firstly, rather than being a doctrinal system originating in the sixteenth century as an ideological justification for the Spanish conquest of South America, the law of nature and nations was a sprawling generic matrix for a vast array of disciplines and doctrines, stretching in a bewildering variety of forms from the thirteenth to the twentieth century. The genre had its roots in Christian theology and Roman law, as is clear from the theological determination of the name itself: ‘natural’ law signifying norms that are both divinely inscribed as developmental tendencies in man’s ‘nature’ or essence, and acceded to via ‘natural’ reason as opposed to divine revelation, making these norms universally available to all men. This name or concept, though, lends an entirely spurious unity to the array of often cross-cutting and conflicting disciplines and doctrines to be found in this genre: competing theological psychologies and philosophical anthropologies; rival conceptions of man’s natural-law society as Edenic or Hobbesian; conflicting conceptions of political authority as devolving from divine law or originating in a sovereignty pact; divergent modes of specifying ‘positive’ law (Romano-canonical or national common law) and incorporating it in natural law (as dependent or as surrogate); and so on. Once this diversity is taken into account, then it becomes clear that in the law of nature and nations we are not dealing with an ideology but with a shifting matrix for the relations between Europe’s diverse theological, political, and juridical cultures. Rather than an ideological doctrine for European imperialism, the law of nature and nations supplied a

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23 Michael Stolleis, ‘The Legitimation of Law through God, Tradition, Will, Nature and Constitution’, in L. Daston and M. Stolleis (eds.), *Natural Law and Laws of Nature in Early Modern Europe: Jurisprudence, Theology, Moral and Natural* (Farnham: Ashgate, 2008), pp. 45-56. Cf., Stolleis’s comment at p. 51 that ‘there is no such thing as “the” natural law; instead, in the course of some 150 years, the success of natural law was based on a wide variety of religious, theoretical and political approaches and motifs’. 
gestational matrix for a wide variety of political philosophies, and for a diversity of reception contexts for various kinds of positive law: Romano-canonical law, regional common law, and imperial *jus publicum* (particularly as related to the religious peace treaties of 1555 and 1648).

Here we can just scratch the surface of the complex historical transformations that took place across these matrices, taking note only of a seventeenth-century conflict of particular relevance to our present concerns. On one side of this conflict were Catholic and Protestant scholastic constructions of Christian natural law, grounded most commonly in Christian-Aristotelian conceptions of man as acceding to the devolved form of divine law through his own ‘rational and sociable nature’, whose realisation or perfection provides the norms of civil authority in the polis. On the other side was the Hobbesian and Pufendorfian anti-metaphysical construction of natural law. Here, man is incapable of acceding to divine norms owing to the corruption of his now passionate and fractious nature, which means that he must impose civil norms on himself for the minimal end of achieving social peace, ultimately via the appointment of a civil sovereign who determines and commands them as positive law. The fact that the former construction was advanced by those intent on defending the role of theology and religion in determining juridical and political norms — while the latter supplied the intellectual weaponry for those intent on supplanting the juridical and political role of theology with a secular conception of civil authority — provides us with an insight into the diversity of forms assumed by the law of nature and nations, and into the forces driving this diversity. Despite the

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28 For a revealing account of how this conflict played out in a particular local context, see Thomas Ahnert, *Religion and the Origins of the German Enlightenment: Faith and the*
profoundly European character of these programmatic constructions, there was no singly ideological idea or function around which their Europeanness could become ‘centric’; so that when the rights of non-European ‘nations’ was introduced into the natural-law matrices, this too only had the status of a program-specific topos within these shifting constructions.

Second, seen in this light, the claim that the law of nature and nations is unified around the ideological idea of European civilisational supremacy — the idea or doctrine identifying specifically European conceptions of state, economy and society with the progress of human civilisation — becomes doubly misleading. Not only does this claim ignore the fact that some versions of early modern natural law explicitly rejected civilisational progress as the basis of sovereignty and justice — as we shall see in the case of Pufendorf — but it also mischaracterises the form in which progress was understood in those versions where it was present. In particular, there is a tendency to treat the neo-scholastic ‘perfectionist’ metaphysics found in the *jus gentium* of Christian Wolff (1679-1754) and Emer de Vattel (1714-1767) as if it were continuous with the stadial conjectural histories and developmental anthropologies of the Scottish political economists or nineteenth-century imperialists, with the various constructions being unified around the imperialist idea of European civilisational supremacism.29 Wolff’s construction of man’s ‘perfection’ or realisation in civil society, though, was based on a rationalistic (Leibnizian) updating of scholastic metaphysical anthropology, setting it apart from both Scottish speculative historical anthropology, and nineteenth-century civilisational supremacism.

According to Wolff’s metaphysical anthropology, man is possessed of a rational nature or essence (‘intellectual being’) whose latent capacities for universal intellection and rational self-governance are ‘perfected’ — in the sense of realised or completed — through the progressive intellectual refinement of his sensuous nature and inclinations. It is from the perfection of man’s intellectual nature that Wolff derives the norms of natural law.30 Wolff’s *jus gentium* was thus organised around a speculative metaphysics of individual intellectual self-transformation, whose

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transposed collective forms are the nation and the *civitas maxima* or supreme world state.\(^{31}\) Hence, while he does indeed construct a hierarchy of civilised an uncivilised nations, this functions only as a corporate analogue of the individual’s path through the stages of intellectual self-refinement, turning nation and state into the political analogues of philosophy faculties.\(^{32}\) Not only does Wolff fail to identify these different civilisational levels with European and non-European nations, but when he comes to discuss the property rights of nomadic nations he argues that these should be respected.\(^{33}\) This is because all nations are to be understood as the corporate forms in which humanity strives for the realisation or perfection of its rational nature, hence as ‘mora\(\text{lly equal’.

Wolff’s global recognition of the metaphysical equality of all nations, though, is of no particular credit to him, and holds no particular significance for the history of *jus gentium* in relation to European colonialism and imperialism.\(^{34}\) Not only was the metaphysical anthropology underpinning this equality regional within European intellectual culture, but it was so far removed from positive law and statecraft as to lack all determinacy in these domains. Vattel could thus use the same neo-scholastic anthropology to *deny* property rights to nomadic nations, as we shall discuss below. Concomitantly, when this scholastic metaphysics of man’s self-perfecting being *was* anchored in concrete juridical, religious or political programs — as it was when used to provide a theological rationale for Spanish Catholic missionising in South America — then it was not the ideological idea of European civilisational supremacy that was decisive. Rather it was the integration of the metaphysics of rational self-perfection within a concrete missionising program, as it was by Vitoria. Here it could be used to constitute the ‘indians’ as possessing the same perfectible essence as Europeans, but


as requiring a specifically Christian religious pedagogy for their essence to be realised.\(^{35}\)

It was not until the high-tide of European imperialism in the second half of the nineteenth century that various European conceptions of sovereignty and the rule of law were indeed transformed into the culminating points of human civilisational progress. This development, however, of which modern international law was both the instrument and the effect, pertained to cultural and political circumstances far more ambivalent, and far less escapable, than can be captured by treating international law as the ideology of European imperialism. As Martti Koskenniemi has shown in his remarkable study, the European supremacist construction of sovereignty and the rule of law was undertaken by a cosmopolitan circle of liberal humanitarian jurists. This group — networked through the *Institut de droit international* (1873) and its house journal the *Revue de droit international et de législation comparée* — conceived international law to be the ‘legal conscience of the civilised world’, and sought to form a cosmopolitan legal order establishing parity of treatment and rights for both European and non-European nations.\(^{36}\) Rather than being dupes of a self-serving supremacist ideology, or slaves to an unreflective legal positivism, these intellectuals grounded their universalist juridical and political doctrines in the most powerful available European philosophies and social theories: the Germans members drawing on Kant’s conception of a philosophically based cosmopolitan principle of right,\(^{37}\) the French on Catholic natural-law associationalism and Durkheimian solidarist conceptions of an international legal community.\(^{38}\) These powerful theoretically-based constructions of international justice would continue into the middle of the twentieth century and, by implication at least, beyond; for we have already observed their presence in the universalistic theoretical constructions and philosophical history that inform the postcolonial critique of international law itself.

In any case, in addition to making it prone to fracture along national lines when under political pressure, the regionally specific (national) philosophical underpinnings of this humanitarian international law also made its central doctrines and concepts

\(^{38}\) Koskenniemi, *Gentle Civiliser of Nations*, pp. 266-338.
underdetermined in relation to concrete politics and law. As a result of their cross-cutting philosophical construction, such concepts as sovereignty could be put to quite contradictory uses in colonial settings: denied to some indigenous groups deemed to lack the attributes of supreme government and the rule of law; recognised in other groups deemed to possess the quite different defining attribute of national self-determination.\(^{39}\) The fact that the European law of nature and nations was itself internally divided along different regional philosophical understandings meant that concepts such as sovereignty remained largely philosophical and floating in relation to the domains of positive politics, statecraft, and jurisprudence. The latter were governed by their own programmatic logics — the Christian ‘civilising mission’, the military occupation of territories, the economic exploitation of their resources and populations — which determined what the denial or recognition of indigenous sovereignty meant in circumstances that were always concrete.

The history of modern international law was thus characterised not by the smooth ideological integration of its humanitarian ‘civilising mission’ into various imperialist projects, but by its repeated wrong-footing and disillusionment by the actual course of international political events. These continued to run on belligerent national and hegemonic logics at variance to the philosophical cosmopolitanism of the humanitarian international jurists, which itself turned out to be more regional or national than its self-understanding allowed for. In short, if the doctrine of European civilisational progress did not play a determining role in early modern \textit{jus gentium}, then the fact that it did so in modern international law might turn out to both far more ambivalent and far less escapable than is suggested by postcolonial philosophical critique. For it begins to appear that as a result of the forms in which it envisages the overcoming of international law’s imperialist Eurocentrism — through the establishment of a just international legal order on the basis of a cosmopolitan principle of right, or the establishment of a solidaristic international community of self-determining nations — this critique operates within the same philosophical cultures as international law itself, and is likely subject to a similar political indeterminacy and ambivalence.

Finally, if the law of nature and nations was not founded on a unifying ‘idea’ or theory, then its anchorage in historical reality was not mediated by ‘material interests’

that either bent this idea to their ideological will, or else promised its rendezvous with truth through a process of reciprocal universalisation. On one side of the equation, the dialectical logic of this hermeneutic philosophical history is undermined by the eminently material and historical character of the intellectual components of the law of nature and nations themselves. If we examine these components — the moral theologies or philosophical anthropologies, the metaphysical and anti-metaphysical conceptions of natural law, the speculative histories of property or sovereignty, and so on — then what we encounter are not true or false ideas or beliefs as such. Rather, we are confronted by a diverse array of intellectual practices or cultures through whose formative effects ideas or beliefs are acceded to in particular ways or ‘capacities’.

Koskenneimi has thus argued that to understand modern international law it is not the doctrinal ideas of the jurists that matters but their shared ‘sensibility’, formed on the basis of a broad philosophical and moral culture.\(^{40}\) In a similar vein a research collaboration in which I have participated has argued that the history of philosophy should take as its focus not the philosophical subject of truth or ideology but the ‘persona’ of the philosopher.\(^{41}\) This is the purpose-built ‘self’, formed through the mastery of an array of intellectual, moral and technical ‘arts of the self’, on the basis of which particular ways of acceding to truth are instituted.\(^{42}\) The history of the law of nature and nations is thus not grounded in a philosophical subject rendered myopic by Eurocentric interests or panoptic by a ‘universal history with cosmopolitan intent’; neither is it centred in a European ‘self’ closed in on itself by its occlusion of a non-European ‘other’, whose protean being promises an emancipatory breakthrough. Rather, the concepts and doctrines of \textit{jus gentium} were thought through the cultivation of a variety of theological-, philosophical-, and political-juristic personae. These can be envisaged as emerging in the space between two axes: first, the axis


formed by particular means of ethical self-shaping, including theological and moral anthropolgies of various kinds, and the recovered *ethoi* of scepticism, neo-Stoicism, neo-Aristotelianism, neo-Platonism and neo-Epicureanism; and, second, that formed by a variety of professional roles or ‘offices’, including political theologian for one of the rival churches, political or diplomatic adviser to the prince, academic jurisconsult to a state or estate, and academic philosopher in a republic of letters. We shall see that the *jus gentium* jurist acceded to knowledge and truth through occupancy of a particular intellectual persona, whether that of the Epicurean political adviser to a territorial prince (Pufendorf); the philosophical-casuistical diplomat to a republican European ‘society of nations’ (Vattel); or the neo-Platonic political metaphysician and prophet of an enlightened academic ‘republic of letters’ (Kant).

On the other side of the dialectical equation, *jus gentium* intellectual cultures did not find their anchorage in larger historical interests and programs in accordance with the exemplary philosophical-historical relations between theory and practice, idea and actualisation, or reason and history. Rather, this occurred in accordance with the specific historical-intellectual role of the law of nature and nations in providing a matrix for the reception of positive law in specific cultural and political contexts, and for the elaboration of programmatic political philosophies for the concrete political orders associated with such reception.43 The role of the intellectual historian of the law of nature and nations is thus not to provide a philosophical-hermeneutic diagnosis of the degree to which the theory or norm of global justice has been actualised in the practice or history of politics, allotting degrees of moral praise or blame accordingly. Instead, it is to provide contextual accounts of the diverse ways in which the resources of *jus gentium* cultures have been used to provide reception contexts for positive legal orders, and political rationales for concrete political projects or regimes.

Such contextual deployments of the law of nature and nations have included: its metaphysical use to frame the reception of positive (Roman, common, imperial) laws within the legal order of confessional states, by treating them as devolving from a divinely sourced law of a nature; its civil use to secularise the reception of these same bodies of positive law, by treating them as commands of the territorial sovereign acting as sole interpreter of the natural law of social peace; its theological use to frame the reception of Romano-canon law in foreign lands subject to Christian missionising under the natural-law norms of a ‘universal’ church; its civil-administrative use to establish jurisdiction and the reception of European common law systems in settler colonies; and its philosophical use to treat positive law and politics as historically devolved forms of a theoretical principle of right, ultimately grounded in the universal law of a cosmopolitan community of rational individuals.

The spatialisation of justice in these contexts cannot be understood as occurring along a single axis linking the particularist and Eurocentric to the global and cosmopolitan. Rather, spatialisations occurred on multiple axes formed by the role of the law of nature and nations in ordering a variety of geopolitical orders — imperial, territorial, regional-hegemonic, cosmopolitan — in accordance with a diversity of geoethical programs, all of which remained regionally European in relation to the geoethics of other ‘civilisational’ cultures. Our task is thus to discuss some of the ways in which the law of nature and nations has superimposed normative order and political space in accordance with interests arising from concrete political orders and legal regimes, with a view to shedding light on the diversity of ways in which jus gentium has spatialised justice.

**Pufendorf’s Secular Territorialism**

Samuel Pufendorf (1632-1694) wrote his *De jure naturae et gentium* of 1672 in his capacity as a political adviser and historian to the Swedish court — roles that he would reprise for the princely government of Brandenburg-Prussia — in order to provide the political and moral architecture for a particular kind of Protestant territorial state.\(^{44}\) Not only was Pufendorf’s construction of the law of nature and nations thus European, but it was regionally so. In its first receptions at least, it was tied to the context of supplying the rationale for ‘sovereign’ Protestant territorial

states under the umbrella of the nominally Catholic Holy Roman German Empire.\textsuperscript{45} At the same time, it contained a program to ‘deconfessionalise’ or secularise the prototypical form of such states: the Lutheran confessional state that had emerged during the latter part of the sixteenth century and whose prime exemplar was electoral Saxony.\textsuperscript{46}

Pufendorf developed and refined the intellectual infrastructure of his construction through continuous and protracted academic combat with the representatives of scholastic natural law, Protestant and Catholic. He rejected the Christian Aristotelian conception of natural-law norms — as grounded in man’s divinely ordained ‘rational and sociable’ nature and acceded to through self-governing reason — by deploying a radically opposed philosophical anthropology and derivation of norms. Man’s moral nature, Pufendorf stipulated, is not a teleological substance (entelechy) bearing essential norms that were implanted in man by God through his creation.\textsuperscript{47} Rather it is a changeable ‘status’ or \textit{entia moralia} — a moral convention as opposed to a substance — that had been ‘imposed’ or instituted for purposes associated with the governance of civil life: ‘We seem able, accordingly, to define moral entities most conveniently as certain modes, added to physical things or motions, by intelligent beings, primarily to direct and temper the freedom of the voluntary acts of man, and thereby secure a certain orderliness and decorum in civilised life’ (I.i.3, p. 5). This had been done initially by God in the form of the \textit{status naturalis} (natural condition), but then by men on themselves in the form of the various civil statuses or moral personae — political subjection, natural religion, marriage, property, and so on — through which civil life is ordered. In this way, Pufendorf could deny that there were any transcendent or objective norms of natural law to which men could accede through a reason possessing indirect (natural) access to the divine law or the divine mind. Instead, barred from (transcendental) rational access to such norms owing to the postlapsarian (natural) impairment of his intellect and will, man had to derive them instead from observation of his natural condition and circumstances.


\textsuperscript{46} Hunter, \textit{Rival Enlightenments}, pp. 148-63.

This ‘detranscendentalising’ of the philosophical anthropology and forms of reasoning that could be used in natural law amounted to a reconstruction of the persona of the natural jurist, as this figure could no longer be an Aristotelian theologian or a Christian-Platonic metaphysician claiming natural (rational) access to divine or transcendental norms. Pufendorf instead sought to reshape the persona of the natural jurists into that of a ‘Christian Epicurean’ civil philosopher, renouncing all transcendental rationality as incompatible with his civil office, and deriving political and juridical norms from no higher source than man’s observable natural condition (I.ii.1-6, pp. 22-31). When thinking in this persona, the nature that man observes in himself in his status naturalis is that of a creature whose weakness (imbecillitas) required him to be sociable in order to survive and flourish, but whose viciousness and self-interest prevent him from doing so naturally (II.ii.1-12, pp. 154-78). From this set of observations it was possible to deduce the basic law of nature in its Hobbesian-Pufendorfian form: that man should conduct himself in such a manner as to cultivate and preserve sociable or peaceable relations with his fellows (II.iii.14-15, pp. 205-10).

Given that Pufendorf’s philosophical anthropology precludes such conduct from coming naturally or rationally to man — in the form of a sociable nature harbouring a natural good or a rational freedom giving rise to a natural right — the norms of man’s sociability have to be imposed on him from without, in the form of disciplinary rules or laws (I.vi.1-4, pp. 87-90; II.i.1-8, pp. 145-53). This occurs initially within the settings of the family household and clan associations, but ultimately through the institution of the civitas (commonwealth or state). The state is thus not to be regarded in the Christian-Aristotelian manner, as the natural setting in which man as the zoon politikon realises or perfects his sociable nature. It must be understood instead as an artificial condition or status (status civilis), imposed by man on himself in order to discipline his will to the conduct required for sociability and civil peace: ‘Therefore, all men, being born as infants, are by that fact unsuited to civil society, and most of them remain so all their lifetime, while it is discipline, not nature, that fits man for such a society’ (VII.i.1-11, pp. 949-66, at p. 952). The civil state is thus not an institution entered into conditionally in order to realise a natural good or to protect a natural right, such that its disciplinary authority might then be held accountable by political theologians or moral philosophers claiming ‘natural’ (rational) knowledge of natural goods or natural right. Rather the civil state is instituted by men out of mutual
fear and entered into unconditionally for the purpose of achieving social peace. This occurs through an act of reciprocal imposition — the sovereignty pact — in which men agree to give up their natural capacities for self-protective coercion and decision to a ‘superior’, thereby rendered ‘sovereign’, who will protect them all from each other (VII.ii.1-8, pp. 967-77). The role of the pact is not to realise man’s natural good or protect his natural right, but to institute the new moral personae that constitute the civil state: that of the citizen constituted by his obedience to the superior from whom he receives protection; and that of the superior understood as imposing sovereign obligations for the purposes of achieving sociability or civil peace (VII.ii.20, pp. 994-95).

It is in Pufendorf’s construction of civil obligation that we can see the profound territorialisation to which he subjects political authority and justice. Under this construction, obligation is imposed on political subjects through laws issuing as the commands of a superior, whose moral personality is composed of two conjoint features: the capacity to coerce those who might disobey his laws; and a ‘just cause’ for commanding laws that govern the liberty of his subjects (I.vi.8-12, pp. 94-103). Given that justice arises from the obligation to obey the laws of a legitimate authority, and considering that the authority of Pufendorf’s superior arises from his capacity to protect citizens from each other and from ‘external’ enemies, then Pufendorf’s construction of justice is territorial in a dual sense. Justice or right is spatially restricted to the political territory in which the superior’s subjects reside and over which he can exercise the effective coercive force required to command laws; and it is normatively (geoethically) restricted to legislative decisions of the territorial sovereign whose positive laws are the sole effective determinant of the natural-law norm of sociability or peaceability. For Pufendorf, to be a citizen did not mean to be subject to civil laws as the devolved forms of natural laws responsible for the realisation man’s rational and sociable nature, where, given its spatial indeterminacy, the ‘polis’ in which this takes place might be a city, a country, an empire, or even a civitas maxima. Rather, to be a citizen means to dwell in a space constituted by the sovereign’s exercise of protective government over it. This space is not the indeterminate and potentially global one constituted by the gathering of citizens to

cultivate their natural virtues and exercise their natural rights. It is instead ‘situated upon some certain part of the surface of the earth, in which citizens have gathered themselves and their property for safety’ (VII.ii.20, p. 994). In short the geonormative space in which it is possible to be a citizen is constituted by the sovereign’s capacity to pacify its interior and defend its frontiers in accordance with the terms of the sovereignty pact. This means that citizens acquire obligations and right only by dwelling within a space constituted by the laws of a territorial sovereign: a territorial jurisdiction.

The true character of Pufendorf’s construction of territorial civil obligation has been drowned-out by 300 years of philosophical outrage at his departure from European philosophical universalism. It was Leibniz who provided the immediate and lasting formulation of this outrage, in his argument that it was incoherent or circular of Pufendorf to both derive justice from the commands of a territorial superior and yet appeal to ‘just causes’ in order to legitimate these commands. Yet this reception continues today, even in some of the best commentary, which treats the supposed location of these ‘just causes’ above the commands of the superior as symptomatic of the incoherent surfacing of a supraterritorial or ‘supranational’ ethics within Pufendorf’s territorialism. All such commentary, however, ignores Pufendorf’s actual specification of the ‘just causes’, which is given in his stipulation that the justness of the superior’s commands derives from nothing higher than the exchange of obedience for protection in the sovereignty pact that institutes the personae of subject and superior in the sovereignty pact. Given the territorial character of the superior or sovereign — he is instituted by citizens gathered ‘upon some certain part of the surface of the earth’ for the purposes of their own safety — and that only he has the right to decide the laws for this end, then the ‘just causes’ for the sovereign’s commands are themselves thoroughly territorial, in the dual sense outlined above, and so is justice itself.

The geonormative order against which Pufendorf constructed this territorialised form of the law of nature and nations was that embodied in the Holy Roman German Empire, which constituted a superimposition of normative order and political space of

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49 For further discussion, see Ian Hunter, ‘The Love of a Sage or the Command of a Superior: The Natural Law Doctrines of Leibniz and Pufendorf’, in Hochstrasser and Schröder (eds.), *Early Modern Natural Law Theories*, pp. 169-94.
a quite different kind. Through an overlapping appeal to continuity with the
Christianised Roman Empire — embodied in the political title of Holy Roman
(German) Emperor and the papal claim to apostolic succession — the German Empire
and the papacy maintained the image of universalism in which the respublica
Christiana ruled over the entire civilised world, beyond which lay only ill-defined
barbarians.\textsuperscript{51} Christian (scholastic) natural law had supplied the normative ordering
for this universal spatialisation via its conception of man’s rational nature, through
which all men have indirect ‘natural’ access to divinely-sourced universal natural-law
norms, even if some are yet to receive the Christian dispensation and may thus require
tutelage in order to realise this nature. In reality, and unlike the sovereign political
kingdoms of England and France, the early modern German Empire was a loosely
ordered umbrella jurisdiction. Under this archipelagic jurisdiction, an imperial legal
system and body of public law ordered the cross-cutting rights and entitlements of a
complex array of ‘estates’ — nobilities, clergies, cities, knights circles — and
emerging princely states, themselves increasingly exercising territorial jurisdiction.\textsuperscript{52}
Moreover, since the beginning of the sixteenth century the formerly ‘universal’ or
Catholic ‘Roman’ church had been fractured by the emergence of several Protestant
churches which, as the result of their alliance with various imperial estates and
increasingly independent territorial states, gave rise to ‘national’ religious polities, or
confessional states.\textsuperscript{53}

Pufendorf’s territorial spatialisation of justice and political authority must be
seen in this regional European historical context. As a programmatic construction
designed to restrict natural-law norms to the positive laws of a territorial sovereign,
Pufendorf’s \textit{De jure naturae et gentium} had to destroy the Christian-Aristotelian and
Christian-Platonic bases of ‘Christian natural law’ in man’s universal rational

\textsuperscript{51} Schmitt, \textit{The Nomos of the Earth}, pp. 56-66; and Pagden, \textit{Lords of All the World}, ch. 2.
\textsuperscript{52} See the important discussion of this in von Friedeburg and Seidler, ‘The Holy Roman
Empire of the German Nation’.
\textsuperscript{53} Heinz Schilling, ‘Confessional Europe’, in T. A. J. Brady, H. A. Oberman, and J. D.
Tracy (eds.), \textit{Handbook of European History 1400-1600: Latin Middle Ages, Renaissance
641-82; Heinz Schilling, ‘Confessionalisation and the Rise of Religious and Cultural
Frontiers in Early Modern Europe’, in E. Andor and I. G. Tóth (eds.), \textit{Frontiers of Faith:
Religious Exchange and the Constitution of Religious Identities 1400-1750} (Budapest:
European Science Foundation, 2001), pp. 21-35.
nature. As the source of ‘natural’ good or ‘natural’ right, Christian natural law supplied norms whose theological or philosophical transterritorial character made them inherently destabilising for the territorial normativity imposed by Pufendorf’s civil sovereign; for such norms made it possible for citizens to think that they were subject to obligations and rights beyond those to which they acceded as the inhabitants of a politically pacified and defended territory. It did not matter whether such transterritorial norms were wielded by the representatives of the formerly universal Catholic church (Jesuit political theology); Protestant scholastics seeking to imprint territorial states with a confessional character; or political metaphysicians such as Leibniz (and later Wolff), who imagined the restoration of the unity of the universal church and empire on the basis of universal reason. Seen in this context, Pufendorf’s territorial spatialisation of justice and political authority was thus reciprocally related to their secularisation, in the specific sense of the relegation of all transcendent hence transterritorial determinants of civil norms in favour of the commands issued by a territorial sovereign for the sole purpose of maintaining civil peace. This was the condition of excluding transterritorial ‘universal’ churches from the exercise of civil power and jurisdiction, and of confining ‘cosmopolitan’ political philosophers to the impotent precincts of the university or private speculation.

One of the effects of Pufendorf’s territorial spatialisation of justice was his denial of the existence of a positive law holding between states. If *jus naturae* is restricted to the domain of territorial sovereigns, then *jus gentium* cannot be regarded as law, and justice is internal to political territory. Just as there is no obligative law or right below the level of the territorial state — owing to the fact that the norms of sociability must be determined and imposed by a territorial sovereign in the form of positive laws — so there is no law or right above the level of the state, for the same reason, apart of course from the unenforceable and indeterminate law of nature (II.iii.23, pp. 226-29). This is not simply as a result of what would come to be called the ‘problem of enforcement’, as it is not just the absence of a supraterritorial coercive power that was decisive for Pufendorf’s denial of a positive *jus gentium*. Equally decisive is the absence of a supraterritorial source of judgment capable of determining the concrete

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54 For an account of the vehement and protracted conflict that raged between the (theological and juristic) defenders of the two kinds of natural law in seventeenth- and eighteenth-century Germany, see Hans-Peter Schneider, *Justitia Universalis. Quellenstudien zur Geschichte des “Christlichen Naturrechts” bei Gottfried Wilhelm Leibniz* (Frankfurt aM.: Klostermann, 1967).
meaning of natural law for the purposes of positive legislation. In fact for Pufendorf it was the lack of an answer to Hobbes’s mordant question of *quis judicabit?* — who judges? — that had fuelled Europe’s internecine wars and that had driven him (and Hobbes) to find an answer in the coercively enforceable decisions of a territorial sovereign, thereby spatialising and secularising justice in a manner that made it unthinkable above the level of the territorial state. For Pufendorf, relations between states were governed not by law and justice but by treaties and custom. Treaties differed from laws in their lack of an authority, comparable with the territorial sovereign, that could determine how the natural law of sociability should be specified and implemented as positive law between nations. From this lack arose the instability of treaties and their tendency to dissolve into war (VIII.ix.1-13, pp. 1329-41).

It should be clear, then, that Pufendorf’s reconstruction of the law of nature and nations was not driven by European colonial expansion into the non-European world, but by his programmatic territorialisation and secularisation of the ‘universal’ political order of the German Empire and the Catholic church. Despite various postcolonial attempts to retrospectively include him in the imperialist forms of *jus gentium* — particularly by those theorists who associate the latter with the eclipsing of the ‘naturalist’ legal perspective by a ‘positivist’ one — Pufendorf only discusses the ‘rights’ of European colonial powers in passing, and as a by-product of his central concerns. It is significant, though, that when he does, it is to deny the colonising rights of the Spanish in South America, as asserted by Vitoria on the basis of such natural-law norms as hospitality, commerce, or the spread of Christianity (III.iii.9, pp. 363-66). This is not because Pufendorf latently accepted some incipiently universalist conception of justice — as those keen to defend European *jus gentium* against its postcolonial critics have ascribed to him — but for quite the opposite reason. If justice is indeed internal to political order of the territorial state, then the question of whether the South American nations should accept the Spanish as ‘guests’ or as trading partners is a matter for their own (territorial) determination. As there are is no determinant (natural-law) right or justice between nations, then the Spanish have no such rights in relation to the South American peoples, and their colonisation takes place in the a-licit state of nature.

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As a result of his campaign to destroy the universality of scholastic natural-law norms — for the threat they posed to the geoethical integrity of the secular territorial state — Pufendorf had also undermined the universal *jus gentium* rights through which the Spanish scholastics had justified the expansion of European Christendom into South America. He had done so, however, not on the basis of an incipient true universalism but through his territorialisation and secularisation of justice itself, which he had undertaken from within a wholly European intellectual culture or persona, and in accordance with a regionally European political and religious program. If in doing so he had almost inadvertently revealed the ‘Eurocentric’ character of scholasticism’s ‘universal’ *jus gentium* justifications for colonisation — showing that their global character derived from the supremacist claims of a ‘monstrous’ empire and a ‘political’ papacy — then his own territorialisation of justice itself remained the product of a regionally European political culture and program.

**Vattel’s Diplomatic Casuistry for a ‘Society of Nations’**

Just as Pufendorf developed his natural law in opposition to scholastic versions, so the Swiss natural jurist and diplomat Emer de Vattel had developed the intellectual infrastructure of his *Le droit des gens* (1758), in part at least, through opposition to Pufendorf’s natural law — especially in the form this had been transmitted in the French editions of the Huguenot publicist Jean Barbeyrac. In doing so, Vattel redeployed Leibniz’s case against Pufendorf’s derivation of justice from the commands of a superior, arguing that Pufendorf incoherently appealed to a higher form of justice in order to legitimate these commands. He thereby replicated Leibniz’s failure to comprehend Pufendorf’s grounding of justice in the exchange of obedience for protection in the sovereignty pact. As an antidote to Pufendorf’s secular territorialism, Vattel redeployed key elements of scholastic political metaphysics, as these had been mediated via Wolff’s *Jus gentium*. Yet he put the old scholastic foundations to work in quite new register — one far less rationalist than Wolff’s — by incorporating recent developments in European statecraft, diplomacy and public law into yet another avatar of the law of nature and nations.

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Against Barbeyrac and Pufendorf, Vattel stipulated that a natural law was derivable from man’s ‘nature’ or essence — his rational and sociable nature — on the basis of latent developmental tendencies whose ‘perfection’ or realisation completes man and thus provides universal norms of conduct. Following Wolff and the scholastics he argued not only that these norms are accessible to man through natural reason, but that man is naturally motivated and obligated to follow them, as a result of the ‘happiness’ — the motivating energy — that he experiences through their realisation. In this way he linked duty to self-interest. Given that individual human weakness makes sociability necessary for the perfection of man’s nature, then it too is a natural good. It is thus possible to envisage a virtuous society of men acting in accordance with the laws of nature to realise their natural good and natural right in the state of nature, prior to the institution of the civil state. At the same time, Vattel also stipulates that, owing to the blindness of their passions, men typically fail to rationally discern the norms of virtuous conduct and, mistaking their true interest or happiness in the realisation of these, slip their natural obligation to natural law. It is these defects in man’s intellect and will that give rise to civil society and civil law, the role of the latter being to compensate for man’s lack of rational discernment by prescribing positive laws, and to reinforce his enfeebled natural obligation through penal sanction. Society and law thus operate in a double register in Vattel’s construction: as the natural form in which men pursue their corporate perfection on the basis of a collective will harmonised in accordance with natural law or right; and as the artificial form in which men compensate for their defective intellect and will by deploying positive law and government to harmonise their wills and enact natural law or right in the civil domain.

Situated at the nexus of this double register is Vattel’s central political concept — for which there is no equivalent in Pufendorf’s political architecture — the concept of ‘nation’. In the register of natural law, the nation is the corporate form in which men pursue their collective perfection and happiness, and thus itself assumes the form of a corporate moral personality possessed of a collective intellect and will. In the

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civil domain, where its collective intellect and will must be determined and enacted through positive law and government, the nation precipitates the form of the state, understood as the political apparatus required to execute the self-perfecting will of the nation. This bi-valent construction of nation and state lies at the heart of Vattel’s law of nature and nations, determining the form of both his public-law conception of a national state, and his *jus gentium* conception of a society of nations.

In the public-law section of the *Droit des gens* that comprises book I, Vattel supplies the moral, political and juridical architecture for what might be called a ‘moral republican’ construction of nation and state. In conceiving the nation as a self-perfecting corporate moral person capable of discerning and willing natural-law norms, Vattel invests civil sovereignty in the collective will or ‘body of the nation’. Just as individuals are under the natural-law duty to perfect their natures, so too, as the corporate form of the individuals united in them, nations are required to perfect theirs. This puts individuals under a ‘double obligation’: to cultivate their own virtues and the corporate virtues and welfare of the nation to which they belong (I.ii.13-21, pp. 85-9). In comparison with Pufendorf’s construction, this changes the locus and function of political authority: from the superior whose sovereignty derives from the enforcement of civil peace, to the nation whose sovereignty derives from the collective willing of its own perfection or realisation. In Vattel, the nation’s self-perfecting sovereign will is only delegated to the state and its ruler, as the ‘representative’ of the nation and executor of natural right (I.iii.26-34, pp. 91-6).

At the same time, in addition to changing its locus to the corporate body of the nation or ‘society’, Vattel also greatly expanded the scope of political authority. In addition to Pufendorf’s sole end of securing sociability or civil peace — whose minimalist character holds the key to his secularisation of politics and law — Vattel’s conception of the nation as a self-perfecting corporate moral persona allows him to extend the objectives of political authority to include a wide array of things pertaining to the nation’s collective ‘perfection and happiness’. This array includes the cultivation of agriculture (I.vii), commerce (I.viii), communications (I.ix) and finances (I.x) in order to provide the necessities of national existence. It also embraces the establishment of a public religion in order to oversee the corporate moral refinement of the national citizenry (I.xii); a system of justice and polity in

(Indianapolis: Liberty Fund, 2008), Prelims., § 5, p. 68. (Future references given in text, by book, chapter, paragraph and page numbers).
which positive civil law and punishments will realise the natural-law obligations and rights of citizens (I.xiii); and a system of military defence, grounded in natural-law self-defence and the right to punish, and facilitated by the cultivation of the ethic of republican military virtue in the armed male citizenry (I.xiv).

As a result of this of this moral republican construction, Vattel’s conception of the political authority of nation and state takes on a distinctively ambivalent character. On the one hand, because right exists in the state of nature, and the sovereignty invested in the collective will or body of the nation is only delegated to the state and its ruler, Vattel endorses a ‘liberal’ conception of resistance. According to this, the collective citizenry or nation has the right to resist or even depose a ruler who contravenes natural right or national will; for example, by imposing a religion that contravenes them, or by otherwise failing to execute the various objects of national perfection and happiness on whose realisation his delegated authority depends (I.iv.51-54, pp. 104-22). In practice, this means that Vattel answers the Hobbesian question of *quis judicabit?* by investing the deciding power in a parliament or meeting of the estates general, understood as reassuming sovereignty into the ‘body of the nation’ and as enunciating the national will. On the other hand, because the status of citizen is constituted by participating in the virtuous (agricultural, commercial, religious, civil and military) activities that constitute the nation’s collective self-perfection — rather than in the simple exchange of obedience for protection — those citizens who do not participate in these activities, or who do so in the wrong way, may forfeit their civil status and rights. In the case of religion, for example, because of its key role in cultivating the corporate virtue of the nation, Vattel refuses to take Pufendorf’s Prussian tolerationist path of separating state and religion, which would be tantamount to separating state from nation and society. Instead, he opts for the Swiss solution to religious conflict, in which each nation (canton) must establish its own public religion, leaving dissenters with the option of emigrating to their own national religious territory (I.xii.129-31, pp. 157-59).

At the same time, despite the declared universality of Vattel’s natural-law construction of political authority — the first general law of *jus gentium* which is that ‘each individual nation is bound to contribute everything in her power to the happiness and perfection of all others’ — this authority nonetheless undergoes a territorialisation that parallels Pufendorf’s, as we can see in the second general law: ‘Nations being free and independent of each other, in the same manner as men are
naturally free and independent, … each nation should be left in the peaceable enjoyment of that liberty which she inherits from nature’; for this means that ‘it exclusively belongs to each nation to form her own judgment of what her conscience prescribes to her’ (Prelims. 14-16, pp. 73-4). For Vattel, the universality of man’s natural obligation to perfect his essence undergoes a dual localisation in the process of its realisation. First, since it is only the collective intellect and will of a particular national corporate person that can determine how this obligation will be embodied in civil government and law, then each nation possesses ‘freedom and independence’ in relation to all others with regard to the exercise of imperium or political rule. Second, and no less importantly, the nature of the virtuous activities through which the nation perfects itself — agriculture, commerce, religion, polity, arms — means that the nation must occupy a particular country (‘seat’ or settlement) over which it exercises rights of ownership or dominium; so much so that a nation is almost the same thing as a ‘country’ (I.xviii.203-6, pp. 213-14). Taken together, the dual political and moral-spatial forms in which the nation pursues its corporate perfection and happiness — through the exercise of imperium or government over a domain or country in which its virtues are seated and cultivated — determine Vattel’s concepts of political territory and jurisdiction, and show why Vattel rejects Wolff’s global spatialisation of political authority, in the form of the civitas maxima or world state.

Now we can observe that it is precisely in this context — as a special topic at the end of the chapter outlining how the moral republic occupies the country in which it cultivates its virtues — that Vattel justifies the impaired domain rights of nomadic ‘nations’ living in America (I.xviii.207-9, pp. 214-16). The justification for this impairment and associated land-appropriation is based not on the uncivilised or un-Christian character of these nations as non-European, it being ‘barbaric’ of the Spanish to have justified their conquest of South America in these terms. Rather it is based on the failure of these ‘wandering nations’ to engage in the virtuous agricultural and commercial activities that are constitutive of both the nation’s corporate domain rights and the individual property rights of citizens. Here, rather than justifying the impairment of the domain rights of non-European nomads by treating them as barbarians excluded from European law and rights, Vattel does so by treating them as if they were Europeans failing to exercise the republican agricultural virtues required to qualify for such rights. According to this political mythos, it is the increase in global population and scarcity of land that has subjected the ‘wandering tribes’ to
European law and right; for this has made their claimed dominion over large tracts of uncultivated land unjustifiable in relation to the virtuous activities that constitute a nation’s rightful occupancy of its seat or country. In this regard, Vattel’s treatment of the non-European nomads parallels his treatment of certain European groups — specifically the (Catholic) monastic orders — who also occupy land without engaging in activities contributory to national civic virtue.

Despite the fact that they share the same spatial borders, Vattel’s territorialisation of political authority thus differs fundamentally from Pufendorf’s. This is in part because Vattel derives the territorial character of rule or imperium from the nation’s exercise of corporate self-governance through a national collective will, rather than from a territorial sovereign’s defence of citizens against domestic and foreign enemies, as Pufendorf does. More importantly, though, it is because Vattel regards the national country or seat as a morally-saturated space in which its citizens practice the virtuous civic activities that perfect their corporate moral personality as a nation or society. For Vattel it is thus being born in a particular country to national parents that determines citizenship, rather living in the place or being subject to jurisdiction there (I.xix.211-13, pp. 217-18): ‘this term [country] signifies the state, or even more particularly the town or place, where our parents had their fixed residence at the moment of our birth. In this sense, it is justly said, that our country cannot be changed, and always remains the same, to whatsoever place we may afterwards remove’ (I.xi.122, p. 153). This way of territorialising civil norms — in terms of the moral cultivation of a national domain rather than the exercise of a protective political jurisdiction — was suited to Vattel’s Swiss context. He invested the political authority of the Swiss cantons and estates in the (Protestant) religious, agricultural and commercial activities that defined a national cultural identity, rather than in the exercise of government over a territory and its population. In this regard, it is worth recalling that for the Swiss government typically assumed a loose federal form, with some cantons even assigning their administration to foreign states, as Vattel’s own canton of Neuchâtel during the time in which it had been ruled by the Prussian kings.

In outlining his jus gentium for an international ‘society of nations’ — in books II-IV of the Droit des gens — Vattel employs the same intellectual infrastructure as for his public law construction of nation and state, but develops it in a different manner. He thus comments that the law of nations is nothing but the application of natural law to the society of nations, but adjusted to their particular character
In doing so, he allows the double intellectual register that structures his conception of civil society to flow through into his construction of the society of nations, but with a crucial difference. Developing the so-called ‘domestic analogy’, Vattel argues that as nations and states are corporate moral persons, so, like individuals, they are obligated by the law of nature to band together into a ‘society of nations’ in order to achieve their mutual perfection and happiness, and thus that of global mankind as a whole (II.i.1-2, pp. 259-61). This forms the normative basis of a law of nations that governs their interactions in such areas as commerce and communications, war and peace. At the same time, however, because its status as corporate intellect and collective will makes the virtuous nation or ‘country’ into the ultimate judge of how best to pursue its own perfection and happiness, there is no higher source of judgment or authority — no international equivalent of civil government or civil law — binding on the ‘society of nations’. As a territorially-seated corporate moral person, each nation has complete ‘freedom and independence’ in relation to all others when it comes to exercising political authority. Just like Wolff, Vattel thus argues that since all nations have the exclusive duty and right to determine their own national perfection or realisation, those ‘ambitious Europeans who attacked the American nations, and subjected them to their greedy dominion, in order, as they pretended, to civilise them, and cause them to be instructed in the true religion … grounded themselves on a pretext equally unjust and ridiculous’ (II.i.7, p. 265).

As a result of this structuring duality, Vattel’s account of jus gentium unfolds in the space between two different forms of the law of nations. On one side, deriving directly from the application of natural law to the relations between nations, is the natural or ‘necessary law of nations’, which requires nations, like individuals, to form a society through which they can reciprocally realise or perfect their rational and sociable nature and achieve global well-being (Prelims. 7-8, p. 70). This obligation to join with other nations in seeking mankind’s global perfection and happiness is unconditionally binding on the inner conscience of all national rulers, and is the source of justice or right between nations. On the other side, emerging from each nation’s decisions as to the best means of pursuing its own welfare and happiness, is the ‘voluntary law of nations’, so-called because of its dependence on the will of each nation (Prelims. 21, pp. 75-6). The obligations of the voluntary law of nations concern their ‘external’ relations only, and are grounded in ‘prudence’ rather than justice or
right. Vattel argues that were nations to act according to the natural law and with proper insight into their true long-term interests, then justice and prudence would always coincide. Given, though, that the judgment of nations is clouded by passions and jealousies in the same way as that of individuals, and given their untrammeled ‘freedom and independence’, then each nation will claim to have justice on its side in a partisan manner, and there is no higher authority capable of making a final determination. In governing the relations between nations in the absence of a determinable universal norm of justice, the voluntary law of nations takes shape as a raft of conventions and customs, under which nations may occasionally suffer an injustice with regards to the ‘internal law’ of nations, but which nonetheless remains ‘valid’ with regards to the ‘external’ or voluntary law (Prelims. 9, p. 71).

Situated at the nexus of the natural and voluntary law of nations — and at the heart of Vattel’s *jus gentium* — are international treaties. Unfolding in the space between international justice and national prudence, Vattel’s understanding of treaties assumes a duality of normative register that is often difficult for modern commentators to grasp. On the one hand, Vattel insists that entering into treaties in and adhering to them in good faith is a ‘sacred’ obligation binding on the conscience of the nations’ sovereign representatives (II.xii.163-64, pp. 342-44); for unless sovereigns keep faith with treaties and pacts, there could be no society among nations and the natural law commanding their mutual perfection and welfare would be null and void (II.xv.218-21, pp. 386-87). On the other hand, nations may abrogate treaties that threaten the survival of their state, which only the nation in question may judge (II.xii.160, p. 341). Further, because each nation enters into a treaty in pursuit of its own perfection and welfare and interprets the terms of treaties in accordance with its own interests, treaties themselves must be surrounded by a body of interpretive conventions or rules, in order to reconcile conflicting interpretations and permit rival parties to ‘come to terms’ through them (II.xvii).

As their role is to show how general principles can be explicated to suit particular cases and circumstances where they lack self-declaratory force, these rules for the interpretation of treaties are a crucial pointer to the ambivalent normative register in which Vattel’s law of nations unfolds: namely, the register of casuistry. Here casuistry — moral reasoning via ‘cases’ — is understood in the non-pejorative sense of an art of moral interpretation governed by situational rules or conventions for adapting moral principles to cases or circumstances in which their applicability is
otherwise in doubt. Unlike philosophical morality, casuistry begins from the premise that moral principles are not self-actualising in moral judgment, and that the exercise of the latter is always discretionary and in need of lower-level supplementary rules and conventions. It is lack of familiarity with the history of casuistry that has led much modern commentary on Vattel to fluctuate between the view of him as an ‘idealist’ champion for international justice, and as a ‘realist’ apologist for national self-interest. This is symptomatic of the failure to grasp that Vattel treats national prudential self-interest as a flawed approximation to international justice, and deploys casuistical reasoning to narrow the gap between the two. The interpretive conventions with which Vattel surrounds the fundamental principle that ‘treaties must be honoured’ (pacta sunt servanda) — conventions for minimising interpretation, for tying key terms to the original purposes of the treaty, for permitting their extension to new circumstances, and for even facilitating abrogation when the treaty threatens national survival — should thus be treated as indicative of the casuistical form of Vattel’s jus gentium and of the contextual interests in which it was anchored. These interests were those of the stratum of European statesmen and consuls for whom Vattel supplied a political and diplomatic casuistry suited to the process of treaty negotiation: ‘The law of nations is the law of sovereigns. It is principally for them and for their ministers that it ought to be written’ (Pref., p. 18).

It is in relation to the crucial rights of war and peace, though, that the double normative register of Vattel’s law of nations displays its full structuring effects. On the one hand, it is the ‘natural and necessary law of nations’ that determines the justice of the causus belli, which it does on the basis of a nation’s natural right to defend itself and to forestall or avenge an injury or wrong done to it by another nation (III.iii.24-30, pp. 482-85). This is the legitimating basis of the ‘just war’ in which a nation may engage when a foreign nation infringes its rights to pursue its own welfare and happiness in such areas as trade, communication, navigation and self-defence. On the other hand, though, given that each nation has the sole and sovereign right to judge whether a wrong in fact has been committed, it will typically be the case that no-one is in a position to judge which of two warring nations in fact has justice on its side: ‘Wherefore, since nations are equal and independent, and cannot claim a right of

59 For a collection of essays that helpfully situates casuistical reasoning in a variety of religious, political and ethical contexts, see Edmund Leites, (ed.), Conscience and Casuistry in Early Modern Europe (Cambridge: Cambridge University Press, 2002).
judgment over each other, it follows, that, in every case susceptible of doubt, the arms of the two parties at war are to be accounted equally lawful, at least as to external effects, and until the decision of the cause’ (III.iii.40, p. 489).

Vattel’s way of dealing with the lack of an answer to the *quis judicabit?* question at the international level is thus to declare that both warring parties should be considered ‘just’ with regards to the undecidable question of who has right on their side. This has the effect of suspending the ‘just war’ principle and shifting the focus of Vattel’s *jus gentium* to a body of conventions for regulating war between ‘just enemies’. The purpose of this shift is to neutralise disputes over which party has justice on their side — itself a cause of war and obstacle to compromise — and to move the laws of war and peace wholly onto the terrain of the ‘voluntary law of nations’. Vattel’s laws of war and peace thus consist of a body of prudential rules, customs and conventions designed to ensure that war will be conducted in a ‘regular form’ and that it gives rise to no insuperable obstacles to the conclusion of peace treaties (III.iv.66-68, pp. 507-8). This body of conventional rules covers such things the grounds on which war can be declared and by whom; the distinction between enemy belligerents and non-combatants; the limits of destruction to enemy towns and cities; the status and rights of neutrals; the immunities of civilians and the rights enemy captives; and the scale of war reparations and retributions.

Vattel’s use of these conventions is casuistical. It takes place through the discussion of particular cases in which the role of the conventions is to control the manner in which a general principle can be adjusted to difficult circumstances. So, for example, a besieging general should allow enemy non-combatants to leave a besieged city, but there may be circumstances under which he is justified in returning them: if, for example, the pressure they put on the city’s food stocks is likely to hasten its capitulation (III.viii.148, p. 551). Similarly, exiles fleeing a war have a right to seek refuge in neighbouring countries, but these countries ‘do no wrong’ if they make admittance dependent on prudential calculations regarding their own stability and capacity to absorb the refugees (I.xix.229-230, p. 226). With regards to war reparations, Vattel argues that it is legitimate for the victorious nation to exact these on the vanquished — in order to recover some of the costs of the war and to weaken the war-making capacities of the enemy — but these reparations must not become unsupportable for that would threaten the peace (III.ix.160-62, pp. 566-68). Despite Vattel’s initial invocation of a community of nations bound by the natural law of
reciprocal perfection, these conventions are actually underpinned by the shared interest that nations have developed ‘in this part of the world’ in ensuring that there is a ‘balance of powers’, so that no nation can flout the laws of war and peace with impunity (III.iii.47, p. 496).

Regardless of his occasional treatment by modern commentators as an international-law ‘realist’, Vattel’s suspension of the justice of the cause from the laws of war and peace in fact recapitulated a two-hundred year history of the gradual ‘secularisation’ of central-European war- and peace-making. It was this process, beginning with the Peace of Augsburg in 1555 and culminating in the Peace of Westphalia in 1648 that had seen the gradual removal of the moral standing of the enemy — his status as heretic, anti-Christ, infidel — from the causes of war and the negotiations for peace: to be replaced by the elaboration of prudential rules for conducting ‘regular’ wars and negotiating pragmatic peace based on compromise with the enemy.\(^{60}\) The historical memory of this process is present in Vattel’s repeated assertion that unless the question of the justness of the conflicting nations be suspended, then the war between them will be conducted with unregulated ferocity and atrocity, as a war of annihilation, precluding the forms of compromise and mutual acceptance required to achieve a modus vivendi peace (III.xviii.292-294, pp. 644-47).

Vattel’s casuistical construction of the law of nations — in terms of conventional rules for the regulation of war between ‘just enemies’ restrained by a ‘balance of powers’ — was the instrument and effect of a particular history: one whose relegation of unrestrained wars of religion or booty in favour of ‘regular’ political war was widely regarded as a measure of European society’s increasing civilisation. It was this exemplary historical narration of Europe’s civilisation of warfare — rather than stadial conjectural history or the colonial relations between European and non-European peoples — that determined Vattel’s deployment of the concepts of civilisation and barbarism. The resulting conception of civilisation and barbarity was indeed ‘Eurocentric’, not because of a non-European ‘other’ that it occluded or repressed, however, but because of the specifically European intellectual culture in

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which it was grounded, and the wholly European political, religious and juridical history from which it emerged.

For Vattel, barbarian nations are not defined by their extra-European culture or locale, but by their refusal to engage in ‘regular war’ in accordance with conventions of war and peace that were deemed to have civilised the political and military conduct of European nations. Vattel’s exemplary barbarians and savages — whose transgression of conventions that approximated natural law itself meant that they could scarcely be considered human — are thus members of an array of nations who have waged unjust and unregulated war for booty, predation, or religious conversion (III.iii.34, p. 487; III.iv.67, p. 507-8). Some of these nations were from the distant past (Franks and Goths); others from the recent past (the fanatics of the European wars of religion and the Ottoman Turks); and some from the present (sundry pirate and bandit groups). Given the view of its modern critics that European *jus gentium* imposed a conception of civilisation predicated on the barbarity of Indian and American peoples, it is striking that Vattel does not include such peoples in his list of savages. Of course, this list could easily be (and was) extended to include such non-Europeans. It remains the case, though, that the conception of civility informing this list was not formed on the basis of the specific barbarity of new-world peoples but on that of all those who flouted the rules of ‘war in its regular form’, foremost among whom had been the Europeans themselves. As a European diplomatic and political casuistry for secularising and ‘civilising’ wars between European barbarians, Vattel’s normative law for a ‘society of nations’ was spatially restricted to a Europe seen as the product of a particular political and juridical history. This is what made it ‘Eurocentric’, rather than its supposed imperialist or racist exclusion of the non-European.

It is nonetheless true that Vattel’s normative spatialisation of a European law of nations provided something like a negative warrant for European colonialism and imperialism. In doing little more than recapitulating the conventions by which European states had come to regulate intra-European war and conquest, Vattel’s ‘law’ had the *de facto* effect of allowing non-European peoples to fall into an extra-legal space. Here, while conquest and land-expropriation could not be right, neither could they be unjust. This was not because the inhabitants of the non-European world were uncivilised but because they belonged to a space and a history that was outside the history that had civilised and juridified the European barbarians. In this regard,
Vattel’s law of nations broadly conforms to Schmitt’s account of a specific ‘nomos of the earth’ — or spatialisation of political order — that was characteristic of seventeenth- and eighteenth-century European public law and *jus gentium*. Schmitt’s characterisation of this legal order — as a means for regulating war and peace between sovereign states viewed as ‘just enemies’ (*justi hostes*) within the spatial confines of Europe — makes sense if this order is seen as a political and diplomatic casuistry thrown up by European history for the regulation of geoethically independent territorial nations or states.

It was their negative or *de facto* existence outside this normative spatialisation of the earth — rather than their positive or *de jure* existence inside the sphere civilisation (and barbarity) — that opened the non-European ‘nations’ to land-expropriation. As we have already observed, Vattel’s positive or *de jure* justification for the partial expropriation of land belonging to ‘wandering tribes’ came not from his law of nations but from his Swiss-Protestant republican construction of the ‘moral nation’. Even in this latter setting, though, it was not barbarity that impaired the domain rights of non-European nomads but their failure to engage in the virtuous activities — of agriculture and commerce — through which Vattel’s citizens dwell in the morally-saturated space of the national ‘country’: a failure that they shared with such European groups as the members of (Catholic) monastic orders. Needless to say, this way of thinking was also regional within and to Europe; although, again, not constituted through reference to a non-European reality that it gets wrong, and thence might yet get right, when universal reason is actualised in global history.

**Kant’s Regional Cosmopolitanism**

When in his 1795 essay ‘Toward Perpetual Peace’ the East-Prussian metaphysician Immanuel Kant (1724-1804) named ‘Hugo Grotius, Pufendorf, Vattel’ as the ‘miserable comforters’ of the law of nations, he accused them of using a concept of right (*jus*) in relation to war that not only lacked all legal force in restraining the belligerence of nations, but actually encouraged this. Moreover, this was a concept of right that only brought particular wars to an end in negotiated compromises or *modi vivendi*. It did not eradicate the warlike disposition of people or nations and thereby bring perpetual peace in the form of a world republican federation.

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governed by global justice or ‘cosmopolitan right’. In this accusation Kant invoked the existence of a dormant inner ‘moral disposition’ through which man would ‘eventually become master of the evil principle within him’. Apparently this was the moral disposition that Kant’s own moral philosophy had awakened, by recovering a metaphysical normative principle so pure and universal that it applies not just to human beings but to ‘rational beings’ as such. It was also a disposition that a ‘universal history with cosmopolitan intent’ would realise in the world of historical practice through the gradual synthesis of a world republic or a world federation of republics.

We are quite accustomed of course to seeing philosophers display contempt towards their predecessors grounded, as it is Kant’s case, in hostility towards all philosophical cultures other than their own, and in studied indifference toward the historical contexts in which earlier cultures were anchored and the purposes that they served. I am referring of course to the intellectual cultures that informed Pufendorf’s and Vattel’s jus gentium, and to the specific historical contexts responsible for their articulation: namely, those associated with the post-imperial territorialisation and secularisation of political authority in central Europe, and the consequent regularisation of intra-European warfare — contexts that constituted the political order in which Kant unwittingly lived and philosophised. We should be less resigned, though, when modern commentators replicate Kant’s anachronistic philosophical arrogance towards his predecessors in the law of nature and nations; for example, when these commentators envisage a necessary ‘constitutionalisation’ of early modern jus gentium proceeding in accordance with a Kantian philosophical-historical transformation of state-centred prudence into universal cosmopolitan justice. For in

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65 For exemplary instances see Habermas, ‘Does the Constitutionalisation of International Law Still have a Chance?’; Cavallar, The Rights of Strangers; and Otfried Höffe, Kant’s Cosmopolitan Theory of Law and Peace, trans. A. Newton (Cambridge: Cambridge University Press, 2006). See also, the essays collected in James Bohman and Matthias Lutz-Bachmann, (eds.), Perpetual Peace: Essays on Kant’s Cosmopolitan Ideal
doing so, these commentators assume that Kant indeed recovered a universal normative principle for international law that a global history is realising in our time: as if Kant’s cosmopolitan spatialisation of justice somehow escapes the regional European character of Pufendorf’s and Vattel’s.

Underlying this assumption is the view that unlike the kind of natural law doctrines elaborated by Pufendorf and Vattel, Kant’s twin principles of morality and right are not based in ‘comprehensive’ metaphysical doctrine — a particular metaphysical anthropology or cosmology for example. Rather, they are supposed be based in a rationality — ‘pure practical reason’ — whose universality is guaranteed by its ‘formality’: in fact by the ‘formal’ principle of whether a particular norm is ‘universalisable’ among suitably specified rational beings; either that or else by suitably ‘detranscendentalised’ and historicised surrogates for the process of universalisation, such as those provided by Rawls’s ‘original position’ construction, or Habermas’s specification of an ‘ideal speech situation’. Seen from the standpoint of contextual intellectual history, however, it is evident that Kant’s principles of morality and right — and the ‘test’ of universalisability itself — are indeed grounded in a specific, substantive and comprehensive metaphysical anthropology and cosmology.66 Drawing on a Christian Platonic anthropology deeply embedded in the history of north-German Protestant university metaphysics, Kant characterised man as the empirical harbinger for a pure rational being (Vernunftwesen). This being is understood as a pure intelligence (homo noumenon), existing outside space and time, and possessing twin spontaneous intellectual capacities — to intelligise the pure forms of experience, and to govern the will by thinking the ‘idea’ or form of its law — free of the ‘sensuous inclinations’ that otherwise tie the will of empirical man (homo phenomenon) to extrinsic ends or goods.67

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66 For a more detailed discussion, see Ian Hunter, ‘Kant’s Cosmopolitanism from a Historical Viewpoint’, in Barry Hindess and R.B.J. Walker (eds), The Cost of Kant, (forthcoming).
It is this substantive metaphysical anthropology of man’s rational being that supplies the two central features of Kant’s moral philosophy: his conception of the good will as one that transcends enslaving sensuous inclinations by spontaneously conforming itself to pure reason’s intellation of the idea of the law; and his conception of moral community as the ‘kingdom of ends in themselves’ that is formed when the universe of rational beings is joined through transparent reciprocal willing in accordance with this intellation. This same metaphysical anthropology and its associated cosmology lie at the heart of Kant’s ‘doctrine of right’ (Rechtslehre) and cosmopolitan jus gentium. In fact Kant’s political and legal doctrine is formed on the basis of the extraordinary conceit that right or justice originates when this pure intelligence existing outside space and time seeks to exercise its freedom ‘externally’ by occupying the global surface of the earth. It is on this ground that Kant formulates his principle of right or justice — as the harmonisation of the external freedom of each with the external freedom of all in accordance with a universal law — and his conception of the juridical community. The latter is understood as the devolved form of the moral community, emerging when rational beings form a common will on the basis of ‘universal reciprocal coercion’, as opposed to universal reciprocal intellation.

So recondite are the metaphysical doctrines informing Kant’s conception of cosmopolitan right, and so deeply buried in the exoteric formulations of Habermas and Rawls, that it is worth supplying a full quotation that encapsulates them, this one


Kant, Groundwork, pp. 52-8.

Kant, Groundwork, pp. 81-4.


Kant, Metaphysical Elements of Justice, pp. 33-5.

Kant, Metaphysical Elements of Justice, pp. 35-7.
When it is thought in terms of the relations between men as pure intelligences in no relation to things and to each other in space and time, right is easy to determine according to general rules. One needs to allow for nothing more than freedom and the power of willing [Willkür] in relation to one another, either immediately or mediated through things. In any case, one can say in general that all external right [can be regarded] as possession of the free choices of others (because one has control of their willing). When, for this right to be concretely actualised, man is viewed as a being of the senses [Sinnumwesen], then the idea of a community of wills forms the basis of: 1. the sensory conditions for the determination of right required in regards to [external] things, under which alone a communal will is possible; 2. such conditions through which [a communal will] becomes real; 3. the condition of the use of persons as things through which a unified will becomes necessary.\(^\text{73}\)

The central elements of Kant’s juridical and political philosophy flow directly from this metaphysical picture. Kant thus begins his construction of right or justice by posing the philosophical problem of ‘noumenal possession’ (possessio noumenon): how can a pure intelligence existing outside space and time occupy the surface of the earth? According to Kant’s metaphysical anthropology, cosmology and cosmography this problem is inescapable and fundamental, because men as spiritual beings are required to make use of the earth in order to redeem it from the morally vacuous status of res nullius — an ownerless thing — and in order to obtain embodiment for themselves in the world of space and time.\(^\text{74}\) The spherical character of the earth’s surface is crucial for this construction, as it is the continuous and finite nature of the globe that establishes contiguity among the rational beings seeking to occupy it. This is what allows their exercises of ‘external freedom’ to conflict, and gives rise to right or justice as the principle that resolves this conflict through communal will-harmonisation.\(^\text{75}\)


\(^{74}\) Kant, *Metaphysical Elements of Justice*, pp. 52-3.

\(^{75}\) Kant, *Metaphysical Elements of Justice*, pp. 56-64.
Noumenal or rightful possession of the earth — that is the capacity of pure intelligences existing outside space and time to occupy the surface of the earth — is thus reciprocally related to the formation of a communal will. This is understood in terms of the harmonisation of the choices of each with the choices of all through ‘universal reciprocal coercion’, and it permits the universe of rational beings to achieve a justly distributed possession of the surface of the earth without having to physically attach themselves to it and thereby lose their intelligible freedom. It is this communal will that forms the basis of justice in Kant’s public law and for his construction of the civil state. As the rightful condition established by the common will remains ‘provisional’ in the ‘state of nature’, Kant understands the civil state as the actualisation and execution of this will by means of coercive public law applied to man ‘as a being of the senses’.  

The fact that for Kant the only legitimate polity is the ‘ideal republic’ — characterised by the relations of freedom, equality and reciprocity among citizens forming a common will — is thus the direct outcome of his conception of the state as the means of executing the communal will through which rational beings achieve noumenal possession of the globe.

Kant’s cosmopolitan or global spatialisation of justice is thus the result of the metaphysical reciprocity that the establishes between the community of space in a spherical earth and the community of wills formed among the rational beings seeking to occupy it: ‘Since the earth as a self-enclosed surface rather than a limitless one, then both civil law [Staatsrecht] and the law of nations (ius gentium) together lead inevitably to the idea of a law of nations (ius gentium) or cosmopolitan right (ius cosmopoliticum).’ For Kant jurisdictionary space is inherently global, as right or justice is conditional on the harmonisation of wills required to occupy a global space, which means that Kant’s political metaphysics cannot formulate a political-territorial conception of jurisdiction. For the same reason, the only truly legitimate form of political authority for Kant is that exercised by a world republic, as it is only the harmonisation of wills of the entire universe of rational beings that makes rightful possession of the earth possible and that is actualised in the global civil state:

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76 Kant, Metaphysical Elements of Justice, pp. 64-72, 76-7.
77 Kant, Metaphysical Elements of Justice, pp. 78-84. Cf., also Immanuel Kant ‘On the Common Saying: That may be correct in theory, but is of no use in practice’, in Practical Philosophy, pp. 273-309, at 290-96.
78 Kant, Metaphysical Elements of Justice, pp. 75. (Translation modified).
Since nature has enclosed all nations within limited boundaries (by virtue of the spherical shape of their dwelling, as *globus terraqueus*) … so all nations originally hold a community of the land … [which is] that of possible physical interaction (*commercium*), that is, a community which involves a universal relationship of each to all the others such that they can offer to trade with one another, and have the right to trade with a foreign nation without being regarded as an enemy. — This right, insofar as it involves the unification of all nations for the purpose of establishing a certain universal law of their possible interaction, can be called cosmopolitan right (*ius cosmopoliticum*).\(^{79}\)

This is the view expressed in the *Rechtslehre* and in the ‘Idea for a Universal History with Cosmopolitan Intent’. Kant’s subsequent recasting of the world republic into a world federation of (presumably) territorial republics — in his ‘Perpetual Peace’ essay — is couched ambivalently in his characterisation of the latter as a ‘negative surrogate’ for the former; although Kant is in two minds as to whether this surrogate is called for owing to the illegitimate attachment of states to their territorial sovereignty, or because territorial states are already legitimate as a result of their local embodiment of the common will.\(^{80}\) If we compare Kant’s republicanism with Vattel’s, however, then it is clear that for Kant there can be no territorial embodiment of the common will, as for him there is no conception of the nation as a local (‘free and independent’) corporate moral personality, and no equivalent of Vattel’s national ‘country’ where natural-law virtues are cultivated in a nationally-specific form.

Again, this is because Kant’s cosmopolitan spatialisation of justice is grounded in the metaphysical reciprocity between the spatial community of the globe and the noumenal community of rational beings formed to occupy it. It should thus be clear that Kant’s ‘universal’ spatialisation of justice was not only regional to Europe but was also regional within Europe; as the metaphysical anthropology and cosmography on which it was based belonged not to universal reason, but to the teaching programs of an archipelago of north-German Protestant philosophy faculties.\(^{81}\)

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\(^{79}\) Kant, *Metaphysical Elements of Justice*, p. 125. (Translation modified).


\(^{81}\) On the regional-academic character of Protestant German metaphysical philosophy more broadly, see Walter Sparn, ‘Die Schulphilosophie in den lutherischen Territorien’, in Holzhey and Schmidt-Biggemann (eds.), *Die Philosophie des 17. Jahrhunderts, Band 4*, pp. 475-97. On its pedagogic or ‘psychagogic’ character, see Ian Hunter, ‘The University
Similar remarks apply to Kant’s ‘universal history’, through which he envisages all states on earth subject to a global historical development that will see them unified in a common international legal order, whether this is one that dissolves them into a world republic or unites them into a world federation. Kant’s universal history is based on the same metaphysics as his universal spatialisation: that is, on the conception of a universe of intelligences (‘rational beings’) existing outside space and time and auto-conforming their collective will through pure self-reflection. In this quasi-Platonic metaphysical cosmology, time is the medium through which the unified self-willing intellectual community ‘falls’ into sensuous embodiment and division, in Kant’s version by choosing to occupy the surface of the earth. For Kant, properly (i.e., philosophically) understood, history represents the domain in which the pure moral community is subjected to the sensuous inclinations and interests of the ‘evil principle’. This means of course that it is also the domain in which man’s sensuous self (\textit{homo phenomenon}) can be redeemed through the progressive realisation of his pure moral capacities (\textit{homo noumenon}) over and through time. Kant thus projects a ‘universal history’ encompassing global mankind by assigning history the metaphysical purpose of realising man’s a-temporal moral disposition and community through such temporal and non-moral surrogates as war and trade.\textsuperscript{82} It is this ‘philosophical history’ that is envisaged as realising mankind’s ‘dormant moral disposition’ through the progressive world-historical development of a cosmopolitan juridical order: one that will not just eliminate war, but the ‘evil principle’ that gives man belligerent inclinations in the first place.\textsuperscript{83}

Grounded as it is in the metaphysical anthropology and cosmology that Kant drew from the resources of Protestant university metaphysics, this morally-purposive ‘universal’ history is thus evidently regional to Europe. More importantly for our present concerns, though, this philosophical historiography is also regional within Europe. This becomes clear when it is placed alongside the historiography of the ‘narratives of civil government’ — of the kind composed by Pufendorf among others — where Europe’s political and juridical order is characterised not in terms of the unfolding of moral community but in terms of the empirical play of political powers

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\textsuperscript{82} Kant, ‘Universal History’, pp. 50-1.

\textsuperscript{83} Kant, ‘Perpetual Peace’, pp. 331-37.
and interests and positive juristic institutions. In relying on Kant’s philosophical history to provide a normative rationale for the emergence of a cosmopolitan international legal order, modern scholars of international law and international relations thus deploy a historiography based on a regional European metaphysics. When he offers a Kantian philosophical-historical interpretation of the ‘residual’ presence of state interest in the institutions of international justice — such phenomena as the use of the League of Nations to enforce ‘victors justice’ over the Germans after the first world war, or the right of veto accorded to the five super-state powers that make up the Security Council of the United Nations Organisation, and so on — Habermas thus diagnoses this as symptomatic of the halting but nonetheless progressive historical unfolding of ‘cosmopolitan’ justice. In other words, his account of the cosmopolitan ‘constitutionalisation of international law’ never leaves the terrain of Kant’s regional European political metaphysics and philosophical history. The implausibility of this metaphysics and historiography proving ‘universal’ — that is, capable of grounding the diverse anthropologies and cosmogonies of non-European cultures and peoples — is shown by the fact that it is not even universal in relation to the rival European political anthropologies and historiographies that we find in Pufendorf and Vattel.

In acceding to the ‘hidden truth’ and proleptic future of the international legal order in this manner, Habermas is occupying a particular kind of intellectual persona made available through Kant’s metaphysical anthropology and cosmology. This becomes clearer once we observe that Kant’s philosophical history is reciprocally related to his highly metaphysical construction of twin normative domains that he calls ‘theory’ and ‘practice’. Under this construction, ‘theory’ refers to the philosopher’s self-reflexive recovery of the ‘idea’ or principle of right, the thinking of which — because it is supposed to be the means of purging ‘sensuous man’s’ inclinations and interests — is envisaged as transforming the philosopher into the personification of the community of rational beings in whose pure willing he now

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85 Habermas, ‘Does the Constitutionalization of International Law still have a Chance?’, pp. 132-46.
‘participates’. For its part, ‘practice’ is supposed to refer to the empirical or historical domain inhabited by ‘sensuous man’ (the *Sinnenwesen*). Here the pure moral norms of the intelligible community are either forestalled by the inclinations and interests of empirical man (*homo phenomenon*), or actualised in the conduct of the theorist (*homo noumenon*) who acts in accord with the awakened moral disposition and the purposive history in which this disposition is being unfolded.

The persona of the theorist whom Kant identifies with the ‘philosopher’ is thus ascribed an intrinsic moral and cognitive superiority over the personae inhabiting the unredeemed domain of historical practice: namely, the ‘miserable comforters’ of the *jus gentium* tradition and the jurisconsults to empirical states, whom Kant stigmatises with moral and cognitive corruption for their complicity with the political tyranny of man’s sensuous interests and inclinations. Through an extraordinary attempt to convert metaphysical purity into political prestige, Kant makes the philosopher — in the persona of the ‘moral politician’ — into the lynchpin of the universal historical actualisation of the moral community. Kant thus assigns this personage the role of adviser to the prince, in which he will oversee the transformation of the maxim’s of state prudence into the cosmopolitan principle of justice, by advising the prince to enact a republican constitution for his state, and to join a cosmopolitan federation of states as the ‘surrogate’ for an intrinsically pacific global moral community.

Conversely, beginning with Hobbes and the *jus gentium* ‘miserable comforters’, the jurisconsults are identified with the ‘political moralist’ who serves the interests of power rather than right. According to Kant, as a result of their empirical conception of justice based on the political governance of permanently conflicting interests, the juristic political moralists are themselves accomplices of the war and repression through which empirical politics satisfies mankind’s sensuous interests and inclinations. Here we can see the emergence of a key intellectual source for the postcolonial critique of *jus gentium* as an accomplice of European colonialism and imperialism.

We have seen, though, that Kant’s supposedly ‘universal’ metaphysical anthropology of man’s rational being — and the ‘universalisability’ criterion of moral

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reason internal to it — is no less regional and substantive than the other *jus gentium* political rationalities that we have discussed: the quasi-Epicurean anthropology of man’s passion-driven nature from which Pufendorf derives the norm of imposed sociability; and the updated Christian-Aristotelian anthropology from which Vattel derives the norm of self-perfecting corporate ‘national’ moral personality. In each case, a particular anthropology and cosmography is associated with the shaping of a particular intellectual persona, understood as a specific way of acceding to knowledge and truth. It is in this historical-intellectual light that we should view Pufendorf’s Epicurean political jurist deriving knowledge of natural law from observation of man’s postlapsarian ‘imposed’ nature; and so too Vattel’s Aristotelian statesman-diplomat, unfolding casuistical norms for the ‘society of nations’ in the space between the natural and necessary law of global perfection and the voluntary law of national self-interest. Kant’s philosophical derivation of a ‘pure’ norm of right — through the (self-transformative) reflective recovery of an a priori principle supposedly latent in the philosopher’s own ‘rational being’ — thus has no greater intrinsic validity than their constructions. It pertains not to universal truth, but to a particular regional way of acceding to truth as ‘universal’. Its supposed theoretical superiority over the ‘empirical’ constructions of Pufendorf and Vattel does not come from the fact that it knows more about law and politics than they do. Rather it arises from the fact that in claiming to retrieve the concept of right through pure thought, the theoretical personage invokes his spiritual superiority over all those whose empirical methods supposedly tie them to man’s sensuous inclinations and interests.

In a recent discussion of the conditions of normative judgment in international law, Martti Koskenniemi develops an account paralleling the one that we have just elaborated, arguing that the derivation of norms for international law depends upon the formation of the ‘mindset’ (cf., persona) of the *jus gentium* jurist. This promising argument is short-circuited, however, by Koskenniemi’s recourse to the Kantian opposition between a ‘managerialist’ and a ‘constitutionalist’ mindset, and by his identification of the latter with the disguised metaphysician hidden in Kant’s ‘moral politician’. Koskenniemi assumes that the principle of right to which the constitutionalising international jurist accedes by cultivating this philosophical persona — the principle of reconciling the freedom of each with the freedom of all in

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the collective will of a community of rational beings — does indeed provide a ‘formal’ (universal) basis for the exercise of normative judgment. This forces him to read history backwards from this normative principle and persona, thereby stigmatising the so-called ‘managerial’ jus gentium of Pufendorf and Vattel as merely ‘instrumental’ in relation to particularistic ‘material’ norms.

In adopting this strategy, Koskenniemi fails to observe that the ‘deepening of subjectivity’ and ‘moral regeneration’ required to accede to Kant’s ‘formal’ principle of right is itself dependent on a particularistic philosophical culture and substantive end. We have shown that Kant was engaged in the cultivation of a spiritually privileged persona deemed capable of retrieving the pure (formal) principle of justice by thinking its idea, thereby ostensibly personifying the pure community of intelligences in the ‘fallen’ historical world of state interest. The cosmopolitan ‘mindset’ or persona through which Kant accedes to the pure principle of right is thus no less anchored in a regional historical culture and normative program than the very different personae required by Pufendorf’s Hobbesian natural-law political philosophy or Vattel’s Wolffian jus gentium political casuistry. The central difference between them is that while Pufendorf’s program was tied to the secularisation and territorialisation of political authority in the post-Westphalian German Empire — and while Vattel’s was linked to the regulation of war- and peace-making among the ‘just sovereigns’ of a European society of nations — Kant’s program was tied to a different kind of local interest. This was the interest of a regional academic-philosophical clerisy intent on establishing itself as the privileged conduit through which the metaphysical norm of a community of rational beings flowed into ‘empirical’ politics and law. Such was the cultural-political program that anchored Kant’s global spatialisation of justice and prophetic ‘universal’ history of mankind’s cosmopolitan future.

**Conclusion**

Despite the central role that he claimed for the philosophical adviser to the prince. Kant did not occupy this office. In this he differed significantly from Pufendorf and Vattel: the former occupying the office of political adviser and court historian to the Protestant territorial states of Sweden and Brandenburg-Prussia, the latter seeing diplomatic service on behalf of Protestant Saxony as consul to the Swiss Federation. Kant instead spent his whole adult life as a student and then professor of
philosophy (metaphysics and logic) at the East-Prussian university of Königsberg. Here he dedicated his considerable intellectual energies to philosophical tasks associated with the defence of Protestant university metaphysics against such perceived threats as scientific empiricism, ethical pragmatism, and Hobbesian conceptions of politics and law.\(^{92}\)

It will be clear from the preceding discussion that Kant’s juridical and political philosophy — his contribution to the history of the law of nature and nations — was wholly contained within his regional academic metaphysics and the publicistic defence of its philosophical culture. By cultivating his persona in terms of participation in the willing of a community of pure intelligences, the Kantian political adviser could not engage the interests of the territorial prince, as the advice he had to offer — ‘Convert your own state into a rational republican community and then amalgamate it with a world republic or federation of republics’ — was not given in a political capacity or persona; neither was it addressed to a political personage: the Prussian prince or political class. Rather, it was addressed to the only group within the Protestant German Bildungsbürgertum — academically educated middle classes — who were disposed to think of the political and juridical order in a metaphysical manner: as if it were the form in which a universe of pure intelligences achieves a devolved mutually coercive form of communal willing. In fact this was the cultural stratum educated via the regional Protestant scholasticism of Leibniz and Wolff, and then Kant himself.

It thus was not the case that Kant had formulated a universally true theory of cosmopolitan law and politics that was blocked by the merely historical and contingent political interests of territorial princes, and that hence might yet take wing in the enlightened law and politics of a cosmopolitan future.\(^{93}\) In conceiving the ‘theory’ of law and politics in terms of the self-purifying intellection of a pure idea to which their empirical reality will eventually approximate, Kant was not offering a true (or false) theory of them. Rather he was providing the ‘spiritual’ means of forming a particular way of acceding to their truth: as the devolved historical-


empirical manifestations of a self-governing community of pure intelligences. This
does not mean that Kantian legal and political philosophy was ineffectual in the
domains of positive law and politics. It does mean, though, that its effects were not
realised through technical mastery of these domains, but through the supervening
presence of the philosophical persona through whose spiritual purity the need for a
‘pure’ theory of law is first generated.

If further research shows that, in comparison with Grotius, Pufendorf and Vattel,
there is little use of Kant’s *Rechtslehre* in nineteenth-century positive law — whether
as a natural-law reception framework, or as a cited legal authority — then that will
tend to confirm the preceding account.94 This account will also find a degree of
confirmation if the juristic reception of Kant’s legal metaphysics takes place
principally through the supervention of a pure theory of cosmopolitan justice, acceded
to via the persona of the philosophical jurist or ‘moral politician’. That, I take it, is
one of the central lessons of Koskenniemi’s illuminating account of the reception of
Kant by German international lawyers — Gerber, Heilborn, Triepel, Holtzendorff,
Jellinek — in the years between 1870 and 1914. In their ceaseless efforts to ‘square
the circle’ of national self-interest and a pacific cosmopolitan legal order, the
Germans drew on Kant’s principle of right as the communal will of a rational
community, while combining it with a neoKantian sociological history.95 According
to the latter, the rational community’s universal normative will is gradually being
realised via the sociological globalisation of justice through the extension of
international treaties and conventions, and the continuing growth of international
trade and communications — much as Habermas still argues in his account of the
ongoing ‘constitutionalisation’ of international law.

In grounding itself in a metaphysical anthropology and cosmology geared to the
formation of a prophetic-hermeneutic philosophical persona, this account, though,
remained underdetermined in relation to any given state of political and juridical
affairs. The same political reality could be interpreted as symptomatic either of the
practical embodiment of the principle of the ideal common will — as Kant interpreted
the rule of Frederick the Great, for example — or of the failure to realise in practice

94 Cf., the rough tabulation of citational frequency of *jus gentium* authorities in F. S.
this ideal, which nonetheless remained true ‘in theory’. The grounding of their theory of international justice in a regional German metaphysics — one that only engaged political reality by setting it a cosmopolitan moral task — meant that the German international jurists were ill equipped to deal with the play of state-centred political forces that drew Germany into a catastrophic war and then extracted vengeful reparations based on war guilt. Buckling under this unbearable pressure on their national philosophical premises and culture, some of the Kantian international jurists defaulted to the defence of Germany’s patriotic interests, while others took refuge in a utopian future still to come.96

In comparison with the territorial spatialisation of jurisdiction and the European spatialisation of *jus gentium* that we find (in different ways) in Pufendorf and Vattel, the global spatialisation of justice in Kantian philosophical international law initially had no direct anchorage in a concrete political and juridical order. Schmitt’s account of the destruction of the early modern public-law ‘nomos’ of a European society of nations under the impact of rising extra-European ‘hemispheric’ political hegemonies — particularly the expanding imperial hegemony of the USA — does suggest, though, that Kantian cosmopolitanism may have found *post-facto* anchorage in this new imperialism at one remove. One can see this, for example, in John Rawls’s Kantian rejection of a Vattelian *modus vivendi* between ‘just enemies’ as a basis for international stability, and his argument that international relations must be based instead on ‘stability for the right reasons’. Apparently this will emerge when each of the members of a ‘society of peoples’ undergoes a ‘moral learning’ that sees it suspending its ‘comprehensive’ cultural doctrines and achieving co-operation on the basis of a ‘reasonable and rational’ conception of justice.97 In using the device of the ‘veil of ignorance’ to suspend divergent comprehensive doctrines — and thereby allow different peoples to achieve consensus through the moral learning of a shared conception of right — Rawls elaborates a devolved simulacrum of Kant’s self-transformative participation in a community of rational beings as the means of transcending divisive empirical interests.98 Given that this ‘universal’ construction of international law is actually an adaptation of the Kant’s regional political metaphysics — but now tied to the interests of a different national philosophical clerisy — then the

global norms of Rawls’s ‘law of peoples’ can only find a \textit{de facto} anchorage: namely, in the global projection of United States power and culture.

The symptom of this anchorage is to be found in Rawls’s conception of ‘outlaw states’. In conceiving such states in terms of their failure to achieve a ‘decent’ domestic simulacrum of liberal-democratic rule — which is then aligned with their aggressive foreign policies — Rawls treats them as unjust in relation to the shared conception of justice that constitutes the ‘law of peoples’, and thence as subject to military sanction by an international force acting in the name of this conception.\footnote{Rawls, \textit{The Law of Peoples}, pp. 80-1.}

This does indeed point to the eclipse of the secularised territorial \textit{jus gentium} of Pufendorf and Vattel, in which all ‘regular’ warring nations are ‘just enemies’ as there is no determinable global normative principle or agent capable of effectively deciding who has justice on their side. In being based on a transposed deployment of Kant’s regional metaphysics of justice, however, Rawls’s confidence that his philosophy can indeed decide this question — his confidence that his philosophy can include all the earth’s ‘peoples’ within a single global spatialisation of justice — relies \textit{de facto} on the existence of a global hegemon intent on projecting its own politics and culture as ‘universal’.