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JUS GENTIUM METHODO SCIENTIFICA PERTRACTATUM

BY CHRISTIAN WOLFF

VOL. I. A Photographic Reproduction of the Edition of 1764, with an Introduction by Otfried Nippold, a List of Errata, and a portrait of Wolff.

VOL. II. A Translation of the Text, by Joseph H. Drake, with a Translation (by Francis J. Hemelt) of the Introduction by Otfried Nippold, an Index, and a portrait of Wolff.

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CHRISTIANVS L.B. DE WOLF.
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BY

CHRISTIAN WOLFF

VOLUME TWO

THE TRANSLATION

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PREFACE

Since nations in their relations with each other use no other law than that which has been established by nature, a separate treatment of the law of nations and the law of nature might seem superfluous. But those, indeed, who feel thus do not weigh the laws of nations in scales that are perfectly balanced. Nations certainly can be regarded as nothing else than individual free persons living in a state of nature, and therefore the same duties are to be imposed upon them, both as regards themselves and as regards others, and the rights arising therefrom, which are prescribed by the law of nature and are bestowed on individual men, because by nature they are born free, and are united by no other bond than that of nature. And so whatever right arises and whatever obligations result therefrom, come from that unchangeable law which has its source in the nature of man, and thus the law of nations is undoubtedly a part of the law of nature, and therefore it is called the natural law of nations, if you should look at its source, but the necessary, if you should look at its power to bind. And this is a law common to all nations, so that any nation which does anything contrary to it, violates the common law of all nations, and does a wrong. But since, indeed, nations are moral persons and therefore are subject only to certain rights and duties, which by virtue of the law of nature arise from the social contract, their nature and essence undoubtedly differ very much from the nature and essence of individual men as physical persons. When therefore the duties, which the law of nature prescribes to individuals, and when the rights, which are given to individuals to perform the duties, are applied to nations, since they can be such only as are allowed by their subjects, they must be suitably changed by them, that they may take on a certain new form. And thus the law of nations does not remain the same in all respects as the law of nature, in so far as it controls the acts of individuals. What therefore stands in the way of treating it separately as a law peculiar to nations? Indeed, he who speaks of the law of nature and nations, shows by that very fact, unless he should wish to utter sound without sense, that there is a difference between the law of nature and the law of nations. But if, indeed, any one shall be too obstinate to admit that the law of nations is different from the law of nature, he may call our present volume, which we have written on the former subject, the ninth part of 'The Law of Nature'. For we consider it unseemly to use the weapons of controversy over goats' hair. But as indeed the condition of men is such that in a state one cannot completely satisfy in all details the rigour of the law of nature, and for that

reason there is need of positive laws, which do not differ altogether from the law of nature, nor observe it in all details; so likewise the condition of nations is such that one cannot completely satisfy in all details the natural rigour of the law of nations, and therefore that law, im mutable in itself, should be changed only so much that it may not depart entirely from natural law, nor observe it in all details. But since the common welfare itself of nations demands this very immutability; therefore nations are none the less bound to admit as between themselves the law arising therefrom, than they are bound by nature to an observance of natural law; and the former no less than the latter, if consistency in the law is preserved, is to be considered a law common to all nations. But this law itself we, in company with Grotius, have been pleased to call the voluntary law of nations, although with not exactly the same signification, but with a slightly narrower meaning. But far be it from you to imagine that this voluntary law of nations is developed from the will of nations in such a way that their will is free to establish it and that freewill alone takes the place of reason, without any regard to natural law. For as we have proved in the eighth part of 'The Law of Nature', civil laws are not matters of mere caprice, but the law of nature itself prescribes the method by which the civil law is to be fashioned out of natural law, so that there can be nothing which can be criticized in it; so also the voluntary law of nations does not depend upon the free will of nations, but natural law itself prescribes the method by which the voluntary law is to be made out of natural law, so that only that may be admitted which necessity demands. Since nature herself has united nations into a supreme state in the same manner as individuals have united into particular states, the manner also in which the voluntary law of nations ought to be fashioned out of natural law, is exactly the same as that by which civil laws in a state ought to be fashioned out of natural laws. For that reason the law of nations, which we call voluntary, is not, as Grotius thought, to be determined from the acts of nations, as though from their acts their general consent is to be assumed, but from the purpose of the supreme state which nature herself established, just as she established society among all men, so that nations are bound to agree to that law, and it is not left to their caprice as to whether they should prefer to agree or not. Those are not lacking who, when they condemn the voluntary law of nations, speak of it as natural law, so that they seem to disagree only in words, but agree in fact; nevertheless if you wish to examine the matter more carefully, you could not deny that the obligation which comes from natural law is not in the least diminished by the voluntary law, although this gives immunity of action among men and permits those things to be tolerated which could not be avoided without greater evil, consequently it is

undoubtedly necessary that natural law must be distinguished from voluntary law, by whatever names indeed you may have preferred to call these different laws. We prefer the custom of not changing terms once introduced into science except for urgent necessity, but the concepts corresponding to them, as there may have been need, are to be so limited and corrected, that they may correspond to the truth. For it seems too childish, with the arrogance of a weak mind, to change terms or their signification, and on this account to claim the reputation of a discoverer with those among whom even the one-eyed is king. That most perfect law of nature constantly retains its force, so that we should do right, and should not wish to do the things which can be done without punishment, unless they may also be done rightly, and thus there may arise a consciousness of duty done as a reward, inasmuch as that is a great part of happiness, and as good deeds produce a true and great reputation, delight in which is also to be considered as real happiness without a flaw. But just as individuals can acquire rights by stipulations and contract obligations through them; so also nations can acquire rights from nations, by stipulations and contract obligations through them. This is appropriately called the stipulative law of nations, and it gets its validity from natural law, which commands that agreements should be observed. Moreover, natural law enjoins that agreements should be made with a sense of obligation, although the voluntary law does not base their validity upon the same considerations, and there may be a violation of natural law without a penalty and that is to be endured. It is self-evident that stipulative law is only a particular law of nations, which is not valid except between those nations which have contracted. It has been decided before that there can be a tacit no less than an express agreement, and by nature there are certain tacit provisions in every express agreement, since the law of nature makes no distinction between contracts *bona fide* and *stricti juris*. On these tacit agreements are based those provisions which have been introduced by custom among nations, and which, as we have said, constitute the customary law of nations. This is similar to the stipulative law, therefore it holds good only between nations which have made those customs their own by long observance. But although the characteristics which belong to this law are carelessly referred to the common law of nations, nevertheless the great number of erring nations does not excuse the error, so that it could be referred either to the natural or the voluntary law. We do not follow the mass of jurists, who decide concerning a fact before the reasons have been considered as to why it must be so decided, and then that they may protect their preconceived opinion, they finally seek out reasons as to why they should so decide. We admit as true only what is inferred as a necessary consequence from previous conclusions, but we do not invent doubtful

principles, so as to deceive those endowed with a weak intellect, to whom it is not permitted to see very far ahead. The method by which we have determined to present the law of nature and nations and which we use in our philosophy, does not admit of these devices; it requires truth without colouring and childish deceit. Therefore in the present work also we have so presented the law of nations, that what is natural may be separated from that which is voluntary but common to all nations, what is customary from either, what finally is stipulative from all the rest, and that by a careful reader those things may be easily distinguished which come from different sources. But as it is human to err, so it will not seem wonderful that nations, even the most learned and civilized, have erroneously considered those things to be in accordance with the law of nature which are diametrically opposed to it, and that perverse customs have arisen therefrom, by which right has been transformed to reckless licence, which we do not in the least confuse with the voluntary law of nations, but refer to an unjust customary law of nations, by which the most sacred name of law is defiled. And in that we part company with Grotius, to whose time system was an unknown name, an abuse which still exists in our time, and he can be easily excused, because he has united the voluntary and customary law of nations into one, and in doing this he has not distinguished good customs from bad. But it is to the advantage of the human race that things so different should not be confused with one another, since nations and their rulers would escape responsibility for disasters and troubles, if a sense of duty should be divorced from the exercise of a right, and the right transformed into reckless licence. In fact it is rather to be desired than hoped for, that nations should be brought back to the straight road from the by-paths into which they have strayed too far; nevertheless on this account a knowledge of the truth is not to be considered absolutely useless. For in order that we may not be unjust to the Supreme Being, it is fitting that we understand the source of evils, and that we should not be so hopeless of the human race, as to believe that there may never be any one who would be unwilling to put his hands into the keeping of truth. May God bring it about that the times may come in which, if not all, at least very many rulers of nations may recognize what they owe to their own nation and to other nations.

Halle, April 9, 1749.

PROLEGOMENA

§ 1.—*Definition of the Law of Nations.*

By the Law of Nations we understand the science of that law which nations or peoples use in their relations with each other and of the obligations corresponding thereto.

We propose to show, of course, how nations as such ought to determine their actions, and consequently to what each nation is bound, both to itself and to other nations, and what laws of nations arise therefrom, both as to itself and as to other nations. For laws arise from passive obligation, so that, if there were no obligation, neither would there be any law.

§ 23, pa
Jus Na
§ 25, pa
Jus Na

§ 2.—*How nations are to be regarded.*

Nations are regarded as individual free persons living in a state of nature. For they consist of a multitude of men united into a state. Therefore since states are regarded as individual free persons living in a state of nature, nations also must be regarded in relation to each other as individual free persons living in a state of nature.

§ 5, par
Jus Na
§ 54, pa
Jus Na

Here, of course, we are looking at nations as they are at their beginning, before one has bound itself to another by definite promises restricting the civil liberty which belongs to a people, or has been subjected, either by its own act or that of another, to some other nation. For that the liberty of nations, which originally belongs to them, can be taken away or diminished, will be evident from proof later.

§ 3.—*Of what sort the law of nations is originally.*

Since nations are regarded as individual persons living in a state of nature, moreover, as men in a state of nature use nothing except natural law, nations also originally used none other than natural law; therefore the law of nations is originally nothing except the law of nature applied to nations.

§ 2.
§ 125, P
Jus Na

The only law given to men by nature is natural law. This then can be changed by the act of men voluntarily, by agreement between individuals, so far as concerns those things which belong to permissive law, and so far as concerns the performance of those things which belong to mankind; it can be changed in the state by force of the legislative power, as we have shown in our natural theory of the civil laws. In like manner the only law given to nations by nature is natural law, or the law of nature itself applied to nations. This then can be changed by the act of nations voluntarily, so far as concerns those things which belong to permissive law, and so far as concerns the performance of those things which belong to mankind, as we shall see in the following discussion. But far be it from you to think that therefore there is no need of our discussing in detail the law of nations. For the principles of the law of nature are one thing, but the application of them to nations another, and this produces a certain diversity in that which is inferred, in so far as the nature of a nation is not the same as human nature. For example, man is bound to preserve himself by nature,

Chapte
part 8,

[1] [Unless otherwise designated, all marginal notes either refer to other works of Wolff or are cross references to other sections of this book. The complete title of the other works of Wolff to which he makes reference may be found on p. lii—Tr.]

every nation by the agreement through which it is made a definite moral person. But there is one method of preservation required for a man, another for a nation. Likewise the right of defending one's self against the injuries of others belongs to man by nature, and the law of nature itself assigns it to a nation. But the method of one man's defence against another is not, of course, the same as the proper method of defence for nations. There will be no difficulty in this for those who have understood the force of the fundamental principle of reduction, which is of especial importance in the art of logic. And if any mists still obscure the minds of some, the following discussion will dispel them. Therefore we are not embarrassed by the objections of those who argue that the law of nations ought not to be distinguished from the law of nature, and that the law of nations ought to be presented as nothing other than the law of nature. So far as we are concerned, each may indulge his own belief. With none shall we start a dispute. For us it is sufficient to have explained those things which seem to be in harmony with the truth.

§ 4.—*Definition of the necessary law of nations.*

We call that the necessary law of nations which consists in the law of nature applied to nations. It is even called by Grotius and his successors, the internal law of nations, since it evidently binds nations in conscience. It is likewise called by some the natural law of nations.

Of course, the necessary law of nations contains those things which the law of nature prescribes to nations, which, just as it regulates all acts of men, so likewise controls the acts of nations as such.

§ 5.—*Of the immutability of this law.*

§ 4.
§ 142, part 1, Phil. Pract. Univ.

Since the necessary law of nations consists in the law of nature applied to nations, furthermore as the law of nature is immutable, the necessary law of nations also is absolutely immutable.

§§ 136, 142, part 1, Phil. Pract. Univ.
§ 5, part 8, Jus Nat.
§ 136, part 1, Phil. Pract. Univ.
§ 4, part 8, Jus Nat.

The immutability of the necessary law of nations arises from the very immutability of natural law, and is finally derived from the essence and nature of man as a source whence flows the very immutability of natural law. The law of nature therefore rules the acts of nations, because men coming together into a state and thereby becoming a nation, do not lay aside their human nature, consequently they remain subject to the law of nature, in as much as they have desired to combine their powers for the promotion of the common good.

§ 6.—*The nature of the obligation which comes from the necessary law of nations.*

§ 4.

In like manner since the necessary law of nations consists in the law of nature applied to nations, and consequently the obligation which arises from the necessary law of nations comes from the law of nature, furthermore, since this obligation itself, which comes from the law of nature, is necessary and immutable, the obligation also which comes from the law of nations is necessary and immutable; consequently neither can any nation free itself nor can one nation free another from it.

§ 142, part 3, Phil. Pract. Univ.

These things are to be well considered, lest some one may think, when he sees that a certain licence of action must be allowed among nations, that the necessary law of nations is of no value. For this would be just as if one should argue that the law of nature is of no value, because the abuse of their liberty must be allowed to men in a state of nature and the same is turned to licence of action, nor can this be prohibited except by positive law in a civil state, where they can be compelled by a superior force to do what they are unwilling to do of their own accord. The abuse of power remains illicit even among nations, even though it cannot be checked. Nor do good nations do all they can, but they have respect for conscience no less than every good man has, who does not gauge his right by might, but by the obligation that comes from tne law of nature. A good nation differs from a bad in the same way that a good man differs from a bad, or, if you prefer, the virtuous from the vicious.

§§ 150, 156, part 1, Jus Nat.

§ 7.—*Of the society established by nature among nations.*

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

§ 138, part 1, Jus Nat.
§ 135, part 1, Phil. Pract. Univ.
§ 142, part 1, Phil. Pract. Univ.
§ 5, part 8, Jus Nat.
§ 26, part 8, Jus Nat.
§ 5, part 8, Jus Nat.

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

§ 5, part 8, Jus Nat.

§ 8.—*Of the purpose of that state.*

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

§ 7.
§ 142, part 7, Jus Nat.
§ 144, part 7, Jus Nat.
§ 141, part 8, Jus Nat.

Just as one man alone is not sufficient unto himself, but needs the aid of another, in order that thereby the common good may be promoted by their combined powers; so also one nation alone is not sufficient for itself, but one needs the aid of the other, that thereby the common good may be promoted by their combined powers. Therefore since nature herself unites men together and compels them to preserve society, because the common good of all cannot be promoted except by their combined powers, so that nothing is more beneficial for a man than a man; the same nature likewise unites nations together and compels them to preserve society, because the common good of all cannot be promoted except by their combined powers, so that nothing can be said to be more beneficial for a nation than a nation. For although a nation can be thought of which is spread over a vast expanse, and does not seem to need the aid of other nations; nevertheless it cannot yet be said that it could not improve its condition still more by the aid of other nations, much less that other nations could not be aided by it, however much it could itself dispense with the aid of others. Just as man ought to aid man, so too ought nation to aid nation.

§ 9.—*Of the state which is made up of all nations.*

All nations are understood to have come together into a state, whose separate members are separate nations, or individual states. For nature herself has established society among all nations and compels them to preserve it, for the purpose of promoting the common good by their combined powers. Therefore since a society of men united for the purpose of promoting the common good by their combined powers, is a state, nature herself has combined nations into a state. Therefore since nations, which know the advantages arising therefrom, by a natural impulse are carried into this association, which binds the human race or all nations one to the other, since moreover it is assumed that others will unite in it, if they know their own interests; what can be said except that nations also have combined into society as if by agreement? So all nations are understood to have come together into a state, whose separate nations are separate members or individual states.

§§ 7, 8.

§§ 4, 9, part 8, Jus Nat.

§ 504, part 5, Jus Nat.

§ 5, part 8, Jus Nat.

Reasoning throws a certain light upon the present proposition, by which we have proved that nature has established society among men and compels them to protect society. Nay, rather the state, into which nature herself orders nations to combine, in truth depends on that great society which she has established among all men, as is perfectly evident from the above reasoning. But that those things may not be doubtful which we have said concerning the quasi-agreement, by which that supreme state is understood to have been formed between nations; those things must be reconsidered which we have mentioned elsewhere. Furthermore, in establishing this quasi-agreement we have assumed nothing which is at variance with reason, or which may not be allowed in other quasi-agreements. For that nations are carried into that association by a certain natural impulse is apparent from their acts, as when they enter into treaties for the purpose of commerce or war, or even of peace, concerning which we shall speak below in their proper place. Therefore do not persuade yourself that there is any nation that is not known to unite to form the state, into which nature herself commands all to combine. But just as in tutelage it is rightly presumed that the pupil agrees, in so far as he ought to agree, nay, more, as he would be likely to agree, if he knew his own interest; so none the less nations which through lack of insight fail to see how great an advantage it is to be a member of that supreme state, are presumed to agree to this association. And since it is understood in a civil state that the tutor is compelled to

§ 138, part 7, Jus Nat.

§ 7.

Note, § 142, part 7, Jus Nat.

act, if he should be unwilling to consent of his own accord, but that even when the agreement is extorted by a superior force that does not prevent the tutelage from resting upon a quasi-agreement; why, then, is it not allowable to attribute the same force to the natural obligation by which nations are compelled to enter into an alliance as is attributed to the civil obligation, that it is understood to force consent even as from one unwilling? But if these arguments seem more ingenious than true, and altogether too complicated; putting them aside, it is enough to recognize that nature herself has combined nations into a state, therefore whatever flows from the concept of a state, must be assumed as established by nature herself. We have aimed at nothing else.

§ 10.—*What indeed may be called the supreme state.*

The state, into which nations are understood to have combined, and of which they are members or citizens, is called the supreme state.

The size of a state is determined by the number of its citizens. Therefore a greater state cannot be conceived of than one whose members are all nations in general, inasmuch as they together include the whole human race. This concept of a supreme state was not unknown to Grotius, nor was he ignorant of the fact that the law of nations was based on it, but nevertheless he did not derive from it the law of nations which is called voluntary, as he could and ought to have done.

§§ 17, 23, Proleg.

§ 11.—*Of the laws of the supreme state.*

Since the supreme state is a certain sort of state, consequently a society, moreover since every society ought to have its own laws and the right exists in it of promulgating laws with respect to those things which concern it, the supreme state also ought to have its own laws and the right exists in it of promulgating laws with respect to those things which concern it; and because civil laws, that is, those declared in a state, prescribe the means by which the good of a state is maintained, the laws of the supreme state likewise ought to prescribe the means by which its good is maintained.

§ 10.
§ 4, part 8, Jus Nat.
§ 46, part 7, Jus Nat.
§ 965, part 8, Jus Nat.
§ 969, part 8, Jus Nat.

It occasions very little difficulty that laws may be promulgated in the state by a superior such as nations do not have, and certainly do not recognize. For since the law of nature controls the will of the ruler in making laws, and since laws ought to prescribe the means by which the good of the state is maintained, by virtue of the present proposition, then, it is evident enough of what sort those laws ought to be that nations ought to agree to, consequently may be presumed to have agreed to. No difficulty will appear in establishing a law of nations which does not depart altogether from the necessary law of nations, nor in all respects observe it, as will appear in what follows.

§ 965, part 8, Jus Nat.
Note, § 965, part 8, Jus Nat.

§ 12.—*How individual nations are bound to the whole and the whole to the individuals.*

Inasmuch as nations are understood to have combined in a supreme state, the individual nations are understood to have bound themselves to the whole, because they wish to promote the common good, but the whole to the individuals, because it wishes to provide for the especial

good of the individuals. For if a state is established, individuals bind themselves to the whole, because they wish to promote the common good, and the whole binds itself to the individuals, because it wishes to provide for adequate life, for peace and security, consequently for the especial good of the individuals. Inasmuch then as nations are understood to have combined in a supreme state, individual nations also are understood to have bound themselves to the whole, because they wish to promote the common good, and the whole to the individuals, because it wishes to provide for the especial good of the individuals.

§ 28, part 8, Jus Nat.

§§ 9 and fol., part 8, Jus Nat.

§ 7, 9.

Nature herself has brought nations together in the supreme state, and therefore has imposed upon them the obligation which the present proposition urges, that because they ought to agree, they may be presumed to have agreed, or it may rightly be assumed that they have agreed, just as something similar exists in patriarchal society, which we have said is valid as a natural quasi-agreement. But if all nations had been equipped with such power of discernment as to know how effort might be made for the advantage of themselves, and what losses might be avoided by them, if the individual nations performed the duty of a good citizen, and their leaders did not allow themselves to be led astray by some impulse of passion, certainly there would be no doubt that in general all would expressly agree to that to which nature leads them, which produces and maintains harmony even among the ignorant and unwilling. But this must be shown by us, how nature provides for the happiness of the human race in accordance with the human lot. For men ought not to be imagined to be what they are not, however much they ought to be so. And for this reason it will be plain from what follows, that laws which spring from the concept of the supreme state, depart from the necessary law of nations, since on account of the human factor in the supreme state things which are illicit in themselves have to be, not indeed allowed, but endured, because they cannot be changed by human power.

Note, § 635, part 7, Jus Nat.

§ 13.—*Of the law of nations as a whole in regard to individual nations.*

In the supreme state the nations as a whole have a right to coerce the individual nations, if they should be unwilling to perform their obligation, or should show themselves negligent in it. For in a state the right belongs to the whole of coercing the individuals to perform their obligation, if they should either be unwilling to perform it or should show themselves negligent in it. Therefore since all nations are understood to have combined into a state, of which the individual nations are members, and inasmuch as they are understood to have combined in the supreme state, the individual members of this are understood to have bound themselves to the whole, because they wish to promote the common good, since moreover from the passive obligation of one party the right of the other arises; therefore the right belongs to the nations as a whole in the supreme state also of coercing the individual nations, if they are unwilling to perform their obligation or show themselves negligent in it.

§ 29, part 8, Jus Nat.

§ 9.

§ 12.

§ 23, part 1, Jus Nat.

This will seem paradoxical to those who do not discern the connexion of truths and who judge laws from facts. But it will be evident in what follows that we need the present proposition as a basis of demonstration of others which must be admitted without hesitation.

And in general it must be observed that our question is one of law, for which men are fitted in their present state, and not at all of facts, by which the law is either defied or broken. For there would be no purpose in the supreme state, into which nature has united nations, unless from it some law should arise for the whole in regard to the individuals. Of what sort this is will be shown in what follows.

§ 14.—*How this is to be measured.*

The law of nations as a whole with reference to individual nations in the supreme state must be measured by the purpose of the supreme state. For the law of the whole with reference to individuals in a state must be measured by the purpose of the state. Therefore, since in the supreme state too a certain right belongs to nations as a whole with reference to the individual nations, this right also must be measured by the purpose of the supreme state.

§ 30, part 8, Jus Nat.

§ 13.

Since in any state the right of the whole over the individuals must not be extended beyond the purpose of the state, so also the right of nations as a whole over individual nations cannot be extended beyond the purpose of the supreme state into which nature herself has combined them, so that forthwith individual nations may be known to have assigned a right of this sort to the whole.

Note, § 30, part 8, Jus Nat.

§ 15.—*Of what sort this is.*

Some sovereignty over individual nations belongs to nations as a whole. For a certain sovereignty over individuals belongs to the whole in a state. Therefore, as is previously shown, some sovereignty over individual nations belongs also to nations as a whole.

§ 31, part 8, Jus Nat.

§ 14.

That sovereignty will seem paradoxical to some. But these will be such as do not have a clear notion of the supreme state, nor recognize the benefit which nature provides, when she establishes a certain civil society among nations. Moreover, it will be evident in its own place that nothing at all results from this, except those things which all willingly recognize as in accordance with the law of nations, or what it is readily understood they ought to recognize. Nor is it less plain that this sovereignty has a certain resemblance to civil sovereignty.

§ 32, part 8, Jus Nat.

§ 16.—*Of the moral equality of nations.*

By nature all nations are equal the one to the other. For nations are considered as individual free persons living in a state of nature. Therefore, since by nature all men are equal, all nations too are by nature equal the one to the other.

§ 2.

§ 81, part 1, Jus Nat.

It is not the number of men coming together into a state that makes a nation, but the bond by which the individuals are united, and this is nothing else than the obligation by which they are bound to one another. The society which exists in the greater number of men united together, is the same as that which exists in the smaller number. Therefore just as the tallest man is no more a man than the dwarf, so also a nation, however small, is no less a nation than the greatest nation. Therefore, since the moral equality of men has no relation to the size of their bodies, the moral equality of nations also has no relation to the number of men of which they are composed.

§ 17.—*In what it consists.*

§ 16.
§ 78, part 1, Jus Nat.

Since by nature all nations are equal, since moreover all men are equal in a moral sense whose rights and obligations are the same; the rights and obligations of all nations also are by nature the same.

Therefore a great and powerful nation can assume no right to itself against a small and weak nation such as does not belong to the weaker against the stronger, nor is a small and weak nation bound to a great and powerful one in any way in which the latter is not equally bound to it.

§ 18.—*Whether by nature anything is lawful for one nation which is not lawful for another.*

§ 17.
§ 170, part 1, Jus Nat.

Since by nature the rights and obligations of all nations are the same, and since that is lawful which we have a right to do, and unlawful which we are obliged not to do or to omit; what is lawful by nature for one nation, that likewise is lawful for another, and what is not lawful for one, is not lawful for another.

Might gives to no nation a special privilege over another, just as force gives none to one man over another. Just as might is not the source of the law of nature, so that any one may do what he can to another, so neither is the might of nations the source of the law of nations, so that right is to be measured by might.

§ 19.—*What form of government is adapted to the supreme state.*

§ 10.
§ 50, part 8, Jus Nat.
§ 16.
§ 136, part 1, Jus Nat.
§ 131, part 8, Jus Nat.

The supreme state is a kind of democratic form of government. For the supreme state is made up of the nations as a whole, which as individual nations are free and equal to each other. Therefore, since no nation by nature is subject to another nation, and since it is evident of itself that nations by common consent have not bestowed the sovereignty which belongs to the whole as against the individual nations, upon one or more particular nations, nay, that it cannot even be conceived under human conditions how this may happen, that sovereignty is understood to have been reserved for nations as a whole. Therefore, since the government is democratic, if the sovereignty rests with the whole, which in the present instance is the entire human race divided up into peoples or nations, the supreme state is a kind of democratic form of government.

The democratic form of government is the most natural form of a state, since it begins at the very beginning of the state itself and is only *de facto* changed into any other form, a thing which cannot even be conceived of in the supreme state. Therefore for the supreme state no form of government is suitable other than the democratic form.

§ 20.—*What must be conceived of in the supreme state as the will of all the nations.*

§ 157, part 8, Jus Nat.

Since in a democratic state that must be considered the will of the whole people which shall have seemed best to the majority, since

moreover the supreme state is a kind of democratic form of government, and is made up of all the nations, in the supreme state also that must be considered the will of all the nations which shall have seemed best to the majority. Nevertheless, since in a democratic state it is necessary that individuals assemble in a definite place and declare their will as to what ought to be done, since moreover all the nations scattered throughout the whole world cannot assemble together, as is self-evident, that must be taken to be the will of all nations which they are bound to agree upon, if following the leadership of nature they use right reason. Hence it is plain, because it has to be admitted, that what has been approved by the more civilized nations is the law of nations.

§ 19. § 10. § 173, part 8, Jus Nat.

Grotius recognized that some law of nations must be admitted which departs from the law of nature, the inflexibility of which cannot possibly be observed among nations. Moreover, he does not think that this law is such that it can be proved otherwise than by precedents and decisions, and especially the agreements of the more civilized nations. We indeed shall enter upon a safer course if we point out that nations following reason ought to agree as to either this or that which has prevailed, or now prevails, among them as law—a thing which can be proved from the concept of the supreme state no less plainly than the necessary or natural law of nations can.

Prolegomena, De Jure Belli ac Pacis, § 46.

§ 21.—*Of the ruler of the supreme state.*

Since in the supreme state that is to be considered as the will of all nations, to which they ought to agree, if following the leadership of nature they use right reason, and since the superior in the state is he to whom belongs the right over the actions of the individuals, consequently he who exercises the sovereignty, therefore he can be considered the ruler of the supreme state who, following the leadership of nature, defines by the right use of reason what nations ought to consider as law among themselves, although it does not conform in all respects to the natural law of nations, nor altogether differ from it.

§ 20. § 141, part 8, Jus Nat. §§ 30, 31.

Fictions are advantageously allowed in every kind of science, for the purpose of eliciting truths as well as for proving them. For example, the astronomers, in order to calculate the movements of the planets, assume that a planet is carried by a regular motion in a circular orbit concentric with the sun and about it, and, in the reckoning of time, the sun is assumed to be carried by a regular motion around the equator. Nay, all moral persons and, too, the supreme state itself in the law of nature and nations have something fictitious in them. Those who disapprove of such things, abundantly show that they are only superficially acquainted with the sciences. Moreover that fictitious ruler of the supreme state is assumed, in order to adapt the natural or necessary law of nations to the purpose of the supreme state, as far as human conditions allow, using the right of making laws, which we have shown above belongs to the supreme state.

§ 11.

§ 22.—*Definition of the voluntary law of nations and what it is.*

With Grotius we speak of the voluntary law of nations, which is derived from the concept of the supreme state, therefore it is

§ 21. considered to have been laid down by its fictitious ruler and so to have proceeded from the will of nations. The voluntary law of nations is therefore equivalent to the civil law, consequently it is derived in the same manner from the necessary law of nations, as we have shown that the civil law must be derived from the natural law in the fifth chapter of the eighth part of 'The Law of Nature'.

§ 965, part 8, Jus Nat.

And so we have a fixed and immovable foundation for the voluntary law of nations, and there are definite principles, by force of which that law can be derived from the concept of the supreme state, so that it is not necessary to rely by blind impulse on the deeds and customs and decisions of the more civilized nations, and from this there must be assumed as it were a certain universal consensus of all, just as Grotius seems to have perceived.

§ 23.—*The stipulative law of nations.*

There is a stipulative law of nations, which arises from stipulations entered into between different nations. Since stipulations are entered into between two or more nations, as is plain from the meaning of 'pact', since moreover no one can bind another to himself beyond his consent, therefore much less contrary to his consent, nor acquire from him a right which he does not wish to transfer to him; stipulations therefore bind only the nations between whom they are made. Therefore the law of nations, which arises from stipulations, or the stipulative, is not universal but particular.

§ 788, part 3, Jus Nat.

§ 382, part 3, Jus Nat.

§ 789, part 3, Jus Nat.

The stipulative law of nations has its equivalent in the private law of citizens, because it has its origin in their agreements. Therefore just as the private law for citizens, derived from agreements entered into between themselves, is considered as having no value at all as civil law for a certain particular state, so also the law for nations, derived from agreements entered into with other nations, it seems cannot be considered as the law of nations. Therefore it is plain that the stipulative law of nations is to be accepted only in a certain general sense, in so far as through stipulations nations can bind themselves to one another and acquire certain rights, and there is a certain proper subject-matter of these stipulations, so that therefore the stipulative law of nations has regard only to those things which must be observed concerning the stipulations of nations and their subject matter in general. For the particular stipulations and the rights and obligations arising therefrom as to the states stipulating, since they are simply factitious, do not belong to the science of the law of nations, but to the history of this law or of that nation, which it enjoys in respect of certain other nations. The general theory of the stipulative law of nations could have been referred to the voluntary law of nations; whoever desires so to do, will not have the least objection from us.

§ 22.

§ 24.—*Of the customary law of nations.*

The customary law of nations is so called, because it has been brought in by long usage and observed as law. It is also frequently called simply custom, in the native idiom *das Herkommen* [usage]. Since certain nations use it one with the other, the customary law of nations rests upon the tacit consent of the nations, or, if you prefer,

upon a tacit stipulation, and it is evident that it is not universal, but a particular law, just as was the stipulative law. § 23.

What we have just remarked about the stipulative law must likewise be maintained concerning the customary law.

§ 25.—*Of the positive law of nations.*

That is called the positive law of nations which takes its origin from the will of nations. Therefore since it is plainly evident that the voluntary, the stipulative, and the customary law of nations take their origin from the will of nations, all that law is the positive law of nations. And since furthermore it is plain that the voluntary law of nations rests on the presumed consent of nations, the stipulative upon the express consent, the customary upon the tacit consent, since moreover in no other way is it conceived that a certain law can spring from the will of nations, the positive law of nations is either voluntary or stipulative or customary. § 22. § 23. § 24. § 22. § 23. § 24.

Those who do not have a clear conception of the supreme state, and therefore do not derive from it the voluntary law of nations, which Grotius has mentioned, and even wholly reject it, or refer some part of it to the customs of certain nations, such recognize no other positive law of nations at all, aside from the stipulative or customary. But certainly it is wrong to refer to customs, what reason itself teaches is to be observed as law among all nations.

§ 26.—*General observation.*

We shall carefully distinguish the voluntary, the stipulative, and the customary law of nations from the natural or necessary law of nations, nevertheless we shall not teach the former separately from the latter, but when we have shown what things belong to the necessary law of nations, we shall straighway add, where, why, and in what manner that must be changed to the voluntary, and here and there, when we have carefully considered it, we shall add the stipulative and the customary, which are by no means to be confused with the voluntary, especially since they have not been distinguished from it with sufficient care by Grotius. And the method which we have thus far used, both in the law of nature and in the other parts of philosophy already taught by us, and which we shall likewise use in the other parts, to be taught by us in their own time and order, this too we use in the law of nations, although the particular laws peculiar to some nations, which either come from stipulations or are due to customs, we do not consider, inasmuch as they are at variance with our plan, with which only those things which belong to science are in harmony. And why one must use such a method is plain from our proofs and our notes in the Prolegomena to 'The Law of Nature.' §§ 2 and fol., part 1, Jus Nat

THE END OF THE PROLEGOMENA.