I. INTRODUCTION

Any attempt to examine the relationship between Vattel and colonialism is confronted with something of a paradox. His great and massively influential work, *The Law of Nations*,¹ does not deal in any sustained or comprehensive way with the issue of imperialism – and in this regard it differs from the work of his distinguished predecessors – Vitoria’s writing on *De Indis*² or Grotius’s *The Free Sea*,³ both of which addressed legal problems arising directly from the expansion of European Empires.⁴ Vattel’s writing, on the other hand, refers only in passing to imperialism.⁵ Nevertheless, the passages in which Vattel does deal explicitly with colonial issues have been frequently cited, much commented upon, and indeed, have created ways of thinking and categories of classification that have permanently structured the conceptualization of relations between European and non-European peoples. Vattel is a complex figure, because he seems to perceive himself as anti-imperial (like many of his forbears, such as Vitoria) and, indeed, he is powerful in condemning various forms of imperialism. Despite this, his work points to a particular species of colonialism that has a unique character and whose dynamics demand a particular attention because it profoundly affects an entity that, through various transformations, emerges in contemporary international law as ‘indigenous peoples.’

⁴ Recent scholarship has examined the colonial aspects of Grotius’s work see eg Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge University Press, Cambridge, 2002).
⁵ Conceptual distinctions can be made between ‘colonialism’ and ‘imperialism’ but here I have used the terms interchangeably.
My purpose in this brief article is twofold. I attempt to place Vattel’s thinking on imperialism in the broader context, first in relation to his own jurisprudence in an effort to understand how it coheres with the general system that he outlines. In particular, I am interested in the question of the relationship between his thinking on non-European peoples and the ideas for which he is regarded as original. That is, Vattel is understood to have outlined a new framework for international law – indeed, he is notorious for having done so⁶; most prominently, Vattel enhances the powers of sovereignty by asserting that while all States are bound by natural law, it is the prerogative of each State to decide what the law is and how to apply it. As numerous scholars have pointed out, this approach, while appearing to maintain the authority of natural law over sovereign power, effectively undermines it.⁷ My interest lies, then, in the ramifications of Vattel’s vision of sovereignty for non-European peoples. My second concern is to understand the specifics of Vattel’s thinking on what may be termed colonial issues, and his relationship in this context to the work of scholars such as Vitoria and Grotius who had given deep thoughts to the question of the relations between European and non-European peoples. I conclude with some reflections on the enduring effect of Vattel’s colonial jurisprudence.

II. VATTEL’S LAW OF NATIONS

The passage for which Vattel is perhaps most famous in relation to colonial issues needs to be quoted at length:

The cultivation of the soil deserves the attention of the government, not only on account of the invaluable advantages that flow from it, but from its being an obligation imposed by nature on mankind. The whole earth is destined to feed its inhabitants, but this it would be incapable of doing if it were uncultivated. Every nation is then obliged by the law of nature to cultivate the land that has fallen to its share; and it has no right to enlarge its boundaries, or to have recourse to the assistance of other nations, but in proportion as the land in its possession is incapable of furnishing it with necessaries. Those nations (such as the ancient Germans and some modern Tartars) who inhabit fertile countries but disdain to cultivate their lands, and choose rather to live by plunder, are wanting to themselves, are injurious to all their neighbours, and deserve to be extirpated as savages and pernicious beasts. There are others, who, to avoid labour, choose to live only by hunting and their flocks. This might, doubtless, be allowed in the first ages of the world when the earth, without cultivation, produced more than was sufficient to feed its small number of inhabitants. But at present, when the human race is so greatly multiplied, it could not subsist if all nations were disposed to live in that manner. Those who still pursue this idle mode of life usurp more extensive territories than, with a reasonable share of labour, they would have occasion for; and have, therefore, no reason to complain, if other nations, more industrious and closely confined, come to take possession of a part of those lands. Thus, although the conquest of the civilized empires of Peru and Mexico was a notorious