The Emerging Universal Legal System

PHILIP ALLOTT*

It is remarkable that the human species has managed to survive for almost 250 years in the grip of the bizarre Vattelian worldview. In the 20th century, the crazy idea that the human race might not survive was treated as a suitable topic for rational discussion and rational decision-making. People who are otherwise sane and sensible could talk about Mutual Assured Destruction and the End of Civilisation. People who are otherwise sane and sensible could make and manage total war, wars with no necessary geographical limit, no effective limit to the methods of death and destruction, no limit to the suffering to be endured by powerless and blameless human beings. In the 20th century, people who are otherwise decent and caring could regard it as regrettable, but natural, that countless millions of human beings should live in conditions of life which are a permanent insult to their humanity, or in chaotic societies dignified by the name of 'state', or in subjection to criminal conspiracies dignified by the name of 'government'.

The fact that, for so long, such madness has been mistaken for sanity is a tribute to the power of simple ideas, and to the power of those who have power over public consciousness. The simple ideas in question – the Vattelian international system – seem infantile by comparison with the complexity and subtlety of the ideas that we have developed to explain and to guide our national systems. But, for those who have power over the national systems, the very simplicity of the international system has been its special charm. It has allowed them to escape from the tiresome burdens of their national political systems into the rarefied upper-atmosphere of 'foreign policy' and 'diplomacy', into a prelapsarian world in which there has been no French Revolution, not even an American Revolution, a world in which 'states' represented by 'governments' co-exist in a state of nature which is Lockeian when things are going well, and Hobbesian from time to time, when things get out of control or when there is no other way to sort things out.

* Professor of International Public Law, University of Cambridge.

1 E. de Vattel's *Le droit des gens, ou, Principes de la loi naturelle: appliqués à la conduite et aux affaires des nations et des souverains* was published in 1758.

2 In the Vattelian mind-world a 'state' is simply a society whose public realm is under the control of a 'government' and which is recognised as a state by other governments. But the semantic confusion in Vattel between 'state' and 'nation' proved to be of great significance when, in the 19th century, it became possible to cause ordinary citizens to confuse their allegiance to their genetic nation with their obligations to the systematic state, a state-system which might require them to die by the million.

In John Locke’s benign pre-society, human beings are in ‘a state of perfect freedom
to order their actions, and dispose of their possessions and persons as they think fit,
within the bounds of the Law of Nature, without asking leave, or depending upon
the will of any other man.’ In the non-benign unsociety of Thomas Hobbes, ‘during
the time men live without a common power to keep them all in awe, they are in
that condition which is called war; and such a war, as is of every man, against every
man’.

For Hobbes, the myth of the state of nature was, in one sphere at least, not a
myth but a fact. ‘But though there had never been any time, wherein particular
men were in a condition of war one against another; yet, in all times, kings and
persons of sovereign authority, because of their independency, are in continual
jealousies, and in the state and posture of gladiators.’ And Locke had a simple
answer to what he calls the ‘mighty’ objection that there never have been men in a
state of nature: ‘[S]ince all princes and rulers of independent governments all through
the world are in a state of nature, it is plain the world never was, nor ever will be,
without numbers of men in that state.’

It was Vattel who made the myth of the state of nature into the metaphysics of
the law of nations. ‘Since Nations are composed of men who are by nature free and
independent, and who before the establishment of civil society lived together in
the state of nature, such Nations or sovereign States must be regarded as so many
free persons living together in the state of nature.’ And the reified abstractions
inhabiting the international state of nature are not fictions. They are persons. ‘Such
a society has its own affairs and interests; it deliberates and takes resolutions in
common, and is thus become a moral person having understanding, and a will
peculiar to itself, and susceptible at once of obligations and of rights.’

These pseudo-persons have what Vattelians call ‘international relations’, pseudo-
psychic conditions of amity and enmity, as petulant and whimsical as the personal
relations of medieval monarchs or oriental potentates. They play ‘the great game’
of diplomacy, as they call it, a game whose arcane contests must sometimes be

---

6 Locke, *op. cit.*, II.§14, p. 317.
8 At p. 1.