

This Law is distinguished into a Law of Nations and a Civil Law.

[1] A Law of Nations, in the Roman Law, signifies an improved Dictate of natural Reason, deduced by long Experience & Practice, from a Consideration of the Nature of Society, and from Enquiry into the Dispositions of Mankind, Necessity or Conveniency; and upon these Considerations observed by all Nations, which the Doctors of the Civil Law call the consequential or Secondary Law of Nations. Under which Contracts, such as ~~the~~ Sales letting to Hire, Partnership, a Deposit, and others. *L. 5. ff. de just. & iur. §. 2. in fin. inst. de iur. nat. gent. & iur.* But a Law of Nations, in the modern Acceptation of the word, is a common Law betwixt different Nations for regulating the Order of mutual Commerce. ^{which is practicable every State, from its own and others towards it} This Law arises from a tacit or express Compact and Stipulation betwixt Nations, and derives its Authority from that golden fundamental Rule of Society; Faith is not to be violated.

Seeing all mankind makes one universal Society, which is divided into divers Nations which have their separate Governments; and seeing Nations have with one another different Intercourses and Communications: it was necessary that there should be Laws to regulate the Order of these Communications, both for the Prince among themselves, and for their Subjects. Which take in the Use of Embassies, Negotiations, Treaties of Peace, and all the ways in which Princes and Subjects carry on their Intercourses, and keep up their Engagements with their Neighbours. And even in Wars, there are Laws which regulate the Manner of declaring of Mediations, of Truces, of Suspensions of Arms, of Capitulations, of the Safety of Hostages, and other the like Matters. Seeing Nations have no Authority to impose Laws one upon another; there are two Sorts of Laws which serve as Rules to them. One is of the natural Laws of Humanity, Hospitality, Fidelity, and all those which depend on these first Laws, and which regulate the manner of behaviour which the people of different Nations see to use towards one another in Times of Peace and of War. And the other is that of the Regulations which Nations agree on by Treaties, or by Usages which they establish and mutually observe, And the Infractions of such Laws

Laws and Usages of Nations are restrained by open Wars, by Reprisals, and by other ways suited to the Ruptures and Attempts.

[2] A civil Law, is what the sovereign power in every Nation, whether Monarchical, Aristocratical, or Democratical, hath made for its own peculiar Conveniency, to govern the people united by the Tyes of Society under such Authority.

The Laws of Nature and Nations being found insufficient to keep perversely wicked men to the peace and good behaviour; or to answer all the exigencies of Government, and the safety of the Subjects; what through want of Rewards and Punishments to enforce the Observation of them; what through their consisting of most general Precepts, and private persons being easily obnoxious to mistake in the Application to particular Cases, or in drawing remote Inferences therefrom: positive Laws were made in particular Nations, whereof some gave an external Sanction to the Laws of Nature, which all men had not clear Reason to discern, or upright Hearts to obey: Others regulating Matters left indifferent by the Natural Laws, were devised to prevent or remove Inconveniences, or from some other view of the publick good and suited to the respective Genius and Interest of every Nation. v.g. The Jewish Nations hold a Kid given by a Man to a Woman, a sufficient Proof of their having committed Adultery. The voracious English oblige a Husband to own as his lawfull Issue, a Child born by his Wife while he was within the four Seas; tho he were able to prove, that by reason of his Absence from her, it was simply impossible he could be the Father of it: and that wise people being extremely addicted to Trade do not interdict Prodigals, lest thereby Money which is the Sinews of Commerce should not circulate so freely. Murder or premeditated Homicide, is in Ireland punished as Treason; because the Irish are too prone to commit that Crime. And for the same Reason upon the borders betwixt Scotland and England Theft is proved by one Witness concerning with fama clamorosa. Thus proper Laws were made every where, that by such fixed Standards Government might be regulated, Life, Property and what else is dear to Men secure, and Controversies determined. So that Necessity and publick Utility gave Occasion to the making of good Laws.