

educational\_materials

## Educational materials for Law of Nations

In this essay, Samuel Gregg describes the role of *ius gentium*, or “law of nations,” within the natural law tradition. For the Romans, the *ius gentium* originated in the natural law and was the class of written law that applied regardless of citizenship. The idea that the *ius gentium* was essentially positive law derived from the natural law persisted through the time of [Aquinas](#). However, in the early-modern period, groups of Jesuits and Dominicans defined the *ius gentium* as law constituted “by the common consent of the people.” *Ius gentium* also came to refer to the laws which govern interactions between states, or simply to the domestic laws which were in place nearly everywhere. For Francisco Suárez, this understanding maintained the tie to the natural law because a failure to follow the *ius gentium* was an indicator of a corrupt society. In the modern period, Hugo Grotius and Samuel von Pufendorf treated *ius gentium* more as a law between states (thus weakening its connection to the natural law), though both viewed it to be higher than mere convention. By the 18th century, the concept of *ius gentium* as the common law of humanity was largely marginalized. Only faint echoes of the early-modern natural law tradition remained as the conception of the law of nations became increasingly focused on the application of the laws in [Hobbes’s](#) “state of nature” to state relations, and in particular to international commercial relations.



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### FRANCISCO SUÁREZ

Francisco Suárez was born in Granada, Spain in 1548. He entered the Society of Jesus at the age of 18 in 1564, and for eight years he taught philosophy and theology across Spain and Europe. His scholastic education grounded him firmly in the philosophical tradition of [Thomas Aquinas](#), and his efforts to continue that tradition emerge in his large body of work.

Though Suárez taught extensively in the early years of his academic career, he did not publish his first work, *De Deo Incarnato*, until 1590. Subsequently he published twelve other volumes, including the two for which he is perhaps most famous, *Disputationes Metaphysicae* (1597) and *De Legibus* (1612). Suárez develops the natural law tradition most directly in *De Legibus*, in which he posits the inability of human reason to discern acts as right and wrong without God’s provident command. Among other issues he also addresses the necessity of human government and the origins of political power. Suárez laid early foundations for international law and is arguably one of its founders. His scholarship had a deep influence on later philosophers, including Hugo Grotius, René Descartes, and Gottfried Leibniz.

To learn more about Francisco Suárez’s life and writings, please click [here](#).

### HUGO GROTIUS

Hugo Grotius was born in Delft, Holland in 1583. Raised in an economically stable and well educated family, Grotius showed signs of brilliance as a child. At the age of eight he could write Latin elegies, and at fifteen he accompanied Dutch politician Johan von Oldenbarnevelt on an embassy to France. Upon completing his law degree from the University of Orléans as a young man, he began a lengthy legal, political, and diplomatic career.

Impressed by Grotius’s highly successful law practice, Prince Maurice of Nassau appointed him Attorney General of Holland, Zeeland, and West Friesland in 1607. Though in the later years of his life he pursued more closely the problem of Christian unity, his early political support for religious freedom cost him his

prestigious position. Although he was promoted from Attorney General to Pensionary of Rotterdam in 1613, he was later imprisoned by Maurice and a group of Calvinists after they overthrew supporters of religious freedom in the States General. In 1621, Grotius escaped prison in Amsterdam and fled to Paris, where he continued a period of prolific writing.

Grotius's broad background in the legal field and foreign diplomacy shaped his scholarship on international and natural law. He was the author of approximately five-dozen books, including his two most famous, *De iure praedae commentarius* (*Commentary on the law of prize and booty*) and *De iure belli ac pacis* (*On the laws of war and peace*). Grotius devoted himself to questions about the origin of nations and their government by positive law, the legitimacy of law, and why humans ought to obey it. After a harrowing shipwreck and another harsh sea voyage, Grotius died in 1645 in Germany.

To read more about the life and writings of Hugo Grotius, please click [here](#).

### **SAMUEL VON PUFENDORF**

Samuel von Pufendorf was born in Dorfchemnitz, a small town in Saxony, in 1632 and grew up a firsthand witness to the turmoil following the Thirty Years' War. His academic and diplomatic career would later be shaped by his childhood experience of political strife. Homeschooled until the age of thirteen, Pufendorf then entered a subsidized school where he developed a special passion for and proficiency in the classics. His competency in Latin and Greek was formative in his scholarship on natural law.

During his time as a student at the University of Leipzig and in his year of study at Jena, Pufendorf expanded his educational background quite rigorously. He studied philosophy, jurisprudence, and mathematics and was exposed to the works of Galileo, Grotius, Descartes, and [Hobbes](#), all of which deeply influenced his own thought and works.

Throughout his life Pufendorf often moved between different academic positions that were invariably intertwined with politics and diplomacy. In 1658, Pufendorf assumed his first post as tutor to the family of Paul Julius Coyet, Sweden's envoy to Copenhagen. When the members of the envoy were imprisoned during Charles X Gustav's war against Denmark, Pufendorf wrote his first major work, *Two Books on the Elements of Universal Jurisprudence*, which draws extensively on the theory of Grotius and Hobbes. After he was freed from prison, Pufendorf spent the next ten years of his life as a professor at the Palatinate's university at Heidelberg and then at the university at Lund in Sweden, where he was a professor of the law of nature and of nations, and of ethics and politics.

In 1672 and 1673, Pufendorf wrote two other major works of his political theory canon, *On the Law of Nature and of Nations* and *On the Duty of Man and Citizen According to Natural Law*. In 1677, Pufendorf entered the final phase of his academic and diplomatic career when he took up the responsibilities of royal Swedish historian and later of privy councilor and private secretary to the dowager queen Hedwig Eleonora. In one of his last works, *Of the Nature and Qualification of Religion in Reference to Civil Society*, Pufendorf argued for the separation of church and state as a path to achieving religious toleration. He died of complications from a stroke in 1694 in Berlin.

To read more about Pufendorf's life and works, please click [here](#).



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### **Aquinas, Thomas:**

(1225-1274) a Dominican priest whose most famous work, the *Summa Theologica*, provides a

philosophical and theological explanation for most of the Church's teachings, including those on the law and the natural law. Aquinas distinguishes the *ius gentium* from the *ius naturale* on the grounds that the former is promulgated through positive laws, and from the *ius civile* on the grounds that it [*ius gentium*] is necessary for justice and social order in any community, easily deducible from the natural law, and applicable across jurisdictional boundaries. For more information on Thomas Aquinas and his relationship to the natural law tradition, please see the section of this website on "[The Natural Law Theory of Thomas Aquinas.](#)"

### **Gaius:**

(2nd century A.D.) a Roman jurist and author of the *Institutes*. For Gaius, the *ius civile* was a particular law of the state, while the *ius gentium* was the law "observed by all mankind." In Rome, the *ius gentium* was formally distinct from the *ius civile* because it applied to citizens and non-citizens alike, whereas each person was subject to the *ius civile* of his own state, even when in another.

### **Grotius, Hugo:**

(1583 - 1645) a Dutch jurist and philosopher who helped develop international law based on the natural law. Though he considered the *ius gentium* to be the law between states, distinct from the civil law and grounded in the law of nature, he noted that because *ius gentium* is positive law, it is a product of human will.

### ***inter nationes:***

between nations.

### **Isidore of Seville:**

(560 - 636) a Spanish archbishop who, in his *Etymologiae*, listed institutions like peace treaties and the treatment of prisoners in wartime as part of the law of nations because they applied to almost everyone.

### ***ius civile:***

the law particular to a state; the law based on custom or legislation that applied exclusively to Roman citizens. (*Compare with IUS GENTIUM and IUS NATURALE.*)

### ***ius gentium:***

the law of nations. Originally a term used within ancient Roman jurisprudence to codify the treatment of foreigners, it later came to refer to law common among nations. Over time, the concept was more or less associated with the first principles of natural law but became increasingly concerned simply with the application of the early-modern understanding of the laws of nature in the so-called "state of nature" to state or international relations. By the 18th century, the term was even more narrowly focused on international commercial relations.

### ***ius naturale:***

the natural law, discernible through human reason.

### **Pufendorf, Samuel von:**

(1632 - 1694) a German philosopher and jurist, Pufendorf considered the *ius gentium* to be more than mere convention but accepted Grotius's argument that the law of nations referred to the law between states as opposed to the law shared by all humanity.

### Suárez, Francisco:

(1548 - 1617) a Jesuit priest and scholastic philosopher who situated the *ius gentium* between the natural and positive law, though closer to the natural. This included the civil laws governing property and domestic commerce and, as he thought more fitting, international laws.

### Treaty of Westphalia:

a series of treaties signed in 1648 that ended the Eighty Years' War between Spain and the Dutch Republic and the Thirty Years' War in the Holy Roman Empire.

### Vattel, Emer de:

(1714 - 1767) a Swiss philosopher, diplomat, and legal theorist who played an important role in the development of natural law. In his most famous work, *Droits des Gens* (1758), he treats the law of nations as simply the law of nature of individuals in the state of nature applied to states. Unlike Hobbes and Pufendorf, Vattel believed that since nations and individuals were different, they also had different rights and obligations.

### Vitoria, Francisco de:

(1483/1486 - 1546) a Dominican jurist and theologian who played a significant role in the development of international law and just war doctrine. He shifted the emphasis of *ius gentium* from *inter omnes homines* to *inter omnes gentes*, that is, from the law among all individual men to the law among all nations.



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- I. Classical origins of *ius gentium*, or “law of nations”
  - A. The *ius gentium* is first articulated by Greek and Roman classical philosophers and jurists.
  - B. In Gaius’s *Institutes*, *ius gentium* is associated with *ius naturale*.
    1. *Ius civile* is the special law of the state.
    2. *Ius gentium* is the “law observed by all mankind.”
    3. *Ius naturale* differs from *ius gentium* in that *ius naturale* originates in human reason, whereas *ius gentium* is its practical application.
  - C. A second sense of *ius gentium* within Roman law emerges to address the treatment of foreigners rather than just the application of law according to citizenship.
  - D. Isidore of Seville (560 - 636) preserves and codifies Gaius’s concept of the *ius gentium* in his *Etymologiae* and lists some customary laws that appear to have force amongst almost all peoples.
- II. Medieval treatment of *ius gentium*
  - A. [Thomas Aquinas](#) (1225 - 1274) agreed with Gaius’s distinction between *ius civile* and *ius gentium* and argued that *ius gentium* is the aspect of the positive law deduced from the natural law and application across jurisdictional boundaries.
    1. Aquinas uses the examples of contracts and property, which are necessary for justice and social

order in any community, to show that *ius gentium* is deduced from natural law (and hence not merely *ius civile*).

2. Since *ius gentium* is promulgated through the positive law, it is distinct from natural law proper.

### III. Early modern period: breakdown of distinctions

A. Some Jesuit and Dominican scholastics thought all laws were either natural or positive, but since these categories rendered *ius gentium* redundant, they introduced instead the new definitional feature that *ius gentium* is constituted by “the common consent of the peoples.”

B. Francisco Suárez situated *ius gentium* between the natural and positive law, identifying two groups:

1. Laws that are part of the domestic law of most commonwealths, e.g., laws governing property and domestic commerce (civil law).

2. Laws that coordinate relationships between peoples and commonwealths (laws *inter nationes*), e.g., laws governing war, international commerce, and the treatment of diplomats.

C. Francisco de Vitoria made a similar point in shifting the emphasis of *ius gentium* from *inter omnes homines* (among all men) to *inter omnes gentes* (among all peoples).

D. Suárez believed that the *ius gentium* had a universal character. It extended to everyone, not because all people consented to its content, but because all people independently recognized its content.

1. Failure to recognize the *ius gentium* was considered evidence of a society’s corruption.

### IV. Rise of the modern nation state: further modification

A. The Treaty of Westphalia (1648) brought about a reconsideration of the role of *ius gentium* in international law.

B. Hugo Grotius (1583 – 1645) took up the notion of “a body of law that is maintained between the states” that was grounded in “the law of nature and nations,” but he slightly diminished the connection of *ius gentium* to the natural law.

C. Samuel von Pufendorf (1632 – 1694) further weakened the connection by accepting Grotius’s idea that the law of nations is the law between states rather than the universal human law, and he also adopted [Hobbes](#)’s idea of the law of nature and its division into the laws of man and those of states.

1. Though he rejected Hobbes’s belief that the state of nature was one of war, he nonetheless held that laws were necessary to maintain a rather feeble peace.

### V. 18th-century changes

A. The concept of *ius gentium* as the common law of humanity became largely marginalized.

B. Emer de Vattel in *Droits des Gens* (1758) referred to it as the law of nature of individuals in the state of nature applied to states.