Utopian Thought and the Law of Nations

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I. INTRODUCTION

Thomas More in his conversation with Raphael Hythloday agreed with Plato that “nations will be happy, when either philosophers become kings, or kings become philosophers.” Some five hundred years following More’s sojourn to the New Isle of Utopia, the “philosophers” remain in search of a societal order that would appropriately reflect and encompass the humanity’s best social and political contrivances.

Inasmuch as humanity remains governed by law, and “[a]ll laws are promulgated for this end, that every man may know his duty;” the quest for a modern Utopia is then appropriately placed in the purview of jurisprudence. This legal article does not make any grandiose attempts to devise a utopian or messianic scheme for a new world order. Instead, it compiles for the reader a collage of thoughts on this subject from the past. Additionally, the author presents the reader with a brief overview of certain historical events as they pertain to the ideas of utopian thought and the law of nations. When examined together, the historical events provide grounding context to otherwise abstract world of thought.

This work also attempts to establish a meaningful connection between the study of the law of nations and the study of utopian thought. The author believes such a connection exists, and it has been left principally unexplored. Over the centuries, the law of nations has evolved primarily from the study of maxims imposed by mutual consent to a sophisticated joint approach to global economic and social governance. The utopian thought, on the other hand, evolved from the classical study of city-state governance to its climax in “the daring scientific fables” of “the humanization of outer space” and into relatively recent “impoverishment of utopian imagination.”

Both studies have been, for the most part, responsive to contemporary social and scientific developments, although in substantially different ways. This article suggests that an abstract continuum exists where utopian thought, reality, and the law of nations exist in that sequential order. Utopian thought foreshadows in an avant-garde and attempts to imagine a paradisiacal future by solving the problems tormenting the humanity today. Reality then occurs “as does an apple fall when it is ripe,” with or

1 UTOPIA, SIR THOMAS MORE 17 (Cosimo Books 2009) (1516).
2 Id. at 62.
3 The author’s research did not reveal any work, whether it be in legal or historical context, that has considered these two disciplines together.
4 See discussion infra.
5 See, e.g., PLATO, THE REPUBLIC.
6 FRANK EDWARD MANUEL, UTOPIAN THOUGHT IN THE WESTERN WORLD 801 (1979).
7 Id.
8 Id.
9 LEO TOLSTOY, WAR AND PEACE, Part 4 205 (Oxford University Press 1886) (1865) (“Why does an apple fall when it is ripe? Is it that its weight brings it down? Is it that its stalk withers? Is it that the sun has parched it and the wind torn it away? Or is that the boy who eyes it as it hangs has an irresistible longing to eat it? Neither reason is enough by itself. The fall of the apple is the necessary consequence of all the causes brought about by the minute processes of organic nature. Hence the botanist who pronounces it to be the result of the decomposition of cellular tissue is just as much in the right as the boy who ascribes it to the potency and fulfillment of his desire.”).
without any influence from the utopians. And the law of nations then simply sorts through the yesteryears and approves (codifies) or disapproves (rejects) the recent historical novelties, subject, of course, to the constraints of the codification process.\textsuperscript{10}

If such approach is absolutely correct, then the utopians’ efforts could be ennobling inasmuch as futile. Perhaps the most relevant question in this context concerns the amount of influence the utopian thought is able to exert on future history and on the law of nations. Vattel authored the following supplication: “if the conductors of states, if all those employed in public affairs, condescended to apply seriously to the study of a science which ought to be their law, and, as it were, the compass by which to steer their course, what happy effects might we not expect from a good treatise on the law of nations.”\textsuperscript{11} Indeed! And do not these words echo those of Plato and More that “nations will be happy, when either philosophers become kings, or kings become philosophers?” Were Plato, More, and Vattel discouraged by the amount of influence their work had on the rulers, and in turn, on the citizens? Were their efforts ultimately fruitful in bringing to pass liberating change? Or were their works merely prognostic, hopeful, utopian?

In short, does the world and the law of nations need utopian thought today? This work answers affirmatively. As one commentator points out: “great utopians have been great realists” with keen knowledge that “serves them as springboard for a jump into a future.” The author is convinced that the humanity has not yet seen that “not a place” where harmony and civility abound. Onward then!

II. UTOPIAN THOUGHT AND THE LAW OF NATIONS

The following section provides a brief overview of both the utopian thought and the law of nations. Before a meaningful connection can be established between these disciplines, and even more so before the need for a symbiotic relationship between them can be argued, it is first necessary to examine, at least briefly, their foundational premises, histories, and purposes for existence.

A. The origins of utopian thought

The morphological origins of utopian thought are plainly linked to the work of Sir Thomas More. The word utopia is derived from Greek οὐ, meaning “not,” and τόπος, meaning “place.” Thus the literal meaning of utopia is “not a place.”

The philosophical origins of utopian thought are far less definitive. In all likelihood, the utopian thought began as early as the first measure of intelligence graced the human mind. In that moment, our ancestor undoubtedly conceived some manner of betterment, which served as a harbinger for utopian thought. More specifically, we could point to the traverses of the ancient Guarani tribe through South America: For thousands

\textsuperscript{10} See, e.g., Christopher Weeramantry and Nathaniel Berman, The Grotius Lecture Series, 14 AM. U. INT’L LAW. REV. 1515, 1523 (“The legacy bequeathed by the Westphalian break: the duty to cleanse international law of any residual elements of imperial or patriarchal injustice, indeed, to view any such elements as residual. In the U.S., this approach takes the form of a project I call restatement-and-renewal. Periodic restatements of international law carry forward the tradition of the “modern international law” inaugurated in 1648. Periodic calls for renewal, for a “new international law,” reframe the tradition in the light of policy innovation and situational flexibility, in the light of ever-new versions of modernity.”).

of years, they have travelled vast distances in search of “Land-without-Evil,” as it was described to them by their ancestors. Utopian dream probably also accompanied Gilgamesh in his journey to the garden of Dilmun, where he sought eternal life in the company of the gods. But it was Plato in *The Republic*, who plainly acknowledged the formative power of law on the humanity and synthesized an ethereal quest for betterment into a pragmatic and realistic pursuit of a legal system within the framework of city-state governance.

The significance of Plato’s *Republic* deserves a detailed mention. Throughout *The Republic*, Plato’s focus remained steadfast on the issue of city-state governance. Plato also awarded particular attention to the concept of justice. This focus kept Plato’s work within the scope of “the Science of Politics,” and more specifically, within the “Science of Jurisprudence.” It was, in fact, this formulaic form of *The Republic* that inspired and served as a prototype for Thomas More’s *Utopia*.

Plato’s approach is particularly important because utopian thought does possess tremendous potency for breadth. As we shall see, following the publication of More’s work, utopian thought far exceeded the bounds of city-state governance. In fact, following the original printing of *Utopia* in 1516, the use of the term became widespread. By the late sixteenth century, utopia could mean a “derogatory epithet, connoting a wild fancy or a chimerical notion” or it “could refer to an ideal psychological condition or to an idealizing capacity.” By the seventeenth century, the usage came to connote even broader concepts:

[U]topia was no longer restricted to a speaking picture, a dramatic narrative portrayal of a way of life that is so essentially good and fulfills so many profound longings that it wins immediate, almost instinctive, approbation. It could embrace as well the underlying principles of an optimum society expounded and argued either by the author directly or by several interlocutors. Utopia also came to denote general programs and

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12 Guarani tribe is an ancient tribe inhabiting modern-day Brazil. *See generally http://www.survivalinternational.org/tribes/guarani. See also MANUEL, supra note 6.*

13 *See HARRIET E.W. CRAWFORD, DILMUN AND ITS GULF NEIGHBOURS 2 (1998) (“Gilgamesh, the Sumerian Hero, also travelled to Dilmun across the sea in his quest for eternal life . . . .”). In Sumerian thought, Dilmun is generally considered a place where “the sun rises” and where the Sumerian hero Utnapishtim resides with the gods. *See generally id.*

14 How great must have been Gilgamesh’s disappointment when instead of eternal life he found in Dilmun a half-eaten forbidden fruit, thorns, and thistles. *See ALFRED J. HOERTH, ARCHAEOLOGY AND THE OLD TESTAMENT 187 (1998) (disagreeing with the notion that Dilmun and Garden of Eden were in the same location, but acknowledging an opposing point of view); see also Genesis, Chapter 3 for references to forbidden fruit, thorns, thistles.*

15 The original Greek title of the Republic is *Πολιτεία*, which in English translation is “city-state governance.”

16 *See HANNIS TAYLOR, THE SCIENCE OF JURISPRUDENCE 3 (1908).*

17 *See WILLIAM NELSON, TWENTIETH CENTURY INTERPRETATIONS OF UTOPIA: A COLLECTION OF CRITICAL ESSAYS 100 (1968).*

18 *See discussion infra.*

19 *See MANUEL, supra note 6, at 2.*
platforms for ideal societies, codes, and constitutions that dispensed with the fictional apparatus altogether.\textsuperscript{20}

One thing, however, always remained constant in characterization of utopian thought: Whatever “deep-rooted social and psychic diseases”\textsuperscript{21} tormented the humanity, utopians always readily responded with propositions for cure. This particular aspect of utopian thought is of great importance to this article and will be examined in more detail infra.

\textbf{B. The origins of the law of nations}

When discussing the origins of international law, a reference to Hugo Grotius and the Peace of Westphalia are often expected as axiomatic. Within the recent past, however, an important distinction is frequently made: The credit Hugo Grotius deserves in inaugurating the modern systematic study of the law of nations should not, by default, place the birthplace of an international legal order in a contemporaneous to Grotius time period.\textsuperscript{22} Many therefore argue that the law of nations has its roots “increasingly far in the past,”\textsuperscript{23} long before Grotius and Westphalia. In any event, definitions of the law of nations abound. Moreover, various commentators, including prominent authors, have routinely disagreed on the meaning of the term.

Most definitions of the law of nations developed under the assumption of a plurality of “relatively independent . . . bodies politic”\textsuperscript{24} where the field of international law\textsuperscript{25} was essentially reduced to the law of coordination among the states or their predecessors.\textsuperscript{26} This view, however restrictive, nevertheless fairly accurately represented

\begin{itemize}
  \item \textsuperscript{20} Id. at 2.
  \item \textsuperscript{21} Id. at 801 (What are now the deep-rooted social and psychic deceases that torment us most cruelly? An incapacity to love? A confusion of identity? A bewildering metaphysical anguish? An inchoate religious yearning? An unrequited passion for equality? An unappeased drive for exploration and challenge? Just as there are throughout the world different levels of economic growth and of acceptance of the ways of the scientific-technological civilization, so utopia responding to different wants coexist in a new babel.).
  \item \textsuperscript{22} See, e.g., Randall Lesaffer, International Law and Its History: The Story of an Unrequited Love, in MATTHEW CRAVEN ET AL., TIME, HISTORY AND INTERNATIONAL LAW 40 (2007) (“[S]top considering [the law of nations] as a highly exceptional \textit{creation ex nihilo} by the ‘intellectual giants’ of the early 17th or even 16th century. The Precursors of Grotius and Westphalia need to be studied seriously if we are ever to understand the formation of this law of nations. It is impossible to comprehend Grotius without being aware of the intellectual tradition in which he stood.”). \textit{See also} WILHELM GREWE, THE EPOCHS OF INTERNATIONAL LAW 7 (Michael Byers transl., Walter de Gruyter 2000) (1984) (“Twentycentury textbooks still refer to Hugo Grotius as the ‘Father of International law’ and to Peace of Westphalia of 1648 as the ‘prelude to modern international law.’ This narrow view under which the history of the law of nations was perceived, was the logical consequence of an understanding which could only conceive of modern sovereign States as subject of this law.”).
  \item \textsuperscript{24} GREWE, supra note 22, at 8.
  \item \textsuperscript{25} I use the term international law loosely and hereinafter synonymously and interchangeably with the term “law of nations.”
  \item \textsuperscript{26} GREWE, supra note 22, at 8.
\end{itemize}
the reality of a world comprised of sovereign entities with varying degrees of intercourse among them.

In 1758, Vattel expressed regret over then-widespread definition of the law of nations: “The generality of writers, and even celebrated authors, almost exclusively confine the name of ‘Law of Nations’ to certain maxims and treatises recognised among nations, and which the mutual consent of the parties has rendered obligatory on them.”

Further he penned: “[t]he moderns are generally agreed in restricting the appellation of ‘the law of nations’ to that system of right and justice which ought to prevail between nations or sovereign states.”

Even over a century later, Vattel’s regret over this restricting definition remained relevant. Consider the following examples: Professor Bulmerincq defined international law to be “the totality of legal rules and institutions which have developed themselves touching the relations of states to one another.” Lord Coleridge defined the law of nations as “that collection of usages which civilized states have agreed to observe in their dealing with another.” Hannis Taylor defined it as “the aggregate of rules regulating the intercourse of states, which have been gradually evolved out of the moral and intellectual convictions of the civilized world as the necessity for their existence has been demonstrated by experience.”

If one accepts the general tenets adopted by legal historians in their traditional interpretation of the Peace of Westphalia, the following can be deduced concerning the structure of international law: the treaties of Westphalia and “almost every subsequent treaty of peace or commerce . . . constituted a sort of written code of conventional law, by which the distribution of power and territory among [sovereign states] was permanently settled . . . .” The intercourse between the signatory nations would then proceed under the terms of the treaties until the attained balance was disturbed, typically by a war.

Thus, through a Westphalian lens, the law of nations appears to have had a logical beginning at or around 1648, and its scope was limited primarily to the law of coordination. This system placed particular emphasis on matters of peace and commerce as they occurred among the signatory states. Therefore, the definitions summing up this system were reasonable and likely accurate, although to a large extent contemporaneous and often inapplicable to periods preceding Westphalia or substantially removed in time therefrom.

The article proposes its own definition (although the author must gladly acknowledge the substantial influence of Wilhelm Grewe): The law of nations is the sum total of effective behavioral restraints rooted in cultural, religious, and other common values – whether codified or not – that governs the relationships among the world’s inhabitants.

This definition is deliberately broad and places particular emphasis on erasing any reference to states, bodies politic, and sovereignty. In this regard, the definition purposefully and substantially departs from the commonly accepted definitions examined

27 VATTEL, supra note 11, at vii.
28 Id. at 8.
29 Das Völkerrecht (in Marquardsen’s Handbuch, vol. i) § 1 of the monograph (emphasis added); see also HANNIS TAYLOR, A TREATISE ON INTERNATIONAL PUBLIC LAW 84 (1901) (quoting Professor Bulmerincq).
30 The Queen v. Keyn, L.R., 2 Exchequer Division, p. 154 (emphasis added).
31 HANNIS TAYLOR, A TREATISE ON INTERNATIONAL PUBLIC LAW 86 (1901) (emphasis added).
32 HENRY WHEATON, ELEMENTS OF INTERNATIONAL LAW 192 (1836).
above as well as from any realistic reflection of the existing system of international legal order.33

III. THE STUDY OF UTOPIAN THOUGHT AND THE LAW OF NATIONS

A. Why study the law of nations or its history?

The scholars of international law have spent a good deal of time in defining the object of their study. The historiographers of international law and students of comparative law follow suit.34 Good reasons to study the law of nations abound. The examination of classical texts can “both reflect and affect international legal reality.”35 The study of the history of international law can contextualize historical concepts, reveal past pitfalls, and enable correct interpretation of the classics.36 More pragmatically, these studies can have a direct effect on “improving legislation” and thereby realistically effectuate social change.37

Many authors also agree that the “relation between legal doctrine and state practice is, or at least should be, the main subject in the study of the history of the Law of Nations.”38 This method intimately links the study of the law of nations and the study of municipal laws. Theoretical grounds justify this approach.39

33 The author believes the proposed definition will become increasingly accurate in the future. The international system today is indeed much more complex than rules of coordination among bodies politic. See, e.g., Eric Engle, U.N. Packing the State’s Reputation? A Response to Professor Brewster’s “Unpacking the State’s Reputation,” 114 PENN ST. L. REV. PENN STATIM 34 36 (2010), available at http://pennstatelawreview.org/114/114 Penn Statim 34.pdf. (“The international system is something much more complex, beautiful, and rational. It is a self-governing society comprised of 1) states with unlimited international legal personality; 2) international organizations with derived international legal personality; and 3) even non-state actors with limited international legal personality interacting almost always in positive sum economic terms and only very exceptionally in negative sum violent conflict. International organizations today enjoy derived international legal personality. They are subjects (not objects) of international law. They make and enforce international laws, and yet they are not states.”).

34 See, e.g., William E. Butler, International Law and the Comparative Method, in WILLIAM E. BUTLER, INTERNATIONAL LAW IN COMPARATIVE PERSPECTIVE 25 (1980) (Butler speaking specifically to comparative studies of international law, but the author believes the following observation applies universally to the study of the history of international law, as well as to the substantive study of the law itself: “Comparative lawyers have always devoted, and are continuing to give, considerable attention—some would say, inordinate attention—to defining the nature and purpose of their field.”).


37 See BUTLER, supra note 34, at 25, 27 (The study of comparative law “reaches across all branches of law and all disciplines. It can offer empirical insights in an enquiry into the particular or provide a broad background against which both the law and its national systems may be viewed, either in the past or in the present. It also may offer, though this must be undertaken with low expectations and circumspection, a means of testing the efficacy of legal solutions to problems in various societies.”).


39 See, e.g., BUTLER, supra note 34, at 37 (“Of greater significance, to my mind, is the interaction between municipal legal orders and the international legal system or subsystems, a relationship especially apparent
The general consensus among the writers exposes a universal desire to effectuate positive social change through means available to scholars and jurists. This reason in itself should be motivation enough for any would-be student of international law and its history.

B. Why study utopian thought?

Identifying the motive for the study of utopian thought is not an arduous or complicated task. Utopian thought in itself aims to alleviate human affliction, cause fulfillment of often selfless dreams, and accelerate reality to the level par with the human mind. In 1595, in the midst of a violent epoch in English history, Sir Philip Sidney wrote the following words, which in style and substance represented a symbolic counterweight to the general brutality of the time: “But even in the most excellent determination of goodnesse, what Philosophers counsaille can so readily direct a Prince, as the feined Ciris in Xenophon, or a vertuous man in all fortunes as Aeneas in Virgill, or a whole Common-wealth, as the Way of Sir Thomas Moores Eutopia?” Sir Sidney therefore expected More’s work to be influential and advisory, capable of making a behavioral impact.

Utopian thought does have an ability to alter the course of history. Subsequent historical analysis will clearly reveal this potential. Moreover, the study of utopian thought is an ennobling and virtuous undertaking, a lofty and invigorating analytical journey worthy of pursuit by any educated person, and particularly a lawyer.

Yet perhaps the most compelling motivation for the study of utopian thought stems from its unequivocal emphasis on selflessness. Utopians have always employed their intellect in a pursuit of a more perfect system where each person represents a co-equal part of the human family. Utopians thus exhibited a strong predisposition towards Liberalism—which, as one economist defined it, is, in part, “caring about the well-being of vast numbers of people you’ll never meet.” This approach, although not always representative of the author’s behavior, is, nonetheless, a statement of aspirational belief.

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40 Sir Philip Sidney as quoted in MANUEL, supra note 6, at 2.

41 I would prefer to say “для каждого образованного человека,” because the word “человек” much better than any English equivalent (man, person, human being, etc.) conveys the dignified and all-important distinction between a person and a hominoid. With that distinction, which is far more evident in the Russian language, we can, in part, credit Maksim Gorky and his phrase "Человек - это звучит гордо;" Vladimir Mayakovskiy, Себе, любимому, посвящает эти строки автор (1916) (Пройду, любовищу мою волоча. В какой ночи бредовой, недужной какими Голиафами я зачат - такой большой и такой ненужный?); and others.

C. The decline of utopian imagination

Both, the study of utopian thought and study of the law of nations, naturally belong within the province of the science of politics and the science of jurisprudence. However, heretofore, utopian thought has never been accepted within these realms. In fact, authors generally caution against “illusions” and “utopian thinking” in a systematic study of international law and law in general. The proponents of excluding utopian thought from these realms label utopians as lacking the necessary realism, empiricism, and objectivity. They compare utopian thought to fairytales, incompatible with scientific application.

In some respects, utopians do, in fact, tend to exclude themselves from meaningful participation in the methodical formulation of the law of nations. They do so, most often, by looking too far into the future. When utopians attempt to unveil that which is to happen many centuries from now, or that for which implementation exist no contemporary means, utopians are often dismissed as naïve, extravagant, or chimerical.

But utopian thought is not always synonymous with unrealistic or fanciful. Early utopians—Plato and More—undertook methodical approaches, where they aspired to describe a societal order subscribing to a more perfect system of governance made possible through law. Later utopians, including Kant and Marx, also proposed legal structures that could hardly be characterized as chimerical, although certainly in many respects some singular propositions likely appeared far-fetched to their contemporaries.

But even these methodical approaches are hardly tolerable today “in the age of permanent emergencies, [when] more than ever we have become narrow utilitarians dedicated to fixing, not reinventing, the here and now.” Prospective and prognostic study of law that looks beyond the immediate future is often dismissed as unnecessary.

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43 See note 15 and accompanying text.
44 The author’s research reveals no prior work discussing the connection between the study of utopian thought and the law of nations. On the contrary, authors generally caution against “illusions” and “utopian thinking” in systematic study of international law.
45 See, e.g., GREWE, supra note 22, at 703; see also Peter Gabel, Duncan Kennedy, Roll Over Beethoven, 36 STAN. L. REV. 1, 36 (“Duncan: Why do you think people believe in all this if its all a hallucination? Peter: Because in the pain of our isolation we become attached to the utopian content in legal imagery. This is why I think it’s dream-like. The wish to be really free and connected is partially satisfied in the fantasy that we’re all part of a great democratic group, and related wish-fulfilling images are scattered throughout the discourse in a more-or-less random, pre-rational way. Then they are rationalized through a kind of “secondary process,” to both fit and help shape the alienated routines of everyday life. Look at contract law. Deadening economic routines are turned into little stories about a mythical group where everyone has freedom and is entitled to security and where you get punished if you don’t act in good faith like everybody else does and so on. While people in fact are wandering around in a quasi-autistic stupor exchanging blank gazes with strangers on the street.”).
46 See, e.g., FRIEDRICH AUGUST HAYEK ET AL., THE ROAD TO SERFDOM: TEXT AND DOCUMENTS 197 (2007) (quoting and agreeing with Professor E.H. Carr) (“A realist . . . is one ‘who makes morality a function of politics’ and ‘who cannot logically accept any standard of value save that of fact.’ This ‘realism’ is contrasted, in truly German fashion, with the ‘utopian’ thought dating from the eighteenth century ‘which was essentially individualist in that it made the human conscience the final court of appeal.’”). See also E.H. CARR, THE TWENTY YEARS CRISIS 28, 54, 84 (1939).
47 See discussion infra.
and untimely. Moreover, in the abstract continuum introduced previously, the law of
nations is hardly a trailblazer, but rather a laggard, responding primarily through selective
codification of yesteryears’ pitfalls.\(^{49}\) Thus, international lawyers are typically caught up
in sorting through past problems rather than turning their sights to alleviating present and
future pain.

**D. The cause of the decline**

The author believes the source of this intolerance towards “prospective reflection”
and “reinvention” is two-fold. First, the world does, in fact, exist in a state of “permanent
emergency.” The sophistication of the existing technical, economic, infrastructural, and
social ecosystems requires continuous tweaking, maintenance, and appeasement. Fairly
minor disbalances in often isolated areas are able to send ripples of pain and volatility far
and wide.\(^{50}\) In such daily scenarios of possible impending doom, it is, in fact, difficult to
justify philosophical reflection and prospective reinvention of the existing model.

The second reason responsible for fairly recent misapprehension of utopian
thinking and the general decline of “utopian imagination” stems from the general view
widespread in the Western world today: The present legal foundational framework is
somehow perceived as nearly infallible and untouchable. For example, the American
Constitution is viewed by large swaths of the population as somehow inspired
or perfect legal order, immune from any substantial review or revision.\(^{51}\) The view that
America’s legal foundation is already in near-utopian model is thus widely held.
Criticisms and proposed revisions of the underlying constitutional model arise primarily
from legal scholars who are often marginalized and dismissed without interest.

Additionally, social realities within the Western world add yet another measure of
apathy towards ideals espoused by traditional liberalism. Whereas for millennia, great
thinkers, jurists, and utopians aspired to effectuate liberating change where slavery,
servitude, inequality, and brutality would not torment the lives of ordinary people, today
these concerns strike with less force. The Western world, to a large extent, has
objectively achieved many of the ideals envisioned by the generations past.

With this change, however, the populace and the legal profession have developed
a certain measure of atrophy and indifference towards social betterment and reinvention.
Of much greater importance in our daily lives is sensationalism imposed by mass media,

\(^{49}\) The inherent limitations of such simplistic view are addressed throughout supra and infra.

\(^{50}\) As, for example, with the sub-prime U.S. mortgage market.

\(^{51}\) In certain religious circles, this view is taken to great extremes, often placing the Constitution somewhere
between the Gospels of Matthew and Luke. See, e.g., One Nation Under God, painting by Jon
McNaughton, available at http://www.mcnaultonart.com/artwork/view_ zoom/?artpiece_id=353# (depicting Jesus holding the Constitution with Jefferson on Jesus’s right hand and
George Washington on the left; a weeping Supreme Court Justice expressing deep regret over the following
Ogden, and others; an African-American soldier with the last name of “King” on his armor as a “tribute” to
Martin Luther King, Jr. (who, apparently unbeknownst to the artist, advocated for peaceful resistance, but
was nevertheless brutally shot in the throat by an American war veteran); a person of apparent Asian
heritage who is described as an amazed non-Christian immigrant who suddenly realized where “America’s
greatness” comes from; and many other truly “wondrous” symbolisms). See also Russell Shorto, *How
gossip, sporting events, and other distractions, which frequently supersede more virtuous endeavors.\textsuperscript{52} Consider the following highly-accurate observation:

\begin{quote}
The most advanced and wealthy segments of Western civilization, where the division of labor is highly sophisticated, have become so absorbed with their intense and perhaps growing psychic malaise that they depute special writers to dream for them of a higher mental system totally possessing mankind, or of a childlike society without instinctual repression, offering complete self-actualization, overflowing with love and engaged with play, or of space colonies where men quench their thirst for exploration, continue to diversify the species, and populate the universe.\textsuperscript{53}
\end{quote}

In this passage, the departure from the Utopian origins of Plato and More is blatantly evident. In the face of the present attitudes, utopian thought does, in fact, face an uphill battle for inclusion within the regular intercourse of empirical legal studies. The present attitude towards utopian thought is most regrettable and goes against the grain of Western tradition.\textsuperscript{54} The author argues categorically that the study of law does need utopian reflection. Moreover, moving forward, utopian thought does possess vast potential for effectuating a positive impact specifically through the law of nations.\textsuperscript{55}

\textbf{E. Why does the law of nations need utopian thought?}

Historically, the law of nations, within its “narrow bounds” so disliked by idealists (utopians) and embraced by the realists, has developed primarily as a responsive law of post-conflict coordination. To wit, the law of nations evolved as an answer to past emergencies, most often wars. Following conflict, sovereign states assented to behavioral norms, which they found to be beneficial through brutal experience, economic exhaustion, and repeated bloodshed. This proposition is particularly true if one upholds the view of the Westphalian treaties inaugurating the modern system of international legal order as it emerged from such post-conflict coordination.

Within fairly recent past, however, specifically following the end of World War II in 1945, and increasingly more so following the Fall of the Berlin Wall in 1989, the law of nations has taken on a personality very distinct from its Westphalian progeny. Although immediately following World War II, emphasis was placed on the prevention of global conflict, it is even more important that states had begun to interact “almost always” in “positive-sum economic terms and only very exceptionally in negative-sum violent conflict.”\textsuperscript{56} The end of the Cold War accelerated this process, and to a large

\textsuperscript{53} \textit{Manuel}, supra note 6, at 802.
\textsuperscript{54} \textit{See id.} at 802, 805, 806.
\textsuperscript{55} \textit{See Jan Scholte}, \textit{Globalization: A Critical Introduction} 314 (2000) (“Our concern should not be that we are powerless to correct the ill of [] globalization. Rather, our disquiet should be that we have not done more to exploit the substantial potentials of reforms.”).
extent, eradicated perpetual fear of impending global war, which in relatively recent past appeared genuinely probable. Prevention of bloodshed on the global scale was thus displaced from the Parthenon of international law by the pursuit of economic prosperity. Not that prevention of global conflict suddenly became an inferior objective, but rather the interconnected system of global trade became a greater, or at least as great, a deterrent of war as, for example, mutual assured destruction. Economic interdependence, of course, also came with the benefit of greater prosperity.

The resulting economic and political movements towards global trade and commerce have been pervasive, real, and course-changing. For example, private business actors now take every opportunity to exploit the existing legal networks – on municipal and global scale – to externalize business costs and to increase profits. Moreover, multinational and global companies undertake routine efforts to “shape and enforce international law,” thus themselves creating and defining legal networks in a great array of settings through a variety of means.

International organizations also form and contribute to the law of nations. Entities such as UN, MERCOSUR, Andean Community, ASEAN, African Union, EU and many others “enjoy derived legal personality” and their influence on the international legal process can hardly be disputed by any objective observer.

The combination of these processes, amplified by the short timeframe in which they have occurred, continues to have a significant impact on the law of nations. Additionally, the trends toward trade-related integration and globalization, along with generation of heretofore unprecedented wealth, in all likelihood, will stay a steady and accelerating course for the reasonably foreseeable future. Most intriguingly, however, these gains have not and will not arrive smoothly or without arising very familiar, age-long societal ills which have tormented civilizations during the past millennia. The difference now is only in the scale of the application. What philosophers and utopians heretofore have often attempted to cure within the framework of city-state governance is now applicable with a new force on a global scale.

As businesses, governments, and other actors have attempted to gain competitive advantage through externalizing costs, a slew of side effects has emerged. Some of the commonly cited ills of this process include increasing economic inequality on national and international levels, forced labor, persistent poverty, financial slavery, deepened democratic deficits, ecological degradation, and decline of cultural diversity, among others. The existence of these problems is difficult to dispute. Somewhat simplistic

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58 Engle, supra note 56, at 37.
59 See id.
60 See id. (citing THE STRUCTURE AND PROCESS OF INTERNATIONAL LAW: ESSAYS IN LEGAL PHILOSOPHY DOCTRINE AND THEORY 890 (Ronald St. J. Macdonald & Douglas M. Johnston eds., 1983)).
62 Of course, many prior utopians have suggested and advocated for global solutions of various types. However, these propositions were primarily related to curing the torments of warlike conflict rather than economic and societal ills of a world viewed as a whole. See, e.g., IMMANUEL KANT, PERPETUAL PEACE: A PHILOSOPHICAL ESSAY (Mary Campbell Smith transl., S. Sonnenschein & Co., 1903) (1795).
63 See, e.g., JAN SCHOLTE, GLOBALIZATION: A CRITICAL INTRODUCTION 9 (2000); KELLEY LEE ET AL., HEALTH IMPACTS OF GLOBALIZATION: TOWARDS GLOBAL GOVERNANCE 124 (2003); JULIE CLARK, GLOBALIZATION AND THE POOR 85 (2000); KELLEY LEE ET AL., HEALTH IMPACTS OF GLOBALIZATION:
and very near-sighted recipe for cure characterizes globalization as a destructive process and a culprit of most things wrong with the world today. The proponents of this view simply seek to undo the integration processes of the past decades.

However, a more appropriate response would perpetuate the positive gains of economic integration and political coordination, but eliminate the ills created therefrom. The major roadblock to this solution is imposed by the restraints of the present system of political and national sovereignty. States, as well as private players and international organizations, have natural inclinations to secure their own interest before favoring any attenuated global benefit. Moreover, the realists would likely argue the impossibility of formulating a unified global benefit in a world where cultural and religious differences exist in irreconcilable contradictions, and where extremism abounds. Therefore, any possible solutions appear to stand clearly on utopian grounds.

The author emphasizes that the object of this article is not to propose a utopian solution for global governance or to call for an establishment of a world state or la republique universelle, but to acknowledge the following: (1) the existence of familiar social ills now applicable on a global scale; (2) the formative power of law to prescribe to every man his duty; (3) the ability of past utopians to be realist in identifying existing societal ills; (4) the direct influence of utopian imagination on the course of global history; (5) the disbalance in favor of responsive “after-the-fact” solutions rather than prospective betterment and “reinvention” in today’s national and international legal discourse.

F. The role of modern international lawyers; a word of caution and call for restraint

Friedrich Hayek disagreed with E.H. Carr that “we know the direction in which the world is moving, and we must either bow to it or perish.” Today, however, many will likely agree that the world is moving, at an accelerated pace, towards globalism, and if not unequivocally towards globalism, then, at least, towards regionalism and supranationalism. In this light, solutions to modern social ills must be increasingly designed on a global or regional scale and not at the municipal level.

Over time, many scholars recognized the Westphalian approach to the law of nations as “confining within very narrow bounds a law so extensive in its own nature, and in which the whole human race are so intimately concerned” that it is a “degradation of...
that law”\textsuperscript{72} and a “misconception of its real origin.”\textsuperscript{73} One author plainly states that the “inter-State law of a society of sovereign and equal States is only one possible configuration of an international legal order.”\textsuperscript{74}

Several questions then arise in this context. First, what is so potentially “confining” or “degrading” in reducing the law of nations to mere “co-ordination” among sovereign states? Second, what are the alternative “configurations?” And, ultimately, could an alternative configuration present a model that does in fact employ the humanity’s best political and social contrivances? Thus, it is highly appropriate for modern international lawyers to wrestle with these questions, even if the proposed answers may be in the utopian realm.

But Hayek also agreed with Hölderlin that “[w]hat has always made the state a hell on earth has been precisely that man has tried to make it his heaven.”\textsuperscript{75} Utopian thinking in its bold adventurism and, at times, in its unrestrained optimism, without a measure of reason and pragmatism, can be dangerous, and this danger is often exposed when utopian models are checked by reality.

IV. UTOPIAN INFLUENCE ON HISTORY, POLITICS, AND THE LAW OF NATIONS

The following section attempts to illustrate the potential of utopian imagination to foretell the future – but not always without error – to influence the course of history and the fate of humanity. It serves as a confirmation for the necessity of utopian thought in legal discourse. At the same time, it is also a cautionary tale forewarning against the reckless testing of utopian hypotheses on the lives of ordinary people.

A. Natural Law, American Revolution, and Early American Republic

“We hold these truths to be self-evident . . . .”\textsuperscript{76}

The origins of natural law are customarily traced back to ancient Greek philosophers, who in turn attribute these origins to divinity.\textsuperscript{77} A common criticism of natural law is often drawn from its breadth and ambiguity.\textsuperscript{78} This, of course, makes defining natural law a difficult task. In general, natural law is considered to be the set of laws ordained by nature and therefore applying to everything everywhere. Throughout centuries, natural law won many adherents, including many widely-known thinkers and philosophers. Among them were Socrates, Plato, Aristotle, Aquinas, Suarez, Grotius,

\textsuperscript{72} Id.  
\textsuperscript{73} Id.  
\textsuperscript{74} GREWE, supra note 22, at 8.  
\textsuperscript{75} Id. at 76 (citation omitted).  
\textsuperscript{76} UNITED STATES DECLARATION OF INDEPENDENCE.  
\textsuperscript{77} See HOWARD P. KAINZ, NATURAL LAW: INTRODUCTION AND RE-EXAMINATION 4-13 (2004).  
\textsuperscript{78} See id. at 43 (“A great multitude of people are continually talking of the Law of Nature; and then they go on giving you their sentiments about what is right what is wrong; and these sentiment, you are to understand, are so many chapters, and section of the law of Nature. . . . [The ‘Natural Law’ consists] in so many contrivance for avoiding the obligation of appealing to any external standard, and for prevailing upon the readers to accept of the author’s sentiment or opinion as a reason, and that a sufficient one, for itself.”) (quoting JEREMY BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION Chapter 1 (1982)).
Hobbes, Pufendorf, and Kant. Of course, each writer glossed the postulates of natural law with their own fancy, and reconciliation of their various notions is virtually impossible.

Given the widespread past and present adoption of natural law principles, many may take issue with the inclusion of natural law in the utopian realm. In fact, natural law appears to run counter to the notions of utopianism because the foundational premise of natural law describes all spheres of existence as governed by nature – any nonconformity to nature thus has no bearing on the existence of natural law itself. Natural law adherents do not pursue a mythical utopia but rather strive to bring the existence to its naturally ordained state, which is presently altered by human imposition. However, inasmuch as natural law does not always govern human affairs but is only in paradisiacal imagination of its followers, it remains a utopian proposition.

In the eighteenth century, natural law had quite a hold on the legal thought in the western world. American colonies were no exception. Legal and political discourse often centered around the natural rights, although at times the discussions turned rather nebulous. In colonial pre-revolutionary America, the natural law was a common aspirational ideal much more than it was a realistic reflection of any existing political or social embodiment. Notwithstanding, however, its abstract foundations, natural law did in fact bear out the essence of American independence, thus demonstrating the undisputable power of thought to enable human action.

The textual analysis alone reveals that United States Declaration of Independence drew heavily and directly from principles of natural law. The opening paragraph declares: “[i]t becomes necessary for one people . . . to assume among the powers of the earth, the separate and equal station to which the law of nature and of nature’s God entitle them.” And further: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.” With the consequent passage of the Constitution and the Bill of Rights, as well as with the passage of the Fourteenth Amendment, the influence of natural law on the early American Republic is apparent. In fact, the natural law “became the ultimate basis for the chief arguments in support of the American Revolution.”

Out of the many theorists of natural law, a special role in the early American Republic was reserved for Emer de Vattel. Vattel was, of course, most famous for his masterful work contained in *The Law of Nations*. This volume is a comprehensive ode to natural law, comprising many books and chapters dealing with an array of topics spanning everything from the definition of sovereignty to most intricate detail of international customs and their origins.

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79 See id.


81 See id.


83 United States Declaration of Independence.

84 Id.

Of particular benefit to this article is Vattel’s synthesis of the history of the law of nations. Prior to endeavoring in detail on what Vattel himself considered to be the law of nations, he introduced in the preface to his celebrated volume the views of his predecessors and contemporaries on the usage of that term.\textsuperscript{86} He fairly methodically, although not exhaustively, summed up for us the origins of the Roman coinage of the phrase (\textit{jus gentium}), the meaning that emperor Justinian attributed to it, and the nuance added by Grotius, Hobbes, and Puffendorf. He did not omit Barbeyrac nor Baron de Wolf, who in Vattel’s view deserved nothing less than “glory” for being the first one to perceive and execute the work on a system of “natural law of nations, which should claim the obedience of states and sovereigns . . . .”\textsuperscript{87}

The work of Vattel beginning with its very title\textsuperscript{88} and through the concluding paragraph is a celebration of natural law, which, he argued, applies equally and universally to the nations as well as to their citizens (although separately and in their own right).\textsuperscript{89} To Vattel, the law of nations was “the law of nature applied to states or nations.”\textsuperscript{90} And the scope of the law of nature in his eyes was, of course, grand. It encompassed everything from “the rights of dominion and property”\textsuperscript{91} to promotion of “the welfare of human society”\textsuperscript{92} and the protection of liberties.\textsuperscript{93}

In defining the law of nations as the law of nature applied to nations,\textsuperscript{94} and considering virtually limitless scope attributed to the law of nature,\textsuperscript{95} Vattel then acknowledged with frustration the “narrow bounds”\textsuperscript{96} of the law of nations that concerned itself merely with the maxims and treatises imposed by mutual consent.\textsuperscript{97} In this approach, Vattel substantially departed from Grotius, who declared the law of nations as deriving “its authority from the unanimous approbation of all, or, at least, of many nations.”\textsuperscript{98}

Beyond issues of international significance, Vattel’s work also contained “the clearest rules of construing private contracts and respecting the admiralty and insurance law”\textsuperscript{99} among others. In its broad scope, availability, and contemporaneous nature of his writing, Vattel’s influence was particularly pronounced on the early Supreme Court jurisprudence. Justices of the Court routinely cited to Vattel and to the principles of natural law he elucidated.\textsuperscript{100} Thus his influence on the early American jurisprudence was extensive and significant.

\textsuperscript{86} \textsc{Vattel}, supra note 11, at x.
\textsuperscript{87} \textit{Id}.
\textsuperscript{88} The full title is “The Law of Nations; or, \textit{Principles of the Law of Nature}, Applied to the Conduct and Affairs of Nations and Sovereigns” (emphasis added).
\textsuperscript{89} See \textsc{generally Vattel}, supra note 11.
\textsuperscript{90} \textit{Id}. at ix, 190.
\textsuperscript{91} \textit{Id}. at 204.
\textsuperscript{92} \textit{Id}. at 492.
\textsuperscript{93} See \textit{id}.
\textsuperscript{94} See note 88.
\textsuperscript{95} See discussion at note above.
\textsuperscript{96} \textsc{Vattel}, supra note 11, at 190.
\textsuperscript{97} \textit{Id}. at vii.
\textsuperscript{98} \textsc{Hannis Taylor, Grotius and the Growth of His System} 85 (1901).
\textsuperscript{99} I. Chitty in Preface to \textsc{Vattel}, supra note 11, at v.
\textsuperscript{100} Class discussion with William E. Butler, Professor of Law, Penn State University, Dickinson School of Law (April 12, 2010).
At the time of his writing, Vattel subscribed to and advocated for the principles of natural law. But he nevertheless did not entertain any false illusions as to the universal adoption of natural rights. It would be less than a decade following Vattel’s death in 1767 when the first domino would fall, leading to the emancipating grant of basic, “natural” human freedoms to millions of people worldwide.

B. Karl Marx, Utopian Socialism, and the Twentieth Century

The merit of Marx is that he suddenly produces a qualitative change in the history of social thought. He interprets history, understands its dynamic, predicts the future, but in addition to predicting it, he expresses a revolutionary concept: the world must not only be interpreted, it must be transformed.101

- Che Guevara

The longer I spend on Wall Street, the more convinced I am that Marx was right.102

- Wall Street Banker

Arguably, no other person exerted greater influence on the twentieth century than Karl Marx.103 Within his legacy, Marx also remains one of the most polarized historical figures. At his funeral, Engels correctly predicted that Marx’s “name and work will endure through the ages.”104 But according to several accounts, Marx was not favorably disposed towards such accolades or towards the allegiance many swore to his name: “I, at least, am not a Marxist,”105 he said, upon learning that a new French party claimed the discipleship.

It would certainly require at least a lifetime of most scrupulous and thorough research to sort through the entirety of Marx’s legacy. And even then the account would be most contradictory and irreconcilable. One thing, however, would remain certain: Karl Marx was a self-proclaimed utopian.106 His quest, simply put, was to bring an added measure of equality to the world perceived by him as largely unfair to many who labored from dawn to dusk. In some respects he was a follower of Thomas More, who held the lust for possessions to be an evil necessary to eradicate.

Although Marx declared himself a revolutionary, it is unknown whether he would have expected his ideas to take hold on the world in such immediate future following his death. The expectations for his proposals were fairly utopian in the sense that he envisioned them to take place in some distant future, and certainly not immediately.

But contrary to these expectations, his influence was quickly and directly realized in the Russian revolutionary events of the early twentieth century. Heretofore, those events and their consequences likely represent Marx’s most pronounced and enduring historical legacy.

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101 Che Guevara as quoted in BRUCE MAZLISH ET AL., REVOLUTION; A LEADER 401 (1971).
104 Id.
105 Id.
106 Karl Marx as quoted in WHEEN, supra note 103.
The consequent Russian, or more appropriately, Soviet democracy attempted to usher in socialism and communism as outlined by Marx and others. For a time, following the exhaustive Russian Civil War and World War I, Soviet Russia and its successor, the Soviet Union, remained at large isolated and growing in influence as a regional power. However, following the conclusion of World War II, the Soviet Union emerged as world power and a superpower with an agenda to spread socialist revolution worldwide. And many revolutions did in fact follow from Europe, to Africa, to Latin America. Despite his claim to be a revolutionist, Marx is hardly to blame for the resulting bloodshed. Nevertheless, in the name of Marxism or anti-Marxism, many “bloody blemishes on the history of the twentieth century were justified.”

The resulting world order commonly referred to as the Cold War put in opposition what several decades ago was nothing more than a utopian hypothesis against firmly established capitalism of the Western World.

In a similar fashion, Marx could equally be credited with acceleration of scientific progress. The competition among the superpowers oftentimes resulted in giant leaps of technology. To Marx’s great surprise he may have been partially responsible for accelerating the human exploration of the cosmos, the result he hardly intended in the Communist Manifesto.

Until today, the world continues to feel the impact of Marx’s utopian propositions. The resurging influence of his thought in most surprising of circles may be a foreshadowing of other things to come. Marx’s legacy typifies, perhaps better than any other example, a utopian thinker attempting to conceive “of better ways of being born and dying.” His legacy, whatever it may be, represents the result of a utopian quest for prospective betterment and reinvention, as well as the very real influence utopians exert on the formation of law at the municipal, international, and global level.

C. Lev Tolstoy, Gandhi, and Martin Luther King, Jr.

Mohandas Gandhi is widely and rightfully deemed a preeminent world leader and thinker. He, in turn, considered himself a disciple of Lev Tolstoy. The lives of Gandhi and Tolstoy intersected briefly and only through correspondence. Tolstoy, of course, is more commonly recognized for his literary accomplishments rather than for his political influence. Nevertheless, it was Tolstoy’s religious and philosophical outlook that directly affected the formation of Gandhi’s political views.

Born to a family of Russian nobility, Tolstoy from youth associated with the grandest of Russian aristocracy. The protagonists of his most famous works War and Peace and Anna Karenina are in fact Russian aristocrats. Throughout the younger years of his life, Tolstoy was in relative harmony with his high social station. Towards the later years, however, he began to experience what is typically referred to by his biographers as a “spiritual crisis.” Leading up to this time, he had witnessed firsthand certain

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107 Wheen, supra note 103, at 5.
108 Manuel, supra note 6, at 802.
traumatic events which caused the most profound re-evaluation of his core values. For example, upon seeing a public execution in Paris he wrote the following: “The truth is that the State is a conspiracy designed not only to exploit, but above all to corrupt its citizens. . . . Henceforth, I shall never serve any government anywhere.”

Tolstoy increasingly became distant from the things of the world. He renounced tobacco, meat, and wine; began to read thoroughly the works of pacifists; and himself composed works of political rather than literary value. Specifically, in 1908, Tolstoy wrote A Letter to a Hindu, which was published in the Indian newspaper Free Hindustan and caused Gandhi to write to Tolstoy for advice.

Gandhi and Tolstoy quickly found themselves to be very akin. A conversation was struck up between the two, documented in several letters that followed. Tolstoy’s premise was based on various forms of peaceful resistance as opposed to violent revolutions. Gandhi agreed wholeheartedly, adopting many other Tolstoy’s ideas as well. In 1910, Gandhi began in great part to realize his political vision: a Tolstoy Farm, an 1,100 acre estate was founded on the outskirts of Johannesburg. The Farm would become a lively enterprise providing home and sustenance to those who labored there. A school for children was also founded on the farm, similar to the school Tolstoy established for his former peasants at his estate in Yasnay Polyana. Gandhi later wrote concerning his experience in South Africa:

I have serious doubts as to whether the struggle could have been prosecuted for eight years, whether we could have secured larger funds, and whether the thousands of men who participated in the last phase of the struggle would have borne their share of it, if there had been no Tolstoy Farm.

Tolstoy did not live to see Gandhi’s successful struggle for emancipation through nonviolent means. He died in 1910 and did not witness the Indian triumph of the 1940s. Upon his death, Indian Opinion published an obituary, which in part read: Tolstoy “has shown how present-day civilisation, based as it is on brute force, is a negation of the divinity in man, and how, before man can realise his manhood, he must substitute for brute force love in all his actions.” As one commentator points out: “it must [have been] a matter of great encouragement and melancholy satisfaction to Indian passive

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111 As one commentator points out: “First, it rarely happens that an author on social science, including legal studies, consistently holds the same system of ideas without any modification, amendment or correction.” KINJI AKASHI, CORNELIUS VAN BYNKERSHOEK: HIS ROLE IN THE HISTORY OF INTERNATIONAL LAW 7 (1998).
115 See id. at 54.
116 See id. at 44-55.
117 See id. at 53.
118 See C.F. ANDREWS, MAHATMA GANDHI’S IDEAS INCLUDING SELECTIONS FROM HIS WRITING 212 (2008).
119 See MIČEK, supra note 114, at 55.
resisters that the sage of Jasnaya Poljana considered the Transvaal struggle to be one of worldwide importance.\textsuperscript{120}

However, Tolstoy's formative influence did not stop with India. Although not directly but vicariously through Gandhi, Tolstoy's ideals of love and non-violence also made the most profound effect on Martin Luther King, Jr. An “unbroken lineage”\textsuperscript{121} thus links Tolstoy, Gandhi, and Martin Luther King. King himself acknowledged this influence confirming that when he “was introduced to the life and teachings of Mahatma Gandhi . . . [he] became deeply fascinated by his campaigns of nonviolent resistance.”\textsuperscript{122} King visited India and upon his return was more committed than ever to the peaceful methods proven successful in Indian experience.

V. CONCLUSION

This article previously proposed an existence of an abstract continuum where utopian thought, reality, and the law of nations exist in a sequential order. From its very roots, utopians have pondered ideal models and societies. Their study began with a recognition of the formative power of law on the humanity, and in this light, prospective utopian legal systems were proposed. At first, many of them appeared chimerical and impossible. With time, however, these previously ridiculed notions became everyday reality with characteristics of inalienability. In a somewhat different manner, the law of nations did what it could to reduce human affliction through the adoption of certain principles imposed by mutual consent among sovereign nations and aimed at reducing violence and promoting trade and civility. As opposed to prospective reinvention, the law of nations tackled humanity’s problems most often through a responsive, after-the-fact approach.

Within fairly recent past, significant transformations impacted both the utopian thought and the law of nations. Utopian thought experienced a significant decline caused, in part, by the perception of near-utopian existence of the present political models. The law of nations, on the other hand, emerged from being primarily the law of coordination to a sophisticated system of joint regional, and increasingly so, global cooperation and joint action. With this transformation, many of the previously-eradicated social ills reemerged with new force on a new scale. Humanity again is faced with very familiar concerns where the most basic concepts of freedom and liberty may require redefinition.

If contemporary international lawyers are expected to generate new shapes for the law of nations, an understanding of its past could provide a sharper image for the future. Any prospective cure, however, first requires a keen awareness of present imperfections. In this sense, utopian approach of perceiving societal torments is most beneficial. It provides an “incomparable instrument of thought because it allow[s] a systematic exploration of a variety of specific possibilities.”\textsuperscript{123} The inclusion of utopian thought

\textsuperscript{120} Id.
\textsuperscript{121} PBS.org, Count Leo Nikolayevich Tolstoy, A Tolstoy Timeline, available at http://www.pbs.org/wgbh/masterpiece/anna/timeline_bio.html.
\textsuperscript{122} Martin Luther King in THE MARTIN LUTHER KING, JR. COMPANION 37 (Coretta King, Dexter King eds. 1993).
\textsuperscript{123} MANUEL, supra note 6, at 806.
within the regular curriculum of international legal studies could illuminate many of the necessary aspects of the international legal process. At the very least, the student of utopian thought,\textsuperscript{124} would be “at his best in understanding things post-festum. Having studied the fate of many prophets, he may have no ambition to be one, and when he falls among them he steps gingerly, leery of the contagion of the \textit{morbus utopiensis}.\textsuperscript{125}

\textsuperscript{124} Including the author of this essay.

\textsuperscript{125} \textsc{Manuel}, \textit{supra} note 6, at 806.