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ciety one of the conditions of his existence, we may thence infer his social duties.

Now, out of Society the Human Race could not exist, for

1. The infant would presently perish if not supplied with food and warmth.
2. The human mother, unlike other animals, is hardly less helpless than her new-born babe, and she too would perish without aid.
3. The husband and father gives the needed aid only because he knows himself to be so; and this knowledge he must owe to social regulation, unless we suppose him and his family disconnected entirely from all others.
4. On that supposition it would be impossible for him at once to feed and defend his wife and child. While he hunts the deer, the tiger devours them.

This infirmity of the *individual* man is the strength of the Race. It binds men together, and makes the strength the knowledge and the resources of the whole, the strength, knowledge and resources of each.

From this social nature we infer social duties: *prescribed by the author of that Nature.*

The *sanction* is the destruction which a neglect of them would bring on the race.

The universal law which binds all things "*Natura convenienter vivere,*" is faithfully obeyed by all things but man. Why not by him?

He has a *will* wayward and perverse, *passions* that mislead, and a *reason* too short-sighted to keep him always in the path of duty.

To reform this will; to regulate these passions and enlighten this reason is the business of all *Education* from the cradle to the death-bed.

Even while man resists the teachings of Wisdom and Virtue, he acknowledges, in *general terms*, the social duties arising from his social nature.

This admission is the basis of *Natural Law*; which teaches the duties of *Man to Man.*

Can he lawfully refuse to perform them?

Can he, *by his own* act, shake off the obligation to perform them?

Can he lawfully disable himself to perform them?

They are due to all. Can he, by leaguings with a few, free himself from his duties to the rest?

To all these questions reason answers "no."

Then a community so knit together that the performance of the duties of its members to strangers is made impracticable, must assume them.

Communities are thus bound to fulfil to other communities the duties which the *members* of the one owe to the *members* of the other as natural men.

Thus the Law of Nature becomes the Law of Nations.

It is the same code whose maxims are summed up in the rule, "Whatsoever ye would that others should do unto you, the same do ye also unto them."

Its sanction is the same that denounces "tribulation and anguish upon every soul of man that doeth evil."

What is all this but Morality.

So far the Law of Nations is made up, not of positive enactments but of moral maxims.

To him that studies it the words of the Apostle are a sure guide, "Whatsoever things are *true—honest—just—pure—lovely—of good repute, —these seek.*"

Is this true of *all* National Law?

No. It is only true of the *necessary* law, so called because our subjection to it is not a matter of choice, but an inevitable necessity imposed by the author of our Nature. There is besides this a *conventional* law of nature, sometimes ascertained by compact, sometimes by custom alone, by which Nations bind themselves to duties which the Law of Nature does not prescribe. Of what is called the Voluntary Law, I do not speak here. That is explained in Book III. Chap. 12.

But the *necessary* law interferes even with conventional laws.

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It admits of conventions *supplementary*, but not *contradictory* to itself.

Why? Because no convention can make it right to do wrong.

What then? Do such conventions stand for nothing?

By no means. They give a right to demand equivalents.

This too is a decision of the Natural or Necessary Law.

Such is the nature of the subject, which, while it blends with the most important and agitating questions that disturb the peace of the world, and exercises the maturest and ablest minds, yet draws its maxims and reasons from a source, with which youth should contract an early familiarity, and which, we are told, God is sometimes pleased to disclose to babes and sucklings, while he hides it from the disingenuous and perverse, who seek not the truth in the love of it.

BOOK I.

CHAPTER 1.—Vattel's definition of a NATION imputes *Nationality* to a Band of Robbers, a Crew of Pirates, a Caravan of Merchants, or the Crew of a Merchant Ship. He then predicates of Nationality, a RIGHT to command obedience.

Now where there is a RIGHT to command, there can be no CRIME in obedience.

Hence the Soldier of a Sovereign State is not deemed a Murderer, however unrighteous the war he is engaged in. See Book III. Sec. 6.

From Vattel's premises the same might be true of a Pirate or Robber.

This would be good news to them, but fatal to others.

The same definition on the other hand puts the Caravan, *se invito*, in a state of outlawry.

We want therefore a better definition. I offer the following:

"A NATION, or BODY POLITIC, is a society of men, *permanently* united, for the purpose of promoting their common welfare by their combined strength, and possessing *of itself*, by common CONSENT, a right RECOGNIZED *by the rest of the world, to govern its members.*"

This CONSENT binds the individual to obey.

This RECOGNITION by foreign powers ACCEPTS *the responsibility of the Nation* in lieu of the *personal* responsibility of the *individual*.

Herein is the value of such Recognition to newly founded States.

This power of Self-Government is the test of NATIONALITY, and SOVEREIGNTY. Hence it is not affected by *Forms of Government*, by *unequal Alliances*, by *Treaties of Protection*, by *Tribute*, by *Feudal Subordination*, by *Subjection to the same Prince*, by *Confederation*, or by any thing that leaves the *functions* of GOVERNMENT, even *in form*, in the hands of its own authorities.

Slavish submission *degrades* SOVEREIGNTY, but does not *extinguish* it.

CHAP. 2.—A Nation should live in conformity to its *common* nature,

as a Nation, and to its *particular* nature, as *Commercial, Agricultural, &c.*

Hence she should study her capabilities and cultivate them.

Self-preservation in the *natural man* is an *inevitable* duty.

So also is the duty of the *State* to preserve the *lives* of its Members.

But to preserve the ASSOCIATION is but an affair of prudence and policy.

He who kills himself evades the duties for which he was created.

A State disbands: the *natural* duties of the members *remain*, and *may still be performed*.

Self-perfection is a duty to which *self-knowledge* is necessary.

A Nation owes this duty to itself, to its fellow-men, and to God.

The duty of Individuals to aid in these objects is a branch of private virtue.

Vattel speaks vaguely and largely of the rights resulting from these duties, but in the end resolves all into a right to do what is not wrong; which is the true conclusion.

CHAP. 3.—The PUBLIC AUTHORITY is established *by the STATE*, for its OWN GOOD.

The division of Laws should be threefold. 1. FUNDAMENTAL, and UNCHANGEABLE *except by the PEOPLE*. 2. ORGANIC, yet CHANGEABLE *by the Government*. 3. CIVIL and CHANGEABLE *by the Government*.

J. B. B.
Judge Nathaniel B. B.
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The Government cannot change the law which *creates* it, and *grants* and *defines* its powers, any more than a man, standing in a tub, can lift himself by the handles.

But it ought to be at liberty to *new-model* the machinery it works with. E. g. the Courts.

From inattention to this distinction Constitutions are made inconvenient, and Constitutional restraints fall into disrepute, as unnecessary, frivolous and troublesome.

The People who framed the Government, and *they alone* can change it.

When men agree to form a body politic, a majority must have the right to fix and change at pleasure the form of Government.

But, if the first agreement to live together as a body politic contains a stipulation as to the form of Government, then *all* should concur to change that form; or the dissatisfied may, if they choose, withdraw.

Constitutional changes are mischievous. Men should reverence their institutions.

Time is necessary to this. We are first partial to our own work, and then capriciously fall out with it. That of our fathers we venerate. The image worshipper who made his God, and can make another, throws him into the fire when his prayers are not answered.

CHAP. 4.—Vattel confuses his reader by predicating Sovereignty sometimes of the Ruler, and sometimes of the *Body Politic* itself whose creature the Ruler is, and whose *authority* he does but represent. The BODY POLITIC is the *true* and *only* SOVEREIGN.

This distinction solves some difficulties and corrects some errors. It shows—

In what sense private virtues are not the virtues of Kings.

The representative character of the Ruler and his duty to study, preserve and perfect the State.

His obligation to respect the Constitution.

His obligation to obey, respect and execute the laws.

The nature and extent of his subjection to them.

The absurdity of the *Jus divinum*.

It gets rid of the absurd paradox of an *inviolability* that may be forfeited!!!

It shows why Tyranny short of Usurpation may be resisted.

How it is sometimes right to disobey.

The difference between *ruling by*, and *being ruled by* a Minister.

CHAP. 5.—How the tenure of office does not affect its dignity.

How that, and the order of succession may be changed.

How the idea of a patrimonial State is absurd.

How the succession is indivisible.

How the right of succession may be qualified.

How the People are the Judge of a disputed succession.

How foreign States should not interfere.

How the Ruler's authority is inalienable.

How the ratification of the People is necessary even where the Prince has authority by law to appoint his successor.

CHAP. 8.—The *advantages* of Commerce are twofold.

1. As a *Convenience*. It procures comforts not to be had without it.

2. As a source of *Profit*. This consists of the difference between the cost of production under unfavorable circumstances, and the cost of production under the *most* favorable circumstances, added to the cost of transportation.

For the *duty* to prosecute Commerce. See Book II. Chap. 2.

Monopolies are *evil* as they discourage competition, and are partial.

They are good when they lead to enterprises which might otherwise not be undertaken.

In such cases they are just, to requite sacrifice and hazard, and reward exertion.

Vattel's idea of the Balance of Trade is exploded as absurd.

CHAP. 9.—The advantage of Roads and Canals is a corollary from that of Commerce.

Being established at general expense, the use of tolls is to make those who use them pay something more than those who do not.

Hence tolls are justifiable in all cases when not excessive.

CHAP. 10.—The use of *coinage* is as authentic evidence of the weight of metal.

The Government, which can alone command universal confidence, should supply this evidence. For the same reason individuals should not be suffered to coin.

This is the true idea of the prerogative.

Hence to debase the coin is *doubly* criminal when done *by Government*.

CHAP. 11.—Education. The minds of the People should be cultivated.

The question is of the MEANS, KIND and EXTENT of cultivation.

In a free Country it may be easier to provide Schools than Scholars.

The King of Prussia forces all persons to send their children to his schools.

In a Democracy, if Men wish to send their children, they will.

If not, they will not enforce penalties against themselves.

But if they do it from choice there will be scholars, and if these are able to pay for education, there will be schools.

To the extent of that education which every one can procure, there is no need of Laws to provide the means of education.

Hence primary schools with us in Virginia are useless.

But they are popular, as a compliment to the multitude.

They are like books in the library of a King who never reads.

But they are necessary for the sake of appearances, and in both cases "*Suprema voluntas stat pro ratione.*"

But there is a degree of Education not accessible to all.

In that case, let the public lend its aid by paying salaries to Teachers.

But this is taxing some for the benefit of others.

True. But the *Public* is benefitted too by the development of high minds, one of which pays for the education of hundreds. It is like washing for Diamonds.

But should great attainments in literature, art, and science be specifically rewarded except by employment in the public service for the *public good*.

Answer. Excellence in *useful* things can always earn its reward.

Why should the public encourage excellence in what is useless?

Apply this to Statuary, Historic Painting, &c. The instances given by Vattel at Sec. 113, illustrate and enforce what is here suggested.

Philosophical research is sometimes said to be dangerous.

Dangerous to what? To Truth?

That which has *passed* for Truth has often said so; but it has been since found that it was *Error*, not *Truth* that was alarmed.

Respect to established opinions needs no legal sanctions; though it has sometimes *seemed* so, because opinions *seemed* to be established which were not established.

When the innovator succeeds it commonly appears that public opinion had been, in fact, on his side. When he mistakes in this the attempt fails. "He who spits against the wind spits in his own face." So said Franklin to Paine.

None are so sensitive to public opinion as the very men who are most ready to assail what only *passes* for it. Vanity is the mainspring of action in such men.

At an earlier day Voltaire would have been a Loyola.

Respect for public opinion is a Sentiment, and public opinion enforces it. This alone can.

There is no common measure between Sentiment and penal coercion.

Public Virtue is to be cultivated by *public employment*.

Office gives encouragement, influence and authority either to Virtue or to Vice.

To bestow it on Vice shows corrupt *designs* in the ruler.

When the *People* thus bestow it, the *work of corruption* is already done.

J. B. S.
Judge Nathaniel B. Tucker

Public Virtue is to be encouraged by *example*; and it is especially the duty of all men in office to set such example, and above all is it the duty of the Ruler.

The same is true of men eminent for talent, wealth, or any other means of influence.

Love of Country is a natural sentiment, in a certain degree, and to that degree it is virtuous and valuable.

It has its rise in the best affections, and in turn it cultivates them.

In a Country addicted to conquest, injustice and rapacity it becomes excessive, and the nurse of these evils, and their appropriate passions, Avarice and Ambition.

Hence Patriotism was so vivid in Rome and Greece and among Barbarians.

CHAP. 13.—The Enactment of good laws and their due execution are essential to Justice.

The first belongs to the Legislature. The second to the Judges.

Should the Legislator be also a Judge? No. Should he appoint Judges? No.

The Judge should be independent as a check on unconstitutional legislation.

He should be appointed by some other: his appointment is what is called an executive act, and he who makes it is called "the Executive."

Justice requires that the Judge be independent of every thing but the Law.

Hence the Executive must not control or vacate judicial decrees, but should enforce them.

The qualifications for all office (especially judicial office) are ability and virtue.

He who is wanting in these has no claim to office. To appoint such, is to do injustice to those who have the proper qualifications;

To defraud the People of the services for which salaries are paid;

To corrupt the community by discouraging the pursuit of Wisdom and Virtue.

On all these grounds, the man best qualified for an office *has a right to it*.

The Ruler, who habitually chooses bad men, means to corrupt the People.

The People that knowingly chooses such a Ruler is in love with corruption.

Judges should be permanent—not occasional. Appointments of Judges to try particular cases enables the appointer to screen the guilty and destroy the innocent.

The office of PARDON is to save from the penalties of the law men convicted by mistake:—

Offenders who may be spared without impairing the security of Society; those whose punishment would offend the moral sense of the community; as for example,

Cases of *technical* guilt, prompted by *virtuous feelings*.

Offences of men otherwise blameless distinguished by talent and public service.

Cases where the innocent would perish with the guilty from want or from sympathy.

This is true, whether we deduce the right to punish from self-defence or from God's Law.

Duelling is wrong; but society ought not to punish what it drives men to do.

The Legislature of Virginia say he who fights shall not even be a Constable. *But they elect him to the Senate.* Their Law professes to express the public sentiment. Their *conduct* gives the lie to their testimony. They should repeal the Law, or respect its principle.

CHAP. 14.—Population is but an *element* of Strength. Without military qualities, and the resources that intelligence supplies, it is weak.

ness. See England and China. Attila, when told of the numbers of the effeminate Romans, said "the thicker the grass the easier it is mown."

Fortitude, Frugality and Simplicity are indispensable to a people who have to defend their *Liberty* against GREAT odds. They have to fight under disadvantages, which the *luxurious* and *effeminate* will not agree to encounter. *They will sooner submit to oppression.*

A wealthy Nation fighting for CONQUEST may succeed, without these qualities. Courage alone will do.

A brave man fights the better for a good breakfast, if he can get it.

If he cannot, he ought to be able to fight without it.

In the beginning of the English Civil Wars the Cavaliers beat the Roundheads.

When their money failed their spirit sunk under hardship.

Laws to encourage, or discourage marriage are alike absurd.

Vattel contrasts the population of Catholic and of Protestant countries.

He mistakes the cause of the difference.

Convents discourage population by feeding useless mouths and starving Labor. If all the Nuns were mothers there would only be more hungry children to be starved off.

The difference is made by that form of despotism which commonly accompanies Popery.

In Switzerland, where none such prevails, Catholic and Protestant Cantons are alike populous.

CHAP. 15.—*Reputation is Strength.* If for *Valour* it inspires *Fear*; if for *Virtue, Love.*

In either case it gives *Security* which alone makes *Power* desirable.

We are ashamed to quarrel with a good man; for all men will say we are in the wrong.

The Reputation for *Virtue* is essential to true *Glory.*

The wise and good whose praise is *Fame* will not applaud splendid wickedness.

Even they who *admire* and *envy* will be ashamed to *praise* it.

Of this Reputation the Ruler is the chief Guardian.

Hence he, above all men, should be virtuous, and encourage *Virtue.*

Private men too can do much for the reputation of their Country. England owes her best fame to private men. Franklin is an honor to America, not so much in public as in private character.

CHAP. 16.—Texas wisely sought to escape from Mexico by joining the United States. When she had repelled the danger, she withdrew the proposal. She may be driven to renew it.

CHAP. 18.—The Earth is given to the whole human Race.

Without cultivation it will not support all.

Men will not cultivate without security in the enjoyment of their labor.

Hence it is good for mankind to agree that whoever cultivates shall acquire a right to the spot.

It is fair to presume that all have agreed to that which would be best for all.

Hence we presume a common consent, giving each people a right to the Country it cultivates.

Whence then can we derive the right of the Savage to the Country he does not cultivate.

He can have no such right as to exclude those who will cultivate.

But the right of the cultivator extends only so far as his cultivation. He cannot claim more unless the conduct of the Savage renders more necessary for *Security.*

The Right of Discovery was a perfect right in Spain, and so universally acknowledged.

She fished up a jewel from the Sea, and all civilized nations agreed that it was her's.

The right of discovery was a perfect right in Spain, and so universally acknowledged.

But if she did not *use it*, might not others settle and cultivate?
Yes. It was hers *to use*; not to leave useless and desert.

The *Right of DOMAIN* is a right to the country as a source of subsistence and profit.

The *Right of EMPIRE* is the right to govern all who set foot upon it.

CHAP. 19.—It is a common error “that, *by the Law of Nature*,” a man’s native Country is the place of his birth, and that it is *positive Law* that makes him a member of the society to which his father belongs. The reverse is true.

To be a member of any society is to have certain *rights*, and to owe certain *duties*.

By the Law of Nature the Son inherits his Father’s acquisitions, and, among these his *rights*.

But *rights* have their correlative *duties*. *Claiming* one he must perform the other. What matter then where he is born?

He who is by the *Law of Nature* a native of one Country, and, by *positive Law*, a native of another, may have *rights* in both; but his *natural duties* belong to the *first*. His allegiance cannot be due to both.

Vattel is erroneously supposed to favor arbitrary Expatriation.

But he puts the right on grounds fatal to such a pretension.

1. On Necessity, which is above all Law, and supersedes it.
2. On the failure of Society in its duties to the Individual. Now if he owes nothing to them, they owe nothing to him, and there can be no such duties.
3. On positive wrong done to him, which is a stronger case of the same sort.
4. On the consent of the State—superfluous, if he have the absolute right.

Moreover he says they have not a right to cut him off, and exile him. Then he has no right to *cut them off* from him. If they have no right to sunder the link that connects him to them, no more has he.

CHAP. 20.—Income from Public Domain makes Government too independent of the People.

The best Revenue is that derived from the free grant of the People; because, by withholding it they may check abuses and prevent usurpation. The History of English Liberty illustrates this.

This is the true idea of Taxation. Vattel errs in ascribing it to eminent domain.

All interference with individuals in the management of their property is mischievous.

Corporations (unless created for public service) are, in this, like other individuals.

The best use of wild lands is to *give* them, in small portions, to *actual settlers*.

They should not be sold, for that creates an independent Revenue.

The *sale* of wild lands to individuals exhausts the people (*for the time*) as much as taxation to the same amount, and diminishes, by just so much, the capacity to pay taxes.

To *give* public lands to *settlers* is *POLITIC*, because they add to the resources of the Country.

It is *JUST*, because they who have no land have a claim on the domain of which others have *already got their share on the same terms*—that is by *settlement*.

The business of settlement is one of unlooked for difficulties. He who settles wild lands, on a remote frontier, pays a high price, even if they are given to him; and the public receives the benefit in taxes on his increased consumption, his exports, and the imports they bring back.

Legislative interference with the business of individuals produces ridiculous blunders. The Colonial Legislature of Virginia once made it penal to *dig up Tobacco-Suckers*. At another time it was made penal to *leave them standing*.

CHAP. 21.—The Power of Government over public domain depends on the Constitution.

The best use of wild lands is to give them, in small portions, to actual settlers.

If not given, no such Power can be lawfully exercised.

CHAP. 23.—The jurisdiction over bays, &c. depends not on their size, but on the Jurisdiction over *all* the *shores*, and all the *streams* flowing into them.

BOOK II.

CHAPTER 1.—The duty of assisting other nations in famine is a duty of Humanity.

In case of invasion and the like it is an affair of policy and calculation.

To interfere on any other ground is to be unjust to its own People.

The notion of setting an example is idle. Vattel's instance shows the consequence.

Poland saved Austria, and Austria, since Vattel wrote, aided to dismember Poland.

The duties of Nation to Nation in this respect are unlike those of Man to Man.

A Nation never falls into the water so as to be in danger of drowning.

The idea of mutual *love* between Nations is hardly romantic. It is merely silly.

If it were, as Vattel says, according to Man's nature, the fact would show it.

We have no means of knowing Man's nature, but by his conduct.

It is his nature to love his family and friends.

Because he loves them he does not love their enemies or cherish their rivals.

Men who make common cause array themselves against the world.

CHAP. 2.—We have already considered Commerce as a source of advantage. L. 1. C. 8.

As a duty, it is enforced by the following considerations.

Man is a social animal, and his existence depends on the social affections.

Nature therefore gives these the greatest force next after feelings which are purely selfish.

These social affections are, from the nature of the case, exclusive.

They attach the individual to a small circle of friends.

Beyond that circle they engender a principle of repulsion.

But man is an intellectual and moral being, and his intellectual and moral improvement require more extended intercourse and connexions.

To lead him to these, strong incentives are necessary to overcome the exclusive and repellent effect of affections properly domestic and social.

These incentives are supplied by the advantages of Commerce.

They owe their efficacy to the infinite diversity of Man's wants, and the infinite variety of the productions of the earth influenced by all the diversities of soil, climate, &c.

These diversities are God's means to lead man to the highest moral and intellectual excellence.

If this be so, it is his duty to give them their due effect.

Moreover—God gave the earth, not to *Nations in parcels*, but to *MAN COLLECTIVELY*.

The Nation whose location gives her a peculiar benefit, should not monopolize it.

She should be satisfied to enjoy and derive profit from it.

What she cannot use she should dispense to others who need it.

She sees, at the same time, that others have what she wants.

This leads to exchange, which is Commerce. Such is God's Law, and such his sanctions.

The end is the diffusion of Civilization—Art—Science—Religion.

Commerce is the hand-maid and pioneer of these.

Sometimes she assumes their garb, and Avarice under the mask of Benevolence preaches missions to Africa, &c. &c. This hypocrisy is detestable, but it achieves God's work.

Not Auction

Judge Tucker

CHAP. 3.—Precedency had its rise in the comparative power of different States.

The German Empire was once the greatest of European Nations.

Hence the Imperial Crown had precedence.

There were no considerable Republics in Europe.

Hence Kings had precedence of all Republics.

In the days of Roman Power the Consul took precedence of all Kings.

It was absurd to suppose that any thing could depend on the Ruler's

Title.

The decay of the German Empire, the vast power of Great Britain, and the rise of the N. American Republic has exploded all this nonsense.

But when many men pass through a narrow door one must go foremost.

This precedence is now allotted to the foreign Minister who has been longest at any Court.

He takes the lead of all others. When he withdraws, his successor falls to the rear.

A high sounding title may put dangerous ideas into the Ruler's head.

On the other hand, an humble title may inspire the People with false security.

We should watch our President with more jealousy, if he was called KING.

Had the Congress of the U. States been called PARLIAMENT the Constitution would have been rejected.

As it is, the tendency to Consolidation is masked by a title appropriate to an assembly of Deputies from Independent States.

Titles which do not imply claims on other nations may be foolish, but they are harmless.

The Emperor of China hurts no one by calling himself "Brother to the Sun."

But the Title of King of France formerly claimed by English Kings was injurious.

CHAP. 6.—The duty of a State to protect her People, and her Right to command their obedience, and to protect them from the consequences of obedience depend on each other.

These are the Essence of SOVEREIGNTY, and the tests of its existence.

The existence of either right implies that of the other two.

The duty to protect results from the right to command.

The right to protect results from the duty to protect.

The duty to command (OR CONTROL) results from the right to protect.

The right to command results from the duty to command.

And so on all round the circle again.

Hence the responsibility of the State for the acts of its members, responsible to it alone.

Hence the individual is responsible only to the State which is responsible for him.

A State is therefore bound in good faith; to prevent its members from injuring others;

To enforce reparation for injuries it has not prevented.

To repair them if practicable, when it fails to enforce reparation from the offender.

If it fails in all these it inflicts injury, and gives cause of War.

Societies which deny these duties have no right to be treated as Nations.

As they neither restrain nor punish wrong to others, they have no right to screen the offender.

The right to protect results from universal agreement to leave wrong doers to be punished by their own Sovereign. If he will not inflict punishment, the injured party may.

CHAP. 7.—There is a seeming inconsistency in treating with our Indians as Sovereigns, and at the same time claiming jurisdiction over their Country. How is this?

The title of King of France formerly claimed by English Kings was injurious

William Brewster

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The *Savage* idea of *Sovereignty* is over *Persons*. Ours is over *Place*.
The two may well consist together.

An *American* kills an *American* in *England*. He must be punished
there not here.

He kills an *American* in the *Indian* Country. We punish him, for
if we do not no one will.

It is no offence against *Indian* Law for a white man to kill a white
man in their Country.

They claim no *Sovereignty* over *him*, and have no idea of *Sovereignty*
over *place*.

If he kills one of *their people*, they kill him as an *enemy* not as a *crimi-*
nal.

If an *Indian* kills one of us, we kill him as a *criminal* not as an *enemy*.

These ideas are not inconsistent with their acknowledged right of
Domain.

They relate to the *Jus imperii* which they do not claim, and recognise in
us so far.

On this principle it is our duty to respect the rights mentioned at S.
88, and to prevent our people from destroying their game.

CHAP. 8.—Controversies are decided by the Courts and Laws of the
Country where they are tried.

But the *rights* of the *parties* sometimes depend on the laws of another
country.

These are then looked into, not as law to the *Court*, but to *ascertain* the
rights of the *parties*.

Of this nature are laws concerning *Interest*, *Land* *Titles*—*Inheri-*
ances, &c.

In many other particulars no regard is paid to foreign *Laws*.

Sec. 105-6.—The *foreigner* is bound to defend the Country that shel-
ters him.

Vattel does not deny this. By *militia* he means *army*—perhaps *foreign*
service.

Into this a *foreigner* cannot be lawfully forced, even where men are
pressed into service.

Under our laws no man can be forced to serve except in defensive war.

The native *militia* cannot be forced to go abroad any more than the
foreigner.

But both must defend the Country if invaded.

If they *enlist* as *regular soldiers*, both are liable to foreign service, *by*
their own consent.

Sec. 109, 10, 11.—*Inheritance* in land is governed by the law of the
Country where it lies. *Lex loci rei sitae*.

In personal property by the law of the party's domicile though he die
abroad. *Lex domicilii*.

Debts are to be paid out of it according to the law of the Country
where it happens to be.

This is the *Lex fori*, which in the other cases adopts the *Lex loci rei*
sitae, or *lex domicilii*.

CHAP. 9.—*Inalienable* rights are such as a man cannot lawfully divest
himself of.

He cannot divest himself of a right to do an absolute duty.

It is his duty to preserve his life; and so he cannot divest himself of
the right to live.

My land is mine because every body has consented that it shall be
mine.

Then I have a right to order others off, and so has every landholder.

But if all landholders do this in concert, must landless men go into
the Sea?

No. Their answer is found in Sec. 117, "that the allotment of prop-
erty was with a tacit reserve of a right to live," and therefore to some
resting place for the sole of the foot.

Still no man has, in general, a right to go on another's Land.

W. Williams

But a man swimming for life has a right to land where he can. Vattel states this vaguely because he starts wrong. He says "Nature imposes no obligations without giving the means of fulfilling them." Well! Charity is a duty. Shall we steal leather to make poor men's shoes?"

The affair of the Sabine Rape concerned the rights of the women, which are overlooked.

They had a right not to be ravished, and it was the duty of the Sabines to protect them.

But they had a right to live with the Romans if they chose, and it was the duty of the Sabines to let them alone.

CHAP. 10.—The admission of foreigners is liable to objections.

1. If numerous they may be unruly as the foreign laborers on our public works.

They may revolt. Foreigners were invited in Texas, and took the Country to themselves.

2. If admitted to citizenship they make common cause and control elections.

If an attempt is made to remedy this mischief they combine against it. The foreigners in New York rule the City and cannot be put down.

CHAP. 11.—He who finds what before belonged to no one, has a right to it.

He who finds what belongs to another has a right to keep it till the owner appears.

This right I should call the right of usucaption.

If the owner does not claim it he may, in time, be presumed to have relinquished it.

Hence the municipal law says that, after a certain time, he shall not have it.

The Right thus acquired by Time is Prescription.

These two things are different, and ought to have different names.

There are analogous cases in National Law.

A nation discovering and settling a vacant Country acquires a right to it at once.

Discovery alone gives a right to settle if she will.

If she does not settle it and another does, her right is lost by neglect.

The law of Nations fixes no precise time for this, nor will the right of the discoverer be always lost by delay.

The reason of the whole matter is shown in the following questions and answers:

What is the origin of all perfect title to Land? Occupancy.

What if the occupant leave the spot? He loses his title according to the law of Nature.

But the Law of Nations modifies this, and protects the title for a time.

How long may the title continue after ceasing to occupy? Till it is clearly abandoned.

How is abandonment ascertained? By long disuse.

Suppose the owner kept off by force? His right remains, and no prescription can be raised against it.

If no force be used, and the title be not claimed till another occupies and settles, who has the right in that case? The new occupant.

Will it make no difference if the owner did not intend to abandon? None; if his delay led the other to settle under the belief that he had abandoned.

Why so? Because the law of Nature gives the right to the actual occupant, and the law of Nations will not interfere on behalf of one whose negligence leads others into difficulties. The maxim applies; "Sic utere tuo ut alienum non laedas."

CHAP. 12.—Treaties are but Contracts.

Contracts between Sovereign States are alone called Treaties.

Sec. 165.—I sell a horse to A. but do not deliver him. Then I sell the same horse to B. and promise to deliver him.

This promise is not void as Vattel says it is. It does not indeed bind

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