

W. L. G. 18
Judge Nat. Tucker

13

me to deliver the horse to B. for no promise can make it right to do wrong.

But it binds me to buy him back from A. for B. if I can.

If I cannot I am bound to compensate B. for his disappointment.

Sec. 171.—It seems absurd to rely on a promise not to murder or rob.

But moral codes are various. What a Quaker calls murder we do not.

What we call murder and think wicked a Savage may think praiseworthy.

But even when he thinks he has a right to kill, he may think himself bound by his word not to kill.

Hence his promise may, and often does deserve confidence.

The very looseness of the moral Code of Savages requires something they can rely on, so as to feel secure from each other.

Hence they are remarkable for fidelity to promises in their intercourse with each other.

So too with civilized men, until civilized men teach them treachery.

Sec. 178.—Unequal alliances are degrading, and to degrade another makes him an enemy at heart.

Hence unequal alliances are generally undesirable to both parties.

1. But security may make it necessary to impose restraints on a weak neighbor.

2. It may be better to subdue the rancour of the perverse by severity, than to endeavor to appease it by undeserved forbearance.

3. Where gratitude prompts to voluntary concession, its acceptance will not offend.

These remarks apply to those alliances which degrade the weaker party.

A surrender of dignity by power is graceful and engaging condescension.

A treaty unequal, or otherwise odious, is presumed to be *personal* and *temporary* unless the contrary be clearly expressed.

Why? Because the inequality shows that one party had an undue advantage over the other, and was disposed to use it.

Hence he would not have left this matter doubtful, if the other would have submitted to have the inequality established permanently.

Sec. 192-3.—There are cases where treaties not strictly real bind successors.

1. Peace is made, and one King promises, as one of the terms of the treaty, to give his daughter in marriage to the other. His successor is bound to deliver the lady.

2. A King having power to cede a province gives one in exchange for a wife, or as a portion for his daughter. His successor has no right to annul the cession.

3. He *promises*, in a like case, to cede a province or to pay money. His successor is bound to fulfil the engagement.

All these are personal treaties but of that peculiar character denominated at Sec. 153, Conventions.

CHAP. 13.—War is waged by assailing all the rights of the enemy.

Among these are his rights due from ourselves by Treaty.

Hence war puts an end to those rights and the obligations they arise from.

The violation of one article of a Treaty is just cause of War.

Hence it gives the injured party a right to put an end to that and all treaties *by War*.

But as this arises only in virtue of the right to make War—*Therefore*,

To renounce the obligation of all treaties for such cause is an act of War.

But merely to withhold the equivalent of the violated stipulation is no act of War.

Sec. 203.—He who acquires a country by purchase, takes it subject to the rights of third parties; and he can get no more by surrender or conquest.

W. L. G. 18

CHAP. 14.—When the functions of an Officer cannot be performed without authority to treat, he has such authority *virtute officii*.

Hence a military commander has it; but it follows that he has no authority to treat concerning matters not belonging to his function.

If he goes beyond this, it presents a case of what is called *Sponsio*.

If he pretends to have other authority that he has not, he is criminal.

If he does not, but only promises to use his influence with his superior to fulfil his engagements, and he does so use it, he is answerable for no more.

If he breaks this promise, he is responsible personally.

This was the case with Posthumious who was therefore given up.

But were the Romans bound to restore things to the *status quo ante*?

Had it been *practicable* they would have been. Vattel's remarks to the contrary are hardly *sophistical*. *Sophistry is argument*. His is mere *declamation*.

But it was not possible to replace things as they were, because one of the conditions of the *status quo* was that the Romans had been taken by surprise, and it is absurd to talk of *agreeing* to be taken by *surprise* at a particular time and place.

The Romans were therefore bound to give an *equivalent*, (which was also impossible,) or to *ratify the treaty of which they had had the benefit*.

So Vattel teaches in all other cases. What he says here is unworthy of him.

Sec. 216.—If a State borrows money, she is bound to repay it.

What is done with the money does not affect the rights of the lender.

What the State does by one duly authorised, is the act of the State.

If he borrows for the State, the State borrows. If he wastes, the State wastes.

The right of the lender cannot be impaired by the folly or infidelity of her agents.

If she appoints men incompetent or unfaithful she must always take the consequences.

Here again Vattel inculcates a loose morality not worthy of him.

It is absurd to say that ruinous contracts are not binding.

Men ruin themselves by such contracts, but still they are universally bound by them.

The *morality* of contracts is the same, whoever be the parties.

So when the domain is aliened by one *duly authorised*, the State alienes.

He who buys of the State, *through her agent*, has a right to his purchase.

The often cited case of the French resumption of royal grants is not to the point.

The King of France *never had authority* to alienate the royal domain.

His right in it was like that of a Parson to his glebe.

Hence the successor always had a right to resume.

There is more loose morality in this chapter than in all the rest of Vattel's work.

CHAP. 15.—Sec. 229.—A owes B \$100, and C \$100. Both have a right to their money.

He afterwards makes a *special promise* to pay B *on a certain day*.

He provides \$100 accordingly, and on that day both claim it. He must pay B. Why?

C's right to be paid is as good as can be. B's therefore can be no better.

As right is the measure of obligation, the rights being equal, so must the obligation be.

All this is true, and yet we feel the conclusion to be false. How is this?

The law of God enjoins truth, fidelity and the fulfilment of promises.

There is an obligation *to him* to fulfil the promise made to B.

This, added to B's equal *right*, casts the balance in his favor.

Still C's *rights* are not impaired by the promise made to B.

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He is as much wronged as if no such promise had been made. But not to have paid B, would have been to *wrong him*, and to *sin against God*.

The case of an oath is yet stronger.

These ideas reconcile Vattel with himself, (for there is an apparent contradiction between Sec. 226, 229 and 320,) and they reconcile reason with what we feel to be right.

CHAP. 16.—Sec. 257.—Francis I. when taken prisoner by Charles V. was released on engaging to cede certain provinces, and gave his son as a hostage.

Vattel says, that, had he died his son should have been released.

How so? When the value of his son as a hostage depended on his rank.

Charles agreed to release the reigning King, only in consideration of having his successor as a hostage. This gave him security, that, if Francis did not perform his engagements, the son should. To say that on the death of the father the son should be released, is to deprive the pledge of all its value.

It might indeed be argued thus:

The treaty was that the KING should be released and his SUCCESSOR a hostage.

The *essence* of this treaty would be fulfilled, if, when the HOSTAGE became KING, *his successor* should be substituted for *him*.

This is sophistical, for the faithfulness of Francis had changed the conditions of the case.

But Vattel assigns no reason, and leaves his opinion standing in naked absurdity.

CHAP. 17.—Rules of interpretation are necessary, because

1. There is a want of precision and fixedness in all languages.
2. It is inconvenient to enumerate even all cases which *may* be foreseen.
3. New cases will arise, which could not be foreseen.

Sec. 267.—All this means that neither party shall entrap the other by using words which he means to be understood in one way, intending afterwards to insist on a different interpretation.

A says to B "I promise so and so." These are A's words to be interpreted favorably for B.

Again A says to B, "Do you promise so and so." B says "I do." These two are A's words, and to be interpreted in the same way, though B was induced to adopt them.

Why? Because in both cases A deliberately *introduced* the words. If there was a trap laid, it was laid by him, and should catch him.

Hence the maxim, "*Verba fortius accipiuntur contra PROPONENTEM.*"

In all doubtful cases the question is, "who is the *proferens verba*?" But where the intention and motive of the promisee are plain, (as at Sec. 273,) the words must, in all cases, be interpreted in conformity thereto.

If there be two clauses one plain the other obscure. Shall the first be obscured by the last?

No. The last shall explain the first. LIGHT radiates: DARKNESS does not.

Sec. 273.—No interpretation contrary to what *must have been* the intention of either party can be right.

This also solves the cases put at Sec. 283, 291, and the like. Interpretations are either *literal* or *liberal*.

A liberal interpretation may be either *extensive* or *restricted*.

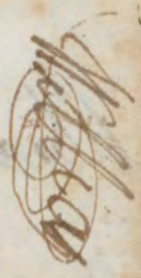
The first *extends* the operation of the words *beyond* their *literal* meaning.

The second *restrains* it from matters which the *literal* meaning would embrace.

The reason and principle in both cases are the same.

Sec. 305.—One man's loss may be another's gain; but it does not follow that the good balances the evil.

Jos. Saunders Professor of Mathematics & Philosophy
 in the College of William & Mary
 Wm. Mullington Professor of Chemistry & Mineralogy
 in the College of William & Mary



Handwritten signatures and notes at the bottom of the page, including a large signature that appears to be 'Wm. Mullington'.

Wm Murray *Edw M B*

A rich man made poor is made miserable by his change of condition.
A poor man made rich is not always made happy. Very often he too is made wretched.

The moral evil is great in both; for both are introduced into situations the duties of which they are unprepared to fulfil.

Men are generally happiest and most useful in the stations in which they were born.

The only exceptions are when one rises by merit, and another falls by unworthiness.

These changes will take place. All others of the kind are undesirable.
CHAP. 18.—Reparation for every wrong should be demanded and insisted on.

If not fully given or offered it should be exacted by force.

But when it is frankly offered, the terms should be discussed in a spirit of compromise.

Sec. 329.—The Arbitrator is insulted by a refusal to submit to his award.

Nothing will justify it but corruption or partiality.

To refuse then, is to charge him with one of these.

The difference between Retaliation and Retortion is in the effect.

Retaliation only provokes new outrage.

Retortion puts an end to it. The one aggravates, the other cures the mischief.

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BOOK III.

CHAP. 2.—The Sovereign being author and all others but instruments, the latter are not legally or morally chargeable with crime in any act of regular hostility.

But if the war be unjust there is all the guilt of murder and rapine actually incurred.

All this is the guilt of the Author, and all the miseries of war are his work.

Hence private men learn to think of war as a thing the morality of which concerns them not.

This is true in a despotic government. But we should learn to think differently.

As soldiers we may be but instruments. As citizens we are ourselves the Authors of war.

But no man lays this to heart; and hence the wars of Republics are often wanton and unjust.

A King must bear the stings of Conscience, and the reproaches of the world, for unjust war.

In a Republic every man claims his share of glory, but forgets his responsibility.

Militia should never be used but for sudden inroads. Its use is recommended by the idea that the burthens and dangers of war should be borne equally by all.

This is fallacious, for many of the militia are not called out during a war of some years.

Those who are, perform an enforced duty, never required.

The regular who enlists, serves from choice, and the expense is defrayed by all.

This establishes exact equality among all.

The regular often finds the camp a place of comparative comfort and plenty.

To the militia it is a scene of comparative privation.

The regular becomes enured to military life and learns to love it.

The other does not serve long enough, and to him it is a life of hardship.

The regular, seasoned to the camp, is safe except from the enemy.

Of the militia disease destroys many more than the sword.

The regular is commonly an idler whose time is best employed in the field.

John Jay

Robt Hutchins *Mar*

The other is missed in seed time and harvest, in his shop, or in his study.

The loss from this is a loss to society, as well as to the individual.
The regular is commonly a single man with few or none to mourn his loss.

The death of the militiaman blights hearts and hopes, and ruins whole families.

Add to all this the notorious superiority of regulars for actual service. Opposed to all this is the danger to freedom from regular troops.

If they are never used but in time of war, this danger is imaginary. Regular armies will not be kept up in time of peace while freedom and the spirit of freedom remain.

Their *existence* is more a *symptom* than a *cause* of corruption and slavery.

The whole militia system, beyond enrolment, is a tax on the community in time of peace, producing no fruit but vanity, idleness and dissipation.

Each muster costs the Union, in time and useless expense, \$1,000,000. Sec. 13.—Vattel's partiality for Switzerland makes him too indulgent to the trade of blood.

The soldier who serves *his own country* is a guiltless instrument.

But is he guiltless who murders for pay in a foreign quarrel? Wherein does he differ from the hired bravo?

The case is changed, if he fights in what he deems a righteous cause, the cause of justice and freedom, and therefore the cause of mankind, and his own among the rest.

Sec. 15.—The offender in this case cannot justify himself by the command of his Sovereign, because the authority of his Sovereign does not extend to a friendly state.

He cannot be compelled to obey, and is not bound to do.

The case is different when he comes in hostile array. He is under coercion: and the authority of his Sovereign supercedes that of the invaded country.

CHAP. 3.—War should have its *object*, its *cause* and its *motive*.

To be *prudent* there should be an *object* to be attained adequate to the moral and physical evil of war.

The *advantage*, which is *contingent*, should far exceed the *evil*, which is *certain*.

To be *just*, there should be a *clear wrong* done, or a *clear right* to be asserted: or the other party must have refused to settle amicably an *important doubtful* demand.

To be *honorable* the *motive* must be *identical* with the *cause*.

To make a *trivial injury* a *pretext* for a war of *conquest* is dishonorable. Indeed as soon as the wrong is redressed the cause ceases. Thenceforth the war is without cause.

Such cases are common. They are like that of the duellist who fastens a quarrel on a rival in politics, business, or love, to kill him out of the way.

He may conform to all the laws of the duel, and yet be the worst of murderers.

If these ideas were generally acted on, wars would be very rare, and the world much happier.

But they are frequent, because nations are neither *prudent*, *just* nor *honorable*.

For this they deserve to suffer, and they execute righteous judgment on themselves.

The Greeks allied their rapacity with Alexander's ambition, and ruined themselves.

The *alleged cause* of war with Persia was a *dread* of her *power*.

The *true motive* was a *conviction* of her *weakness*, and her *wealth*.

All nations act thus by turns, and all the time reproach each other as enemies of the human race.

The other is missed in seed time and harvest, in his shop, or in his study.

John
Wm. M. G. G. G.

The other is missed in seed time and harvest, in his shop, or in his study.

The other is missed in seed time and harvest, in his shop, or in his study.

Gay M
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So true is it that "Hypocrisy is the tribute that Vice pays to Virtue."
Sec. 46.—This seeming paradox means only that both parties are equally entitled to the benefit of the laws of war, as between each other, and as it regards neutrals. See B. 3, c. 12.

Sec. 48.—The *value* of the balance of power is as a *protection* to the *weak* against the *strong*.

Henry IV. proposed to make it a *pretext* to *oppress* and *crush* the *weak*.

Sec. 50.—Preparation and counter-preparation are things in which Kings agree to rival each other, that they may oppress, plunder and enslave their people. In this they make common cause. Though otherwise enemies, they play this game into each other's hands.

Sec. 56, 64.—Declarations of war should always be made. They fix the date at which the rights of war commence, and this is often very important to the rights of individuals. Note 146.

CHAP. 7.—Nations addicted to peace complain of the Laws of War as unjust to neutrals.

But though constantly cavilled at, no part of the Law of Nations is better established.

I propose to show that they are less unjust, than at first they seem to be; and

To explain why they have been so long submitted to.

1. The Law of Contraband increases the risk at which contraband goods are transported.

But they are articles which the Belligerent must have at any price.

He is willing therefore to indemnify the risk, and in buying the cargo that comes safe to port, he pays for the cargo that is captured.

This seems like paying one man for another man's loss. But it is not so.

Both cargoes are insured, and the profit of marine insurance in time of war shows, that more is gained to the neutral by the risk, than is lost by it.

The reason is that there is no limit to the premium the belligerent can be made to pay.

The loss falls heavily on him, and the party which is weakest at sea is always trying to engage neutrals in a crusade against the law of contraband.

2. The same remarks apply with increased force to the law of blockade.

3. The right to search neutral ships for enemies goods admits of no such compensation.

But all that can be urged against it is the fanciful idea of the sanctity of the flag.

On board of Government ships the flag is, and ought to be sacred, for it plights the faith of the Nation that it covers nothing that it ought not to cover.

The flag of the merchant has no such meaning, and it is no just cause of offence to examine whether it does not cover contraband, or enemies goods.

These, if found, are confessedly liable to be taken.

The right to take them implies the right to search for them, when it can be done without any indignity to the nation.

When the *nation* hoists the flag, it must be respected.

The honor of the Nation is not concerned in the individual that hoists it.

There is then small injustice in these laws, and little reason why neutrals should go to war on account of them.

But there are many considerations to induce them to wish to remain at peace.

There is no trade so profitable as that of Neutrals in time of war.

The value of contraband articles is increased by the necessities of war.

The value of other productions is increased by the interruption of the production of the belligerents, whose laborers are taken to bear arms.

My dear Sir
I have the honor to acknowledge the receipt of your letter of the 14th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration. I am, Sir, very respectfully,
Your obedient servant,
J. M. [Signature]

My dear Sir
I have the honor to acknowledge the receipt of your letter of the 14th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration. I am, Sir, very respectfully,
Your obedient servant,
J. M. [Signature]

Neutrals monopolize the carrying trade of the power weakest at sea. They charge extravagant freights, and, when captured, the captor pays freight.

If a neutral goes to war she loses all these advantages.

When she becomes belligerent she changes her position, and becomes sensible of the value of the law to her as a belligerent, which, as a neutral, she objected to.

The laws of war are dictated by the stronger party, and are best for him.

If the neutral, going to war for neutral rights, prevails in the contest, she as the stronger party adopts and enforces the very code she warred against.

It is plainly seen then that these laws will not be relaxed.

Hence they are acquiesced in, and the neutral submits to a slight curtailment of the advantages of neutrality, sooner than throw away the whole.

CHAP. 9.—We have no right to inflict injuries which do not conduce to the lawful end of war.

If we do so the enemy will have a right to retaliate, and will be sure to retaliate.

In such case the offender may be supposed to know that he has done wrong.

Knowing this, and suffering for it, he may be expected to desist.

But we have a right to do whatever conduces to the lawful end of war.

This right should not be abused; but if it be the enemy should not retaliate.

It is not to be supposed that he who has but exercised a known right will feel himself in the wrong.

Hence retaliation will not make him desist, but will provoke new excesses.

Thus, in the first case, retaliation puts an end to the evil.

In the second, it perpetuates and increases it.

CHAP. 10.—Crime consists in inflicting a wrong, or withholding a right.

If a man has a right to know the truth, it is wrong to withhold it.

A *fortiori* it is wrong to make him believe what is not true.

If a man has no right to know the truth, we are not bound to tell him.

A *fortiori* if his knowledge of the truth would be injurious to us.

In such case we have a right to hide it from him.

If this can only be done by deceiving, we have a right to deceive.

Hence Walter Scott justified his denial of his writings. The discovery of the author injured him, for it dispelled the charm of mystery, and checked the sale of his works.

On the same principle stratagems in war are universally justified.

There is no moral difference between deceiving by word, and by act.

If no right be withheld or wrong done, there is no crime in either case.

He who asks what he has no right to ask is not injured by a false answer.

Honorable men indeed dislike to say what is not true.

Hence he who asks a question he has no right to ask, inflicts an injury.

If he obtains a false answer, the fault is his own.

A man may lawfully hide his money from a robber, and say that he has none.

A very sensitive man might dislike even to do this, but his right is unquestionable.

But even in war, all stratagems are not alike lawful.

It is wrong to deceive by a false show of *Friendship* such as a *flag of truce*.

Or by a false show of *distress*, such as *signals of distress*.

This is to take advantage of *confidence* or *benevolence*.

To invite an *attack*, by laying yourself apparently open to it is lawful.

You ask no *confidence* and only turn the enemy's *hostility* against him.

MS. A. 2. 1845
1844

Sec. 179.—Spies are not punished as criminals, but killed as enemies. The defence we use against them is adapted to their mode of warfare. We endeavor to prevent their attack by the dread of consequences. To inspire this their destruction, in case of detection, is made inevitable.

With the same view we call it *punishment*, and superadd the idea of *infamy* by inflicting the death due to *ignominious crime*.

All this does but enhance the merit of him who braves it to serve his country.

Yet association of ideas operates so far that men of delicate and fastidious honor will not consent to act as spies.

Yet a bold and faithful spy is esteemed above others of *that class* of men from among which spies are commonly selected. How comes this strange paradox.

It has its rise in *conventional* and *artificial* notions of honor.

He who becomes a spy AGREES to be HANGED if detected.

This *conventional honor* forbids its votaries to agree to be HANGED in any event.

It is thus *honorable* to serve our country; *honorable* to brave death, but *dishonorable* to incur the risk of being HANGED.

Hence no man is liable to be forced to serve as a spy, and hence spies are taken from among those anomalous character in which fidelity, courage, address and sagacity are found alloyed with something grovelling and base.

This character combined with the FORM of trial and execution associates the idea of criminality with the act of the spy.

But if there be any *guilt* the employer is most guilty.

Yet the employment of spies is held clearly lawful, and the commander, who puts a spy to death, has his own spies in the enemies camp.

Yet the spy has no right to complain of his fate, for he bargained for it fairly.

Hence spies are paid liberally.

So too the employer never complains for the thing is understood by all parties.

General Clinton did indeed intercede for Andre; but his case was peculiar.

He was *technically* a spy, for he was in disguise within the American lines.

But he did not mean to go there at all, and was led into them by mistake and the treachery of that DOUBLE TRAITOR Arnold.

On this ground he (while willing to be shot) claimed a right not to be hanged, because not having consented to be a spy, he had not consented to be hanged if caught.

I offer these thoughts as an analysis of the complex and inconsistent ideas which the mind associates with a spy.

Inattention to the principle of the case of spies has led to false argument by supposed analogy, and to dangerous mistakes. McLeod's case is an example.

It may be doubted whether the treatment of spies should not be exploded as a relic of ancient barbarism. They commit no crime. Why not treat them as prisoners of war?

A spy may indeed be, (and he often is,) guilty of treachery, and therein criminal.

Let him be punished accordingly; but take away the infamous punishment of the mere spy, and his duty would be performed by men incapable of baseness.

CHAP. 12, 13.—Here we find the meaning and effect of the voluntary Law of Nations.

War, which is slaughter, desolation and misery, must be attended by Crime.

But who is guilty? Not the soldier, for he is but an instrument.

The guilt then lies on the Sovereign, and one party, at least, is always guilty.

Mr. J. Arnold's Case

1691 1692

Ino T Jones
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Judge [unclear] 21 [unclear]

But who is to *sit in judgment* on a sovereign, when other sovereigns are but his equals?

God alone, who is above all, and who alone can inflict the due penalty.

The *necessary* law teaches us what this judgment may be supposed to be.

The *voluntary* law forbids other nations to interfere with that freedom of will and conscience which they claim for themselves.

Hence, apparently, it is called voluntary because it leaves the will free.

The effect is that neutrals must consider each party equally entitled to all the rights of belligerents growing out of the state of war.

Each party too must consider the other entitled to the benefit of all the laws of war.

It is curious to see what would be the consequence if this were not so.

Neutrals denying belligerent rights to one party and allowing them to the other, they would be involved in war, and it might become universal.

One *party*, denying the rights of war to the other, might burn, destroy and refuse quarter.

This would provoke retaliation, and put an end to the humane laws of war.

Instead of favoring war then, the voluntary law checks the horrors of war.

Moreover if punishment were to be inflicted it would fall on individuals.

Would you treat the soldier as a malefactor when the sovereign alone is guilty?

The voluntary law does in effect decide, that the rights of the *individual* shall not be affected by the injustice of his Sovereign's cause and conduct.

This *natural justice* prescribes, and hence Vattel well concludes that the *Voluntary Law* of Nations is enjoined by the *necessary* law, which forbids all injustice.

Nothing here said applies to the case of one who shews himself *Hostis humani generis*, against whom all may make common cause.

It only applies to those who *do not make common cause* but remain *neutral*.

Whatever they allow as lawful to *one* belligerent they must allow to *both*.

Even when common cause is made against a *hostis humani generis*, natural law protects his *subjects* from being treated as *malefactors*.

The Sovereign alone is guilty, and should be hunted to destruction.

Hence the doom to which the nations of Europe consigned Bonaparte.

Their war was not with France, but with him. If they were *right* in the War, they were *right* in the use they made of victory.

CHAP. 13.—Sec. 201.—To be useful to the Sovereign a country should be prosperous.

A Conqueror never enjoys the full benefit of a Conquest, till the People are reconciled to him.

Hence conquered provinces should not be made to suffer for the faults of the enemy.

To plunder them is not to plunder the enemy but ourselves.

If their prosperity be promoted they become faithful subjects, and the overflowing of their abundance fills the treasury.

Oppress them and you embitter their enmity and make them dangerous, not useful.

That which should be the "stone of Ajax in the hand, becomes a mill-stone round the neck."

CHAP. 14.—In whatever is restored, by the Treaty of Peace Post-limnium takes effect.

In whatever is ceded to the enemy it is lost.

Prisoners are considered as being released by Peace, without naming them.

Every thing else in the enemy's hands will be lost forever unless the Treaty stipulates for its restoration.

CHAP. 15.—Observe that this only applies to *inroads* made by private persons.

An *invader* has no right to consider the hostile acts of the citizens as crime.

Sec. 229.—The right to take enemy's property has been shown to belong to the Sovereign.

He may delegate this privilege to any one he thinks proper.

In case of *Privateers*, this is done by *Commission*. A *Privateer* without *commission* takes, without authority, what belongs not to him but the Sovereign.

He is therefore a Robber and Pirate and treated as such.

The same principle condemns Soldiers who plunder without leave.

Sec. 164.

CHAP. 16.—Sec. 245.—*Nothing aggressive* is allowable in time of truce.

Any thing not aggressive, may be attempted in secret.

If not discovered the event proves it might have been done, if there had been no truce.

If discovered that proves the contrary, and the attempt, if resisted, should be given up.

CHAP. 17.—Enemy's property when taken (except by commission) belongs to the Sovereign.

The same principle applies to Prisoners. He, who should, at this day ransom a Prisoner, would be treated as a bribed Traitor. The Prisoner is his *Sovereign's*—not his.

CHAP. 18.—The difference between *Insurrection* and *Civil War* is twofold.

1. Between the things themselves. 2. Between their effects and consequences.

1. When confined to a *neighborhood*, or a *few* persons here and there, it is *Insurrection*.

When *large provinces* rise as *one man*, or the *people* are *nearly* divided, it is *Civil War*.

2. In *insurrection* the insurgents are treated as *Criminals*.

In *Civil war* they are treated as *enemies* according to the *laws of war*.

There is sound reason for this discrimination. 1. Moral. 2. Political.

1. *Might* does not make *right*; but what only few complain of is no general grievance.

That which a whole province or half a nation resists is always a great evil.

Men should not be deemed *criminal* in resisting actual and general grievances.

The number engaged affords a presumption that their *opinion* is right.

Even if wrong, the number makes them *think themselves* right.

When all we see are of our opinion, we are then sure we are right.

There can be no *moral* guilt where men faithfully act in pursuance of opinions which do not, in themselves denote *moral depravity*.

Morality then prescribes forbearance in *Civil War*, and after it is ended.

2. Policy too prescribes it; for the enemy during the war has power to retaliate severity and will do so.

In *insurrection* you punish with small danger of retaliation.

When *Civil war* is ended, we may punish *safely*. But whom shall we punish?

Not the whole multitude. *Quicquid multis peccatur in nullum*, is a sound maxim.

The general good alone justifies punishment.

This cannot be promoted by the massacre of half a nation.

If we take the ringleaders, we sacrifice the best men, and slay the *mind* of the country.

Freedom's friends always perish when the halter gleans what the sword spares.

Hence Civil Wars always end in the establishment of arbitrary power, for the ideas here advanced are rarely acted upon.

One of the advantages of a federate republic is that it guards against this.

In Civil War both parties act under authority, they may be excused for obeying.

Hence the *technical* guilt of Treason cannot be imputed, as it otherwise would be, to the losing party. According to the maxims of Consolidated Empires. The losing party are always TRAITORS—; as if moral guilt could depend on the fate of a battle.

But—

“Treason can never prosper. What’s the Reason?
Why, when it prospers, none dare call it Treason.”

BOOK IV.

CHAP. I.—It is absurd to say that War is Man’s natural State.

If so, men would fight, from instinct, at first sight.

But in fact they are friendly at first sight, if no cause of quarrel be suspected.

A man long alone (as in a Wilderness) longs for the sight of a human face.

He desires nothing so much as a Companion.

If two such meet, they instantly become fast friends.

Moreover, Man is strong to inflict, but feeble to endure.

The Tiger’s tenacity of life is proportioned to the teeth and claws of his race.

Art has increased man’s *means of destruction* but not his *tenacity of life*.

No animal of the same size is so easily destroyed, and none has such powers of destruction.

If naturally hostile, they would soon destroy each other.

If Tigers could find and kill each other as men can, the race would be extinct.

Moreover children cannot be raised without Peace and Security.

The helpless mother would starve, and the ants would devour her new-born infant.

How then can we say that a state of existence is natural to man, in which the race of man must soon cease to exist?

Society is to Man what water is to a Fish.

He is not in it by *mistake or chance*, but because he *cannot live out of it*.

Peace is essential to Freedom. War requires too much power in Government.

War disturbs all happiness, and especially domestic happiness.

In Peace, the fireside, the nursery of Virtue is undisturbed.

It affords leisure for the cultivation of Art and Science.

It leaves the Channels of Commerce open to the introduction of all we need, in exchange for all we have to spare.

It affords leisure for the advancement of individual prosperity.

It cheapens all things and multiplies comforts and enjoyments.

It enables men to become *wiser, better and happier*.

Hostis pacis Hostis humani generis.

CHAP. 2.—Sec. 19.—It is sometimes hard to ascertain the exact point of controversy.

Hence the use of manifestoes, or declarations of War setting forth the cause of War.

If War be made to obtain reparation for a *specific aggression*, and reparation is not obtained, or provided by the treaty of Peace, the demand is surrendered, but the injured party may again go to war for similar aggressions.

But if the aggression be *justified on principle*, and we war *against the principle*, the result may be different.

Thus when we demand a *Treaty relinquishing the principle*, and go to

War because the other party will not make such a Treaty, then if we make peace without obtaining the object, we give up the principle itself.

These things should plainly appear in the manifesto; and thus War is made an instrument of Peace, which is all it is good for.

CHAP. 7.—Sec. 100.—The case of Sanvage shows that no minister ought to be amenable to the authority of the Court to which he is sent.

It shows that if he be so in any case whatever, that very case will be proved against him if his fidelity and zeal make him obnoxious.

His judges are the officers of one who wishes to destroy him.

The witnesses against him are the subjects of his enemy.

If it be said he can be convicted only on his own confession, they will say he confessed.

They said that Sanvage confessed, what we now know must have been false.

If he confessed under torture, that itself was punishment without proof.

If he was not tortured it cannot be true that he confessed.

Joseph Lewis
Joseph Lewis
Joseph Lewis

Beverly Tucker

Williamsburg

Virginia

Joseph Lewis

John of Jones Lewis

Benjamin

sword

W