

Book X. Of Laws in the Relation They Bear to Offensive Force

1. Of offensive Force. Offensive force is regulated by the law of nations, which is the political law of each country considered in its relation to every other.

2. Of War. The life of governments is like that of man. The latter has a right to kill in case of natural defence: the former have a right to wage war for their own preservation.

In the case of natural defence I have a right to kill, because my life is in respect to me what the life of my antagonist is to him: in the same manner a state wages war because its preservation is like that of any other being.

With individuals the right of natural defence does not imply a necessity of attacking. Instead of attacking they need only have recourse to proper tribunals. They cannot therefore exercise this right of defence but in sudden cases, when immediate death would be the consequence of waiting for the assistance of the law. But with states the right of natural defence carries along with it sometimes the necessity of attacking; as for instance, when one nation sees that a continuance of peace will enable another to destroy her, and that to attack that nation instantly is the only way to prevent her own destruction.

Thence it follows that petty states have oftener a right to declare war than great ones, because they are oftener in the case of being afraid of destruction.

The right of war, therefore, is derived from necessity and strict justice. If those who direct the conscience or councils of princes do not abide by this maxim, the consequence is dreadful: when they proceed on arbitrary principles of glory, convenience, and utility, torrents of blood must overspread the earth.

But, above all, let them not plead such an idle pretext as the glory of the prince: his glory is nothing but pride; it is a passion, and not a legitimate right.

It is true the fame of his power might increase the strength of his government; but it might be equally increased by the reputation of his justice.

3. Of the Right of Conquest. From the right of war comes that of conquest; which is the consequence of that right, and ought therefore to follow its spirit.

The right the conqueror has over a conquered people is directed by four sorts of laws: the law of nature, which makes everything tend to the preservation of the species; the law of natural reason, which teaches us to do to others what we would have done to ourselves; the law that forms political societies, whose duration nature has not limited; and, in fine, the law derived from the nature of the thing itself. Conquest is an acquisition, and carries with it the spirit of preservation and use, not of destruction.

The inhabitants of a conquered country are treated by the conqueror in one of the four following ways: Either he continues to rule them according to their own laws, and assumes to himself only the exercise of the political and civil government; or he gives them new political and civil government; or he destroys and disperses the society; or, in fine, he exterminates the people.

The first way is conformable to the law of nations now followed; the fourth is more agreeable to the law of nations followed by the Romans: in respect to which I leave the reader to judge how far we have improved upon the ancients. We must give due commendations to our modern refinements in reason, religion, philosophy, and manners.

The authors of our public law, guided by ancient histories, without confining themselves to cases of strict necessity, have fallen into very great errors. They have adopted tyrannical and arbitrary principles, by supposing the conquerors to be invested with I know not what right to kill: thence they have drawn consequences as terrible as the very principle, and established maxims which the conquerors themselves, when possessed of the least grain of sense, never presumed to follow. It is a plain case that when the conquest is completed, the conqueror has no longer a right to kill, because he has no longer the plea of natural defence and self-preservation.

What has led them into this mistake is, that they imagined a conqueror had a right to destroy the state; whence they inferred that he had a right to destroy the men that compose it: a wrong consequence from a false principle. For from the destruction of the state it does not at all follow that the people who compose it ought to be also destroyed. The state is the association of men, and not the men themselves; the citizen may perish, and the man remain.

From the right of killing in the case of conquest, politicians have drawn that of reducing to slavery -- a consequence as ill-grounded as the principle.

There is no such thing as a right of reducing people to slavery, save when it becomes necessary for the preservation of the conquest. Preservation, and not servitude, is the end of conquest; though servitude may happen sometimes to be a necessary means of preservation.

Even in that case it is contrary to the nature of things that the slavery should be perpetual. The people enslaved ought to be rendered capable of becoming subjects. Slavery in conquests is an accidental thing. When after the expiration of a certain space of time all the parts of the conquering state are connected with the conquered nation, by custom, marriages, laws, associations, and by a certain conformity of

disposition, there ought to be an end of the slavery. For the rights of the conqueror are founded entirely on the opposition between the two nations in those very articles, whence prejudices arise, and the want of mutual confidence.

A conqueror, therefore, who reduces the conquered people to slavery, ought always to reserve to himself the means (for means there are without number) of restoring them to their liberty.

These are far from being vague and uncertain notions. Thus our ancestors acted, those ancestors who conquered the Roman empire. The laws they made in the heat and transport of passion and in the insolence of victory were gradually softened; those laws were at first severe, but were afterwards rendered impartial. The Burgundians, Goths, and Lombards would have the Romans continue a conquered people; but the laws of Euric, Gundebald, and Rotharis made the Romans and barbarians fellow-citizens.[1]

Charlemagne, to tame the Saxons, deprived them of their liberty and property. Louis the Debonnaire made them a free people,[2] and this was one of the most prudent regulations during his whole reign. Time and servitude had softened their manners, and they ever after adhered to him with the greatest fidelity.

4. Some Advantages of a conquered People. Instead of inferring such destructive consequences from the right of conquest, much better would it have been for politicians to mention the advantages which this very right may sometimes give to a conquered people -- advantages which would be more sensibly and more universally experienced were our law of nations exactly followed, and established in every part of the globe.

Conquered countries are, generally speaking, degenerated from their original institution. Corruption has crept in, the execution of the laws has been neglected, and the government has grown oppressive. Who can

question but such a state would be a gainer, and derive some advantages from the very conquest itself, if it did not prove destructive? When a government has arrived at that degree of corruption as to be incapable of reforming itself, it would not lose much by being newly moulded. A conqueror who enters triumphant into a country where the moneyed men have, by a variety of artifices, insensibly arrived at innumerable ways of encroaching on the public, where the miserable people, who see abuses grown into laws, are ready to sink under the weight of impression, yet think they have no right to apply for redress -- a conqueror, I say, may make a total change, and then the tyranny of those wretches will be the first thing exposed to his resentment.

We have beheld, for instance, countries oppressed by the farmers of the revenues, and eased afterwards by the conqueror, who had neither the engagements nor wants of the legitimate prince. Even the abuses have been often redressed without any interposition of the conqueror.

Sometimes the frugality of a conquering nation has enabled them to allow the conquered those necessaries of which they had been deprived under a lawful prince.

A conquest may destroy pernicious prejudices, and lay, if I may presume to use the expression, the nation under a better genius.

What good might not the Spaniards have done to the Mexicans? They had a mild religion to impart to them; but they filled their heads with a frantic superstition. They might have set slaves at liberty; they made freemen slaves. They might have undeceived them with regard to the abuse of human sacrifices; instead of that they destroyed them. Never should I have finished, were I to recount all the good they might have done, and all the mischief they committed.

It is a conqueror's business to repair a part of the mischief he has occasioned. The right, therefore, of conquest I define thus: a

necessary, lawful, but unhappy power, which leaves the conqueror under a heavy obligation of repairing the injuries done to humanity.

5. Gelon, King of Syracuse. The noblest treaty of peace ever mentioned in history is, in my opinion, that which Gelon made with the Carthaginians. He insisted upon their abolishing the custom of sacrificing their children.[3] Glorious indeed! After having defeated three hundred thousand Carthaginians, he required a condition that was advantageous only to themselves, or rather he stipulated in favour of human nature.

The Bactrians exposed their aged fathers to be devoured by large mastiffs -- a custom suppressed by Alexander, whereby he obtained a signal triumph over superstition.

6. Of Conquest made by a Republic. It is contrary to the nature of things that in a confederate government one state should make any conquest over another, as in our days we have seen in Switzerland.[4] In mixed confederate republics, where the association is between petty republics and monarchies, of a small extent, this is not so absurd.

Contrary is it also to the nature of things that a democratic republic should conquer towns which cannot enter into the sphere of its democracy. It is necessary that the conquered people should be capable of enjoying the privileges of sovereignty, as was settled in the very beginning among the Romans. The conquest ought to be limited to the number of citizens fixed for the democracy.

If a democratic republic subdues a nation in order to govern them as subjects, it exposes its own liberty; because it entrusts too great a power to those who are appointed to the command of the conquered provinces.

How dangerous would have been the situation of the republic of Carthage

had Hannibal made himself master of Rome? What would he not have done in his own country, had he been victorious, he who caused so many revolutions in it after his defeat?[5]

Hanno could never have dissuaded the senate from sending succour to Hannibal, had he used no other argument than his own jealousy. The Carthaginian senate, whose wisdom is so highly extolled by Aristotle (and which has been evidently proved by the prosperity of that republic), could never have been determined by other than solid reasons. They must have been stupid not to see that an army at the distance of three hundred leagues would necessarily be exposed to losses which required reparation.

Hanno's party insisted that Hannibal should be delivered up to the Romans.[6] They could not at that time be afraid of the Romans; they were therefore apprehensive of Hannibal.

It was impossible, some will say, for them to imagine that Hannibal had been so successful. But how was it possible for them to doubt it? Could the Carthaginians, a people spread over all the earth, be ignorant of what was transacting in Italy? No: they were sufficiently acquainted with it, and for that reason they did not care to send supplies to Hannibal.

Hanno became more resolute after the battle of Trebia, after the battle of Thrasimenus, after that of Cannæ; it was not his incredulity that increased, but his fear.

7. The same Subject continued. There is still another inconvenience in conquests made by democracies: their government is ever odious to the conquered states. It is apparently monarchical: but in reality it is much more oppressive than monarchy, as the experience of all ages and countries evinces.

The conquered people are in a melancholy situation; they neither enjoy the advantages of a republic, nor those of a monarchy.

What has been here said of a popular state is applicable to aristocracy.

8. The same Subject continued. When a republic, therefore, keeps another nation in subjection, it should endeavour to repair the inconveniences arising from the nature of its situation by giving it good laws both for the political and civil government of the people.

We have an instance of an island in the Mediterranean, subject to an Italian republic, whose political and civil laws with regard to the inhabitants of that island were extremely defective. The act of indemnity, [7] by which it ordained that no one should be condemned to bodily punishment in consequence of the private knowledge of the governor, *ex informata conscientia*, is still recent in everybody's memory. There have been frequent instances of the people's petitioning for privileges; here the sovereign grants only the common right of all nations.

9. Of Conquests made by a Monarchy. If a monarchy can long subsist before it is weakened by its increase, it will become formidable; and its strength will remain entire, while pent up by the neighbouring monarchies.

It ought not, therefore, to aim at conquests beyond the natural limits of its government. So soon as it has passed these limits, it is prudence to stop.

In this kind of conquest things must be left as they were found -- the same courts of judicature, the same laws, the same customs, the same privileges: there ought to be no other alteration than that of the army and of the name of the sovereign.

When a monarchy has extended its limits by the conquest of neighbouring provinces, it should treat those provinces with great lenity.

If a monarchy has been long endeavouring at conquest, the provinces of its ancient demesne are generally ill-used. They are obliged to submit both to the new and to the ancient abuses; and to be depopulated by a vast metropolis, that swallows up the whole. Now if, after having made conquests round this demesne, the conquered people were treated like the ancient subjects, the state would be undone; the taxes sent by the conquered provinces to the capital would never return; the inhabitants of the frontiers would be ruined, and consequently the frontiers would be weaker; the people would be disaffected; and the subsistence of the armies designed to act and remain there would become more precarious.

Such is the necessary state of a conquering monarchy: a shocking luxury in the capital; misery in the provinces somewhat distant; and plenty in the most remote. It is the same with such a monarchy as with our planet; fire at the centre, verdure on the surface, and between both a dry, cold, and barren earth.

10. Of one Monarchy that subdues another. Sometimes one monarchy subdues another. The smaller the latter, the better it is overawed by fortresses; and the larger it is, the better will it be preserved by colonies.

11. Of the Manners of a conquered People. It is not sufficient in those conquests to let the conquered nation enjoy their own laws; it is, perhaps, more necessary to leave them also their manners, because people in general have a stronger attachment to these than to their laws.

The French have been driven nine times out of Italy, because, as historians say, [8] of their insolent familiarities with the fair sex. It is too much for a nation to be obliged to bear not only with the pride of conquerors, but with their incontinence and indiscretion; these are,

without doubt, most grievous and intolerable, as they are the source of infinite outrages.

12. Of a Law of Cyrus. Far am I from thinking that a good law which Cyrus made to oblige the Lydians to practise none but mean or infamous professions. It is true he directed his attention to an object of the greatest importance: he thought of guarding against revolts, and not invasions; but invasions will soon come, when the Persians and Lydians unite and corrupt each other. I would therefore much rather support by laws the simplicity and rudeness of the conquering nation than the effeminacy of the conquered.

Aristodemus, tyrant of Cumæ, [9] used all his endeavours to banish courage, and to enervate the minds of youth. He ordered that boys should let their hair grow in the same manner as girls, that they should deck it with flowers, and wear long robes of different colours down to their heels; that when they went to their masters of music and dancing, they should have women with them to carry their umbrellas, perfumes, and fans, and to present them with combs and looking-glasses whenever they bathed. This education lasted till the age of twenty -- an education that could be agreeable to none but to a petty tyrant, who exposes his sovereignty to defend his life.

13. Charles XII. This prince, who depended entirely on his own strength, hastened his ruin by forming designs that could never be executed but by a long war -- a thing which his kingdom was unable to support.

It was not a declining state he undertook to subvert, but a rising empire. The Russians made use of the war he waged against them as of a military school. Every defeat brought them nearer to victory; and, losing abroad, they learned to defend themselves at home.

Charles, in the deserts of Poland, imagined himself sovereign of the whole world: here he wandered, and with him in some measure wandered

Sweden; while his capital enemy acquired new strength against him, locked him up, made settlements along the Baltic, destroyed or subdued Livonia.

Sweden was like a river whose waters are cut off at the fountain head in order to change its course.

It was not the affair of Pultowa that ruined Charles. Had he not been destroyed at that place, he would have been in another. The casualties of fortune are easily repaired; but who can be guarded against events that incessantly arise from the nature of things?

But neither nature nor fortune were ever so much against him as he himself.

He was not directed by the present situation of things, but by a kind of plan of his forming; and even this he followed very ill. He was not an Alexander; but he would have made an excellent soldier under that monarch.

Alexander's project succeeded because it was prudently concerted. The bad success of the Persians in their several invasions of Greece, the conquests of Agesilaus, and the retreat of the ten thousand had shown to demonstration the superiority of the Greeks in their manner of fighting and in their arms; and it was well known that the Persians were too proud to be corrected.

It was no longer possible for them to weaken Greece by divisions: Greece was then united under one head, which could not pitch upon a better method of rendering her insensible to her servitude than by flattering her vanity with the destruction of her hereditary enemy, and with the hopes of the conquest of Asia.

An empire cultivated by the most industrious nation in the world, that

followed agriculture from a principle of religion -- an empire abounding with every convenience of life, furnished the enemy with all necessary means of subsisting.

It was easy to judge by the pride of those kings, who in vain were mortified by their numerous defeats, that they would precipitate their ruin by their forwardness in venturing battles; and that the flattery of their courtiers would never permit them to doubt of their grandeur.

The project was not only wise, but wisely executed. Alexander, in the rapidity of his conquests, even in the impetuosity of his passion, had, if I may so express myself, a flash of reason by which he was directed, and which those who would fain have made a romance of his history, and whose minds were more corrupt than his, could not conceal from our view. Let us descend more minutely into his history.

14. Alexander. He did not set out upon his expedition till he had secured Macedonia against the neighbouring barbarians, and completed the reduction of Greece; he availed himself of this conquest for no other end than for the execution of his grand enterprise; he rendered the jealousy of the Lacedæmonians of no effect; he attacked the maritime provinces; he caused his land forces to keep close to the sea-coast, that they might not be separated from his fleet; he made an admirable use of discipline against numbers; he never wanted provisions; and if it be true that victory gave him everything, he, in his turn, did everything to obtain it.

In the beginning of his enterprise -- a time when the least check might have proved his destruction -- he trusted very little to fortune; but when his reputation was established by a series of prosperous events, he sometimes had recourse to temerity. When before his departure for Asia he marched against the Triballians and Illyrians, you find he waged war^[10] against those people in the very same manner as Cæsar afterwards conducted that against the Gauls. Upon his return to Greece, ^[11] it was

in some measure against his will that he took and destroyed Thebes. When he invested that city, he wanted the inhabitants to come into terms of peace; but they hastened their own ruin. When it was debated whether he should attack the Persian fleet,[12] it is Parmenio who shows his presumption, Alexander his wisdom. His aim was to draw the Persians from the sea-coast, and to lay them under a necessity of abandoning their marine, in which they had a manifest superiority. Tyre being from principle attached to the Persians, who could not subsist without the commerce and navigation of that city, Alexander destroyed it. He subdued Egypt, which Darius had left bare of troops while he was assembling immense armies in another world.

To the passage of the Granicus, Alexander owed the conquest of the Greek colonies; to the battle of Issus, the reduction of Tyre and Egypt; to the battle of Arbela, the empire of the world.

After the battle of Issus, he suffered Darius to escape, and employed his time in securing and regulating his conquests: after the battle of Arbela, he pursued him so close[13] as to leave him no place of refuge in his empire. Darius enters his towns, his provinces, to quit them the next moment; and Alexander marches with such rapidity that the empire of the world seems to be rather the prize of an Olympian race than the fruit of a great victory. In this manner he carried on his conquests: let us now see how he preserved them.

He opposed those who would have had him treat the Greeks as masters[14] and the Persians as slaves. He thought only of uniting the two nations, and of abolishing the distinctions of a conquering and a conquered people. After he had completed his victories, he relinquished all those prejudices that had helped him to obtain them. He assumed the manners of the Persians, that he might not chagrin them too much by obliging them to conform to those of the Greeks. It was this humanity which made him show so great a respect for the wife and mother of Darius; and this that made him so continent. What a conqueror! He is lamented by all the

nations he has subdued! What a usurper! At his death the very family he has cast from the throne is all in tears. These were the most glorious passages in his life, and such as history cannot produce an instance of in any other conqueror.

Nothing consolidates a conquest more than the union formed between the two nations by marriages.[15] Alexander chose his wives from the nation he had subdued; he insisted on his courtiers doing the same; and the rest of the Macedonians followed the example. The Franks and Burgundians permitted those marriages;[16] the Visigoths forbade them in Spain, and afterwards allowed them.[17] By the Lombards they were not only allowed but encouraged.[18] When the Romans wanted to weaken Macedonia, they ordered that there should be no intermarriages between the people of different provinces.

Alexander, whose aim was to unite the two nations, thought fit to establish in Persia a great number of Greek colonies. He built, therefore, a multitude of towns; and so strongly were all the parts of this new empire cemented, that after his decease, amidst the disturbances and confusion of the most frightful civil wars, when the Greeks had reduced themselves, as it were, to a state of annihilation, not a single province of Persia revolted.

To prevent Greece and Macedon from being too much exhausted, he sent a colony of Jews[19] to Alexandria; the manners of those people signified nothing to him, provided he could be sure of their fidelity.

He not only suffered the conquered nations to retain their own customs and manners, but likewise their civil laws; and frequently the very kings and governors to whom they had been subject: the Macedonians[20] he placed at the head of the troops, and the natives of the country at the head of the government, rather choosing to run the hazard of a particular disloyalty (which sometimes happened) than of a general revolt.

He paid great respect to the ancient traditions, and to all the public monuments of the glory or vanity of nations. The Persian monarchs having destroyed the temples of the Greeks, Babylonians, and Egyptians, Alexander rebuilt them:[21] few nations submitted to his yoke to whose religion he did not conform; and his conquests seem to have been intended only to make him the particular monarch of each nation, and the first inhabitant of each city. The aim of the Romans in conquest was to destroy, his to preserve; and wherever he directed his victorious arms, his chief view was to achieve something whence that country might derive an increase of prosperity and power. To attain this end, he was enabled first of all by the greatness of his genius; secondly, by his frugality and private economy;[22] thirdly, by his profusion in matters of importance. He was close and reserved in his private expenses, but generous to the highest degree in those of a public nature. In regulating his household, he was the private Macedonian; but in paying the troops, in sharing his conquests with the Greeks, and in his largesses to every soldier in his army, he was Alexander.

He committed two very bad actions in setting Persepolis on fire and slaying Clitus; but he rendered them famous by his repentance. Hence it is that his crimes are forgotten, while his regard for virtue was recorded: they were considered rather as unlucky accidents than as his own deliberate acts. Posterity, struck with the beauty of his mind, even in the midst of his irregular passion, can view him only with pity, but never with an eye of hatred.

Let us draw a comparison between him and Cæsar. The Roman general, by attempting to imitate the Asiatic monarch, flung his fellow-citizens into a state of despair for a matter of mere ostentation; the Macedonian prince, by the same imitation, did a thing which was quite agreeable to his original scheme of conquest.

15. New Methods of preserving a Conquest. When a monarch has subdued a large country, he may make use of an admirable method, equally proper

for moderating despotic power, and for preserving the conquest; it is a method practised by the conquerors of China.

In order to prevent the vanquished nation from falling into despair, the victors from growing insolent and proud, the government from becoming military, and to contain the two nations within their duty, the Tartar family now on the throne of China has ordained that every military corps in the provinces should be composed half of Chinese and half Tartars, to the end that the jealousy between the two nations may keep them within bounds. The courts of judicature are likewise half Chinese and half Tartars. This is productive of several good effects, 1. The two nations are a check to one another. 2. They both preserve the civil and military power, and one is not destroyed by the other, 3. The conquering nation may spread itself without being weakened and lost. It is likewise enabled to withstand civil and foreign wars. The want of so wise an institution as this has been the ruin of almost all the conquerors that ever existed.

16. Of Conquests made by a despotic Prince. When a conquest happens to be vastly large, it supposes a despotic power; and then the army dispersed in the provinces is not sufficient. There should be always a body of faithful troops near the prince, ready to fall instantly upon any part of the empire that may chance to waver. This military corps ought to awe the rest, and to strike terror into those who through necessity have been entrusted with any authority in the empire. The emperor of China has always a large body of Tartars near his person, ready upon all occasions. In India, in Turkey, in Japan, the prince has always a body-guard independent of the other regular forces. This particular corps keeps the dispersed troops in awe.

17. The same Subject continued. We have observed that the countries subdued by a despotic monarch ought to be held by a vassal. Historians are very lavish of their praises of the generosity of those conquerors who restored the princes to the throne whom they had vanquished.

Extremely generous then were the Romans, who made such a number of kings, in order to have instruments of slavery.[23] A proceeding of that kind is absolutely necessary. If the conqueror intends to preserve the country which he has subdued, neither the governors he sends will be able to contain the subjects within duty, nor he himself the governors. He will be obliged to strip his ancient patrimony of troops, in order to secure his new dominions. The miseries of each nation will be common to both; civil broils will spread themselves from one to the other. On the contrary, if the conqueror restores the legitimate prince to the throne, he will of course have an ally; by the junction of whose forces his own power will be augmented. We have a recent instance of this in Shah Nadir, who conquered the Mogul, seized his treasures, and left him in possession of Hindostan.

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1. See the Code of Barbarian Laws, and Book xxviii below.
 2. See the anonymous author of the Life of Louis le Debonnaire, in Duchesne's collection, ii, p. 296.
 3. See M. Barbeyrac's collection, art. 112.
 4. With regard to Tockenburg.
 5. He was at the head of a faction.
 6. Hanno wanted to deliver Hannibal up to the Romans, as Cato would fain have delivered up Cæsar to the Gauls.
 7. Of the 18th of October, 1738, printed at Genoa by Franchelli. See also the Amsterdam Gazette, Dec. 23, 1738.
 8. See Pufendorff's Universal History.

9. Dionysius Halicarnassus, vii.

10. See Arrian, *De Expedit. Alex.*, i.

11. Ibid.

12. Ibid.

13. Ibid., iii.

14. This was Aristotle's advice. Plutarch, *Of the Fortune and Virtue of Alexander*.

15. Arrian, *De Expedit. Alex.*, vii.

16. See the Law of the Burgundians, tit. 12, art. 5.

17. See the Law of the Visigoths, iii, tit. 1, § 1, which abrogates the ancient law that had more regard, it says, to the difference of nations than to that of people's conditions.

18. See the Law of the Lombards, ii, tit. 7, §§ 1, 2.

19. The kings of Syria, abandoning the plan laid down by the founder of the empire, resolved to oblige the Jews to conform to the manners of the Greeks -- a resolution that gave the most terrible shock to their government.

20. See Arrian, *De Expedit. Alex.*, iii, and others.

21. Ibid.

22. Ibid., vii.

23. Tacitus, *Life of Agricola*, 14.