

Capuchins, near the cemetery of St. Michele, where the police, unprepared for this aquatic enterprise, had taken no measures to prevent an entrance. Within the sacred building all knelt down, and one selected beforehand commenced a "De profundis." As the chorus filled the ancient vaults, every heart was raised in fervent prayer to Heaven for the repose of him who had so loved his native land.

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### ART. III.—THE ETHICS OF WAR.

By FRANCIS WILLIAM NEWMAN.\*

THE history of ethics is, we believe, very well understood by the few who have taken pains to study it closely; nor do we suppose that it contains any paradox to such. But, on a superficial view, it is highly paradoxical and full of inconsistencies. On the one hand, it appears that the earliest knowledge attained by mankind, is an acquaintance with moral right. The child, or at least the youth, seems to know it so instinctively, as, from the freshness of his sense, to give truer verdicts on many subjects than experienced men. Barbarians, to the astonishment sometimes of our churchmen, manifest that we have very little to teach them of that knowledge of which we may have been too ready to think ourselves the privileged depositaries. On second thoughts, we see not only how it is, but why it is thus; that human society would never be able to coalesce at all, unless moral feeling were universal and instinctive; an almost immediate consequence of which is, the desire of public rule, enforcing justice; and since all the sciences of observation and experience presuppose civilized life, they are naturally posterior to that knowledge which is a previous condition of civil union.

Nevertheless one branch of ethics which touches domestic life most closely, and as to which we need in very early youth firm and positive principles, is a marked exception; so that in it we find an avowed and sharp contrast between barbarian and civilized ethics. Of course we refer to the relations of the sexes, and the approval of polygamy and concubinage among barbarians. Scarcely have we explained this to ourselves, when we are morti-

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\* In consequence of our dissent from the opinions implied by our much-esteemed contributor at p. 414, he has, at our request, prefixed his name to his article. It was in type, ready for our last number, which must be borne in mind in reference to some of the expressions.—EDITOR.

fied to discover, that in the midst of Christianity and civilization, no sooner do men throw off reverence for traditional precepts, than an alarming fraction of them gravitates towards an immorality of sentiment on this subject far baser than that of barbarians.

When we pass from social to national ethics we find paradoxes still greater. In many ages of the world the very nations who seem most scrupulously virtuous in their internal relations, are judged by their neighbours outside\* to be proportionably unjust and violent in their foreign behaviour ; and yet seem not to know it, but generally to have a firm belief that they are acting a rightful, reasonable and necessary part, when their conduct, *if* it be wrong, is nothing short of murder, robbery and other high crimes on a great scale. Historians have often remarked, that the foreign dependencies of free nations are ruled more oppressively than those of arbitrary monarchs, and that where both possess plantations cultivated by slaves, the slaves of the freer people are treated more rigorously and have less chance of rising out of their degradation. Again and again does impartial history remark, that when by means of free and just institutions a nation has become inwardly strong, it rarely shows any desire that its neighbours should share like advantages, but perhaps pharisaically alleges that they are not fit for freedom. It is apparently as ready to assail national existence as if it did not know the dearness of nationality ; in short, it is hard to say that the wars of free states have been entered into at all more scrupulously and justly than those of despots, or that their successes have been less greedy and less ferocious.

These and such like phenomena may not only be explained, but *so* explained as to blunt the edge of our indignation, though it cannot abate our sorrow. But while such facts as we have named may seem casual or transitory, a deeper and more permanent paradox remains, that, according to the current morality of Christendom, two nations may be engaged in deadly struggle and *neither be in the wrong*. While inflicting mutual miseries, of which the deaths and wounds in battle are but a small fraction, both sides may be virtuous and feel reciprocal esteem, so that by a few strokes of the pen passing between two ambitious and narrow-hearted men, the armies which yesterday put forth all the

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\* The Athenian ambassadors in Thucydides (v. 105) say straight out to the Melian Senate : " Among themselves, and in regard to their native institutions, the Lacedæmonians for the most part behave very virtuously ; but towards all others they, most signally of all men whom we know, account what is pleasant honourable, and what is convenient just." Within twenty years all Greece confessed the truth of this harsh statement.

appliances of force and craft and science for mutual destruction, to-day embrace as friends and honour the hostility which has distressed them. This paradox also, no doubt, can be explained, but to explain it falls short of satisfying the judgment. To say that in a war both sides are right, is to overthrow the only moral theory on which, as far as we know, war has ever been defended, viz., by comparing it to necessary self-defence against a ruffian, or to police-procedure against a criminal, which is justified in civil life. This theory essentially supposes that one side is guilty or unjust. To treat combatants on both sides as morally on a par, and both justified by the law of "discipline;" not only entirely overthrows this analogy, but admits the atrocious moral heresy that the organic centre of a State, called "the Government," can, at its own pleasure and its own sole responsibility, liberate its citizens from human duties towards the citizens of other States. As in certain religions, or religious orders, it is supposed that the high-priest or grand master may claim and receive absolute obedience, concentrating in himself all the moral responsibility, so that the votaries are conscientiously bound to obey whatever deed of ferocity he may enjoin, and are acquitted of blame by the fact of his command; such, according to the appearance of things and (it would seem) according to the creed of Christendom, is the relation of every dutiful subject towards his "Government." Two armies meet for mutual slaughter. Neither of the two asks, or may ask, the justice of the quarrel, the rightfulness of the end sought, nor of the means used. Their respective "Governments" take the responsibility of this; and though of the two it will be admitted that one or other may be in the wrong, yet the soldiers on both sides are held to be acquitted; and that, even if they happen to believe their Government to be perpetrating high-handed crime.

In such a state of public facts, and such a theory or no-theory to justify them, no one can wonder at the rise and progress of an opinion that "war is essentially an immoral state." This opinion exists in minds wholly opposed, and with results wholly opposite: the one class condemning war *in toto* for its immorality, the other always justifying it *in detail* on the ground of "necessity," yet pleading its essential immorality to defend every procedure in it which is most unscrupulous but happens just then to be convenient. To the former class of course the Quakers belong. Once perhaps scarcely any but actual members of the Quaker body went all lengths in the absolute condemnation of war; but now many who are not Quakers may be heard to use language similar or identical: and we think the grounds of this opinion have somewhat shifted since first the Quakers adopted and systematized it. Originally it may have been suggested by a severe

literalism in the interpretation of a single Scripture text: but the Quakers have shown in a thousand ways that whenever they seize a broad principle, they can overleap special texts as decisively as the boldest and freest of Christians. In fact, so strongly marked has been their unflinching devotedness to broad and even extreme principles, that in the few cases where they may seem to press a text slavishly, one may rather believe that the letter to which they appeal is their servant and tool, than that it is their master. Nor is it by quoting "Resist not evil," that they make converts to their peculiar view of war, but by displaying the want of moral basis to justify the horrors in which wars abound. Indeed, to the policeman no Quaker has any real opposition. If they do not cry aloud their approval of his proceedings, one still cannot doubt that they approve in their hearts: and whenever an attempt is made to argue with them, they deny the *fact*, that war is an operation of international police, inasmuch as there is no court, no magistrate, no public trial, no verdict; nor is there any ostensible and intelligible mark by which by-standers can learn which is the culprit and which the officer. The total mass of those who are called the "peace-party" in England is not great; but unhappily, while they are *not* numerically strong enough so to enforce preventive justice that war may be avoidable, they are morally powerful to divert nearly all the zeal and energy which might else effect very sensible improvements in martial law and in the forms of declaring war, so as to make hasty and unjust war much more difficult.

Looking simply to what *is*, and not to what we *wish* to be, it seems inevitable to concede to the Quaker that war is not a process of police. Nations are mutually in the condition of a community in which there is no magistrate, but every man wears arms and revenges his own wrongs at his own instinct, if he is strong enough; or if he is not, then associates some coadjutor to waylay and punish the offender. Then naturally the little and the weak are prudentially just, but the strong and swaggering can afford to use more latitude; since it suffices for them to be only not so unscrupulous as to bring about a coalition that will overpower them. All must entitle such a state of things *anarchy*; the essence of which is, that force is used for private ends, without the intervention of those forms which experience and reason dictate as most efficacious for maintaining public law. If society could be transported back to anarchical times, or rather, if we ourselves could be transported to the backwoods of America or the inmost wilds of Australia, where from the extreme thinness of population judicial institutions were as yet utterly inefficacious,—terrible as would be the calamity to our sentiment, we could not embrace the Quaker doctrine of going unarmed. To

display a peaceable, or we might call it a sheepish deportment, in the presence of wolves, would stimulate wolfish appetite and exasperate unscrupulous ferocity, with evils immensely worse than those which result from sturdy and perpetual hostilities. Equally, or indeed much more, do we maintain that for a rich, industrious nation like England, to proclaim that she does not fight however cruelly attacked, would involve to herself and to the morality of the world mischiefs a hundredfold worse than those of our stubbornest wars. Our readers therefore must not suppose that we are espousing the Quaker side in its essential points; but unless the thoughtful part of the nation probes this question to the bottom, conceding to the Quaker and to the peace party all that is true in their view, unscrupulous men have the game in their own hands; and the nation, drifting without moral guidance, learning nothing from past calamities, must expect, like all other great empires which have done the same, to fall at last into irreparable disaster. Precisely because we stand on an eminence, we encounter immensely more risk than those who have no heterogeneous and distant dependencies.

Hitherto the ministers of religion, equally with the literary men and the poets, have virtually blown the flames of war by teaching, directly or indirectly, that it is the duty of "subjects" to fight in any or every cause which their "Governments" may prescribe. Although, until a great revolution of mind has taken place, neither Church nor State can organize international rule in place of anarchy, this is only a stronger reason why those who alone can promote a revolution of mind should beware of misdirecting their moral influence. Let us for a moment consider what the doctrine means. War, as it exists, is at its best comparable to a just process of "Lynch Law," or to the just resistance of a felonious attack; and at its worst to the ferocious struggle of two savages, alike regardless of justice and of formal legality. Imagine that in a state of anarchy the heads of two families have fallen into feud; and that each commands his younger kinsfolk to aid him, and to kill as many as they are able of the other family. It is probable that they would zealously obey; nor could we severely blame them; but might merely remark, that these poor ignorant people know no higher law than that of obeying their chief, though he bid them to rob and murder. But what should we think, if a European missionary, whose sacred character enabled him to go safely to the houses of *both* the combatants, were actively to exhort the young men of *each* to obey their chief in such matters; and were to preach publicly, that in every case of deadly quarrel it behoved the younger members of a family to abstain from inquiring into the justice of the case, but, be it just or unjust, to prosecute every feud which their chief

might take up? Should we not feel it hard to moderate indignation against such a moral teacher? It would be manifest to us, that if the chief were under the necessity of winning the approval and sanction of his own kinsfolk, this would at least put some little more of reason and moderation into his projects of attack. More peculiarly, if from the paucity of powerful leaders there were little restraint on him from without, while from the number and strength of his followers he might have great restraint from within, it would seem the height of imprudence, almost of malignity, to inculcate that the question of entering on feuds, and how far they are to be pushed, ought to rest with him alone. We are not speaking in dark parables; for the application of this to national wars is very evident. If the central authority, whatever its nature, which decides on war, is merely politically dominant, but has no high moral superiority to the cultivated part of the nation; and its decisions are not made under such judicial public forms, as alone carry with them the ostensible mark of conscientious justice; on what moral grounds can the community be acquitted of guilt, if it perpetrate hostilities in mere obedience to them? Surely all pretence of morality vanishes, if on the one hand the people are exempted from moral responsibility while obeying the command to kill and plunder, and on the other no such scrupulous forms have been used which any one could imagine would justify the hanging of a notorious murderer or the fining of a notorious swindler. We are often indignant with Chinese morality for having a different law for the native and for the foreigner; but what else is our own practice? If a murder has been committed openly among ourselves, the murderer may not be hanged as soon as caught, but a public trial is enforced: his accusers and his jury are *put on oath*, and he is allowed to *defend himself*. If on the contrary a Chinese officer has given some offence to an English officer, war is forthwith begun, not once nor twice only: and English sailors are bid to commit the extreme of violence, without the intervention of a single sacred form, which may save their consciences from the sense of being pirates and murderers. Under these circumstances the introduction of religion into war is apt to cause only a greater revulsion of feeling still, by suggesting that it adds hypocrisy to lawlessness and endeavours to make or to represent the highest and purest of beings our accomplice. To the Englishman the late Emperor Nicholas's *Te Deum* bears this aspect; but what else to the Russian did Lord John Russell's appeal to God for the Right seem to be? Neither side has *ostensibly* taken care to be on the side of God, yet each side makes the assumption that God is with it, when He cannot be with both. No cause has more powerfully tended to make States irreligious, than the natural disgust felt by public men when the most sacred

name is thus manifestly (on one or both sides) in the worst sense "taken in vain:" and out of this irreligion of States another long train of evils has flowed.

With many persons the uneasy feelings which such considerations inspire, are set aside by the flattering though true remark, that "war has been gradually becoming milder and less indiscriminating." On this we have more to say; but first we desire to mark sharply, what is the nature of the ameliorations which alone have been attempted or pretended. The "laws of war," so much talked of, absolutely leave the question of justice untouched; they accept war as a *fact*, and dictate merely the modes of declaring and of carrying on the war. This is exactly what was probably often done in detail by a Christian priest after the overthrow of the western Roman empire. Hopeless of inspiring in the turbulent barons around him any care for either the forms or the substance of justice, he may have striven to make their fightings, if fight they must, as little atrocious as circumstances allowed. The only laws he would have a chance of recommending, are those of honour and chivalry: first, as to declaring war:—not to make your attack suddenly, before the other party is forewarned of your hostility, but give previous notice, so that your war may not wear the aspect of assassination. Next, as to the mode of the war:—not to attack non-belligerents, as women and children; not to do permanent damage *wantonly*, as cutting down fruit-trees where other timber is to be had; not to waste the fields and starve a whole population *without urgent cause*: to treat as non-belligerent all disabled men, whether disabled by extreme age or by wounds. Out of the last principle rises the duty, not only of giving quarter to the wounded in war, but of sparing the life of all who surrender; since, by binding them, they are rendered non-belligerent. Yet there also *urgent cause* may justify slaughtering prisoners, as by Henry V. after the battle of Agincourt, if they are too numerous to keep and their escape may be dangerous. Thirdly, to respect a flag of truce and the sacred heralds, and observe all compacts made during the truce for the conduct of the war.

Such precepts fundamentally commended themselves (with limited exceptions) to Hector and Achilles; so little has Christendom to boast in them. The greater development of the principles with us has depended on two changes internal to society. On the one hand, a very large portion of the *men* of every nation has become as completely non-belligerent as the women; on the other, the extinction of slavery has destroyed the pecuniary value of captives of war. The result of these changes is immense, and we must not be supposed to underrate them. We must dwell on them for a moment.

The barbarous assumption always was, that, as soon as a state

of war has commenced (never mind how or why), either side had a right to kill the other, and therefore had an absolute right to the persons and property of the other, if they could be seized by violence or stealth. Hence, if a warrior spared a life which he might have taken, that life becoming his, it was open to him to sell the captive as a slave, or to accept ransom. Accordingly, to give quarter to an enemy in battle, was accounted a deed of avarice or of prudence, rather than of mercy. An immense impetus is given to war, where an invading army is permitted to plunder at pleasure, and where the whole possessions of the country are esteemed the natural right of the successful invader; and still more, when the bodies of the inhabitants are reckoned as nearly the most valuable property. Even a poor people affords plenty of plunder, when they themselves can be sold for slaves. While this idea was dominant, every war had all the atrocity of a slave-hunt; and every man in the country became a belligerent, when exposed to calamity so horrible. Hence also arose the terrific scenes which recur so often in the pages of classical history; when husbands kill their wives and children, and throw themselves and their property into a burning pile, rather than fall into the hands of the conqueror. Cruelty and atrocity, deadly feuds of race and even of border cities, were exasperated to a degree now scarcely imaginable. Where belligerent states were conscious of kindred origin, there was an incipient amelioration\* from their being ashamed to sell captives of war, or from believing that the surrounding states would not buy. No cause so sustained the bitterness of the quarrel between Christendom and Islam, as the reduction of captive Christians to slavery by the Saracen and afterwards by the Algerine corsairs, long after the states of Christendom in their mutual wars had abandoned even the idea of private ransom for captives. However, the overthrow of domestic slavery was but one of several changes simultaneously operating. The development of war as a peculiar art, the rise of Italian and Swiss mercenary troops, the establishment of standing armies, on the one hand led to professional sympathy between adverse ranks, and on the other converted the masses of the people into non-belligerents. Hence not only the right of quarter to those who surrender, and gentler and honourable treatment of prisoners of war, but also the desire not to exasperate the peasants

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\* To the opposite effect Tacitus observes, concerning the battle of Bedriacum, in which the army of Otho was defeated by the Vitellians (*Hist. ii. 44*): "There was the more slaughter, because in a civil war captives are not converted into plunder." The brutal soldiers had no pecuniary motive for sparing life. But the more or less of slaughter on the field is not that on which the ferocity and miseries of war turn.

of a country into enemies, but, by limiting the demands made upon them, prevent their despair.

Great inconsistencies still remain in practical vigour, which are not pointed at and forced upon attention as they deserve. The different treatment which property on land and property at sea receives during war, is perhaps the most prominent of these inconsistencies. From time to time the question is plainly asked, Why is the property of peaceable traders to be confiscated at sea, when the same enemy would have refrained from touching them on land? The answer is, unfortunately, an excellent one in its way: "Because the distinction is found convenient to powerful belligerents." On land, an invader who has to meet an enemy's army in its own home, has difficulty to feed himself, if the peasants are bitterly hostile; and if he can induce them to furnish supplies by some moderate compulsion short of robbery, he much facilitates his operations. But at sea, he carries his supplies with him, and is never dependent on the good will of the merchants whom he despoils. Moral reasoning has no chance against such arguments; and unhappily England, by reason of her power at sea, has had the chief interest in upholding the practice of plundering an enemy's merchant-vessels. Even the rights of neutrals have been dealt with very unscrupulously; and whatever recent changes have been made for the better, have risen since our second American war, out of the notorious determination of the great republic to uphold at any cost her own view of her neutral rights. In the late Russian war our attacks on the innocent Finns, confiscation of cargoes of salt, dashing exploits to capture some poor little vessel, or burn marine stores in private yards, were certainly very ignoble to us. The odium was great, the gain contemptible; and it would be well, if the retrospect might at length induce an abandonment of the principle involved.

The Finns, pressed down by Russia, may have been in heart our friends; but that goes for nothing. In fact, the moment a neutral is overpowered by our enemy, he is treated as himself our enemy. No more striking illustration of the rights allowed to *weak* neutrals is needed, than the defence which is made of our two attacks on Copenhagen. In 1801, Russia, Sweden, and Denmark had joined in an "armed neutrality," to maintain their rights at sea, as "neutrals," against the pretensions of England, who for the convenience of her war with France crippled their commerce. To break this northern alliance, "which threatened our naval supremacy," Lord Nelson was sent to destroy the Danish fleet. Seventeen sail were burned, sunk, or captured by him. The Emperor Paul was at the same time assassinated, and the coalition dissolved itself. Six years later—

"The terrible chastisement which the Danes had received at the hands of Lord Nelson had not promoted any friendly feeling towards England. . . . It was known to our cabinet that there had been secret articles to the peace of Tilsit."

And it was believed that Russia had consented to the conquest of Denmark by France.

"There was no army in Denmark capable of resisting the French forces. If we could have relied on the friendship of the Danes, we could not rely on their weakness. In short, if we did not make sure of the Danish fleet, Bonaparte was sure to get it. The great law of nature, the instinct of self-preservation, dictated the step which we took. Our Government rushed to its object without a declaration of war against Denmark, because such a declaration would have defeated the object," &c.

Thus Denmark is *suspected* of being angry that we destroyed her fleet six years before; and is *convicted* of two offences, that of having built a new fleet, and that of being weak by land. Our cabinet thinks she is certain to be overpowered by her enemy; therefore, to anticipate him, we come down upon her with sudden and overwhelming attack ourselves.

Far more afflicting was the case of Genoa: let Dr. Arnold\* tell the story. In the autumn of 1799 the Austrians had driven the French out of Lombardy and Piedmont. The remains of the French force clung to Italy only by the Riviera of Genoa. Their general, Massena, hopeless of relief till the following spring, fortified himself within the lines of the Genoese towers; and the Austrians, not daring to attack him there, sought only to reduce him by famine. Lord Keith, the British naval commander-in-chief in the Mediterranean, lent the assistance of his force to cut off the supplies of Genoa. The winter passed, and spring returned. Famine had begun to accomplish its work. Over the green hill-sides ladies of the highest rank wandered under the eyes of our sailors, cutting up every plant which could be turned to food, and bearing home common weeds as a treasure. Ere long, infants died before their parents' eyes, husbands and wives lay down to expire together. When twenty thousand innocent persons, old and young, women and children, had perished by this most horrible of deaths, the distress at last became unendurable to the French army. Massena is said to have been as well-behaved to the unhappy Genoese as military exigencies allowed; which of course means, that his soldiers were to be the last to starve. But when relief became desperate, and half the garrison had been disabled, it was allowed to surrender and

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\* "Oxford Lectures on Modern History," 1842; lect. iv.

march out freely with the honours of war. And what had been the guilt of the Genoese? The sole offence alleged against them is, that they had no military force powerful enough to hinder the French army from throwing itself into their city. Yet "the laws of war" justify the conduct of the Austrian and British commanders; and Dr. Arnold, while evidently execrating a deed, which rests equally on the two cabinets, has no other solution of the difficulty, than that "all non-combatants should be *allowed to go out of a blockaded town.*" But what ships would take them? and who would feed them when carried away from their supplies? Evidently no issue can be found from this hideous barbarity, without adopting totally new principles as to the rights of belligerents against neutrals.

It is well to contrast these proceedings with those sanctioned in the officers of justice, when sent by impartial authorities to execute a sacred verdict. Suppose that a desperate felon, after conviction, murders the constable who is escorting him to jail, and escapes. He is pursued, and runs into a house, where he barricades himself with an old woman and some children. What would be said of his pursuers, if they burned down the house, and with it burned the innocent family, in order to kill or capture the criminal? Or, to change the hypothesis, imagine the constable wilfully to run an innocent man through the body, in order to stab the felon behind him; how should we receive his calm justification, that "he had no choice about it, for it was his only way of reaching the guilty person?" Nothing is clearer than that such a remedy of guilt is worse than the disease; yet belligerents are allowed to assume, that the object at which they aim—victory—is of *paramount* importance, so that all other rights are to be sacrificed to it, whenever they are strong enough to enforce the sacrifice. This they are allowed to assume, although it is certain that one or the other is committing hideous outrage; and neither clergymen, historians, moralists, public writers, nor statesmen raise any cry of indignation that can be heard through the tumult of intense selfishness and greedy ambition.

Perhaps because in Asia we have for a hundred years been brought into worse temptation than any other European power—being side by side with industrious, highly peopled, but comparatively weak nations—therefore it is, that in many points we cling to some barbarous practices longer than others. The notion that

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\* If the newspapers have told truth, this very deed was done many times by our officers in the early stage of the Indian mutiny. They burned down cottages with unarmed men, women, and children in them, because armed mutineers had escaped into them.

all the property of an enemy's country naturally belongs to an invading army, comes from the worst times of barbarism, and is theoretically discarded by all Europe; yet the English armies in the East still hold fast to the idea, long since renounced in Europe, that every town which they capture is their prize-money, and must pay to the army a large ransom as a commutation for their natural right of plunder. Our newspaper-writers, especially those of India, blow up a flame of indignation and even of disaffection against the Government, if it dares to dispute this "soldiers' right." A marvellous example of it was lately exhibited at the siege of Delhi. That city, like unhappy Genoa, had been guilty of the crime of weakness. The citizens were unarmed; we had kept them so; and if they had been our staunch and vehement friends, they had not power to resist the mutineers, whom the Honourable East India Company had failed to keep in control. This was an obvious certainty. The inhabitants first suffered taxation, or rather plunder, from our mutineers; next were made guilty by us for the fact; and in the capture were treated with a ferocity such as well vies with any deeds of Russia or Austria; finally, an immense outcry was made against Lord Canning, for the injustice of depriving the army of the spoil of Delhi—our own city!

It is only within very recent years that the atrocious system of paying *head-money* to soldiers or sailors for the numbers they kill, was abolished by us. Austria brought great and just detestation on herself for thus remunerating the murderers of the Gallician nobility, in 1846; but it is still more recently that we adopted the same mode of reward to our sailors for the wholesale massacre of an alleged piratical tribe in Borneo, under the guidance of the philanthropic Rajah Brooke. The stir made against it in Parliament by Mr. Joseph Hume, Mr. Cobden, and a few others, has led to its final abolition, but the recency of this conversion ought to make Englishmen less pharisaically proud of their international morality, and more resolved to undertake the task of self-purification.

The laws of *purveyance* display another very unsettled question, in which, we are happy to say, England has set a good example. In an enemy's country an invading army cannot but make requisitions of supplies from the people around; but it may pay for them, either at prices fixed by itself, or even at market price. Even in France, so long ago as 1814, the Duke of Wellington paid for everything in ready cash—the only way which is not illusive. In Persia we lately did the same. The Russian and Austrian armies, when ashamed or afraid to seem to rob, pay in bits of paper, signed by unknown generals, colonels, or commissariat officers. Farmers and peasants soon despair of

ever getting payment, or are ruined before payment is possible, and sell the paper for a mere trifle to speculators who buy it up. On the return of peace, if the paper has largely fallen into the hands of a powerful millionaire—a Rothschild—it will sometimes be paid in full, and with little delay; otherwise, either with much delay, or not at all. The greedy violence of the Russians in Moldavia and Wallachia during the late Russian war, went beyond all bounds; for they not only commanded the service, or rather the slavery, of the people with their carts and horses, but laid claim also to their military action against their acknowledged and legitimate sovereign. When a belligerent is strong, it would appear that he may break all the "laws of war" with impunity, at least against lesser nationalities.

Among the rules of European warfare, hardly any touches so nearly the feelings of military men, and hence of the whole European aristocracy, as the right of captives of war to honourable treatment. When the war goes on between nations which were just before in amicable diplomatic relations, this right is granted, sometimes with ostentatious care. If the Austrians had hanged, we will not say, Sardinian regular officers who had fallen into their hands, but even Garibaldi, who at least bore the King of Sardinia's commission, it would have been met with loud and violent resentment. Yet when the nations belligerent have not recently met on terms of diplomatic equality, at least three of the great powers have in our memory discarded at pleasure this most fundamental law of civilized warfare. The first instance to which we allude is that of Russia in Poland. The Emperor Alexander, having occupied the Duchy of Warsaw (a poor fragment of the old kingdom of Poland), for military convenience against Napoleon I., refused to evacuate the country after his fall; cajoled the aristocracy by proposing a liberal constitution, and forced Austria, England, and Prussia into acquiescence by trimming the scale between them and Napoleon, when he returned from Elba.

In a very few years Alexander discarded the constitution, and openly usurped a despotic rule, hereby tearing up with his own hands his own legitimacy. In consequence, after the French revolution of 1830, the Poles rose as a nation to claim their freedom, and took the field with regular armies. In two great battles they were successful; but their resources failed against those of Russia, and they were at last subdued. That it was a national war in a national cause, and in defence of rights guaranteed to them in the Treaty of Vienna (1815) was plain. It was a war waged not by mere guerilla, but in orthodox regularity. Yet the conquered Poles were treated as the vilest of criminals, and were sent to the torturing life of Siberian bondage in great numbers. No European power dared to enter a protest.

Next came the turn of Austria, who, after worse treachery to the Hungarian nation, hanged their captive officers as soon as the war commenced. Neither England nor France protested, because it was known that Russia was backing her up, rejoicing, no doubt, to see Austria enter into final implacable feud with the greatest of her kingdoms. At the end of the war, the Hungarian generals who had surrendered to Russia, and had been treated with marked honour until all were caught, were at length handed over to Austria to be hanged; and again no power in Europe dared to protest. Yet Englishmen imagine, that their sovereign, strong in their affection, might take courage to speak for the right cause before all the world. Alas! what a delusion! when England herself finds it so convenient, or so suitable, to practise similar deviations from civilized war. Russia called the Poles "rebels;" Austria called the Hungarians "mutineers and rebels;" words which like "heretic" or "infidel" are allowed to overthrow the first principles of humanity and of right. But the received laws of war avowedly ignore the question which side is constitutionally or morally right; they only ask, whether both sides are strong enough to confront one another in the open field; if so, these laws must be in every case observed, whether the enemy consists of rebels or of robbers,\* in order to prevent needless atrocity. Nevertheless, England has never been magnanimous enough to act on this obviously just principle. It is not merely an Edward I., who treated the Scotch and the Welsh as "rebels;" nor is it only the Irish whom we have so treated, where we had at least the excuse, that the Irish nation was always divided against itself. George III. and his Tories would have hanged Washington as readily as they hanged the Irish leaders; it was still worse, perhaps, to send in the Red Indians against our American colonists. To the Caffres, entreating terms of peace, our general-in-chief replied: "We make no terms with *rebels*;" and would hear of nothing but unlimited surrender. Finally, most signally of all, though the Indian armies met us with regular war, we refused to

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\* Many of our readers must remember the fearful exasperations of the civil war in the Spanish colonies, owing to the Spanish commanders persevering to treat the insurgents as *rebels*. Such cruelty did not save the royal cause, and, as we believe, can seldom or never have any tendency to promote a final triumph.

† "You are a lucky people," said an Austrian to an Englishman; "your old kings did most of the atrocious work to your hand, and George III. finished the last of it in Ireland. Unfortunately for us, we have got to do it yet. When we have violently fused up our populations, as you have done yours, then we will be as virtuous as you." This man, like all other immoral men, did not know that every immorality entails its own curse, and that England might, with far less mischief to herself, have won mildly and honourably what she seized by violent wickedness.

recognise their belligerent rights, denied the possibility that men with skin so black could have a spark of patriotic feeling, or that the Great Mogul, by whose gift and signature we up to that day held our legal position in India, had any royal right to quarrel with us, or to receive the moral homage of his own countrymen. His sons freely surrendered at the smooth-tongued persuasion of an English officer, who presently shot them in cold blood, at his own will and motion, and was rather admired for it. The king himself was tried by court-martial, and sentenced to ignominious punishment. Captive soldiers were deliberately killed by the hundred—we fear by the thousand; to say nothing of the unarmed population strung up in lines on suspicion, or without public trial. Regiments which desired to lay down their arms, and stipulated for nothing but their lives, were again and again refused this privilege. Finally, when all our fear was calmed, when no hot blood remained, when extravagant falsehood had been exposed, Tantia Topee, the last, perhaps the most gallant of their leaders, was betrayed to us for money, and hanged. If Prince Schwarzenburg could have foreseen these doings, how many more envenomed words might he have added to his celebrated dispatch in reply to Lord Palmerston's faintly whispered hope that Austria would be merciful in her hour of conquest?

Well, at least it is only against "mutineers" and "rebels;" hence the evil is not a widely-spreading precedent. It is to be hoped, that in war against regular, acknowledged governments, we set a good example to all the world, and conscientiously obey the laws of war—at least the fundamental ones.—But there is nothing more fundamental to civilized warfare than that no war shall be commenced without a previous statement of grievances and demand of redress—a demand made to the sovereign himself; and that *only after* he has refused redress, and when in consequence war has been solemnly declared, with its motives and aim, shall hostilities be begun. In dealing with great powers, we anxiously observe these forms. France, Russia, America, have again and again committed against us exasperating offences, yet we have not at once rushed into war, but have demanded explanations and redress. At this moment we are embroiled with America, by General Harney having occupied an English island with United States' troops: if an English admiral thought to earn the praise of energy by the dashing exploit of expelling him, it is certain that he would be cashiered, and perhaps meet yet severer punishment. But when we have to deal with Burmah, with China, with Persia, we forget all our "Christian" rules; as though, if these powers be the barbarians that we allege, it can be right for us to sink to their level; or, as though we can teach them to

observe the international law of Christendom by any other method than by practising that law towards them.

If there is any external phenomenon of war more striking to men's imagination, as indicative of its justice or injustice, it is the mode of commencing it; whether with grave deliberation, slowness, apparent unwillingness, or with haste, suddenness, and an endeavour to take the adversary unawares; or rather, treacherously to treat one who is in amity with us as an enemy. A power which is substantially unjust, gains at least the appearance of gravity and moderation, if it makes its demands with formality, deliberates over the refusal of redress, publicly warns the other side of impending consequences, appoints a time after which hostilities must commence, and, only after thus holding open a door of escape, undertakes the war as if compelled. All this forbearance we do show to a great power, as recently to Russia. But if, on the contrary, a war is suddenly commenced by the voluntary act of a distant official, without even allowing the Home Government to express an opinion; or, what may seem even worse, if orders from home have been given to lull the other party into unsuspectance and come down upon him with a sudden act of war; then, even if the cause of the war be ever so good and urgent, it has all the aspect of odious violence and treachery, being more like to a deed of assassination than to a legitimate process against a criminal. It is peculiarly frightful that such abrupt procedures have been repeatedly practised by English officers, sanctioned or not publicly reprov'd by our highest authorities, without any strong or permanent indignation of the English public. It is but a few years since the English fleet, carrying an army from India, attacked Bushire, simultaneously declaring war; and our envoy, narrating the facts, boasted of the skill with which he kept the Persian authorities, down to the last moment, ignorant that there would be any war at all. Soon after, the statement of the Persian minister was published, that forty days had been given by our ambassador to their plenipotentiary at Constantinople for communicating with his government, and that not a quarter of that time was elapsed when our sudden assault was made.

There is much in all this to excite grave alarm, and call for a total reform in our foreign dealings. Christendom was once our only world of diplomacy; we are now in contact, not only with mere savages with whom no political relations at all are possible, but with old, thickly-peopled, industrious nations, who cannot be expected to know or practise the technical peculiarities of European international dealings, but who can practise all the duties of good neighbourhood. If our officers are allowed to plunge into chaos because they are able (rightly or wrongly) to allege that a foreign power, whether China, or Persia, or Burmah,

or Siam, or Japan, is neglecting some point of the ceremonial law of Europe, the law of right and of God will assuredly avenge itself upon us.

There never yet was a prudent government, however despotic, which conceded to its servants abroad the right of making war without consulting it. Suppose it to be ever so careless of justice, ever so grasping, ever so willing to assume that an officer, subject to daily irritation at the resistance of his will by a foreign power, is himself an adequate court for deciding on the justice of commencing a hostile attack, still its justice is only one point of the case; the expediency of it is generally a vast argument. A local officer, at Hong Kong or Rangoon or in the Peiho, looks only to the limited question before him, and cannot be expected to embrace all sides of the case. The Persians or the Chinese may have wronged us, yet it may be highly inconvenient to us to invade them on account of the wrong. A small force can do nothing but occupy one or two forts, and there remain, perhaps to be half starved. A large force is sent with great effort; and even if it be fit for human potentates proudly to forget the contingencies of war, and how many great armaments of invasion have failed miserably, crippled by the elements, by pestilence, by famine, and finally have been defeated by an adversary once inferior;—yet we have to ask, are we not made weak and almost passive in Europe and elsewhere, if we have to carry on a war at the opposite side of the world? And if we succeed in the invasion, what are we to do next? Should we try to annex more provinces to our empire? but this may, not unreasonably, cause a league of great powers against us. Moreover, unless the new districts themselves give us reliable men and money, every such extension of empire is a source of weakness. Surely the propriety of such extension should be publicly and calmly discussed by the Cabinet and Parliament and Nation at home, and is not to be prejudged by an executive officer on the other side of the world. Yet this is done by our way of going on. One man strikes a blow, in Burmah perhaps or China; a cry then arises in the “independent press,” that, “once in for the war, we must go through with it, else we shall be despised.” If the end of it is that we annex a province, and no immediate visible mischief accrues, a precedent is established and an impetus given to like “energetic action” of every local executive. To give prizes for conduct, of course stimulates to similar conduct; and for many years past our officers in Asia have been thus incited to take into their own hands a very summary settling of disputes.

Neither the Emperor of the French nor the Emperor of Russia allows his subordinates to make wars for him at their pleasure, but the free English nation appears almost to have forgotten that

nation or Parliament has any voice in such a question. The Parliament delegates its control to the Privy Council, the Privy Council to the Cabinet, the Cabinet to some admiral, or some civilian in the far East, accustomed to despotism; and appears to have adopted as a fixed principle, that in order not to discourage energy in its servants, their conduct, even when disapproved,\* is to be publicly sanctioned, and to be rewarded if successful. The Ministry, talking high of the prerogative of the "Crown," (all of which they assume to themselves,) by the connivance of the *out* party, which hopes ere long to come *in*, have wonderfully succeeded in making the nation and Parliament believe that the sole decision on war, peace, and treaties *constitutionally* belongs to what is called the Crown, that is, to the Ministry of the day.

It is easy to see the monstrosity of such a state of things, and that if it were constitutional, it ought not to be, and ought instantly to be reformed, even if all precedent were the other way. There is no more fundamental principle of freedom (for it is even admitted under despotism) than that no nation shall be dragged into a war by its executive against its will and judgment. But to say this, is to say more than we here need; for if it were admitted that the ultimate decision rested with the executive government, yet if there be any organic deliberative institutions at all, their voice must at least be first elicited, after mature review of the facts. Nay, if even a majority of every class in the nation desired war, yet they have no right to enter into it without first hearing what the minority has to say on the other side. This is the essential meaning of deliberative institutions. The minority has to undergo risk, to make sacrifices, at the command of the majority: well, so it must be, *if* the majority cannot be convinced. But it is the duty of these to listen calmly, to receive and to give reasons. This essential right is overthrown, if a war is entered into, or indeed is patched up by a treaty fraught perhaps with new dangers, by a sudden act, without time for deliberation, or by only one side of the State—the party in power. The Sultan of Turkey† enters into no wars without the solemn advice both

\* In a former article we remarked that Commodore Lambert, who began the last Burmese war in disobedience to the positive written orders of Lord Dalhousie, *was mildly rebuked* in words, yet was continued in command. His act was followed up, although distinctly disapproved, and at the close of the war he *received a special honour* from her Majesty.

† By a regulation of Solyman the Magnificent, which professed, we believe, to be based on the Koran, the Sultan cannot begin any war until the Sheikh el Islâm (the head of the religious functionaries) has declared that it will be rightful. So excellently intended a rule was sure to be evaded upon occasion. In fact, the Sheikh can be deposed by the Sultan, and a more compliant successor appointed, which somewhat lessens the spirit of this functionary.

of his Cabinet and of his Council. But the English Cabinet has believed itself omnipotent in Asia since the overthrow of the Sikh power, and, therefore perhaps, ventures on liberties there, of which it would not dream against any of the great powers of Christendom.

Nevertheless, so hard is it to induce a modern Parliament to care for any principles, however sacred and obviously necessary, by arguments drawn from the morality and expediency of the case itself, unless there is either compulsion from abroad or precedent at home, that it is of great importance to appeal to our constitutional lawyers for information as to precedents. Mr. Toulmin Smith, in his valuable sessional publication, the "Parliamentary Remembrancer,"\* has brought together a series of precedents on this subject, distinctly showing that in old England, during those times in which our historians are apt to tell us that the king was without constitutional check, it was already a well-defined positive rule, which our boldest kings dared not to violate, that *the consent of the Great Council, and afterwards of the Parliament, was necessary to a WAR or to a TREATY*. Referring our readers to his pages (especially, pp. 3, 4, 96, &c.) for details, we here borrow from him a few facts which contain the principle. One of the articles of the Ordinances made by certain barons in the 5th Ed. II. (A.D. 1311) begins with the recital of the existing law in these words:—"Forasmuch as the king ought not to undertake deed of war against any one, but by common assent of his baronage." It is true that all these ordinances were revoked ten years later, but with the protest that no such matters could be dealt with, unless they were "treated, accorded, and established in Parliaments," &c.

In the 5th year of Edward III. the king's Chancellor declared that he

*"Summoned the Parliament on matters touching the Duchy of Guienne and the king's lands beyond sea, in order to make peace or other issue to the dissensions between the kings of England and France. . . . The said Bishop of Winchester, Chancellor, on the part of our lord the king" (say the Rolls of Parliament) "asked of . . . all*

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\* This work, having no advertisements and no other news than parliamentary, cannot afford publisher's expenses. It is issued by post, to subscribers only, every Saturday, from the office of the printer, 10, Little Queen-street, Lincoln's Inn Fields. The subscription is one guinea per session. All persons who are concerned to watch the proceedings of Parliament, and hear questions argued from a lawyer's point of view, quite strange to our newspapers and to Parliament itself, will find much in this periodical to reward study, even if few follow the writer to the full in his zeal for antiquity. No other work of the kind, we believe, exists; yet it would seem quite necessary to public men and public bodies.

the barons and great men there assembled, whether the king should take the way of arbitration (*proces*) as the king of France had proposed, or should make war. *The prelates, earls, barons, and other great men counselled, as the best, that the king should make a friendly treaty with the king of France on the aforesaid matters."*

In the 17th year of the same great king (A.D. 1343) a Parliament was holden at Easter, the proceedings of which are given in the Rolls with unusual fulness. While the king was in France with his army, and had laid siege to the city of Vannes, two cardinals, as ambassadors of the Pope, besought him to make a truce, in hope of concluding during it an honourable peace. The king, wishing to retain the Pope as a friend, assented to the truce, and forthwith sent from his side Sir Bartholomew de Burghersh to attest all the facts to the Parliament, *and asked of it permission to make peace.*

"The said Sir Bartholomew said, on behalf of the king, that, because this war was undertaken and begun by the common consent of the prelates, lords, and commons, the king did not wish to treat of peace, nor to accept a peace without their common assent."

The replies of the two Houses are calm and straightforward, approving of the truce and of an effort for honourable peace, but without one word which can suggest that the king had shown to them any unusual condescension.

In the next year, the king informs the Parliament that *the king of France has broken the truce*, and requests their counsel, *what he is to do in so great a necessity.* (Do our Queen's ministers now ever condescend thus to ask advice of Parliament?) Both Houses reply: that the war must be carried on; and vote supplies, with the caution; "*provided that the money be spent in the business shown to them in this Parliament.*" . . . They had then no idea of equipping a great force for the king, and letting him use it without consulting them as to its direction. (Rolls, 18 Ed. III. Nos. 1, 6—10.)

In the 28th year of the same king, Parliament was officially informed that negotiations for peace had been proposed, but that the king "would not make peace without the assent of the Lords and Commons:" thereupon he inquired if they were willing. Reply in the affirmative having been made, the Chancellor again put it to them: "*Then you will assent to the treaty of perpetual peace, if it can be made!*" And the Commons replied, one and all, Aye, aye; on which it was resolved that there should be a public record thereof. (Rolls, 28.)

In the 36th year of Edward III. (A.D. 1362) Parliament was asked to give assent to a *proposed treaty* with David Bruce, king of Scotland. *They refused their assent.* Very many cases of the same kind in regard to the wars of Scotland (says Mr. T. S.) might be quoted. We cannot dwell longer on similar affairs in the

same reign, but we pass to the spirited and warlike king Henry V., who first asks advice of Parliament concerning "matters of foreign embroilment," and having entered into war with France by their consent, next year informs them that he hears the French king to desire peace, but that "he would not conclude the same without the assent and good counsel of the Estates of the realm," and begs that, when the whole facts are before them, "he shall be informed by the good advice of his very wise council here present (the Parliament) *what will be most profitable and honourable to do in the matter.*"

In the next year, assigning the reason of summoning a Parliament, he says, that he had "with the assent of all the Estates and commonalty of the realm," gone into France, and "had there so done, that in a short time, by the high grace of God, he had won the town of Harfleur, which is the principal key to France, and had afterward fought at Agincourt, in the land of France, with all the power of France; over whom God had given him great victory." He goes on to state his vain efforts for peace after the victory, and again asks "the gracious aid and counsel of the Lords and Commons" as to his further proceedings.

When the actual peace arrives, the Rolls state that, by a provision in the treaty itself, "the said peace needs *not only* to be sworn to by the said kings, Henry of England and Charles of France, *but also* to be allowed, accepted, and approved by the three Estates of each kingdom." It is then stated that the king of France had sworn to the peace, and the Estates of France had allowed and approved it; and that the king of England had, in order to the confirmation of the same peace, according to the manner and custom of the kingdom, summoned the Parliament, and desired the three Estates themselves to look into and examine the tenor of the same peace. The result is, that they "approve, *allow, authorize, and accept it.*"

This is surely enough to show that modern Cabinets employ the word "Crown" as a cover for usurpation against the Parliament, such as our great and warlike kings, when not yet enslaved to a ministry, never claimed as any part of their prerogative. In European wars, the Cabinet never dares to affront the Parliament and nation by substantially going against their approval, yet sedulously avoids the form of seeming to ask their advice; and in regard to treaties, arrogates fearlessly to itself an actual despotism. But it is our Asiatic wars which have brought out the formidable fact, that the Cabinets claim to discard the authority of Parliament altogether. It deserves remark, that when their endeavours to lull Parliament into negligence prove vain, our ministers act the demagogue in the worst sense, according to the old craft of those who seek to establish a despotism on the ruins

of solid deliberative institutions by the aid of popular passions and popular ignorance. An outcry is made about "insult to the British flag," great newspapers garble the facts and write inflammatory articles, and the Parliament is coerced by the ministers and the democracy. On the last occasion, when the House of Commons condemned the second Chinese war, it was subjected to a penal dissolution; yet its vote of censure remains unrescinded: and now, behold, a third Chinese war looms upon us! This is not the place to discuss the substantial right or wrong of the new quarrel; but we do protest against the *mode* in which England is dragged into it. To fight first and deliberate afterwards, is the way to deliberate with inflamed minds; besides that it brings upon us the odious argument, which Lord Dalhousie has not scrupled to sanction by his pen, that in Asia, England cannot afford to retract, lest moderation be mistaken for weakness! The House of Commons did not discuss the question whether Sir John Bowring or Governor Yea were fundamentally right or wrong in their quarrel; but they dealt with the general question, whether a local executive officer is to commence hostilities at his own private opinion; *not* in immediate defence against attack, but taking on his single self the maintenance of the "honour" of England. National honour is a precious possession; but it is for that very reason a jewel, *the maintenance of which cannot be delegated* by the great Estates of the realm even to a Committee of themselves, or to a Cabinet which represents one side or faction of England; much less to a single local officer. On these general grounds, disapproving the war as *hasty* and *unauthorized*, the House of Commons solemnly condemned the proceedings of Sir John Bowring. The vote has never been reversed: the minister then defecated has feared to stir the subject. And behold, hardly has the same minister by unforeseen events been a few months in power, than a perfectly similar deed takes place;—an English functionary, not assaulted by the Chinese, but alleging some ceremonial offence, concerning which the Home Government and the Parliament ought to be consulted, enters on hostilities which must either be disowned by us with much humiliation, or followed up at the risk of new war.

There is a phenomenon in this transaction fraught with monstrous possibilities, to which we request attention. Let us try the patience of our readers by a very absurd hypothesis. Suppose Sir Francis Head (or some other friend and admirer of the Emperor of the French), sitting in Parliament, to move for a bill which should authorize the Emperor to place a French war-minister in the English Cabinet; which should further authorize the English minister-at-war, in private concert with the Frenchman, to direct the proceedings of the Queen's fleets, without the

previous cognizance of the rest of the Cabinet or of the Prime Minister. We might be perplexed whether to think the honourable member mad or treasonable; no, we should think him mad; for the treason would be too visible to impute to any sane man. It would not need any intense jealousy of the French Emperor to lead to the instant hissing out of such a bill. Without participating in the panic of possible invasion by his fleets, without imputing to him any worse sentiment towards England than the common jealousy of our wide-spread and ever-encroaching power, we certainly deprecate volunteering to put our military and naval movements into his control, or exposing them to his intrigues. If he have any deep designs, and fears they will meet our opposition, if on this account he desire to paralyse our European action and reduce us to helplessness, or even make us dependents on his bounty; in no way can he have better hope of success, than by embroiling us in a distant and unlimited war. To accept his aid is *pro tanto* to make ourselves dependent on him. A small succour cannot affect the war seriously, but it may blind us as to his malicious intentions. Be his auxiliary force large or small, it is but auxiliary: he is no principal in the war, and can withdraw when he pleases without damage to France; and if his aid be large and valuable, by threatening to withdraw he can constrain us not to oppose any of his European schemes. Besides, if we allow him to co-operate largely in an Asiatic war, we give him exactly what he wants—an excuse for maintaining a navy of disproportionate strength; which, when trained in actual service, may ere long be used for European purposes highly disagreeable to us.

Now, if for a moment we put, for argument's sake, this monstrous hypothesis, that a French and English war-minister sitting together in Downing-street directed the fleets of England without consulting Parliament or the Cabinet, it would have at least one practical safeguard against terrible mischief. Public opinion would be wide awake; all eyes would be fixed on the English war-minister; any grave error of judgment in him would easily be called treason; to allow himself to be seduced by the plausibilities of his French colleague would be an offence which could meet with no mercy from the nation, the Parliament, the Cabinet, or the Queen. Our minister would deliberate with a rope round his neck: and the opinion admits of reasonable defence, that he would act with greater sagacity for his country than is to be expected from a Governor of Hong Kong or a Commissioner attached to our Chinese fleet. In fact, every evil which might be feared from a French Minister visibly sitting in Downing-street, deserves to be feared ten times over from our present arrangements. The commander of the French ships and troops, whether

in the river of Canton or in the Peiho, communicates with the local English executive, and the English nation knows nothing of it. None of us can know, or even guess, how far the Frenchman's advice may have ingeniously implicated us in toils which his master is spreading. For aught we know, his intrigue may be busy to guide the Chinese to the very acts, which he then warmly advises us to chastise. The cautious English nation will not allow its sovereign to decree war at the whispers of an unofficial person, nor except by the act of the Privy Council; yet it permits a man, whose name members of Parliament are not certain to know, at the other side of the world, joined in military council with an irresponsible foreigner, to enter upon war in the Queen's name. It is a cheap defence to say, "It is not war against the Emperor of China; it is but chastisement of a provincial Chinese officer." No doubt our second Chinese war was fought, without any declaration at all, under this pretence. But hereby we do but aggravate our own lawlessness; certainly the Empire has not yet fallen to pieces, although we seem to be aiming to reduce it to the state of India after Aurungzebe, in order that Europe may come in to prey on the carcase. That the future history of China will have any similarity to that of India, we do not at all believe; but that is not our present subject. We are but remarking that it is war against the Chinese Emperor that we make, whatever may be pretended to the contrary; and that in such war we permit ourselves to be implicated at the will of one rather obscure Englishman, whose ear is open to the secret counsel of a servant of Louis Napoleon. All this is as inconsistent with prudence, common sense and decency as it is opposed to every principle of civilized warfare, Christian or Pagan.

Formalities of war give no security against the vilest hypocrisy, nor against the most odious injustice; yet in the worst case they are of great value, not only to the nation attacked, but also to the army attacking, and to its masters. Is it requisite, after the Indian mutiny, to insist, how terrible a scourge a demoralized soldiery may become to the power which has organized it? Not one of the great powers, not even Austria, has more vital reason to beware of lowering the morality of its army, than England. A mixed army of Asiatics can be elevated to nobler sentiments (as the late lamented General Jacob practically showed and attested) by sympathy with what is just and noble in its leaders; but it far more easily drops into unison with all that is worst in them or in their government. The morality practised by us in the siege and storm of Delhi was mainly a concession to the barbarism of the Sikh soldiers, who had joined our standard in thirst of plunder. If it be true that rude men cannot learn religion without symbols, much more true is it that they cannot understand justice and

righteous war without their symbols. When they see us *to-day* in amity with a foreign nation, receiving their visits as friends, purchasing from them for mutual convenience, honouring their flag and their magistrates, and *to-morrow* assailing them with war for some local quarrel turning on a point of honour (a sort of quarrel which everybody notoriously can always make when he is determined to make it), the soldiers, who have not even the excuse of nationality for obeying our commands to slaughter, must inevitably sink into the moral condition of pirates. They cannot imagine themselves to be fighting for any high idea; they fight neither for their country, nor for their creed, nor for the Right, nor for civilization, but solely for pay and promotion. For this essentially selfish object they are made to kill and rob (war to them is necessarily identified with these two words); than which nothing can be more demoralizing. The same men, unless attached to officers of uncommon mental qualities, are certain to turn against us whenever hope of selfish advancement suggests that course as prudent; and far short of this, our dread of their fickleness is sure to make our conduct towards them vacillate between dangerous concessions and equally dangerous severity. Old Napoleon used to compare England to Carthage, and hence inferred her destiny to fall by the arms of his (Gaulish) Rome. If he could have foreseen the full development of our Indian armies, and have compared them to the vast mercenary hordes which were the curse and worst internal ruin of Carthage, his comparison would have been less superficial.

Yet, in truth, historians point us to a very similar development, still more manifestly fatal, in Rome itself. Carthage fell by foreign force; Rome solely by her own armies and by the operation of military discipline—so called; that is, by uninquiring obedience to the word of command. The old Romans began with a formality quite superstitious, the king and senate consulting the college of heralds for erudite instructions as to minute ceremonies. For perhaps four centuries, the discipline of the army was admirable: its decline began from the day when a general\* first took upon himself to make war at his own judgment, trusting to obtain a bill of indemnity, if successful, with booty and honour of course. A general who so acts will be sure to indulge his soldiers, in order to win their attestations and influence. This was but a step towards the times in which the generals succeeded in teaching the troops that their sole business was to obey, when led not only beyond their province, but even against their country.

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\* Cn. Manlius: Livy, book 38.

By virtue of our annual Mutiny Act, the soldier ceases to be a citizen; he is nothing but a slave. By knowingly accepting a shilling from a recruiting sergeant, he is interpreted to have renounced his civil rights, his understanding, and his conscience.\* He is at once transferred into a new sphere of relations, of which he has neither theoretical nor practical knowledge. What a trap of iniquity is martial law, was exhibited in lurid colours which might have turned to scarlet, in the late discontent of the East India Company's European regiments. When the Company was deprived of its control over the Indian armies, the Queen's servants claimed, as of course, to command the soldiers of the Company; but the men refused to obey, alleging that they had not enlisted in the Queen's service. Their plea may have been bad in law, but it was a plea of which the civil courts have to judge; the military executive must not be judge in his own quarrel. But this was not the worst. Orders were next given to one of the Queen's regiments to fire on their countrymen as on mutineers. Sooner than obey such a command, which to them, no doubt, seemed a horrid murder, they put *themselves* into the position of mutineers; and who shall say what dreadful results might not have arisen out of the complication? A general takes upon himself to judge a disputed question of civil law ("Are or are not these men exempt from the operation of the Mutiny Act?"), and commands his soldiers to shoot down those who, in defence of their supposed civil right, decline to obey him! It is not by crude, immoral despotism that discipline can ever be strengthened; such discipline as conduces to safe victory and orderly rule must grow out of honour and conscience. By crushing the moral sentiments, no higher discipline is attainable than that of unscrupulous and tumultuous janizaries. If the disobedient regiments had been lawless and threatening, the case would have been totally different; but to expect men to fire at their comrades because the latter fancied (however vainly) that Parliament had given them their discharge, is a terrible indication what sort of obedience our military men expect from soldiers. Men trained in their school would surely obey a general who, in the most approved Parisian fashion, ordered them to disperse a Parliament or a Court of Justice.

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\* Until a recent period, our peasants were entrapped into the ranks with a coarseness akin to the violence of the press-gang. Various provisions have of late years been made for the protection of a recruit, *provided* his drunkenness has been so complete, that he can swear that he did not know what he was doing in accepting the enlistment money; *provided also* that within twenty-four hours he can repay all the moneys advanced to him, and twenty shillings more as a fine. We fear these laws give little or no immediate protection; but they admit a valuable legal principle.

The actual state of the law (as we receive information) is such as may *perhaps* indicate that Parliament has been cheated by the Executive. In the Annual Mutiny Act a soldier is subjected by Parliament to summary death for a vast number of offences, including disobedience to any **LAWFUL** command. But this most important word **LAWFUL** is omitted in the oath provided for the soldier in the Articles of War. To refuse to take this oath would be the very highest act of mutiny; yet it imposes on him a duty not sanctioned by the Act of Parliament,—that of obeying the command of his superior, whether it be lawful or unlawful! Not only is no tribunal provided, to which a soldier might appeal if commanded to commit a dreadful crime, such as to shoot his innocent and unjudged comrade, but the very idea that lawful commands *only* are to be obeyed is, as far as possible, forbidden to be whispered within the camp. That it is the soldier's duty to obey command, and *not* ask whether it be a lawful command, is practically enforced and admitted. Thus a despotism is usurped, going far beyond the already great and terrible power consciously placed by Parliament in the hands of the military executive. This state of things reminds us of the infamous duplicity by which the slave-trade was formerly carried on. Parliament passed an Act which authorized British ship-masters to bring workmen from Africa to the colonies, *provided they came by their own consent*, and added penalties on those who should carry them off by *deception*. But the Executive Government, here and in the colonies, uniformly winked at the notorious breach of these clauses, and sanctioned the carrying off black men by violence and deception. After which it was pretended that the kidnapped people and their progeny had become the lawful cattle of the planters by parliamentary enactment. Is the soldier's oath at this moment legally imposed?

In the shock of war, when an enemy is in sight, civil rights must be, more or less, suspended. If our own country were the seat of war, we could not wish to retain during the crisis our present rights of free speech, free press, freedom from arrest, free movement, all as perfect as now; for, as the Piedmontese lately well judged, such rights would be used by the enemy for his own purposes. Dictatorial power should then be lodged for awhile in the noblest man, and in a nation which loves its laws and liberty is seldom abused. So also, during actual warlike service, civil rights must of necessity be largely curtailed. Promptitude being matter of first necessity, there is no time for the formal scrupulosity of our law-courts. But it is not on this account requisite to leave no conscience at all to a soldier. If he were ordered to kill women and children, all will justify his refusal. Neither yet should he turn his weapons against his unarmed countrymen,

nor against the public institutions. Blind obedience cannot be approved. If commanded to flog a comrade who has not been tried and sentenced by a court-martial, here also refusal would be praised by every civilian. Why then is it hard to admit that he ought to disobey, if commanded to attack the public friends of his country? If there has been no declaration of war by the Queen, to use hostilities is *piracy*. When it is equally notorious in the one case that there has been no sentence of court-martial on his comrade, and on the other that there has been no declaration of war against Danes or Chinese, why is he to take cognizance of the former fact and disobey, but to ignore the other and obey? Why is he to refuse to commit assault on his comrade, but consent to commit piracy, at the mere word of command?

Moreover, setting the law of military obedience as sternly as one may during actual war, this is no reason at all for making it equally severe on the professional soldier during the months or years of peace. The subordinate civilian in a government office is not very apt to disobey orders or to affront his superior: martial law is not found needful to secure respectful compliance. Why is it any the more necessary in time of peace to ensure obedience from an ensign or lieutenant? Surely, on them the fear of losing their commissions would be always a sufficient restraint. To the private soldier, it may be objected, dismissal might be no punishment, but rather a boon; but if this be a general fact, does it not argue ill-treatment of the soldiers, amounting to cruelty? Recent discoveries have painfully illustrated this, as far as the London barracks are concerned. It is but a year since we devoted many pages to this disgraceful topic, and we need not further recur to it than to insist that the British soldier could never have thus rotted with odious pestilence in time of peace, had he dared to complain; and it is the needless severity of martial law which makes his complaint impossible, because hopeless. No other class of men can be thus coerced into grave-yard silence. Convicted felons would have dared to open their mouths and publish their injuries: only the British soldier could be thus immured to suffer and die with sealed lips. The life of a soldier in peace ought to be a life much coveted; inasmuch as its labours might be merely the labours of the palestra, such as all young and active men like; and if, instead of cruel martinet-discipline and the intolerable *ennui* which drives them to dissipation, their vacant hours were well directed, there would be little danger of their thinking dismissal a light punishment, nor is it probable that any bounty would permanently be needed to allure them. But this touches on a wider subject than we intended. It suffices here to insist that in the existing system the soldier, often cruelly entrapped into his slavery, is treated like a slave; and that this

ought to be fundamentally changed. The details afford material for very lengthened and mature discussion.

There are many who believe that the time will come, when no weapons of war shall be forged, and universal peace shall reign. If they expect this time to be brought about without human effort, and that in consequence they may fold their arms in contentment or in despair, their belief is a mischievous superstition. But if they look to this consummation as the final result of manifold struggling towards a juster and purer state, and accept this struggle as laid upon us all by the Highest Wisdom, then it is a generous creed. We also believe that a time will come when men will look back in wonder and pity on our present barbarism; a time at which to begin a war—unless previously justified by the verdict of an impartial tribunal, bound in honour to overlook what is partially expedient to their own nation or party—will be esteemed a high and dreadful crime. The "Governments" will never initiate such institutions until compelled by public opinion and by the inevitable pressure of circumstances; nor is any nation in the world yet ripe to put forth such pressure; otherwise it would not be difficult to devise a supreme court, or rather jury, which would put a totally new moral aspect on war. We honour the good intentions and the moral courage of a man who, like Mr. Cobden, comes forward to advocate international arbitration as a means of evading war; and we can admit, that many great wars might have been advantageously avoided by us, *if we had been willing to submit to arbitration.* But it is too visible that not only are foreign despotisms unwilling, English ministries and English governors-general are equally unwilling to submit their claims to judgment, when they think they are able to seize by the strong hand what they fancy is their right. It seems to us, that those who wish to stop needless and unjustifiable war, have to begin their work from another point—the reform of martial law. Let some member of Parliament give notice that he means to oppose the unceremonious annual renewal of the Mutiny Act, and meanwhile move for a committee to consider in detail what is the least loss of civil rights which will suffice for army discipline. A new Mutiny Act should embody several principles; first, that a broad distinction be made as to a soldier's surrender of his civil rights during peace and during war; secondly, that in the peace-discipline his subjection be assimilated to that of an apprentice or other servant who may not leave his master, and all questions between him and his superiors be tried in the civil courts; thirdly, that the militia never be under war-discipline, except if the country were invaded; fourthly, that war-discipline otherwise begins only when war has been declared *in the capital* by her Majesty, *with the formal assent of Lords and Commons;*

fifthly, even in war, the *limits* of a soldier's obedience need to be more strictly defined; for it is abominable and unendurable, that when the Queen has declared war against *one* power, the commander should lead his men to attack *another* power, against whom no war has been declared. To expect a soldier to obey under such circumstances, is to train him to overturn the constitution and laws of England, whenever commanders are found unscrupulous and daring enough to attempt it. All such laws of obedience are essentially immoral and demoralizing.

The effect of such a change in martial law would be to make piratical hostilities on our part almost impossible. If nine or ten years ago this had been the state of the law, Commodore Lambert would never have dared to commit the offence for which Lord Dalhousie rebuked him,—of bombarding Rangoon without orders, and indeed against order: but every sailor, when commanded to fire, would have known that he was committing slaughter at his own risk; inasmuch as neither her Majesty nor her Indian viceroy had declared war. The English Navy would forthwith become, what we fondly fancy it is, a *purely defensive* force, whereas in the eyes of foreigners it is now *essentially offensive*, provoking extreme dislike of us, and inciting every great power to raise a navy in opposition to us. In those who remember Navarino and Copenhagen, how could any other sentiment towards us be expected, especially when our statesmen coolly avow that they send a fleet as “a demonstration” to influence negotiations. But if it were well known that our ships at Gibraltar, at Malta, at Corfu, or elsewhere, are *bonâ fide* a police repressing piracy and all lawless violence, but in no case can dare to blockade a port, bombard a city, or fire into a vessel, unless the cause have been heard, and both sides pleaded in full Parliament, with abundant time for ambassadors and diplomatists to discuss, to explain, to retract or compromise; should we not soon be everywhere welcome as mere preservers of the public peace? And might we not soon find that one quarter of our present Mediterranean fleet sufficed for that duty?

We fear that no Quaker will move in the direction of improving that which he condemns *in toto*; but the Peace Party by no means consists of none but Quakers; and if any of them read our pages, we earnestly press on them that it is by claiming a revision of the Mutiny Act, and by opposing its unconditional renewal, that they will find an opening for their action. Of course the change will be called impossible: what new thing is not? but there is only one misapprehension which it here seems worth while to anticipate. A felonious attack is unceremoniously resisted by *civilians*, equally as by *soldiers*. The spirit of our countrymen is abundantly proved on all sides of the globe, and,

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without martial law, can be fully trusted for repelling active assault when made upon them. In India, in Borneo, in the backwoods of Canada, or in seas where pirates abound, English civilians are always willing to fight, in purely self-defence, of course without her Majesty having declared war; nor can there be the slightest danger that soldiers should refuse, in cases in which merchant sailors are always courageous. Nor are our policemen under martial law. It must not then be pretended, that, by such a reform of the Mutiny Act as we advocate, the right and necessity of real self-defence would be for a moment compromised. But it would on the one hand stop the officious zeal of individuals, who fancy it belongs to them to maintain the honour of our flag (a zeal by which they cruelly dishonour it)—on the other, it would control usurping ministers, or the dynastic influences which they represent; in place of this, enforcing public parliamentary debate and solemn approval, as a necessary prerequisite to any voluntary deed of war.

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#### ART. IV.—PLUTARCH AND HIS TIMES.

*Plutarch's Lives. The Translation called Dryden's. Corrected from the Greek, and Revised.* By A. H. CLOUGH. In Five Volumes 8vo. London and Boston. 1859.

A REVISED translation of Plutarch's *Lives* may seem a doubtful experiment at a time when the kind of heroism which he portrays is out of date, and his philosophical maxims are as little regarded as the "Morals" that Sir Roger L'Estrange tacked to Esop's fables. That the demand for such revision should proceed from the other side of the Atlantic is also not a little singular. For though the United States justly entitle themselves The Great Republic, they have as little in common with insolent Greece or haughty Rome, as Washington had with Marc Antony, or Franklin with Pericles or Cicero. The demand is no unhopeful sign. If it be good for men in their political or social career to stand upon ancient ways, and consider which is best among them, not less good is it for states occasionally to revert to the past, and ponder its lessons and warnings, more especially for a people whose just pride in their own vigorous youth may incline them to undervalue the teachings of time. For the busy and restless Americans we can imagine few things more salutary than the study of ancient literature. They are not likely to fall into the delusion of the French repub-