

Excerpt from Emmerich de Vattel

The Law of Nations, or the Principles of the Law of Nature (Originally published 1758)

CHAPTER XVI

Of the Protection sought by a Nation, and its voluntary Submission to a foreign Power.

§192. Protection. When a nation is not capable of preserving herself from insult and oppression, she may procure the protection of a more powerful state. If she obtains this by only engaging to perform certain articles, as, to pay a tribute in return for the safety obtained,—to furnish her protector with troops,—and to embark in all his wars as a joint concern,—but still reserving to herself the right of administering her own government at pleasure,—it is a simple treaty of protection, that does not at all derogate from her sovereignty, and differs not from the ordinary treaties of alliance otherwise than as it creates a difference in the dignity of the contracting parties.

§193. Voluntary submission of one nation to another. But this matter is sometimes carried still farther: and although a nation is under an obligation to preserve with the utmost care the liberty and independence it inherits from nature,—yet, when it has not sufficient strength of itself, and feels itself unable to resist its enemies, it may lawfully subject itself to a more powerful nation on certain conditions agreed to by both parties: and the compact or treaty of submission will thenceforward be the measure and rule of the rights of each. For since the people who enter into subjection resign a right which naturally belongs to them, and transfer it to the other nation, they are perfectly at liberty to annex what conditions they please to this transfer; and the other party, by accepting their submission on this footing, engages to observe religiously all the clauses of the treaty.

§194. Several kinds of submission. This submission may be varied to infinity, according to the will of the contracting parties: it may either leave the inferior nation a part of the sovereignty, restraining it only in certain respects,—or it may totally abolish it, so that the superior nation shall become the sovereign of the other,—or, finally, the lesser nation may be incorporated with the greater, in order thenceforward to form with it but one and the same state: and then the citizens of the former will have the same privileges as those with whom they are united. The Roman history furnishes examples of each of these three kinds of submission,—1. the allies of the Roman people, such as the inhabitants of Latium were for a long time, who, in several respects, depended on Rome, but, in all others, were governed according to their own laws, and by their own magistrates;— 2. the countries reduced to Roman provinces, as Capua, whose inhabitants submitted absolutely to the Romans;¹ —3. the nations to which Rome granted the freedom of the city. In after times the emperors granted that privilege to all the nations subject to the empire, and thus transformed all their subjects into citizens.

¹ Itaque populum Campanum, urbemque Capuam, agros, delubra deūm, divina humanaque omnia, in vestram, patres conscripti, populi que Romani ditionem dedimus. [“Therefore we now place under your sway and jurisdiction, senators, and that of the Roman people, the people of Campania and the city of Capua, its fields, its sacred temples, all things human and divine.” LIVY, book vii. c. 31. *Ab urbe condita*, VII, 31.

§195. Right of the citizens when the nation submits to a foreign power. In the case of a real subjection to a foreign power, the citizens who do not approve this change are not obliged to submit to it:—they ought to be allowed to sell their effects and retire elsewhere. For my having entered into a society does not oblige me to follow its fate, when it dissolves itself in order to submit to a foreign dominion. I submitted to the society as it then was, to live in that society as the member of a sovereign state, and not in another: I am bound to obey it, while it remains a political society: but when it divests itself of that quality in order to receive its laws from another state, it breaks the bond of union between its members, and releases them from their obligations.

§196. These compacts annulled by the failure of protection. When a nation has placed itself under the protection of another that is more powerful, or has even entered into subjection to it with a view to receiving its protection,—if the latter does not effectually protect the other in case of need, it is manifest, that, by failing in its engagements, it loses all the rights it had acquired by the convention, and that the other, being disengaged from the obligation it had contracted, re-enters into the possession of all its rights, and recovers its independence, or its liberty. It is to be observed, that this takes place even in cases where the protector does not fail in his engagements through a want of good faith, but merely through inability. For the weaker nation having submitted only for the sake of obtaining protection,—if the other proves unable to fulfil that essential condition, the compact is dissolved;—the weaker resumes its right, and may, if it thinks proper, have recourse to a more effectual protection.² Thus the dukes of Austria, who had acquired a right of protection, and in some sort a sovereignty over the city of Lucerne, being unwilling or unable to protect it effectually, that city concluded an alliance with the three first cantons; and the dukes having carried their complaint to the emperor, the inhabitants of Lucerne replied, “that they had used the natural right common to all men, by which every one is permitted to endeavour to procure his own safety when he is abandoned by those who are obliged to grant him assistance.”³

§197. Or by the infidelity of the party protected. The law is the same with respect to both the contracting parties: if the party protected do not fulfil their engagements with fidelity, the protector is discharged from his; he may afterwards refuse his protection, and declare the treaty broken, in case the situation of his affairs renders such a step advisable.

§198. And by the encroachments of the protector. In virtue of the same principle which discharges one of the contracting parties when the other fails in his engagements, if the more powerful nation should assume a greater authority over the weaker one than the treaty of protection or submission allows, the latter may consider the treaty as broken, and provide for its safety according to its own discretion. If it were otherwise, the inferior nation would lose by a convention which it had only formed with a view to its safety; and if it were still bound by its engagements when its protector abuses them and openly violates his own, the treaty would, to the weaker party, prove a downright deception. However, as some people maintain, that, in this

² We speak here of a nation that has rendered itself subject to another, and not of one that has incorporated itself with another state, so as to constitute a part of it. The latter stands in the same predicament with all the other citizens. Of this case we shall treat in the following chapter.

³ See [[Watteville *The History of Switzerland* the first edition is titled *Les historiens de la Suisse*.—The United Provinces, having been obliged to rely wholly on their own efforts in defending themselves against Spain, would no longer acknowledge any dependence on the empire, from which they had received no assistance. GROTIUS, *Hist. of the Troubles in the Low Countries*, B. xvi. p. 627. Note added in 1773/1797 editions.

case, the inferior nation has only the right of resistance and of imploring foreign aid,—and particularly as the weak cannot take too many precautions against the powerful, who are skilful in colouring over their enterprises,—the safest way is to insert in this kind of treaty a clause declaring it null and void whenever the superior power shall arrogate to itself any rights not expressly granted by the treaty.

§199. How the right of the nation protected is lost by its silence. But if the nation that is protected, or that has placed itself in subjection on certain conditions, does not resist the encroachments of that power from which it has sought support,—if it makes no opposition to them,—if it preserves a profound silence, when it might and ought to speak,—its patient acquiescence becomes in length of time a tacit consent that legitimates the rights of the usurper. There would be no stability in the affairs of men, and especially in those of nations, if long possession, accompanied by the silence of the persons concerned, did not produce a degree of right. But it must be observed, that silence, in order to shew tacit consent, ought to be voluntary. If the inferior nation proves that violence and fear prevented its giving testimonies of its opposition, nothing can be concluded from its silence, which therefore gives no right to the usurper.

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