

hand, the war is to be carried on between them in the same manner as between two different nations; and they are to leave open the same means of preventing enormous violences, and restoring peace. But when a nation becomes divided into two parties, absolutely independent, and no longer acknowledging a common superior, the state is dissolved, and the war, betwixt the two parties, in every respect is the same with that of a *public war between two different nations*. The obligation therefore of observing the common laws of war is absolute, indispensable to both parties, and the same to which the law of nature obliges all nations to observe between state and state."—If the opposition by force, therefore, of the colonies (now United States) from the 19th of April, 1775, to the 4th of July, 1776, may be properly called a *civil war*, we wish to know what rights the people of America could acquire or be entitled to in consequence of it. The learned Rutherford informs us, "nature has made such a connection between mankind, as obliges them to abstain from what is productive of harm to one another, and to do what is productive of mutual good. This connection is the foundation of the law of nature, which may be traced out from the principles of reason. By the law of nations is meant such rule, as nations or civil societies are obliged to observe in their intercourse with one another. The matter of both these laws (i. e. the law of nature and of nations) is the same; the law of nations, as well as the law of nature, commands whatever is beneficial, and forbids whatever is hurtful to mankind in general. But whilst the matter of them is the same, the objects of them are different; the law of nature considers mankind as individual persons; the law of nations considers them as formed into collective persons. Thus the same law, which is called the law of nature, when it is applied to separate and unconnected individuals, is called the law of nations, when it is applied to the collective bodies of civil societies considered as moral agents, or to the several members of civil society considered, not as distinct agents, but as parts of these collective bodies. The law of nature is not the only measure of the obligations that nations may be under towards one another, they may bind themselves to one another by particular compacts, or treaties, to do or to avoid what the law of nature has neither commanded nor forbidden, these obligations arise from immediate and direct consent, and extend no further than to those nations, that by their own act of immediate and direct consent, have made themselves parties to them. War of all sorts is governed by the law of nature only, whether it is a solemn one, between nations, or a civil one, between different parts of the same nation. No right, therefore, either to corporeal, or to incorporeal things, can be acquired by taking them in war, unless it is acquired by the aid of the law of nature. War is only the use of force, the mere taking of a thing in war can give us no right to it, because by the law of nature no effects of right are produced by mere force."

It may now be proper to enquire into the law of nature. "The law of nature has provided a remedy against injuries in the equality of nature: any person, who is either in danger of suffering an injury, or has actually suffered one, may make use of force either to defend or to redress himself.

"Every man has naturally a right to think and to act for himself. The law of nature prohibits him from doing what is unjust, and by the same law of nature he is obliged to advance the happiness of mankind, as he has ability and opportunity; but it leaves him to judge in what instances, and by what means he will do it. The law of nature considers all mankind as one great society, and obliges them in this view not to hurt one another, and mutually to do for one another all such kind offices as are in their power.

"Every man has naturally a right to make use of his own force, either for his own defence, when he is in danger of being injured, or to obtain reparation, and to inflict punishment, when he has been injured.

"If any person has injured us, by taking from us what is our own, or by withholding from us what in strict justice is due to us; the law of nature not only allows us to make reprisals, by seizing upon so much of his goods, as is equivalent to what we have lost, where we cannot recover the very thing itself; but it gives us property likewise in the goods so taken. Besides the person who immediately does the injury, others may be so concerned in it, as to be under an obligation with him of making good the damages arising from it."

"The several members of a civil society are parties by the law of nations in any injury that the society does: for this law considers such a society as one collective person: and consequently an injury, which is the act of this collective person, must in the view of this law be the concurrent act of its several parts or members."

From the above it is manifest, that if the war is considered as a *civil war* from the 19th day of April, 1775, to the 4th day of July, 1776, and the nation of Great-Britain was the aggressor, she is, and the individuals of that nation are, by the principles of justice, the law of nature and of nations, answerable for any damage this state or any of its citizens hath sustained in consequence of the war. The law of nations, as to property taken from an enemy, applies to *civil wars* as well as *public wars* between independent nations; there is in reality no distinction, and this is declared by Vattel, Rutherford, and Burlamaqui.

By the declaration of independence, this state became a sovereign and independent state, and as such entitled to every benefit which any nation can claim by the law of nations. Rutherford informs us, "In a war which is internally just, as a nation may take the persons, so likewise it may seize upon the goods of the enemies, either moveable or immovable, as far as such seizure is a necessary means of bringing them to do what is right; but what is seized only for this purpose does not become the property of the captors: the possession is just, till the purpose for which the goods were taken is answered; but as soon as the claims of the injured nation are satisfied, the justice of the possession is at an end.

"There are however three ways, by which a nation in a *just war* may acquire property in the goods which it takes from its enemies. First, a nation that has been injured, has a right to reparation of damages. Reparation is made according to the law of nature, not only by recovering the thing, which we are unjustly deprived of, but likewise, where the very thing cannot be had, by recovering an equivalent out of the goods of the person who has deprived us of it. And, by the law of nations, this right to obtain an equivalent extends to the goods of all; who are members of the nation that has done the injury; not because the goods