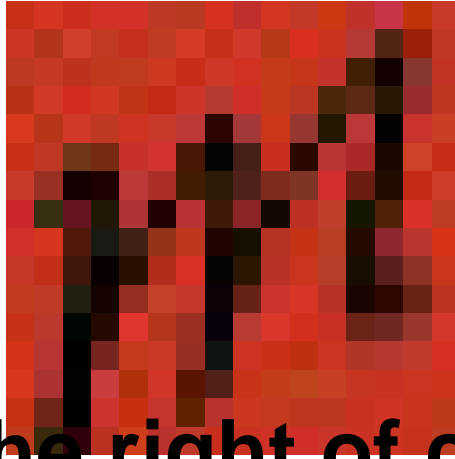


<http://montesquieu.ens-lyon.fr/spip.php?article2710>



X.3 On the right of conquest

- The Spirit of Law - Book X. On the laws in their relation to offensive strength -

Publication date: mardi 4 septembre 2018

Copyright © Montesquieu - Tous droits réservés

From the right of war derives the right of conquest, which is its consequence ; it ought then to follow its spirit.

When a people is conquered, the conqueror's right over it follows four kinds of laws : the law of nature, which makes everything tend to the preservation of species ; the law of natural reason, which would have us do unto others as we would have them do unto us ; the law that forms political societies, which are such that nature has not limited their duration ; and finally the law derived from the thing itself. Conquest is an acquisition ; the spirit of acquisition brings with it the spirit of preservation and use, and not that of destruction.

A state which has conquered another treats it in one of the following four ways : it continues to govern it according to its own laws, and assumes for itself only the exercise of the political and civil government ; or it gives it a new political and civil government ; or it destroys the society and disperses it among others ; or finally it exterminates all the citizens.

The first manner is in keeping with the law of nations which we follow today ; the fourth is more in keeping with the Romans' law of nations, on which point I leave you to judge how much better we have become. We must here render homage to our modern times, to present reason, to today's religion, to our philosophy, to our morality.

The authors of our public law, based on old histories, having gone beyond rigid cases, have fallen into great errors. They have ventured into arbitrariness ; they have assumed that conquerors have I know not what right to kill, which has led them to deduce consequences as dreadful as the principle, and establish maxims which conquerors themselves, when they have had the least good sense, have never adopted. It is clear that once the conquest is accomplished, the conqueror no longer has the right to kill, since he is no longer in the situation of natural defense and his own preservation.

What made them think this way is that they believed the conqueror had the right to destroy the society, whence they concluded that he had the right to destroy the men who make it up, which is a consequence falsely deduced from a false principle. For it would not follow from the annihilation of the society that the men who compose it should also be annihilated. Society is the union of men, and not the men ; the citizen can perish and the man remain.

From the right to kill in conquest politicians have deduced the right to reduce to servitude : but the consequence is as ill-founded as the principle.

There is no right to reduce anyone to servitude except when it is necessary for the preservation of the conquest. The object of conquest is preservation ; servitude is never the object of the conquest ; but it can come about that it is a necessary means for achieving preservation.

In that case, it is contrary to the nature of the thing for that servitude to be permanent. The enslaved people must be able to become subjects. Slavery in conquest is an accidental phenomenon. When, after a certain time, all the parts of the conquering state have bound themselves to those of the conquered state – through customs, marriages, laws, associations and a certain conformity of mind – the servitude must end. For the conqueror's rights are founded only on the absence of these things, and the aversion of the two nations, which keeps each from placing any trust in the other.

Thus, the conqueror who reduces a people to servitude must always reserve the means (and those means are multiple) of ending it.

X.3 On the right of conquest

These are not vague things I am saying. Our forefathers who conquered the Roman empire did just that. The laws they made in the heat, the action, the impetuosity, and the arrogance of victory were later attenuated ; their laws were harsh, and they made them impartial. The Burgundians, the Goths, and the Lombards wanted the Romans to be forever the defeated people ; the laws of Euric, of Gundobad, and of Rotharis made compatriots of the barbarian and the Roman. [\[1\]](#)

[\[1\]](#) See the code of barbarian laws and Book XXVIII below.