

INTERNATIONAL LAW;

OR,

R U L E S

*Regulating the Intercourse of States*

IN PEACE AND WAR.

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By H. W. HALLECK, A. M.,

AUTHOR OF "ELEMENTS OF MILITARY ART AND SCIENCE," "MINING LAWS OF  
SPAIN AND MEXICO," ETC.

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state were organized into territories, with new territorial governments, which took the place of those organized during the war, and existing on the restoration of peace. (*Campbell v. Hall*, 1 Cowper Rep. p. 204; *U. S. Statutes at Large*, vol. 9, pp. 446, 452, 453; *Cross, et al., v. Harrison*, 16 Howard Rep., p. 164; *Dunlop, Digest of Laws of U. S.*, pp. 1238-1250; *Brightly, Digest of Laws of U. S.*, pp. 105, 693, 890; *Story, On the Constitution*, b. 3, ch. 31, § 668; *Dred Scott v. Sandford*, 19 How. Rep., p. 393.)

§ 17. It seems to be a well established rule of the law of nations, that, on the cession of a conquered territory by a treaty of peace, the inhabitants of such territory are remitted to the municipal laws and usages which prevailed among them before the conquest, so far as not changed by the constitution or political institutions of the new sovereignty, and the laws of that sovereignty which *proprio vigore* extend over them. This leads us to enquire, *first*, whether the municipal laws in force prior to the conquest, and suspended or changed during the war, are revived *ipso facto* by the treaty of peace; and *second*, what laws of the new sovereignty are considered as extending over the acquired territory immediately on its cession, and without any special provisions to that effect, either in the laws themselves, or as enacted by the legislative power. It has already been shown that, according to the decision of the English courts, the laws of the conquered territory must be subordinate to the British constitution, as the king himself cannot there establish laws, or confer privileges contrary to fundamental principles. And there can be little doubt that the federal constitution is extended over conquered territory which, by confirmation or cession, becomes a part of the United States. It is true that the territory acquired as a *conquest* is to be preserved and governed as *such*, until the sovereignty to which it has passed, legislate for it, or gives it the authority to legislate for itself. In conquests made by England, this may be done by the commands or letters-patent of the king, and in those made by the United States, by the law of congress. In the former case, the local government acting under royal authority, represents the crown, and must act in subordination to parliament, and the fundamental principles of the British

constitution. In the latter case, the local government, acting under the direction of the president, represents the sovereignty of the United States, to which the territory has passed. And, as that sovereignty is the United States, under the federal constitution, no powers can be exercised in that territory, either by the president, or by congress, which are opposed to the federal constitution, and it necessarily follows that the inhabitants of such territory, acquire, immediately on its becoming a part of the United States, the privileges, rights, and immunities guaranteed by the constitution. They do not, indeed, thereby acquire the political rights of *citizens*, entitling them to vote for representatives in congress, or to sue and be sued in the federal courts; but they thereby become privileged as subjects of the United States, and no powers opposed to the federal constitution can be exercised over them; they owe an allegiance to the government of the United States, and are entitled to its protection. (*Calvin's Case*, Coke Rep., part 7; *Campbell v. Hall*, 1 Cowper Rep., p. 204; *Cross, et al. v. Harrison*, 16 Howard Rep., p. 165; *Dred Scott v. Sandford*, 19 Howard Rep., p. 293.)

§ 18. We have already remarked, that the relations of the inhabitants of the conquered territory, *inter se*, are not, in general, changed by the act of conquest and military occupation; nevertheless, that the conqueror, exercising the powers of a *de facto* government, may suspend or alter the municipal laws of the conquered territory, and make new ones in their stead. Such changes are of two kinds, viz: those which relate to a suspension of civil rights and civil remedies, and the substitution of military laws, and military courts and proceedings; and those which relate to the introduction of new municipal laws, and new legal remedies and civil proceedings. There can be no doubt that when the war ceases, the inhabitants of the ceded conquered territory cease to be governed by the code of war. Although the government of military occupation may continue, the rules of its authority are essentially changed. It no longer administers the laws of war, but only those of peace. The governed are no longer subject to the severity of the code military, but are remitted to their rights, privileges, and immunities, under the code civil. Hence, any laws, rules, or regulations introduced by