A STUDY ON THE TRANSLATION OF *ELEMENTS OF INTERNATIONAL LAW* BY W.A.P. MARTIN

丁译《万国公法》研究

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ABSTRACT

Wanguogongfa (1864) was a legal work translated from Henry Wheaton's *Elements of International Law* (1855) by an American missionary W.A.P. Martin. The first one ever of its kind, *Wanguogongfa* played a crucial role in ushering late-Qing China into the community of western international legal system. Despite abundant research from historical and legal perspectives, discussion based on text analysis is still lacking. In order to align and compare the ST's legal English and the TT's classic Chinese more accurately, the research introduces the unit of "phrase" and modifies Leuwen-Zwart's translational shift model. A parallel corpus has also been set up to look into the "fullness" of ST and TT in terms of moral reasoning reconstruction under the framework of norm study as raised by Gideon Toury. After investigating features of differences on text and paratext levels, it is found that omission and addition of facts, together with the simplification of logic in the TT lead to the change of text type from expositon to instruction, reshaping the narrative distance. Finally, concepts from Niklas Luhmann's Social Systems Theory such as "system", "communication", "autopoesis" and "second-order observation" are applied to tentatively explain the translational phenomenon in its social context, thus depicting the norms of translation in the 19th century Imperial China across languages and cultural boundaries.

Key Words: *Wanguogongfa*, parallel corpus, Social Systems Theory, DTS

摘 要

《万国公法》（1864）一书由美国传教士丁韪良译自亨利•惠顿的《国际法原理》（1855），标志了中国被纳入国际法体系的开端。现有研究多关注其史学和法学贡献，在翻译研究领域对文本规范进行描写的研究尚未展开。通过借鉴兹瓦特提出的翻译迁移模式，本研究引入“句段”概念，完善了从英文到文言文的双语文本对比模式，并以此为出发点建立了原作和译作的平行语料库。随后结合伦理论证模式，从事实、逻辑和利益关系的再现三个方面考查母体规范完整度在文本和副文本特征中的再现，本研究发现：译本的改写主要体现在事实的删节、逻辑的简化以及与读者关系预设的重置上，这导致了文本类型从“论述型”到“指导型”的转变。随后，通过运用社会系统论中“系统”、“沟通”、“自我再制”和“二阶观察”等概念，本研究将该翻译现象置于社会文化场景中，提出“翻译作为沟通”的研究范式，对 19 世纪中国法律文本的翻译策略及翻译目的做出了历史化和语境化解释。

关键词：《万国公法》，平行语料库，社会系统论，描写翻译研究

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目 录

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第一章 绪论

《万国公法》（1864）一书由美国传教士丁韪良(W.A.P.Martin)译自惠顿(Henry Wheaton)的著作《国际法原理[1]》(Elements of International Law)（1855），随后于 1864 年 8 月 30 日在北京崇实馆由清政府出资刊刻。作为中国系统构建国家法体系历程的开端，其出版既标志着清政府主动输入西方法学的正式开始，亦意味着中国被逐步纳入国际法体系。有学者指出，《万国公法》是中国最重要的公法著作之一，是“中国封建王朝引进的第一部系统的西方国际法著作”（王健，2001：151）。

本研究主要以《国际法原理》（原作）与《万国公法》（译作）的对比为研究重点，结合量化和质化分析，重现清末时期国际法译者在特定历史政治背景下采用的翻译策略，在描写规范的基础上，运用社会学理论解释策略背后的社会政治操纵机制。本章围绕以下几个问题展开：

第一、 选择和研究该文本的目的

第二、 研究范围的确定

第三、 现有的研究成果以及需要完善和补充的地方

第四、 该研究对于法律翻译研究的意义

1. 文本背景与研究动机

《万国公法》的重要，在于其引介国际法的全面性和系统性。在此之前，西方国际法在中国的引入都是零散和片段性的。如 1648 年左右，意大利神甫卫匡国(Martino Martini，1614～1661)曾将西班牙法学家苏亚雷斯

[1] 田涛在《丁韪良与万国公法》一文中，将此书译为《国际法精义》（1995：107-112）。

(Francisco Suarez，1548～1617)国际法著作的部分译成中文(白佐良，1994：61；费赖之，1997；方豪，1948)[2]；1689 年葡萄牙耶稣会传教士徐日昇（Tomás Pereira, 1645～1703）在中俄尼布楚条约谈判中充当中国代表团译员，其日记中多次提到国际法（约瑟夫•塞比斯，1973：114-115)；法国天主教传教士张诚（Gerbillon, Jean Francois, 1654-1707）同样参与了该谈判，并在缔约过程中体现了国际法的运用，推动了中俄尼布楚谈判的完成（张诚，1973)。据参与中俄尼布楚谈判的张诚日记[3]（1689 年 8 月 22 日)，“我们的钦差大臣们是从来没有与任何别的国家进行过缔约谈判的，[……]而且他们对于国际公法完全陌生,不懂得特命使节的性质可以使他的人身成为不可侵犯的,保障他即使面对最大的仇敌也不致受到欺侮”（张诚，1973，29-30)。徐日昇则记载:“在每个细节上，即条约的写制、签署、盖印和互换，都严格遵守了国际惯例，以至于在条约中加入法令，这是自威斯特伐利亚和约以来条约中都曾使用的办法。条约的正式文本使用了拉丁文，又是另一证明”（ 约瑟夫•塞比斯，1973：116)。

此后，1839 年，伯驾和袁德辉曾应钦差大臣林则徐的要求，把瑞士法学家瓦泰尔（1714～1767）的《万国法》一书关于战争和外国人待遇的几段译成汉文，称为《各国律例》；林则徐发表在《中国丛报》上的《林则徐致英女王书》(1839)一文中，亦引用了《各国律例》第 249 条第 4 款“守法”中有关“往别国，遵该国禁例，不可违犯，必罚以该国例也”的属地管辖原

[2] 不过，曾涛（2008）指出，“无论从现今留存的出版物，还是学者整理的相关书名，均无法找到卫匡国所译该书的出版记录。有翻译的记述却无出版记录，造成长期以来学界对此事件认定不易。如程鹏（1989）就考证，基于并无确切的出版证据反映出该著作被译成中文，此事件不能被认为是西方国际法的最早传入。考虑到苏阿瑞兹时为著名的神学教授及国际法学者，有些来中国的传教士甚至在他任教过的葡萄牙大学学习过，因此，尽管这一说法并无任何直接资料证实，王铁崖（1998：374）认为这种说法是有可能的。”

[3] “The Second Journey of The Pp. Gerbillion and Pepeyra into Tartary, in 1689”，in J. B. Du Halde, *Description G'eographique, Historique,Chronologique, Politique et Physique de L'Empire de La Chine et de La Tartaric Chinoise*.1735.

则，要求英方交出在中国贩卖鸦片的嫌疑人[4]。以上国际法的知识在国际交往中不过是用作临时应急。

《万国公法》则带来了完整的知识体系，其构成包括四卷，分别为“释公法之义，明其本源，题其大旨”、“论诸国自然之权”、“论诸国平时往来之权”以及“论交战条规”，既有对国际法来源的考查，又有对自然法理念的阐述，同时还包括和平和战争时期国家间交往规则。这成为了清政府对外交往时的依据，亦担负了整个国际法系统在同治中兴时期的启蒙任务。

促成《万国公法》问世的力量来自三方面：清政府的需求、以美国政府为首的国际势力的推动，以及以丁韪良为代表的宗教团体的诉求。

首先，该书的译成来自清政府的现实需要。早在 1862 年，清政府总理衙门[5]的大臣文祥就表示，希望蒲安臣（Anson Burlingame，1820-1870）能推荐一种为西方国家公认的权威性的国际法著作[6]。蒲安臣推荐了惠顿的书，并答应翻译其中若干章节。以后，蒲安臣将此事函告美国驻上海领事乔治•西华德（George Seward，1840-1910），后者即告知丁韪良正在翻译惠顿国际法著作一事。1863 年 11 月，在蒲安臣的引荐下，惠顿向总理衙门的大臣们展示了其未完成的译稿.虽然对惠顿著作所知甚少，在与丁韪良会谈时，文祥十分关心书中是否包括有赫德（Robert Hart）曾译过的“二十四款”(全书第三卷第一章)，并表示：“这将成为我们对外派驻使节的指南[7]”（Martin, 1896:233）。

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[4] 林则徐以“各国有禁止外国货物，不准进口的道理。贸易之人，有违禁货物，格于例禁，不能进口，心怀怨恨，何异人类背却本分”，认为身为主权国家的中国有权禁止鸦片进口。他在信中责问道：“弼教明刑，古今通义，譬如别国人到英国贸易，尚需遵英国法度，况天朝乎！今定华民之例，卖鸦片者死、食者亦死。试思一人若无鸦片带来，则华民何由转卖？何由吸食？是奸夷实陷华民于死，岂能独予以生？被害人一命者尚须以命抵之，况鸦片之害人岂止一命以乎？故新例于带鸦片来内地之夷人，定以斩绞之罪，所谓为天下去害者此也”。

[5] 1860 年 3 月，清政府设立总理各国事务衙门，简称“总理衙门”，主管外交、通商和关税等事务，后来管辖领域不断扩大，统管采买军火、建筑铁路、开采矿产、制造枪炮、开办学校、派遣留学生等诸多事务，实际上成为办理外交和总揽洋务新政的中枢。

[6] 《同治朝筹办夷务始末》第 27 卷，第 25-26 页。

[7] “[…]this will be our guide when we send ministers to foreign countries”.

其次，《万国公法》翻译与引介，不仅迎合清朝政府的需要，亦与西方势力在背后的推动紧密相关。译本的选定就是干涉结果之一。据丁韪良的说法："我本来提出打算翻译瓦泰尔的作品，但华若翰先生建议我采用惠顿氏的，他的书同样权威，且更现代一些"[8]（Martin，2004：150）。对此，刘禾解读到："华若翰的及时干预意义重大。[……]因为它代表了美国政府的官方观点[……]原作者的国籍无论如何对国际法自封的公正无私性投下一道可疑的阴影。[……]在更广泛的意义上，国际法的'作者身份'在这里显得相当关键，因为西方列强争夺的焦点之一，就是谁的国家更有资格代表普世价值"（刘禾，2009：159-160）。时任中国海关税务司司长赫德对其的支持[9]，同样具有一定的政治目的。在《译者序》中，丁指出："他[赫德]热情地欢迎一个美国教科书，并且发挥他的影响力使它得到赞许和接纳[10]"（丁韪良，1864）。对于这些需要，译者丁韪良心领神会，他提到："我花了一段时间翻译惠顿的《国际法原理》，我认为这部作品可以对我自己的事业，以及两个帝国产生一定程度的影响。其实，局势对这种书的需求早已引起我的主意[11]"（Martin，1896：221-222；参见丁韪良， 2004:150）。

迎合内外政治需要的背后，作为美国基督教长老会的传教士，丁韪良还有个人的宗教目的。1863 年，写给宁波一位长老会传教士娄理华(Walter Lowrie) 的信中，他提到："我从事这项工作，并没有得到任何人的指示，

[8] "I was proposing to take Vattel for my text, when Mr. Ward recommended Wheaton as being more modern and equally authoritative".

[9] 丁韪良的记录中曾提及赫德对其《万国公法》翻译工作的支持："赫德先生十分睿智，他早已从我提到的那些书中选出了一些段落。由于他离开北京的时候还没有见过我，我到达不久他就从天津给我写了一封信，表达了对我翻译惠顿氏法律著作意愿的支持。他鼓励我坚持下去，他保证这本书会被总理衙门接受的"（Martin，2004:159）。

[10] 该译本随后由赫德于 1865 年 5 月以同年第 7 号通令发给各口岸的海关税务司，以便使各口岸均有一册，可作参考。

[11] "I employed a portion of my time in translation Wheaton's "Elements of International Law," a work that was to exert some influence on two empires as well as on the course of my own life. The want of such a book had early forced itself on my attention,[...]."原文中的 two empires 在 2004 年中文版中被译为"中英这两个帝国"。但根据上下文，很难说作者确定的意思如此。考虑到丁本人为美国国籍，且该书来自美国，此处的"帝国"亦有可能是指"美国"（虽然美国是民主共和制国家）。

但是我毫不怀疑它可以让这个无神论的政府承认上帝及其永恒正义，也许还可以向他们传授一些带有基督教精神的东西”（Martin，1863；转引自刘禾，2009：158）。

这样做并非没有阻力。反对的声音既来自国内，也来自国外。得知丁韪良从事的翻译工作后，法国使馆代办（the French *Charge d’affairs*）哥士奇（Klecskowsky）对蒲安臣说道：“那个让中国人了解我们西方国际法秘密的人是谁？杀死他！-- 绞死他！他将给我们带来无数的麻烦[12]”；英国公使卜鲁斯（Sir Frederick Bruce）则对此表示欣然，他说到：“这本书会有用的，[……]可以让中国人看看西方国家也有‘道理’可讲。他们也是按照道理行事的。武力并非他们的唯一法则[13]”（Martin，1896：234）。——看似矛盾的评价反映出国际法理论中对立又统一的两面：“秘密”体现出国际法所支持的某些权利,其施行范围具有局域性；“道理”却显示出国际法价值观点的普世性。国际法既作为成文法，有既定的施行范围，又作为一种伦理原则，具有广泛的指导意义。

以丁韪良为主导的翻译团队，不可避免地要受到多重势力的牵制和影响。同时，他们也面临翻译过程中如何理解和处置国际法的两面性这一问题。由此呈现出的译本形态值得探究。

2. 研究对象

《万国公法》由《国际法原理》译入。该书由美国公法学者、法官、律师亨利•惠顿（Henry Wheaton）[14]编写，最初于 1836 年分别在英国伦敦和美

[12] “Who is this man who is going to give the Chinese an insight into our European international law? Kill him--choke him off; he’ll make us endless trouble”.

[13] “The work would do good, […]by showing the Chinese that the nations of the West has taoli [“principles”]by which they are guided, and that force is not their only law”.

[14] 惠顿于 1785 年 11 月 27 日生于美国罗得岛州普罗维登斯一个商人和银行家家庭。1802 年，毕业于当地的著名学院,即后来的布朗大学,1805 年到法国巴黎、英国伦敦等地留学，次年回国，曾在家乡任律师,1812 年移居纽约，任共和党机关报 National Advocate 的编辑，并

国费城出版，伦敦版分为 2 卷，费城版只有 1 卷，但内容基本相同。该书由惠顿基于长期从事外交官工作的经验，广泛研究欧洲大陆和美国案例材料撰写而成，且“着重于研究外交活动和案例，这就使他的著作产生了相当大的和持久的影响”(Nussbaum，1954:246)，被认为是西方权威性的国际法著作。1836 年以后，惠顿这部著作的版本被不断修订和更新，如 1846 年经修订后在费城再版（通常称为第 3 版）。1848 年和 1852 年，又在法国巴黎和德国莱比锡以法文出版（通常称为第 4 版和第 5 版）。1848 年的第 4 版是经惠顿本人修订的最后一个版本。

惠顿去世后，不断有学者对他的这本著作予以修订和增补 1855 年，由劳伦斯(William Beach Lawrence)编辑的一个版本（通常称为第 6 版）在波士顿出版。劳伦斯后来称第 6 版为“第 1 个注释版”。根据编辑者劳伦斯的说明，该版本依照原作者惠顿最后修订、1848 年在莱比锡出版的法文版为标准，同时也保留了在此前各版本中所有，但在 1848 年版中被省略的特别适用于美国的一部分内容。

1863 年，在波士顿出版了“第 2 个注释版”（通常称为第 7 版，1864 年又在伦敦重印）。

1866 年，由达纳(R.H. Dana)编辑的第 8 版在波士顿出版（1936 年，《国际法原理》作为“国际法经典丛书”的第 19 种出版时就是选用第 8 版）。该书完整的出版信息列表如下：

就 1812 年的战争，撰写过许多文章。1815 年 5 月任纽约海事法院法官,同年出版了《海上捕获法文摘 (*Digest of the Law of Maritime Captures or Prizes*)》。1816—1827 年他任美国最高法院报告员。1827 年 9 月 19 日,惠顿抵达哥本哈根,出任美国驻丹麦第一任外交代办(charge d'affaires) ,开始其外交生涯 ,1835 年转任美国第一任常驻柏林公使(Minister Resident)，两年后任普鲁士特派公使（envoy extraordinary and minister plenipotentiary to Prussia）。1847 年离职回国,曾在哈佛大学任讲师,教授国际法, 1848 年 3 月 11 日病逝于麻萨诸塞州道彻 。其生平著作中，以《国际法原理 *Elements of International Law*（1836）》最为有名。其余的还有《*Enquiry into the Validity of the British Claim to a Right of Visitation and Search of American Vessels Suspected to be Engaged in the African Slave Trade*》（1842），《*History of the Law of Nations in Europe and America, from the Earliest Times to the Treaty of Washingto*n》。后者以法语写成，1845 年在法兰西学院（French Institute）举办的竞赛中获奖（“honorable mention”）（Lawrence,1855）。

时间	版本序号	出版地点	语言	备注
1836	第 1 版	费城	英	
	第 2 版	伦敦（英）	英	
1846	第 3 版	费城	英	内容同第一版
1848	第 4 版	巴黎	法	
1853	第 5 版	德国莱比锡	法	
1855	第 6 版	波士顿	英	劳伦斯注释
1863	第 7 版	波士顿	英	
1866	第 8 版	伦敦	英	达纳编辑
1936	百年纪念版	纽约		内容同第八版

表 1-a：《国际法原理》的版本列表

《国际法原理》还被翻译成其他多种文字，1854 年在墨西哥出版了西班牙文版，1860 年在那不勒斯出版了意大利文版，然后是在中国和日本出版的《万国公法》(张用心，2005)。对于中文译本出自哪一个版本的《国际法原理》，学界曾有一些误解（何勤华，2002：6；刘禾，2009：182)。其实，在此之前，就有学者指出，1855 年的版本才是原本（张嘉宁，1991；林学忠，1994；林学忠，1995)。研究汉语国际法学术用语的挪威汉学家鲁纳(Rune Svarverud)向王健“提供了有关最早的国际法汉译本对应的西文原本复印件”，王健“取之（《国际法原理》1855 年的第 6 版）与丁译（万国公法》比对核查”，证实“其两相呼应”，并在其著作中列出“《万国公法》篇目英文对照表”（王健，2001：4)。随后多位学者认定，《万国公法》所使用的原文版本，即为 1855 年的《国际法原理》(张用心，2005；傅德元，2008)。

《万国公法》本身也有数个版本。邹振环认为《万国公法》“先后有同文馆本、石印本、西学大成本等，被各地新学学堂采纳为法律课本。曾出现过许多私刻本与盗印版”(邹振环，1989)。田涛考证出：《万国公法》最初出版时有两个版本，一为刻本，一为活字本；刻本扉页上印有‘同治三年岁在甲子孟冬月镌’（即 1864 年 11 月）和‘京都崇实馆存版’字样以及张斯

桂一篇序文，活字本则并未说明印行时间和地点，且收有董洵和张斯桂两篇序文；刻本的印行似应早于活字本；上述版本均无英文序言，可见丁韪良只是印行部分《万国公法》时在卷前使用了英文序言，以送给在华外人和部分美国政府官员（田涛，1999)。对此，张用心（2005）指出:《万国公法》的出版机构是京都崇实馆，所谓《万国公法》“为同文馆译制”，是沿袭多年的错误；“复旦大学收藏的私刻本”，其“序页”上印有“京都崇实馆存版”字样，并不是真正的崇实馆本，而很可能是后来“盗印版”。

总的来说，除了英文序的有无之外，以上中文版本在正文内容上的差异不大。

直到 2002 年，上海书店出版社出版了《万国公法》平装版，2003 年中国政法大学出版社出版了点校本（以下简称“点校本”），对其做了繁体到简体，竖排到横排的处理。后者附加了注解和前言。经本研究者对比，两个版本仅在标题用语方面略有出入。上海书店版尽量依照了 1864 年版的版本排列，点校本则对原来的版本进行了一定调整和修订，如正文和目录中标题不一致的地方，点校本均按照正文，在目录中予以了更正。原文中所使用的国别名称，也按照现代的专有名词习惯进行了调整。

在 2003 年点校本的基础上，本研究参考了日本早稻田大学图书馆收藏的崇实影印本（以下简称“崇实版”）。对比之下，发现 2003 年点校本的第二卷第二章第六节（2003:87）遗漏了一段之外，繁体到简体的转化过程中存在部分误差，如:

第二卷第一章第三节和第四节中的“搆兵纷纷”，实为“构兵纷纷”；

第二卷第一章第五节中的“予闻此事”（2003：62)，查崇实版，实为“预闻此事”；

第二卷第一章第九节的“血流汗杵”为“血流漂杵”之误；

第二卷第二章第十四节中，“循庇其人”，实为“徇庇其人”（2003:112）；

第二卷第二章第二十一节，“公师多以他国亦当树为已断”，应为“视为已断”（2003:121）；

第三卷第一章第十一节“荏任之规”中的“随从员并”，实为“随从员弁”（2003:147）；

第三卷第二章第九节“与之仅废”是“与之俱废”的失误（2003:165）；

第四卷第一章第三节中“则在我师出有名，非领武矣”之中的“领武”二字，实为“黩武”(2003:179)

第四卷第一章第十六节中的“家货”为“家赀”（2003:191），第十七节“经某船捕拿”应为“经英船捕拿”；

第四卷第三章第二十九节“将何所传恃而行耶”为“将何所倚恃而行耶”之误；

不一而足。另有一些排版错误，如第二卷第一章第六节的“西 1 牙”，实为“西班牙”。校订后的中文简体版见参考文献后的附录。

此外，2003 点校本在段落分割、标题位置等方面因采用的是 1836 年版本，与 1855 年的英文原本有所差异。如第三卷第三节“何等之国可以通使”的最后一句“遣使、接使，其职属国内何部，仅归其国法自定”，应为第四节“国乱通使”的首句（Martin, 2003:142-143）。

鉴此，除《国际法原理》各个版本(以 1836、1855 和 1866 年版为主)和《万国公法》崇实版之外，本研究主要使用的“文本内（textual material）”材料（Toury, 2001:65）为研究者自行建立的一个小型平行语料库，由校订过的中文与英文对照版构成。详见附录。

“文本外（extratextual）材料”（Toury, 2001:65）则包括惠顿在写作《国际法原理》之前的部分著作，丁韪良所著的《*The Circle of Cathy*（花甲忆记）》、《*The Lore of Cathy*（汉学菁华）》《*Hanling Papers*(翰林文集)》。与丁韪良生平以及《万国公法》有关的研究文章、清末与国际法传播相关的档案记载等。为考察译者的翻译思想，《万国公法》出版前后，丁韪良任教同文馆期间编译的国际法译作，如《公法便览》、《邦交提要》等书的序言和凡例等，亦在考察范围之内。

就译者而言，虽然现有研究多将《万国公法》的译者简略归为丁韪良一人，参与全书定稿的中国助手其实达八名之多。对此《凡例》有所说明:“是书之译汉文也，本系美国教师丁韪良。视其理足义备，思于中外不无裨益，因与江宁何师孟、通州李大文、大兴张炜、定海曹景荣略译数卷，呈总理各国事务衙门批阅。蒙王大臣派员校正底稿，出资付梓”(丁韪良，1864)。除了参与翻译的同文馆学生何师孟、李大文、张炜和曹景荣四人之外，户部尚书董恂的《万国公法序》提到：“此丁韪良教师《万国公法》之所由译也。韪良能华言，以是书就正，爰属历城陈钦、郑州李常华、定远方浚师、大竹毛鸿图，删校一过以归之”。恭亲王的奏折亦提及，“另有总理各国事务衙门的章京陈钦、李常华、方浚师、毛鸿图等四员等润色之后，予以印行”（弈訢，1863）。可惜当时的翻译底稿并不见于史料，加上相关人物资料多已佚失，无法确定翻译和修订过程中各人具体的角色和分工。鉴于本文研究的是清末社会政治背景下，国际法译作作为翻译的性质，译者的团队均遵循同样的社会和文本规范，因而删除的决策者在本文中被当做一个整体来看待[15]。

除了这八位中国助手，任职海关总署的赫德亦可能对译本的成稿有所贡献。根据 1863 年 7 月 14 日赫德日记，其中提到：“董、薛、恒祺和崇纶都

[15] 笔者有时会使用“译者丁韪良”这样的说法。在没有特殊注明的情况，该名称意指“丁韪良以及翻译团队”。

来到后，我们便开始议事[……]他们急于要我把惠顿的国际法至少是其中有些对他们可能有用的部分译成中文。[……]从卜鲁斯先生处借到了惠顿法”，次日则记载道：“整天大部分时间在家，忙于写一部关于出入上海的各种土产品的小志。还为惠顿氏国际法写一个摘要，准备译成汉语”（赫德，2004：375）。随后的两个月中，他数次提到从事的翻译工作，目的是供“总理衙门各位启蒙”[16]（赫德， 2004：379），但他的翻译以节录为主。具体内容有“公使权利”（赫德， 2004:380）和海事法规中的‘补偿’和‘捕获奖金’”[17]（赫德，2004：386）。其结果是，8 月 7 日，他“3 点去总理衙门，带着惠顿国际法内有关条约一章的译稿，董毫无困难就看懂了”（赫德，2004：387）。这一成功，“为赫德的朋友、传教士——翻译者丁韪良于 11 月被介绍到总理衙门铺平道路”（凯瑟琳等，2004：361）。根据赫德的说法，到了后来，“董给我一本我摘译的惠顿国际法，竟然已经是厚厚一大册了”（8 月 17 日日记）（赫德，2004：391）。

虽然无法确认赫德的译稿在多大程度上给丁韪良提供了帮助，甚至是否充当了部分底稿，可以肯定的是赫德积极筹划和运营了译本的赞助工作。1864 年 7 月 17 日的赫德日记记载了丁韪良的来访：“他指给我看他的‘惠顿’译文第 1 页：我告诉他，如果他要 500 两以上，我可以给他设法，为了他的任务，我将促使政府认可他的服务，批准给他一笔钱。他看来似乎很满意。（赫德, 2005:233-234）8 月 20 日的日记中则记载道：“另一封公函，指示从总署十分之三的船钞中付给丁韪良 500 两，刊印他的惠顿《万国公法》

[16] 1863 年 7 月 16 日，他记述自己“进行了惠顿法的翻译工作”（2004:376）。7 月 23 日和 24 日的日记中则有“把我为即将译成中文的惠顿发中的一段写的引言译成中文。此段是供总理衙门各位启蒙之用的”以及“整天未外出：把惠顿国际法的说明译成中文”（赫德，2004：379）的记录。

[17] 7 月 25 日其工作是“校审了惠顿国际法 20 段，都是关于公使馆权利的”（赫德，2004：380）；7 月 26 日“译惠顿法：公使权利部分译毕“。27 日则记录到：“今天把惠顿国际法的译件读了一遍，其他什么也没有干。他们说对译文很欣赏——特别是那引言部分”（2004：381）。8 月 3 日，补充：“今天又译了一些惠顿国际法”（2004：385）；8 月 5 日又记载到“整天未出门，忙于译惠顿国际法。把海事法规中的‘补偿’和‘捕获奖金’等二章译成中文”（2004：386）“整天在家，忙于‘惠顿’和‘美国领事手册’”（2004：386）。

译本”（赫德，2005：236）。—— 赫曼斯曾指出:“原作及其译本之间的关系清晰地反映出一个国家和另一个国家之间的关系”(Hermans, 2004:95)。作为赞助商之一，美国人赫德的政治观点及对国际法的看法在目标语文本上亦将有所体现。

事实上，鉴于现有史料的缺乏，任何希冀在译本合作过程中将丁韪良作为译者独立出来的决定都是不明智的。正如图里所说：“我们永远无法知道有多少人参与翻译过程，扮演何种不同的角色。不管人数多少，惯例是将功劳全部归之于一人，代表他们全体，被称为‘译者’”[18]（Toury,2001:183）。与其将研究焦点集中在某一位译者(如丁韪良)的主观思想以及写作风格上，不如将译本视作当时的社会环境下的共同决定的产物。通过译本的客观特征的分析归纳，印证当时的政治风貌。因此，与当时社会政治环境相关的史料，包括赫德在内的历史人物资料，一并包括在本研究的考察范围之内。

3. 现有研究成果探討

《万国公法》在亚洲的影响深远。其出版后仅一年，中文抄本传到日本的京都。1865 年“由东京开成所复刻出版。以后在各地出现了许多版本，包括注有日本假名和标点的版本，成为维新初期决定开国方针的重要参考书籍，被广泛地当作经典权威著作阅读[19]”（日本国际法学会，1985：23；程鹏，1989）。明治五年（1872 年）日本公布新学制时，《万国公法》还被指

[18] “There is no way of knowing how many different persons were actually involved in the establishment of a translation, playing how many different roles. Whatever the number, the common practice has been to collapse all of them into one persona and have that conjoined entity regarded as ‘the translator’; […]”

[19] 该书在日本除了庆应元年（1865 年）、四年（1868 年），明治四年（1871 年）、八年（1875 年）、十四年（1881 年）、十九年（1886 年）的翻刻本外，还有堤士志的《万国公法释义》（四册，1868 年京都）、瓜生寅根据英文原文校译的《交道起源》（又名《万国公法全书》，1868 年）、重野安绎译述的《和译万国公法》（1870 年鹿儿岛藩）以及高谷龙州注解、中村正直批阅的《万国公法蠡管》（1876 年东京府）等各种不同形式的译、注本出版。总之，明治初期《万国公法》的各种节译、全译的日译本多达数十种(王健，2004)。

定为法学教科书（王健，2002）。不仅在中国和日本，甚至意大利、比利时、美国等地，均有不少学者撰文，对此进行研究和评述。

现有研究可分为：（一）对版本的考证；（二）对译者生平及著作的考据；（三）法学概念的移植；（四）词汇与语义学的考据；以及（五）译本的传播及影响。

关于版本的考证上一节已经谈及，此处不赘。

丁韪良著述颇丰，译作迭出，至于对译者生平及著作的考据研究，：国际法方面，有《公法便览》《星轺指掌》等；学术思想方面，有《汉学菁华》、《翰林文集》等；文学方面，有自述《花甲忆记》等；他还作为主编，参与出版了《新学月报（尚贤堂月报）》等刊物。对其生平以及思想追溯的研究因而较为丰富。如王维俭在 1984 年在《中山大学学报》发表了《丁韪良和京师同文馆》，对其生平和学术贡献做出述评（另见孙邦华，1999；高黎平，2005；韩礼刚，2005），《花甲忆记》的译者沈弘（2002）则撰文肯定了作为京师大学堂的首任“校长”在中国教育史上的地位（另见陈平原，1998；孙邦华，2000）。王文兵（2008）通过《此<花甲忆记>非彼<花甲忆记>丁韪良 A Cycle of Cathay 中译本勘误补正》一文考证了丁韪良的传记版本，厘清了现有的误解。至于其对国际法体系的推动，继田涛（1999）发表了《丁韪良与<万国公法>》一文后，邹磊（2009）肯定了丁韪良通过附会“中国古世公法”，置换中国传统的“世界图景”，以将中国纳入到正在扩展的资本主义世界体系的努力。此外，傅德元（2010）指出丁译《富国策》将西方近代经济学理论传播到中国，王文兵、张网成的《重建与解释：丁韪良的中国历史研究述评》（2009）则从历史学研究角度解读丁韪良的成就。至于其宗教活动的记载和整理，有《丁韪良在宁波三年宗教活动述评》（王维俭，1987）和《通往基督教文学的桥梁——丁韪良对中国语言、文学的介绍和研究》（王文兵，2007）等文。目前最为全面的总结，是傅德元（2008）的《丁韪良研

究述评（1917-2008）》，该文将对丁韪良的研究分为三个阶段：1950 年以前的研究和介绍；1950-1985 年大陆学界研究概况；1987-2008 年大陆研究成果及主要观点。此外，还附有中国台湾地区、美国等地的研究情况介绍。

围绕《万国公法》中法律概念的形成，史学界和法学界学者往往根据词语的传世与否来论定翻译的“成败”。如围绕《万国公法》等书讨论研究中国国际法名词的由来，分“旧有名词”、“新创名词”、“翻译得不好或未翻译的名词”三方面进行说明（丘宏达，1968：11-13）。张嘉宁的论文则将《万国公法》的汉译与日译进行比较，指出国际法专业名词的汉译方面，《万国公法》确实有开创性的贡献，当然也存在许多的“不足”（1991：404）。徐中约在他的著作中以“原词”、“丁译”与“今译”三项列表说明，特别指出，“主权”一词的译法沿用至今，是“比较好的一个例子”（1960）。何勤华（2002：28）的点校者前言中也提到“由于受译者的法律素养和中文水平的影响，《万国公法》创造的许多概念术语对后世影响不大，许多则根本没有流传”，以上判断均以“好”、“不好”为词语标签，具规定性，有失偏颇。

词汇学和语义学方面的研究，有鲁纳（2000）、王健（2001）、刘禾（2009）、、屈文生（2010）等，集中在“right”、“权”、“权利”等词的翻译上：有学者认为“《万国公法》之后，凡丁韪良主持的同文馆翻译的公法类译书，逢对应‘Right’者，无不使用‘权利’”（申卫星，2005）；还有的发现 right 以外，“权/权利”在原文中还对应 authority, sovereignty, power, privilege 等词，但或止步于罗列现象（屈文生，2012），或简单地将归为“各种形式的‘right’”，指出翻译策略就是“以‘权’为后缀构成新词”(Masini,1993: 47；王健，2001:168)；另外，现有研究缺乏对“权/权利”一词转换过程的具体描述，如马斯尼认为：“丁韪良的译作中，该词（right）被译为‘权’，由此扩展了‘权’表示‘权力、势力’的最初含

义”(Masini, 1993: 47)，叙述略显简单化。

关于 “国际法”知识进入东亚三国的情况，徐中约(1960)、田涛(2001)与鲁纳 (Svarverud,2007)有专著论述晚清中国引介国际法的情况，刘禾(1999)则从”后殖民理论”视角进行讨论。此外，日本的尾佐竹猛(2005,转引自潘光哲，2012)、九州大学的韩相熙（2007）著有论文，斯德恩（Stern，2008）和林学忠（2009）则有专著,论述国际法概念在东亚的传播，重溯国际法体系在亚洲范围内的构建。

以上研究或以读者为导向，观察作品的影响，或以译者为导向，考察其思想的形成。以文本为导向，对清朝末年法律翻译中的翻译规范进行描写的研究几乎为空白。

就文本本身的分析和比对而言，据研究者现有的资料，仅发现日本的重野安绎（1991）、张嘉宁（1991）、陈圆（2011）和香港的林学忠（2009）对个别章节进行了比对。

以重野安绎为例，《翻译的思想》一书中收录了由他译为日文的《万国公法》第一卷第二章，同时列出英文和中文的版本作为参照（1991：4-5）。其英文段落的排版方式，是在原文中每隔 5 行以数字“1”、“5”、“10”、“15”等标记，如下：

Chapter II NATIONS AND SOVEREIGN STATES 《& 1. Subjects of International Law.》 The peculiar subjects of international law are Nations, and those political societies of men called States.	5
《& 2. Definitions of a State.》 Cicero, and, after him, the modern public jurists, define a State to be, a body politic, or society of men, united together for the purpose of promoting their mutual safety and advantage by their combined strength.	10

This definition cannot be admitted as entirely accurate and complete, unless it be	
understood with the following limitations: […]	15

表 1-b 重野安绎文本对应示例（I）

其中文版本的内容呈竖行排列的形式，同样以“1”“5”“10”“15”等序数每隔 5 行予以标记。略去译者掺杂的日语注音符号，其排版大致如下：

5	10	15
《第一节》 人成群立国 而邦国交际有事 此公法之所论也 《第二节 何者为国》 得哩云 所谓国者 惟人众相合 协力相护	以同立者也 今之公师 亦从其说 然犹属未 尽 而必限制之者 其端有四 一档除民间大会 凭国权而立者 无论其何 故而立也 即如英国 昔有客商大会 奉 君命而立 得国会申命 为通商东印度等	处 此商会 前虽行自主之权 在东方或战或 和 不待问于君［……］

表 1-c 重野安绎文本对应示例（II）

在该双语版本中，数字仅提示行序的排列，不代表中英文文本间的对应关系。

香港城市大学的林学忠博士则从文本对比的差异中发现译者对内容操控。《从万国公法到公法外交》一书中，他以第一卷第一章第一节为例，探讨了“公法”“性法”的概念与西方国际法中“international law”与“natural law”的不同（林学忠，2009：63-65）。其方法是将在意义上能

对应的句子以下划线的方式标记出来，然后分析意义的异同。但原文和译文中“剩余”的，也就是意义“未能”对应的成分，不在其探讨范围内。这种片段式的研究，尚不够深入和全面。

总之，现有对文本的考察，从翻译研究的角度来看，都没有描述当时的翻译规范，也无法提供清晰的翻译现象的图景描述。

4. 研究问题与研究意义

《万国公法》诞生逾百年以来，对文本的研究为什么如此匮乏？原因恐怕在于：一、原作和译作（也称源语文本和目的语文本）成书年代久远，版本佚失，不易寻取；二、原作和译作体量庞大，原作有将近千页，译作相对较少，已发行的现代横排版，亦有二百多页之厚；三、文本对比方法不易，原文的行文风格相当古旧，句式长、转折多、从句叠赘，加上多重否定频频出现，较为难懂，译文则以文言文表述，虽然其文字表达在文言文中属于浅显的一种，但对现代学者而言仍存在意义和理解上的隔阂，解读不易。因而现有研究多以选择性的抽样为主。

本研究旨在以文本为立足点，发现原作到译作的变化。“变化”这一假设的前提来自译者本人。至少借他人之口，丁韪良如此评价自己的翻译策略：

> 在天津我得到了崇厚热情的接待。[……]在翻阅过我译的惠顿手稿之后，他对此书为迎合中国新外务关系的需求而做出的调整（adaption to the wants of China in her new relations）大为赞赏，并表示要就此写信给总理衙门的大臣文祥，或者由恭亲王新组建的外务部[20](Martin，1896:222)。

[20] “At Tientsin I was cordially received by Chunghau, […] Looking over the manuscript of Wheaton, he was struck with its adaption to the wants of China in her new relations, and promised to write on the subject to Wensiang, the leading minster in the Tsungli Yamen, or Board

这里“调整”一词可理解为译者根据“需求”主动做出的“改写”。可以看到，在字里行间译者对其“改写”的成功颇为自得。

由此我们要问：

（1） 和原作相比，译作做出了哪些“调整（adaption）”？

（2） 其改写是否导致了功能的变化？

（3） 这些“改写”如何反应了译者对“新外交关系之中中国的需要（wants of China in her new relations）”的理解？

（4） “改写”是否还有其他目的？

在梳理和借鉴前人文献的基础上，笔者拟从文本和文本外材料入手，详细再现丁韪良的翻译策略和翻译决定，辅以当时的史料作为背景解释，以提供兼具全景和微观的观察视角。该研究的意义不仅在于填补现有的文本分析空白，更在于：

第一、提供较为全面的英文与文言文的比对模式。与现有整段或整句对应的方式相比，本模式以句段为对应单位，标记方法更为详尽，适合目标语与源语差距较大的文本，更具实用价值；

第三、将“伦理论证（moral reasoning)”理论应用于国际法译作文本研究，提供新的视角；

第三、文本对比的分析结果可为史学和法学研究提供新的素材和佐证；

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of Foreign Affairs, then newly organized under the presidency of Prince Kung” (Martin, 1896:222).需要指出的是，现有的中文版本将此译为“到达天津时，崇厚热情地接待了我，【……】阅毕惠顿氏的书稿之后，他对于**该书稿跟中国建立新的外交关系的需求之间的契合**印象十分深刻。他承诺写信给总理衙门事务大臣文祥或是外务部来讨论此事。外务部是由恭亲王新组建的，由恭亲王本人直接负责”（丁韪良，2004:150），斜体字部分的译文明显有误。该译本的更多问题，参见王文兵（2008）。

第四、为同治中兴时期的国际法译作研究建立一个好的开端。以此为基础对类似文本进行研究，展开类比分析，以聚集更多文本特征，能期更全面地描述该时期国际法翻译的性质和面貌。

第二章 理论框架

为回答上一章提出的研究问题，首先需确定《国际法原理》与《万国公法》之间的文本对应关系，发现和描写其变化。一般而言，语法结构较为接近的语料，其意义的对应较容易判断。但是《万国公法》经历了从法律英文到文言文的变化，传统意义上的字句对应几乎不存在。正如严复说：“西文句法，少者二三字，多者数十百言。假令仿此为译，则恐必不可通”（严复，1984：136）。为确定和分析从原文到译文“翻译迁移（translation shift）”发生的层次和类型，文本对比模式的建立十分必要。本章将借鉴现有的迁移研究成果，在此基础上提出法律英文到文言文的对比模式，将其应用到平行语料库的建设中，然后就国际法文本的功能差异提出理论研究框架。

1. 文本信息的迁移与对应

翻译迁移研究的目的，在于找出影响译者做出这些翻译迁移决策背后的文化、文学和意识形态等规范，“进而得出在某一段时期对翻译的总体的观念和看法”（李德超，2005）。图里指出：“为了描述源语文本与目标语文本在各个层面（包括小词、小节甚至全篇）之间的关系，描写翻译研究有必要借用其他学科的理论工具[21]”(Toury, 2001: 85)。不过现有的迁移研究多关注迁移的分类，对迁移单位的确定研究尚不充分，对英汉之间的迁移现象指导意义尚不明显。

[21] “The apparatus for describing all types of relationship which may obtain between target and source items, segments, even whole texts, is one of the tools DTS should be supplied by the thereotical branch of the disciplne”.

1.1 翻译中的迁移

卡特福德在《翻译的语言学理论（*A Linguistic Theory of Translation*）》（1965）中首次提出“翻译迁移”这一术语，指“从源语进入目标语的过程中对形式对应的背离”（Catford, 1965:73），主要分为“层次迁移”和“范畴迁移”两种形式。前者与“直接翻译”（由维内和达贝尔内提出，下文即将谈及）相似，指一种语言中用语法表达的成分在另一种语言中用词汇来表达（两种语言在语法概念上相差较远时往往会发生这种迁移）；后者则接近于间接翻译（见下文），是指源语的范畴与目标语的范畴不相对应，具体可分为“结构迁移”、“单位迁移”以及“内部体系迁移”（Catford, 1965:75-82）。

其实，在此之前，维内和达贝尔内（J.P. Vinay & J.Darbelnet）以及雅各布森（Roman Jakobson）都提出过类似的研究理论。

维内和达贝尔内在《法英比较文体学：翻译方法论》（1958）一书中，从词汇、句法结构和信息的角度对法语和英语做了较为全面的比较。不过他们更为侧重迁移的多变性（李德超，2005）。在他们看来：“译者翻译的并非单词，而是观点和情感(ideas and feelings)”[22]，因此翻译单位是一种“思想的单位”，即“话语中的最小片段，组成这些片段的符号互相连接，不能单独地翻译”[23]（Vinay & Darbelnet, 1995:21）。翻译单位相当于一句话语中可以被完整翻译的最小部分，如词素、单词、短语或整个成语等，由此，翻译单位具有较大的灵活性。维内和达贝尔内将翻译方法分为“直接翻译”与“间接翻译”两种：“直接翻译”是依据源语和目标语中相同的范畴或概念，“把源语信息中的每一个要素都迁移至目标语中”；“间接翻译”，往往因为源语和目标语在“结构和元语言上的差异”，只有改变目标语的句法顺

[22] “the translators do not translate words, but ideas and feelings. ”
[23] “the smallest segment of the utterance whose signs are linked in such a way that they should not be translated individually.”

序或者改变词汇，才能移植源语特定文体效果（Vinay & Darbelnet, 1995:315）。其中，直接翻译分为“借用”、“仿造”和“直译”，间接翻译分为“置换”、“调适”、“对等”和“适应”。总的来说，直接翻译的单位较大，而间接翻译的单位较大。但他们关注的迁移现象多发生在句子之内。

与此相似，雅各布森在《论翻译的语言学视角*(On Linguistic Aspects of Translation)*》(1959)中提及意义迁移的处理。他指出，当不能充分表达原文意义，译者可以使用“借词或借译”、“创造新词或语义迁移”以及“曲折陈述”几种翻译手法（Jakobson, 1989:56）。以上迁移的分析建立在语言的对应单位已经事先确立好的基础上。

总之，早期的翻译迁移研究涉及的原文和译文的比较几乎只局限于文本的微观语言层面，没有超出句子的范围，忽视了更为宏观的语言单位，如段落、句群和语篇等对微观语言层面的影响（李德超，2005）。对文本迁移的研究多着眼于词汇层面的变化，围绕具体的翻译策略和翻译技巧展开（参见Zhang & Pan, 2009）。

从80年代开始，翻译迁移的研究内容不仅包括对原文和译文微观语言结构的比较，还包括宏观方面如风格、衔接与连贯、文本类型等方面的标记。内容也涵盖了文学和非文学翻译。布朗姆-库尔卡（Blum-Kulka）开始关注句子层面之间的迁移现象。她定义了衔接和连贯两个概念：前者是“一种显性的、连接文本各部分的关系，它通过特定的语言标记表达”；后者则是“一种隐型的、出于文本各部分之间的潜在意义关系，由读者或听众通过阐释过程来使之变为显型”（Blum-Kulka, 1986：17）。发生在衔接层面的翻译迁移主要表现在：译文的明晰化程度或高或低；原文明示或暗含的意义潜势或在译文中改变（Blum-Kulka, 1986：18）。在连贯层面上的翻译迁移则可以分为读者型和文本型。前者由于译文读者群体对译文中所表现的原文文化预

设的误读造成；后者则往往由于译者对原文连贯关系的错误翻译而导致（Blum-Kulka, 1986：23-24）。以上的迁移研究跳出了字词对应的局限，开始关注宏观的文本特征，但具体分析的时候，该理论的操作性不强。

事实上，维内和维内和达贝尔内也都指出,翻译单位的大小与思维方式紧密相关[24] (Vinay & Darbelnet, 1995:21)”。文本信息的迁移如在较大的单位层面上发生（如整段的删除和扩写），意味着译者采取了意译的手段。由此，文本功能可能会发生较大的改变。

1.2 译素和句段

目前最为全面的文本迁移研究模式，由比较模式和描写模式两部分组成，是鲁文•兹瓦特（Kitty M.van Leuwen-Zwart）在语言学的基础上提出的，目的是“比较和描写叙事性文本的整体翻译中出现的迁移[25]”（1989：152）[26]。其比较模式的创新之处，在于引入“译素(transeme)”和“第三比较项(Architranseme,ATR)”的概念。“译素”指的是“可被理解的文本单位（comprehensible textual unit）”，依照迪克（Simon C. Dik）在《功能语法(*The Theory of Functional Grammar: The structure of the clause*)》（1989）一书中刚提出的标准判定:“译素”分为“叙事性译素（state of affairs）”及“周边型译素（satellite）”两种，前者通常表现为一个较为完整的动词词组，以“/……/”标记，后者则不包括动词，通常为前者的修饰性成分，以“（……）”标记（1989：155）。

在建立译素边界的基础上，可用“第三比较项”来衡量从源语到目标语的变化。“第三比较项”指独立于原文和译文之外，具有原文和译文共同意

[24] “The unit of translation we postulate here are lexicological units within which lexical elements are grouped together to form a single element of thought”
[25] “[…]for the comparison and description of integral translations of fictional narrative texts”.
[26] 图里对此略有质疑，认为兹瓦特比较的先决条件在于文本之间的“关系”是相对稳定的，而且对文本转移的研究，仅仅构成“解释性假设”的第一步（Toury,2001:85）。

义的一种理论的假设。通过比较，可以得出译文在语义、句法、语用和文体层面上发生的翻译迁移。其描写模式，是根据“翻译迁移”在译文中出现的种类和频率来展示微观层面上的迁移对译文宏观结构的影响，从而总结出具有普遍意义的翻译法则。这与图里所持的“中间概念（intermediary concepts）”极为相似。图里指出，所有的比较分析都具有“片面性(partial)”，只能就某一方面展开；比较总是“间接的(indirect)”，需要借助中间概念；中间概念的确定，与比较所依据的理论紧密相关（Toury,2001:81），总之，“通过比较大量看似孤立的对应项，研究者将得以从中得出这些对应项,或者对应分项之间的规范模式”[27](Toury,2001:81)。

参照兹瓦特提出的译素划分标准，选取《国际法原理》第一卷第一章第一节的内容，以下各句可被标记如下：

例（1） /There is no legislative or judicial authority, //recognized by all nations, //which determines the law //that regulates the reciprocal relations of States./

例（2） /The origin of this law must be sought in the principles of justice, //applicable to those relations./

例（3） /(While in every civil society or state)there is always a legislative power //which establishes, (by express declaration,)the civil law of that State, //and a judicial power, which interprets that law, //and applies it to individual cases,// (in the great society of nations) there is no legislative power, //and consequently there are no express laws, //except those which result from the conventions //which States may make with one another./

[27] “After a large number of isolated pairs have been studies, regular patterns should be looked for which may have governed all these pairs, or subgroups thereof.”

以上译素划分的目的，是为了更为清晰地研究译素之间的文本迁移现象，这种迁移往往以自然句为单位发生。但就国际法的著作和译作而言：原作多复杂句，自然句的篇幅较长，往往一句就构成一整个小节；译文则较松散，原始版本甚至没有标点符号（个别版本带有句读标记），意群划分多由读者自行判定。——如此，源语与目标语的语言结构差异较大，目标语文本中的译素与源语文本的译素单位大小并不相同，出现的顺序更是差异显著。这种从源语文本出发划分译素的方法在本研究中并不适用。

“语篇是一个具有连贯和衔接的单位，通过一个或一个以上的序列得到实现，而这些序列是由各彼此相关的成分组成，起到为某一个总体修辞目的服务的作用[28]”（Hatim & Mason, 2001: 178；参见哈蒂姆等,2005:274 ）。为分析源语文本和目标语文本的差异，在兹瓦特提出的“译素”和“第三比较项”的基础上，本研究根据目标语文本翻译单位的内容，缩小或放大源语文本对应的“译素”单位，继而以符号“[……]”标记。同时引入“句段（phrase）”的概念。这里所说的“句段”相当于图里所说的“翻译单位（translational unit）”，指“译者翻译过程中所依据的源语文本的语言-文本单位[29]”（Toury,2001:122）。如果源语文本和目标语文本的句段对应关系成立，就可以将之称为“耦合对子(coupled pair)”（Toury, 2001: 77-85）。事实上，“翻译文本的解决方案与其问题相互决定[30]”（Toury, 1995:77）,在确立翻译单位的时候，研究者往往需要根据“译素”的对应关系，厘清“句段”的长短。“句段”由一系列在源语中相关的译素组成，以

[28] “Text is a coherent and cohesive unit, realized by one by one than one sequence of mutually relevant elements, and serving some overall rhetorical purpose.”
[29] “[…] translational unit- i.e., the linguistic-textual unit in the original text within which the translator tended to work”.
[30] “a target-text solution […]a corresponding problem[…]should be conceived of as determining each other in a mutual way.”

“/……/”标记起始位置[31]。

这里提到的“缩小或放大源语文本的‘译素’单位”，指的是在实际的文本比对过程中，译素不再像兹瓦特规定的那样，以包括动词或者不包括动词为分类依据。就本研究涉及文本的具体情况而言：动词、名词甚至形容词或者副词本身就可能成为独立的译素，如例（5）中的“origin”被译为“何自而来”；源语文本中的单个译素在目标语文本中可能被重复使用，如例（4）中的“recognized by all nations”被译为“令万国必遵”、“令万国必服”；源语文本中两个或者以上的译素也可能在目标语文本中被译为单个译素，如例（8）中的译素“be […] derived”被译为“立”。

总之，译素的确定以“内容词（content words）”（Leuwan-Zwart,1989:157）为出发点，包括名词、动词、形容词和副词，或以上词组的组合，其划分方法在于同时对照目标语中的“内容词”，辅以数字上标，确立两者间的联系。

确立内容词的对应关系，也就是“耦合对子”，操作难点往往在于：（一）任何层次和范围内的原文实体都有可能与译文的某一部分相关；（二）对子不需要在层次和范围内完全对应，在省译或者增译的情况下有可能出现零对等”（Toury, 1995:78-79）。据此标记译素与句段的方法如下：

（1）检视英文各“内容词”的核心意义；

（2）在中文中寻找相对的译素，排除标点符号、虚词、连词和介词；

（3）在源语和目标语中以“[……]”划分译素；

（4）对译素分别加以序号如“[1]”等，标记对应关系；

（5）对于一系列紧密相关的译素，依据标点符号或者连词、介词以

[31] 鉴于“句段”的概念在中文中大于“译素”，因而替换兹瓦特原来使用的“译素”分割符号“/……/”，以新的符号“[……]”表示“译素”。

“/……/”标记起始位置，由此划分出句段；

（6）对于无法对应的“内容词”，即信息冗余，以阴影标记。

以序号标记的方式解决了源语译素与目标语译素的错位问题，“阴影”标记的方法则解决了译素冗余的处理问题。

以此标记《国际法原理》和《万国公法》的开卷第一节全节，可得示例如下：

例（4）/[There is no[1]][legislative[2]] or [judicial[3]] [authority[4]], [recognized by all nations[5]], //which [determines[1]] [the law[2]] that [regulates the reciprocal relations of States[3]]./

/[天下无[1]][人[4]][能定法[2]][令万国必遵[5]]，[能折狱[3]][使万国必服[5]]，//然万国尚[有[1]][公法[2]]，以[统其事而断其讼[3]]焉。/

例（5）/[The origin[1]] of [this law[2]] [must be sought in[3]] [the principles of justice[4]], [applicable[5]] to [those relations[6]]./

或问[此公法[2]]既非由君定，则[何自而来[1]]耶?曰：将[诸国交接之事[6]]，[揆之于情，度之于理[5]]，[深察公义之大道[4]]，[便可得其渊源矣[3]]。

例（6）/While [in every civil society or state[1]] [there is always[2]] a [legislative[3]] [power[4]] which [establishes, by express declaration, the civil law of that State[5]], and a [judicial[6]] [power[7]], which [interprets that law, and applies it to individual cases[8]],// [in the great society of nations[1]] [there is no[2]][legislative power[3]], //and consequently [there are no[1]] [express laws[2]], //except [those[1]] which

[result from[2]] [the conventions[3]] which [States may make with one another[4]]./

/夫[各国[1]][固有[2]][君[4/7]]为己之民[制法[3/5]][断案[6/8]],//[万国[1]][安有[2]]如此[统领之君[3]],//[岂有[1]]如此[通行之法[2]]乎?//[所有通行之法者[1/4]],皆[由[2]][公议[3]][而设[2]]。/

例（7）/As [nations[1]] [acknowledge no[2]] [superior[3]], as they have not organized any common paramount authority, [for the purpose of[4]] [establishing by an express declaration[5]] [their international law[6]], //and as [they have not constitute[1]] [any sort of Amphictyonic magistracy[2]] to [interpret and apply that law[3]], //[it is impossible[1]] that [there should be[2]] [a code of international law[3]] [illustrated[4]] by [judicial interpretations[5]]./

/但[万国[1]][既无[2]][统领之君[3]][以[4]][明指[5]][其往来条例[6]]，//亦[无[1]][公举之有司[2]][以息其争端[3]]，//[倘求[2]][公法[3]]，//而欲恃[一国之君操其权[4]]，[一国之有司释其义[5]]，[不可得[1]]矣。/

例（8）/[The inquiry[1]] [must then be[2]], [what are the principles of justice[3]] which [ought to regulate[4]] [the mutual relations of nations[5]], that is to say, from [what authority[6]] [is[7]] [international law[8]] [derived[9]]?/

/[欲知[1]]此[公法[8]][凭何权[6]]而[立[7/9]],[惟有[2]][究察[1]][各国相待[5]][所当守[4]][天然之义法[3]]而已。/

例（9）/When [the question[1]] is thus stated, [every publicist[2]] will

[decide it according to his own views[3]], //and [hence[1]] [the fundamental differences[2]] which we remark [in their writings[3]]./

/至于[各公师[2]][辨论此义法[1]]，则[各陈其说[3]]，//[故[1]][所论[3]]不免[歧异[2]]矣。/

从以上例子可以看到，相对源语文本而言，目标语文本的译素位置排列顺序变动，导致了标注源语文本时，译素的界定需要根据上下文语境进行调整处理。考虑到研究文本的特殊性（从句式复杂的法律英文到过于精炼的文言文）[32]，译素的单位根据源语文本和目标语文本的对应关系缩小或者扩大，继而以序号标注对应关系，如此将更具操作性。

就文本之间的对应关系而言：一个自然句往往会包含一至多个句段；句段之间的区分方法多为标点或者连词；源语和目标语之间的迁移关系表现出多种形态，既有“隐化（implicitation）”倾向，如例（6）将译素（3）和（5）、（6）和（8）译为“制法断案”，又有“显化（explicitation)”倾向，如例（5）中的句段（5）将“applicable”一词译为“揆之于情，度之于理”。需要说明的是，单从目标语文本出发的话，例（5）中的“揆之与情，度之于理”结构体现为对仗的四字格，似乎可以独立成句。但是对照源语文本，可发现这两小句是对后置定语“applicable（可适用于)”一词的发挥和演绎，其语义重点在“揆”和“度”也就是“衡量”的意义上，因此“applicable”一词作为译素[5]单独列出，“揆之与情，度之于理”亦以上标[5]标记，以示其对应关系。

同时，通过译素的确定，可以较为精确的定位句段单位之间源语和目标语文本中冗余和不符的信息部分。不过，要对更大单位的文本差异进行观察，

[32] 对这种语言差异，译者丁韪良评论道：“单音节的形式使汉字显得醒目有力，而且假如说汉字在句子中的位置能决定其字面含义，就像一列数字中的数词，或在祭天时所用的官话，它可以通过让每一个汉字都担当各种词性的职责的方式来补偿上述的不便。在英语中，我们发现许多名词可转换为动词的特点是一种增强表达能力的因素。在中文里这种词性的转换则是非常普遍的。人们很容易感受到，这一事实在何种程度上使得汉字的表达变得更为多变、简洁和有力”（丁韪良，2007：89）。

发现结构和功能变化，下一步的任务是建立和标记平行语料库。

2. 从英文到文言文的平行语料库

自 1993 年贝克（Mona Baker）提出了基于语料库的翻译研究，语料库被认为是研究翻译规律的有力工具。“翻译的语料库研究通过对语言冗余度的大小、词汇共现和规范程度、句法模式、用词特点以及每一个文本的附带信息，是人们了解译语文本的文体特征和译者风格，有效地揭示译者特有的语言使用习惯、语言行业的偏好、特殊的句法结构、连贯性、主位-述位结构以及标点符号的使用特点”（罗选民等，2005）。以平行语料库为方法来研究翻译，自此始方兴未艾。

平行语料库包括两个文本，源语文本和目标语文本（Kenning, 2010:497）。平行语料库可分为单向（unidirectional）或者双向的(bidirectional)。同时语料库可以在不同层次上（如句子或者词的层面）上分别对应（Xiao & Yue, 2010:241）。对比与平行语料库对于翻译和对比研究的益处有以下几点：(1)提供观察语言新视角；（2）增加我们对于语言、文化具体差异以及共同点的了解；（3）厘清源语文本和翻译文本、地道与非地道文本(（native and non-native text）的差异；（4）付诸于一系列实际运用，如词汇学、语言教学以及翻译实践当中[33]（Ajimer & Altenberg，1996：12；转引自 Mcenery & Xiao, 2007:18)

不过，现有关于特殊语体如法律翻译的平行语料库研究较少。目前已建成的法律平行语料库有赫尔辛基大学的“the MultiJur Multilingual Corpus of Legal Texts”，西班牙维哥大学的“Legal sections of the

[33] “(1) Offering new insights into the language compared. (2)Increasing our knowledge of language-specific, typological and cultural differences, as well as of universal features. (3)Illuminating differences between source texts and translations, and between native and non-native texts.(4)Can be used for a number of practical applications, e.g. in lexicography, language teaching and translation.”

CLUVI parallel Corpus”[34],西班牙海梅一世大学的“the GENTT Corpus of Textual Genres for Translation”语料库，以及有香港浸会大学梁倩雯博士（2008）建立的法庭口译语料库。以上语料库的建成有利于翻译过程研究以及翻译应用研究，其具体应用包括字典编撰、从术语库中提取所需样本以及训练翻译记忆软件和译员等（Biel, 2010）[35]。至于其他的法律翻译语料库研究，纳博特（Monzo Nebot）（2008）在传统词汇语法范式之外，关注语篇层面的标注，如对及物性、话题-述题结构、信息次序等文本特征进行标注，培养译者对法律翻译文本功能即效果的认识。

图里指出：“表面上来看，仅对比两篇文本是非常简单的研究出发点。事实上，该比对可能相当复杂，且具有不小的意义。在不断将文本语境化（contextualization）成分带入研究的同时，我们将得以发现：译者做出的翻译决策往往是‘有模式可循的（highly patterned）’”（Toury,2001:147）。本研究建立平行语料库，目的在于考察法律文本，从而发现更为宏观的层面上原作到译作的迁移和变化（包括删除和增加等），界定省译和增译的边界，从而描述翻译规范。

2.1 语料的对齐

平行语料库往往以“段落”或者“句”为对应单位。将原作和译作的文本按顺序排列对齐。鉴于原作文本具有典型的法律文本特征，以长句和复杂句为主，如采用传统的段落对齐法，文本之间的迁移几乎无法认定。如果以句为对应单位，鉴于本研究的文体特征表现为长句和复杂句，其信息的对应方式会造成信息分析中的遗漏。

[34] 其建库使用的语言为加利西亚(Glician)语到西班牙语、巴斯克语（Barseque）到西班牙语。
[35] 此外，香港城市大学的朱纯深教授等提出了教学语料库中的标注方式，以“名词短语（nominal group）”为关键词，将翻译技巧标注为信息组织、信息分配、信息实现、信息清晰化、信息和伴随信息五类（王惠，朱纯深，2012）。不过其标注是从培训译者角度出发的，不适用于本研究。

结合上节中的研究成果，本研究以一组意义相关的译素（句段）为单位，将源语和目标语版本对应起来，并以双行表格的形式表现。鉴于语料过多，不再使用序号单个标记译素，而是采用横向起始高度并列法，标识“句段”在意义层面上的相关性。如中英文句段的起始位置出于同样高度，即标志着两句在意义上的对应性。冗余的信息则另起一行，做零对应处理。鉴于语料所占篇幅可能过大，句段划分时将尽量依据中文或者英文的标点符号为分段依据，尽量容纳关联的译素。以回车键另起一行，标志分割。

上一节中的例（1）到（9）可用该方法将语料对齐如下：

1. Origin of International law.	**第一节　本于公义**
There is no legislative or judicial	天下无人
authority, recognized by all nations,	
（↓）	
which determines the law	能定法
	令万国必遵，（↑）
that regulates the reciprocal relations of States.	能折狱
	使万国必服，（↑）
	然万国尚有公法，以统其事而断其讼焉。或问此公法既非由君定，则何自而来耶?曰：
The origin of this law (1)	将诸国交接之事，(3)
must be sought in the principles of justice, (2)	揆之于情，度之于理，深察公义之大道，(2)
applicable to those relations. (3) (p.1)	便可得其渊源矣。(1)
While in every civil society or state	夫各国
there is always a legislative power	固有君
which establishes, by express declaration, the civil law of that State, and a judicial power, which interprets that law, and applies it to individual cases,	为己之民制法断案，

in the great society of nations there is no legislative power, and consequently there are no express laws, except those which result from the conventions which States may make with one another. As nations acknowledge no superior, as they have not organized any common paramount authority, for the purpose of establishing by an express declaration their international law, and as they have not constituted any sort of Amphictyonic magistracy to interpret and apply that law, （↑） it is impossible that there should be a code of international law illustrated by judicial interpretations The inquiry must then be, what are the principles of justice which ought to regulate the mutual relations of nations, that is to say, from what authority is international law derived? When the question is thus stated, every publicist will decide it according to his own views, and hence the fundamental differences which we remark in their writings.	万国 安有如此统领之君， 岂有如此通行之法乎? 所有通行之法者，皆由公议而设。 但万国既无统领之君以明指其往来条例， 亦无公举之有司以息其争端， 倘求公法， 而欲恃一国之君操其权，（↓） 一国之有司释其义， 不可得矣。 欲知 此公法凭何权而立，惟有究察各国相待所当守天然之义法而已。 至于各公师辨论此义法，则各陈其说， 故所论不免歧异矣。

表 2-a 第一卷第一章第一节文本对应示例

再以第一卷第一章第二节为例，原文和译文对应的句段划分如下：

例（10）/The leading object of// Grotius, and of his immediate disciples and successors,// in the science of which he was the founder, //seems to have been,// *First*, //to lay down those rules of justice which would be binding on //men// living in a social state, independently of any positive laws of human institution;// or, as is commonly expressed, living together in *a state of nature*; //and *Secondly*,//To apply those rules, under the name of Natural Law, //to the mutual relations of //separate communities living in a similar state with respect to each other. (Wheaton, 1855:2)

/公法之学，创于荷兰人名虎哥者。//虎哥与门人//论公法，//曾分之为二种。//世人若无国君，若无王法，//天然同居，//究其来往相待之理，应当如何?//此乃公法之一种，名为“性法”也。//夫诸国之往来，与众人同理，//将此性法所定人人相待之分，//以明各国交际之义，//此乃第二种也。/

划分依据如下（原文各句段按照文本顺序依次排列，译文句段顺序调整后对应原文句段）：

原文	译文（依原文顺序排列）
The [leading object[1]] of	论[公法[1]]
[Grotius[1]], [and[2]] of his immediate [disciples and successors[3]],	[虎哥[1]][与[2]][门人[3]]
in the [science[1]] of which [he[2]] was the [founder[3]],	[公法之学[1]]，[创于[3]]荷兰人名[虎哥[2]]者。
seems to have [been[1]],	曾分之[为[1]]二种。
[*First*[1]],	此乃公法之[一种[1]]，名为“性法”也。
to lay down those [rules of justice[1]] which would be [binding on[2]]	究其[来往相待之理[1/2]]，应当如何?

[men[1]]	[世人 [1]]
living in a social state, [independently of[1]] [any positive laws of human institution[2]];	若无国君[36]，[若无 [1]][王法 [2]]，
or, as is commonly expressed, [living together in *a state of nature*[1]];	[天然同居 [1]]，
and [*Secondly*],	此乃[第二种 [1]]也。
To apply [those rules[1]], under the name of [Natural Law[2]],	将此[性法 [2]]所定[人人相待之分 [1]]，
to the [mutual relations[1]] of	以明[各国交际 [1]]之义，
[separate communities[1]] living [in a similar state[2]] with respect to [each other[3]]	夫[诸国 [1]]之往来，[与 [2]][众人 [3]][同理 [2]]，

表 2-b 第一卷第一章第二节译素对应示例

鉴于目标语文本中句段的顺序与源语文本并不一致，需要引入数字，标记各个句段。其方法详见下节。

2.2 语料的标记

依据英文表述顺序重新排列中文语料，可发现双语版本之间的对应关系，同时也可以看到，中英文在句段上的对应顺序上并不完全一致，甚至可能存在较大差异。

对此，解决方案为：当中英文的句段顺序差异较大时，分别以数字标记其对应关系；同时在排版上为节约空间，不再将意义对应的句段平行排列于同一高度，转而以（1）（2）（3）等罗马序列符号表示；当一组顺序差异较大的句段结束，另一组类似情况的句段开始时，以（1’）（2’）（3’）重

[36] 在某种程度上，可以将“若无国君”看做是“living in a social state”意思的对应。但根据本研究提出的语素对应的方法，“国君”这一信息在源语文本中并不存在，因此仍作冗余信息处理，以阴影标记。

新标记顺序，以示区分。如第二卷第一章的第十三节：

Of this nature was the guaranty by France and Sweden of the Germanic Constitution (1) at the peace of Westphalia in 1648, (2) the result of the thirty years' war waged by the princes and States of Germany (3) for the preservation of their civil and religious liberties against the ambition of the House of Austria.(4) The Republic of Geneva (1') was connected by an ancient alliance (2') with the Swiss Cantons of Berne and Zurich, in consequence of which they united with France, (3') in 1738, (4') in offering the joint mediation of the three powers (5') to the contending political parties by which the tranquility of the republic was disturbed. (6')	前时日耳曼诸邦血战三十年之久，(3) 以御奥国而护其本国与本国之教理。(4) 至一千六百四十八年间复和。(2) 法兰西、瑞威敦二国与日耳曼立约，保其国法，即此例也。 (1) 一千七百三十八年，(4') 瑞士之日内哇(1') 一邦内乱。(6') 伯尔尼、苏黎二邦与法国共议，(3') 前来为之调处，(5') 盖三邦前有盟约如此也。(2')

表 2-c 第二卷第一章第十三节语料标记示例

以此标记上节中提到的例(10)，如下：

2. Natural Law defined. The leading object of (1) Grotius, and of his immediate disciples and successors, (2) in the science of which he was the founder, (3) seems to have been, (4) *First*, (5) to lay down those rules of justice which would be binding on (6) men (7)	**第二节 出于天性** 公法之学，创于荷兰人名虎哥者。(3) 虎哥与门人 (2) 论公法，(1) 曾分之为二种。(4) 世人(7) 若无国君，若无王法，(8) 天然同居，(9) 究其来往相待之理，

living in a social state, independently of any positive laws of human institution; (8) or, as is commonly expressed, living together in *a state of nature*; (9) and *Secondly*, (10) To apply those rules, under the name of Natural Law, (11) to the mutual relations of (12) separate communities living in a similar state with respect to each other. (13)	应当如何? (6) 此乃公法之一种，名为“性法”也。(5) 夫诸国之往来，与众人同理，(13) 将此性法所定人人相待之分，(11) 以明各国交际之义，(12) 此乃第二种也。(10)

表 2-d 第一卷第一章第二节文本对应示例

在语料中使用的其他符号还有：

（↓）（↑）：为一组对应符号，其出现提示不同文本高度中句段之间的对应关系。前者表示与其意义对应的句段与其相对应的语言栏下方，后者提示与其对应的句段位于其相对应的语言栏中的上方。

阴影栏：表示信息在对应文本中缺失，如“in every civilized nation”。

下划线：表示其对应方式较为特殊，值得引起注意，如“a commercial corporation”。

继而以第四卷第一章中的第五节为例：

5. Right of making war, in whom vested. The right of (↓) making war, as well as authorizing reprisals, or other acts of vindictive retaliation, belongs, in every civilized nation, to the supreme power of the State. The exercise of this right is regulated	**第五节　定战之权** 定交战、准强偿并报复等事， 其权(↑) 固属于君， 而各国自有律法以

by the fundamental laws or municipal constitution in each country, and may be delegated to its inferior authorities in remote possessions, or even to a commercial corporation--- such, for example, as the British East India Company--- exercising, under the authority of the State, sovereign rights in respect to foreign nations.	范围之。 然有时托授远处部属，使交通别国者，盖虽服本国所辖，仍可若自主而行之也。 即如印度前系英国通商大会 任其国权，其与邻国交战与否，本国准其自定也。

表 2-e 第四卷第一章第五节文本对应示例

总之，研究者通过手工比对原文和译文的方式，建立了英汉平行语料库。具体实施步骤为：

（1）将原文和译文以每节为单位，按双栏表格的形式排列；

（2）根据原文和译文的意义对句段进行分割，并在同一高度将其对应起来；

（3）句段之间意义冗余的部分以阴影标记；

（4）对于意义完整的句段省译或者增译，以单独成行，无对应序列表示；

（5）原文和译文的表达全部依照文本原有的顺序，对于译文和原文在意义对应上顺序不一致的，以符号“（↓）（↑）”或“(1)(2)(3)”标识其对应性。

这样，基本解决了英文和文言文的文本对应问题，能较为精准地定位源语文本到目标语文本的信息冗余现象。

2.3 增删的认定

根据兹瓦特的观点，源语信息和目标语信息之间的关系可分为“调整（modulation）”,“修改（modification）”以及“转变（mutation）”三种。转变之中，又分：“增加（addition）”、“删除（deletion）”和“意义剧变（radical change of meaning）”，其判定标准即源语信息和目标语信息之间是否存在“第三比较项”（Leuwen-Zwart,1989:169）。

在本文的研究中，较为有代表性，同时也较为容易判断的增删，以自然句或者自然段的分隔为起始标志，如第四卷第一章第九节（没有译出的部分以阴影表示）：

例（11）/The State does not even touch the sums which it owes to the enemy; everywhere, in case of war, the funds confided to the public, are exempt from seizure and confiscation.// In another passage, Vattel gives the reason of this exemption. “In reprisals, the property of subjects is seized, as well as that belonging to the sovereign or State. Every thing which belongs to the nation is liable to reprisals as soon as it can be seized, provided it be not a deposit confided to the public faith. This deposit being found in our hands only on account of that confidence which the proprietor has reposed in our good faith, ought to be respected even in case of open war. Such is the usage in France, in England, and elsewhere, in respect to money placed by foreigners in the public funds.”// Again he says: “The sovereign declaring war can neither detain those subjects of the enemy who were within his dominions at the time of the declaration, nor their effects./（Wheaton, 1855: 368）

/至国家自欠于敌人之债，则不能不还。缘无论何处，有托公信而存钱物者，皆置于捕拿之权外。”//[……]//又云：“敌国之民，始战时在疆内者，不但不能强留其人，即货物亦不能强留/。

发生在自然句内部的增删则需要依据译素的对应，更为细致地进行观察：

例（12）原文: //It appears from these passages to have been the law of Holland. Valin states it to have been the law of France, whether the trade was attempted to be carried on in national or neutral vessels; and it appears from a case cited (in The Hoop) have been the law of Spain; //and it may without rashness be affirmed to be a general principle of law in most of the countries of Europe.（Wheaton, 1855:383）

/[……]//欧罗巴诸国律法大抵皆如是也/。

以上两例中，源语信息冗余量较大，且冗余信息和译出的信息之间以标点符号作为分隔标记，较容易判断。但在实际操作中，即使我们引入了第三比较项的概念，对于增删的判断也不是那么黑白分明的。如以下段落中的句段（8）和句段（19）：

句段	ST	TT
1	During the war between the United States and Great Britain, which commenced in 1812,	一千八百十二年英美战争之时，
2	it was determined by the Supreme Court, that	美国上法院断云：
3		“如非国会另定律法准之，（↓）

4	the enemy’s property,	则敌国货物
5	found within the territory of the United States on the declaration of war,	在疆内者
6	could not be seized and condemned as prize of war,	不得捕拿，
7	without some legislative act expressly authorizing its confiscation.(↑)	
8	The court held that the law of Congress [declaring war[2]] [was not such an act[1]].	/
9	That [declaration[2]] [did not[1]], by its own operation, so [vest[3/5]] [the property of the enemy[4]] in the government,	并[不可[1]]因[宣战[2]]便[以[3]][敌货[4]][为已有[5]]，
10	as to support judicial proceedings for its seizure and confiscation.	而遂以之入公也。
11	It vested only a right to confiscate,	但有可捕之权而已，
12	the assertion of which depended on the will of the sovereign power.	其行与不行惟国会能定之。”
13	The judgment of the court stated, that	又云：
14	the universal practice (↓)	
15	of forbearing to seize and confiscate debts and credits,	“不以债负入公，
16	the principle universally received, that the right to them revives on the restoration of peace,	俟复和仍准追索，
17		既为常例，(↑)
18	would seem to prove that war is not an absolute confiscation of this property,	则货物不因战始即绝于原主。
19	/	盖并无必入公之势，
20	but that it simply confers the right of confiscation.(Wheaton, 1855: 371-373)	但有可入公之权耳。”

表 2-f 第四卷第一章第九节文本对应示例

以兹瓦特提出的判定标准来看，句段（9）已经在目标语文本中有了对应的语素，句段（8）的意义由此多余。但联系上下文的话，句段（8）“法院认为国会宣战的法案无效（The court held that the law of Congress

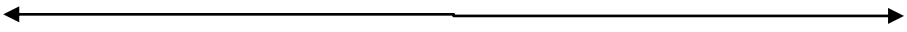
declaring war was not such an act.）” 和句段（9）“该宣战行为，并不能赋予政府没收敌货的权利（That declaration did not, by its own operation, so vest the property of the enemy in the government）”两段中间虽然以句号隔开，但其译素（2）均为“（宣战）声明（declaration）”，且都含有该声明无效(“was not such an act”以及”did not… vest…”)的意思。同时句段（8）中的“法院”，与句段（2）中的美国上法院意义相呼应，起到承上启下的作用。以上句段（8）/(9)在目标语文本被译为“并不可因宣战便以敌货为已有”一句，可看做译出信息的简练(reduction),而非删除（omission)。

反之亦然。在句段（19）中，“it simply confers the right of confiscation”被译为“盖并无入公之势，但有可入公之权耳”，目标语中的前半句在源语文本中并没有出现，但是与句段（20）形成结构上的对仗，是对句段（20）的意思延伸，相当于信息的充实（amplification)。

如此来看,deletion 到 addition 之间呈现出开放的线性结构(spectum，也称连续轴)。如下：

删除 --- 删减 --- （隐化 --- 显化 ） --- 扩充 --- 增加

deletion--reduction--(implicitation—explicitation)-amplification----addition



如兹瓦特所说，以上数者间的分界线并不那么清晰[37](Leuwen-Zwart, 1989:153)。图里也指出，如果“从文本语言角度来看，删除的部分尚不能构成完整的句子、段落或者章节。那么，某处的删除，有可能在另一处构成增加”（Toury, 2001:59)，要精确地确定并描述删除的情况，实际上不太

[37] “the diving lines between categories such as explicitation, amplification and addition on the one hand, and implicitation, reduction and deletion on the other were vague and imprecise.”

可能。不过本研究仅涉及较为显著的文本增删情况，表现为对以下条件之一的满足：

（1） 删除的跨度达数页；或

（2） 删除的文本上下文之间以段落或者自然句的中止符号分隔开来；或

（3） 删除的文本与上下文之间一端为句号，另一端为逗号、介词或者连词，且该段文本中多处“内容词”在对应文本中完全缺失。

以此为标准，上节中的句段（8）和（19）前后均有标点符号作为隔断，可归在增删内容之列。对于上述的情况（1），在平行语料库将以“（省略 p.275-280）”的方法标记其起始位置；对第（2）种情况，则注明省略的起始页码，并录入省略的段落，以表格零对应方式表示；至于情况（3），则以阴影标记。以第四卷第一章第十一节为例：

11. Interference of the five great European powers in the Belgic revolution of 1830.	**第十一节 比利时叛，五国议之**
The interference of the five great European powers represented in the conference of London, (↓)	
in the Belgic Revolution of 1830, affords an example of the application of this right to preserve the general peace,	一千八百三十年间，比利时叛荷兰自立。 五大国会于伦敦，公议其事(↑)，
and to adapt the new order of things to the stipulations of the treaties of Paris and Vienna, by which the kingdom of the Netherlands had been created.	仍不废其前时建立荷兰之约，惟重议章程，改之以合时宜。
We have given, in another work, a full	其所以行此权者，

account of (1) the long and intricate negotiations relating to the separation of Belgium from Holland, (2) which assumed alternately the character of a pacific mediation and of an armed intervention, according to the varying circumstances of the contest, (3) and which was finally terminated by a compromise between the two great opposite principles which so long threatened to disturb the established order and general peace of Europe. (4)	盖欲保诸国之安也。(4) 此事公议已久，(2) 其居间管制之者，或和而管之，或强而管之，(3) 余已细述于他书内，今不详录。(1)
The Belgic Revolution was recognized as an accomplished fact, (省略 P. 105 whilst its legal consequences were limited within the strictest bounds, by refusing to Belgium the attributes of the rights of conquest and of postliminy, and by depriving her of a great part of the province of Luxembourg, of the left bank of the Scheldt, and of the right bank of the Meuse.)	比利时既自立，
The five great powers, representing Europe, consented to the separation of Belgium from Holland, and admitted the former (省略 P. 105 among the independent States of Europe, upon conditions which were accepted by her and have become the bases of her public law.)	五国认之，
These conditions were subsequently incorporated into a definitive treaty, concluded between Belgium and Holland in 1839, by which the independence of the former was finally recognized by the latter.	荷兰后亦认之，与之立约焉。

表 2-g 第四卷第一章第十一节文本对应示例

3. 信息的冗余与完整度研究

在建立平行语料库的基础上，通过详尽定位和标注文本的对应部分，可

以发现译者主要的翻译策略为信息的省略（omission）和增加（addition），这将构成本文的考察重点。

波波维奇认为，造成与原文不一致的成分的原因，可能是语言上的因素，但也可能是出于译者在语篇结构、文学传统或文化因素上的考虑，换言之，是受到了当时翻译规范的影响（Popovi, 1970:78-87）。导致翻译迁移的，除了语言结构本身的特点，受所在文化背景、文学传统等因素影响而做出的译者决策，亦是重要因素之一。对增删规律进行假设和证明，将发现译者决策的规范。

3.1 操作规范与完整度研究

根据图里的观点，规范分为初始规范（initial norms），预先规范(preliminary norms)和操作规范(operational norms),其中操作规范中又分为母体规范（matricial norms）[38]和文本语言规范(textual-linguistic norms)（1995:58-59）。在他看来：“操作规范则指导着译者在翻译过程中的各个决定。该规范影响着文本的构阵（matrix），即文本中语言信息，文本构成，言语构成分布的方式”[39](Toury,2001:58-59)。如果文本信息的构成发生变化，“源语文本与目标语文本的关系也直接或者间接地发生变化”，也就是说，母体规范（matricial norms）指的是“在何种情况下什么文本成分更可能被保留下来，什么成分可能会发生变化”(Toury,2001:58-59)。该规范决定了源语文本中的信息被何种目标语文本信息替换，因此也决定了翻译的（文本）完整度（fullness of translation），信息的分布(actual distribution)以及文本的分割

[38] “Matricial norms”有“母体规范”，“整体性规范”以及“模板规范”等多种译法。在本研究中统一译为“母体规范”，其中的“matricial(母体)”一词与下文中的“构阵（matrix）”为同一词根，意义相同。

[39] “They affect the matrix of the text--i.e. the modes of distributing linguistic material in it --- as well as the textual make-up and verbal formulation as such.”

（textual segmentation）(Toury,2001:58-59)。

完整度发生变化的同时，文本的分割亦会受其影响，同时发生变化。“删除、增加、（信息）位置改变以及文本的分割，无论是发生在文本当中，抑或围绕文本进行，都由规范决定。当然，以上四者均可独立发生。不过，以上四种文本变化之间不一定存在清晰的界限。大段的删除，往往也带来文本分割的变化，特别是如果删除的部分之间没有清晰的界限的话”（Toury, 2001:59)。

现有关于文本完整度的研究，多停留在语法层面之上。如奈达（Nida）在《翻译科学探索》（1964）的第 10 章中介绍了增(addition)、减(subtraction)和改(alteration)三类调整原文的技巧（Nida, 2004:229)。他将减的内容分为：（a）不必要的重复（unnecessary repetition)、(b）具体的指称（specified references)、(c）连词（conjunctions)、(d）过渡句(transitionals)、(e)分类描述(categories)、(f)祈使句(vocatives)、以及（g）固定搭配（formulae)(Nida,2004:232)，且“这些减实际上不会改变信息内容。它们也许会使某些语言特征变得更明晰，但不会在实质上减少沟通带来的信息”（Nida,2004:233)。有学者对该翻译手法的态度有所不同，他们认为所有的增加和删除都是翻译错误（Delisle，1993；Russell, 1999)。

Vázquez-Ayora 提出了删减（omission)、置换（displacement）与颠倒(inversion)的翻译策略，其删减的标准，是就目标语的语法结构而言的源语中的冗余和重复，置换与颠倒的需要亦源于此(Vázquez-Ayora,1977；转引自 Molina & Albir, 2002)。Margot(1979)提出了冗余（redundancy）的概念，他指出，当源语信息对于目标语读者而言变得重复，往往需要裁减源语信息，以在源语读者和目标语读者之间取得平衡(转引自 Molina & Albir,2002)。这些增删现象，多属于“必要（obligatory）”迁移

（Toury,2001:57/173），已由语法规范决定，与译者主观上翻译策略的选择关系不大，因而不在本文的研究范围之内。

其他的分类，有将省译分为语言、非语言两个层面的。其中语言层面的分为语法和词汇意义上的省译；非语言层面则有文化信息、对话和评论以及对某些角色的描述等省译类型（于婷，2011）。有的以增译（amplification）和省译(omission)为题目探讨科技文献中的翻译现象，不过仅从词汇角度出发，将省译分为代词（人称代词、物主代词以及反身代词）、连接词（并列连接词、从属连接词以及时间连接词）以及介词（时间、地点以及介词短语）的省译（应婷婷，2012），也属于上文提到的微观层面。

总之，以上对完整度的研究分类主要以语法概念为依据，多局限于文本的微观语言层面，没有超出句子的范围，增删的发生，往往由语言自身的语法特征引起。鉴于《国际法原理》到《万国公法》的增删体量较大，以上提到的分类方法并不适用。

就更为宏观的语言单位，如段落、句群和语篇层面的增删对文本功能的影响而言，图里提到：操作规范可以作为一个模式，翻译作品依此成形（Toury,2001:60）。一种最好的情况，是翻译作品重现了部分的源语作品模式，最糟糕的情况，就是翻译作品建立的是完全虚假，在源语中根本不曾存在过的模式，不过这样一来，译者引介（其实不是引介，而是强加）的，是原文的一个版本，通过剪裁，以适应之前已有的模式（Toury, 2001:60-61）。以佛洛依德（Tom Freud）对贝希施泰因的《德国故事集》的改编为例，他分析了改动带来的功能变化：佛洛依德的改编主要体现在故事情节的删节上；随后为了弥补该删节，又对故事的顺序做出调整；以及在故事的开头部分增加“讲述者”的内容(Toury,2001:148-152)。由此，故事的整体结构从原有的并列（paratactic）结构变成了主从（hypotactic）结构（Toury,2001:153），由此显示出一种“调整过的叙事模式（a mediating

model）”(Toury,2001:155),“降低了该文本潜在的陌生感，增强其接受度”[40]（Toury,2001:162)。

图里（Toury,2001:12)指出，要得出有价值的结论，研究的时候需要把“功能（function）”、“过程（process）”和“产品（product）”视作互为相关的因素。文本的功能决定了翻译过程。虽然由于史料缺乏，《万国公法》翻译过程中发生的修改和之后的校订无法追溯，但对文本研究，特别依序对各章节进行的考察，至少可以部分再现翻译过程。其各章间的变化规律，可反映出译者的风格。在过程的作用下，产品的最终形式，有可能具备与原作不同的功能。本研究重点关注的，是原作被调整后呈现出的结果。图里认为：分析和概括译作与原作之间的偏离现象，研究产品自身呈现出何种形态，相当于研究产品（product)；同时，可根据文本外材料，预设和验证读者的反馈，衡量该偏离产生的后果；对翻译策略做出总结和归纳的基础上，可得出译本的初始规范（Toury, 2001: 27-28)。赫曼斯也提到，规范研究的来源，包括译本本身，还涉及副文本（paratext，详见下文）以及宏文本（metatext, 指译者以及翻译领域的相关活动）(Hermans, 2004:85)。

据此，本研究将以文本和副文本内容为考察对象，从微观和宏观层面分析增删对文本功能带来的变化。

3.2 法律文本的功能考察

功能语言学、描述翻译研究（Descriptive）与功能主义翻译理论中的“功能”各有所指。图里也承认：他说的“功能”和“功能学派（skopostheorie）”所说的“功能（mere use of the end product）”并不一样，其异同仍需学者进一步分析[41]。他认为：翻译在接受文化(recipient

[40] “[…] mitigating the potential alienness of the text and enhancing its acceptability.”
[41] “the correlations between the two uses of ‘function’,[…]still await scholarly processing.”

culture）中的可能地位，即图里所指的功能（function），应该被视为产品构成最重要的决定因素。因为翻译总是被视作要去填补目标文化当中的某项空白[42] (Toury, 2001:12)。原文中仍然在译文当中被保留的成分，其“重要”并非与生俱来（inherent），而是从接收者的角度出发，由译者赋予的(assigned)。由此，翻译的潜在功能，将最终决定翻译过程。不过所有已完成翻译的作品，都可以说具有填补目的文化空缺的功能。该判断无法证伪，其“功能”亦有“决定论”的意味。这里所说的功能，是从文化需要的角度出发的。

“功能主义”则源自德国的施莱尔马赫，又称“德国功能翻译学派”。其根源在于布勒根据语言工具模式中的组成成分：语境（context）、话者（speaker）、受话者（hearer）以及符号（sign）的关系，区分了三种语言功能：信息功能（the information function）、表达功能（the expressive function）、感染功能（the appellative function）。布勒依据文本主要功能对文本进行分类，区分出三大文本类型：意动型文本（conative）、表达型文本（expressive）和信息型文本（representative），随后发展的理论有赖斯（Katharina Reiss）的文本类型理论、弗米尔（Hans J. Vermeer）的目的论、赫尔兹-曼塔利（Justa Holz-Mänttäri）的翻译行为理论和诺德（Christiane Nord）的功能加忠诚理论(Nord, 2001)。在此基础上，赖斯将文本类型分为三种：信息型（informative）、表达型（expressive）和操作型（operative），并总结了各种文本类型的特点及其与翻译方法的关系，认为原文的主要功能决定了翻译的方法（Reiss 1987：108- 109）。她认为：翻译的目标是“目标语文本和源语文本在思想内容、语言形式以及交际功能等方面实现对等”（Reiss，1989：12），对翻译的评估不能仅仅对某方面或某部分做出评估，而应该从确定文本类型开始；文本类型和翻译方法一旦确

[42] “(T)ranslations always come into being within a certain cultural environment and are designed to meet certain needs of , and/or occupy certain ‘slots’ in it.”

定，就能够评估译者在多大程度上满足了相关标准（Reiss，2004：47）。由此文本类型的确定对于翻译研究而言十分必要。在确定文本类型的基础上，可以研究其翻译策略，从而发现对译者设定的目标读者群而言，文本信息和感染的功能如何体现，在译文中最终实现了多少。该学派所指的“功能”，与符号的发出者意图紧密相关。

“功能语言学”是“系统功能语言学（system-functional linguistics）”的简称，亦指以韩礼德(M.A.K. Halliday)为代表的“系统功能语法（systemic functional grammar）”。该理论从 “概念/经验(ideational/experiential)”、“人际(interpersonal)”、和“语篇(textual)”三个层面来解读文本意义，亦将这三个层面冠以“元功能（meta-function）”之称。不仅如此，各范畴的具体成分无不为了实现一定的功能，如小句的及物性是由参与者（participant）、过程（process）和环境（circumstance）等功能成分构成的，语气是由语气成分（Mood）和剩余成分（Residue）组成的，主位结构由主位（Theme）和述位（Rheme）组成，信息结构由新信息（New）和已知信息（Given）组成等(Halliday, 2008)。马丁（J.R. Martin）等学者发展了该理论。哈蒂姆（Basil Hatim）则将该理论引入翻译研究当中。各学者的观点仍然有所差异，但其根源一致，以“功能语言学派”一以贯之。这里所说的“功能”， 主要强调“形式即意义”，注重语言的社会属性，以及语言是如何实现社会功能的。

本研究所考察的“功能”，主要是指文本在源语和目标语文化中扮演的角色。这与作者/译者的意图同样相关。个人作为文化的组成因子，其翻译决策必然在极大程度上受文化的影响。特别是本研究考查的文本，作为政治意图的产品由多人合作完成，反应出的个别译者风格有限，更多时候体现了翻译团队为迎合外部需求而做出的集体决定，且在目标语文化中起到特定的作用。

由此，本研究拟从伦理论证构成的三要素入手，考察译作对于原作中相关要素的再现程度，再现译者的翻译策略，同时结合文本外材料探寻作者和译者的写作/翻译意图，从而发现从原作到译作的功能变化。

3.3 国际法著作的伦理论证构成

国际法起源于两河流域和尼罗河畔最早的一批奴隶制国家。国家间的关系从偶发到频繁，原始的国际法规范应运而生。当时的条约内容多带有浓厚的伦理色彩，且约定必须信守原则开始出现。古代国家间常态的战争，也出现了相应的战争法规则，冲突中的提交公断制度，使被围困的城镇免遭破坏和当地居民免受奴役。又如在古希腊社会，宗教、法律和道德三位一体。希腊国家城邦间缔结的条约包括媾和条约、同盟条约以及互助和互不侵犯条约等，也包含了一些保障个人自由和保护财产等方面的规定。在外交使节方面，确认了使节在执行其使命时享有不可侵犯的权利，同时使节还会得到许多礼仪上的尊重。总之，古代国际法的源流与伦理息息相关。

近代国际法于 16 世纪左右在欧洲开始出现，其产生条件有赖于 14 至 16 世纪文艺复兴、新大陆的发现和宗教改革。其原则来自于伦理推论所持的“义务论”[43]，认为“对的行为在于遵守道德原则”。不管行为结果是怎样，义务论只在乎行动本身是否符合某些“特性”或“规则”。换言之，义务论较关心的行动的“动机”，而非行动的“结果”。义务论之中也分为“行动的义务论（act-deontological theories）”和“规则的义务论（rule-deontological theories）”：行动的义务论把每个行动视为独一无二的伦理情境，相信我们可以诉诸个人的良心与直觉来判断行动的对错。

[43] 关于国际法与伦理的关系，存在两种对立的观点：现实主义者认为国际生活中的伦理就是起支配作用的大国的伦理；强者可以随心所欲,弱者只能任人摆布，而“道德就是权力的产物”；另一种观点则认为伦理已融入国际法的血脉，普遍人权等问题应当受到保护和推广，国际法的任务在于使人们意识到权利，并且将正义置于狭隘的国家利益之上（丁丽柏，2007）。

规则的义务论大多接受“可普遍性原理（the principle of universalizability，简称 PU）”，即当某一道德原理或规则可普遍化时，它就是判断行动对错的依据。在此基础上，英国元分析伦理学家黑尔（Richard Mervyn Hare）指出，原则事实上具有普遍性与规约性这两大固定的属性。根据其理论，有两种伦理判断需要区分：第一种是每个人在追求个人利益的同时，依据可普遍性原则(PU)及指令性原则(the principle of prescription，简称 PP)，同时考虑到他人的利益；第二种则是个人并不关注利益，而是理想。要达到理想状态，也就意味着预设某样事物是“善（pre-eminently good）”的 (Hare，1977：149/159；Alexy，1989: 75)。但当某人企图实施其所认可的理想，而该理想又与他人甚至他自己的利益相冲突，矛盾就会产生。“每一个做出规范性声明的人都预设该条规则会带来某种后果，为了符合他人的利益需求，人们必须接受这些后果，哪怕这些假设性的场景中其个人也有可能处于他人的境地之中[44]”(Alexy，1989：76-77)，这和国际法的性质一致。

由此，以国家间关系为主要对象的国际法体现出浓厚的伦理特质。国际法的伦理维度，是国际法存在的深层次原因，也是国际法得以运行的合理性基础。伦理判断（moral judgement）由三个基本要素组成：事实（Fact）、逻辑（包括普遍性原则与规约性原则）、对他人可能获得收益和损害的预测（Interest/inclination＆Predication，以下简称为“利益得失”）(Hare, 1977：94；Alexy，1989:71)，这些内容，在国际法著作和译作中都必不可缺。

[44] “Everyone who makes a normative statement that presupposes a rule with certain consequences for the satisfaction of the interests of other persons must be able to accept these consequences, even in the hypothetical situation where he or she is in the position of those persons”.

4.研究模式的设定与解释

在对齐和标记好语料之后，结合以上提到的伦理论证考察三要素，下一步需要解答的是：《国际法原理》作为国际法文本是如何分析和推理的？译作是否完整甚至过度再现了其伦理论证的的三要素？

为探究以上问题，考察任务可具体分为：

（1）在事实层面发现文本信息的增删给译作所持的观点带来的影响；

（2）以事实增删为根据，考察译者规律性的选择如何在更大的文本单位上影响文本表述方式，带来逻辑层面的变化；

（3）综合以上事实和逻辑的变化，分析原作到译作的功能差异，继而对该差异作出解释性判断。

事实上，“事实”、“逻辑”和“利益得失”三部分的内容并非彼此独立，互不兼容。其实，“逻辑”蕴含于“事实”当中，而“利益得失”又包含在前两者之内。也就是说：文本可以观察到的逻辑变化是根据事实的变化推论而成；事实和逻辑的变化也将对文本涉及的法律管辖对象带来利益方面的影响。

如下图所示：

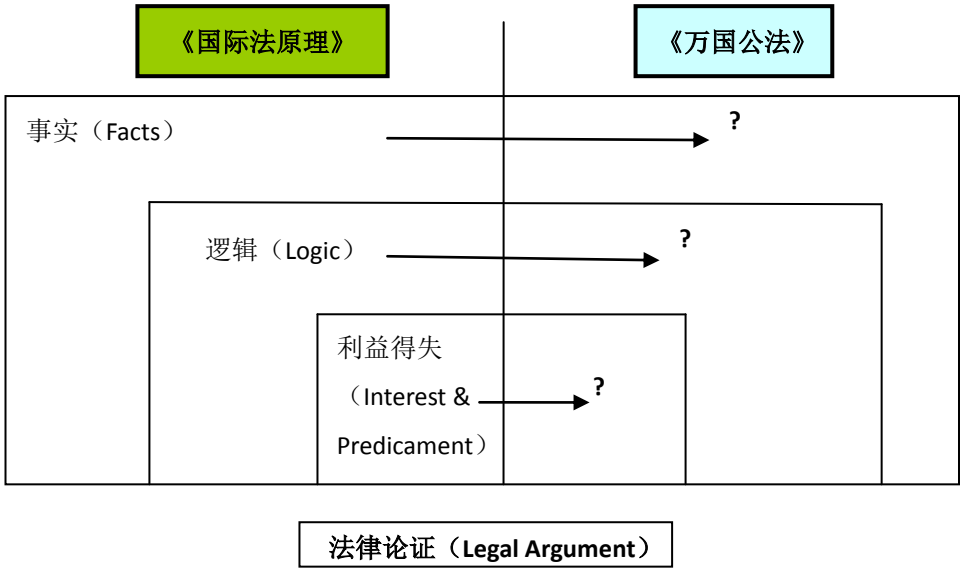


图 2-a 文本考察模式（I）

确立好基本考查步骤后，下一个问题是，从哪个方面来衡量和比较文本以上三个部分的变化？通过初步考查，研究者发现，原作到译作发生的最显著变化体现为增删（以删为主），这是译作成为“改写”本的关键因素。据此将上述的三个考查步骤与母体规范研究相结合，可从文本完整度的角度来分析伦理论证三要素的变化。

也就是说，研究者将从文本入手，首先分析相对原作而言译作的增删所带来的国际法事实的变化，随后以更大的文本单位为考察对象，发现多处事实的增删最后导致的原作和译作逻辑论证方式的不同。最后，在对文本中事实和逻辑变化进行归纳的基础上，结合副文本特征，得出原作和译作中作者/译者和读者之间预设关系的差异。

该分析模式可展示如下：

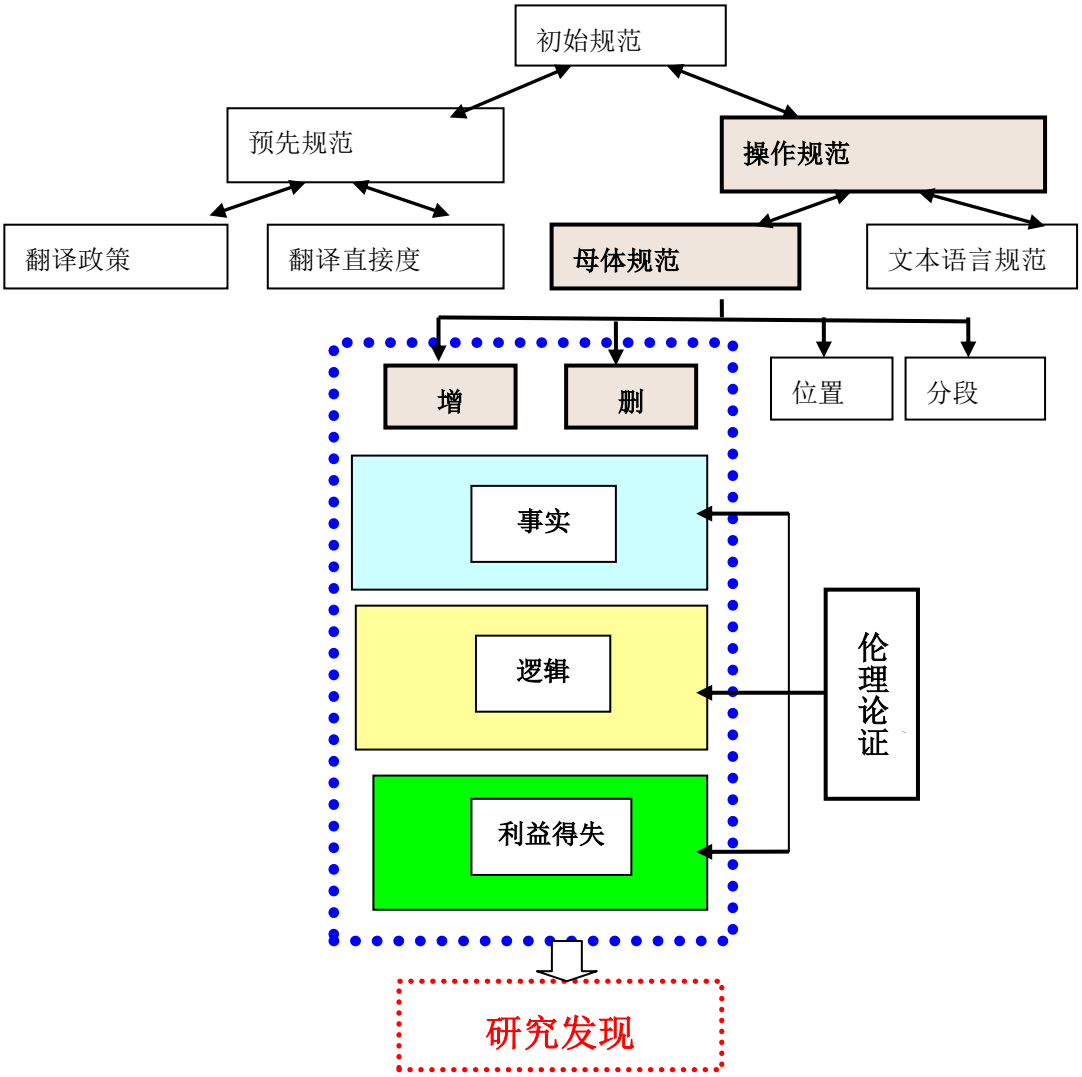


图 2-b 文本考察模式（II）

不过，对上述文本规范的描写并不是本研究的最终目的。建立平行语料库并予分析之后要进行的下一步，是形成“解释性假设（explanatory hypothese）”，如此才能“逐步构建出翻译之概念”[45]（Toury, 2001:85）。在研究层面，图里认为应以“文本”和“文本外”材料为来源，考察“规范”形成（Toury, 2001:65）。至于规范在译者层面的形成，图里认为，译者的

[45] “Like the establishment of TRSNSLATION RELATIONSHIPS, with which it is intimately linked, the identification of shifts is part of the *discovery* procedures only, i.e., a step towards the formulation of *explanatory hypotheses*. The latter, in turn, necessitate the establishment of the overall CONCEPT OF TRANSLATION underlying whatever corpus one sets out to investigate: one text within a braoder context, one problem-area across texts, or a body of texts selected according to one principle or another”(Toury, 2001:85).

形成，源于个人在不断接受“环境反馈（environmental feedback)”的基础上，翻译规范逐渐“内化为一种在先天基础上改造过的能力”[46](Toury, 2001: 250)。“环境反馈”指的是译者收到社会环境对其翻译成果做出的评价。这些评价使得译者根据社会期待调整翻译行为。“在先天基础上改造过的能力”是指一个译者的诞生既有“天性（nature)”的作用，又有“教养（nurture)”的功劳（Toury, 2001: 250)。简言之，译者的培养过程是一个“与翻译有关的社会化过程（socialization as concerns translating)”（Toury, 2001:250)。这些论述可以说奠定了翻译研究中社会学转向的基础。

赫曼斯也指出：“描写本身并不够。描写需要为一个目标，如解释，服务。这要求我们把翻译现象置于宏观语境当中，对该宏观语境做出诠释。由此，在描写的框架下，系统这一概念将介入进来[47]”（Hermans, 2004:102)。赫曼斯同样认为译者的个人行为是社会影响的结果之一。但他强调每个译者都是“社会个体（social agent)”（Schäffner, 2004:60)，其在翻译过程中遵循的“规范”都是“被教授（be taught)”而成的（Schäffner, 2004:38)。赫曼斯指出：“规范”约束和制约译者的翻译选择，使译者倾向某些翻译选择，否定其他选择(Hermans, 1991:161)，由此“翻译充满了价值判断[48]”（Hermans, 2004:95)。这些用语暗示了译者被权力关系操控，同时也把对翻译规范的解释引入更大范围的社会语境。

图里亦指出：“要描述源语和目标语文本之间的项、段甚至整个语篇之间的各种关系，描写翻译研究就需要求助于[某些学科]的理论”（Toury, 2001:85)。在赫曼斯看来，使用系统论来解释规范，是翻译研究学派的创始人图里提到，但并未完全贯彻的一步。

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[46] “a norm has indeed been internalized and made part of a modified competence”

[47] “Desciption is not enough. It has to serve a purpose, such as explanation. It requires that phenomena are put into a context, and that we have an apparatus to bring that contect into view. That is where, in the descriptive paradigm, the notion of system comes in.”

[48] “[T]ranslation is bound up with value”.

说到系统论，在翻译研究领域人们熟悉的是由埃文·佐哈尔（Itamar Even-Zohar）创立的“多元系统论（Polysystem Theory)”。该理论认为：各种社会符号现象，即各种由符号支配的人类交际形式，如文化、语言、经济、文学、政治、意识形态等，皆为系统，而非各种独立元素组成的混合体。每个社会符号系统都不是一个单一的体系，相反是个开放的体系，由许多不同元素组成，这些不同元素组成不同的子系统，它们相互交叉，部分互相重叠，各有不同行为，却又作为一个有组织的整体而运作，互相依存(埃文·佐哈尔，2002)。

赫曼斯指出，多元系统论，甚至可以说所有的系统论的核心概念，一言以蔽之，就是“关联”(relational)（Hermans, 2004:106-107)。多元系统论与社会系统论都来源于功能主义，但它们也有一些显著的差异：多元系统论主要解释文学现象，社会系统论解释社会现象；多元系统论中的系统有的处于中心位置，是“主要系统”，有些处于边缘位置，是“次要系统”，而社会系统论认为，系统无所谓好坏之分，系统和环境也不存在优劣之别；多元系统论中，那些处于边缘位置的“次要系统”总是想争夺“主要系统”的中心位置，社会系统论中，系统互为环境，协同彼此，不存在完全竞争的关系。

有学者认为，多元系统论只把翻译视作一个传统文学系统中的次级系统，尚不能清晰地分析翻译在整个社会系统中的角色。此外，多元系统论在描述系统运作的时候缺乏社会系统论那样的精确度，该理论只能被看作是翻译研究迈向“社会化”的第一步（Tyulenev, 2010:148)。

多元系统论和社会系统论虽然相似，但是在科学和合理地解释包括翻译在内的社会现象方面，社会系统论的理论构建似乎更胜一筹，原因如下：

首先，多元系统主要解释文学现象，社会系统论解释社会现象。佐哈尔认为多元系统是一个整体文化系统的一部分，必然与该文化以及该文化中的其它多元系统相互关联。同时，一个多元系统可能和其它文化中的相应系统

形成一个“大”多元系统或“宏”多元系统。因此，一个多元系统内的任何变化都不能孤立地看待，而应该联系整个多元系统，甚至整个人类文化——人类社会中最大的多元系统来研究(埃文·佐哈尔，2002)。而鲁曼则是从一开始就立足于整个人类社会，再细致地观察具体系统现象。在研究视角上，我们可以说前者是从下至上(bottom-up)，后者是从上至下(top-down)的。

其次，多元系统论中的系统是分等级的，有些系统处于中心位置，是“主要系统”，有些系统处于边缘位置，是“次要系统”。如传统上的翻译文学在整个文学系统中始终处于边缘地位，被认为是一个次要系统。社会系统论中，系统则各自为政，系统之下也许有子系统，但是子系统和系统的关系是互相选择，互为偶然的。对此，赫曼斯认为，把系统或者文化按照“主要”和“次级”进行分类的方式是基于一种主观的逻辑方式，持“胜者为王”的决定论态度。事实上，所谓的“主流”的标签是我们借助事后诸葛亮式的聪明为其贴上的，并非客观的研究成果（Hermans, 2004:118-119)。相反，鲁曼认为，系统无所谓好坏之分。系统和环境也不存在优劣之别。社会系统论中，系统互为环境，协同彼此，不存在完全竞争的关系。系统与系统，系统与环境，环境与环境之间只存在高下之分，不存在优劣之分。不同的系统具有不同功能，各自独立运作发展。

另外，多元系统论的决定论还体现在佐哈尔对多元系统的描述侧重抽象模式，剥离了“人”的主观因素，轻视“真实生活”(Munday, 2001：111)。一方面，多元系统论的解释模型过于庞大，它肯定社会文化系统带来的影响力，但忽略考虑具体的组织和机构作出的具体的决定可能对整个社会产生的推动力，一旦社会变化完成，多元系统论就宣称该变动在大的社会层面上完全符合它提出的模型；另一方面，多元系统论醉心于分类并剖析类别之间的联系，但是没有理出分类背后的具体理据，也不能完全解释类别自身如果发生变化是否仍归该类。由此，有学者认为：多元系统论带有“全然的决定论”

（Hermans, 2004：118）面貌，其提出的科学模式客观与否还面临质疑（Gentzler,1993：123）。社会系统论虽然也面临“去人化(dehumanize)”的指责，但是鲁曼反复强调：系统不以人作为主体，并非是对人的地位的贬低。事实上，神经系统和社会系统的存在的构成和“人”息息相关，不可分离。只是出于研究的必要，我们有必要把系统从“人”中抽象出来。鲁曼提出“双重偶发性（double contingency)”[49]的概念，,是对传统研究中因果模型的否定。因为沟通行为的偶发性指“多个原因导致一个结果”或者“多个结果由一个原因导致”，因此跳出了决定论的限制。

据此，本文的第六章将结合《万国公法》产生的宏观语境，试图用“社会系统论”这一理论解释《万国公法》翻译规范形成的社会与历史背景。

[49] Double contigency，有的学者译为双重偶然性，双重偶联性，双重偶成性，偶发性。

第三章 从原作到译作的事实变化

本章将归纳和总结译者声明和现有研究的不足，继而对原作到译作在事实层面上的变化做出量和质的分析。具体考查内容包括：初步估算原文和译文的字数，依据其比例变化，发现增删的大体规律；结合各章的内容考察增删规范，对具体章节的详略给予初步假设性的解释；通过增删所导致的译作中概念和观点变化，发现译者翻译决策的倾向性；结合社会环境，对翻译策略作出初步解释。

1. 现有研究及不足

自1850年起即被派往中国传教，作为英法联军的翻译，丁韪良协助起草过《天津条约》，随后担任京师大学堂总教习[50]，连同《万国公法》在内，丁韪良总共组织翻译了四五十部关于法律、经济、军事、政治、教育的著作。《凡例》中丁韪良解释："译者惟精义是求，未敢傍参己意。原书所有条例无不尽录。但引证繁冗之处，少[稍]有删减耳"，说明其对文本的取舍原则是保留"条例"（即法律的规定性内容），删除"引证"。"引"多指其他公法学者的观点、或者案例之类的事实；"证"则相当于"对国际法原则的说明和解释"；引述的内容可作为证据说明国际法原则；要对国际法原则作出合理的说明，权威引用和案例必不可缺。英文序言（以下简称为"《英文序》"）里对取舍内容以及翻译策略的说明更为细致：

[50] 驻美公使陈兰彬曾在《公法便览》的序言中如此评价丁韪良："居中土久，口其语言，手其文字，又勤勉善下，与文章学问之士游，浸淫于典雅义理之趋，故深造有得如是"（吴尔玺，1878），对其语言能力及学识品德予以充分肯定。

我认为删去某些冗长的讨论（例如有关惠顿担任驻普鲁士宫廷公使时的住宅的豁免权）以及各式各样不重要的细节（例如有关莱茵河、圣劳伦斯河和密西西比河航行的规定）是合适的。有时候，为了避免不必要的细节，我作了一点压缩；而在另外一些地方，为了说清楚，我又作了某种程度的扩写。[51]据其陈述，删除内容包括讨论和细节。

“讨论”大致相当于《凡例》中提到的“证”。“细节”在内容上略同“引”，即实际案例等。删除标准则为“冗长”和“不重要/不必要”。其中近11页(287-298页)的“惠顿担任驻普鲁士宫廷公使时的住宅的豁免权”一例说明何为“冗长”；莱茵河等河流的航行规定，因与中国关系不大，可归为“不重要的细节”。对删除的篇幅，丁韪良以“少”带过。王文兵对此评价道：“丁韪良也承认对原书的某些内容做过压缩或省略，但在另外一些地方，为了清晰起见，对原文也做了借题发挥，但他并不认为《万国公法》是一个节译本”（王文兵，2008）。

至于增译，“凡例”中“译者惟精义是求，未敢傍参己意”，《英文序》中“为了说清楚，我又作了某种程度的扩写”说明增加的内容只是对原文的解释，并没有个人观点。

译者声明可总结如下：

——关于删除：

（1）数量：删除内容相对较“少”；

（2）原因：(a）过长,(b)不重要；

[51] 《公法便览》（译者序）中丁韪良的声明类似，如下：“其文义或有疑难之处，余偶加注释以发明之，或间遇所引史案，每增数字以指定某地某时，而未敢以己意参入正文”。可以说两书的翻译策略大致相同。一方面没有掺入个人观点，另一方面，以解释原文为目的，增加的内容为“注释”，以及与事实相关的“数字”。

（3）策略：(a)直接删除，(b)删除后补写梗概。

——关于增加：

（1）数量：未予说明，相当默认为“较少”；

（2）原因：原文“不清楚”地方；

(3) 策略：在原文基础上进行扩写。

现有研究多与上述总结相似，相当于重复译者已经声明过的观点。1870年，江南制造局总办冯焌光、会办郑藻如在所拟开办学馆章程就指出：“闻《万国公法》一书，翻译尚有未全”（1989），但没有给出“未全”的理据。徐中约（Immanuel Chung-Yueh Hsu）亦比较过原作和译作，仅提及原作的第 4 章第 17-19 节以及附录在译作中被删除，没有对其他各节删除情况进行考察（Hsu，1960:129/238）。

在《翻译的思想》一书中，比对第一卷第二章的原文和译文之后，张嘉宁（1991）则归纳出增删的原因“是考虑到中国读者的理解”，该结论无需文本分析亦可以得出。相比之下，林学忠在《从万国公法到公法外交》一书中的观点更令人信服，他吁请读者注意《万国公法》“不但不是原著的忠实翻译，在内容在更是有所删略、有所扩写”（2009:55）。

另外，日本一桥大学法学院的博士研究生陈圆在《丁韪良<万国公法>的翻译手法——以汉译<万国公法>第一卷为例》的论文中以原文 20 页上一句话为例，对文本的删除进行了分析。原文和译文的对比示例如下[52]：

ST	TT
The community of ideas, found upon a common origin and religious faith,	即如欧罗巴数国（↓）系同本而同奉耶稣之教，

[52] 为便于读者对比发现问题，将中英文并列排版，下划线由笔者标记，该对比方法由本研究提出。

constitutes international law as we see it existing among the Christian States of Europe, （↑） a law which was not known to the people of antiquity, and which we find among the Romans under the name of *jus feciale*.	故同一公法： 此公法非古人所不知， 盖罗马国书内已见其名也。

表 3-a 第一卷单句对应示例

“under the name of jus feciale”这一表达被省略。对此，陈圆指出：

> 中国の読者にとってあまりにもなじみのないもので、それを理解させるためには説明を相当に加えなければならず、こうした説明を加えるよりは完全に削除してしまうほうが、当代の国際法知識を手っ取り早く得たいという読者の一番の需要に支障を生じるものではないと判断されたからである。（2011：711）

按照其观点：读者本不熟悉“从军祭官法（jus feciale）[53]”，译者出于该知识点不必要的考虑而没有译出。这对读者固然有快速入门的好处，但也剥夺了他们学习国际法知识的机会。

对于同一节中关于“万民法（jus gentium）”一词的词源没有译出，其观点也值得商榷：

> それは西洋言語の知識を持たない中国の読者たちにとって、有益な説明になるどころか、かえって文意を汲み取る際の混乱を招く恐れがあると判断されたからであろう。[……]他方、中国の読者の知識面

[53] 现称“使节法（Jus Feciale）”，是国际法的古典用语。亦指谈判与外交的法律。

の不足を考慮し、訳者の判断で漢訳本に付け加えられたものもあった。(2011:712)

意思是译者省略以上内容,为的不让没有西方语言知识的读者觉得混乱。其后她又指出,译者是考虑到读者的知识面不足而对某内容作出删除。—— 该结论不过为常识,跟具体文本关系不大。此外,以上判断固然可以作为假设,在下文中得以检验,仅凭文本一处的删除,就对译者和读者的心理状态得出结论,尚不能让人信服。

此外,张用心(2005)对译本评价道:

> 扩写,实际上并不存在[……]。删而未译的内容是相当多的[……]。在丁韪良看来,无论是增是删,都是为了中国读者阅读和理解方便,增删的内容并没有什么特别的意义。不过,惠顿本人的前言(包括写于1836年的"第1版广告"、写于1845年的"第3版前言"、写于1847年的"1848年版前言",1855年的第6版均有刊载),篇幅并不算大,但对于阅读和理解应该有不可替代的价值,没有将之翻译为中文,可以算是丁韪良的失误。

其对扩写的描述与事实不符。"将原文的前言删除"归于译者判断"失误"具有规定性;且认为丁韪良所做的增删目的"并没有什么特别的意义",仍属于传统翻译研究中的价值判断。法学界的学者多对翻译中的删除持该态度,如伊藤不二男就指出丁韪良对于惠顿的著作只翻译出大意,不够忠实(1979:464)。

鉴于现有研究中涉及文本的增删现象的数据明显不足,以下本研究者将采用量化的统计方法,结合文本内容的考查,较为详实地再现《万国公法》

的增删情况。

2.整体增删规律

为统计译作相对原作的删除幅度和比例，先对原文和译文的字数进行估算，继而依据各章推测翻译规律。

将《国际法原理》(1855)的 PDF 版本转换为 TXT 文档，继而粘贴在 word 文档，以 MS WORD 工具统计得出原文含注释约计 37 万个英文词。对照中英版本的正文，将译出的部分逐一标记。人工比对后发现，正文内容有 200 多处的删除，删除的长度从半句到 30 页不等。随后手工录入原文，并与译文比对（即译出）的部分，经 word 统计，译出的原文为 10 万词左右。

至于译文，参考中国政法大学出版社的《万国公法》，并以日本早稻田大学收录的影印本为校对，可发现译文有近 10 万字，与译出的原文字数略同。

2.1 各章译出比例统计

统计各章删除比例的方法分为几步：

1、通过目录计算《国际法原理》中在各章所占的页面，以及《万国公法》中各章所占的页面数，得出统计基数；

2、通过手工对比，统计《国际法原理》各章中占页面位置超过五分之二到全页的注释；

3、将原文中各章所占的页面数减去该章中脚注所占的页面数，可得出每章大致字数。

初步数据结果如下：

卷/章	《国际法原理》	《万国公法》

	起止页码	页数统计	起止页码	页数统计
一/1	1-26	26	5-24	20
一/2	27-82	56	25-53	29
二/1	85-111	27	57-76	20
二/2	112-209	98	77-123	47
二/3	210-216	7	124-130	7
二/4	217-270	54	131-138	8
三/1	273-316	44	141-157	17
三/2	317-357	72	158-173	16
四/1	361-415	55	177-196	20
四/2	416-479	64	197-220	24
四/3	480-606	127	221-252	32
四/4	607-622	16	253-262	10
总计	/	646	/	250

表 3-b 各章起止页码统计

上表中的起止页面统计，以章节的自然发展为起点和终点。

需要说明的是，正文之外，每页均附有脚注，且脚注比正文字体小至少两号字，其在各页中所占的比例均有不同：（1）多数情况下，脚注只在正文下占据 5 行以内的位置；（2）某些情况下，脚注占 2/5 到 1/2 版面；（3）有的页面上脚注占据大部分位置，正文部分仅有 2-5 行；（4）还有一种情况（如第四卷第三章的 24 节），是某章的正文部分结束后，脚注还绵延接续，占据了接下来所有页面。

以此统计各章的脚注所占据的页面篇幅，因情况（1）涉及的脚注字数较少，暂不计入统计。将情况（2）列入“脚注篇幅-半页”一栏中，其中脚注占页面 2/5 的情况另以括号注明。同时将情况（3）和（4）均计入“脚注篇幅-全页”一栏中，“（全）”字表明该页全部内容为注释，无正文内容。据此梳理全书，统计结果如下：

卷/章	全章起止页	脚注篇幅-半页		脚注篇幅-全页		总计
		起止页码	页数	起止页码	页	

	码				数	
一/1	1-26	/	0	/	0	0
一/2	27-82	40-42；71	2	36-39；49-50；72-75	10	12
二/1	85-111	88	0.5	89-93	5	5.5
二/2	112-209	116;119;138; 141-145(2/5 页);156;174	4.5	122-137；167-173； 180-183；188;199；	29	33.5
二/3	210-216	/	0	/	0	0
二/4	217-270	/	0	267-270(全)	4	4
三/1	273-316	276-277	1	305-315	11	12
三/2	317-357	328；330	1	331	1	2
四/1	361-415	/	0	371-373；390	4	4
四/2	416-479	418	0.5	432-437	6	6.5
四/3	480-606	494；546；561	1.5	535-545；562-563； 572；586-587； 604-606(全)	19	20.5
四/4	607-622	/	0	612-617	6	6
总计						106

表 3-c 各章脚注所占篇幅统计

《国际法原理》的正文共有 646 页，其中脚注占据了 106 页[54]，约为 16%。

将每章页码总数，减去上节计算出来的脚注所占页面数，可更为精确地得出正文在各章中的比例。

卷/章	《国际法原理》原文			实际的正文篇幅	
	起止页码	页面数	脚注所占页面数	页面数	占全书比例
一/1	1-26	26	0	26	5%
一/2	27-82	56	12	44	8%
二/1	85-111	27	5.5	21.5	4%
二/2	112-209	98	33.5	64.5	12%
二/3	210-216	7	0	7	1%
二/4	217-270	54	4	50	9%

[54] 事实上，脚注所使用的字体要比正文字体略小，此处的比例仅作为大致上的参考，不能以此统计脚注字数。

三/1	273-316	44	12	32	6%
三/2	317-357	72	2	70	13%
四/1	361-415	55	4	51	9%
四/2	416-479	64	6.5	57.5	11%
四/3	480-606	127	20.5	106.5	20%
四/4	607-622	16	6	10	2%
总计		646	106	540	100%

表 3-d 各章正文实际所占页面和比例统计

继而比较译文各章在全书中的比例，得图示如下：

卷/章	内容简述	《国际法原理》		《万国公法》		变化	
		原文比例	排名	译文比例	排名	趋势	幅度
一/1	国际法的定义	5%		8%		↑	3%
一/2	国家基本权利	8%		12%	2	↑	4%
二/1	独立自主权	4%		8%		↑	4%
二/2	民事和刑事立法	12%	3	19%	1	↑	7%
二/3	平等权	1%		3%		↑	2%
二/4	物权	9%		3%		↓	6%
三/1	使节往来	6%		7%		↑	1%
三/2	和平期谈判订约	13%	2	6%		↓	7%
四/1	如何宣战	9%		8%		↓	1%
四/2	敌对双方之权	11%	3	9%		↓	2%
四/3	中立国战权	20%	1	13%	2	↓	7%
四/4	战争期订立和约	2%		4%		↑	2%
总计		100%		100%			

表 3-e 各章在全书中所占比例统计

原作中：第四卷第三章占全书篇幅最大（20%），其论述内容为中立国在战争期间所拥有的权利；其次是第三卷第二章，涉及和平时期国家的谈判与订约

的规则，以及相关案例（13%）；再次，是第二卷第二章“民事和刑事立法权”以及第四卷第二章“交战方的相关权利”，分别占 12%和 11%。译作的详略有所不同：占全书篇幅最大的为第二卷第二章“民事和刑事立法权”（19%）；其次是第四卷第三章“中立国的战权”（13%）以及第一卷第二章“国家的基本权利”（12%）。其变化规律对比图显示如下：

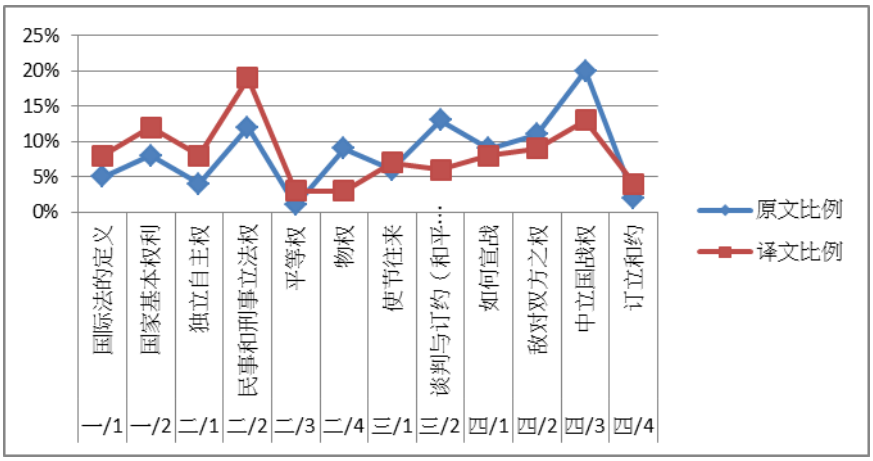

图 3-a 原文和译文所占全书比例对比示意图

此处以菱形为节点的线条代表原文各章在全书中所占的比例，以正方形为节点的线条代表译文各章所占比例。从曲线走势可以看出：前五章中译文比例高于原文（表现为以菱形为节点的线条处于以正方形为节点的线条下方），说明译者大体上采用了增译的翻译策略；随后各章中译文比例基本低于原文（表现为以菱形为节点的线条基本位于以正方形为节点的线条之上），说明后七章中译者多采用删除的翻译策略。

以第二卷第三章为分界线，《国际法原理》中的前五章占全书篇幅的 30%。《万国公法》中，前五章占据了全书篇幅的 50%。

增删变动最大的章节是第二卷第二章（“民事和刑事立法权”）和第三卷第二章（“和平期谈判与订约”）。变化幅度都达到 7%，只是一个是上升，一个是下降。这在某种程度上可以显示出译者对其内容重要程度的判断。后

七章中，仅“使节往来”和“战争期订立和约”两章比例略有上升（1%左右），其余五章所占全书的比例大幅下降，说明译者进行较多的删除。

2.2 删除的频次统计

超过自然句一句以上的删除，以及连续两页以上的大幅删除[55]在各章中的分布和出现频率如下：

卷/章	一句到两页		两页以上		总计
	起止页码	处	起止页码	处	
一/1	4-5; 5; 17-18; 19;	4	/	0	4
一/2	30;	1	60-71	1	2
二/1	93; 94-95; 103-104; 105	4	/	0	4
二/2	142;146;156;162;178	5	186-196	1	6
二/3	/	0	/	0	0
二/4	234; 236-237; 242; 243; 244; 245; 254; 255;	8	219-233;246-248; 248-252;255-270	4	12
三/1	278; 279(2); 302; 303	5	287-298	1	6
三/2	320-321; 322; 322-323; 327; 329; 331-332; 333; 334; 344; 345; 347; 349; 350; 351(2); 355; 356-357	17	323-325;344-342; 352-354	3	20
四/1	364(2); 364; 368; 369; 374; 375(2); 379-380; 381; 383; 384(3); 385;388-389; 389; 394-395; 395-396; 396; 397(2); 398-399; 400(2); 408; 409; 410;	27	371-373;376-379; 385-387;392-394; 401-407;410-413;	6	33
四/2	422(2);423; 424-425; 425(2);425-426;438-439;458; 477-478	10	426-429;440-443; 444-456;462-464; 465-469	5	15

[55] 以一句到两页为分割线，是因为有的页面上脚注占据大量篇幅，正文内容不到五行。在这种情况下，二页之内的删除涉及的字数并不多。而两页以上的删除，往往体量较大，体现出译者的倾向，因而另计。

四/3	480(2)；486；486-487；487；488；489(2)；492；493；495(3)；496；500；505；565(2)；566(2)；569；570-571；572-573；574；574-575；576(2)；577；580；581；582；585；589；590(2)；591；594；	37	482-485;501-503；508-534;544-554；555-561；595-603	6	43
四/4	608；609；	2	/	0	2
总计		120		27	147

表 3-f 各章删除频次与出处列表

总之，1 句以上的删除在全书中多达 147 处，其在各章中的分布密集度如下图所示：

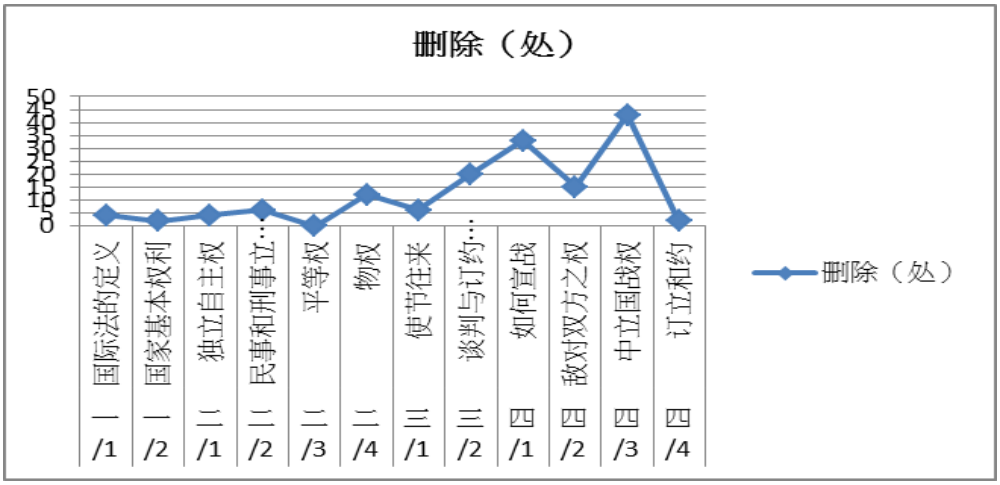

图 3-b 各章删除频次曲线示意图

除最后一章以外，译者在各章中的删除决策呈多点分布势态。第四卷第三章“中立国的战争权利”中的删除最为频密。

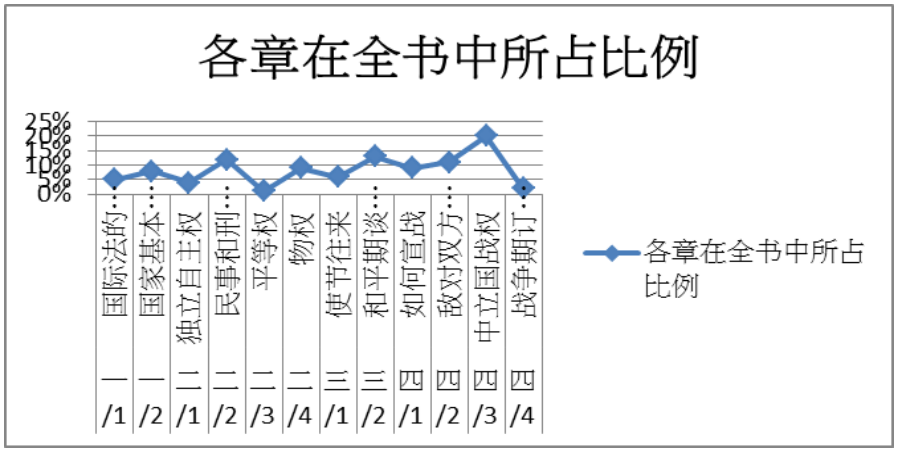

图 3-c 原文各章所占比例示意图

与各章所占的原文比例示意图相比，可以看到目标语文本的删除决策与源语文本各章自身的篇幅基本正相关。——也就是说，源语文本的章节篇幅越长，删除出现的频次越密。这说明译者删除决策具有平衡化的倾向。

2.3 删除内容概述

原作分四卷，共计 12 章。前两卷内容与实体法密切相关，以定义和概念为主。后两卷在规定权利和义务的实体法基础上，增加了许多程序法的内容，以和平时期和战争时期国家之间交往的规则为主体。

从删除的大致情况来看，第一卷仅以段落为单位删除了二处，无论从篇幅还是频次来说，都在全书中为最少，其删除决定的做出更具代表性。这两处的内容分别为（1）万民法定义、概念和起源以及（2）神圣罗马帝国议会的具体组成(第一卷第一章第 23 节)。特别是第 2 处删除，其小节名称为“德意志联邦”，全节在整卷中篇幅最多。甚至其结尾部分，编辑达纳（Dana）还在注解中提到需要参考之前的国际法著作[56]（Dana, 1855:59），大幅引用了惠顿在《万国法（*law of nations*)》一书中的观点。仅此一个注释，就

[56] “The Diet shall take the necessary measures to organize the tribunal according to the preceding articles[…]”.

占文本篇幅达 5 页之多。在该节中，共 11 页左右的内容完全被删，仅保留“日耳曼众盟邦”成立的政治目的，并简要阐述了各邦主权如何划分。该节中“神圣罗马帝国议会”的组织形式、参与国家的相关权利义务、以及 1832 年的具体条款统统略去。该删节策略不仅显示出译本文本予以英美等主流国家内容的优先考量，亦在文本字数分布上显示出一定的平均倾向，即当某一节内容相对其他各节而言过长，该节将被适度删减，以保持章节之间的布局平衡。这与上一节的发现相呼应。

第二卷分为四章，论述国家的绝对权利（absolute international rights)。其内容包括国家的自护以及独立权（第一章)，国家的民事和刑事立法权（第二章)，国家之间的平等权（第三章）以及国家的物权（第四章)。第二卷第二章开始，英美法庭关于奴隶贩卖的案例和判决（参见 Wheaton,1855:188-196）被大刀阔斧地删除。第二卷第四章里，各国具体案例及纠纷（参见 Wheaton,1855:219-233)、英美法丹麦等国之间关于“洋海是否专管”的国家约定，整整三小节就莱茵河、密西西比河以及圣劳伦斯河达成的航运协议内容以及学者们的相关争议（参见 Wheaton,1855:255-270）没有目标语文本中重现。

第三卷涉及的内容为遣使派使的礼仪程序，以及和平时期国家之间如何订立条约。该卷篇幅较大。在此卷中大段删除的内容有:（1）早期与现代公法就特使全权自身定义及其规定范畴产生的观点冲突;（2）欧洲四国干涉土耳其帝国的具体案例;（3）美国和波斯政府就公使财产免于侵害进行的讨论（参见 Wheaton,1855:287-298)，英美关于渔区划分(参见 Wheaton,1855:334-342)，英国和葡萄牙之间的协议等具体内容;（4）国际法学者的著作内容介绍(参见 Wheaton,1855:352-354)。

第四卷的四章以战争时期的国家相处条约为主，分别为:（1）战争开始前如何宣战，双方国家民众的权利义务;（2）交战双方战争时期拥有的战权;

（3）局外国家的权利；以及（4）战后和约的签订提出了相关原则、建议和具体案例。就原文所占篇幅而言，第四卷相当于前三卷的总和，大幅删除的内容也最多。

在第四卷中，第一章关于“宣战及其战争效果（Commencement of War, and Its Immediate Effects)”。其中省略了部分案例，相关评价，斯果德言引言，以及学者观点。删除最为显著的，是法院判决书的理据，包括：美国宪法；国会法案；一般法庭判决理由；美国法院的具体判决意见及理由；(战利法院)在判决书中阐述理由；判决书内容；争议等（参见 Wheaton,1855:401-407)。以及“土产即为敌货”的相关争论、问题、案例和主流观点。最长的部分连续删除 7 页。

第二章题为“敌者之间的战争权利（Rights of War as between Enemies)”，这一章中连续删除内容较多的是第 6 节和第 12 节。第 6 节本身较长，涉及了英美的具体交战案例。美国政府对予实施该行为的军队官员进行开除的理由，关于此事更进一步的辩论（如相关官员往来信函的内容，以及加拿大总督的具体意见，甚至该事件在国家法中如何被定性）均予省略。同样略去不提的，还有英国公师的部分观点（参见 Wheaton,1855:425-426)。以及关于法国将各国艺术品掠夺到卢浮宫，随后不得不归还的具体案例（参见 Wheaton,1855:426-429)。第 12 节则记述了三种货物被抢夺后需归还原主的情况，以黑体字小标题提示，但在译文中区分标志变为“其一”、“其二”、“其三”，其中美国船只被英国捕获，经法国战利法院判决的案例，法英美之间具体制定条约的特例以及“地平线号（cargo of The Horizon)”的案例（参见 Wheaton,1855:440-443）均予省略。连同接下来的数小节，包括“就捕获同盟国财物实施的友好和解”，“美国法律中关于友好和解的规定”以及各国（美国、英国、法国、西班牙、荷兰、瑞典）相关的法律规定（参见 Wheaton,1855:444-456)。此外，第 16 节、第 24 节以及第 27 节

分别删去了国际法实施过程中的质疑与特例、战利法院的大小和职能区别、多个案例（参见 Wheaton, 1855: 465-469）、古罗马旧例的演化过程以及对某些判决原因的分析。

第三章讨论了中立国所享有的战争权利，既删除了瑞士特殊的地理位置（参见 Wheaton, 1855:482-485）、王房的由来（参见 Wheaton, 1855:495-496）、河流海湾领域的界定（参见 Wheaton, 1855:501-503，还删除了若干案例（参见 Wheaton, 1855:508-534/544-554/）、学者观点(参见 Wheaton, 1855:569-701)以及判决理由(参见 Wheaton, 1855:572/573/574-575)等。

第四章本身篇幅不长。“和谈协议的签订（Treaty of Peace)”全章只有 8 节，基本上没有较大篇幅的省略。

整体上而言，《国际法原理》原作的正文部分约占全书篇幅的 540 页（见上表 3-d)，计 20 万词，但总共译出的仅有 10 万词（本研究设立的语料库数据统计结果)，增译的部分相较起来微乎其微 ——可以说，译作略去了近一半的内容，这与译者声明的内容并不相符。

各卷两页以上的删除内容和情况列表如下：

卷/章	内容简述	页面数	内容概述
一/1	国际法的定义	/	/
一/2	国家基本权利	60-71	神圣罗马帝国议会具体构成
二/1	独立自主权	/	/
二/2	民事刑事立法权	187-196	英美法庭关于贩奴的判决、案例、理由
二/3	平等权	/	/
二/4	物权	219-233 246-248-252	各国关于“权由征服而来”的纠纷 “洋海可否专管”各法学家的讨论； 国家海洋管辖范围及理由，欧洲公法

		255-270	**17-19 关于河流航行的三小节**
三/1	使节往来	287-298	**就“公使房屋器具置权外”美国和波斯达成的协议；惠顿观点**
三/2	和平期的谈判与订约	323-325 334-342 352-354	早期其他法学家的看法和谬误 英美关于渔区划分的争议 英葡协议，法葡英纠纷来历
四/1	如何宣战	371-373; 376-379; 385-387; 392-394; 401-407; 410-413;	美国上法院判决理由; 关于以上法律原则的争议; 法院判断入公的理由; 格劳修斯著作第四章内容，拜氏补充; 法院判卷带来的相关两个问题; 与判决相关的问题
四/2	敌对双方之权	426-429; 440-443-444-456; 462-464-465-469	卢浮宫收藏掠夺来的宝物引起的争议、理由及案例; 由以上条例引发的相似案例以及国际法原则讨论;美国及其他国家的法规; 判决的法律原理，该判决可能会引致的法律后果，英国政府报告以及案例
四/3	中立国战权	482-485; 501-503; 508-534 544—554-555-561; 595-603	瑞士的地理位置; 关于“犯之者加刑”的争论和案例; 相关的案例追溯; 对判决其他学者的相反观点、引述的案例,英国的相关规定，全小节删除 对某条法律条例的推论
四/4	订立和约	/	/

表 3-g 两页以上的删除列表

大幅删节（篇幅超过两页以上）的内容共有 23 处之多，但译者仅提及其中两处。一方面，译者的公开声明强调“无不尽录”、“少有删减”（丁韪良，1864），对翻译的删节情况轻描淡写；另一方面，客观的数据说明了译作在原作基础上做出了一半篇幅左右的删节，印证了丁韪良本人私下承认的“改写”一语。以丁韪良为代表的译者团队以删除为手段，“满足”了 “中国的需要”（Martin，1896），也体现出文本之外，话语和事实间存在矛盾，。

3. 概念的迁移

图里指出：译者的解决方案与源语文本中的问题往往相辅相成，互相决定（Toury, 2001:77），且“经过调整的翻译可被看做描述性假设的形成基础”（Toury, 2001:129）。也就是说，翻译过程中译者倾向于将某些内容看做原作的“问题”，采取“删除”的解决方案。反过来，通过归纳和分析删除的内容，也可以（假设性地）推测解译者持有的观点和态度。事实层面的删除，不仅造成“化繁为简”的效果，更因为特定信息的缺失，带来概念和观点传播中的差异。这种刻意造成的差异，即为译者就原作信息在译作中提供的“解决方案”。

翻译带来了国际法概念从西方语境到东方语境的迁移。正如《国际法原理》所指出的：国际法体系最关键的概念包括“通常意义上的人权，及主权国家认可的个人交往的权利，无论其职权如何；国家之间的直接交往”（Wheaton,1855:14）。以下将从“公法”、“权利”等国际法基本概念入手，结合原作涉及“中国(China)”的描述，探讨目标语文本的翻译策略对事实重建产生的影响。

3.1 从“international law”到“公法”

国际法（International Law），原称“万国法（Law of Nations/jus gentium）”指国家之间的法律，是国家在其相互交往中形成的，主要用来调整国家之间关系的有法律约束力的原则、规则和制度的总称。

以关乎国家或个人的利益为标准，法律的类别有公私之分。国际法与国际私法有各自不同的内容体系。因国际法所调整的主要是一种国家与国家之间的“官方”关系，管的都是“公家”的事，所以被称为国际公法。而国际私法主要是调整不同国家的自然人或法人之间的民事法律关系，是一种私人

之间的关系，如涉外合同与婚姻的法律适用问题，与国际公法的性质不同。但国际私法在调整具有涉外因素的民事法律关系中也适用国际法的一些基本原则，有时国际上亦就某些国际私法规则签订国际公约。在这种意义上，国际私法也成为广义的国际法的一个分支。一般意义上的国际法，包括我们今天所讲的国际法，都是指国际公法。

按照古典国际法学者赫夫特尔（Heffer，丁韪良将其译为海氏）的观点："万国法应该称为外部公法，以区别于某一个特定国家的内部公法[57]"（Vattel,1758：22；转引自 Wheaton,1855:14-15），被译为"今时所谓公法者，专指交际之道，可称之曰外公法，以别于各国自治内法也"（丁韪良，2003:16）。译文没有明确地再现出与"外公法"对应的"内公法"概念，亦没有体现出公法（与私法相对应）的完整概念。

在第一卷第二章第五节中，惠顿也指出：所谓内部公法和外部公法，不如称作宪法和国际法更为正确[58]（Wheaton,1855:29）,丁韪良将之译为"论此者尝名之为内公法,但不如称之为国法也。[……]论此者尝名之为外公法,俗称公法,即此也"（丁韪良,2003:27-28),将其中的"constitutional law（宪法）"译为"国法"，同时将"international law（国际法）"译为"公法"。且按照惠顿在《国际法原理》第一版的广而告之中提出的观点，国际法是"支配各国在平时与战时相互关系中行为的规则与原则[59]"（Wheaton,1836:iii），则国际法等同于国际公法。既如此，将国际法简称为公法也未尝不可。

对"国际法"的名称问题，学术界尚未形成明确的共识。有学者认为，

[57] "It may more properly be called external public law, to distinguish it from the internal public law of a particular State".
[58] "Internal sovereignty […] may more properly be termed constitutional law. External sovereignty […] may more properly be termed international law."
[59] "[…] the rules and principles which govern, or are supposed to govern, the conduct of States in their mutual intercourse in peace and in war, and which have therefore received the name of International Law"

这种对国际法性质的理解，“恰恰与惠顿的观点相悖”（张用心，2005），把此处的省略，看做是译者借机用隐瞒的方式表达个人观点（张用心，2005；赖骏南，2011）。另一方面，丁韪良将国际私法译为“私权之法”（丁韪良，2003:20）和“公法之私条”（丁韪良，2003:78），没有明确翻译出与公法对应的私法概念，其所用的“公法”，不是国际公法的简称，而是万国公法的简称，因此不正确（张用心，2005）。

在王健（2001）看来，以“公法”作为“国际法”的译名并无不妥，或者至少有正确的成分。王健的书中有一章题为《公法的时代》，不仅没有对“公法”一词作出准确的解读，且“公法”与“国际法”始终交替使用，似乎这两个词的现代汉语语义也毫无区别（张用心，2005）。鲁纳也认为：“万国公法”这一译名，充其量只反映出“jus gentium（万民法）”、“law of nations（万国法）”的意义，而没有体现出边沁（Jeremy Bentham）所倡导的“international law(国际法)”的观念，其被日语中的“国际法”代替，无可厚非（Svarverud, 2007:107-108）。

《万国公法》第一章中，继译出“各国相待之例，即所称万国之公法，亦如是。既无制法之君，称之曰法，要皆借字，乃出于万国之共好共恶，非由执权者之禁令也。其权在心而不在身，盖君国所以不违之者，惟惧他国仇怒致患也”（丁韪良，2003:19）后，“万国公法”一词在各种语言中的来源考据被译者省略，其省略的内容如下：

> 该法在拉丁文中被叫做“jus gentium”,在法语中为“*droit des gens*”,在英语中被叫做“law of nations”。更准确的说，首次出现时，由 Zouch 博士称为“*jus intergentes*”，意思为“两个或多个国家之间的法律”[……]其在法语中的对等词为[……]“国际法（international law）”的概念由[……]提出，通常被称为“*law of*

nations”[60]。(Wheaton, 1855:19)

由此，丁韪良将“jus gentium（万民法）”、“international law（国际法）”以及“law of nations（万国法）”均译为“万国之公法”（如“罗马国律法书所谓万国之公法者”），或者以“公法”（如“海氏以公法分为二派”）统一称之。他甚至将整本译著定名为《万国公法》，并在《凡例》中说明，“是书所录条例，名为《万国公法》，盖系诸国通行者，非一国所得私也”（丁韪良，2003）。对于惠顿所特别讨论和提倡的“国际法（international law）”这个词，丁韪良偶尔将之译为“诸国之法”（如“海氏以诸国之法，不足尽罗马国法师所言公法之义”）外，也一概称之为“公法”[61]。据此，林学忠指出：“丁韪良[……]有意淡化自然法（natural law）的色彩，把国际法说出是天理，具有普遍价值”（2009:63）。

或许得益于将“international law”译为“公法”，又在目标语文本中省略了对“国际法”一词的源流考据，梁启超认为《万国公法》亦是中国传统“经世”思想体现，认为“居今日而言经世”，其要旨之一即为必须“深通六经制作之精意，证以周秦诸子及西人公理公法之书以为之经，以求治天下之理”（1986：297），将来自西方的知识和传统思想脉络，融铸串联。潘光哲（2012）甚至认为：所谓“国际法”亦尝存在于中国古史的认知，始终

[60] “This law has commonly been called the *jus gentium* in the Latin, *droit des gens* in the French, and law of nations in the English language. It was more accurately termed the *jus intergentes*, the law between or among nations, for the first time, by Dr. Zouch, an English civilian and writer on the science, distinguished in the celebrated controversy between the civil and common lawyers during the reign of Charles II., as to the extent of the Admiralty jurisdiction…The terms *international law* and *droit international* have now taken root in the English and French languages, and are constantly used in all discussions connected with the science, and we cannot agree with Heffter in proscribing them.”

[61] 不过，经历过义和团事件之后，丁韪良对于“公法”的态度似有所改变。在《邦交提要》一书，他说到，所谓的国际公法，也仅仅是保护“有化之国，自强之国”，而对当时中国这样的“内政不修，外交不明，营私舞弊，气象愁惨”(丁韪良，1904)之国，不在所谓“公法”保护之列。当时任大清海关总税务司的赫德在《局外旁观论》（1865）中十分明确地道出了此类“公法”的性质，“在民间立有合同，即国中立有条约，在万国公法准至用兵。败者必认旧约，赔补兵费，约外加保方止”。

不绝。——《万国公法》所含的国际法理念是舶来的，目标语文本却体现出将其纳入中国的传统思想体系的努力，这一尝试，通过回避“international law”的词源考据得到了实现。

3.2 从“right”到“权利”

西方的“right（权利）”概念受到两种不同的法理影响：成文法强调“right”需由法律条文和司法机构保障；自然法的法理则认为“天赋人权”，是道义赋予人类的某样资格或者事物，是“所有权利的基础或对所有实证法赋予正义特征的道德原则基础”[62](薛波等，2003：1200)。19 世纪中叶，“权利（rights）的思想在中国，几乎没有背景，以致必须为它创造一个新词”（费正清，1994:4）[63]。中文语境下，“权”字代表“皇权”，由统治阶层专属，显示出中国一贯以来的“王治”思想[64]。同时，“在中国传统文化里面，‘权’字的本意——‘威势’向来在上而不在下，权在有司而不在凡间庶民”（王健，2001: 167)，相当于“统治阶级的势力与强制力”，

[62] 据柏林（Isaiah Berlin）考察，“right”一词被引入欧洲语言中大约是十四至十五世纪 ，“个人私隐权”这种代表自主性的观念在西方出现，最早则不会超过 16 世纪（柏林,1986:238-239）。也就是说，权利作为一个纯法律概念，演化到个人自主性为正当这一理念，即承认“天赋人权”，在西方也经历了漫长的过程。不过，到了《国际法原理》写作的十九世纪,西方法律体制下的 right 已经发展成熟，并含有以下意项：(1)与法律或者道义相一致的行为或（占有某物的）自由（以下简称为“合乎法律或者道义”）；(2)根据法律或者正义应得的；(3)权力、特权、豁免权；(4)可或不可做某事的强制力；(5)某种得到认可和保护，不得遭到损害的利益；(6)对财产的拥有；(7)作为股东所拥有的收益；（8)作为股东拥有的证明文件(Garner,2004:1436-1437）。

[63] 其进入中国文化语境的尝试可追溯到 1839 年。当时林则徐委托伯驾（Peter Parker）和袁德辉翻译瓦泰尔（Emmerich De Vattel）《国际法，或适用于各国和各主权者的行为与事务的自然法原则》一书中的部分章节，后收录于魏源编辑的《海国图志》第 83 卷中。原文有 8 处使用了 right。伯驾并未将之作为完整概念处理，仅以“当”、“得”和“应”这样的情态词译出其规定性。袁德辉则用“道理”和“权”字译出 4 处，试图用名词化的翻译形式将该概念引介到中文语境中，不过这种努力尚未成气候。

[64] 《汉典》记载：《公羊传·桓公十一年》里有“权者何？权者反于经，然后有善者也”的句子。此处的“经”表示惯例，“权”是打破惯例的力量，“权者”这种群体具有打破和建立机制的力量。《前汉·律历志》里则有“孔子陈后王之法，曰谨权量。量多少者不失圭撮，权轻重者不失黍絫”的表述。这里“权”字本意为“秤砣”，动词形式引申义为“称量”。《后汉书·滕抚传》中有“性方直，不交权埶，宦官怀忿”的字句，“权”字代表身居高位，拥有势力的人。—— 不同时代不同文本中，“权”字的核心意义在“秤砣”、“改变的力量”、“居高位的人”之间流转。

即“权力”。

“权利”作为一个完整的法律概念，在汉语的古典文集中更是从未出现过[65]。先秦文献中很少使用“权利”。汉以后，“权利”仍为“权”加“利”的意义组合（金观涛 & 刘青峰，2006）又因为“利”字相当于“货财”，“显然带有贬意”[66](李贵连，1998:115；申卫星，2005)。总之，“right”与“权/权利”的意义差异可总结为：（1）right 为世人共有，“权/权利”只属于上层阶级;（2）right 具有“法治”特征，“权/权利”强调“王治”；（3）right 为抽象的法律概念词汇，有正面意义,“权/权利”并未成为专有名词，略带贬义。

以上符号的意义差异，译者丁韪良也部分意识到了。在另一部国际法译作《公法便览》（1877）的“凡例”中，他说到：

> 公法既别为一科，则应由专用之字样。故原文内偶有汉文所难达之意，因之用字往往似觉勉强。即如一‘权’字，书内不独指有司所操之权，亦指凡人理所应得之分。有时增一‘利’字，如谓庶人本有之权利云云。此等字句，初见多不入目，屡见方知不得已而用之也。（丁韪良，1878）

“一科”和“专用”表示丁韪良认识到国际法作为独立学科，有使用专有名词传递概念的必要性（虽然将其译为情态动词也可以暂时传递意义，但不能成为永远的解决方案）；他还发现了“right”和“权” 因所属对象分别为“凡人”和“有司”所导致的意义差异；在承认其译法“用字[……]

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[65] 梅仲协指出：“我固有之法律思想，素以义务为本位，未闻有所谓权利其物者。稽考典籍，权与利二字连用，殊罕其例”（1998:32）。

[66] 甚至有学者认为：“两者结合起来似是 power-profit（权力-利润），或者至少是说 privilege-benefit（特权-利益）。这样就使一个人对权利的维护，看起来像一场自私的权力游戏”（王赪武,1979：3-4；转引自费正清，1994:4）。

勉强”这一不足的基础上，他提出了“屡见”的解决方案；同时，对译者而言，“权利” 偶尔（“有时”）使用，与“权”字相差不大，同为“庶人”即“凡人”所有；最后，当“不独”和“亦指”构成递进关系，前者往往为已知信息，后者为新增信息，该关联显示出译者希望在读者已认可的“有司所操之权”上，附加“凡人理所应得之分”，扩展“权”的意义。

以第一卷第一章为例，right 在原作中共出现 15 次；2 次作为形容词和“理由（reason）”搭配，表示“正确的”意思；3 次未译出；其余的被译为“权/权利“(8 次)，“例”（2 次），“条规”（1 次）以及“分”（1 次）。其中 1 次“right”呈单数，是拉丁语“droit”的解释性翻译，其他 11 次均以复数形式表示独立的法学概念。

继而抽取每卷(以原文“Part”的首字母 P 表示)的第一章，在原文中检索 right，随后在译文中确定其对应的名词化译文。在排除缺省翻译（即 right 并未译出)，以情态词如“可”、“应”、“得”等来表达，以及 right 作为形容词出现修饰 reason 仅表示“正确”的情况，right 对应的名词化译法共有 89 处，其中 74 次被译为“权/权利”，9 次被译为意义含糊，大而化之的“例”，4 次被译为规定性较强、指向明确的“条规”以及“法”，1 次被译为与“duty”意义相近的“分”以及 1 次被译为偏离原意较多的“术”。

正如图里所说：“译者总有一项以上的选择。但是，考虑到目标文化的局限性，不是所有选择都同等可行。诸选择倾向形成一个从高到低的排列秩序”（Toury, 2001:163)。从选词频率上，可以看到”例”、“条规”、“法”等词均不足以作为独立概念传递 right 的意义。译者有意识地将“权/权利”作为与 right 对应的术语来处理，翻译策略趋向稳定，“right”、“权”、“权利”的对应已经形成。如以下三例所示：

例（13）In treating of the rights of neutral navigation in time of war, he says, “Reason commands me to be equally friendly to two of my friends who are enemies to each other; and hence it follows that I am not to prefer either in war.”（P.8）

论战时局外者航海之权，彼云：“我有两友，同结怨仇，我均当以友谊待之，不可助此以害彼，此理也。”

例（14）It is the essence of all civil society, (civitatis,) that each member thereof should have given up a part of his rights to the body of the society, and that there should exist a supreme authority capable of commanding all the members, of giving to them laws, and of punishing those who refuse to obey, (Wheatong, 1885:11-12)

夫国之赖以立者，须二事以成：有因众人以治己之私权归之于公，一也；有统权之君以为之制法。

例(15)As a treaty binds only the contracting parties, it is evident that the conventional law of nations is not a universal, but a particular law.(Wheaton, 1855:13)

夫盟约章程之有权者，惟在于立之之国，乃是特立而非通行也。

例（14）中：“治己之私权”与“统权之君”均为“公民社会”存在的必要条件，“权”由此归属于上层统治阶级和“文明社会的每一位成员（civil society …each member）”；“私权”一词，亦使得“权”首次归属于个人；“his rights（他的权利）”使用了“外照应（exophoric）”的修辞手段，“指向外部语境”（Thompson, 2008：181），即西方法律体制

认可下的公民权利；译文中，“认可个人权利”的外部环境尚不具备，修辞效果无法重现，文本内特别增加“众人”、“己”和“私”等强调“个人”等前置修饰语，以“内照应（endophoric）”的方式予以弥补。

例（15）中：“章程”的“有权”体现出法律制度的规约性，对儒家提倡的“为政在人”，执政者“其身正，不令则行，其身不正，虽令不从”的主张可以说构成了一定的挑战[67]。

通过反复应用，“权/权利”这一概念“被置于一种刻意将其独特性（markedness）模糊化的语境中，读者由此将之当成正常的表达法”（Toury,2001:213），最终忽略其独特性，从而完全接受[68]。——由此，西方法学中“天赋人权”的思想在“权”的掩护下，渗入中文语境[69]。

3.3 “China”地位的重塑

萨义德说过:“‘东方’和‘西方’这样的地方和地理区域都是人为建构起来的”（萨义德，1999:7）。原作《国际法原理》中有三处提及中国，在西方帝国的立场上记录了当时国际法体系版图中中国的国际位置。对此，

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[67] 胡以鲁（1914）对此评价：“自希腊有正义即权力之说，表面之义方含权之意，而后世定其界说，有以法益为要素者。日人遂撷此二端，译作权利，以之专为法学上用语；虽不完，犹可说也”，说明其认识到“权利”中必不可缺的法律“要素”，且予以肯定。不过从“王治”到“法治”的转变不可能一蹴而就，“权/权利”带来“尊崇制度”的理念，结合上文提到“庶人所有”的可能，多少会让当时的知识分子有不适感。严复在致梁启超的信中就提到“强译‘权利’二字，是以霸译王，于理想为害不细”（1986:519），其中的“以霸译王”，隐隐含有了对草民造反的担心，胡以鲁（1914）亦忧心忡忡道：“权利【……】一经俗人滥用，遂为攘权夺利武器矣！”

[68] 需要指出，译文符号意义扩展后，与 right 的“裂痕”趋向缩小，但并未完全消失，如 right 的经济意义在本文的观察结果中就未能体现。这可能与《万国公法》偏重政治和国际关系，加上选取范围有限，“权”字出现的语境不够丰富有关。另一种可能，是为了摆脱“利”字带来的负面影响，译者索性将任何经济意义从“权”字上剥离出去，只以其表示“某种好处”，如“国使权利””。当然，法律概念的诞生固然可以凭译者一己之力完成，其搬运能否获得成功，取决于该概念所处的法律环境是否具备相关的土壤，以及读者的最终认可。不过，由《万国公法》开始，“权利”一词甚至远播到了日本。随后，1903 年清政府颁布的《公司律》中明确将“权利”二字纂入法律。自此，在中国，“权利”一说“遂成燎原之势”（申卫星，2005）

[69] 正如刘禾所说：“衍指符号比较善于掩饰词语的外来性和内在分裂，无论是书面形式还是语音形式，本土词语可以在‘词汇’的稳定表象上维护不变，因为书写的具体字形--即笔迹的物质形态--可以涂上同质性的虚幻外表，而这一切都很容易在那些讲本族语的人群面前蒙混过关”（2009:14）。

译作的翻译和诠释，特别是对某些信息的过滤和增加，体现了中国主权地位“重建”过程中的特殊考虑。

1.3.1 “反商业和反社会”的中国

《国际法原理》的第一卷第十章“海氏大旨（System of Heffter）”中，作者惠顿描述了中国如何摆脱“反商业和反社会”的陋习，被宗教感化，从而走上文明的正轨，如下：

例（16）Opinion of Savigny.

According to Savigny, “there may exist between different nations the same community of ideas which contributes to form the positive unwritten law (das positive Recht) of a particular nation. This community of ideas, found upon a common origin and religious faith, constitutes international law as we see it existing among the Christian States of Europe, a law which was not known to the people of antiquity, and which we find among the Romans under the name of *jus feciale*. International law may therefore be considered as a positive law, but as an imperfect positive law, (*eine unvollendete Rechtsbildung*,) both on account of the indeterminateness of its precepts, and because it lacks that solid basis on which rests the positive law of every particular nation, the political power of the State and a judicial authority competent to enforce the law. The progress of civilization, founded on Christianity, has gradually conducted with all the nations of the globe, whatever may be their religious faith, and without reciprocity on their part.”

It may be remarked, in confirmation of this view, that the more recent intercourse between the Christian nations of Europe and America and the Mohammedan and Pagan nations of Asia and Africa indicates a disposition, on the part of the latter, to renounce their peculiar international usages and adopt those of Christendom.[…]

The same remark may be applied to the recent diplomatic transactions between the Chinese Empire and the Christian nations of Europe and America, in which the former has been compelled to abandon its inveterate anti-commercial and anti-social principles, and to acknowledge the independence and equality of other nations in the mutual intercourse of war and peace.（Wheaton, 1855:20-22）

出于同俗，行于他方

赛宾尼云：“一国之律法，概从其教化风俗，故数国若同化同俗，即可同一公法也。即如欧罗巴数国系同本而同奉耶稣之教，故同一公法：此公法非古人所不知，盖罗马国书内已见其名也。公法即可谓律法，惟不如各国之律法、禁令详细，凭国势以行，赖有司以断之者也。然而吾侪之化，本乎耶稣之教而渐兴，令我以此公法待天下万国，无论其崇奉何教，无论其以是待我与否。”

赛氏此说是也，亦可以迩来之事证之。[……]

欧罗巴、亚美利加诸国奉耶稣之教者，与中国迩来亦共议和约，中国既弛其旧禁与各国交际往来，无论平时、战时，要皆认之为平行自主之国也。

其最后一段内容，如以现代汉语翻译，可以表述如下：

以上论述也同样适用于中华帝国近日与欧美基督教国家的外交往来，中

国已被迫放弃它那根深蒂固的反商业和反社会的原则，它不得不承认无论在战时还是在和平交往中，其他国家也都是自主国家，并与之平等。（着重号为笔者所加，参见刘禾，2009：182）

用本研究提到的方法对语料进行对应比较，可以发现原文中的“被迫放弃（has been compelled to）”在译文中变成了具有主动意味的“驰”。

The same remark may be applied to the recent diplomatic transactions between the Chinese Empire and the Christian nations of Europe and America, in which the former has been compelled to abandon its inveterate anti-commercial and anti-social principles, and to acknowledge the independence and equality of other nations (↓) in the mutual intercourse of war and peace.	欧罗巴、亚美利加诸国奉耶稣之教者，与中国迩来亦共议和约， 中国既弛其旧禁 与各国交际往来，无论平时、战时，要皆认之为平行自主之国也。（↑）

表 3-h 第一卷第十章例句文本对应示例

这段话与原文不同的有三处：（1）原文中的“has been compelled to”在译文中被略去；（2）“放弃（abandon）”译为“驰”；（3）原文中的“反商业和反社会”在译文中没有出现。

（1）、（2）处改动是相关联的，目标语文本中“被迫放弃”译为了具有主动意味的“驰”。同时相对“放弃”完全不保留的意思，“驰”字体现出较为谨慎的“解除”之意。（3）处则将惠顿对中国不够遵守国际法规则的指责完全抹去，其“原文的有些修辞，显然被丁韪良等人的译文有意含糊了”（刘禾，2009：182）。换言之，“反商业和反社会”这样严重违背国际法基

本原则的行为，在译文中被轻描淡写地转述为当时的中国已取得的进步，体现在放松原来对外交往中的严格控制以及与世界各国交易往来上。由此，“中国和其他国家的相对位置发生了变化”（刘禾，2009：182）。

以上有关“中华帝国”这段话，在 1836 的版本中并不存在，而是 1846 年，版本再次修订的时候由作者惠顿加上的，刘禾认为：“中国既弛其旧禁与各国交际往来”这一行为，准确而言，体现在“鸦片战争，以及战后迫使清朝对外国贸易开放的那些不平等条约[……]这些国际事件标志着中国半殖民化历史的开端”（2009:182）上。在她看来：“惠顿本人将此事看作是欧罗巴和亚美利加诸国征服异教国家的证据：原先属于‘吾西方之公法’的国际法原理，似乎终于获得了普世主义的地位”（刘禾，2009：182）。

对于以上内容，到了 1866 年版的《国际法原理》中，编者达纳（Richard H. Dana Jr.）增加了一处注释[70]，特别提醒读者要了解 1855 年丁韪良的中译本的意义：

> 西方文明在东方获得进展的最有力的证据，就是惠顿先生这部著作被支那政府采用，作为其官员在国家法领域的教科书使用。这本书是在 1864 年朝廷的赞助下翻译成中文的。这项译事系由美国公使蒲安臣提

[70] 全注如下：“By the Treaty of Paris, of March 30, 1856, the great powers invited the Sultan to participate in the advantages of the public law and system of Europe. There are treaties of the Sultan with Austria, Venice, and Poland, in 1699; with Austria in 1718 (the Peance of Passarowitz); and with Russia in 1774, 1792, 1812, 1829, and 1833. The United States and the maritime nations of Europe have treaties with China and Japan, and ministers resident at Peking and Yedo. The United States have treaties with China, of 1844 and 1858; and with Japan, of 1854 and 1858; with the Ottoman Empire, of 1830 and 1862; with Siam, of 1833 and 1858; with Algiers, of 1795, 1815, and 1816; Tripoli, of 1796 and 1805; Tunis, of 1799 and 1824; Persia, of 1856; the Sultan of Muscat, of 1838; Morocco, of 1836; and Borneo, of 1850.The most remarkable proof of the advance of Western civilization in the East, is the adoption of this work of Mr. Wheaton, by the Chinese Government, as a text-book for its officials, in International Law, and its translation into that language, in 1864, under imperial auspices. The translation was made by the Rev. W.A. P. Martin, D.D., and American missionary, assisted by a commission of Chinese scholars appointed by Prince Kung, Minister of Foreign Affairs, at the suggestion of Mr. Burlingame, the United States Minister, to whom the translation is dedicated. Already this work has been quoted and relied upon by the Chinese government, in its diplomatic correspondence with ministers of Western Powers resident at Peking.—D”

议、由美国传教士丁韪良主译，并得到总理大臣恭亲王委派的支那学者的协助，此书是献给蒲安臣的。支那政府在与西方列强驻北京的使节办理外交交涉时已经引用和依赖这部著作了。((Wheaton, 1855:13；参见刘禾，2009:183)。

总之，原作者对中国的负面评价，因为如上的删除处理，消除了引起预期读者不快的隐患，同时，因为中文译本的发行，原作中对中国的负面评价被随后对该一行为的肯定抵消。受益于《万国公法》中特定信息的增删处理，在一定程度上，“中国”摘下了其“反文明反社会”的标签，被纳入西方的国际法体系，国际法所倡导的世界秩序，也被更为顺畅地介绍进中国。

1.3.2 治外法权

中国在国际法地位中的特殊，还体现在“治外法权”的实施和“外人不得入籍”的规则上。

《国际法原理》一书中第二处提到中国，在第二卷第二章“论制定律法之权”的第十一节“因约而行于疆外者领事等官”中。这一节的英文标题是“领事裁判权（Consular jurisdiction）”，即治外法权。在这一节中，惠顿提到治外法权的定义为“两国的领事或者代表机构在获得授权的情况下，就其定居他国的国民仍受本国管辖而签署的协议。其性质和范围视协议具体内容而定[71]”（Wheaton, 1855: 166），被译为“此国之律法可行于己之疆外，而及于彼国之疆内者，盖因二国相约而然”(丁韪良，2003:106)。

治外法权由两国约定而起，随后惠顿特意以《中美望厦条约》为例说明该情况的实施(“于一千八百四十四年，美国与中国立和约通商章程”)。

[71] “the treaties by which the consuls and other commercial agents of one nation are authorized to exercise, over their own countrymen, a jurisdiction within the territory of the State where they reside. The nature and extent of this peculiar jurisdiction depend upon the stipulations of the treaties between the two state.”

依照这种特权，凡在中国享有领事裁判权的国家，其在中国的侨民不受中国法律的管辖，不论其发生何种违背中国法律的违法或犯罪行为，或成为民事刑事诉讼的当事人时，中国司法机关无权裁判，只能由该国领事或由其设在中国的司法机构依据其本国法律裁判。

在此之前，1843 年的中英《五口通商章程》已经成为领事裁判权制度在中国的开端。其第 13 条规定：

> 凡英商禀告华民者，必先赴管事官处投票，候管事官先行查察谁是谁非，勉力劝息，使不成讼。间有华民赴英官处控告英人者，管事官均应听诉，一例劝息，免致小事酿成大案。其英商欲行投票大宪，均应由管事官投递，禀内倘有不合之语，管事官即驳斥另换，不为代递。倘遇有交涉词讼，管事官不能劝息，又不能将就，即移请华官公同查明其事，既得实情，即为秉公定断，免滋讼端。其英人如何科罪，由英国议定章程、法律发给管事官照办。华民如何科罪，应治以中国之法，均应照前在江南原定善后条款办理。[72]

“英人[……]科罪，由英国议定章程、法律发给管事官照办”一条的规定，成为了领事裁判权制度在中国的开端。

1844 年《中美望厦条约》第 21 条则规定，中美人民间的刑事案件,依被告主义办理。第 24 条规定,中美民事混合案件，由“两国官员查明，公议察夺”，似乎是采取会审制度。第 25 条规定，美国人之间的案件由美领事办理,美国人与别国人之间涉讼,由有关国家官员自行办理，中国官员不得过问。《万国公法》第二卷第二章第十一节将之表述如下：

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[72] 《道光条约》，卷 2，页 12－27。英文本见《海关中外条约》，卷 1，页 369-389。

例（17）By the treaty of peace, amity, and commerce, concluded at Wang Hiya, 1844, between the United States and the Chinese Empire, it is stipulated, art.21, that “citizens of the United States, who may commit any crime in China, shall be subject to be tried and punished only by the consul, or other public functionary of the United States thereto authorized, according to the laws of the United States.” Art 25. “All questions in regard to rights, whether of property or of person, arising between citizens of the United States in China shall be subject to the jurisdiction, and regulated by the authorities, of their own government. And all controversies occurring in China, between citizens of the United States and the subjects of any other government, shall be regulated by the treaties existing between the United States and such governments respectively, without interference on the part of China.” (Wheaton, 1855:167)

第二十一条云：嗣后，中国民人与合众国（双行小字：即美国之别名也）民人有争斗词讼交涉事件，中国民人由中国地方官捉拿审讯，照中国例治罪。合众国民人由领事等官捉拿审讯，照本国例治罪。但须两得其平，秉公断结，不得各存偏护，致启争端。第二十五条又云：合众民人在中国各港口自因财产涉讼，由本国领事等官讯明办理。若合众国民人在中国与别国贸易之人因事争论者，应听两造查照各本国所立条约办理，中国官员均不得过问。（丁韪良，2003:107）

将以上语料以本研究提出的方法对应起来，得双行表格如下：

By the treaty of peace, amity, and commerce, concluded at Wang Hiya, 1844,	于一千八百四十四年，美国与中国立和约通商章程，

between the United States and the Chinese Empire, it is stipulated, art.21, that “citizens of the United States, who may commit any crime in China, shall be subject to be tried and punished only by the consul, or other public functionary of the United States thereto authorized, according to the laws of the United States.” Art 25. “All questions in regard to rights, whether of property or of person, arising between citizens of the United States in China shall be subject to the jurisdiction, and regulated by the authorities, of their own government. And all controversies occurring in China, between citizens of the United States and the subjects of any other government, shall be regulated by the treaties existing between the United States and such governments respectively, without interference on the part of China.”	第二十一条云： “嗣后，中国民人与合众国（双行小字：即美国之别名也）民人有争斗词讼交涉事件，中国民人由中国地方官捉拿审讯，照中国例治罪。 合众国民人 由领事等官捉拿审讯，照本国例治罪。 但须两得其平，秉公断结，不得各存偏护，致启争端。” 第二十五条又云： “合众民人在中国各港口自因财产涉讼， 由本国领事等官讯明办理。 若合众国民人在中国与别国贸易之人因事争论者， 应听两造查照各本国所立条约办理， 中国官员均不得过问。”

表 3-i 第二卷第二章第十一节文本对应示例

事实上，《中美望厦条约》的第二十一款如下[73]，《国际法原理》中未出现的部分以阴影标记：

ARTICLE XXI.

Subjects of China who may be guilty of any criminal act towards citizens of the United States, shall be arrested and punished by the Chinese authorities according to the laws of China: and citizens of the United States, who may commit any crime in China, shall be subject to be tried and punished only by the Consul, or other public functionary of the United States, thereto authorized according to the laws of the United States. And in order to the prevention of all controversy and disaffection, justice shall be equitably and impartially administered on both sides.

此处添加的内容，与该条约的第二十一款[74]以及第二十五款[75]如出一辙。一个独立国家能够建立对内的主权，但它对外的主权“恐怕需要得到别的国家的认可，方才圆满和完整”[76]（Wheaton, 1855:30）。克莱斯勒（Stephen Krasner）曾列出四种国际法主权概念，其中国际法意义层面上的“主权”

[73] Treaty of Wanghia, 维基来源，http://en.wikisource.org/wiki/Treaty_of_Wanghia 2013 年 7 月访问。

[74] “嗣后中国民人与合众国民人有争斗、词讼、交涉事件、中国民人由中国地方官捉拿审讯，照中国例治罪；合众国民人由领事等官捉拿审讯，照本国例治罪；但须两得其平，秉公断结，不得各存偏护，致启争端”。

[75] 合众国民人在中国各港口，自因财产涉讼，由本国领事等官讯明办理；若合众国民人在中国与别国贸易之人因事争论者，应听两造查照各本国所立条约办理，中国官员均不得过问。

[76] “The recognition of any State by other States, and its admission into the general society of nations, may depend, or may be made to depend, at the will of those other States, upon its internal constitution or form of government, or the choice it may make of its rulers.”

指的是国家主权需要得到国家间的认可；威斯特伐利亚体系影响下的“主权”则以自治原则为标志，主要指国家处理内部事务的过程中外部势力不得干涉（1999:8-9）。丁韪良所用的回译手段，是直接找到相关条款的中文版本，并补全了与中国权利相关的部分，其增译的部分赋予中国在原作中所不具有的地位，双方更显平等。

1.3.3 入籍制度

从 18 世纪开始，马尔腾斯（Georg Friedrich von Martens）以及哥廷根学派（the Göttingen School）的学者提出了国际法的实证主义转向，将国际主权的概念从近代法律哲学及形而上学中抽离出来，趋向欧洲中心化（Anghie, 2005:35-36）。该转向对西方国家以外的地区体现出歧视态度，强调文明国家与非文明国家的区别，将非文明国家从文明国家的交际圈中孤立出去，独留后者独享“主权”以及国际法规则带来便利。

该思潮也在原作当中有所体现。其中第三处关于中国的描述，出现在第四卷第一章第十八节“西人住于东土者（Merchants residing in the east）”里，透露出将中国划归为“非文明地区”的倾向。

> 商人住在西土各国为业者，按律法视之与己民同例。商人在东土者，即以商会得名。盖西东风俗不同。在西土，别国人与本国人交际无所胆碍，在东土则不然。所谓异邦人羁旅于外方是也。英荷交战时，有英商在土耳其贸易，恃荷兰领事保护，战利法院断以为可视同荷兰人，即可视其货为敌货，于是将其货捕拿入公。西人在中国人商会者，不问其本国为何国，按律法不视为中国人，皆就所属之商会而定其名。凡住于东土者，概从此例，惟印度虽属东土，不归此例，盖既系英之属国，则住

彼通商之人皆应服英律，即可视为英人[77]。

其后两句提到中国的商业惯例，将原文和译文对比，其对应如下表所示：

And thus in China, and generally throughout the east, (↓) persons admitted into a factory are not known in their own peculiar national character: and not being permitted to assume the character of the country, are considered only in the character of that association of factory. But these principles are considered not to be applicable to the vast territories occupied by the British in Hindostan;	西人在中国 入商会者， 不问其本国为何国， 按律法不视为中国人， 皆就所属之商会而定其名。 凡住于东土者，概从此例，(↑) 惟印度虽属东土，不归此例，

表 3-j 第四卷第一章第十八节文本对应示例

这里所提到的“所属之商会”，也就是广州“十三行”[78]。原文中“不

[77] “The national character of merchants residing in Europe and America is derived from that of the country in which they reside. In the eastern parts of the world, European persons, trading under the shelter and protection of the factories founded there, take their national character from that association under which they live and carry on their trade: this distinction arises from the nature and habits of the countries. In the western part of world, alien merchants mix in the society of the natives; access and intermixture are permitted, and they become incorporated to nearly the full extent. But in the east, from almost the oldest times, an immiscible character has been kept up; foreigners are not admitted into the general body and mass of the nation; they continue strangers and sojourners, as all their fathers were. Thus, with respect to establishments in Turkey, the British courts of prize, during war with Holland, determined that a merchant, carrying on trade at Smyrna, under the protection of the Dutch consul, was to be considered a Dutchman, and condemned his property as belong to an enemy. And thus in China, and generally throughout the east, persons admitted into a factory are not known in their own peculiar national character: and not being permitted to assume the character of the country, are considered only in the character of that association of factory. But these principles are considered not to be applicable to the vast territories occupied by the British in Hindostan; because as Sir W. Scott observes,[…]” (P. 408)

[78] “十三行”沿袭了明代的旧称，广东有所谓“三十六行”者，其职责是“代市舶提举盘验纳税”。康熙五十九年（1720 年），行商发展到十六家，在广东官府支持下，成立了垄断性的“公行”。乾隆十六年（1751 年）则有洋行 26 家。十三行的贸易对象包括外洋、本港和海南三

被允许”入籍的字样被隐去。代之以从中国也就是预期读者角度出发的“不视为”。原作中对中国略带责备的口气，在译作中被改写为较为客观公允的陈述，中国的国际地位也趋于平等化。

4. 观点的屏蔽

增删的翻译策略带来的另一后果，是某些观点在目标语文本中没有提及，相当于被屏蔽。

4.1 “公法”规定性

张斯桂在为《万国公法》写的序言中分析了欧洲各国自强自立的原因，进而认为其依赖的就是国际法，“望我中华之曲体其情，而俯从其议[……]。行见越裳献雉，西旅贡獒，凡重译而来者，莫不畏威而怀德，则是书亦大有裨于中华，用储之以备筹边之一助”（张斯桂，1864），董恂的《序言》也称：“今九州外之国林立矣，不有法以维之，其何以国？”（董恂，1864），对国际法的规定性备加推崇。

事实上，国际法著作不同于一般的法律法规，其规定性来自法律来源和法制环境。根据联合国一直以来的《国际法院规约》第 38 条[79]，国际法法源由（1）条约（2）习惯国际法（3）一般法律原则（4）司法判决以及（5）各国权威公法学者著作构成。前三项为主要法源，后两项为辅助法源，法律效力存在先后或大小之分，“司法判例及各国权威最高之公法学家学说，作

部分。十三行早期的贸易对象，有荷兰、英国、丹麦、西班牙等西欧国家。外商洋行受严格限制，例如：外商与中国官府交涉，必须由十三行作中介，外商不得在广东省住冬，番妇不得来广州，外商不得坐轿，外商不得学汉文等。因官办的商行，诸多舞弊，而十三行价格统一，货不搀假，不欺诈，有良好商业信用，外商要中国商人代办手续，多通过十三行。

[79] 联合国国际法院官方网站 http://www.un.org/zh/documents/statute/index.shtml，2012 年 9 月访问。

为确定法律原则之补助资料者”。——“公法学家学说”意味着国际法著作的规定性较弱。

查《万国公法》，首卷首章中大段的删除连续出现，位于 17-18 和 19 页。原文先引用了“法国名师来内法（Rayneval）”的观点：“万国律例，不宜称公法”。其法理层面的原因在于“盖无制法之权，安有律法之禁令也?人若无王法，则其分所当行，惟出于情理之当然，各国相待亦如是”，与原文保持一致[80]。但当“来内法”对拉丁词语“gens”被译入英语中的时候产生了误解，并对此进行批评的时候，其关于名与实不符的讨论被略去，内容如下：

> *gens* 一词源自拉丁语，在法语中并不指“人（people）”或“国家（nation）”。
>
> 来内法（Rayneval）据此严厉批评了英语语言中以“法（law）”来称唤该规则体系的作法（该体系控制着，或者说应当控制，国家间交往时的行为)。他的观点是，法律是一系列的行为法则，其实施义务由主权国家授予，同时仅对从属该国家政体的个人起约束作用；——也就是说，各个彼此独立的国家之间并不具有共同认可的主权权威，由此也不被某种法律约束；——这也就是说，所有国家间的相对义务，都来自惯例中的“是”与“非”，对此，无论如何，所谓的“法”都不起约制作用；——这还等于是说，这一套规则系统曾经被罗马的律师称作 *jus gentium*，在除了英语以外的所有现代欧洲语言中，都表示“国家权

[80] “An eminent French writer on the science of which we propose to treat, has questioned the propriety of using the term droit des gens (law of nations) as applicable to those rules of conduct which obtain between independent societies of men. He asserts “that there can be no droit (right) where there is no loi(law); and there is no law where there is no superior: without law, obligations, properly so called, cannot exist; there is only a moral obligation resulting from natural reason; such is the case between nation and nation.”

利”，或者“战争与和平法”的意思[81]。

该段文字的基本结构为“his arguments is, that…;—that…;—that…;—that…, and in all…, except…”，以四个排比句“-that”加上总结性的分句“and in all”，对“law of nations”这一英文名称使用不当大加挞伐，认为其最多被当成一种行为准则，不应上升到法律地位。目标语文本中该完整的推理和论证过程未能重现，仅保留了否定语气中较为和缓的一句：“英国公师本唐者，亦曾议此律例之当称法与否[82]”。

目标语文本对于“万国公法”性质的处理与“来内法”所论述的观点相左，却与赞助商的出版目的有强烈的联系。1863 年春天，丁题良直接致函蒲安臣公使，希望翻译完成后能给清政府参阅。蒲氏对此大加鼓励。1863 年丁韪良谒见了总理衙门大臣，将《万国公法》译稿四本呈交总署。恭亲王奏报中将《万国公法》与“律例”一词反复联系甚至等同起来：

> 知有《万国律例》一书[……]并言外国有通行律例[……]呈出《万国律例》四本，声称此书凡属有约之国，皆宜寓目。遇有事件，亦可参酌援引。[……]检阅其书，大约俱论会盟战法诸事，其于启衅之间，彼此控制钳束，尤各有法。[……]臣等查该外国律例一书，衡以中国

[81] “The word *gens* imitated from the Latin, does not signify in the French Language either people or nations.”//The same writer has made it the subject of serious reproach to the English language that it applies the term law to that system of rules which governs, or ought to govern, the conduct of nations in their mutual intercourse. His argument is, that law is a rule of conduct, deriving its obligation from sovereign authority, and binding only on those persons who are subject to that authority;--- that nations, being independent of each other, acknowledge no common sovereign from whom they can receive the law;--- that all the relative duties between nations result from right and wrong, from convention and usage, to neither of which can the term law be properly applied; --- that this system of rules had been called by the Roman lawyers the *jus gentium*, and in all the languages of modern Europe, except the English language, the right of nations, or the laws of war and peace.”

[82] “That very distinguished legal reformer, Jeremy Bentham, had previously expressed the same doubt how far the rules of conduct which obtain between nations can with strict propriety be called laws.”

制度，原不尽合，但其中亦间有可采之处。[……]将来通商口岸各给一部，其中颇有制伏领事官之法。未始不有裨益。[83]（王尔敏，2008：184-185）

奏折中强调《国际法原理》一书的规定性，以“制伏领事官”，争取支持[84]。国际法学者对于规定性的否认被隐去，与当时的读者预期非常接近。

4.2 司法与行政

从原作到译作的删减变化中，对具体执政措施的省略较为明显。具有代表的例子来自第一卷第二章，其中提到了英、奥、普、俄四国公约，其第三条的内容关于“阿尼合邦”的内部治理问题，明确指定了法律行为人，但具体执行措施却在译作中被略去（译文的阴影部分由本研究者补译，下同）。

例（18）By the third article it is provided that[…].His Britannic Majesty will devote particular attention to the legislation and general administration of those states. He will appoint a Lord High commission who shall be invested with the necessary authority for this purpose. (Wheaton, 1855:46)

第三条云：[……]。大英君主亦当鉴察其制法、行法等情。他将指任一名皇室代表成员，并赋予其相关的权力。

第 6 款中被省去的亦包括条款执行的细节，如下：

[83] 恭亲王奏报全文，见《筹办夷务始末（同治朝）》，卷 27，页 25-26。

[84] 1861 年，咸丰帝去世，载淳继位，即同治帝。两宫太后与恭亲王奕欣发动辛酉政变，两宫垂帘听政，最后由两宫之一的慈禧太后获得实权。被称为洋务派的奕欣展开自强运动（又称洋务运动），使得中国社会出现较安定的局面，史称同治中兴。

例（19）The sixty article provided that a special convention with the government of the United States of the lonian islands shall regulate, according to their revenues, the object relating to the maintenance of the fortresses and the payment of the British garrisons, and their numbers in the time of peace. The same convention shall also ascertain the relations which are to subsist between this armed force and the lonian government. (Wheaton, 1855:46)

第六条云：“当由美国的伊奥尼亚群岛政府另设章程，根据其财政收入，结合和平时期其维护要塞所需的实际费用，定护兵之额，与合邦归粮之款。且该款规定适用于军队与伊奥尼亚群岛政府之间的供给”

原文的条款中清晰订明了执行章程的行为主体（伊奥尼亚群岛政府）以及完整的执行程序（根据……，结合……，制定，且适用于……）。但是译文中皆无体现。类似的省略在其他各章中比比皆是。

4.3 政治考量

《万国公法》不仅通过内容的删除，回避了公法学者对国际法规定性的质疑，更隐去了《国际法原理》一书中所提到案例具体实施过程中特例出现的可能性。这里所说的特例，指的是在国际法的具体实施过程中，政治势力可能对法律的规定性形成的干扰。在删除的段落之中，“政治考量(political consideration)”成为了关键词，如下例：

例（21）It appears, then, to be the modern rule of international usage, that property of the enemy found within the territory of the

belligerent State, or debts due to his subjects by the government or individuals, at the commencement of hostilities, are not liable to be seized and confiscated as prize of war. This rule is frequently enforced by treaty stipulations, but unless it be thus enforced, it cannot be considered as an inflexible, though an established rule. "The rule," as it has been beautifully observed, "like other precepts of morality, of humanity, and even of wisdom, is addressed to the judgment of the sovereign—it is a guide which he follows or abandons at his will; and although it cannot be disregarded by him without obloquy, yet it may be disregarded. It is not an immutable rule of law, but depend on political considerations, which may continually vary."//(Wheaton, 1855:369)

由此观之，战之始，所有敌国货物在我疆内者，或负债欠于彼民者，无论欠者为君为民，皆不可捕拿入公，此现今常例也。但约内若无明言，虽系常例，恐有人悖之矣。该常例说来冠冕，但就像道德、人道、甚至智慧等观念一样，只是用来劝服统权者接受的借口——对他而言不过是种参考，遵循可，不遵循亦可；虽然忽视它会令人背上污名，但该常例可被忽视。该规例并非什么神圣不可侵犯的法律，多取决于政治方面的考虑，亦可能不断变动 。

可以看到，被省译的内容在坦白告知读者：所有的游戏规则都可在某种程度上被君王忽视，甚至违反。这与目标语文本预设的国际法"规约性"有所不符。下例类似：

例(22)So, also, on the rupture between Great Britain and Denmark,

in 1807, the Danish ships and other property, which had been seized in the British ports and on the high seas, before the actual declaration of hostilities, were condemned as *droits of admiralty* by the retrospective operation of the declaration. The Danish government issued an ordinance retaliating this seizure, by sequestrating all debts due from Danish to British subjects, and causing them to be paid into the Danish royal treasury. The English Court of King's Bench determined that this ordinance was not a legal defence to a suit in England for such a debt, not being conformable to the usage of nations; the text writers having condemned the practice, and no instance having occurred of the exercise of the right, except the ordinance in question, for upwards of a century. The soundness of this judgment may well be questioned. It has been justly observed, that between debts contracted under the faith of laws, and property acquired on the faith of the same laws, reason draws no distinction; and the right of the sovereign to confiscate debts is precisely the same with the right to confiscate other property found within the country on the breaking out of the war. Both require some special act expressing the sovereign will, and both depend, not on any inflexible rule of international law, but on political considerations, by which the judgment of the sovereign may be guided. (Wheaton, 1855:381)

一千八百七年，英与丹国交战，未宣战时，先行捕拿在各海口并大海上船只，战后以之入公。丹国即不许己民还债于英，于是收其银入库，以为报复。英国皇家法院判决，就如上债务的诉讼而言，（丹麦的）该法律规定在英国境内不足构成法律上的保护，因其不符合国际惯例；公法学者指责这一

判决，并指出如此行使权利在近一个世纪以来并无先例。由此，该判决的合理性被质疑。也有学者较为公正地指出，根据法律精神所签订的合同之下的负债，以及根据该法律获得的财产，就理性而言无实质差异；对统权者而言，其没收负债的权利等同于其在战争爆发之际，没收其属地的其他财物的权利。两者都需要特别的法案批准，表达出君主的意愿，且两者都不在于国际法的弹性，而是取决于政治上的考虑，其君主可以依据其做出判断。

这一段文字出现在第四卷第一章第 12 节中，是对丹麦没收英债行为的法理思考，其中作者较为客观的指出，虽然国际法的惯例和规则具有一定的约束力，各个国家的君主亦有可能出于“政治上的考虑”，以规则之外方式来处理。特别是“其君主可以依据其做出判断”一语，等于向读者指出国际法暂行规则的无效，与上节中提到目标语文本中对“公法”规定性的预设有所不符。纵观全书，如此“节外生枝”的话往往被略去。

4.4 宗教观的预设

刘禾指出：“惠顿把文明进步与国际法联系起来论述普世主义的方式”不同于“那种把文化的公度性作为出发点来论述国际法的普世主义的做法”（2009:180），因为作为基督教徒，丁韪良所追求的普世主义以上帝的存在为前提。

> 惠顿尽管可以把基督教等同于普遍性，拒绝考虑不同文明之间的交互性，但他的译者丁韪良则不得不思考，当一个文明和另一个文明实行交往时，当国际法的理念需要跨越不同的文化和语言的边界时，彼此之间的交流是不是可能这一类的根本问题。[……]作为译者，丁韪良必须首先在两种不同的语言和文化之间设立某种公度性，否则就根本无法开

始他的工作。[……]他们把对语言之间公度性的追求本身，转化为普遍性的条件。（刘禾，2009：180 页）

从原作者对将中国纳入国际法系统所持的保留态度，到译者丁韪良热心将其推而广之的立场，译作对公度性的设立，建立在上帝的存在与国际法中的自然法原理相通的基础上。原作中对宗教立场的质疑由此被删改。

从上一节的统计来看，第一卷的译文信息最为完整，仅有两处明显的删除。其中之一，是第四节中格劳秀斯（Hugo Grotius,被译为“虎哥”）对“公法（law of nations）”以及“性法（natural Law）”的判断。在引用了“虎哥”的公法、性法有所区别的观点之后，原作者惠顿对其观点的评价如下（为方便读者理解，研究者将根据上下文对原文作出解释性点评，以方括号标记）：

例（23）He had previously said, “As the laws of each particular State are designed to promote its advantage, the consent of all, or at least the greater number of States, may have produced certain laws between them. And, if fact, it appears that such laws have been established, tending to promote the utility, not of any particular State, but of the great body of these communities. This is what is termed the Law of Nations, when it is distinguished from Natural Law.” All the reasoning of Grotius rest on the distinction, which he makes between the natural and the positive or voluntary Law of Nations. He derives the first element of the Law of Nations from a supposed condition of society, where men live together in what has been called a state of nature. That natural society has no other

superior but God, no other code than the divine law engraved in the heart of man, and announced by the voice of conscience. Nations living together in such a state of mutual independence must necessarily be governed by this same law. Grotius, in demonstrating the accuracy of his somewhat obscure definition of Natural Law, has given proof of a vast erudition, as well as put us in possession of all the sources of his knowledge. He then bases the positive or voluntary Law of Nations on the consent of all nations, or of the greater part of them, to observe certain rules of conduct in their reciprocal relations. He has endeavored to demonstrate the existence of these rules by invoking the same authorities, as in the case of his definition of Natural Law. We thus see on what fictions or hypotheses Grotius has founded the whole Law of Nations. But it is evident that his supposed state of nature has never existed. As to the general consent of nations of which he speaks, it can at most be considered a tacit consent, like the *jus non scriptum quod consensus facit* of the Roman jurisconsults. This consent can only be established by the disposition, more or less uniform, of nations to observe among themselves the rules of international justice, recognized by the publicists. The origin of the Natural Law of Nations in the principle of utility, vaguely indicated by Leibnitz, but clearly expressed and adopted by Cumberland, and admitted by almost all subsequent writers, as the test of international morality. （Wheaton,1855:4-5）

又云：各国制法，以利国为尚；诸国同议，以公好为趋。此乃万国之公法与人心之性法，有所别也。格劳秀斯的以上判断建立在自然法（“性

法”）与“成文法(“公法”)的区别之上。他所认定的国际法的根本构成要素，以一个假定的国家状态为依据：人人生活在自然国当中；这个自然的国度除了上帝，没有其他的更高权威统治者，没有其他成文法例，仅有凭良心而判断的“心法”；这种自然状态下彼此独立的各国，必然也遵守该“法”。通过“精确”地展示自然法“模糊”[精确和模糊作为反义词具有讽刺的效果，表明惠顿对此并不赞同]的定义，格劳秀斯证明了其知识的广博，也使我们得以了解其知识的来源[暗示其判断来自宗教，较为有限]。其后，他认为，所有（或者至少说是大部分）国家同意在互相交往的时候遵守某些行为规范，这构成了国际成文法[voluntary law of nations 多被译为自发法，但此处原文为 positive or voluntary Law of Nations，根据上下文的意思，译为“国际成文法”更为合适]的根基。致力向读者展示以上行文规范确实在国家间存在之时，他再一次求助于某种权威[意指上帝]，正如在求证自然法中该权威存在时他所做的那样。藉此，我们可知格劳秀斯创立整个国际法体系时的虚拟假设[即假设上帝真的存在，无论是在自然法还是成文法的施行中]。不过，他所假设的自然状态从来没有真正存在过。窃思虎哥此说，尚属凭虚。至于他所说的“国家均予同意”，最多不过是默许而已，如罗马公法学者所谓的“合意不构成法”。且该同意只能由各个国家，在意见基本一致的情况下，以正式决议的方式，就遵守已由公法学家认可的国际法原则共同做出。莱本尼子与根不兰所言“公法之出于利者”，则归实际，正若拨云雾而明正路。（Wheaton,1855:4-5）

论述中，作者惠顿先指出：格劳秀斯对成文法和自然法的区分，以理想的国家间存在为前提，但这所谓的理想国家状态从来没有出现过；国家之间并不存在如上帝一样的最终裁决者或最高权威，国际法所谓的基础也根本不存在。——通过“归谬法”对格劳秀斯的观点进行反驳，惠顿对国际法的宗

教起源予以否定，隐隐伴以嘲弄的态度。目标语文本则对这段论述予以省略，仅给出“尚属凭虚”的总结性观点，转而论述代表主流（即“正路”）的莱本尼子与根不兰的看法。

和质疑国际法起源来自上帝的惠顿恰恰相反，译者丁韪良的个人意图显示出其希望通过肯定上帝的存在，加强国际法的普世价值。在《万国公法》的英文前言里，丁韪良亦写到：

> 中国人的精神完全能够适应自然法的基本原理。在他们的国家礼仪和经典里，他们承认存在着一个人类命运的至高无上的仲裁者，皇帝和国王们在形式授予给他们的权利时必须向这个仲裁者负责；从理论上讲，没有人比他们更易于承认，这个仲裁者的法律就鸣谢在认定心灵之中。他们完全理解国家之间的关系，就像理解个人之间的道德关系一样，其相互的义务就是来自于这一准则。（丁韪良，1864）

这段文字可以从两个方面去解读：一方面，可以说，丁韪良“为了说明中国人何以能够理解西方的国际法原理，特地把自然法的原理抬出来，以此论证两个文化之间存在着公度性”（刘禾，2009：176）；另一方面，“人类命运的至高无上的仲裁者”，亦可被理解为译者心中的“上帝”。在后来出版的《邦交提要》（1904）一书里，丁韪良对将基督教义与国际法起源联系起来的目的供认不讳。他指出：“关切公法之外，本书的目的是引领读者将上帝视作创造主，将基督耶稣视作世界的光[85]”。《国际法原理》中，惠顿秉着法律学者的态度对自然法源于上帝予以否认。丁韪良则持有与之相反的理解。这一看法由此被删除，未能进入中国读者的视角。

[85] “Besides its immediate bearing on Public Law; this book is intended to lead the reader to think of God as the Ruler of the universe, and of Christ as the Light of the world”.

5. 小结

在建立平行语料库的基础上通过数据对比原文和译文各章所占比例，可发现：

（1） 全书由第一章至第十二章，整体上呈现出由少到多的删除规律；

（2） 删除策略有平衡各章节所占篇幅的倾向，即源语文本的章节越长，目标语文本越倾向于删除较多的内容；

（3） 删除的频次亦与所在章节的幅度呈现出正相关倾向，如第四卷的第三章占原书的比例为 20%，删除达 45 处，为各章最多。第三卷第二章以及第四卷第二章分别占 13%和 11%，删除频次分别为 20 和 15 处。

（4） 第二卷第二章，题为“制定律法之权”。该章译后占全书比例最大，仅出现 6 处删除。

（5） 在删除力度较大的后半部书中，第三卷第一章“论通使之权”所占比例变化不大，说明目标语文本对其内容保留较多。

以上前三条规则与通常的翻译规律基本接近。规律（5）则与《万国公法》产生的背景有所相关：1863年9月，蒲安臣把丁韪良正式引荐给总理衙门的四位大臣。丁韪良带来了未完成的译稿，请总理大臣过目。文祥说，赫德在清政府的海关总税务司李泰国（Harotio N. Lay）手下担任助理的时候，曾替总理衙门翻译过其中一个重要的段落。随后，文祥追问：“这本书包括‘二十四’条吗？[……]我国向外国派驻使节的时候，这将是我们的指导方针[86]”（Martin，1896:233；参见刘禾，2009:164）。这里的“二十四条”，

[86] “The Chinese ministers expressed much pleasure when I laid on the table my unfinished version of the Wheaton, though they knew but little of its nature or content. ‘Does it contain the twenty-four sections’? asked Wensiang, referring to a selection of important passages made for

就是第三卷第一章，因为涉及使节往来，对该文本内容的全部保留符合了目标读者的利益，也与目标读者的期望完全一致。

至于规律（4），则在实际效果上有助于中国逐步建立国际法规则。与此同时，通过增加、删减或者置换信息来操控文本，通过删除所有关于“international law”起源及各名称意义的详细讨论，仅以“公法”一词作为统称,原作中国际公法和国际私法的区分被省去，自然法和成文法的界限也变得模糊。这种简化概念避免分歧的作法，一方面使读者更为容易地理解原作，另一方面也给译者在国际法的规定性问题上预留了操控空间。在翻译“right”的过程中，通过增补性描述以及将“权利”一词运用于不同语境，融入“庶人所有”以及“法治”的理念，该词（在一定程度上）被重塑。至于原作中涉及“China”的三处陈述，通过运用增删信息的手段，原作对于中国的贬低被屏蔽，（至少在文字上）中国被赋予了更为平等的国际地位。

除了单个概念的意义迁移，在更大的单位，如段落层面，文本的删除还使得原作的某些观点被屏蔽。

一方面，多数学者观点中对现有国际法规定性的质疑被删减，“政治考量”带来的特例也没有出现在读者视线之内。相对原作而言，译作中“公法”的约束力更强。

另一方面，条约谈判中涉及到法规执行时，其具体的行政司法的措施往往被略去不提，这种对源语信息的简化和过滤，恰与读者预期（遵从中国现有行政流程，确保中央集权模式不被干扰）相符。如上文量化统计所示，“制定律法之权”一章内容在目标语文本中得到相应的扩充，与之相联系，可以看到目标语文本倾向于确立国际法的基本制度，其效果将会有助于中国融入国际法大家庭。但引入的举措如果过于激进，就有冒犯当权者的风险，顾忌到此，目标语文本又体现出较为谨慎的翻译策略，多采用删除的手法予以避

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them by Mr. Hart. Being told something of the extent and scope of the work, he added: ‘This will be our guide when we send ministers to foreign countries.’”

讳。

另外，与自然法起源有关的宗教讨论被一笔略过，表露出译者丁韪良作为传教士本人信奉上帝，甚至将试图整个自然法起源归结于上帝的个人立场，正如勒菲弗尔(Andre lefevere)所说的那样,由此“被创造出来的原文‘意像’，往往都是扭曲和被操控的”(1992:7-8)。

第四章 从原作到译作的结构简化

上一章提到，从首章到末章，译作中的删除幅度越来越大。就前两卷而言，由于删除的频次较少，内容相对独立，译本完整度对文本功能的影响，主要体现在单个概念的重塑以及某些观点的屏蔽上。第三、四卷中，同一小节内的删除变得频密，在逻辑结构层面对法理的整体论证模式产生了影响。本章将从法律文本的基本结构出发，以小节为单位探讨多处删除导致译作结构变化的规律性。

1. 法律文本的论辩方式

国际法著作文本不具有绝对的规定性，但在法庭判案时可以援引为参考，其文本类型介于信息和规范之间，属于复合文本。复合文本之中，原作和译作表现出的文类特点又各有差异。

从第 2 章第 2 节中《国际法原理》内容的概述可以看到：在国际法原理的论述部分（以第一、二卷为主），文本表现出“叙述型（exposition）”的特点；案例和外交纠纷的引述和分析部分（主要集中在三、四卷当中），文本更接近“论辩型（argumentation）”文类。

至于具体的论辩方式，哈蒂姆曾提出过“正向论证(Through Argumentation)”及“反向论证(Counter Argumentation)”（Hatim, 1997:39）两种模式。正向论证的结构包括：需维护的论题（Thesis to be supported)、证明(Substantiation)、结论(Conclusion)（Hatim,1997:39)。反向论证则意味着“对某人的观点选择性的归纳（a selective summary of someone else’s viewpoint）”，其结构包括(Hatim,1997:40)：需反对的论题（Thesis cited to be opposed)、反对意见（Opposition)、对反对意

见的证明 (Substantiation of counter-claim)、结论 (Conclusion)、反向论证在结构还可分为双方观点平衡展示（the balance）以及由让步词引导的但书（the explicit concessive）(Hatim,1997:40)。

以下将结合具体例句，考察删除的内容对于论证模式的影响，从而发现原作和译作虽然同为复合文本，在更加具体的文本特征层面是否属于不同的文类。

2. 删节的基本构成（两页之内）

从文本构成来看，目标语文本做删除处理的内容，如篇幅在二页之内，主要包括以下几种：（1）出处；（2）对某些国际法基本原理和规则的评议；（3）但书，即提供相反的观点或者质疑；（4）原因分析；（5）推论；以及（6）背景与案例细节。举例说明如下：

2.1 出处

出处不仅包括书籍的名称和出版信息，也含有对学者个人的引介。《国际法原理》一书中，观点和案例的出处被清楚注明，功能在于其可以作为学术参考，为读者提供索引。如以下几例所示：

例（24）：In the introduction to his great work, he says（Wheaton, 1855:3）

彼言[……]。

例（25）：The former, in his work, *De Give*, says, “…”（Wheaton, 1855:6）

霍氏著书云：[……]。

例（26)：As a celebrated English civilian and magistrate (Lord Stowell) has well observed, “a great part of the law stands upon the usage and practice of nations.” Wheaton, 1855:

英国公师斯果德云[……]。

例(27)：Bynkershoek, (who wrote after Puffendorf, and before Wolf and Vattel,) derives the law of nations from reason and usage (*ex ratione et usu*) and founds usage on the evidence of treaties and ordinance (*pacta et edicta*) with the comparison of examples frequently recurring. (Wheaton, 1855:8)

宾克舍以公法之源有二，理与例也。例则有各国之律法、盟约可证。

这些内容相对而言属于“引证繁冗”（丁韪良，1864）的部分，对读者而言则属于“不必要”了解的部分。——这样的信息在译作中几乎大多被省略，

2.2 评议

典型的评议，表现为作者或者公法学者对于法律原则或者案例的观点阐述，往往以“such”“this ”“which”等先行词引导，如“Such would have been the retroactive effect of that course of circumstances.”以及“This is the necessary course, if no particular compact intervenes for the restoration of such property, taken before a formal declaration of hostilities”等句，对以上句内容做出评价，同时也是在修辞上予以强调。如以下两例：

例(28)As to what species of residence constitutes such a domicile as will render the party liable to reprisals, the text writers are deficient in definitions and details. Their defects are supplied by the precedents furnished by the British prize courts, which, if they have not applied the principle with undue severity in the case of neutrals, have certainly not mitigated it in its application to that of British subjects resident in the enemy's country on the commencement of hostilities. (Wheaton, 1855:394)

何谓迁居别国，始可拿为抵偿，公师虽未详辨。然有英国法院公案可援引以明其例。如果英国法院不对涉案的中立者适当放宽，就不可能对战争爆发之际居住在敌国的英国国民实施以（同样）较为宽容的政策。

例（29）"Time," says Sir W. Scott, "is the grand ingredient in constituting domicile. In most cases, it is unavoidably conclusive. It is not unfrequently said, that if a person comes only for a special purpose, that shall not fix a domicile. This is not to be taken in an unqualified latitude, and without some respect to the time which such a purpose may or shall occupy; for […] This matter is to be taken in the compound ratio of the time and the occupation, with a great preponderance on the article of time: be the occupation what it may, it cannot happen, with but few exceptions, that mere length of time shall not constitute a domicile."(Wheaton, 1855: 395-396)

或云因事而偶住者，不得谓迁居，但斯果德言："必当视其时之久暂，

并当视其事之为业与否，方可定案。”不过如果不把时间考虑在内的话，以上条件尚显不足，[……]对此作出判断的时候，要综合考量时间和职业，特别是时间：无论从事什么职业，多数情况下，时间长度本身就能构成定居条件。

这些具体对案例的评述，既构成作者惠顿的个人学术观点，亦在一定程度上增加了其论证的严谨性。现有的删除决策倾向保留事实性的陈述，特别是案例的判决结果，以儆效尤，同时淡化作者个人在学术成果的贡献，降低其法学著作特征，以突出其文本的法律规定性。

2.3 但书

但书指的是法律条文中“但”或“但是”以下的部分，通常起提示例外、限制、相反或补充规定但书部分，其表述往往由“but”或者“although”“however”等表示转折的连词引导，但在《万国公法》往往略去。如以下几例：

例（30）[…]it was not believed that modern usage would sanction the seizure of the goods of an enemy on land, which were required in peace in the course of trade. Such a proceeding was rare, and would be deemed a harsh exercise of the rights of war. But although the practice in this respect might not be uniform, that circumstance did not essentially affect the question. The inquiry was, whether such property vests in the sovereign by the mere declaration of war, or remains subject to a right of confiscation, […]. （Wheaton, 1855:374）

然货物在岸上以和平贸易而得者。按诸国之常行，概不捕拿也。且这种

作为会被视作过于严厉。但是，尽管在现实情况中具体处置方法未必一致，其面临的问题是共同的：试问战之始，该货即归君主为己物乎，抑但属入公之权乎?

例（31）In the judgment of the Lords of Appeal in Prize Causes, upon the cases arising out of the capture of St. Eustatius by Admiral Rodney, delivered in 1785, by Lord Camden, he stated that “if a man went into a foreign country upon a visit, to travel for health, to settle a particular business, or the like, he thought it would be hard to seized upon his goods; but a residence, not attended with these circumstances, ought to be considered as a permanent residents.” In applying the evidence and the law of the resident foreigners in St. Eustatius, he said, that “in every point of view, they ought to be considered resident subjects. Their persons, their lives, their industry, were employed for the benefit of the State under whose protection they lived; and if war broke out, they continuing to reside there, paid their proportion of taxes, imposts, and the like, equally with natural-born subjects, and no doubt come within that description.” (Wheaton, 1855: 394-395)

从前英破荷兰属地时，即英人之住于彼地者，其家货一并捕拿以为抵偿，后有告官讨还之事，法院断曰：“如某人去探访某国，出于寻医，办事或者类似目的，要没收他的财物有些困难；但其居所不能随身携带，可视为其永久居所。”就 St. Eustatius 一案，他提到：就任何观点而言，其人既身居彼地，其生计亦在彼国，且平素皆系用力以利彼国，并赖彼国保护，则是与彼国人民无异。遇战仍居彼地，不回本国，况捐钱投税俱与彼民一律，当即

与彼民视同一致，不能退还其家货。”

例（32）The debts due by American citizens to British subjects before the war of the Revolution, and not actually confiscated, were judicially considered as revived, together with the right to sue for their recovery on the restoration of peace between the two countries. The impediments which had existed to the collection of British debts, under the local laws of the different States of the Confederation, were stipulated to be removed by the treaty of peace, in 1783; but this stipulation proving ineffectual for the complete indemnification of the creditors, the controversy between the two countries on this subject was finally adjusted, by the payment of a sum *en bloc* by the government of the United States, for the use of the British creditors. (Wheaton, 1855:379-380)

即如与英分立之前，有欠债于英人者，迨复和后即准债主复行讨索，讨还过程中的障碍，在于美国联盟各州的地方法规不同。虽然 1783 年的和约签订之际该障碍终于得以扫除，但该和约条款对于债权人讨索行为的完成，法律效力又显不足。其矛盾最终得到解决，是由美国政府竟出帑银以偿其款。

从以上数例中可以看到，目标语文本往往省略了源语文本中对法律判决和法理推断过程中关于“意外情况”或者“特殊环节”（往往以转折词引导）的考量。其被删节的原因与上一章中提到的“政治考量”相似：为维护“公法”的规范性，如源语文本谈论的既定规则之外还有特殊情况需要予以额外的处置，即使情况出现的可能性不太，目标语文本也倾向于回避。

2.4 原因

通过文本比对，还可发现，以段落为单位的删除处理，往往包括了公法学者对于案件判决原因的归纳。其文本特征表现为由“reason”，“because”或者“for”等表示原因的关键词引导，如下例所示：

例（33）The State does not even touch the sums which it owes to the enemy; everywhere, in case of war, the funds confided to the public, are exempt from seizure and confiscation. In another passage, Vattel gives the reason of this exemption. “In reprisals, the property of subjects is seized, as well as that belonging to the sovereign or State. Every thing which belongs to the nation is liable to reprisals as soon as it can be seized, provided it be not a deposit confided to the public faith. This deposit being found in our hands only on account of that confidence which the proprietor has reposed in our good faith, ought to be respected even in case of open war. Such is the usage in France, in England, and elsewhere, in respect to money placed by foreigners in the public funds.” Again he says: “The sovereign declaring war can neither detain those subjects of the enemy who were within his dominions at the time of the declaration, nor their effects. （Wheaton, 1855: 368）

至国家自欠于敌人之债，则不能不还。缘无论何处，有托公信而存钱物者，皆置于捕拿之权外。”书中的另一段，发氏解释了将该债务置于捕拿权外的原因：如实施强偿，所有属于报复对象的财产，包括该国家政权的财产均被没收。但凡可行，所有属于该国家的财物，公共信托中的财物除外，均在强偿范围内。我们手中信托财物的有效性，完全取决于我们是否担负起财

物委托人对我们的信任。即使是在公开的战争中，我们也理应如此。在涉及到公共基金中的外资时，这也是法国，英国以及其他国家惯常的作法。又云：“敌国之民，始战时在疆内者，不但不能强留其人，即货物亦不能强留。

另见第四卷第一章第 16 节：

例（34）Grotius, in the second chapter of his third book, where he is treating of
the liability of the property of subjects for the injuries committed by the State to other communities, lays down that “by the law of nations, all the subjects of the offending State, who are such from a permanent cause, whether natives, or emigrants from another country, are liable to reprisals, but not so those who are only travelling or sojourning for a little time; for reprisals,” says he, “have been introduced as a species of charge imposed in order to pay the debts of the public; from which are exempt those who are only temporarily subject to the laws.(Wheaton, 1855:392)

虎哥云：“一国受害于别国，按公法不但可捕其民之货以为抵偿，即他国之民常住在彼疆内者，亦可拿其货物以为抵偿。惟人疆路过及暂住者，不可妄拿。因强偿”，他补充道，“是为了偿还国家所欠的公共债务，暂时定居他国者不在此列。

例（35）Even Bynkershoek, who maintains the broad principle, that in war every thing done against an enemy is lawful; that he may be destroyed, though unarmed and defenseless; that fraud, or even

poison, may be employed against him; that a most unlimited right is acquired to his person and property; admits that war does not transfer to the sovereign a debt due to his enemy; and therefore, if payment of such debt be not exacted, peace revives the former right of the creditor; "because," he says, "the occupation which is had by war consists more in fact than in law." He adds to his observations on this subject: "Let it not, however, be supposed that it is only true of actions that they are not condemned *ipso jure*, for other things also belonging to the enemy may be concealed and escape confiscation." Vattel says, that "the sovereign can neither detain the persons nor the property of those subjects of the enemy, who are within his dominions at the time of the declaration."(Wheaton,1855: 375)

据宾氏所论，敌人虽不带军仗者，以奸计灭之、以毒物害之，制其身、夺其物，皆属战权。然债负有当还于敌者，不可因战而入公，迨复和时，债主可以追讨，其权无少减也。"因为"，他指出，"战争中侵占的实际发生，未必等于其完全合法。"他还补充到："切勿以为，其不被依法充公，即等于该举动可行，因为有一些属于敌人的物品会在战争中被隐蔽起来，从而逃避罚没"（双行小字：所引宾氏此论，盖以陪证债负之当还。至其论战，有忍心害理者，则无足取也。）发得耳云："敌国人民在我疆内者，于宣战时，其人其货不可强留。"

需要注意的是，在例（35）中，虽然删去了宾克舍对"债主可以追讨，其权无少减也"一句的原因解释和补充说明，在译文中，丁韪良通过双行小字加注的形式，对这句话的原因有所补足"盖以陪证债负之当还"，但已经

对其意思进行了发挥，并且掺入了译者的个人评判：“无足取”。因此仍将此处的“原因”一句视作删除。以上例子中对于原因的省略，也改变了原作作为法学教科书的功能，使得译作提供的规定性信息更为简明清晰，也使得译作呈现出“国际法操作指南”一般的面貌。

2.5 推论

原作中，往往会总结出国家交往规则之后，有举一反三的例子，或者进一步从法理上推测该法律原则的后果，在原文中往往以关联词“and”、“so”或者“if”为起始标志。译作却倾向于省略该推理判断。如下例所示：

例（36）Vattel says, that “the sovereign can neither detain the persons nor the property of those subjects of the enemy, who are within his dominions at the time of the declaration.” It was true that this rule was, in terms, applied by Vattel to the property of those only who are personally within the territory at the commencement of hostilities; but it applied equally to things in action and to things in possession; and if war did, of itself, without any further exercise of the sovereign will, vest the property of the enemy in the sovereign, the presence of the owner could not exempt it from this operation of war. Nor could a reason be perceived for maintaining that the public faith is more entirely pledged for the security of property, trusted in the territory of the nation in time of peace, if it be accompanied by its owner, than if it be confided to the care of others.（Wheaton, 1855:375）

发得耳云：“敌国人民在我疆内者，于宣战时，其人其货不可强留。”

发氏此论，但指人民现居疆内者而言。然推其理，即其人不在疆内，其货物亦不得强据留之。债负亦当依照此例。即使没有统权者[87]的指令,如在战争中罚没敌对方的财物,财物所有者的在场不能使其豁免。即便该财物已经在(战争之前的)和平时期被托管于某公共信托机构,由此在他人处置和保护之下,就算其财物所有者在场，也不能因此豁免。

原作中涉及的对判例后果进行推论，构成了法理思考的部分，目的在于更好地起到教科书的作用，以启迪后人。但是在译作中被保留的信息，往往伴随以表示义务和强制的情态动词“不得”、“当”。删除的是对该案例实施和执行情况的细则的补充。同时，从例（21）来看，其中涉及的内容为例外，也就是“豁免”的情况，对上一句中的“不得强据留之” 恰恰构成反证，目标语文本将之删去，亦与前面的研究发现相一致。

2.6 背景与细节

另外常见的一种省略情况，在于对案例较为详尽的描述，一般由时间状语或者地点状语引导。对此目标语文本倾向于将之简化或者完全略去。

例（37）In the Indian Chief, the case of Mr. Dutilth is referred to by the claimant’s counsel, as having obtained restitution, though at the time of sailing he was resident in the enemy’s country: but the decision of the Lords of Appeal, in 1800, is mentioned by Sir C. Robinson, in which different portions of Mr. Dutilth’s property were condemned or restored, according to the circumstances of his

[87] 在《万国公法》中，sovereign 和 sovereignty 往往被丁韪良译为“君”，但这两个词既有具体的“国家统治者”的意思,又代表较为抽象的“国家主权”,特别是在今天的语境下,译为“君”有些局限。本研究兹将此译为“统权者”。

residence at the time of capture. That decision is more particularly stated by Sir J. Nicholl, at the hearing of the cases of The Harmony before the Lords, July 7, 1803. “The case of Mr. Dutilth also illustrates the present. He came to Europe about the end of July, 1793, at the time when there was a great deal of alarm on account of the state of commerce. He went to Holland, then not only in a state of amity, but of alliance with this country; he continued there until the French entered. During the whole time he was there, he was without any establishment; he had no counting-house; he had no contracts nor dealings with contractors there; he employed merchants there to sell his property, paying them a commission. Upon the French entering, he applied for advice to know what was left for him to do under the circumstance, having remained there on account of the doubtful state of mercantile credit, which not only affected Dutch and American, but English houses, who were all looking after the state of credit in that country. In 1794, when the French came there, Mr. D. applied to Mr. Adams, the American minister, who advised him to say until he could get a passport. He continued there until the latter end of that year, and having would up his concerns, came away. Some part of his property was captured before he came there. That part which was taken before he came there was restored to him, (The Fair American, Adm., 1796,) but that part which was taken while he was there was condemned, and that because he was in Holland at the time of the capture.” (Wheaton, 1855: 397)

在印第安首领一案中，[……]曾有美国人至荷兰贸易，荷兰本与英国和

睦无事，后经法国征服占据。整个战争期间他都留在荷兰[……]彼时英法交战，而该商之货屡遭英兵捕拿，战利法院断曰：“该商在荷兰时，被拿之货当令入公。若出荷兰后，被拿之货即当给还。”盖谓在荷兰境内即为法商，出荷兰境外可为美商也。

其中“美国人”指至约翰逊（Mr. Johnson），相关案例信息作为背景知识在前一页中已经提供过[88]。此处，目标语

文本补充了一个很小的信息“该商”，以替换在源语环境中可供读者查找和替换的人名以及案例索引,其余的细节均予省略，仅告知其“屡遭英兵捕拿”的判决结果。在源语文本中，有兴趣的读者可以根据提供的案例信息，查阅检索更多相关的资料。但在目标语文本中，这一学术上的参考功能因为删除而失去。

以上删除的内容如果单独来看，对于原作观点的影响有限。但如果以小节为单位考察删除出现的位置和频率，可在更为宏观的层面发现删节对文本功能的影响。

3. 小节之内逻辑结构的变化（两页以上）

对删除策略的考察，不仅要分析相关内容本身，还需联系上下文，考察删除的部分在更大文本单位内起到的作用，由此发现文本逻辑论证结构受到的影响。以下本研究将以若干小节为例，分析删除段落与论证结构的关系。

3.1 国际法规则的实际效力

以第四卷第一章第 11 节为例，简略列出该节原文中各句的主位（阴影

[88] “In the case of The Indian Chief, determined in 1800, Mr. Johnson, a citizen of the United States, domiciled in England.”

部分为省略），以字母 A-Z 标记段落顺序，同时结合原文，将译文该小节中的 A-H 段落及省略的部分予以标记（方括号内为研究者对删除内容类型的判断，着重号为研究者所加），如下：

例（38）**11. Droits of Admiralty**

A. The ancient law of England […].In the recent maritime wars commenced by that country, it has been the constant usage[…].As has been observed by an English writer, commenting on the judgment of Sir W. Scott in the case of the Dutchships,“there seems something of subtlety […].

Seizure of enemy’s property found within the territorial limits of the belligerent State, on the declaration of war.

B. During the war between the United States and Great Britain, which commenced in 1812, it was determined by the Supreme Court, that […].The court held that […].That declaration did not […].It vested only a right to […].

C. The judgment of the court stated, that[…].

D. Between debts contracted under the faith of laws,[…].Such proceeding was rare,[…].But although the practice in this respect might not be uniform, that circumstance did not[…].The inquiry was, whether[…].The right of the sovereign to

E. Even Bynkershok, who maintains the broad principle, that[…]“because”, he says, “the occupation which is had by war[…]escape confiscation.”

F. Vattel says, that […].

G. It was true that this rule was, in terms, applied by Vattel to[…];and if war did, of itself, without any further exercise of […].Nor could a reason be perceived for maintaining that […].

H. The modern rule, then, would seem to be, that…

I. This rule appeared to be totally incompatible with the idea, that […].It might be […].

J. The Constitution of the United States was framed at a time when this rule […]. In expounding that Constitution, […].

K. This general reasoning would be found to be much strengthened by […].

L. It would be restraining this clause […]. If it extended to […].

M. The acts of Congress […].

N. War gives […]. The act concerning alien enemies, […].

O. The act […].

P. The act […].

Q. The phraseology of this law […].

R. The proposition that […] Was there in the Act of Congress, by which war was declared against Great Britain, any expression […].

S. That act, after placing[…].

T. That reprisals […].

U. It could not be necessary to employ argument […].

V. The act […].

W. There being no other Act of Congress […].

X. One view, however, had been taken of this subject […] It was urged

that, […].

Y. This argument must assume for […]. This position […]. This usage […]. The rule […].

Z. The rule was,[…]. It was […]. It was […]. Commercial nations, in the situation of the United States, had always […]. When war breaks out, the question […]. The rule […]. Like all other questions […]. it was proper […]. It appeared to the Court that […].（Wheaton,1855:370-379）

第十一节　敌物在疆内者不即入公

A.按英国近今所行，凡敌国船只、货物在其海口者，立即捕拿，以属战利，并不俟知敌国所行如何而后照而行之。此其现在之例，不如旧法之宽宏矣。正如一位英国学者评论的那样……[评议]。

B.一千八百十二年英美战争之时，美国上法院断云："如非国会另定律法准之，则敌国货物在疆内者不得捕拿，并不可因宣战便以敌货为已有，而遂以之入公也。但有可捕之权而已。法院的理由是……[原因] 其行与不行惟国会能定之。"

C. 又云："不以债负入公，俟复和仍准追索，既为常例，则货物不因战始即绝于原主。盖并无必入公之势，但有可入公之权耳。"

D. 任信律法而负债于别国之人，与任信律法得货物于别国者，毫无分别。夫船只在海口者遇战，其船货一并捕拿，虽例属可行，然货物在岸上以和平贸易而得者。按诸国之常行，概不捕拿也。该捕拿行为一来少见，二来……[评议] 试问战之始，该货即归君主为己物乎，抑但属入公之权乎?若属入公之权，则君主行与不行均可随意。所行于一物，即为法于万物，捕拿入公与捕拿疆内别货，其权无异。

E. 据宾氏所论，敌人虽不带军仗者，以奸计灭之、以毒物害之，制其

身、夺其物，皆属战权。然债负有当还于敌者，不可因战而入公，迨复和时，债主可以追讨，其权无少减也。“因为”，他指出，……[原因，另见例（20）]（双行小字：所引宾氏此论，盖以陪证债负之当还。至其论战，有忍心害理者，则无足取也。）

F. 发得耳云：“敌国人民在我疆内者，于宣战时，其人其货不可强留。”

G. 发氏此论，但指人民现居疆内者而言。然推其理，即其人不在疆内，其货物亦不得强据留之。债负亦当依照此例。即使没有统权者的指令，如……[推论，另见例（21）]

H. 总之，敌人货物、债负在疆内者，战之始不应立时入公，现今常例也。故立约时，大概有一款云：“凡有战事，其货物可即收回。”

上节中共有 26 个自然段。但是只译出了前 8 段(A-H)，余下 18 段(I-Z)均以删除。

就段落之内的删除而言，其类型与上一节中总结的类型相符，为“评议”、“原因”和“推论”。得出应当遵守的条例“凡有战事，其货物可即收回”之后，接下来的原作者惠顿对该条例的讨论，包括提出的质疑统统被删去，不再呈现出对该问题的法理讨论。一方面，这样的删节仍然削弱了原作的教育功能，因而加强了其作为法规的功能；另一方面，其对相反观点的回避，印证了惠顿本人对鸦片战争中林则徐罚没鸦片，并惩戒商人的一事所持的反对态度。

类似的例子，还有第四卷第二章第 16 节。该节的主要内容指出:发出捕获指令的政府，对在其授权之下的船只以及法庭的行为负有全责，其中有两处标题分别为“如外国法庭判决不公，如何要求赔偿”以及“法院与战利法院的区别”。第一处在目标语文本中得以重现，题为“枉理断案自行理直”。第二处标题被译为“地方法堂与战利法院有别”，其内容在“依诸国常例，

则所捕之货专归捕拿之法院审断（Wheaton, 1855:212）”之后则有所省略。其省略的，是明显与国际法原则不符，但是在事实上不能排除其存在的客观情况，如以武力行为逼迫实施的司法判决以及与国际法不符的判决有可能由持有偏见的法院发出。甚至，会有某些国际公法学者支持上述判决。当然，如果不符合国际法的原则，两者之间的协议或者条约将不具备国际法效力。亦不能以此协议或者条约在法律上约束参与协定的一方（参见 Wheaton, 1855: 465-469）。对第二处标题后内容的删除，有助于保存目标语文本中国际法规则的权威性。

3.2 不同学术观点的碰撞

以小节为考察单位，会发现大段的删除往往与判决原因以及学者之间的学术观点辩论相关。如第四卷第一章第 16 节所示：

例（39）**16. Persons domiciled in the enemy’s country liable to reprisals.**

Grotius, in the second chapter of his third book, where he is treating of the liability of the property of subjects for the injuries committed by the State to other communities, lays down that “by the law of nations, all the subjects of the offending State, who are such from a permanent cause, whether natives, or emigrants from another country, are liable to reprisals, but not so those who are only travelling or sojourning for a little time; --- for reprisals,” says he, “have been introduced as a species of charge imposed in order to pay the debts of the public; from which are exempt those who are only temporarily subject to the laws. Ambassadors and their goods are,

however, excepted from this liability of subjects, but not those sent to an enemy."

In the fourth chapter of the same book, where he is treating of the right of killing and doing other bodily harm to enemies, in what he calls *solemn war*, he holds that this right extends, "not only to those who bear arms, or are subjects of the author of the war, but to all those who are found within the enemy's territory. In fact, as we have reason to fear the hostile intentions even of strangers who are within the enemy's territory at the time, that is sufficient to render the right of which we are speaking applicable even to them in a general war. In which respect there is a distinction between war and reprisals, which last, as we have seen, are a kind of contribution paid by the subjects for the debts of the State."

Barbeyrac, in a note collating these passages, observes, that "the late M. Cocceius, in a dissertation which I have already cited, De Jure Belli in Amicos, rejects this distinction, and insists that even those foreigners who have not been allowed time to retire ought to be considered as adhering to the enemy, and for that reason justly exposed to acts of hostility. In order to supply this pretended defect, he afterwards distinguishes foreigners who remain in the country, from those who only transiently pass through it, and are constrained by sickness or the necessity of their affairs. But this is alone sufficient to show that, in this place, as in many others, he criticized our author without understanding him. In the following paragraph, Grotius manifestly distinguishes from the foreigners of

whom he has just spoken those who are permanent subjects of the enemy, by whom he doubtless understands, as the learned Gronovius has already explained, those who are domiciled in the country. Our author explains his own meaning in the second chapter of this book, in speaking of reprisals, which he allows against this species of foreigners, whilst he does not grant them against those who only pass through the country, or are temporarily resident in it.”

Whatever may be the extent of the claims of a man’s native country upon his political allegiance, there can be no doubt that the natural-born subject of one country may become the citizen of another, in time of peace, for the purposes of trade, and may become entitled to all the commercial privileges attached to his required domicile. On the other hand, if war breaks out between his adopted country and his native country, or any other, his property becomes liable to reprisals in the same manner as the effects of those who owe a permanent allegiance to the enemy State. (Wheaton, 1855: 392-394)

第十六节　敌民居于疆内者

虎哥在其第三本书的第二章中[出处]云：“一国受害于别国，按公法不但可捕其民之货以为抵偿，即他国之民常住在彼疆内者，亦可拿其货物以为抵偿。惟人疆路过及暂住者，不可妄拿。因为强偿是为了偿还其国家所欠的公共债务，暂时定居他国者不在此列。[原因]至别国使臣并其货物，固不在此权之内，但使臣遣往敌国者则不得免也。”

同书第四章，他谈论了公开战争对敌人杀戮和造成身体伤害的权利问题，[……]强偿不啻为一种补偿的方式。

Barbeyrac 对此回应到：已故的 M.Coceius，[……]坚持认为，那些没

有予以足够时间撤离的外国人应被视作敌方，他们相当于将自身置于同等的敌对行为之中。作为对以上观点的补充，他提到那些短暂过境，以及因为疾病或者必须事务不得不耽搁在地方境外的外国人可排除在外。……不过，他仍然在没有理解虎哥的情况下对他做出批评。事实上，在接下来的段落中，虎哥……通过定居与否来确认居住在敌方国家的外国居民。他也对第二章中的观点做出解释，即，强偿过程中，他赞同对上述外国居民采取该措施，但是过境或者短暂居留在此国的人除外。

人若迁居别国，久与彼民同享通商之利。倘遇战事，即应同当其患，家赀可为抵偿，与彼国人民无异。

该节中被略去的，除了中间插入的出处和原因，还有大段的学者之间的观点冲突以及他们各自的理由陈述。对于源语文本而言，这些不同的学术观点反映出原作虽然为个人专著，具有客观以及严谨的学术态度。与此同时，不同观点的争辩可以引发后续对法理的思考，与一部法学教材书所应具有的特征相符。作为译作的《万国公法》大多数情况下则将以上内容删去，以观点的单一性凸显出文本的权威性，反映出其功能定位与原作的差异。

3.3 法理上的质疑与思考

惠顿引述的他人观点不被保留以外，就作者惠顿本人针对某一判决或者案例发表的个人看法，特别是出于完善国际法规则的目的所做出的预测性判断，目标语文本往往悉数省略。

以第四卷第一章第 17 节为例，该节的多处删除处理都体现出以上观点方面的倾向。现将原文和译文摘录和标记如下：

例（40）17. Species of residence constituting domicile.

A. As to what species of residence constitutes such a domicile as will render the party liable to reprisals, the text writers are deficient in definitions and details. Their defects are supplied by the precedents furnished by the British prize courts, which, if they have not applied the principle with undue severity in the case of neutrals, have certainly not mitigated it in its application to that of British subjects resident in the enemy's country on the commencement of hostilities.

B. In the judgment of the Lords of Appeal in Prize Causes, upon the cases arising out of the capture of St. Eustatius by Admiral Rodney, delivered in 1785, by Lord Camden, he stated that "if a man went into a foreign country upon a visit, to travel for health, to settle a particular business, or the like, he thought it would be hard to seized upon his goods; but a residence, not attended with these circumstances, ought to be considered as a permanent residents." In applying the evidence and the law of the resident foreigners in St. Eustatius, he said, that "in every point of view, they ought to be considered resident subjects. Their persons, their lives, their industry, were employed for the benefit of the State under whose protection they lived; and if war broke out, they continuing to reside there, paid their proportion of taxes, imposts, and the like, equally with natural-born subjects, and no doubt come within that description."

C. "Time," says Sir W. Scott, "is the grand ingredient in

constituting domicile. In most cases, it is unavoidably conclusive. It is not unfrequently said, that if a person comes only for a special purpose, *that* shall not fix a domicile. This is not to be taken in an unqualified latitude, and without some respect to the time which such a purpose may or shall occupy; for […]."

D. In the case of The Indian Chief, determined in 1800, Mr. Johnson, a citizen of the United States, domiciled in England, had engaged in a mercantile enterprise to the British East Indies, a trade prohibited to British subject, but allowed to American citizens under the commercial treaty of 1794, between the United States and Great Britain. The vessel came into a British port on its return voyage, and was seized as engaged in illicit trade. Mr. Johnson, having then left England, was determined not to be a British subject at the time of capture, and restitution was decreed. In delivering his judgment in this case, Sir W. Scott said, "Taking it to be clear that the national character of Mr. Johnson, as a British merchant, was founded in residence only, that it was acquired by residence, and rested on that circumstance alone, it must be held, that, from the moment he turned his back on the country where he had resided, on his way to his own country, he was in the act of resuming his original character, and must be considered as an American. The character that is gained by residence, ceases by non-residence. It is an adventitious character, and no longer adheres to him from the moment that he

puts himself in motion, *bona fide*, to quit the country, *sine animo revertendi.*”

The native character easily reverts

E. The native character easily reverts, and it requires fewer circumstances to constitute domicile, in the case of a native subject, than to impress the national character on one who is originally of another country. Thus, the property of a Frenchman who had been residing, and was probably naturalized, in the United States, but who had returned to St. Domingoo, and shipped from thence the produce of that island to France, was condemned in the High Court of Admiralty.

F. In the Indian Chief, the case of Mr. Dutilth is referred to by the claimant’s counsel, as having obtained restitution, though at the time of sailing he was resident in the enemy’s country: but the decision of the Lords of Appeal, in 1800, is mentioned by Sir C. Robinson, in which different portions of Mr. Dutilth’s property were condemned or restored, according to the circumstances of his residence at the time of capture. That decision is more particularly stated by Sir J. Nicholl, at the hearing of the cases of The Harmony before the Lords, July 7, 1803. “The case of Mr. Dutilth also illustrates the present. He came to Europe about the end of July, 1793, at the time when there was a great deal of alarm on account of the state of commerce. He went to Holland, then not only in a state of amity, but of alliance with this country; he continued there until the French entered.

During the whole time he was there, he was without any establishment; he had no counting-house; he had no contracts nor dealings with contractors there; he employed merchants there to sell his property, paying them a commission. Upon the French entering, he applied for advice to know what was left for him to do under the circumstance, having remained there on account of the doubtful state of mercantile credit, which not only affected Dutch and American, but English houses, who were all looking after the state of credit in that country. In 1794, when the French came there, Mr. D. applied to Mr. Adams, the American minister, who advised him to say until he could get a passport. He continued there until the latter end of that year, and having would up his concerns, came away. Some part of his property was captured before he came there. That part which was taken before he came there was restored to him, (The Fair American, Adm., 1796,) but that part which was taken while he was there was condemned, and that because he was in Holland at the time of the capture." The Hannibal and Pomona, Lords, 1800.

G. The case of The Diana, determined by Sir W. Scott, in 1803, […].

H. Sir W. Scott decreed restitution to those British subjects […].

I. But the property of those claimants […].

Case of persons removing from the enemy's country on the breaking out of war.

J. The case of The Ocean, determined in 1804, was a claim relating to British subjects settled in foreign States in time of amity,

and taking early measures to withdraw themselves on the breaking out of war. It appeared that the claimant had been settled as a partner in a house of trade in Holland, but that he had made arrangements for the dissolution of the partnership, and was prevented from removing personally only by the violent detention of all British subjects who happened to be within the territories of the enemy at the breaking out of the war. In this case Sir W. Scott said "It would, I think, be going further than the law requires, to conclude this person by his former occupation, and by his present constrained residence in France, so as not to admit him to have taken himself out of the effect of supervening hostilities, by the means which he had used for his removal. On sufficient proof being made of the property, I shall be disposed to hold him entitled to restitution."

K. In a note to this case, Sir C. Robinson states that the situation of British subjects, wishing to remove from the enemy's country on the event of a war, but prevented by the sudden occurrence of hostilities from taking measures sufficiently early to obtain restitution, formed not unfrequently a case of considerable hardship in the Prize Court. He advises person so situated, on their actual removal, to make application to government for a special pass, rather than to trust valuable property to the effect of a mere intention to remove, dubious as that intention may frequently appear under the circumstances that prevent it from being carried into execution. And Sir W. Scott, in the case of

The Dree Gebroeders, observes, “that pretences of withdrawing funds are, at all times, to be watched with considerable jealousy; […]” But in a subsequent case, where an indulgence was allowed by the court for the withdrawal of British property […].

Decisions of the American Courts.

L. The same principles, as to the effect of domicile, or commercial inhabitancy in the enemy’s country, were adopted by the prize tribunals of the United States, during the late war with Great Britain. The rule was applied to the case of native British subjects, who had emigrated to the United States long before the war, and became naturalized citizens under the laws of the Union, as well as to native citizens residing in Great Britain at the time of the declaration. The naturalized citizens in question had, long prior to the declaration of war, returned to their native country, where they were domiciled and engaged in trade at the time the shipments in question were made. The goods were shipped before they had a knowledge of the war. At the time of capture, one of the claimants was yet in the enemy’s country, but had, since he heard of the capture, expressed his anxiety to return to the United States, but had been prevented by various causes set forth in his affidavit. Another had actually returned some time after the capture, and a third was still in the enemy’s country.

M. In pronouncing its judgment in this case, the Supreme Court stated that, there being no dispute as to the facts upon which the

domicile of the claimants was asserted, the questions of law to be considered were two: *First*,… and *secondly*,[…]

N. Upon the first of these question, […].

O. The next question was […].

P. But his national character[…].

Q. This doctrine of the common-law courts and prize tribunals of England was founded, […].

R. If, then, nothing but an actual removal […].

S. It was contended that a native or naturalized subject of one country, who is surprised in the country where he was domiciles, […]. （Wheaton, 1855:394-408）

第十七节　何谓迁住别国

A. 何谓迁居别国，始可拿为抵偿，公师虽未详辨。然有英国法院公案可援引以明其例，如果不是这些先例判决中对于中立者过度严格地运用了该原则，就某英国人在战争爆发之际仍然居住于敌国的判决，也不会倾向于适度减轻[评议]。

B. 从前英破荷兰属地时，即英人之住于彼地者，其家赀一并捕拿以为抵偿，后有告官讨还之事，法院断曰：“如某人去探访某国，出于寻医，办事或者类似目的，要没收他的财物有些困难；但其居所不能随身携带，可视为其永久居所。”就 St. Eustatius 一案，他提到：就任何观点而言，[判决理由，另见例 16]其人既身居彼地，其生计亦在彼国，且平素皆系用力以利彼国，并赖彼国保护，则是与彼国人民无异。遇战仍居彼地，不回本国，况捐钱投税俱与彼民一律，当即与彼民视同一致，不能退还其家赀。”

C. 或云因事而偶住者，不得谓迁居。但斯果德言：“必当视其时之久暂，

并当视其事之为业与否，方可定案。”这并不意味着以不适当的方式定夺居留时间长短，且需要将目的考虑在内……。[评议]

D. 前英国律法惟准商会之人通商印度，禁止他人私往贸易，至一千七百九十四年和约明许美国人民通商印度。时有美国人住于英地通商印度者，及其船回入英国海口，即被英捕拿，目为犯禁。其时该商已离英地，转回本国。故法院断曰：“其人常住英国，可谓英商，转回本国即不为英商。应听其复从本名，仍为美国商人。”于是即断其事不为犯禁，遂命以船还之。因定居获得的国籍，在离开该国之时失效。该国籍仅由侨居而来，一旦其在实际行动上离开该国，并无意返回，即刻不再生效。[原因]

本名易复

E. 如彼国人在此国或为业或常住者，即可视为己民。若已住外国而回本国者，欲复其本名，更为容易。即如一千八百年间，有法国人本住法国属邦，地名海底，后往美国居住，即为美国人民，复回海底装货至法，经英船捕拿，法院即以其为法国人，而定其货入公。盖曰：“既回本土，本名即复，不得不视为法国人也。”

F. 在印第安酋长案中，迪提先生(Mr. Dutilth)的案件被重提，因其获得了补偿，尽管当时他……。该判决由 Sir J. Nicholl 宣布，称：……。[背景与细节]曾有美国人至荷兰贸易，荷兰本与英国和睦无事，后经法国征服占据，就他在荷兰境内的所有时间而言，他并没有产业，……在法军入境之时，他曾提出申请……[背景与细节]彼时英法交战，而该商之货屡遭英兵捕拿，战利法院断曰：“该商在荷兰时，被拿之货当令入公。若出荷兰后，被拿之货即当给还。”盖谓在荷兰境内即为法商，出荷兰境外可为美商也。[出处]

G. （The case of Diana）全部案例

H. 斯哥特爵士就此发表观点……。

I. 但是上诉人的财产……。

战争之际迁出敌国的案例

J. 又有英人住于荷兰，为荷兰商行伙伴，经法国占据其地，英法战时，其人定意欲离行伙回本国，但因法国禁止出疆，故其事未果，后经英人捕拿其货，乃告官讨还。法院断曰：“若因其人前在荷兰为业，虽经法国强留，使不得回国，便拿其货物入公，未免执法太严。”于是断为可还其物。

K. 有法师记此案，批注云：“就英人在战争之际希望从敌国迁出，但是因战争爆发行程受到阻挠，以致于不能及时撤离这种情况，[背景与细节]战利法院断此等案多有难处。故人民之住外国者，遇有战事，务必力讨特赐牌照以便出疆，否则虽有将回之意，亦虚而无凭，恐其货物一经捕拿，难保其不入公也。”斯哥特爵士，就 Dree Gebroeders 一案发表观点：……。但随后发生的案例当中，……[但书]。

美国法院的判决结果

L. 美英战时，美国战利法院亦许此例。有英国数人久住美国，视同美国人民，后于战前复回英国为业，装货出海，并未知有战事，经美国兵船捕拿，即行告官讨还。内有一人尚在英国，意欲回国，因有阻碍未果，又有一人于捕货后归回美国，更有一人仍住英国未回。法院皆断其货入公，不得给还。

M. 在宣布判决之时，上法院陈述，就事实而言，并无明显分歧，但是有两个问题需要被考虑：第一……第二……。

N. 就第一个问题 ……。

O. 接下来的问题则为……。

P. 但是其国籍……。

Q. 普通法的法庭以及海事法庭的判处原则……。

R. 如，仅有实质的迁出……。

S. 就本国居民而言，对于战争的突然爆发，他……。

该节共有七个案例，说明了“迁住别国”在不同情境是如何被判定的。其大幅的删除有二处：“G-H-I”三段，涉及“戴安娜一案（The Case of Diana)”的案情描述以及法学家的相关评论；“M-N-O-P-Q-R-S”的七段，则包括对法理的讨论。从例（40）来看，经过调整和干预，原有小节逻辑结构的改动可简化为下图所示：

功能	内容	小结	省略内容[……]
标题引言	**第十七节　何谓迁住别国** 何谓迁居别国，始可拿为抵偿，公师虽未详辨。然有英国法院公案可援引以明其例。[1.……]	“有公案可援引”	1.重要性(which, if they have not applied the principle…)
案例一	从前英破荷兰属地时,即英人之住于彼地者，其家赀一并捕拿以为抵偿，后有告官讨还之事， 法院断曰：“[2.……]其人既身居彼地，其生计亦在彼国，且平素皆系用力以利彼国，并赖彼国保护，则是与彼国人民无异。遇战仍居彼地，不回本国，况捐钱投税俱与彼民一律,当即与彼民视同一致，不能退还其家赀。” 或云因事而偶住者，不得谓迁居，但斯果德言：“必当视其时之久暂，并当视其事之为业与否，方可定案。”[3.……]	“不能退还其家赀”	2.判决理由(if a man went to… he thought it would be hard to…; but a residence…) 3.定案的复杂性(This is not to be taken in …)
案例二	前英国律法惟准商会之人通商印度,禁止他人私往贸易，至一千七百九十四年和约明许美国人民通商印度。 时有美国人住于英地通商印度者,及其船回入英国海口，即被英捕拿，目为犯禁。其时该商已离英地，转回本国。	“命以船还之”	4.对法院判决的简述（The character that is gained by residence, ceases by

	故法院断曰：“其人常住英国，可谓英商，转回本国即不为英商，应听其复从本名，仍为美国商人。”于是即断其事不为犯禁，遂命以船还之。[4.……]		non-residence. It is …）
小标题 法理	**本名易复** 如彼国人在此国或为业或常住者,即可视为己民。若已住外国而回本国者，欲复其本名，更为容易。	“复其本名,更为容易。”	/
案例三	即如一千八百年间,有法国人本住法国属邦，地名海底，后往美国居住，即为美国人民，复回海底装货至法，经英船捕拿， 法院即以其为法国人，而定其货入公。盖曰：“既回本土，本名即复，不得不视为法国人也。”	“定其货入公”	/
案例四	[5.……]曾有美国人至荷兰贸易,荷兰本与英国和睦无事，后经法国征服占据，[6.……]彼时英法交战，而该商之货屡遭英兵捕拿， 战利法院断曰：“该商在荷兰时，被拿之货当令入公。若出荷兰后，被拿之货即当给还。”盖谓在荷兰境内即为法商，出荷兰境外可为美商也。	“被拿之货当令入公/即当给还”	5.涉案细节(In the Indian Chief, …) 6.涉案细节（During the whole time he was there…）
案例五	[7.……]		7.全部案例（The case of Diana）
小标题 案例六	[8.……] 又有英人住于荷兰，为荷兰商行伙伴，经法国占据其地，英法战时，其人定意欲离行伙回本国，但因法国禁止出疆，故其事未果，后经英人捕拿其货，乃告官讨还。 法院断曰：“若因其人前在荷兰为业，虽经法国强留，使不得回国，便拿其货物入公，未免执法太严。”于是断为可还其物。 有法师记此案[9.……]，批注云：“战利法院断此等案多有难处。故人民之住外国者，遇有战事，务必力讨特赐牌照以便出疆，否则虽有将回之意，亦虚而无凭，	“可还其物”	8.小标题（Case of persons removing from the enemy’s country on the breaking out of war） 9.案情梗概（the situation of British subjects,…） 10.另一位公法学者的观点（And Sir W. Scott, in the

	恐其货物一经捕拿，难保其不入公也。” [10.……]		case of…, observes, that…）
小标题 案例七	[11.……] 美英战时，美国战利法院亦许此例。 有英国数人久住美国，视同美国人民，后于战前复回英国为业，装货出海，并未知有战事，经美国兵船捕拿，即行告官讨还。内有一人尚在英国，意欲回国，因有阻碍未果，又有一人于捕货后归回美国，更有一人仍住英国未回。 法院皆断其货入公，不得给还。 [12.……]	“断其货入公”	11.标题（Decisions of the American Court） 12.法院判决理由（In pronouncing its judgment in this case, the Supreme Court stated that…）

表 4-a 第四卷第一章第十七节结构对应示例

可以看到，源语文本的该小节中一共在不同的法理名目下提到了七个案例，几乎每个案例都包括案情细节、法理陈述、判决理由以及学者观点这几部分内容。在目标语文本中，七个案例仍然有所提交，在数量上大约与原作持平，不过各个案例原本涉及的内容都有所减损。如果将案例的各个部分简略如下（X 表示目标语文本缺失的部分），可得表格如下：

	案例						
内容	一	二	三	四	五	六	七
案情细节				X	X	X	
判决结果							
判决理由	X	X			X		X
学者观点					X	X	

表 4-b 第四卷第一章第十七节结构简化示例

删节之后，原小节所具有的多层论证结构被简化。一方面，案情的具体细节有所省略，判决理由多数不提，学者观点也有减损，另一方面，判决结果几

乎悉数保留。—— 原作的法律教科书这一功能被极大程度地淡化，其完备的推理逻辑亦没有再现。译作却得以具有“律例”般的制约效果。

4. 小结

事实论证是一种从材料到观点，从个别到一般的论证方法，是从对许多个别事物的分析和研究中归纳出一个共同的结论的推理形式。使用这种方法，一般是先分论后结论，即开门见山提出论题，然后围绕论题逐层运用材料证明论点，最后归纳出结论（赵利等，2010：361-362）。对比原作和译作的逻辑结构后可以发现，后者的事实论证方式简单直接，往往只保留最基本的事实陈述和法律判决部分，出处、评议、但书、原因分析、后果推论、背景和细节等更为详尽的内容多被省略。其论证的过程明显不如原作详实。

本研究第二章曾提到：伦理判断由事实、逻辑（可普遍性原则及指令性原则）、对他人可能获得收益和损害的预测三个基本要素组成 (Hare, 1977：94；Alexy，1989:71)，这些是国际法规则得以存在和传播的核心内容，在国际法著作和译作中必不可缺。但《万国公法》作为译作倾向于简化法律论述过程，仅告知目标读者法律规定和行为实施后果,等于弱化了事实和逻辑，但是强化了“指令性原则”，更为清晰地指出法律行为所造成的相关“收益与损害”。

值得一提的是“但书”内容在目标语文本中的删除。可以看到，两书中关于国际法历史和基本法理判定的内容多出现在一二卷中，基本属于“叙述型文本（exposition）”，案例分析较多的三、四卷更接近于“论辩型文本（argumentation）”。在“论辩型文本“中，反向论证往往在结构体现为双方观点的平衡展示以及由让步词引导的但书（Hatim,1997:40)。这些内容均在原作中得到充分展现，体现出《国际法原理》的分析论证特征。但译作则多予以删除处理，体现出较为单一的“正向论证”，甚至是“指导型

(instructional)”文本类型的特点。原有论证方式中较为平等的叙述者和读者的关系，由此变得疏离。

另外，原作展示了较为均衡的各学者观点，译作则多处删除案例、法理和法院判决，通常只保留无争议的结论部分,法律论证中的“可普遍性原则”有所弱化,其语篇类型发生了从“论述型”到“指导型”的转变(Hatim＆Mason, 2001:154-156)。

总之，兼具教学和传播功能的《国际法原理》一书，经由《万国公法》的改写，一举变为起明确指导和规定作用的法律法规手册。

如此“改写”，原因何在？研究者认为，一方面，这与译者对预期读者的判断有关。丁韪良曾经这样评述中国人与逻辑分析的关系：

> 中国人缺乏分析能力，这一不足之处，由于下列情况而表现得更加明显：在他们通晓有字母的梵文之前，他们从未对其语言的声音作过任何分析；直到今天，还没有任何可以称之为语法的研究去考察语言的形式，也没有任何与我们的逻辑学相当的对推理过程的研究。（丁韪良，2007:178）

可以看出，丁韪良对中国人是否具有严谨科学的逻辑观念持否定态度。且不论这种看法是否符合事实，这或许导致了译作中大量删节，简化逻辑论证的处理。

另一方面，文本所处的外部环境亦会影响译者做出删除决策。正如布罗克所说的，译文的文本类型有可能与原文的文本类型不一致，从而导致译文在宏观结构上的翻译迁移，该迁移与目标语中流行的文本类型规范紧密相连（Broeck, 1986）。乔斯伯格亦认为：原文体裁和译文体裁可能存在不对称的关系，且目标语中的文本规范是造成这种体裁不对称的主要原因

（Trosborg，1997)。更为简明、章节长短均衡的译本，亦有可能是受到了主流文本规范的影响。

在下一章中，本研究将从副文本的变化入手，根据副文本特征判断原作和译作的功能差异，深入文本讨论翻译策略变化，并结合社会环境作出分析和解释。

第五章 从副文本看与读者预设的关系

正文的翻译和改写完成之后，赞助商和译者共同参与的，是《万国公法》前后的封面、序和凡例的撰写、附加、装订和制作等工作。就成文的时间而言，这些内容的成稿通常迟于正文。但对读者来说，其认知的顺序与之相反。正文以外的文本信息甚至起到了滤过读者的作用，如同“一道门槛，或者——借用博格斯（Borges）评价一篇序言时候的说法——一道‘门廊’，给世人提供了或者踏入或者转身离去的选择”[89](Genette, 1997:2)，必不可缺。用葛乃特的话来说，副文本犹如“一道边界，如同菲利普•莱居里（Philippe Lejeune）所指出的，作为‘印刷文本的边框，框住了一个人所有阅读体验’”[90](Genette, 1997:2)。这说明副文本在内容上与正文文本相补充呼应，在功能上则担任了预设与读者关系的重任。

1. 副文本特征与文本功能

副文本这一概念由法国文论家葛乃特（Gérard Genette）于 1987 年提出，1997 年其同名著作《副文本 *(Paratext)*》由列文（Jane E. Lewin）译为英语并出版。副文本指“那些存在于文本以内和文本以外‘阈限(liminal)’的相关文本，所有围绕文本主体的边缘性材料，包围并延长正文本(译文本身)”(Genette,1997:xviii)。具体而言，副文本按照其离文本主体距离的远近可细分为内文本(peritext)和外文本(epitext)。内文本指封面、出版商信息、标题页、作者姓名、副标题、题词、前言、序言、注释、

[89] “The paratext is […] a threshold, or—a word Borges used apropos of a preface—a “vestibule” that offers the world at large the possibility of either stepping inside or turning back.”
[90] “It is […] an edge, or, as Philippe Lejeune put it, “a fringe of the printed text which in reality controls one’s whole reading of the text.”

跋、后记等；外文本包括采访、日记、访谈、书信、出版社的广告、海报等[91](Genette,1997:xviii)。这些副文本和正文本一起构成完整的作品。

至于副文本的作用，如葛乃特所说：

> 一篇文学作品包括，全部或者至少基本上，一个主体文本。该文本（至少）被定义为或长或短的一段文字性表述，多少具有一定的意义。但该文本几乎不可能单独出现，伴随并强调其出现的，还必然有一组文字或其他性质的产品，如作者名、题名、序言、插图等。尽管我们很难说这些产品到底属不属于该文本，总之他们围绕主体文本，延展该主体文本，目的是为了更好地展示该文本。“展示”在这里不仅具有通常的动词意义，而且意义强烈地表现为：在场；确保该文本在世上的存在；确保该文本作为一本书（至少如此）最终被“接受”和消费。这些伴随产品的形式不同、纵深不同，均构成我之前所称的该作品的副文本[92]。(Genette, 1997:1)

从以上几章对正文的增删分析中，我们已经可以看到原作到译作发生的功能变化。其副文本特征是否也发生了与文本内容相应的变化，以“更好地展示”文本的功能？

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[91] “The subject of the present book, comprising those liminal devices and conventions, both within the book (peritext) and outside it (epitext), that mediate the book to the reader: titles and subtitles, pseudonyms, forewords, dedications, epigraphs, prefaces, intertitles, notes, epilogues, and afterwords – all those framing elements that so engaged Sterne; […].”

[92] “A literary work consists, entirely or essentially, of a text, defined (very minimally) as a more or less long sequence of verbal statements that are more or less endowed with significance. But this text is rarely presented in an unadorned state, unreinforced and unaccompanied by a certain number of verbal or other productions, such as an author’s name, a title, a preface, illustrations. And although we do not always know whether these production are to be regarded as belonging to the text, in any case they surround it and extend it, precisely in order to present it, in the usual sense of this verb but also in the strongest sense: to make present, to ensure the text’s presence in the world, its “reception” and consumption in the form (nowadays at least) of a book. These accompanying productions, which vary in extent and appearance, constitute what I have called elsewhere the work’s paratext.”

以下将通过对比《国际法原理》和《万国公法》的内文本和外文本，发现其功能定位的差异。

2.原作和译作的内文本比较

《国际法原理》最早的版本为1836年版（以下简称“第一版”）。此后，该著作被不断修订和更新。惠顿去世后，1855年，由劳伦斯(W.B. Lawrence)编辑的第六版（以下简称“第六版”）在波士顿出版，亦被称为“第一个注释版”。根据劳伦斯的说明，这一版由原作者惠顿1848年最后修订的法文版（在莱比锡出版）为标准，保留了特别适用于美国的一部分。该部分在此前各版本中有，但在1848年版中被省略。1866年，达纳(R.H. Dana)编辑的第八版（以下简称“第八版”）在波士顿出版。

和原作的多版本相比，《万国公法》的初印本分三种：大开本的相当于16开本，为木刻白纸刷印本；小开本的相当于32开本，又分铅字排印本和木刻本两种。全4卷，4册，半框高214mm，宽160mm，每页10行，行21字。虽然省略了《国际法原理》中带有法学著作特点的注释、索引等内容，但另一方面，应目标文化的需求，译本亦增添了某些副文本特征。现以东京早稻田大学的1864年影印本为主要考察对象,辅以2003年点校本做为参照。

以《国际法原理》的1836、1855和1866三个版本以及1864年的中译本《万国公法》为考察对象，各版内文本的构成如下：

内容（责任人）	《国际法原理》			《万国公法》
	1836	1855	1866	1864
封面	√	√	√	√
目录	√	√	√	√
广而告之(惠顿 Henry Wheaton)	√	√	√	
编者导读（劳伦斯 W.B.Lawrence）		√		

编者前言（达纳 Richard Dana）			√	
法语版前言（惠顿 Henry Wheaton）		√	√	
第三版前言（惠顿 Henry Wheaton）		√	√	
案例列表		√	√	
注释关键事件索引			√	
编者注释（达纳 Richard Dana）			√	
序（董恂）				√
序（张斯桂）				√
英文译者序（丁韪良）				√
凡例（丁韪良）				√
世界地图				√
正文	√	√	√	√
附录一 关于入籍的补充说明（劳伦斯）		√		
附录二 改革美国外交和领事制度的法案		√		
附录三 众议院就中立国权利的辩论记录		√		
关键词索引		√	√	

表 5-a 各版本内文本的构成

以下将根据各个版本的内容构成，具体分析副文本特征的历时和共时变化。

2.1.封面

从封面上来看，1836、1855 与 1866 版的封面组成略同，均包括四部分：书名；作者信息；版本说明信息以及出版信息。

在书名部分，三个版本均在封面的中部偏上位置，以大写字母以及醒目黑体字列出“国际法原理（ELMENTS OF INTERNATIONAL LAW）”。但第一版附有副标题，以略小的字体分数行排列：“附国际法史简介(WITH A SKETCH OF HISTORY OF THE SCIENCE)”。这一行说明在其后的版本中并未出现。

至于作者信息，三版均注明此书由亨利•惠顿著，旁边注明其头衔为法学博士（LL.D）,至于以下的作者介绍，第一版亦与以后的版本有所差异，在第一版中，关于作者的介绍如下（斜体字部分参照原文）：

RESIDENT MINISTER FROM THE UNITED STATES IN AMERICA TO THE COURT OF BERLIN（美国驻柏林法院的外交代表）；

Member of the American Philosophical Society of Philadelphia; of the Royal Asiatic Society of London; and of the Scandinavian Literary Society of Copenhagen （美国费城哲学学会会员；英国皇家亚洲学会会员；哥本哈根斯堪的纳维亚文学会会员）

这两行关于作者的介绍信息，从内容上看，第一行职位表示作者惠顿曾代表美国政府在德国（当时称作普鲁士）的首都柏林行使外交责任。第二行则是惠顿获得的各会员资格。相比之下，前者与法律专业的相关度更高，更具学术和政治上的权威性。从排版的格式来看，第一行为大写，第二行为斜体小写，同样表明第二行的重要性相对第一行而言较低。

到了第六版和第八版，作者头衔在数量上没有显著增加，但体现出更高的专业相关度，如下：

MINISTER OF THE UNITED STATES AT THE COURT OF PRUSSIA; CORRESPONDI MEMBER OF THE ACADEMY OF MORAL AND POLITICAL SCIENCES IN THE INSTITUTE OF FRANCE; HONORARY MEMBER OF THE ROYAL ACADEMY OF SCIENCES AT BERLIND, ETC.,ETC.(驻普鲁士法院美国总领事；法国道德和政治学院委员会委员；柏林科学院荣誉

院士等等)

至于第三部分的版本说明，在第一版中，该信息十分简明，仅有“两卷上/下卷”以说明其篇幅。但在第六版中，继作者的个人信息,封面上还有如下文字说明：

SIXTH EDITION(第六版),

WITH THE LAST CORRECTIONS OF THE AUTHOR, ADDITIONAL NOTES, AND INTRODUCTORY REMARKS, CONTAINING A NOTICE OF MR. WHEATONS DIPLOMATIC CAREER, AND OF THE ANTECEDENTS OF HIS LIFT（附有作者本人的最后订正，额外的注解、包括惠顿先生的外交生涯及其个人生活轶事的引言),

BY（由）

WILLIAM BEACH LAWRENCE（威廉•劳伦斯）,

FORMERLY CHARGE D’AFFAIRS OF THE UNITED STATES, AT LONDON（前美国驻伦敦外交使节提供）.

第八版中该部分则被简略为如下：

EIGHTH EDITION（第八版）.

EDITED, WITH NOTES, BY

RICHARD HENRY DANA, JR., LL.D.（由法学博士理查德•亨利•达纳编辑和加注）

和第一版上推荐信息的空缺比起来，第六和第八版均有知名的学者（劳伦斯、达纳）加注或编辑，说明此书在传播和再版中权威性逐渐积累。这种信息也透露出该书还在读者群中寻求更多的认可，力求扩大影响力，累积更多权威价值。

就封面下方的出版信息来看，第一版注明该书 1836 年由伦敦鲁德门街的“毕•菲罗斯印刷所（B.FELLOWES）”[93]出版，该出版社位于伦敦。第六和第八版则都出版于“利特尔&布朗出版社（Little, Brown, and Company）[94]”。该出版社于 1837 年成立，是美国历史最悠久的出版社之一。到 1855 年发行《国际法原理》的第六版时，“利特尔&布朗出版社”已经成立了近二十年，具有了相当的行业经验和判断力。从其出版地移师本土且连续两次出版的商业行为来看，利特尔&布朗出版社很可能已经购买了《国际法原理》的版权。

首先，第一版《国际法原理》进入印刷品市场之时，还带有附赠“国际法史”的一行说明，带有招徕读者的目的。其后各个版本中，该标题被完全略去,其国际法史的内容被调整到正文当中。

其次，《国际法原理》首次出版时，作者尚未成名，头衔平平。到 1855 年第六版时，惠顿已经名声鹊起，此书既给他带来了不少的荣誉，又在出版的时候，为他赢得了更多读者，从而带来更多肯定。《国际法原理》的畅销和被认可之间已形成良性循环。

第三，同行知名学者的肯定和推荐，让第六版和第八版更具有专业信誉度。

第四，就出版机构而言，由美国本土的出版公司连续经营出版，在一定

[93] 出版统计数据显示，毕•菲罗斯印刷所的出版历史可追溯到 1559 年。其出版图书的数量在 1850 年左右达到巅峰，随后锐减。资料来源：https://openlibrary.org/publishers/B._Fellowes 2013 年 8 月访问。

[94] 当年，两个在一家书店工作过的同事 Charles Coffin Little 和 James Brown 合伙成立了出版社 Charles C. Little and James Brown。一年后，新的合伙人 Augustus Flagg 加盟。1847 年，出版社更名为 Little, Brown and Company，沿用至今。在 Brown 和 Little 相继于 1855 年和 1869 年去世后，Augustus Flagg 担任出版社社长。1968 年，以杂志业起家的时代公司（Time Inc.）收购了利特尔&布朗出版社。资料来源：www.littlebrown.com/ 2013 年 8 月访问。

程度上可获得读者的更多信赖和好感。

总之，《国际法原理》从一开始走的就是学术商业相结合的道路，通过累积读者来获得更多肯定，从而在国际法领域获得一席之地。但随着该书的一版再版并广受肯定，最初的商业性逐渐减弱，代之以更高的学术性和专业性。

《国际法原理》的译作《万国公法》，其封面登载的内容非常精炼，在形式上简朴得多。1864 年的版本为线装直排本，封面上仅有书名，偏左上方排列，题为“官版万国公法”，其内页首页中的出版信息为：“同治三年岁在甲子孟冬月镌，万国公法，京都崇实馆存版”[95]。

和原作比起来，译本封面上的“官版”二字颇值得注意。它赋予了《万国公法》一书与其他译作不同，甚至原作在一开始都不具备的资格：被政府认可。这也说明译作从一开始就设定好了预期读者的身份。同时，与《国际法原理》封面上对作者专业身份的强调相比，“万国公法”题目本身已经具备了译者希望传递的规定性。原作的“国际”意思仅为“在国家之间发生”，定义了其性质，却没有限定其运用的范围。译作中的“万国”则泛指世界各国，将国际法被认可，继而得到施行的范围扩大到所有国家。同时，原作中的“原理（elements）”显示出该书偏重教育功能。而译作中的“公法”二字，显示出其明确的规定性。

2.2 引言与序言

1836 年第一版的《国际法原理》在封面之后，目录和正文之间，仅有作者亲笔所撰的“广而告之（advertisement）”一文（详见下文），寥寥数页。

[95] 据张用心（2005）的研究发现，《万国公法》另有一个版本，附有英文版权页和英文译者序，据说藏于北京大学图书馆。不过本研究者数次探访未果。鉴于没有亲眼见到此版本，这里不将之列入讨论范围。

到了 1855 年第六版，封面和目录之后，附加了由劳伦斯撰写的长达 170 页（参见 Wheaton, 1855:13-184）的引言，对惠顿的水平和著作思想做了详尽的介绍，其主要功能，如葛乃特所说,是“为了帮助读者更好地阅读该书”[96]（Genette, 1997:197）。

1866 年第八版由达纳（Richard Henry Dana Jr.）编辑并加注。在“编者按（Editor’s Preface）”中，继历数《国际法原理》的多个版本之后，达纳亦提到“下一个外国版本”带来的特殊荣誉(Dana, 1866:xi）。正如刘禾所说：“为了达到令人向往的普遍性地位，这部著作就愈是要求得到普遍的承认，愈是要求被翻译成外国语言”（2009：183）。

相较之下,《万国公法》一书开篇，是当时的户部尚书董恂[97]所做的一篇序。

> 涂山之会，执玉帛者万国，维时某氏宅某土，其详弗可得闻已。顾或疑史氏侈词，不则通九州外数之。今九州外之国林立矣，不有法以维之，其何以国?此丁韪良教师《万国公法》之所由译也。
>
> 韪良能华言，以是书就正，爰属历城陈钦、郑州李常华、定远方浚师、大竹毛鸿图，删校一过以归之。
>
> 韪良盖好古多闻之士云。

其评价总的来说较为谨慎而克制：一方面，董恂称译者丁韪良为“教师”，对其社会地位作出较为平实的描述；另一方面，董恂指出丁韪良“能华言”的语言能力，也对其“好古多闻”进行肯定。可以看到，“能华言”而不是“善华言”，说明董恂对丁的语言能力评价不是毫无保留的。丁韪良作为来

[96] “[…] its chief function to ensure that the text is read properly.”
[97] 董恂（1810 年－1892 年），初名醇，避文宗讳改恂，字忱甫，号韫卿，江苏扬州府甘泉县人。晚清政治人物，仕道光、咸丰、同治、光绪四朝，官至户部尚书。（维基百科）

华的西方人，“多闻”自不必说，董恂的表扬重点其实在于“好古”，也就是遵循旧制上。这恰好与文本中丁韪良对某些观点的改写形成了一定的验证。

在这篇“序”里，董恂以反问句提到了万国公法产生的意义：“今九州外之国林立矣，不有法以维之，其何以国？”正点出目标文化中的空缺导致了该翻译文本的选择。不过，和原作的序言相比，此处对书中的文本内容不置一词。在这一点上，如果拿数十年后丁韪良编写《邦交提要》时端方做的序言来比较，不难看出后者不仅对公法的学说内容较为熟悉，而且已经不吝溢美之词，在态度上予以充分肯定[98]。

虽然在“序”中没有提到国际法的具体内容，史料却显示，董恂对《万国公法》相当熟悉，而且对此持肯定态度的。根据赫德日记的有关记载，早在丁韪良的译书成稿之前，董恂就已经通过赫德的节译，了解了此书大部分内容（2004：387-391）。数年之后，也就是 1871 年（同治十年），镇江关查获漏税洋船更名易主一案时，董恂照会英使，亦引用国际法指责对方无理。英方代表只好按章办事。——由此来看，原作中劳伦斯的导读或达纳的注释起到帮助读者理解的作用。译作中序言的功能，则是由身为高层政治人物的作序者出面，对《万国公法》的权威性做出背书。户部尚书的名字出现在序言位置，本身就起到了吸引目标读者的作用。

董恂之后，张斯桂所做的《序言》则洋洋洒洒数百字，将《万国公法》置于世界局势的框架之下，探讨其出现的意义。他指出，英、美、法、俄作为世界四大强国，其强大是靠奋斗而来的。对于英、法两国而言，他们从工业革命开始，扩展到海运贸易和机器制造，从而迅速崛起。俄罗斯虽然积弱久矣，但通过学习西欧，也赶了上来。美国原来不过是英国的殖民地，独立

[98] 余曩读丁君冠西所译惠氏、吴氏、布伦氏、堂氏公法之书，既以条分件（简）繁，纲举目张，为讲国际者所推重矣。其序《公法会通》之言曰，阅是书者，应将地球图记、历代史略先为熟习，而后泰西各国往来事宜，方能洞悉。【……】夫天下之事变无穷，而其所以应之者，准情酌理，因时制宜，遂亦莫不有法。五洲之大，万国之众，其所为公法者，制非一国成非一时，要莫不出于天理之自然，经历代名家之所论定，复为各国交涉之所公许，非偶然也。（端方，1904）

战争之后实行共和制，并妥善处理好了国内外关系，因此成为强国。纵观地球上数十国，能生存下来的，都缘于其遵守盟约，即遵循《万国律例》（即《万国公法》）一书（张斯桂，1864）。这种对现有局势的理解，加上对“不遵守国际法原则”就不能立足于世界的判断，起到了劝服的效果。但是这种劝服并非是纯学术上的观点赞同，亦抱有一定的个人目的。据丁韪良在《花甲忆记》(初版于 1896 年)中的记述：

> [张]是一位“士绅”[……]。他是一位职业学者，继承了一大笔遗产，可以看作是位一流的中国文人。[……]三年后我在上海遇到他后，给他看了我翻译的惠顿氏的《万国公法》译本手稿，他一下子就明白了这项工作的**意义**，这可是中国在世界之林占有一席之地所不可或缺的。他也预见到了这本书迟早会引起中国朝廷的**重视**，因此他自告奋勇为我这本书写了一篇序文，此文表现了他对中外关系的理解，这种**理解**在当时极为罕见。序文为我的书增色不少，同样也为他开启了通往外交界的大门[99]。（Martin, 1896:204-205；参见丁韪良，2004:137-138）

一方面，作为学者，张斯桂敏锐地看到了国际法符合中国需要这一重要意义。另一方面，张斯桂对丁韪良以及国际法理念的支持，来自其对局势的判断，亦怀有一定的政治投机目的。这篇序言既有理想主义的色彩，也出于实用主义的考虑。

[99] “Mr. Chang Luseng, a native gentleman[…] A scholar by profession, and born to the inheritance of wealth, he may be taken as a type of the best class of Chinese literati, […] Three years later, when I met him in Shanghai and showed him the manuscript of my translation of Wheaton’s ‘International Law’, he at once perceived the bearing of the work, as indispensable to the new place China was clled to occupy among the nations. He foresaw too that the book would attrat the attention of the highest dignitaries in the land, and, unsolicited, he wrote a preface which exhibited a comprehension of foreign relations very rare at the epoch. While it served to give wing to the book, it no doubt had something to dowith opening for him a door to diplomatic employment.”

2.3 广而告之、凡例与自序等

1836 年 1 月 1 日惠顿在柏林撰写的“第一版广而告之（Advertisement to the First Edition）”中说明了《国际法原理》的写作目的：

> 在于将和平及战争状态下国家间互相往来遵循或应该遵循的一套规定以及原则（即国际法)**收集**起来，予以**编撰**，由此产生的一本入门书籍，将得以指导外交及有关公共事务从业人员，而不单单是执业律师。当然，**希望**该书对于后者**不至于完全无用**。本书大部分内容来自实际发生过，或已在各国交往实践中被裁定的案例[100]。（Wheaton, 1855）

从写作过程（“收集”、“编撰”）以及写作意图（“希望……不至于完全无用”）来看，该书的功能偏重于信息而非规定。同时，该书的假定读者群不仅有专业人士，还有对国际法事务感兴趣的外交以及公共服务人员。这说明该书的写作风格接近说理式的国际法基本准则解释，而非规定性法则。

以上的“广而告之”在 1855 和 1866 年版中均予以保留。同时出现的，还有惠顿本人于 1847 年 4 月 15 日在巴黎撰写的法文版的序，1845 年 11 月在柏林撰写的第三版的序。出版商充分保留了作者的出版风格。

《万国公法》中的“凡例”则兼有“译者自序”和“译本说明”的功能。由丁韪良本人亲笔所撰，共有六条。其中第一条对惠顿在各国的地位大为肯定，并解释了书名的由来：

[100] “The object of the Author in the following attempt to collect the rules and principles which govern, or are supposed to govern, the conduct of States in their mutual intercourse in peace and in war, and which have therefore received the name of international Law, has been to compile an elementary work for the use of persons engaged in diplomatic and other forms of public life, rather than for mere technical lawyers, although he ventures to hope that it may not be found wholly useless even to the latter. The great body of this Law is commonly deduced from examples of what has occurred, or been decided in the practice and intercourse of nations.”

是书原本出自美国惠顿氏选缮。惠氏奉命驻扎普鲁士首都多年，间尝遍历欧罗巴诸国，既已深谙西今书籍，更复广有见闻，且持论颇以不偏著名。故各国每有公论，多引其书以释疑。端奉使外出者，无不携在案头，时备参考，至派少年学翻译等职，亦每以是书作为课本。是书所录条例，名为《万国公法》。盖系诸国通行者，非一国所得私也。又以其与各国律例相似，故亦名为《万国律例》。(丁韪良，1864)

对惠顿的成就一番渲染之后，丁韪良强调其“持论颇以不偏著名”，亦就该书的运用效果予以夸大其词：“每有公论，多引其书以释疑”。这显然与《国际法原理》的副文本所呈现出的信息形态稍有不合。

就“国际法原理”这一书名被译为《万国公法》，更可以看出译者如何强调和夸大该书的权威性，并言之灼灼地保证“盖系诸国通行者，非一国所得私也”，给文本增加了本来不够充分的规定性。

2.4 地图

继清政府官员董恂和张斯桂各作的序文、目录以及《凡例》，之后，《万国公法》一书有两页地图，分为东半球和西半球，解释世界地理概况，并另附说明，列出东西两半球各大洲内有哪些国家。这是原作中所没有的。

“凡例”之后，《万国公法》中插入了两页的“地球全图”，辅以文字介绍，说明当时的世界地理概况。刘禾如此解读：

《万国公法》明确无误地告诉满清政府的官员，中国在最新的“科学的”世界地图上所处的位置和地位。这张地图印有对半剖开的东西两半球，并按照音译的方法用中文注明各个大陆和海洋的名称。这样的制图学表象在当时还相当罕见。世界地图的目的在于向中国的精英人士介

绍普遍知识的新秩序和全球意识，从而让这个古老的文明加入世界民族大家庭。（2009:168-169）

《宅兹中国》一书中，考据中国古代地图和传教士时期引入的世界地图之后，葛兆光对这一行为做出更为深刻的解读：

中国人始终相信自己是世界中心，汉文明是世界文明的顶峰，周边的民族是野蛮的、不开化的民族，除了维持朝贡关系之外，不必特意去关注他们。所以，古代中国的世界地图，总是把中国这个“天下”画得很大，而把很大的世界万国，画得很小。（葛兆光，2011,108）

不过，自从利玛窦来华之后，特别是关于世界的地图被绘制出来之后，这种关于天下的想象开始发生根本的变化[101]。在他之后，传教士始终在坚持传播这种新世界图像。[……]不仅是在接受西学的士大夫中，就是在官方与民间，传统中国关于天下的图像也开始瓦解和崩溃，人们逐渐接受了新的世界。（葛兆光，2011:87）

利玛窦带来的世界地图之所以给中国造成极大的震撼，在于该地图：首先“瓦解了天圆地方的古老观念”；其次展示出“中国并不是浩大无边的唯一大国，反而很小”；第三，四夷“有可能是另一些文明过渡”；最后，中国应该“承认世界各种文明是平等的、共通的，而且真的有一些超越民族/国家/疆域的普遍主义真理”（葛兆光，2011:111）。

在《万国公法》中加入地图，同样意味深长地暗示了国际秩序的自然法起源：

[101] 详见葛兆光，天下、中国与四夷——古代中国世界地图中的思想史，载王元化编《学术集林》，上海：上海远东出版社，1998 年版。

> 正是这些颠覆性的观念，[利玛窦的]世界地图给中国思想世界带来了一个隐形的、巨大的危机，因为它如果彻底被接受，那么，传统中华帝国作为天下中心，中国优于四夷，这些文化上的“预设”或者“基础”，就将“天崩地裂”。（葛兆光，2011:111）

在此基础上，在国际法译作中附加地图的做法自此成为惯例。《公法便览》、《邦交提要》甚至丁韪良编辑出版的《尚贤堂月报》中，都可以见到。

在《宅兹中国》的结论部分，葛兆光提出，若以“中国的自我认识”为中心，以往的中国历史可以被称作“以自我为中心的想象时代”。不过——

> 自从晚明西洋人逐渐进入东方以来，特别是晚清西洋人的坚船利炮迫使中国全面向西转之后，中国认识“自我”，开始有了一个巨大的“他者”（the Other）即西方，从而进入了第二个阶段即“一面镜子的时代”。（葛兆光，2011:278）

地图的插入，标志了列文森（Joseph R. Levenson）所指出的“从天下到万国”的巨大变化（列文森, 2000:87）。由此，“万国公法”中的“万国”二字，也显得名正言顺了。

2.5 注释、附录与索引

作为一本完整而权威的法学著作兼教科书，正文后的附录与索引必不可缺。

1855 年版的《国际法原理》后部有附录一，题为《关于入籍法令的补充说明（additional note on naturalization, by the editor)》”(参见

Wheaton, 1855:625-633)。附录二题为《一份关于修订美国外交和领事制度的法案（an act to remodel the diplomatic and consulate systems of the United States)》（参见 Wheaton, 1855:634-642），其结尾注明该法案已于 1855 年 3 月 1 日获得通过。附录三为《1854 年 7 月 4 日下议院关于中立国权利的辩论记录（Debate on Neutral Rights. House of Commons, July 4, 1854)》，末尾注明该记录已在《伦敦时报（*London Times*)》1854 年 7 月 4 日号上刊载(参见 Wheaton, 1855:643-669)。

随后是关于注释的“附录（Addenda to the Notes)”（670-694 页）以及案例索引（参见 Wheaton, 1855:695-700）,其后注明以上案例来自英美案例报告，并按字母顺序排列。

此外，就编辑加入的注解所做的索引亦附在其后，篇幅亦长达 30 页左右（701-728 页)。

不过，以上内容《万国公法》均予省略，包括劳伦斯所加的注释。唯一可做补偿的，是正文之间偶尔以双行小字的形式增加个别注释，如下所示：

卷	注释	类别
一	均势之法（所谓均势之法者，乃使强国均平其势，不恃以相凌，而弱国赖以获安焉，实为太平之要术也）	A
	司海法院（或作战利法院）	B
	两国公使（即国使也）	B
	若新立之国，蒙诸国相认（所谓认者，认其为自立自主之国而与之往来也)	C
二	国法（所谓国法者，即言其国系君主之，系民主之，并君权之有限、无限者，非同寻常之律法也）	A
	植物（所谓植物者，即如房屋、田亩不能移动之类，不独树木然也）	A
	按例而生，背例而私生（婚配而生子则谓按例而生，未婚而生子则谓背例私生也。盖于嗣续产业、君位等事皆有关涉耳）	C
	即如海上贩运奴仆一事，非犯公法亦不为海盗也（然诸国多有严禁且以海盗处之）	C

	合众国（即美国之别名也）	B
	双行小字：以下三节详载各国同用某处江河，因立约据条款大例与上俱同，但其细微曲节无关紧要，故未译出。）	D
三	议立约全权之据，可在信凭内总括，或另缮一角，其式略与公诰（双行小字：即如君之谕旨可人人共视者）同	C
四	据宾氏所论，敌人虽不带军仗者，以奸计灭之、以毒物害之，制其身、夺其物，皆属战权。然债负有当还于敌者，不可因战而入公，迨复和时，债主可以追讨，其权无少减也（双行小字：所引宾氏此论，盖以陪证债负之当还。至其论战，有忍心害理者，则无足取也。）	E
	将日耳曼船只交还，盖系在王房(双行小字：英国海涯大湾之总名也）君主辖内所捕故也。	A

表 5-b 各卷夹注列表

总体而言，这些注释可以分为 A-E 类，包括：

A.对新概念的解释，如“均势之法”、“国法”、“植物”、“王房”。

B.就同一概念以不同方式指称，如“司海法院/战利法院”、“两国公使/国使”

C.对其法律运用予以说明和补充，如解释国际法中的“认”的含义，以及“按例而生，背例而私生”，“海上贩运奴仆一事，非犯公法亦不为海盗也”,“全权之据/公诰/君之谕旨”等表达的意思。

D.对大幅删节的解释，如“以下三节[……]其细微曲节无关紧要，故未译出”。不过这种解释只出现了一次，与英文序中的译者声明相呼应。

E.对原作观点的评论，如“迨复和时，债主可以追讨，其权无少减也”这句，译者评论道：“所引宾氏此论，盖以陪证债负之当还。至其论战，有忍心害理者，则无足取也”。

这些文中的夹注，为引入新的概念铺平了道路，在某种程度上弥补了对读者而言的外部背景信息缺失，具有一定的教育功能。

3.作为外文本的译作

在葛乃特的定义里，外文本指的是“任何不在同一卷中和文本在实质上具有增补作用的，但是可以在无限的物理和社会空间中自由流通的副文本[102]”(Genette, 1997:344)，如刘禾所说：“文本与文本之间所以出现这种循环形态，源自于外交行为本身——外交活动离不开语言，所有交往都经常是在语言和语言之间展开”（2009:153-154）。在国际法体系中，译本的存在，可以说，亦是原作的一种外文本形式。译本的不断推出，丰富了原作的生命，对原作起到了增补的作用。

以下主要考查《万国公法》的外文本特征，包括该译本问世前后的相关论述、推介文字以及其面世之后的流通情况。

3.1 赞助商的运作

《国际法原理》中提到赞助商的，为 1855 年版封面内页正中位置有“依据国会法案，由凯瑟琳•惠顿在马萨诸塞州区法院书记办公室录入[103]”一句。这是 1836 年的版本所没有的。凯瑟琳•惠顿是亨利惠顿的妻子，两人于 1811 年结婚。鉴于 1855 年再版时时惠顿已经去世，根据美国的版权法律可以推测出，这一版本是由惠顿的妻子凯瑟琳代为授权而出版的。“国会法案”一语，说明《国际法原理》作为知名的法律参考用书，已经在官方层面得到认可，并得到一定的支持，凸显了该文本的法律权威性。

1866 年的版本中此句得以保留。且扉页中出现了三次“根据国会法案录入”字样。时间分别为 1855、1863 以及 1866，即表示从 1855 年版，也

[102] “any paratextual element not materially appended to the text within the same volume, but circulating, as it were, freely, in a virtually limitless physical and social space”.
[103] “entered according to Act of Congress, in the year 1855, by Catharine Wheaton, in the Clerk’s Office of the District Court of the District of Massachusetts”.

就是丁韪良翻译的这个版本开始，此书的每次再版都得到了国会法案的批准和支持。

至于译作，1863 年春天，《万国公法》尚未完成翻译之时，丁题良直接致函蒲安臣公使，希望翻译完成后能给清政府参阅。蒲氏对此大加鼓励。1863 年，丁韪良将《万国公法》译稿四本呈交总署。就此，恭亲王奏报全文如下：

窃查中国语言文字，外国人无不留心学习，其中之尤为狡黠者，更于中国书籍潜心探索。往往辩论事件，援据中国典制律例相难。臣等每欲借彼国事例以破其说，无如外国条例俱系洋字，苦不能识。而同文馆学生，通晓尚需时日。臣等因于各该国彼此互相非毁之际，乘间探访，知有《万国律例》一书。然欲径向索取，并托翻译，又恐秘而不宣。适美国公使蒲安臣来言各国有将《大清律例》翻出洋字一书，并言外国有通行律例，近日经文士丁韪良译出汉文，可以观览。旋于上年九月间，带同来见。呈出《万国律例》四本，声称此书凡属有约之国，皆宜寓目。遇有事件，亦可参酌援引。唯文义不甚通顺，求为改删。以便刊刻。臣等防其以书尝试，要求照行，即经告以中国自有体制，未便参阅外国之书。据丁韪良告称，《大清律例》现经外国翻译，中国并未强外国以必行，岂有外国之书转强中国以必行之理？臣等窥其意，一则夸耀外国亦有政令，一则该文士欲效从前利玛窦等在中国立名。

检阅其书，大约俱论会盟战法诸事，其于启衅之间，彼此控制钳束，尤各有法。第字句拉杂，非面为讲解不能明晰。正可借此如其所请。因派出臣衙门章京陈钦、李常华、方濬师、毛鸿图等四员，与之悉心商酌删润。但易其字，不改其意。半载以来，草稿已具。丁韪良以无赀刊刻为可惜，并称如得五百金即可集事。臣等查该外国律例一书，衡以中国制度，原不尽合，但其中亦间有可采之处。即如本年布国在天津海口扣

> 留丹国船只一事，臣等暗采该律例之言与之辩论，布国公使即行认错，俯首无词，似亦一证。臣等公同商酌，照给五百两，言明印成后呈送三百部到臣衙门。将来通商口岸各给一部，其中颇有制伏领事官之法。未始不有裨益。（弈訢，1863）

从奏报可以看出，《万国公法》填补了中国国际法知识体系的空白，正是中国所亟需的。同时，弈訢故作玄虚地提到该作可能会被西方人秘而不宣，更加引起有决策权的朝廷的注意。不过，刘禾指出“恭亲王对西方国际法持这样的态度，主要是其实际的用处，因此并不关心它是否是普遍真理”（2009：167）。一方面，清王朝的部分官员试图通过掌握国际法知识来与西方列强讨价还价，尽可能多地保住其统治利益。另一方面，西方的一批政府官员和传教士希望通过在中国传播其国际法思想和制度，让中国遵循他们的价值观和法律规范来行事，以维护其特权和利益。

奏折中书名为《万国律例》。奉准刊印之际，总理衙门四位章京商酌校改及润色，最终定其名为《万国公法》，同时丁韪良要求总署大臣作序以冠书首，并要求序文提及四位章京大名，恭亲王自亦接纳所请，而命总理衙门大臣董恂为之作序，董氏即于同治三年十二月草成序文。故凡呈官方之三百部版本有董氏之序。

总理衙门对此书的赞助，不仅体现在答应译书的请求，还包括派员对译稿进行编校和文字润饰，以及出银五百两资助刊刻事务。经济赞助的同时，另外预定了三百部书以备内用，作为中外发生事故的参考。《万国公法》出版以后，清政府即发给中国通商口岸各一部。中国向各国派的外交使节，多备有此书[104]。刻印本如此高级别以及小范围的散播，亦能说明赞助商对于译

[104] 不过，与在日本的广受欢迎相比，除了第一版刊印的 300 册颁发给各省督抚备用，丁韪良将一部分送给美国国务卿西华德等人之外，同治朝未见重新刊行，直到光绪二十八年（1902 年）出现上海广学会重刊本，此外还有上海申昌石印本（1898 年）及多种私刻和盗

作规范功能的信任和期待。

3.2 后续影响

1836 年第一版出版之后，惠顿的《国际法原理》不断修订和更新，“以便能包容越来越多的新生条约和新的制裁案例”（刘禾，2009:182），其影响也越来越大。值得注意的，是 1866 年《国际法原理》一处注释（正文第 13 页；注释第 22 页)中，达纳提醒读者 1864 年中译本的意义：

> 西方文明在东方获得进展的最有力证据，就是惠顿先生这部著作被中国政府采用，以作为其官员在国际法领域的教科书使用。这本书是在 1864 年朝廷的赞助下翻译成中文的。这项译事系由美国公使蒲安臣提议、由美国传教士丁韪良主译，并得到总理大臣恭亲王委派的支那学者的协助，此书是献给蒲安臣的。支那政府在与西方列强驻北京的使节办理外交交涉时已经引用和依赖这部著作了[105]。（Dana, 1866:22；参见刘禾，2009:183）

在中国，《万国公法》出版之后，1865 年蒲安臣给国务院的报告中写道：“中国人并没有要求我写这份报告，但是他们亲自告诉我他们对完成这项译事的重要性的认识。当恭亲王（就是他负责督导这部著作的翻译）和另一位总理衙门大臣董恂坐下来照相时，他要求手里拿一本惠顿的著

印版。

[105] “The most remarkable proof of the advance of Western civilization in the East, is the adoption of this work of Mr. Wheaton, by the Chinese Government, as a text-book for its officials, in International Law, and its translation into that language, in 1864, under imperial auspices. The translation was made by the Rev. W.A. P. Martin, D.D., an American missionary, assisted by a commission of Chinese scholars appointed by Prince Kung, Minister of Foreign Affairs, at the suggestion of Mr. Burlingame, the United States Minister, to whom the translation is dedicated. Already this work has been quoted and relied upon by the Chinese Government, in its diplomatic correspondence with ministers of Western Powers resident at Peking.”

作”(Wheaton,1936:16a；转引自刘禾,2009：184)。

1864 年初，普鲁士在欧洲同丹麦因领土问题发生战争。当时，普鲁士政府任命一位名叫李福斯（Herr von Rehfues）的官员为驻北京公使。1864 年 4 月，李福斯乘普鲁士军舰到达天津大沽口，准备前往北京。适于此时，发生了李福斯的军舰在渤海湾拿捕三艘丹麦商船事件。清政府依据《万国公法》中有关的论述，对此提出抗议。因渤海湾为中国的内海，普鲁士军舰在专属中国管辖的海域拿捕别国商船，侵犯了中国的主权，违反了国际法原则。结果丹麦船只获得释放（徐中约，1960：132-133；程鹏，1989）。

虽然《万国公法》出版后在同治一朝的传播，除了颁发给各省督抚备用之外，并没有以政令的形式督促对外交涉人员仔细研读，1868 年《中美续增条约》第一条规定所作的注释中，就使团参照国际法有关领海主权和局外中立原则的积极实践做了这样的说明：“从前布国兵船，在天津海口抢劫丹国货船，**有违公法**。今特为提明，各国如肯照办，则日后中国，可免此等挂累”。

在《万国公法》出版之后，诸多学者对之予以了很高的期望，以为凭此即能解决许多国际争端问题。如郑观应，就“猪仔（即中国劳工)”贩卖一事，他评论道：

> “自古济弱扶倾，乃万邦之公法；吊民伐罪，宜畛域无分。[……]故恳各国君主，畛域无分，体天地好生之心，遵**万国公法**，济弱扶倾，吊民伐罪，善恶分明，集众与西洋国理论之”（1982a：10）。

在《论禁止贩人为奴》中提到，郑观应还提到：

> 盖**万国律法**，未有不衷乎义，循乎理者，以理义折之，亦当无词以

对，则其禁止亦不难也。诚使通一介之书，谓居澳之西人曰：佣工之洋，实属有害世道，为国共和，不得不以请。且查屡年运往贵邦之人，皆我国小民。国人受雇出洋，实犯我之例禁，吾已禁国人无得受雇出洋，尔宜禁船主无得私行载往。民为邦本，贵邦宜辍此役。”（郑观应，1982b：17）

以上看法虽是就事论事的评说，其中贯穿着对公法其“衷乎义，循乎理”道德意义的认可，并将它视为处理国际关系的最终依归，体现出以郑观应为代表的知识分子对公法在对外交涉运用中的信心和依赖，这与《万国公法》中相关知识的普及是分不开的。

总之，在《万国公法》引进的初期，知识分子对将其作为据理力争的依据，维护中国的权利抱有十分乐观的态度，也对地方官员不能以公法为依据处理涉外案件深表遗憾。“公法可恃”在同治初年的外交思想中占据了主导地位。

然而，正因为把《万国公法》当成西方国家之间的“盟约”，进而将其视之为条约的另一种形式，转化为外交上“信守条约”的方针。以国际法为依据争取权利，只能是在承认现有的不平等条约的基础上来进行。从李鸿章的“各国条约已定，断难更改”（1908，10），到左宗棠的“条约既定，自无逾越之理”（1979：50），再到冯桂芬的“今既议和，宜一于和，坦然以至诚待之”（1898：74-77:），乃至奕訢的洋人“所以必重条约者，盖以条约为挟持之具[……]入约之后，字字皆成铁案，稍有出入，即挟持条约，纠缠不已”（1866:6），都表示对外交涉要以“信守条约”为基础。

另外，同治年间的知识分子倾向承认国际法的可用可恃性，然而对国际法的研究深度不够，导致他们知道国家主权却不解其中真义，不知道哪些不平等特权违背了国际法原则，更没能认识到中国可以通过自强增强国势，进

而利用国际法摆脱不平等条约的束缚。其国际法意识中带有强烈的妥协性。片面推崇国际法理性精神的认识方式，不仅妨碍了清政府对国际法做出准确的理解和价值判断，也影响了它对国际环境的残酷性形成更真切的认识。《万国公法》的副文本特征中对其法律效力的刻意夸大，未必不是原因之一。

3.3 各方评议

《万国公法》出版后西方各界对此反应各有不同。

反对方以法国使馆的临时代办哥士奇（Bogdan M. Klecskowsky）为代表。他对蒲安臣说："这个家伙是谁？竟然想让中国人对我们欧洲的国际法了如指掌？杀了他！——掐死他！他会给我们找来无数麻烦的！"[106]（Martin, 1896：234）。这种狭隘偏执的态度，说明恭亲王之前在奏折中流露中的担忧并非空穴来风。

赞同的声音则主要来自英方。得知丁韪良在翻译《万国公法》时，英国驻华公使卜鲁斯（Frederick Bruce）的反应则显示出西方违反国际法和中国进入世界民族大家庭这两件事情之间的互相联系。他说到："这本书会有用的，[……]可以让中国人看看西方国家也有'道理'可讲。他们也是按照道理行事的。武力并非他们的唯一法则[107]"（Martin，1896:234）。由此，这位英国外交官承认了这样的事实：西方国家征服世界，凭的是一手拿武器，一手拿法律（道理）。"野蛮的军事实力利用国际法的道德和法律权威来证明，自己征服世界是一种'殖民教化工程'"（刘禾，2010），这样的合法性论证反过来又将全球性的杀戮和掠夺变成一种高尚的事业。不难想象，这种"欢迎中国加入国际法大家庭"的态度势必占据主流。

[106] "Very different was the impression which my undertaking made on M. Klecskowsky, the French charge d'affairs. He said to Mr. Burlingame: 'Who is this man who is going to give the Chinese an insight into our European international law? Kill him-choke him off; he'll make us endless trouble.'"

[107] "The work would do good, […]by showing the Chinese that the nations of the West has taoli ["principles"]by which they are guided, and that force is not their only law".

另一方面，卜鲁斯对丁韪良的翻译计划大加赞赏的另一个原因是，对于在鸦片战争、亚罗战争和其他对中国的战争中违反国际法的行为，英国和其他西方列强需要一个迟到的合法性证明。“迟到的”一词在这里至关重要，因为它显示出丁韪良的翻译工作的间接的意义（不完全是有意为之）。在武力威胁下与满清政府签订一个又一个“不平等条约”之后，现在它们需要总理衙门和清廷严格按照国际法的要求履行和实施条约的各个条款。在这个意义上，国际法的翻译可以说既是迟到的又是非常及时的（刘禾，2000：71）。

具有反讽效果的，是若干年后，曾在中国海军中任职的英国人戴乐尔（William Ferdinand Tyler）[108]参与了中日甲午战争，他在日记中记述到：

> 我们有一些官员误解了满清政府的傲慢态度，这是为了显示出他们的伟大，以及他们所代表的权利。于是我们自然将战争加之于这个国家之上，以获得平等的贸易协定，后来还打破了它闭关锁国的状态——显然，以上行为是基于法规的限制的——但这是一个需要严密的行政方式的时代，在战争状态与和平状态之间，有一条清晰分明的鸿沟。因此我们教会了中国人什么是主权，他们迄今为止只知道暴力能够驾驭一切——为他们服务或是针对他们。（戴乐尔，2011：217-218）

化解“保守”或“开放”、“受益”或“受害”之间矛盾最好的办法就是妥协，叩其两端而执其中央，以达成一种中庸的国家观。由此，以丁韪良为代表的清朝洋务派共同认可，将公法定之为“公”字，最终传达了一种（理想中的）平等观。

[108] 戴乐尔，英国人，1889 年来华，曾先后在中国海关、北洋海军、民国海军部、交通部任职，甲午战争中任“定远”舰副管驾。

4. 小结

刘禾曾评论道：“国际法的历史展开过程，不能不包括国际法在各种其他语言中的翻译和流通，以及这一翻译的历史如何回过头来，又对原文产生循环影响”（2009:173）。对于《国际法原理》而言，其过去的所有版本连同译本都是副文本。对于《万国公法》而言，《国际法原理》的各个版本，包括百年纪念版均构成副文本。总之，副文本不断以更为权威的形式呈现正文，以凸显正文在国际法史上越来越重要的地位，由此《国际法原理》和《万国公法》构成了循环加强的关系。

通过本章的考察，我们发现：《国际法原理》的副文本特征一直以“信息”功能为重点，不断的再版过程中，后来的版本逐渐积累起了权威性，随后又被政府法案被赋予额外的法律效力；《万国公法》的副文本也以“信息”为主，但其封面及序言均显示出更高的权威性和规范作用，辅以有较高政治地位的赞助商的评议，加上作品版本的唯一性，原作被赋予了更高的法律地位。文本这一地位的获得与副文本的展示息息相关，正如葛乃特所说：

> 文本是恒久的，其自身可能在不同的场合和时间里多次再版，却无法发生改变。副文本——则更为灵活多变，其本质就是变动的——副文本就是适应和调整的一种手段。由此，对于文本的‘展示’（即文本面向世界的状态）可以持续被修订，作者在世会参与这种修订，作者离世，其身后的编辑就担负其这一责任（或尽责或失职）[109]。(Genette, 1997: 408)

[109] “Being immutable, the text in itself in incapable of adapting to changes in it public in space and over time. The paratext—more flexible, more versatile, always transitory because transitive—is, as it were, an instrument of adaptation. Hence the continual modifications in the “presentation”of the text (That is, in the text’s mode of being present in the world), modifications that the author himself attends to during his lifetime and that after his death become the responsibility (discharged well or poorly) of his posthumous editors.”

与此类似，国际法的普世性及其规定性，正是在《国际法原理》的作者以及《万国公法》的译者“共谋”之下建构起来的。

第六章 以社会系统论解读《万国公法》

图里指出:“对于文本迁移现象的认定仅仅是文本的考查工作的一部分，接下来的任务是形成解释性假设[110]”(Toury, 2001：85)。翻译进入目标文化后，带去的不仅是“文本项（textual entities）”，更有可能的是某种“模式（models）”,这意味着（文化）移植将包括一批文化，以重复出现的模式，带来类似的方式[111](Toury, 2001: 27)。这句话有几层意义：（一）目标文化缺乏，而源语文化具备，揭示出文化系统之间存在差异；（二）目标文化缺乏，但是目标文化又要求其出现，这说明文化需求随社会发展而变化，文化发展自身存在历时性；（三）空缺成为翻译的理由，说明文化交换和文化互补的必然性。——这与丁韪良提到《万国公法》是为了“迎合中国的需要”而产生的说法相似。

在社会系统论(Social Systems Theory)看来，以《万国公法》为代表的国际法译作相当于一种沟通，为系统带来新的成分，同时也形成对外部环境的指涉。当类似的沟通行为较为稳定地呈频密多发状态，国际法的子系统可能依此形成。鉴于社会系统论与翻译研究中的规范形成具有可比性，本章将结合《万国公法》产生的社会环境因素，对以上各章中发现和归纳出的规范做出较为系统的解释。

1. 社会系统论概述

社会系统论由德国学者尼可拉斯•鲁曼（Niklas Luhmann）提出[112]。因

[110] “[…]the identification of shifts is part of the discovery procedures only, i.e., a step towards the formulation of explanatory hypotheses”.
[111] “groups of texts which embody a recurring pattern or else are translated in a similar fashion”.
[112] 其理论的形成最早可追溯到 1975 年出版的德文著作 *Soziologische Aufklärung 2: Aufsätze*

其博大精深，译介不易，诞生以来在国外学术界曾被尘封过半个世纪之久，直至近年来，因其对社会复杂性的解释力和预见性逐渐得到证明，开始获得学者们的重新认识和赞叹。据笔者对国内近年内涉及该理论的期刊文章统计显示，社会系统理论中的诸多概念对各个学科研究都产生了影响，其中“区分（即系统的封闭和开放）”以及“自我再制”概念多被法学借鉴[113]，社会学领域则更多强调“媒介”和“复杂性”概念的运用[114]。遗憾的是，对于整个系统理论进行叙述和梳理的文章尚不多见[115]。事实上，社会系统理论作为一个完备的系统，同样具有自我指涉和自我再制等特性，其各个元素紧密相关。

1.1 系统和环境

系统和环境（system and environment）是鲁曼社会系统理论中最关键的一组概念。其定义和区分是整个系统理论构架的基础。区分(distinction/differentiation)是所有观察的起点。将系统和它所处的环境区分开来。意味着要区分出哪些系列事件或者行为彼此相关，从而从属于系统；哪些事件或行为与系统内部结构不能兼容，因此属于环境。

关于系统与环境的关系，鲁曼认为：系统必定处于一个比它本身复杂的环境中。所谓“系统的环境”永远比“系统本身”更为复杂。系统籍由消除可能性来简化环境的复杂性。简单来说，复杂性指可能状态的全部。复杂性决定了信息的部分缺失，因此导致系统不可能全面观察自身和环境。复杂性

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*zur Theorie der Gesellschaft,*真正成名则缘于 1995 年出版的英文著作《社会系统（*Social Systems*）》。

[113] 可参见翟小波（2007）、鲁楠（2008）、周婧（2009）、泮伟江（2009）、赵春燕（2010）和宾凯（2010）等人的相关论述。

[114] 可参见杨建华（2008）、肖文明（2008）、车凤成（2008）、樱井芳生（2010）和仇静静（2010）等人的相关论述。

[115] 樱井芳生的文章可谓是其中的佼佼者，但论述从传播学角度出发，只集中在与“媒介”相关的部分。

也导致了选择性，这样系统才得以在更复杂的环境中通过化约复杂性而形成。复杂性从环境到系统的化约十分关键，否则什么都无法形成，只有一片混沌(Knodt, 1995:xvii)。

化约系统中的复杂性不是消除复杂性，而是减低复杂性。亦即，系统藉由消除可能性来简化环境的复杂性。不是环境中所有的可能状态都会在系统中出现；系统只容许部分的可能性在系统中出现。

系统的生存有赖提升自己的复杂性，以适应环境。但系统无法响应所有的环境变化，因为如果系统对一切环境变化带来的外部刺激都产生响应的话，系统不但不胜负荷，也会失去自我属性。面对这样的环境，系统必须先确认自己的内部结构，决定自己和环境的关系，选择接受某些刺激，忽略其他（孙维三，2010：37）。以神经系统为例，如果该系统不能辨识自己和环境的差异，将外部环境的所有信息都无条件接受进来，该神经系统就无法做任何决定、执行任何任务或者在社会中正常行使任何功能。

1.2 意义

鲁曼在他的巨著《社会系统》一书中没有给出“意义（meaning）”的明确定义。在他看来，将某个抽象的概念具体化就等于排除了其他可能性，他只是试图从多个角度描述“意义”的存在方式。

鲁曼指出，意识系统和社会系统都在经历着一个相辅相生的进化过程，这个进化过程(co-evolution)都指向“普遍成果(common achievement)”；这个“普遍成果”可以命令系统、制约系统。这就是“意义”（Luhmann, 1995: 59)。

在系统论中，所有的系统都通过意义而运作着。意义是系统为适应复杂性而自我调整的一种形式（Luhmann, 1995:71；Tyulenev,2009)。

至于意义与环境的关系，在介绍伽达默尔、哈贝马斯和鲁曼的书中，罗

伯兹（David Roberts）引用了鲁曼的话：“意义和世界是共同扩张的。意义通过选择实现，而世界作为背景构成[116]和储藏库为这种选择提供了永不枯竭的可能性(Luhmann, 1990；Roberts, 1995:7)”。他补充道：世界之中只存在意义（There is only meaning in the world)；世界意即所有不同系统、不同环境的共同结合体；意义是联接每个系统和系统所处环境的桥梁；所有系统的边界都是意义的边界（Robers,1995:7)。系统通过不同的意义加工方式彼此区分开来，以法律系统为例，法律系统通过“合法”和“不合法”的意义判定来维持自身的运作。

“意义”是系统和环境发生互动关系中产生的。不象传统认识论所认为的那样，意义是个人或者主体的意图。相反，意义是系统的意图。因为意义是“在面对更高复杂性时的一种选择行为机制”（Habermas et al, 1971；Roberts, 1995:69)。这里所说的选择的主体自然是抽象的系统，而不是单个的人或者物。意义不从属于个人或者主体，是系统的意义使得参与系统运作的个体发出这样或者那样的行为。

1.3 三重选择的沟通

沟通（communication）[117]的提出源于社会结构的高度复杂。和传统观点不同，鲁曼所说的“沟通”有三大特点：第一，沟通不从属于任何主体（subject)；第二，沟通不是某种特定信息的传达；第三，沟通的目的并非达成共识。

鲁曼认为：如果沟通是主体或者个人（individual）的行为，那么任何

[116] 原文为“world forms the background presence(horizon) and reservoir of an inexhaustible potentiality of meaning that is actualized through selection.”有学者将其中的“horizon”一词译为“视界”（鲁显贵，1998)。

[117] Communication 一词包含多重意思，在鲁曼的定义中，communication 还包括异见、冲突甚至对抗，不完全表示达成共识。据此，有学者建议回避“沟通”一词的译法，翻成定义较模糊的“传播”（孙维三，2010：61)。

关于沟通的研究将落到心理学层面上去，而不是社会学。事实上，从来不是个人在沟通，是“沟通在沟通”[118]。此外，沟通不是传递信息(transmission of a pre-given message)，而是选择的结果(a result of recognizing selectivity)。沟通是三种选择的集合：讯息（Information)、告知（utterance)、理解或误解（understanding or misunderstanding）（Luhmann, 1992: 251)。这三个选择过程在沟通的过程中被共同创造。类似的三步骤布勒(Buhler:1934)提过,奥斯丁(Austin,1962)与索尔(Searle,1969)亦据此发展出他们的言语行为理论。不过，以上研究都指信息的传递；社会系统论中，沟通的发生不涉及具体事物或者信息的传递。

鲁曼还反对哈贝马斯所说的，沟通的目标是达成共识（Luhmann,1992:255)。在他看来，沟通有可能是用来表达异见，由此可能导致分歧。鲁曼指出：“事实上，没有理由认为寻找共识（consensus）比寻找差异(dissent)更具理性。最有可能的假设应为：共识或分歧可以在某个特定阶段被置于考虑之外”(Luhmann,1992:255)。

在鲁曼看来:三种选择之间不存在因果接续的关系,只是系统的选择“呈环状相连（in circular sense of reciprocal presupposition）”（Luhmann,1992:255)。在此基础上，我们说系统是封闭的。封闭的系统必须通过沟通更新自我，保存自我，这就是系统的自我指涉和自我再制。

1.4 自我指涉和自我再制

系统中的沟通是自我指涉的：“关于沟通的问题只能通过沟通解决”（Luhmann,1995:251)；“只有沟通可以影响沟通。只有沟通可以控制沟通，修复沟通”(Luhmann, 1992: 254)。社会系统论中的系统都是自我指涉(self reference)的，自我指涉的特征是指涉的运作包含在它所指陈的事物之中。

[118] 原文为”only communication can communicate ”，并以斜体字排版以强调。

随着鲁曼个人思考的深入，社会系统论自身也在经历着发展和变更。相对早期强调“系统通过沟通而存在”，鲁曼在其理论发展的后期借用了生物学家马图拉纳和瓦芮拉提出的“自我再制（autopoiesis)”概念，认为：系统是具有自我生产和自我调节能力的统一体。系统是封闭的，系统通过沟通创造出使自身得以更新的成分（component）(Luhmann,1995:254)，这就是系统的自我再制[119]。

因为意义，系统得以实现从外部指涉到自我再制的转变。在系统中，意义将发挥三层作用：在社会层面上（social level)，意义让系统参与社会环境，即与其他系统进行互动；在事实层面上(factual level)，意义区分自我和他者；在时间层面上(temporal)，意义区分过去、现在和未来(Luhmann, 2000:9-11)。如同生物体的再制，社会系统通过自我指涉来再制和延续自己（Luhmann, 1990:3)，兼具开放性与封闭性。系统和环境或其他系统之间则可能存在多样的结构性连接关系。系统内部的所有组成元素（element）和关系（relation）则由系统自身制造，和外界没有关系[120]。

2. 社会系统论与翻译研究

从社会学角度研究翻译近年来成为研究的热门话题，学者们多从布迪厄的“场域”和“资本”入手，在社会学的宏观框架下解释翻译现象（见胡牧，2006；李红满，2007；邢杰，2007；武光军，2008；郭建辉，2009；王悦晨，2011)。相较之下，鲁曼创立的社会系统论在国内翻译研究界尚未得到应有的关注。国内近年来仅有一篇文章谈到了社会系统论对翻译的影响，多为《系

[119] 马图拉纳(Maturana)和瓦芮拉(Varela)共同创立了一种理论来研究生物体以自身的输出(output)构成输入(input)的自我再生现象，马图拉纳杜撰了“autopoiesis”一词来描述该现象，详见《*Social Systems*（社会系统）》 (Luhmann, 1995)一书。

[120] 传统的社会学家如安东尼•吉登斯认为：社会行动是行为者利用既定的社会规则或资源所发出的行动；社会行动的结果是再制这些社会规则或资源；社会系统即是这些结构性行动所造成的集体社会实践（Giddens，1984：17)。

统中的翻译（*Translation in Systems: Descriptive and System-oriented Approaches Explained*)》一书内容的转述（武光军，2008）。

其对翻译学科的启示目前可以归纳为两种研究范式：翻译作为“系统”，或是“系统的边界”。德国的研究学者波特曼（Andreas Poltermann）是对此进行探索的第一人。他把文学当作具有自我指涉和外部指涉的系统，以系统的指涉与翻译现象的相关性来解释文学翻译和翻译规范。其理据是：从 18 世纪起，文学逐渐发展成为一套独特的系统，有自己的运作规则和功能；其功能是社会批评和再现社会现实；其自我指涉体现在多样化的关于文学的诗学特征的文学评论上，强化了文学系统的统一和与其它系统的差异。以戏剧翻译为例，外国的译作首次“进入”本国语的时候必须符合系统期待，与本国的现有的戏剧风格相符，如同信息降低复杂性以进入系统。没有进入的信息成分仍存在于环境当中，成为选择可能性的部分。随后，在翻译中由于偶发性产生，其它译本也会逐渐融到本国戏剧文化中去(Poltermann, 1992:19 ；转引自 Hermans，2004:140)。

“翻译研究”学派的领军人物提奥·赫曼斯（Theo Hermans）[121]则从社会系统论的基本概念如功能、符码（code）、指涉（包括内部指涉和外部指涉）、内部的功能分化、系统间的摩擦、和二阶观察等出发,类比翻译与系统的关系。他认为：“把翻译看作是社会系统，[……]可以展现一些有趣的方面”（Hermans, 1999:137-138）。在《系统中的翻译》（1998/2004）中，赫曼斯曾表示：SST 构建的目的是解释现代工业文明，而非农业社会。但翻译现象可以说已经存在了至少数百年，自己对于“翻译‘是’系统”的判断，是基于认识论而非本体论作出的(Hermans, 2004:66)。在其后出版的《多声音的集会（*The Conference of the Tongues*）》（2007）中，这一判断

[121] 在接受俄罗斯圣彼得堡国立大学翻译研究学院 Fedorov Readings 会议访谈时皮姆（Anthony Pym）就指出：翻译领域中用 SST 的只有赫曼斯一人。该访谈由 Andrey Achkasov 提问，见 Pym 的个人网站：http://www.tinet.cat/~apym/。

被完善，依据在于翻译虽然古而有之，但直到印刷术发明和普及，拉丁和希腊文经典被重新发现的现代文明社会才真正形成一种社会现象，和功能分化的现代社会一样，翻译系统的复杂性和自治性逐渐增加，直至适用该理论解释（Hermans,2007a:130-136）。

赫曼斯之外，弗米尔（Vermeer）也试着将社会系统论应用于翻译研究（Vermeer, 2006）。不过在他的理论框架当中，翻译本身构成一个大的系统，译者、他的翻译行为、译作以及目标读者的反应构成该系统的子系统（Vermeer, 2006:5-6）。虽然在《鲁曼的社会系统论：对翻译理论的初探(*Luhmann’s “Social Systems” Theory: Preliminary Fragments for a Theory of Translation*)》一书中，弗米尔对社会系统论的关键概念分章节进行了理解性阐述，但是各个概念与翻译研究的联系薄弱，说服力尚不足。

同样着眼于社会系统论，剑桥大学的博士后特里纳夫提出不同观点。他否定了“翻译作为系统”这一范式，因其符码不会是“有效”和“无效”，其内部指涉也很难说构成了规范。事实上，是和翻译系统形成结构对等的其它系统（如出版机构、政治机构等）发出委托翻译和认可译作的指令，决定有效或者无效并非翻译本身。同时，规范由翻译决定只是一个理想。举例而言：因为版权的原因，某些差强人意的译作大为行销；或者因为流行的关系，译得极为勉强的作品也有可能大卖。——归根结底，规范还是来自翻译所服务的政治、经济或者文化系统。据此，翻译自身很难独立成为系统。他更赞同“翻译作为系统的边界”这一研究模式（Tyulenev，2009）。

鉴于鲁曼曾提出“法律作为系统”的理念，本研究则倾向把“中国的国际法体系”看做系统，翻译是该系统的沟通行为之一。换言之，国际法体系本身是一个系统，中国原来游离在这个系统之外，是外部复杂的环境的一部分。由于《万国公法》等沟通行为的稳定发生，中国这一系统逐渐在环境中独立出来，成为了国际法系统的子系统。以图里（1995）为代表的学者在探

讨翻译对目标文化影响的时候谈及类似的观点。他指出：要基于一个“从目标文本出发的框架（target-oriented framework)”，将翻译视作“文化事实（cultural facts)”来研究（Toury,2001:23-29)。图里认为：“翻译是目标文化中的事实；某些情况下具有特殊地位，有的时候甚至自我构建成一个可确认的（子）系统，但是，无论如何，都是归属于目标文化的（Toury,2001:31）”。

在以下小节中，本文将从社会系统论的角度出发，厘清以上几章的研究成果，解释《万国公法》中的翻译现象。

3. 国际法系统中的中国

系统被看成一系列相关的“事件（event）”或者“行为(operations)”(Bechmann & Stehr, 2002:70)。《万国公法》一书获得肯定和接受之后，同文馆在丁韪良主持下陆续翻译了《星轺指掌》、《公法便览》、《公法会通》。其中《公法会通》最初译名为《公法千章》，后经董恂题签改为《公法会通》。丁韪良还于 1881 年撰有《中国古世公法论略（*Traces of International Law in Ancient China*)》（同文馆 1884 年版）等书，普及和宣传国际法原理。以《万国公法》的译介为滥觞，中国逐步被纳入国际法体系当中。—— 该翻译事件在系统运作中角色如何，起到了何种作用？

3.1 国际法体系与复杂性的区分

鲁曼认为：系统必定处于一个比它本身复杂的环境中。所谓“系统的环境”永远比“系统本身”更为复杂。系统籍由消除可能性来简化环境的复杂性。而复杂性（complexity）是指“标志两种系统之间差异的门槛（a threshold that marks the difference between types of systems）”：它们决定了系统内的各成分（element）相关，系统外的各成分则不相干。

系统只容许部分的可能性在系统中出现。系统既不可能全面观察自身和环境（Luhmann, 1995:xvii），也无法响应所有的环境变化。因而在复杂性面前，系统必须根据系统本身的意义做出选择。一方面，系统要化约环境的复杂性；另一方面，系统的生存有赖提升自己的复杂性，以适应环境。

正如本文第二章所提到的，国际法起源于两河流域和尼罗河畔最早的一批奴隶制国家。当国家间的关系从偶发发展到频繁，原始的国际法规则便逐渐从纷繁复杂的交往纠纷中脱离出来，直至近代，形成了较为完备的交往及礼仪的规范，更以法庭判决和国际法著作的形式得到维护和巩固。国际法体系的形成，正是以公法学者试图以著作说明交往规则，在纷繁的乱象中整理出一套相对不那么复杂的原则为起点的。

系统的形成过程大致如下：沟通转瞬即逝；如果构成沟通的选择不再完全偶发，可能性开始重复，使沟通具有一定的可期待性，相对稳定的结构便逐渐形成；由此，单个的系统从外部环境中区分出来（Hermans, 2004:63-64）。系统由沟通构成，关于沟通的期待将沟通紧密联系起来；社会结构是一个期待的结构体，否则社会系统充斥着偶发性，不能称之为系统（Luhmann 1984:139；转引自 Hermans, 2004:141）。

国际法的自然法传统广泛流行于 16 和 17 世纪，其所依赖的“积极人类学”思想，基于一种形而上学的观点，即道义层面上的国际法适用于所有民众及所有国家。19 世纪开始，根据霍布斯所论述的战争理论，国家逐渐接近个人主体的自治状态[122]（Tuck, 1999:16）。

在国际法系统的形成过程中，沟通既包括国际交往间的冲突和冲突的和平或武力解决，又包括各种国际法著作和译作（从格劳秀斯到惠顿再到丁韪

[122] 塔克（Richard Tuck）认为霍布斯的“消极人类学”以及对人类自然状态的假设构成了现代国家主义和个人主义的理论基础 。关于现代的主权观念如何体现权威，及其所代表的消极人类学观点，详见霍布斯（Hobbes）的理论论述。关于法的自然状态理论亦可参见 Richard Tuck, *The Rights of war and Peace: Political Thought and the International Order from Grotius to Kant*[M]. Oxford: Oxford University Press, 1999, pp. 16-50, 109- 139.

良）的出版发行。对于原始国家间最初的混乱状态，其解决方案是双方签署代表国家权威的协定。国家主权的创立，必然伴随一系列形式主义的法律形式。要建立正规的权威，意味着国家的权力和执行效力需得到更多关注，也就意味着主权国家有权随时发动战争，亦有权采用谈判、贸易、创立国际法原则等方式，用双方签署的条约和惯例替代现有的自然法原则。——契约主义的传统由此发展而来。当这种沟通越来越频繁和具有可期待性，国际法的体系逐渐形成。国家间的独立平等孕育而生。

3.2 伦理：国际法体系的意义

系统依据意义指涉来进行选择，从而减低环境的复杂性。对于国际法体系而言，第二章中所谈及的伦理构成，包括普遍性原则（PP）和指令性原则（PU），就是该系统的意义。现代国际法的奠基人，16 世纪的西班牙神学家维托里亚（Francisco de Vitoria, 1492-1546）和他在萨拉曼卡大学的学生们，最早系统地阐述自然法在国际关系中的基本概念，这些概念后来由格劳秀斯、普芬道夫（Samuel Pufendorf，被丁韪良译为“布氏”）等国际法大家进一步发展并加以完善。维托里亚的著作“明白无误地把万民法的意义---即国与国之间的法律----定位在殖民接触的早期年代”（刘禾，2009：30），由此确定了国际法体系的意义所在。

正如图里所说：“既然翻译构成目标语文化不可分割的一部分，从这样的假设出发，翻译的迟而未至也可以被解读为‘有意义的空缺（meaningful void）’，其缺席需要被解释。[……]而该解释与文本本身的内容紧密相关123”（Toury, 2001: 115）。他的意思是，虽然翻译在进入目标语文化之后成为了该文化的一部分。但是在翻译文本诞生之前，是目标语文化自身存在

123 “To anyone who wishes to proceed from the assumption that translations form an integral part of the recipient culture, the delayed arrival of a translation would seem a ‘meaningful void’, an absence deserving explanation […] the explanation is integral to the material itself”.

“空缺”，才使得某一源语文本被翻译。这一“空缺”导致了需求，因而是有意义的。同时，被翻译文本的内容对于目标语文本至关重要，其内容本身能解释目标语文化为何产生需求。这一现象也可以用社会系统论中的系统需要来解释。意义不从属于个人或者主体，是系统的意义使得参与系统运作的个体发出这样或者那样的行为。就东印度群岛的国家和地区的所属权争议，格劳秀斯在《公海论》（1608）中指出它们“本来就拥有自己的主权”，因为在国际法看来，“东印度群岛不是法律真空。欧洲人不能采取对统治这些国家的君主权威视而不见的策略。他们要想对这些土地获得主权，只能通过一些国际法原则认可的方式，譬如土地割让或武力征服”，为了驳斥葡萄牙人，捍卫荷兰人的权益，他（格劳秀斯）要求人们在法理上必须承认东印度群岛各国的主权地位，这一地位在国际法中是合法的（Alexandrowicz，1967：45；转引自刘禾，2009：35）。格劳秀斯的论点在欧洲与亚洲各国主权之间漫长的条约缔结过程中得到了证实，也说明主权的概念如何运作必须在外交实践中得到检验，需要得要整个国际法系统的维护。到了 18、19 世纪之交，欧美的成文法学家重新想象东亚诸国，开始认为这些国家原本不属于国际大家庭，因此把它们（再）纳入到国际秩序之中（刘禾，2009：35），这也是为了应对更加复杂的外部环境，该系统发出的沟通需要。

总之，对国际法的意义做出选择的主体是抽象的系统，而不是单个的人或者物。《万国公法》的发生，正迎合了西方国际法系统扩张的需要。

3.3 作为沟通的翻译事件

所有的国际交往事件都是一种“沟通”，国际法著作的出版和行销亦是“沟通”的一种形式。从社会系统论的角度来看，组成国际法系统的，不是

具体的“人”，而是“沟通(communication)[124]”，也就是“三种选择的集合：“讯息（information）”的选择、“告知(utterance)”该信息的选择、以及对该讯息和该表述进行“理解(understanding)”或“误解(misunderstanding)”的选择[125]”（Luhmann,1992:252）。沟通作为选择的集合，并非单纯地传递既定信息，而是“讯息”、“告知”和“理解/误解”三种选择同步进行，稍纵即逝。与“沟通”相似，《国际法原理》到《万国公法》，其过程中充满了各种系统的选择：1855 年的原作版本从源语文化中诸多版本中被选出；美国传教士丁韪良而不是海关税务司司长赫德被选中承担翻译任务；用翻译而不是提请奏折或者游说的形式来扩大该著作的影响；在翻译过程中，译者团队决定了什么该译，什么不该译；选择在结构上简化以迎合读者反应；译本受到了褒贬不一的评价。总之，成形的《万国公法》后存在无数并未实现的可能性。因为过程充满了选择，翻译活动与“沟通”一样，并非“既定信息的传递”。

“沟通”模式和翻译活动都是指涉性的。在事实层面上，沟通也让系统更好地认识自身，观察自身。沟通活动带来的异域文化和信息将对系统产生冲击，让其作出三种选择：接受（actualized)、可能接受(possible)、抵抗(unacceptable)（Luhmann, 1995:60)。这个区分“自我”和“他我”的过程等同于意义的实现。而原作在翻译过程中的误读亦构成沟通。与此类似，图里提到，“翻译总是会在迎合目标文化需要的同时有所偏离。这种偏离有的时候被视作可予理解的（justifiable)，可接受的（acceptable)，甚至是求之不得的（preferable)，或者三者皆俱”(Toury, 2001: 28)。不论偏

[124] Communication 一词包含多重意思，在鲁曼的定义中，communication 还包括异见、冲突甚至对抗，不完全表示达成共识。据此，有学者建议回避“沟通”一词的译法，翻成定义较模糊的“传播”（孙维三，2010：61)。但本研究者认为，“沟通”并不意味着结果一定是达成共识，因为我们可以说“沟通顺利”，也可以说“沟通失败”。

[125] “It arises through a synthesis of three different selections, namely, selection of information, selection of the utterance of this information, and a selective understanding or misunderstanding of this utterance and its information.”

离带来的效果如何，译作完成的同时，沟通已经完成。即使在翻译中改变和扭曲了“公法”、“权利”、“中国”等概念，以上沟通的多重选择结果出于系统自我再制的需要，已成为既定的社会文化现象。

从社会系统论的角度来解读，国际交往的事件和解决从来不是个人在沟通，是“沟通在沟通”（Luhmann, 1992: 251）。任何外交事件的发生，都有特定的背景原因，或缘于贸易上的需求，或源于对外扩张的需要，从来不是孤立的现象。同样，“沟通没有目的，没有终点。沟通只有发生或者不发生一说”（Luhmann,1992:255），很难说任何历史事件的发生有何目的，或者促成该事的人物各有居心，但事件的走向绝不是个人能决定的。

需要注意的是，沟通可能达成共识，亦有可能表达异见（如国际交往中的冲突和战争），由此导致分歧。在鲁曼看来，没有理由认为寻找“共识（consensus）”比寻找“差异(dissent)”更具理性；最有可能的假设为：共识或分歧可以在某个特定阶段被置于考虑之外(Luhmann,1992:255)。——如西方列强的军队打着“贸易自由”的旗号打开东亚市场的大门，和中国签订《南京条约》，并试图引入国际法以确保他们的利益，这种沟通行为或许会因为体制和文化的差异，带来政治和军事上的冲突及风险。在中国海关税务司司长赫德的帮助下，丁韪良将中国读者知之甚少的《国际法原理》引介到中国，一方面固然是系统的选择，期待达成共识（在事实和逻辑上的删减，其功能是为了系统在更高程度上接受），另一方面也不乏被否定、指责以及被误读的风险（副文本中董恂的背书，即是构筑读者信任，预防风险的发生）。——无论如何，翻译行为本身就是一种多选择构成的沟通。

3.4 国际法体系的自我指涉和自我再制

借助沟通，系统具有自我指涉和外部指涉的特征。社会系统通过自我指涉来再制和延续自己（Luhmann, 1990:3），兼具开放性与封闭性。上文提到

了国际法著作在清末同治中兴时期被大量地引介，源于中国的国际法系统自我再制的需要。正如施密特说过：社会交际中的语篇始终以社会所认同的语篇类型的表现形式出现（Schmidt, 1978: 54）。而且，特定的“话语共同体”会惯性地使用某一种文类，构成该话语共同体的执业者参与文类重现的过程，由此，文类展现了“话语共同体的规范、认知、意识形态和社会认识程度”（Berkenkotter & Huckin， 1995：4），清政府派多名学者参与译本的校排，也反映出该点，亦说明文类的使用与社会环境紧密相关。国际法体系的内部指涉在于该法律系统如何界定和看待自己。对反倾销的争论、国际法原理研究、对某个案例的判决……，都是内部指涉的体现。

国际法著作以及译本的副文本特征变化，正反映和迎合了社会环境的需求。随着《国际法原理》的外文译本不断出现，其英文原著也不断地更新旧有的版本。甚至在原作者惠顿已经去世的情况下，还有编辑通过加注的方法，使其获得新的生命。这种多版本和多译本的现象，正代表了原本以欧洲为中心的国际法系统，逐渐完成了以美国为中心的迁移，且在译本的产生和文化的碰撞中不断扩大自身。

同时，惠顿的正文以及达纳的注释，在 19 世纪的重大国际争端仲裁中被频繁引用（刘禾，2009：183）。到了 1936 年，惠顿的《国际法原理》还作为国际法经典丛书的一部分发行了百年纪念本。当时的主编，已经变成了威尔逊（George Crafton Wilson）。事隔近百年，在编者序中威尔逊仍不忘提及该书的中文版《万国公法》如何受欢迎，以“证明惠顿国际法著作的普世价值”（刘禾，2009：184）。

系统的生存在于不断通过自我再制增加复杂性。因为“自我再制”，系统内部的所有组成元素和关系由系统自身制造，正如国际法系统中，诸多学者、学生、律师、法官等形成一个圈子，或对相关事务进行讨论，或运用相关规则解决纷争，或从现有的学说中整理和提炼出新的观点。一方面各种国

际组织成立和被认可，加上国家间的条约被签订和执行，相当于沟通不断产生，为系统提供了新的成分；另一方面，经典国际法著作在系统自我指涉的要求下被再版和翻译；使被加注和编辑的作品焕发新的活力，为系统的将来提供新的养料。正因为翻译能够为现有的系统提供无穷的意义选择，系统的复杂性由此得到提升，并能够维持其自我再制的功能。

3.5 结构对等与社会政治环境

在社会系统论中，“结构对等”表现为系统发展出的结构，会与其它系统的要求配套，外部复杂性增加的同时，系统内部的复杂性也在提升，如此，系统得以在保持各自特征的情况下共存(Herman, 1999: 143；Hermans, 2004:57)。“结构对等”之外，还有系统摩擦（irritation）和系统共振(resonance)现象，表现为系统与其它系统彼此间的推拉又抗拒。当摩擦和共振到达一个峰值时，系统会从功能上做出调适，以适应环境(Hermans,2007b:65-66)。如政治和艺术系统存在的摩擦和共振现象，往往表现为艺术作品对当权的政治势力进行吹捧或者嘲讽。政治系统发生变动，艺术系统也会调整和改变，以与之配套。

18 世纪所流行的法律实证主义思潮，使得当时的国际法不再将正义原则视为实际法则。吴尔玺（Theodore Woolsey）曾如此评判：“说到正义，我们并不以正义本身，而是以某方关心的，甚至是他们所声称的正义为目的。国家各自独立，便各有自己的权利要维护，涉及本国利益时，亦对权利有不同定义，以备运用”（Woolsey, 1936,313-314）。这正和鲁曼所形容的“系统彼此之间不能互相决定或者干扰，它们的权力都是针对自身实施的”（Luhmann,1995:18）一致。

另一方面，系统从自己的角度去观察外部世界，和其它系统之间保持“结构对等（structural coupling）”的关系（Luhmann, 1995:222）。在

社会系统论中，这种“连接”关系可用“外部指涉”来描述，“如同生物体的再制，社会系统通过自我指涉来再制和延续自己，通过外部指涉来丰富自己，充实自己”（Luhmann, 1990:3）。

赞助商对于《万国公法》译本的选择干预、包括其出版前后的宣传，对其规则性的夸大，显示了当时的政治势力急于利用其规范性约束国际交往中的对方。继 1860 年英法联军入侵北京之后，总理衙门和外国领事区相继建立，随后 1864 年《万国公法》得以出版，这些事都有着不可分离的因果关系，亦被认为是“中国在国际外交史上翻开了新的一章”（徐中约，1960）。但《万国公法》帮助建立起来的国际法子体系，在译者的改写和操控下，与《国际法原理》中的体系始终有所差别。同时，鉴于中国的其他体系发展滞后，在随后的“义和团事件”中，中国还是做出了严重违背国际法原则的事情[126]。

4. 作为二阶观察的翻译研究

系统可以对自身进行观察，但是无法跳出自身进行观察。系统所有的观察都是自我指涉式的，都建立在系统本身的结构和运作方式上。正如我们刚才所说，外部的信息进入系统的时候必然会经历选择，从而导致信息的部分缺失，这意味着系统做出的观察不可能是全面的，如果系统在观察的同时，也能清晰地了解自身观察的这一局限性，并思考自身“为什么”如此观察，那么系统就是在做“二阶观察（second-order observation）”。联系到翻译研究，赫曼斯把翻译诠释为“为对源语文本的观察以及决定如何再现该文本[127]”（Hermans, 2004: 145）的过程。也就是说：进行翻译的时候，译者

[126] 1900 年庚子事变期间，清朝步军统领庄亲王载勋大贴悬赏洋人首级的告示，赏格明码标价：“杀一洋人赏五十两；洋妇四十两；洋孩三十两”，导致了包括外国使节在内的在华洋人的大量死亡，据统计约四百多人（Steiger，1927；牟安世，1997）。

[127] “the process of translation as a matter of observing a source text and making decisions about how to render it”

在对文本做“观察”；与此同时，译者“自我反思的评论和行为构成了对这种观察的观察[128]”（Hermans, 2004: 145）。当译者“注意到自己的翻译作品与其他作品的不同之处，或者坦然承认作品的某些不可译之处，他就在对自己的翻译行为进行观察。与译者着手进行翻译行为的一阶观察相比，这些观察构成了二阶观察[129]”（Hermans, 2004:145）。接下来，翻译研究者们对译者的翻译行为进行评价，相当于“对译者的二阶观察进行再次的二阶观察[130]”（Hermans, 2004:145-146）。不过翻译研究者们“必然存在盲点[131]”，因其“无法再观察自身的研究行为”，（Hermans,2004:146）。

国际法系统中：国际法著作的创作和传播相当于系统对自身的规则进行“观察”；对国际法体系的学术研究以及对国际法著作/译作的研究，则可以被理解为系统的“二阶观察”。一方面，对现行国际法译作的作品本身以及翻译现象进行分析、对比、总结和归纳，能帮助梳理该学科的结构，维持和修缮国际法系统。另一方面，了解国际法译作的翻译规律，即规范，相当于掌握了译者的选择在时间和地理上的局限性，系统的沟通行为将基于以上规范，运行得更为顺畅。本研究的意义也在于此。

[128] “if we envisage, then self-reflexive comments and activities constitute observations of those observations”
[129] “[…]mark the distance between their own work and that of a predecessor, or flag instances of untranslatability, they are observing their own operations. These observations constitute second-order observations in relation to the first-order observation involved in translating”.
[130] “Our comments on translation and translators are a matter of second-order observation with regard to the translators’ own second-order observations. In turn, we cannot observe ourselves observing translators. There always remains a blind spot.”
[131] “We cannot observe ourselves observing translators. There always remains a blind spot.”

第七章 结论

在第二章提出的文本分析模式的基础上，本研究已经就译本的完整度从事实层面和逻辑层面进行了较为细致的考察，同时结合各个版本的副文本特征，分析了从《国际法原理》到《万国公法》的人际功能变化。此外，本研究以社会系统论为依据，对相关的翻译现象做出解释。本章将在以上分析的基础上，回到第一章提出的研究问题，对《万国公法》的文本翻译规范进行描写和总结，随后就考察结果总结本研究的价值。最后，对本研究不足之处进行反思。

1. 研究问题的回答

研究问题的提出，源于译者丁韪良一方面对作品的“改写”表示满意(Martin，1896:222)，另一方面，却在公开的译者说明中否认删改原作（1864)。由此，本文的第一章第 4 节提出了四个研究问题：（1）和原作相比，译作做出了哪些“改写（adaption）”？（2）其功能是否发生变化？（3）这些“改写”如何反应了译者对“新外交关系之中中国的需要（wants of China in her new relations）”的理解？（4）“改写”是否还有其他目的?

为探究这一问题，本研究者首先完善了从英文到文言文的对比分析工具。在兹瓦特提出的“译素”基础上，研究者提出“句段”这一标注工具，以更准确地标记原文到译文的文本项变化。随后，通过建立语料库（详见附件)，逐一比对和标记原文和译文，从《国际法原理》到《万国公法》的文本信息变化得以基本确认。在诸多变化中，鉴于（相对原作而言）译作的增删现象表现显著，但文本某一处的删除可能在另一处得到补偿，本研究借用

了图里的规范描写模式，在研究过程中以“完整度”为主要考察对象。

为描写从原作到译作的完整度变化，并揭示出该变化带来的功能差异，本研究继而引入法学理论中伦理论证三要素，从“事实”、“逻辑”和“利益关系”三方面考查原作该特征在译作中的重建。鉴于这三个方面环环相扣，研究者先从事实出发，总结了以句、段为单位的增删对“公法”、“权利”等概念以及相关法律观点产生的变化规律，随后以小节为考查对象，观察增删给逻辑论证带来的简化现象。鉴于副文本特征作为整个文本的外部框架与读者体验紧密相关，通过考察和分析原作的三个版本加译作一个版本的同异关系，结合其历时和共时的变化，研究者得以发现原作和译作分别反映出来的“作者与读者”、“译者与读者”之间预设关系的差异。

回到最初的研究问题，可以发现，译作的“改写”发生在多个方面，这些改写反应出目标语文本是如何预设“中国的需要”的。

首先，从整体的删除篇幅和频次上看，由第一章至第十二章，呈现出由少到多，由稀到密的删除趋势。具体到各小章节，又有平衡各章各节所占篇幅的倾向，即原书章节越长，译者越倾向于删除较多的内容。其中较为特殊的，是对于目标文化看重的部分，译者对其尽可能地予以保留。另外，以民事和刑事立法为内容的第二卷第二章被译出的比例在全书中居冠首，显示出目标语文本对于中国法律体制构建的重视。

从内容上看，除了篇幅语言结构差异引起的“必要迁移”之外，译者对于“产品”最大的改动体现在对文本信息的增删和结构的简化，并未完整再现原作的法律事实和法理信息。其删改的内容又可具体分为以下方面：

在事实层面上，译者删除了与国际法命名相关的历史沿袭过程的记录和讨论，以“公法”一词以蔽之，由此译者回避了原作中国际公法和国际私法的区分，也模糊了自然法和成文法的界限。这种简化概念避免分歧的作法，一方面使读者更为容易地理解原作，另一方面也给译者在国际法的规定性问

题上预留了操控空间。

译“right”译为“权利”的时候，译者通过附加修饰词的办法，将人权的概念引介进来；与此同时，通过增补性描述以及将“权利”一词运用于不同语境，译文融入了“庶人所有”以及“法治”的理念，从而（在一定程度上）重塑了该词。

在原作涉及到“中国（China）”并给予负面评价的时候，译者更是运用增删信息的手段，屏蔽了原作对于中国的贬低，提高了中国的国际法地位。

译者还屏蔽所有对国际法规定性以及对上帝存在的质疑，“政治考量”带来的特例也没有出现在读者视线之内，显示出译者作为准外交官和传教士的立场。相对原作而言，译作中“公法”的约束力更强。

除了单个概念的意义迁移，在更大的单位，如段落层面，译者亦以删除的手段屏蔽原作的某些观点。如条约谈判中涉及到法规执行时，具体的行政司法措施往往简化，以迎合现有的行政流程，保证了清政府的中央集权模式不被干扰。这说明译者既希望从确立国际法的基本制度开始帮助中国融入国际法大家庭，又顾忌到引入的举措如果过于激进，就有冒犯当权者的风险，由此采用谨慎的态度。

在结构方面：原作作为经典的法学著作，其伦理论证结构通常包括法律文本信息的出处、与案例相关的背景以及细节，以及对法律条款或者法律原则的评议、对例外、限制、相反或补充的规定（但书）、对事件后果或者抽象原则的推论；在译作中，译者倾向于删除反向论证、案例以及法理推论等内容，对于章节的整体结构产生了简化的影响，削弱了原作的推理论证效力。

副文本的改写亦印证了对正文研究的结果。对编者序言、脚注、参考文献和索引等内容的删除降低了原作的学术参考价值。具有较高地位的政治人物所做的序言在形式上塑造了译作的仪式感和权威感。译作中增加的“地图”，则暗示出文本作为“公法”，施行于全球的普遍性，进一步增加该文

本的规范功能。

由此，《国际法原理》原有的“教育”功能，在《万国公法》中被转化为“规范”功能。文本所预设的叙述者和读者的关系，也从较为平等的、以分析说明为特点的传道授业解惑，变为由下至上的劝勉和呼吁。

总之，“改写”不仅体现了中国加入国际法体系，共享国际法保障权利的必要性，“改写”作为一种沟通行为，其发生也反映出西方文明创立的“国际法体系”自我再制的需要。前者作为译者、读者和赞助商的共识，得到了大张旗鼓地宣扬，后者往往被竭力掩盖，因为承认该点，等于承认现有的国际法体系仍需夸大版图，进一步完善，更意味着西方势力需要在接下来的国际法版图中赋予中国平等的待遇和权利。

2. 研究成果的价值

以中国首部完整的国际法译作为考察对象，本研究对《万国公法》中的完整度进行了描写，并运用社会学中的系统论对该翻译现象做出了语境化的解释。该研究成果对于翻译研究应用的启示在于：

第一、完成了对《万国公法》及其原作的完整对比，并建立了完备的平行语料库。该语料库不仅为文本的信息和结构的变化提供了详实的数据，亦为后续其他研究（如增删之外的改译）奠定了坚实的基础。

第二、将《万国公法》翻译策略确定为以删除为主的改写。并就文本的国际法性质，从伦理论证的角度提出以事实、逻辑和利益为主的描写框架，该研究模式将为类似的国际法文本研究提供参考和启发。

第三、对中国法律翻译策略的演变过程增添了新的认识。法律翻译的领军人物苏珊•萨斯维克（Susan Šarčević）曾认为，在历时意义上，翻译策略呈现出由严格直译到直译再到适度直译、近乎直译、意译以及共同起草的变化（Šarčević, 1997:26）。本研究则发现：《万国公法》的翻译策略是意

译，随后得益于中英文语法结构的相似性，才逐渐演变为直译。萨斯维克的推论以欧洲中心论为前提，以罗马法为法源，考察西方法律制度的发展及其在欧洲地区的传播，对亚洲或者其他地区未必适用。该发现是对萨斯维克提出的法律翻译发展规律的反证。

第四、本文以文本对比语言学为依托，对现有史料做出较为详尽的文本分析和解释。目前的史学研究多关注丁韪良个人的翻译贡献,忽略了翻译过程中的其他因素。通过追溯《万国公法》翻译过程，本研究发现译作中存在多种干预因素，不能单单看做是一个人的作品，而应被视作集体的作品和时代的产物。这也为翻译史研究提供了新的素材。

第五、完善了图里在描述翻译学框架下提出的母体规范的研究方案。本研究发现，译者对文本的操纵不仅表现在已译出的内容之上，通过“不译”的处理方法，译者同样可以悄然融入自己的价值观。

第六、在兹瓦特提出的文本对比模式上，以“句段”为单位，解决了句式复杂、顺序不定的法律英语长句与文言文的文本对应问题，同时本研究提出的语料对应、文本分割，序号标记等方法，可以更为精确地发现信息的“删除”、“增加”和“置换”之间的关系，对平行语料库的研究亦有所贡献。

第七、就副文本在翻译运作和译本功能转变中所起的作用有新的认识。翻译研究者通常关注翻译本身，即文字方面，本研究首次将副文本特征与文本类型联系起来，并结合文本的功能变化予以分析，有相得益彰的效果。

第八、将社会系统论应用到翻译研究中。在“翻译是系统”（Hermans,2004）、“译作是子系统”（Vermeer, 2006）、以及“翻译是系统的边界”(Tyulenev,2009)的范式以外，本研究提出了“翻译是系统的沟通行为”这一观点。基于该理论观点，翻译作为沟通行为的发生，必然出于系统的需要。其系统行为发生的原动力不能归于任何的个人。以此为出发点，现有对翻译规范的解释可以与诸多社会因素联系起来，翻译现象的考察也可

以迁移到更广阔的宏观视野中去，以实现翻译研究的“语境化”和“历史化”（Hermans, 2004:158-159）。

3. 本研究的局限

本研究在以下方面尚存在需要完善的地方：

虽然研究者对两个文本共 20 万字/词左右的数据进行了对比分析，并逐一标记增删现象，按其单位大小予以分类，尚不能完全排除数据中的“噪音”现象。也就是说，文本中某些地方出现的增删（特别是某些长度为半句左右的）尚无法在现有模式下予以归纳和解释。考虑到丁韪良作为译者个人完成翻译之后，中国助手亦参与了删校的过程，研究者推测，这些删除的决定，亦在一定程度上反映了他们的个人观点。同时，译稿成书之后，不排除有个别不能阅读原文的中国学者出于上下文连贯流畅的目的而予以删改的可能。

其次，需要说明的是：“翻译的规律性作为假设，很难证明”[132]（Toury,1955:182）。按照图里的观点：文本的母体规范为何，取决于具体如何描述;研究者所能做的,是提供令人信服(或多或少)的“解释性假设”，而非完全“真实”的记录”[133]（Toury,1955:59）。就各卷章根据数据统计出的详略差异而言，除了个别章节（如第三卷第二章）的删除原因已有史料予以佐证之外,其他各章之间尚有微小的风格差异,从翻译的详略上可以看到。对此，研究者只能猜测，部分章节由丁韪良亲历亲为完成，其余章节则有可能由丁韪良口述大意，其助手笔录，随后再校阅而成。在别无史料的情况下，

[132] “The underlying assumption here is that regularities of surface realization and/or translation-source relationships and shifts bear immediate witness to regularities of translational behavior- a very convenient rationale for descriptive studies which, however, is not always that easy to justify, especially as one’s corpus transcends the borders of a homogeneous group whose members can be assumed to have come into being under the same set of norms”

[133] “The decision as to what may have “really” taken place is thus description-bound: What one is after is (more or less cogent) explanatory hypotheses, not necessarily “true-to-life” accounts, which one can never by sure of anyway”.

该推测尚无法证实。

第三，本研究重点为文本的增删现象，且借鉴了图里谈及的完整度这一概念。但在分析某些重要国际法概念如“right(权利)”的过程中，由于信息变化的单位过小（仅增加了一、两个词或数个字），与本研究一开始设定的目标对象（较大单位层面上发生的增删现象）不完全相符。不过一方面“权利”作为国际法的基本概念，其从原作到译作发生的意义迁移将对文本产生重要影响，存在纳入考察范围的必要性，另一方面，译者在文本处理中往往在语境的前后处增添了额外的信息，多数情况下仍可归为增译。

第四，本研究虽题为《丁译<万国公法>研究》，事实上丁韪良及其中国助手的工作量和工作策略无法绝对予以区分。对于以丁韪良个人为考察对象的史学研究，本文提供的资料和数据仅具有一定的参考价值。

最后，因为本研究涉及古籍的录入、简繁体的转换，文本数据量较大，加上相关史料浩繁，语料处理方面或有力有不逮之处。同时，文本中对应的译文多由本研究者提供，鉴于研究者水平所限，对国际法的了解可能挂一漏万，难免有误译及表述不当之处。

参考书目

Ajmer,K & Altenberg B.(eds.). *English Corpus Linguistics:Studies in Honour of Jan Svartvik*[C]. London: Longman,1991.

Alexandrowicz，C.H. *An Introduction to the History of the Law of Nations in the East Indies: Sixteenth, Seventeenth, and Eighteenth Centuries* [M]. Oxford: Clarendon Press, 1967.

Alexy, Robert. *A Theory of Legal Argumentation: the theory of rational discourse as theory of legal justification*[M]. Ruth Adler & Neil Mac Cormick (trans.).Oxford: Clarendon Press,1989.

Anghie, Anthony. *Imperialism, Sovereignty and the Making of International Law*[M]. Cambridge: Cambridge University Press, 2005

Austin, John L., *How to Do Things with Words*[M]. Oxford: Clarendon,1962.

Bechmann, G. & Stehr, N. The Legacy of Niklas Luhmann[J], *Society*. 2002(1/2).

Berkenkotter, C. & Huckin, T. N. *Genre Knowledge in Disciplinary Communication: Cognition/culture/power*[M]. Hillsdale, New Jersey: Lawrence Erlbaum Associates, 1995.

Biel, Lucja. Corpus-Based Studies of Legal Language for Translation Purposes: Methodological and Practical Potential[OL]. *Reconceptualizing LSP. Online Proceedings of the XVII European LSP Symposium 2009*. Aarhus, 2010.

Broeck, Raymond van den. Contrastive Discourse Analysis as a Tool for the Interpretation of Shifts in Translated Texts [A]. In House, Julian & Shoshana Blum-Kulka (eds.). *Interlingual and Intercultural Communication: Discourse and Cognition in Translation and Second Language Acquisition Studies* [C].

Tübingen: Narr, 1986.

Buhler, K. *Sarachtheorie* [M]. Jena: Ficher, 1934.

Catford, J.C. *A Linguistic Theory of Translation: An Essay in Applied Linguistics* [M]. London: Oxford University, 1965.

Dana, Richard Henry. Editorial Notes[A], In Wheaton, Henry, *Elements of International Law*[M]. Boston: Little, Brown and Company, 1866.

Delisle, J.La traduction raisonnée. *Manuel d'initiation à la traduction professionnelle del'anglais vers le françai*s[C], Ottawa: Presses de l'Université d'Ottawa, 1993.

Dik, Simon C. *The Theory of Functional Grammar: The structure of the clause*[M]. Dordrecht :Foris Publications, 1989.

Farías, Ignacio & Ossandón, José.(eds.). Observando Sistemas, Nuevas Apropiaciones y Usos de la Teoría de Niklas Luhmann [Observing Systems: New Applications and Uses of the Theory of Niklas Luhmann]. Santiago de Chile: RiL editores, Fundación Soles, 2006. [OL].at:www.wzb.eu/.../Farías%20Ossandón%20Why%20Luhmann.pdf, 2010.

Garner, Bryan. A. (ed.). *Black's Law Dictionary(9th edition)*[K]. West: a Thomson Reuters Business, 2004.

Genette, Gerard. *Paratexts: Thresholds of Interpretation*[M]. Lewin, Jane E(trans.). Cambridge: Cambridge University Press, 1997.

Gentzler, Edwin. *Contemporary Translation Theories* [M]. London and New York: Routledge, 1993.

Giddens, Anthony. *The Constitution of Society* [M]. Berkeley: University of California Press, 1984.

Habermas, J. and Luhmann, N. *Theory of Society or Social Technology, What is*

the Purpose of Social Research?[M].Frankfurt: Suhrkamp Verlag, 1971.

Halliday, M.A.K. *An Introduction to Functional Grammar* [M]. Beijing: Foreign Language Teaching and Research Press, 2008.

Han, Sang-hee. The Circulation of International Legal Terms in East Asia[OL], *ASLI Working Paper Series WPS014*, Asian Law Institute, National University of Singapore, 2010.

Hare, R.M. *Freedom and Reason*[M].Oxford: Oxford University Press,1977.

Hatim, Basil & Mason, Ian. *Discourse and the Translator*[M]. Shanghai: Shanghai Foreign Language Education Press,2001.

Hatim, Basil & Munday, Jeremy. *Translation: an advanced resource book*[M].Shanghai: Shanghai Foreign Language Education Press, 2010.

Hatim, Basil. *Communication Across Cultures: Translation Theory and Contrastive Text Linguistics*[M]. Exeter: University of Exeter Press, 1997.

Hermans, Translational Norms and Correct Translations[A], in Kitty van Leuven-Zwart and Ton Naaijkens(eds.). *Translation Studies: The State of the Art*[M]. Amsterdam & Atlanta: Rodopi. 1991.

Hermans, Theo. Norms and the Determination of Translation: A Theoretical Framework[A]. In: Alvarez, R and Vidal, M, (eds.) *Translation, Power, Subversion. Multilingual Matters*[M]. Clevedon, 1996.

Hermans, Theo. *Translation in Systems: Descriptive and System-oriented Approaches Explained* [M]. Manchester: St. Jerome Publishing, Shanghai Foreign Language Education Press, 2004.

Hermans, Theo. *The Conference of the Tongues* [M].Manchester: St. Jerome, 2007a.

Hermans, Theo. Translation, Irritation and Resonance [A]. In Wolf, Michaela &

Fukari, Alexandra (eds.). *Constructing a Sociology of Translation* [M].John Benjamins, 2007b.

Holmes, S.James(ed.). *The Nature of Translation: Essays on the Theory and Practice of Literary Translation* [C]. The Hague and Paris: Mouton, 1970.

House, Julian & Shoshana Blum-Kulka (eds.). *Interlingual and Intercultural Communication: Discourse and Cognition in Translation and Second Language Acquisition Studies* [C]. Tübingen: Gunter Narr Verlag, 1986.

Hsu, Immanuel C. Y. *China's Entrance into the Family of Nations. The Diplomatic Phase 1858-1880*[M]. Cambridge, Mass: Harvard University Press, 1960.

Hughes, E.R. *The Invasion of China by the Western World*[M]. London: Adam *and Charles Black, 1968.*

Jakobson, Roman.On linguistic aspects of translation[A]. In Chesterman, A. (ed.). *Readings in Translation Theory*[C]. Helsinki: Finn Lectura, 1989.

Kenning, M. What are parallel and comparable corpora and how can we use them?[A] In O'Keeffe, A. & McCarthy, M.(eds.) *The Routledge Handbook of Corpus Linguistics* [C]. London & New York: Routledge, 2010.

Knodt, E. Forward[A], in Luhmann, N. *Social Systems* [M]. Stanford: Stanford University Press, 1995.

Krasner, Stephen D. *Sovereignty, Organized Hypocrisy*[M]. New Jersey, Princeton: Princeton University Press, 1999

Lawrence, W.B. Introductory Remarks[A], In Wheaton H. *The Elements of International Law*[M]. Boston: Little Brown and Company, 1855.

Lefevere, Andrew. *Translation, Rewriting and the Manipulation of Literary Fame*[M]. London and New York: Routledge, 1992.

Leuven-Zwart, K.M. van. Translation and Original Similarities and Dissimilarities, I[J]. *Target*, 1989(1).

Leuven-Zwart, K.M. van. Translation and Original Similarities and Dissimilarities, II[J]. *Target*, 1990(2).

Li, Zhaojie. How International Law Was Introduced into China[A],马呈元(编), 国际法律问题研究[C]. 北京：中国政法大学出版社,1999.

Liu, Lydia H. *Translingual Practice: Literature, National Culture, and Translated Modernity*[M]. Stanford: Stanford University Press, 1995.

Liu, Lydia H. Legislating the Universal: The Circulation of International Law in the Nineteenth Century[A]. In idem.(ed.),*Tokens of Exchange: The Problem of Translation in Global Circulations*[C].Durham, NC: Duke University Press, 1999.

Liu, Lydia H. *The Clash of Empires: The Invention of China in Modern World Making*[M]. Harvard University Press, 2004.

Luhmann, Niklas. The Differentiation of Society [J]. Stephen Holmes & Charles Larmore. (trans.). *Journal of the History of the Behavioral Sciences*, 1984(3).

Luhmann, Niklas. *Essays on Self-Reference* [M]. New York: Columbia University Press, 1990.

Luhmann, Niklas. What is Communication? [J].*Communication Theory*, 1992(2).

Luhmann, Niklas. *Social Systems* [M]. John Bednarz (Trans.). Stanford: Stanford University Press,1995.

Luhmann, Niklas. *Art as a Social System*[M]. Knodt, Eva M.(Trans.). Stanford: Stanford University Press,2000.

Luhmann, Niklas. The Autopoiesis of Social Systems [A]， in Seidl, D & Becker. K. H. (eds.) *Niklas Luhmann and Organization Studies* [C]. Copenhagen: Liber

& Copenhagen Business School Press, 2005.

Luhmann, Niklas. The Concept of Autopoiesis [A], in Seidl, D & Becker. K. H. (eds.) *Niklas Luhmann and Organization Studies* [C]. Copenhagen: Liber & Copenhagen Business School Press, 2005.

Margot, J. Cl. Traduire sans trahir. *La théorie de la traduction et son application aux textes bibliques*[M]. Laussane: L'Age d'Homme,1979.

Martin, J.R., *Factual Writing Exploring and Challenging Social Reality*[M]. Victoria: Deakin University Press, 1985.

Martin, W.A.P. Chinese Letters of the Board of Foreign Missions of the Presbyterian Church in the United States of America, VII. Peking, *Martin to Board*[C], No.44, October 1, 1863.

Martin, W.A.P. *A Cycle of Cathy: or China, South and North with Personal Reminiscences*[M]. New York, Chicago, Toronto: Fleming H. Revell Company, 1896.

Masini, Federico. The Formation of Modern Chinese Lexicon and Its Evolution Toward a National Language: The Period from 1840 to 1898[J]. J*ournal of Chinese Linguistics Monograph Series*, Rome: Department of Oriental Studies, University of Rome, 1993(6).

McEnery, T. & R. Xiao. Parallel and Comparable Corpora: What is Happening?[A]. In M. Rogers & C. Anderman (eds.)*Incorporating Corpora. The Linguist and the Translator*[C]. Clevedon: Multilingual Matters, 2007.

Miko, F. La Thorie de l'expression et la traduction[A].In Holmes(ed). *The Nature of Translation: Essays on the Thoery and Practice of Literary Translation*[C]. The Hague and Paris: Mouton, 1970.

Molina, Lucia & Albir, Amparo Hurtado. Translation Techniques Revisited: A

Dynamic and Functionalist Approach[J], *Meta*, 2002(4).

Munday, Jeremy. *Introducing Translation Studies: theories and applications* [M]. London and New York: Routledge Press, 2001.

Nebot, Monzo E. 2008. Corpus-based Activities in Legal Translation Training[J]. *The Interpreter and Translator Trainer*, 2008(2).

Nida, Eugene A. To*wards a Science of Translating*[M]. Shanghai: Shanghai Foreign Language Education Press, 2004.

Nord, Christiane. *Translating as a Purposeful Activity: Functionalist Approaches Explained*[M]. Shanghai: Shanghai Foreign Language Education Press, 2001.

Nussbaum,Arthur. *A Concise History of the Law of Nations*[M]. New York: Macmillan Co,1954.

Ossandón, Why Luhmann [OL].at: http://www.academia.edu/3045803/_and_Ignacio_Farias_Why_Luhmann_

Popovi, A. The Concept "Shift of Expression" in Translation Analysis[A]. In Holmes(ed). *The Nature of Translation: Essays on the Theory and Practice of Literary Translation*[C]. The Hague and Paris: Mouton, 1970.

Pym, Anthony. *Interview on Current Issues in Translation Studies* [M]. Saint Petersburg: Fedorov Readings, 2010.

Roberts, David (ed.). *Reconstructing Theory: Gadamer, Habermas, Luhmann* [M]. Melbourne: Melbourne University Press, 1995.

Russell, Graham. Errors of Omission in Translation[A], In *Proceedings of* the *Eighth International Conference on Theoretical and Methodological Issues in Machine Translation*[C], 1999.

Šarčević, Susan. *New Approach to Legal Translation*[M]. The Hague: Kluwer Law International, 1997.

Schmidt, S.J. Some problems of communicative text theories [A], In W. Dressler(ed.). *Current Trends in Textlinguistics*[C]. Berlin: De Gruyter, 1978.

Searle, J. *Speech Acts: An Essay in the Philosophy of Language* [M]. Cambridge: Cambridge University Press, 1969.

Seidl, David & Becker, Kai Helge. (eds.). Niklas Luhmann and Organization Studies [C]. Copenhagen: Liber & Copenhagen Business School Press, 2005.

Schäffner, C. (ed). *Translation and Norms*[C].Shanghai: Shanghai Foreign Language Education Press, 2004.

Steiger, George Nye. *China and the Occident: the origin and development of the Boxer movement* [M]. New York: Russel & Russel, 1927.

Stern, John Peter. *The Japanese Interpretation of the "Law of Nations," 1854-1874*[M]. Book Surge Publishing Co., Inc., 2008.

Svarverud, Rune. *International Law as World Order in Late Imperial China: Translation, Reception and Discourse, 1847-1911*[M]. Leiden & Boston: Brill, 2007.

Thompson, G. *Introducing Functional Grammar*[M]. Beijing: Foreign Language Teaching and Research Press, 2008.

Toury, Gideon. *Descriptive Translation Studies and Beyond* [M]. Shanghai: Shanghai Foreign Language Education Press,2001.

Trosborg, Anna. *Text Typology and Translation*[C].Amsterdam: John Benjamins, 1997.

Tuck, Richard. *The Rights of war and Peace: Political Thought and the International Order from Grotius to Kant*[M]. Oxford: Oxford University Press, 1999.

Tyulenev, Sergey. Why (not) Luhmann? On the Applicability of Social Systems

Theory to Translation Studies [J]. *Translation Studies*, 2009(2).

Tyulenev, Sergey. *Applying Luhmann to Translation Studies: Translation in Society*[M]. Routledge, 2011.

Tyulenev, Sergey. *Translation and the Westernization of Eighteenth-Century Russia*[M]. Frank & Timme GmbH, 2012.

Tyulenev, Sergey. The Meaning Constituting Function of Translation [OL]. http://www.uottawa.ca/associations/act-cats/Young_Researchers_archive/Tyulenev visited at May, 2013.

Vattel, Emer de. *Le droit des gens, ou Principes de la loi naturelle, appliqués à la conduite et aux affaires des Nations et des Souverains*[M]. Londres, 1758.

Vázquez-Ayora, G. *Introduccion de stylistique compare. Analyse comparative de l'Italien et du Francais*[M]. Bruxelles: Didier, 1977.

Vermeer Hans J. *Luhmann's "Social Systems" Theory: Preliminary Fragments for a Theory of Translation*[M]. Berlin: Frank & Timme, 2006.

Vinay, Jean-Paul. & Darbelnet, Jean C. *Comparative Stylistics of French and English: A Methodology for Translation*[M]. Sager & M.J. Hameln (trans.). Amsterdam and Philadelphia: John Benjamins, 1995.

Wheaton, Henry. *Elements of International Law*[M]. London: B. Fellowes, Ludgate Street, 1836.

Wheaton, Henry. *Elements of International Law*[M]. Boston: Little, Brown and Company, 1855.

Wheaton, Henry. *Elements of International Law*[M]. Boston: Little, Brown and Company, 1866.

Wolf, Michaela & Fukari, Alexandra (eds.). *Constructing a Sociology of Translation* [M]. John Benjamins Pub. Co.,2007.

Woolsey, T. D. *Introduction to the Study of International Law (Text of 1866 with Notes)*[M]. Carnegie Endowment, Classics of International Law, No. 19,1936.

Xiao, R. & L.He & M.Yue. In pursuit of the “third code”: Using the ZJU Corpus of Translational Chinese in Translation Studies [A]. In R. Xiao(ed.) *Using Corpora in Contrastive and Translation Studies*[C]. Newcastle: Cambridge Scholars Publishing, 2010.

Zhang Meifang & Pan Li. Introducing a Chinese Perspective on Translation Shifts: A Comparative Study of Shift Models by Loh and Vinay & Darbelnet[J]. *The Translator*. 2009(2).

埃文- 佐哈尔（Even-Zohar）（著）,张南峰(译). 多元系统论[J] .中国翻译，2002(4).

白佐良(G. Bertuccioli). 卫匡国的《逑友篇》及其它[A],陈村富(主编),宗教与文化论丛[C].东方出版社, 1994.

北岳. 法律权利的定义[J]. 法学研究,1995(3).

宾凯.卢曼系统论法学:对“法律实证主义/自然法”二分的超越[J].云南大学学报(社会科学版), 2010(6).

曾涛. 近代中国与国际法的遭逢[J].中国政法大学学报，2008(5).

车凤成. 卢曼“复杂性理论”辩证——兼论其信任观之内涵[J]. 江南大学学报,2008(3).

陈顾远.中国国际法溯源[M].上海书店出版社，1991.

陈平原. 不被承认的校长[J]. 读书，1998(4).

陈秀武. 坂本龙马与《万国公法》[J]. 外国问题研究,2010(2).

陈圆，丁韪良《万国公法》的翻译手法——以汉译《万国公法》第一卷为例[J]. 一桥法学，2011(2).

陈圆.丁韪良的生涯及《万国公法》汉译史的背景[J]. 一桥法学，2011(3).

程燎原. “性法”、“天法”、“自然法”：清末的译论略述[A], 李贵连(主编),近代法研究[C].北京大学出版社,2007.

程鹏. 西方国际法首次传入中国问题的探讨[J]. 北京大学学报(哲学社会科学版),1989(5).

仇静静.权力:社会秩序得以可能的交往媒介——读卢曼的《权力》有感[J]. 法制与社会, 2010(12)

戴乐尔（William Ferdinand Tyler）(著)，张黎源、吉辰（译）.我在中国海军三十年（1889-1920）[M]. 文汇出版社，2011.

丁丽柏.国际法的伦理维度分析[J]. 西南民族大学学报（人文社科版），2007(9).

丁韪良(W.A.P. Martin)（著），沈弘(等译）.翰林文集[M]. 香港: 中华书局，2007.

丁韪良(W.A.P. Martin)，沈弘(等译). 花甲忆记——一位美国传教士眼中的晚晴帝国[M]. 广西师范大学出版社, 2004.

丁韪良(W.A.P. Martin).“凡例”[A]，公法便览，同文馆，1878.

董恂，万国公法序[A],丁韪良,万国公法[M].京都崇实馆，1864.

方豪. 留学发起人事略•卫匡国[A],同治前欧洲留学史略[M].方豪文录[C].北平上智编译局，1948.

费赖之(Louis Pfister)（著），梅乘骐, 梅乘骏(译)，卫匡国神甫传略[A],明清间在华耶稣会士列传（1552-1773）[M].上海教区光启社,1997.

费正清(John King Fairbank)（著），杨品泉.张言等（译）.剑桥中华民国史[M].中国社会科学出版社,1994

冯桂芬. 善驭夷议[A]，校邠庐抗议[C]. 天津广仁堂, 1898.

冯焌光,郑藻如.开办学馆事宜章程十六条[A], 杨逸（编）, 广方言馆全案[C].上海古籍出版社, 1989.

傅德元. 《富国策》的翻译与西方经济学在华的早期传播[J]. 社会科学战线，2010(2).

傅德元. 丁韪良《万国公法》翻译蓝本及意图新探[J]. 安徽史学，2008(1).

傅德元. 丁韪良研究述评（1917-2008）[J]. 江汉论坛，2008(3).

高黎平. 中国近代国际法翻译第一人——丁韪良[J]. 延安大学学报，2005(2).

葛兆光. 天下、中国与四夷——古代中国世界地图中的思想史[A]，王元化(编),学术集林[C],上海: 上海远东出版社, 1998.

葛兆光. 宅兹中国：重建有关“中国”的历史论述[M]. 中华书局出版社,2011.

郭建辉. 翻译的社会学研究：问题及定位[J]. 湘潭大学学报：哲学社会科学版，2009(3).

韩礼刚. 丁韪良生平简介以及对他的重新评价[J]. 内蒙古师范大学学报，2005(3).

汉典. http://www.zdic.net[OL].2012 年 12 月-2013 年 8 月访问.

何勤华.《万国公法》与清末国际法[J]. 法学研究，2001(5).

哈蒂姆（Hatim, B.）,梅森（Mason, I.）（著）,王文斌（译）.话语与译者[M]. 外语教学与研究出版社，2005.

赫德（Robert Hart）（著）,凯瑟琳•F•布鲁纳(Katherine Frost Bruner)，约翰•K•费正清(Sir Robert Hart)，理查德•J•司马富(Richard Joseph Smith)（编注）,傅曾仁，刘壮翀，潘昌运，王联祖（译）. 步入中国清廷仕途——赫德日记（1854－1863）[M]. 中国海关出版社，2004.

赫德（Robert Hart）（著）,凯瑟琳•F•布鲁纳(Katherine Frost Bruner)，约翰•K•费正清(John King Fairbank)，理查德•J•司马富(Richard Joseph Smith)（编注），陈绛（译）. 赫德与中国早期现代化——赫德日记（1863-1866）[M]. 中国海关出版社，2005.

赫德（Robert Hart）. 局外旁观论[A],筹办夷务始末（同治朝），1865(40).

胡牧. 翻译研究：一个社会学视角[J].外语与外语教学, 2006(9).

胡以鲁.论译名.庸言[N]，天津庸言报馆，1914(25)(26).

惠顿（Henry Wheaton）（著），丁韪良(译). 万国公法[M]. 中国政法大学出版社,2003.

惠顿（Henry Wheaton）（著），丁韪良(译).(官版）万国公法[M]. 京都崇实馆，1864.

贾桢等(修纂),筹办夷务始末[Z]. 台联国风出版社，1972.

金观涛,刘青峰.近代中国“权利”观念的意义演变——从晚清到《新青年》[A], 中央研究院近代史研究所集刊[C]，2005(32).

康熙字典.http://tool.httpcn.com/KangXi/ [OL]. 2012 年 12 月-2013 年 8 月访问.

李德超. 从维内、达贝尔内到图里: 翻译迁移研究综述[J]. 四川外语学院学报，2005(1).

李贵连.话说“权利”[A],北大法律评论第1卷第1辑[C].北京:法律出版社,1998.

李红满. 布迪厄与翻译社会学的理论建构[J]. 中国翻译,2007(4).

李鸿章. 筹议海防折[A],李文忠公全书[C],金陵书局刻本,1908.

梁启超. 湖南时务学堂学约[A], 朱有瓛(编)，中国近代学制史料[C]. 上海：华东师范大学出版社, 1986.

梁倩雯. 一个法律语料库的诞生和运用[J]. 辅仁外语学报,2008(5).

列文森(Joseph R. Levenson)，郑大华（译）. 儒教中国及其现代命运[M]. 北京:中国社会科学出版社，2000.

林学忠，从万国公法到现代外交[M]. 上海：复旦大学出版社，2009.

林学忠，日清战争前清朝对国家主权的认识与态度[A]，野口铁郎(编), 中国史上的教与国家[C], 日本：雄山阁，1994.

林则徐（著），袁德辉（译）.致英国女王书[A]. 中国丛报[N], 1839 (8).

刘禾（著），陈燕谷(译).普遍性的历史建构——《万国公法》与 19 世纪国

际法的流通[M]. 河北教育出版社, 2000.

刘禾（著），杨立华（等译）.帝国的话语政治[M]. 生活•读书•新知三联书店, 2009.

鲁纳(Rune Svarverud)（著），王笑红（译），万民法在中国：国际法的最初汉译，兼及《海国图志》的编纂[J]. 中外法学, 2000(3).

鲁楠. 卢曼社会系统论视野中的法律自治[J]. 清华法学,2008(2).

鲁显贵.卢曼社会系统理论导引[M].台北:巨流出版社,1998.

罗选民,董娜,黎土旺.语料库与翻译研究——兼评 Maeve Olohan 的《翻译研究语料库入门》[J]. 外语与外语教学，2005(12).

梅仲协.民法要义[M]. 北京: 中国政法大学出版社,1943/1998.

牟安世,义和团抵抗列强瓜分史[M]. 经济管理出版社, 1997.

潘光哲. “世界史地”与“国际法”知识和近代东亚“地理想象”的生产、流通与嬗变：思考与展望[OL]. 国立清华大学演讲，2012 年 12 月 12 日。

泮伟江. 作为法律系统核心的司法——卢曼的法律系统论及其启示[J]. 清华法治论衡 2009(2).

秦明瑞. 复杂性与社会系统——卢曼思想研究[J]. 系统辩证学学报,2003(1).

丘宏达. 中国国际法问题论集[M]. 台北商务印书馆, 1968.

屈文生. 早期英文词汇的汉译研究[J].中国翻译, 2012(1).

日本国际法学会（编），国际法辞典[Z]. 世界知识出版社出版，1985.

萨义德（Edward Wadie Said）（著），王宇根（译）. 东方学[M]. 北京：三联书店，1999.

申卫星.“权利”一词何处来？[A].清华法治论衡, 2005(5).

沈弘. 如何评价丁韪良在北大校史中的地位？[A], 跨文化对话[C]. 上海文化出版社: 2002(8).

孙邦华. 简论丁韪良[J]. 史林，1999(4).

孙邦华. 丁韪良与傅兰雅的比较研究[J]. 北京档案史料,2000(2).

孙维三. 尼可拉斯·鲁曼的系统传播概念与应用：旺旺中时集团 vs. NCC 风波的案例分析[J].新闻学研究, 2010(7).

田涛. 丁韪良与《万国公法》[J]. 社会科学研究，1999(5).

田涛. 国际法输入与晚清中国[M]. 济南：济南出版社, 2001.

王尔敏. 弱国的外交—面对列强环伺的晚清世局[M]. 广西师范大学出版社,2008.

王惠, 朱纯深. 翻译教学语料库的标注及应用——“英文财经报道中文翻译及注释语料库”介绍[J]. 外语教学与研究，2012(2).

王健. 沟通两个世界的法律意义---晚清西方法的输入与法律新词初探[M]. 中国政法大学出版社,2001.

王健. 输出与回归:法学名词在中日之间[J]. 法学,2002(4).

王铁崖. 国际法引论[M].北京大学出版社，1998.

王维俭. 丁韪良和京师同文馆[J]. 中山大学学报，1984(2).

王维俭. 丁韪良在宁波三年宗教活动述评[J]. 浙江学刊，1987(3).

王文兵，张网成. 重建与解释：丁韪良的中国历史研究述评[J]. 学术研究, 2009（4）.

王文兵. 此《花甲忆记》非彼《花甲忆记》——丁韪良 A Cycle of Cathay 中译本勘误补正[J]. 近代史研究, 2008(4).

王文兵. 通往基督教文学的桥梁——丁韪良对中国语言、文学的介绍和研究[J]. 汉学研究通讯, 2007(1).

王文兵.丁韪良与中国[M]. 外语教学与研究出版社，2008.

王赜武.中国历史中的权力、权利和责任[R]，第 40 届莫理循人种学讲演.1979.

王悦晨. 从社会学角度看翻译现象：布迪厄社会学理论关键词解读[J]. 中国翻译,2011(1).

尾佐竹猛. 国际法より観たる幕末外交物语（1926）[A],明治大学史资料センター（监修），尾佐竹猛著作集[C]. 东京：ゆまに书房，2005.

尾佐竹猛. 近世日本の国际観念の発达（1932）[A],明治大学史资料センター（监修），尾佐竹猛著作集[C]. 东京：ゆまに书房，2005.

尾佐竹猛. 万国公法と明治维新（1933）[A],明治大学史资料センター（监修），尾佐竹猛著作集[C]. 东京：ゆまに书房，2005.

魏源.海国图志[M].100 卷之第 83 卷,1852.

吴尔玺（Theodore Woolsey）（著）.汪凤藻（译），丁韪良（校），公法便览[M]，同文馆.1878

吴思. 洋人的“权利”我们的“分”[J]. 博览群书,2006(8).

武光军. 翻译社会学研究的现状与问题[J]. 外国语,2008(1).

肖文明.观察现代性——卢曼社会系统理论的新视野[J]. 社会学研究,2008(5).

谢佳玲. 汉语情态词的语意界定: 语料库为本的研究[J]. 中国语言研究, 2006(1).

邢杰.译者“思维习惯”——描述翻译学研究新视角[J].中国翻译,2007(5).

薛波等(编). 元照英美法词典 [K]. 北京:法律出版社,2003.

严复.《天演论》译例言[A]，载罗新璋（编）.翻译论集[C].北京：商务印书馆, 1984.

严复.尊疑先生覆简[N]，新民丛报.严复集[M]，中华书局，1986.

杨建华.马克思、韦伯和卢曼的社会分化研究及启示[J]. 浙江学刊,2008(5).

伊藤不二男. 国际法[A]，野田良之，碧海纯一(编),《近代日本法思想史》[C]，有斐阁，1979.

以赛亚·柏林（Isaiah Berlin）（著）.陈晓林(译).自由四论[M].台北：联经出版事业公司，1986.

奕訢. 恭亲王奏报全文[A], 宝鋆等编,筹办夷务始末•同治朝卷[C], 1863(27).

奕訢.总理各国事务恭亲王等奏[A], 宝鋆等编,筹办夷务始末•同治朝卷[C], 1866(49)。

樱井芳生.卢曼社会系统论中的媒介观简介[J]. 新闻与传播评论, 2010

应婷婷. 科技英语英译汉中的增译与省译的研究——以铁路英语文本的汉译为例[D].湖南师范大学，2012

于婷. 从解构主义视角看《狼图腾》英译本的省译策略[D].天津商业大学，2011.

约瑟夫•塞比斯（Joseph Sebes）（著）.王立人（译）.耶稣会士徐日升关于中俄尼布楚谈判的日记[M]. 商务印书馆,1973.

翟小波.“软法”概念何以成立?——卢曼系统论视野内的软法[J]. 郑州大学学报(哲学社会科学版) 2007(3).

张诚（Jean-François Gerbillon）（著），陈霞飞(译).张诚日记（1689 年 6 月 13 日-1690 年 5 月 7 日），商务印书馆,1973.

张嘉宁. 《万国公法》情况和既定的翻译问题：在中国和日本的翻译[A]，加藤周一，丸山真男(编)，翻译的思想[C]. 岩波书店，1991.

张斯桂，序[A],惠顿（Henry Wheaton）（著），丁韪良（译）,万国公法[M]. 京都崇实馆，1864.

张用心.《万国公法》的几个问题[J]. 北京大学学报，2005(3)。

赵春燕. 对“软法”概念的冷思考——兼谈对卢曼法社会学理论的正确理解[J].河北法学, 2010(12).

赵利,黄金华.法律逻辑学[M]. 人民出版社，2010.

郑观应.论禁止贩人为奴[A],郑观应集(上)[C]. 上海人民出版社，1982a.

郑观应. 救时揭要•求救猪仔论[A], 郑观应集(上)[C]. 上海人民出版社，1982b.

周婧. 封闭与开放的法律系统如何可能?——读卢曼《法律作为社会系统》[J]. 社会学研究, 2009(5).

邹磊. “先秦国际法”研究与中国“世界图景”的重建——从丁韪良到陈顾远[J]. 国际观察，2009(3).

邹振环. 京师同文馆及其译书简述[J], 出版史料，1989(2).

左宗棠. 上总理各国事务衙门[A]，左文襄公全集[C]. 台北文海出版社，1979.

附 录

第一卷第一章

PART FIRST DEFINITION, SOURCES, AND SUBJECTS OF INTERNATIONAL LAW. CHAPTER I. Definition and Sources of International Law.	第一卷 释公法之义，明其本源，题其大旨 第一章 释义明源
1. Origin of International law. There is no legislative or judicial authority, recognized by all nations, (↓) which determines the law that regulates the reciprocal relations of States. The origin of this law (1) must be sought in the principles of justice, (2) applicable to those relations. (3) (p.1) While in every civil society or state there is always a legislative power which establishes, by express declaration, the civil law of that State, and a judicial power, which interprets that law, and applies it to individual cases, in the great society of nations there is no legislative power, and consequently there are no express laws, except those which result from the conventions which States may make with one another. As nations acknowledge no superior, as they have not organized any common paramount authority, for the purpose of establishing by an express declaration their international law, and as they have not constituted any sort of Amphictyonic magistracy to interpret and apply that law, (↑)	第一节 本于公义 天下无人 能定法 令万国必遵，(↑) 能折狱 使万国必服，(↑) 然万国尚有公法，以统其事而断其讼焉。或问此公法既非由君定，则何自而来耶?曰： 将诸国交接之事，(3) 揆之于情，度之于理，深察公义之大道，(2) 便可得其渊源矣。(1) 夫各国 固有君 为己之民制法 断案， 万国 安有如此统领之君， 岂有如此通行之法乎? 所有通行之法者，皆由公议而设。 但万国既无统领之君以明指其往来条例， 亦无公举之有司以息其争端， 倘求公法， 而欲恃一国之君操其权(↓) 一国之有司释其义，

it is impossible that there should be a code of international law illustrated by judicial interpretations(p.1). The inquiry must then be, what are the principles of justice which ought to regulate the mutual relations of nations, that is to say, from what authority is international law derived? When the question is thus stated, every publicist will decide it according to his own views, and hence the fundamental differences which we remark in their writings.	不可得矣。 欲知 此公法凭何权而立，惟有究察各国相待所当守天然之义法而已。 至于各公师辨论此义法，则各陈其说， 故所论不免歧异矣。
2. Natural Law defined. The leading object of (1) Grotius, and of his immediate disciples and successors, (2) in the science of which he was the founder, (3) seems to have been, (4) *First*, (5) to lay down those rules of justice which would be binding on (6) men (7) living in a social state, independently of any positive laws of human institution; (8) or, as is commonly expressed, living together in *a state of nature*; (9) and *Secondly*, (10) To apply those rules, under the name of Natural Law, (11) to the mutual relations of separate communities (12) living in a similar state with respect to each other^ (13) (P.2) With a view to the first of these objects, *Grotius* sets out in his work, on the rights of war and peace, (*de jure belli ac pacis*,) with refuting the doctrine of those ancient sophists who wholly denied the reality of moral distinctions, and that of some modern theologians, who asserted that these distinctions are created entirely by the arbitrary and revealed will of God, in the same manner as certain political writer (such as Hobbes) afterwards referred them to the positive institution of the civil magistrate. For this purpose, Grotius labors to show that there is a law audible in the voice of conscience, (1)	**第二节 出于天性** 公法之学，创于荷兰人名虎哥者。(3) 虎哥与门人 (2) 论公法，(1) 曾分之为二种。(4) 世人(7) 若无国君，若无王法，(8) 天然同居，(9) 究其来往相待之理，应当如何？(6) 此乃公法之一种，名为“性法”也。(5) 夫诸国之往来，与众人同理，(13) 将此性法所定人人相待之分，(11) 以明各国交际之义，(12) 此乃第二种也。(10) 虎哥著书，名曰《平战条规》， 内辟古今论性法之谬妄， 或云善恶绝无分别者有之， 云上帝示命而后善恶有别者有之， 云王法先设而善恶始分者亦有之。 此三者，虎哥皆诎其错误，云： “人生在世，有理有情，

enjoining some actions, and forbidding others, according to their respective suitableness or repugnance to the reasonable and social nature of man. (3) "Natural law," says he, "is the dictate of right reason, pronouncing that there is in some actions a moral obligation, (1) and in other actions a moral deformity, (2) arising from their respective suitableness or repugnance to the rational and social nature, (3) and that, consequently, such actions are either forbidden or enjoined by God, the Author of nature. Actions which are the subject of this exertion of reason, are in themselves lawful or unlawful, and are, therefore, as such necessarily commanded or prohibited by God."	(3) 事之合者当为之，事之背者则不当为之，(2) 此乃人之良知。(1) 一若有法铭于心， 以别其去就也，(3) 与性相背者 则为造化之主宰所禁，(2) 与性相合者 则为其所令。(1) 人果念及此， 便知其为主宰或禁或令， 自可知其为犯法与否。"
3. Natural Law identical with the law of God, or Divine Law. The term Natural Law is here evidently used for those rules of justice which ought to govern the conduct of men, (↓) as moral and accountable beings, living in a social state, independently of positive human institutions, or, as is commonly expressed, living in a sate of nature, and which may more properly be called the law of God, or the divine law, being the rule of conduct prescribed by Him to his rational creatures, and revealed by the light of reason, or the sacred Scriptures. **Natural Law applied to the intercourse of States.** As independent communities acknowledge no common superior, (↓) they may be considered as living in a state of nature with respect to each other: and the obvious inference drawn by the disciples and successors of Grotius was, that the disputes arising among these independent communities must be determined by what they call the Law of Nature. This gave rise to a new and separate branch of the science, called the Law of Nation, *Jus Gentium*.	**第三节 称为天法** 其所谓"性法"者， 无他， 乃世人天然同居 当守之分，(↑) 应称之为"天法"。 盖为上帝所定， 以令世人遵守， 或铭之于人心， 或显之于圣书。 邦国天然同居， 虽无统领之君，(↑) 即可将此性法以释其争端， 此乃诸国之义法也。
4. Law of Nations distinguished from Natural Law, by Grotius.	**第四节 公法、性法犹有所别**

Grotius distinguished the law of nations from the natural law	虎哥以公法与性法有所区别，
by the different nature of its origin and obligation, (↓)	
which he attributed to the general consent of nations.	盖出于共议，
	而为各国所共服也。(↑)
In the introduction to his great work, he says,	彼言：
"I have used in favor of this law,	"余论此公法，
the testimony of philosophers, historians, poets, and even of orators;	曾引诸国之道理、史鉴、诗篇以证之，
not that they are indiscriminately to be relied on as impartial authority;	非言皆足以为凭，
since they often bend to the prejudices of their respective sects, the nature of their argument, or the interest of their cause;	盖其间不免陋狭偏曲者。
but because where many minds of different ages	然世代遥远，
and countries	邦国相隔，
concur in the same sentiment,	而皆同意、同言，
it must be referred to some general cause.	必有故焉。
In the subject now in question,	其故无他，
this cause must be either a just deduction from the principles of natural justice,	或天理之自然，
or universal consent.	或诸国之公议。
The first discovers to us the natural law,	一则为性法，
the second the law of nature.	一则为公法也。
In order to distinguish these two branches of the same science,	二者为同学之别派而不可混淆，
(省略P. 3we must consider, not merely the terms which authors have used to define them, (for they often confound the terms *natural law* and *law of nations*,) but the nature of the subject in question.)	
For it a certain maxim	盖有通行条规，
which cannot be fairly inferred from admitted principles (↓)	
is, nevertheless, found to be everywhere observed,	随处所遵守
	而终不出于天理者，(↑)
there is reason to conclude that it derives its origin from positive institution." (p.3)	则此等条规出于公议必矣。"
He had previously said,	又云：
"As the laws of each particular State are designed to promote its advantage,	"各国制法以利国为尚，
the consent of all, or at least the greater number of States, (省略P.4 may have produced certain laws between them. And, if fact, it appears that such laws have been established,)	诸国同议
tending to promote the utility, not of any particular State, but of the great body of these communities.	以公好为趋，

This is what is termed the Law of Nations, when it is distinguished from Natural Law.”	此乃万国之公法与人心之性法有所别也。”
（省略一段 P.4-5 All the reasonings of Grotius）	
But it is evident that his supposed state of nature has never existed	窃思虎哥此说，尚属凭虚。
（省略一段 P.5 This consent can only be established by the disposition… Grotius would, undoubtedly, have done better had he sought ）	
	莱本尼子与根不兰所言（↓）
the origin of the Natural Law of Nations in the principle of utility,	“公法之出于利者”，
vaguely indicated by Leibnitz, but clearly expressed and adopted by Cumberland, and admitted by almost all subsequent writers, （↑）	
as the test of international morality.	则归实际，正若拨云雾而明正路。
But in the time that Grotius wrote, this principle which has so greatly contributed to dispel the mist with which	然彼时
the foundations of the science of International Law were obscured,	何为万国之利
was but very little understood.	尚不甚明，
The principles and details of international morality, as distinguished from international law, are to be obtained	欲明之
not (1)	而徒以人人相待之情理，(3)
by applying to nations, the rules which ought to govern the conduct of individuals, (2)	范围诸国之公事，(2)
but by ascertaining what are the rules of international conduct (3)	则不可焉。(1)
which, on the whole, best promote the general happiness of mankind.(P.5)	然则为政者应如何方致天下之公好，
The means of this inquiry are	必也究察。究察之方有二，
observation and mediation;	一则见广，一则虑深。
the one furnishing us with facts,	见广则知事，
the other enabling us to discover the connection of these facts as causes and effects,	虑深则
and to predict the results which will follow, whenever similar causes are again put into operation.	知其事之有利有害焉。
5. Law of Nature and Law of Nations asserted to be identical, by Hobbes and Puffendorf.	**第五节 理同名异**
Neither Hobbes nor Puffendorf entertains the same opinion as Grotius upon the origin and obligatory force of the positive Law of Nations.(P.6)	霍毕寺、布番多论公法出自何源、行恃何权，亦与虎哥稍异。
The former, in his work, *De Give*, says,	
“The natural law may be divided into	霍氏著书云：
the natural law of men,	“性法分为二种，
and the natural law of States,	一则主庶人之往来，

commonly called the Law of Nations. The precepts of both are the same; but since States, when they are once instituted, assume the personal qualities of individual men, that law, which when speaking of individual men we call the Law of Nature, is called the Law of Nations (↓) when applied to whole States, nations, or people.”	一则主诸国之交际。 所谓万国之公法也， 二者同理而异名， 盖诸国既分， 即以人人往来之道为诸国交际之规。 论人人往来之道， 名之曰‘性法’； 推而极于诸国交际之事， 则名之曰‘公法’焉。”(↑)
To this opinion *Puffendorf* implicitly subscribes, declaring that “there is no other voluntary or positive law of nations properly invested with a true and legal force, and binding as the command of a superior power.” (省略 P. 6 After denying that there is any positive or voluntary law of nations founded on the consent of nations, and distinguished from the natural law of nations, Pufendorf proceeds to qualify this opinion by admitting that)	布氏然其说云： “此外别无通行之公法， 惟有性法可令万国钦服。”
the usages and comity of civilized nations have introduced certain rules, for mitigating the exercise of hostilities between them; that these rules are founded upon a general tacit consent; and that their obligation ceases (1) by the express declaration (2) of any party, engaged *in a just war*, (3) that it will no longer be bound by them. (4)	至于服化之国， 定有例款， 以免交战之残忍。 其条规出于人谋，诸国或明许之，或默许之。 倘二国交战，而或有自恃理直者 (3) 出示云“不复服此交战条规”，(2) 不得谓其不义。(1)(4)
There can be no doubt that any belligerent nation which chooses to withdraw itself from the obligation of the Law of Nations, in respect to the manner of carrying on war against another State, *may* do so at the risk of incurring the penalty of vindictive retaliation on the part of other nations, and of putting itself in general hostility with the civilized world.	但 此一国擅自背诸国之条规 而战， 不惟惧他国之报复， 亦恐遭万国鸣鼓之攻焉。
As a celebrated English civilian and magistrate (Lord Stowell) has well observed, “a great part of the law of nations stand upon the usage and practice of nations. It is introduced, indeed, by general principles, but it travels with those general principles only to a certain extent;	**常例大用** 英国公师斯果德云： “公法 多凭诸国之常例， 其本固出于理。 但不能将天理自然之义以治万事也，

and if it stops there, you are not at liberty to go further, and say that mere general speculations would bear you out in a further progress; thus, for instance, on mere general principles, it is lawful to destroy your enemy; and mere general principles make no great difference as to the manner by which this is to be effected; but the conventional law of mankind, which is evidenced in their practice, does make a distinction, and allows some, and prohibits other modes of destruction;(p.7) and a belligerent is bound to confine himself to those modes which the common practice of mankind has employed, and to relinquish (1) those which the same practice has not brought within the ordinary exercise of war, (2) however sanctioned by its principles and purposes." (3) The same remark may be made as to what Puffendorf says respecting the privileges of ambassadors, which Grotius supposes to depend upon the voluntary law of nations; whilst Puffendorf says they depend, either upon natural law (↓) which gives to public ministers a sacred and inviolable character, or upon tacit consent, as evidenced in the usage of nations, (↓) conferring upon them certain privileges which may be withheld at the pleasure of the State where they reside(P.7). The distinction here made between those privileges of ambassadors, which depend upon natural law, and those which depend upon custom and usage, is wholly groundless(P.7); Since both one and the other may be disregarded by any State which chooses to incur the risk of retaliation or hostility, (省略P.7 these being the only sanctions by which the duties of international law can be enforced. Still it is not the less true that that law of nations, founded upon usage, considers) an ambassador,	亦不可以凭虚之论为公法也。 即如据理而论， 敌人可杀， 理原不分于其杀之之方， 但其所公议条规， 或许此方而禁彼方。 战者杀敌，必以世人所共用杀敌之方， 虽有别方于理无不合者，(3) 苟渚国未经共用同许,(2) 则战者断不得用焉。"(1) 虎哥以国使之权利， 皆出于公议。 布氏云： "国使之有尊爵而不可犯者，敬其君以及其臣， 固本于性法。(↑) 至其利益之处， 或本性法,或本默许,(↑) 盖许与不许原无强制也。" 窃思布氏所言国使之权利，分为二种： 或本于天性而不可犯， 或本于常例而随可改者。 此说绝无所凭， 盖国之能废其一者，亦能废其二， 特恐启他国之怨仇报复耳。 至此国之公使，

duly received in another State,	既接于彼国，即不服彼国之管辖。
which consent cannot be withdrawn	若既为彼国所默许，后又背而不许，
without incurring the risk of retaliation, or of provoking hostilities on the part of the sovereign by who he is delegated.	恐干遣之者之怨(急？)仇报复也。
The same thing may be affirmed of all the usages which constitute the Law of Nations.	公法之条例皆然，
They may be disregarded by those who choose to declare themselves absolved from the obligation of that law,	欲违之者固能违之，
and to incur the risk of retaliation from the party specially injured by its violation, or of the general hostility of mankind.	但恐其所屈者将出尔反尔，且万国必共怒焉。
6. Law of Nations derived from reason and usage. *Bynkershoek*, (who wrote after Puffendorf, and before Wolf and Vattel,) derives the law of nations from reason and usage (ex ratione et usu) and founds usage on the evidence of treaties and ordinance (*pacta et edicta*) with the comparison of examples frequently recurring. (p.8)	**第六节 理例二源** 宾克舍 以公法之源有二，理与例也。例则有各国之律法、盟约可证。
In treating of the rights of neutral navigation in time of war, he says, “Reason commands me to be equally friendly to two of my friends who are enemies to each other; and hence it follows that (↓) I am not to prefer either in war.”	论战时局外者航海之权，彼云：“我有两友，同结怨仇，我均当以友谊待之，不可助此以害彼，此理也：(↑)
Usage is shown by the constant, and, as it were, perpetual custom which (↓) sovereigns have observed of making treaties and ordinances upon this subject, (省略P.8for they have often made such regulations by treaties to be carried into effect in case of war, and by laws enacted after the commencement of hostilities.)	各国之君长，平时立盟约，战时申律法，以定局外者之往来，此例也：(↑)
I have said *by, as it were, a perpetual custom*; because one, or perhaps two treaties, which vary from the general usage, do not alter the law of nations.”	常例为公法，即不因一二盟约之不合而遂废也。”
In treating of the question as to the competent judicature in cases affecting ambassadors, he says,	论国使之权利，彼云：

“The ancient jurisconsults assert, that the law of nations is that which is observed (↓) in accordance with the light of reason, between nations, if not among all, at least certainly among the greater part, and those the most civilized.	“依古时法师所论， 公法 出于理， 而万国之服化者 无不遵守。(↑)
According to my opinion, we may safely follow this definition, which establishes two distinct bases of this law; namely, reason and custom. (p. 8)	则公法有二源， 即理与例焉。
But in whatever manner we may define the law of nations, and however we may argue upon it, we must come at last to this conclusion, that what reason dictates to nations, and what nations observe between each other, as a consequence of the collation of cases frequently recurring, is the only law of those who are not governed by any other---- (*unicum jus sit eorum, qui alio jure non reguntur.*)	凡此辨论， 千言万语， 总归一致， 乃诸国情理所当行者， 并交际往来所惯行者， 合成公法，此外别无所谓公法也。
If all men are men, that is to say, if they make use of their reason, it must counsel and command them certain things which they ought to observe as if by mutual consent, and which being afterwards established by usage, impose upon nations a reciprocal obligation; without which law, we can neither conceive of war, nor peace, nor alliances, nor embassies, nor commerce. ”	盖人之为人， 必有情理，倘用心思， 则事之当为与否，自必能明矣。 凡此惯行者乃为例， 诸国不得违越。 无此例法， 则交战、讲和、会盟、通使、通商皆不得行焉。”
Again, he says, treating the same question: “The Roman and pontifical law can hardly furnish a light to guide our steps; the entire question must be determined by reason and the usage of nations. I have alleged whatever reason can adduce for or against the question; but we must now see what usage has approved, for that must prevail, since the law of nations is thence derived.”	又云： “罗马国古时律法并教中条规不足为指南，必也。 揆情度理，博考诸国之常行，方可得明此道。 其事之情理若何，上已明言。 今则复察常例若何， 盖公法出于例也。”
In a subsequent passage of the same treaties, he says, “ It is nevertheless most true, that the States General of Holland alleged, in 1651, that, according to the law of nations, (1) an ambassador cannot be arrested, (2) though guilty of a criminal offence; (3)	又云： “于一千六百五十一年间，荷兰国言 国使虽有罪，(3) 按公法(1) 不得捕拿。(2)

and quality requires that (↓) we should observe that rule, unless we have previously renounced it. The law of nations is only a presumption founded upon usage, and every such presumption ceases (↓) the moment the will of the party who is affected by it is expressed to the contrary.(p.9) Huberus asserts that ambassadors cannot acquire or preserve their rights by prescription; but he confines this to the case of subjects who seek an asylum in the house of a foreign minister, (↓) against the will of their own sovereign. I hold the rule to be general as to every privilege of ambassadors, and that there is no one they can pretend to enjoy against the express declaration of the sovereign, because an express dissent excludes the supposition of a tacit consent, and there is no law of nations except between those who voluntarily submit to it by tacit convention." (↑)	此后荷兰若无明言，不复从此条规而竟食前言， 则不公也。(↑) 公法出于常例， 若明言不从此常例， 则例不复为常例也。(↑) 胡北路所云国使之权利，不能因日久，便欲坚守不让也： 然彼所论．专指民人 之违君旨， 而求护于他国之公使者。(↑) 但余意国使，凡百之权利皆然： 盖所在之君或不欲给，则不得争。 盖君既明言不从常例，安得以为默许?夫甘心乐从，始能默许。 如非默许(↓) 则公法不得行焉。"
7. System of Wolf. The public jurists of the school of Puffendorf had considered the science of international law as a branch of the science of ethics. They had considered it as the natural law of individuals applied to regulate the conduct of independent societies of men, called states. To Wolf belongs, according to Vattel, the credit of (↓) separating the law of nations from that part of natural jurisprudence which treats of the duties of individuals. In the preface of his great work, he says, "That since such is the condition of mankind that the strict law of nature cannot always be applied to the government of a particular community,	**第七节 性理之一派** 布氏门人 以公法之学为性理之一派， 盖视为人人相待之性法， 而推及诸国交际之分也。 此后，俄拉费以 诸国之公法，与 人人之性法分门别户。 发得耳赞之，谓其有功于公法之学也。(↑) 俄拉费著书云： "人生在世， 相待之分繁多， 难以性法推及之：

but it becomes necessary to resort to laws of positive institution more or less varying from the natural law, so (↓) in the great society of nations it becomes necessary to establish a law of positive institution more or less varying from the natural law of nations.	故国内另设律法与此性法少异， 即诸国之另设条例 与诸国之理法少异， 其故亦然。(↑)
As the common welfare of nations requires this mutation, they are not less bound to submit to the law which flows from it than they are bound to submit to the natural law itself, and the new law thus introduced, so far as it does not conflict with the natural law, ought to be considered as the common law of all nations. (p.10)	其条例之所以异于理法者，盖因诸国之公好必须如此， 诸国即当服此条例，与理法无二。 且条例如与理法无所矛盾， 即当作为万国之通例，
This law we have deemed proper to term, with Grotius, though in a somewhat stricter sense, the voluntary Law of Nations. ”(p.10)	虎哥所称诸国甘服之法是也。”
Wolf afterwards says, that “the voluntary law of nations derives its force from the presumed consent of nations, the conventional from their express consent; and the consuetudinary from their tacit consent.” This presumed consent of nations (*consentium gentium prosumptum*) to the voluntary law of nations he derives from the fiction of a great commonwealth of nations (*civitate gentium maxima*) instituted by nature herself, (↓) and of which all the nations of the world are members^ .(P.10)	**分为三种** 又云： “公法分为三种， 诸国未许而甘服者，一也； 其明许而遵守者，二也； 其默许而惯行者，三也。 其所以未许而甘服者， 惟因诸国之同居于天下，
As each separate society of men is governed by its peculiar laws freely adopted by itself, so is the general society of nations governed by its appropriate laws freely adopted by the several members, on their entering the same. (p.10) These laws he deduces from a modification of the natural law, so as to adapt it to the peculiar nature of that social union, which, according to him, makes it the duty of all nations to submit to the rules by which that union is governed, (↓)	一若庶人之同居于一国焉。(↑) 夫各国自制律法而甘服之， 诸国亦有律法为各国所甘服者， 缘此律法本出于性法 而增减变通， 以洽其事耳。

in the same manner as individuals are bound to submit to the laws of the particular community of which they are members. But he takes no pains to prove （↓） the existence of any such social union or universal republic of nations, or to show （↓） when and how all the human race became members of this union or citizens of this republic.	人生在国内，便服其律法； 列国于天下，当服此公法。”（↑） 窃思 俄氏所言万国合为一国， 无所确据，（↑） 万民合为一民， 亦鲜明征矣。（↑）
8. Differences of opinion between Grotius and Wolf on the origin of the voluntary Law of Nations. Wolf differs from Grotius, as to the origin of the voluntary law of nations, in two particulars: 1. Grotius considers it as a law of positive institution, and rests its obligation upon the general consent of nations, as evidenced in their practice. Wolf, on the other hand, considers it as a law which nature has imposed upon all mankind as a necessary consequence of their social union; and to which no one nation is at liberty to refuse its assent. 2. Grotius confounds the voluntary law of nations with the customary law of nations. Wolf maintains that it differs in this respect, that the voluntary law of nations is of universal obligation, whilst the customary law of nations mere prevails between particular nations, among whom it has been established from long usage and tacit consent.	**第八节 二子所论微异** 俄氏论诸国甘服之法所由起，与虎哥微有不同。 虎哥以为同议而设者， 必凭其同许而立， 其许之与否，皆视其遵之与否也。 俄氏则以人类自然相合， 天既以此法授之， 故各国不得不服也。 虎哥论诸国甘服之法，与其例法混淆而不分。 俄氏以为迥不相同， 盖其甘服之法遍行于万国， 至例法则但行于惯行之国耳。
9. System of Vattel. It is from the work of Wolf that Vattel has drawn the materials of his treaties on the law of nations. He, however, differs from that publicist in the manner of establishing the foundations of the voluntary law of nations. Wolf deduces the obligations of this law, as we have already seen, from the fiction of a great republic instituted by nature herself, and of which all the nations of the world are members. According to him the voluntary law of nations is, as it were, the civil law of that great republic.	**第九节 发氏大旨** 发得耳之书虽取材于俄氏， 惟言甘服之法所由起与俄氏稍有不同。 盖俄氏以万国合为一国，此法乃天所授， 故诸国之公法即是天下之律法也。

This idea does not satisfy Vattel. “I do not find,” (1) says he, (2) “the fiction of such a republic either very just or sufficiently solid, (3) to deduce from it the rules of a universal law of nations, necessarily admitted among sovereign States. (4) I do not recognize (5) any other natural society between nations (6) than that which nature has established between all men. (7)	发得耳则不然， 谓（2） 万国合为一国，语涉虚诞，（3） 不足（1） 为法于自主之国，（4） 诚以上古而来，世人即天然同居，（7） 并无所谓 （5） 诸国天然同居也。（6）
It is the essence of all civil society, (*civitatis,*) that each member thereof should have given up a part of his rights to the body of the society, and that there should exist a supreme authority capable of commanding all the members, of giving to them laws, and of punishing those who refuse to obey, Nothing like this can be conceived or supposed to exist between nations.	夫国之赖以立者，须二事以成： 有因众人以治己之私权归之于公，一也； 有统权之君 以为之制法 禁暴，二也。 今俄氏以万国合为一国，试问有此二事乎?
Each sovereign State pretends to be, and in fact is, independent of all other. Even according to Mr. Wolf, they must all be considered as so many free individuals, who live together in a state of nature, and acknowledge no other law than that of nature itself, and its Divine Author”	且各国称为自主之国者，原因不听命于他国。 若如俄氏之说， 诸国天然同居， 惟知有性法并赋性之主宰，则归私于公安在，统辖之君又安在乎?
According to Vattel, the Law of Nations, in its origin, is nothing but the law of *nature applied to nations*. Having laid down this axiom, (省略P.12he qualifies it in the same manner, and almost in the identical terms of Wolf, by stating that the nature of the subject to which it is applied being different,)	发得耳又以公法之本源皆从性法中推出， 大纲既定，
the law which regulates the conduct of individuals (1) must necessarily be modified (2) in its application to the collective societies of men called nations or states.(p.12) (3) A state is a very different subject from a human individual, (4) from whence it results that the obligations and rights, in the two cases, are very different.(5) The same general rule, applied to two subjects, (6) cannot produce the same decisions, (7) when the subjects themselves differ. (8)	自可制诸国之事，(3) 但必须变通增益之也。(2) 盖诸国与庶人迥异，(4) 故其名分权利亦有不同。(5) 此二者既不同，(8) 则大纲虽一，(6) 其遵守之条规自不能同。(7) 万国之人莫不本此性法，(1)

There are, consequently, many cases in which the natural law does not furnish the same rule of decision between state and state as would be applicable between individual and individual	惟国事之变通增益各有其宜，
It is the art of accommodating this application to the different nature of the subjects	故以性法之同者，主二者之异
in a just manner, according to right reason,	而不越情理之当然，
which constitutes the law of nations a particular science. (p. 12)	此乃公法之所以另为一学也。
This application of the natural law,	以性法
to regulate the conduct of nations in their intercourse with each other,	推及诸国交通之事，
constitutes what both Wolf and Vattel term the *necessary law of nations*.	俄氏与发氏名之为自然之法。
It is *necessary*,	其所谓自然者，
because nations are absolutely bound to observe it.	盖诸国不得不服此理也。
The precepts of the natural law are equally binding upon states as upon individuals,	性法人人必守，各国亦必守，
since states are composed of men,	盖众人合成诸国，
and since the natural law binds all men, in whatever relation they may stand to each other.	而人之于人断无出乎性法之范围也。
This is the law which Grotius and his followers call the *internal law of nations*,	此虎哥与门人所称“公法有内外”。
as it is obligatory upon nations in point of conscience.	而在内之公法，诸国之人心无不知其当服也，
Others term it the *natural law of nations*.	称之曰“理法”亦有之；
This law is immutable,	盖此法不偏不倚，
as it consists in the application to States of the natural law, which is itself immutable, because founded on the nature of things, and especially on the nature of man.)	即以不偏不倚之性法推及国事，
This law being immutable,	既曰不偏不倚，
and the law which it imposes necessary and indispensable,	则系自然而不可废，
nations can neither make any changes in it by their conventions,	诸国不能议而改之，
dispense with it in their own conduct,	自不能废而不从之，
nor reciprocally release each other from the observance of it. (P. 13)	亦不能使他国不从之也。
Vattel has himself anticipated one objection to his doctrine that	或以此说为非。发氏云：
States (1)	“诸国(1)
cannot change the necessary law of nations (2)	之定章程者， (3)
by their conventions with each other. (3)	若与自然之理法不合，
This objection is, that it would be inconsistent with the liberty and independence of a nation (4)	(4)
to allow to others the right of determining whether its conduct was or was not conformable to the necessary	则良心以之可废(5)
	而仍不废之，(2)

law of nations. (5)	
He obviates the objection by a distinction which pronounces treaties made in contravention of the necessary law of nations, to be invalid, according to the *internal law*,	此内法废之
or that of conscience, at the same time that they may be valid by the *external* law;	而外法行之。”
States being often obliged (↓)	
to acquiesce in such deviations from the former law	夫遇此茧自缚等悖理之事，
in cases where they do not affect their perfect rights.	如与其不得已之分无所涉者，
	则诸国屡有任从之者，(↑)
	俄氏所谓诸国甘服之法是也。(↓)
From this distinction of Vattel, flows	发氏论
what Wolf had denominated the voluntary law of nations, (*just gentium voluntariumm,*) (↑)	
to which term his disciple assents, (↓)	
although he differs from Wolf as to the manner of establishing its obligation.	其当遵之义与俄氏有稍异，
He however agrees with Wolf in considering	而论其所由起则与俄氏俱同。
	盖二人皆以 (↑)
the voluntary law of nations as a positive law, derived from the presumed or tacit consent of nations to consider each other	甘服之法出于诸国互认，
as perfectly free, independent, and equal,	其平行自主之权
each being the judge of its own actions,	各断己之是非，
and responsible to no superior but the Supreme Ruler of the universe.	惟服上帝而已。
Besides this voluntary law of nations,	此甘服之法而外，
these writers enumerate two other species of international law. These are:	俄氏、发氏另论公议常例二种。
1. The conventional law of nations,	所谓“公议”者，
resulting from compacts between particular States.	即是诸国之盟约章程。
As a treaty binds only the contracting parties,	夫盟约章程之有权者，
it is evident that the conventional law of nations is not a universal,	惟在于立之之国，
but a particular law.	乃是特立而非通行也。
2. The customary law of nations,	至例法
resulting from usage between particular nations.	则出于诸国之常行，
This law is not universal,	亦非通行也，
but binding upon those States only which have given their tacit consent to it.	盖其有权惟在于默许之之国而已。
Vattel concludes that these three species of international law, the *voluntary*, the *conventional*,	发氏以甘服、公议、常行三者合成诸国之公法。

and the *customary* compose together the *positive law of nations*.	
They proceed from the will of nations;	三者俱出于诸国之情愿焉。
or (in the words of Wolf) "the *voluntary*, from their presumed consent;	俄氏所言甘服之法是未许而可谓必许之者，
the *conventional*, from their express consent;	公议之法是明许而共立之者，
and the *customary*, from their tacit consent."	至例法则默许而惯行者也。
It is almost superfluous to point out the confusion in this enumeration of the different species of international law,	窃思以公法分此三种，未免混而不清，
which might easily (↓)	
have been avoided by reserving the expression, "voluntary law of nations,"	不若以甘服之法
to designate the *genus*, including all the rules introduced by positive consent, for the regulation of international conduce,	总括诸国交通之定章，
and divided into the two *species* of conventional law and customary law,	其中又分为公议、常例二类，
	则较为彰明。（↑）
the former by express consent,	盖诸国之所明许者公议也，
and the latter by tacit consent between nations.	而其所默许者常例也。
10. System of Heffter.	**第十节 海氏大旨**
According to *Heffter*,	海付达，
one of the most recent and distinguished public jurists of Germany,	日耳曼国名公师也。彼云：
"the law of nations, *jus gentium*,	"罗马国律法书(↓)
	所谓万国之公法者，
in its most ancient and most extensive acceptation,	其最古、最广之义无他，
as established by the Roman jurisprudence, (↑)	即诸国所常行默许者也。
is a law (*Recht*) founded upon the general usage and tacit consent of nations."	
This law is applied, not merely to regulate the mutual relations of States,	不但诸国赖此以交际，
but also of individuals,	即人人往来亦遵此法。
so far as concerns their respective rights and duties,	有权可行，有分当守，
	非仅出各国律法，(↓)
having everywhere the same character and the same effect,	乃处处通行无异也。"
and the origin and peculiar form of which are not derived from the positive institutions of any particular State. " (↑)	
	分为二派
According to this writer, the *just gentium*	海氏以公法分为二派：

consists of two distinct branches: 1. Human rights in general, and those private relations which Sovereign States recognized in respect to individuals not subject to their authority. 2. The direct relations existing between those States themselves. "In the modern world, this latter branch has exclusively received the denomination of law of nations, *Volkerrecht, Droit des Gens, Jus Gentium*. It may more properly be called external public law, to distinguish it from the internal public law of a particular State. The first part of the ancient *jus gentium* has become confounded with the municipal law of each particular nation, without at the same time losing its original and essential character. This part of the science concerns, exclusively, certain rights of men in general, and those private relations which are considered as being under the protection of nations. It has been usually treated of under the denomination of *private international law*." Heffter does not admit the term international law (*droit international*) lately introduced and generally adopted by the most recent writers. According to him this term does not sufficiently express the idea of the *jus gentium* of the Roman jurisconsults. He considers the law of nations as a law common to all mankind, and which no people can refuse to acknowledge, and the protection of which may be claimed by all men and by all States. He places the foundation of this law on the incontestable principle that wherever there is a society, there must be a law obligatory on all its members; and he thence deduces the consequence that there must likewise be for the great society of nations an analogous law. "Law in general (*Recht im Allgemeinen*) is the external freedom of the moral person.	论世人自然之权， 并各国所认他国人民通行之权利者，一也； 论诸国交际之道，二也。 今时 所谓公法者，专指交际之道， 可称之曰"外公法"， 以别于各国自治内法也。 夫此公法之二派，其一则与各国之律法相合 而尤不混， 盖专指世人自然之权 及人人相待之当然， 并各国所保护人民之私权也， 故论者称之为"私权之法"。 **公法精义** 海氏以 诸国之法 不足尽罗马国法师所言公法之义， 乃世人之公法， 各国不可不服， 无论何人何国，皆可恃以保护也。 盖人之相处，必有法制以维持其间， 各国之交际亦然。 法乃所以护人，不受外暴也，

This law may be sanctioned and guaranteed by a superior authority, or it may derive its force from self-protection. The *jus gentium* is of the latter description. A nation associating itself with the general society of nations, thereby recognizes a law common to all nations by which its international relations are to be regulated. It cannot violate this law, without exposing itself to the danger of incurring the enmity of other nations, and without exposing to hazard its own existence. The motive which induces each particular nation to observe this law depends upon its persuasion that other nations will observe towards it the same law. The *jus gentium* is founded upon reciprocity of will. It has neither lawgiver nor supreme judge, since independent States acknowledge no superior human authority. Its organ and regulator is public opinion: its supreme tribunal is history, which forms at once the rampart of justice and the Nemesis by whom injustice is avenged. Its sanction, or the obligation of all men to respect it, results from the moral order of the universe, which will not suffer nations and individuals to be isolated from each other^, but constantly tends to unite the whole family of mankind in one great harmonious society^". (P.15-16) **There is no universal law of nations.** Is there a uniform law of nations? There certainly is not the same one for all the nations and states of the world. The public law, with slight exceptions, (↓) has always been, and still is, limited to the civilized and Christina people of Europe or to those of European origin.	或执权者体而行之， 或各人自秉自护之权而行之， 此乃罗马法师所谓公法之义也。 夫一国与众国往来， 皆默认诸国往来之通例也， 违此例 则干他国之共怒而国即危焉。 且各国所以遵此例， 盖望 他国之待我亦将遵之也。 故公法一恕而已， 并无制法之君， 亦无断案之有司。 盖自主之国不屈己于人也， 以天下之共好为权衡， 而事之曲直书诸史鉴。 盖史鉴载诸国之是非，即以褒贬为赏罚， 为拥护公法之干城，当遵之为天经地义，乃能保合太和也。 各国各人之相离独居者，即失天地之和而为其所不容； 各国各人之相合同居者，即顺天地之和而为其所默佑也。 **公法不一** 或问万国之公法皆是一法乎? 曰：非也。 盖此公法 或局于欧罗巴崇耶稣服化之诸国， 或行于欧罗巴奉教人迁居之处， 此外奉此公法者无几 (↑)

This distinction between the European law of nations and that of the other races of mankind has long been remarked by the publicists. *Grotius* states that the *jus gentium* acquires its obligatory force from the positive consent of all nations, or at least of several. "I say of several, (↓) for except the natural law, which is also called the *jus gentium*, there is no other law which is common to all nations. It often happens, too, that what is the law of nations in one part of the world is not so in another, as we shall show in the proper place." (p. 16)	夫欧罗巴之公法与他处所遵之公法有别， 公师早有言矣。 虎哥云： "公法之所以行，或因万国间多有许之者。 盖性法固通行万国， 此外别无所谓通行之法也。 固常见此处遵此法而他处遵他法， 此余所以言多有奉之者而不言人皆奉之也。"（↑） 宾克舍云： "诸国之公法， 即是诸国准情酌理所遵守也， 虽不皆遵之， 遵之者犹过半， 且遵之之国，教化最盛焉。"
So also *Bynkershoek*, in the passage before cited, says that "the law of nations is that which is observed, in accordance with the light of reason, between nations, if not among all, *at least certainly among the greater part,* *and those the most civilized.*"	莱本尼子云： "诸国甘服之法， 乃其所默许者也， 非云万国万世皆奉一法。
Leibnitz speaks of the voluntary law as established by the tacit consent of nations. "Not," says he, "that it is necessary the law of all nations and of all times, since the Europeans and the Indians frequently differ from each other concerning the ideas which they have formed of international law, and even among us it may be changed by the lapse of time, of which there are numerous examples. (省略 P. 17 The basis of international law is natural law, which has been modified according to times and local circumstances.")	盖欧罗巴与印度论诸国之公法，多有不同。 即吾侪阅世久长，公法亦有变更。"
Montesquieu, in his *Esprit des Lois*, says, that "every nation has a law of nations --- even the Iroquois, who eat their prisoners, have one. They send and receive ambassadors; they know the laws of war and peace; the evil is, that their law of nations is not founded upon true principles." (P. 17)	孟得斯咎著书名曰《律例精义》云： "各国自有公法也， 即夷狄掳人而食之者 亦有公法。 盖互相遣使接使， 并有和战条规， 岂非有公法乎?惟不本于正理耳。"
There is then, according to these writers, no	以是观之，并无得哩所谓

universal law of nations, such as Cicero describes in his treaties *De Republica*, binding upon the whole human race ----	遍世通行之法。
which all mankind in all ages and countries, ancient and modern,	盖未见有古今万国、
savage and civilized,	蛮貊文雅、
Christian and Pagan,	教内教外
have recognized in theory or in practice, have professed to obey, or have in fact obeyed.	无不认识遵行之例也。
	应否称法
An eminent French writer on the science of which we propose to treat,	法国名师来内法（Rayneval）者，
has questioned the propriety of using the term *droit des gens* (law of nations) as applicable to those rules of conduct which obtain between independent societies of men. (p.17)	以万国律例不宜称公法。
He asserts “that there can be no *droit* (right)	盖无制法之权，
where there is no *loi*(law);	安有律法之禁令也?
and there is no law where there is no superior: without law, obligations, properly so called, cannot exist;	人若无王法，
there is only a moral obligation	则其分所当行，
resulting from natural reason;	惟出于情理之当然，
such is the case between nation and nation.	各国相待亦如是。
（省略一段 P.17-18 The word *gens* imitated from the Latin……）	
That very distinguished legal reformer, Jeremy Bentham,	英国公师本唐者，
had previously expressed the same doubt how far the rules of conduct which obtain between nations can with strict propriety be called *laws*.	亦曾议此律例之当称法与否。
And one of his disciples has justly observed, that	本唐氏门人有云：
“*laws*, properly so called,	“所谓法者，
are commands proceeding from a determinate rational being,	或自一人而出，
or a determinate body of rational beings,	或自数人公议而出，
to which is annexed an eventual evil as the sanction.	并有刑典以令人遵守。
Such is the law of nature,	是以性法即天理，
more properly called the law of God, or the divine law;	当称为上帝之法也。
and such are political human laws,	至各国之律法，
prescribed by political superiors	固出于上权，
to persons in a state of subjection to their authority.	行于下民，
But laws imposed by general opinion	惟例之出于万人共好共恶者，
are styled *laws*	所以称之曰法，
by analogical extension of the term. (p.18)	特借字而已。

Such are the laws of honor imposed by opinions current in the fashionable world,	君子所遵荣辱之例如是，亦可称之为法，
and enforced by appropriate sanction.	盖以荣为赏，以辱为罚也。
Such, also, are the laws which regulate the conduct of independent political societies in their mutual relations, and	各国相待之例，
which are called the law of nations, or international law.	即所称万国之公法，亦如是。
This law obtaining between nations is not positive law; for every positive law is prescribed by a given superior or sovereign to a person or persons in a state of subjection to its author. The rule concerning the conduct of sovereign States, considered as related to each other,	既无制法之君，
is termed *law* by its analogy to positive law, being imposed upon nations or sovereigns,	称之曰法，要皆借字，
not by the positive command of a superior authority, (↓)	
but by opinions generally current among nations.	乃出于万国之共好共恶，
	非由执权者之禁令也。(↑)
The duties which it imposes are enforced by moral sanctions:	其权在心而不在身，
	盖君国所以不违之者，(↓)
by fear on the part of nations, or by fear on the part of sovereigns, of provoking general hostility, and incurring its probable evils,	惟惧他国仇怒致患也。”
in case the they should violate maxims generally received and respected.” (↑)	
(省略一段 P. 19 This law has commonly been called the jus gentium in the Latin, …)	
Opinion of Savigny.	**出于同俗，行于他方**
According to Savigny,	赛宾尼云：
“there may exist between different nations the same community of ideas	“一国之律法，概从其教化风俗，(↓) 故数国若同化同俗，即可同一公法也。
which contributes to form the positive unwritten law (*das positive Recht*) of a particular nation. (↑)	
This community of ideas, found upon a common origin and religious faith, constitutes international law as we see it existing among the Christian States of Europe,	即如欧罗巴数国系同本而同奉耶稣之教，故同一公法：
a law which was not known to the people of antiquity,	此公法非古人所不知，
and which we find among the Romans under the name of *jus feciale*.	盖罗马国书内已见其名也。
International law may therefore be considered as	公法即可谓律法，

a positive law, but as an imperfect positive law, (*eine unvollendete Rechtsbildung,*) both on account of the indeterminateness of its precepts, and because it lacks that solid basis on which rests the positive law of every particular nation, the political power of the State and a judicial authority competent to enforce the law. The progress of civilization, founded on Christianity, has gradually conducted with all the nations of the globe, whatever may be their religious faith, and without reciprocity on their part." It may be remarked, in confirmation of this view, that the more recent intercourse (↓) between the Christian nations of Europe and America and the Mohammedan and Pagan nations of Asia and Africa indicates a disposition, on the part of the latter, to renounce their peculiar international usages and adopt those of Christendom.(p.20) The rights of legation have been recognized by, (1) and reciprocally extended to, (2) Turkey, Persia, Egypt, and the State of Barbary. (3) The independence and integrity of the Ottoman Empire have been long regarded as forming essential elements in the European balance of power, and, as such, have recently become the objects of conventional stipulations between the Christian States of Europe and the Empire, which may be considered as bringing it within the pale of the public law of the former.(p.21) The same remark may be applied to the recent diplomatic transactions between the Chinese Empire and the Christian nations of Europe and America, in which the former has been compelled to abandon its inveterate anti-commercial and anti-social principles, and to acknowledge the independence and equality	惟不如各国之律法、禁令详细， 凭国势以行， 赖有司以断之者也。 然而吾侪之化， 本乎耶稣之教而渐兴， 令我以此公法待天下万国， 无论其崇奉何教， 无论其以是待我与否。" 赛氏此说是也， 亦可以迩来之事证之。盖 欧罗巴、亚美利加诸国奉耶稣之教者， 与亚细亚、阿非利加之回回等国， 交际往来，(↑) 彼虽教化迥异，亦屡弃自己之例 而从吾西方之公法。 即如土耳其、波斯、埃及、巴巴里诸国，(3) 近遵通使之例，(1) 而与我互相遣使也。(2) 欧罗巴诸国，常以土耳其之自主不分裂与均势之法［双行小字：所谓均势之法者，乃使强国均平其势，不恃以相凌，而弱国赖以获安焉，实为大平之要术也。］ 大有相关，故与土国互相公议盟约， 土国因而服欧罗巴之公法也。 欧罗巴、亚美利加诸国奉耶稣之教者，与中国迩来亦共议和约， 中国既弛其旧禁与各国交际往来，

of other nations (↓) in the mutual intercourse of war and peace.	无论平时、战时， 要皆认之为平行自主之国也。（↑）
11. Definition of international law. International law, (↓) as understood among civilized nations, may be defined as consisting of those rules of conduct which reason deduces, (1) as consonant to justice, (2) from the nature of the society, existing among independent nations; (3) with such definitions and modifications as may be established by general consent.	**第十一节　公法总旨** 服化之国 所遵公法条例，（↑） 分为二类： 以人伦之当然， 诸国之自主，(3) 揆情度理，(1) 与公义相合者，一也；(2) 诸国所商定辨明， 随时改革 而共许者，二也：
12. Sources of international law. The various sources of international law in these different braches are the following: --- 1. Text writers of authority, showing what is the approved usage of nations, or the general opinion respecting their mutual conduct, with the definitions and modifications introduced by general consent. (p.22) Without wishing to exaggerate the importance of these writers, or to substitute, in any case, their authority for the principles of reason, it may be affirmed that they are generally impartial in their judgment. They are witnesses of the sentiments and usages of civilized nations, and the weight of their testimony increases (1) every time that their authority is invoked by statesmen, (2) and every year that passes without the rules laid down in their works being impugned by the avowal of contrary principles. (3) 2. Treaties of peace, alliance, and commerce declaring, modifying, or defining the preexisting international law. What has been called the positive or practical law of nations (↓) may also be inferred from treaties;	**第十二节　公法源流** 万国之公法，其原有六： 有名之公师 辨正诸国之常例， 褒贬诸国相待之是非， 并其随时详辨改革而共许者也。 此公师之论， 固不可废弃人心情理而混从之， 然其论事大抵秉公而不偏倚也。 各国之公师，可证各国所信所行也， 若历代无人辟其说，(3) 而后世各国之君相每引之为权衡，(2) 故其书愈加重贵。(1) 各国会盟立约并通商章程， 或改革、或申明、 或辨正以前之公法。 盖观其盟约， 可知各国所行之公法。（↑）

for though one or two treaties, varying from the general usage and custom of nations, cannot alter the international law, yet an almost perpetual succession of treaties, establishing a particular rule, will go very far towards proving what that law is on a disputed point. (p.22-23)	虽其盟约 有一二与诸国之常例异者， 不得因而改废公法之条。 若历代盟约 皆从同规， 则几为确据， 以正公法之义矣。
Some of the most important modifications and improvements in the modern law of nations have thus originated in treaties. “Treaties,” says Mr. Madison, “may be considered under several relations to the law of nations, according to the several questions to be decided by them.”	迩来公法所有改革之大端， 多出于盟约。 美国公师马的逊云:“盟约之与公法如何? 必视所论之事而定也。
“They may be considered as simply repeating or affirming the general law; they may be considered as making exceptions to the general law, which are to be a particular law between the parties themselves; they may be considered explanatory of the law of nations on points where its meaning is otherwise obscure or unsettles, in which they are, first, a law between the parties themselves, and next, a sanction to the general law, (↓) according to the reasonableness of the explanation, and the number and character of the parties to it; lastly, treaties may be considered a voluntary or positive law of nations.”	或重申以固公法， 或改公法之常经。 意见相同，从权而别创一法 于立约之国， 或辨明公法未明之处， 则不但为法于立约之国， 且以其解说之情理 与夫人品之郑重， 而公法因之愈固，（↑） 是即诸国共议而立之公法也。”
4. Ordinances of particular States, prescribing rules for the conduct of their commissioned cruisers and prize tribunals (p.23)	各国所定章程，以训示巡洋之水师，并范围其司海法院（双行小字：或作“战利法院”）。
5. The marine ordinances of a State may be regarded, not only as historical evidences of its practice with regard to the rights of maritime war, but also as showing the views of its jurist with respect to the rules generally recognized as conformable to the universal law of nations. The usage of nations, which constitutes the law of nations,	盖航海之章程， 可以证 各国海战常例， 并其公师所视何等条例， 与通行之公法为相合者。 依诸国之常行 及现今之公法，

has not yet established an impartial tribunal for determining the validity of maritime captures. (p. 23) Each belligerent State refers the jurisdiction over such cases to the courts of admiralty established (↓) under its own authority within its own territory, with a final resort to a supreme appellate tribunal, under the direct control of the executive government. The rule by which the prize courts thus constituted are bound to proceed in adjudicating such cases, is not the municipal law of their own country, but the general law of nations, and the particular treaties by which their own country is bound to other States. They may be left to gather the general law of nations from its ordinary sources in the authority of institutional writers; (↑) or they may be furnished with a positive rule by their own sovereign, in the form of ordinances, framed according to what their compilers understood to be the just principles of international law. The theory of these ordinances is well explained by an eminent English civilian of our own times. "When," says Sir William Grant, "Louis XIV published his famous ordinance of 1681, nobody thought that he was undertaking to legislate for Europe, merely because he collected together and reduced into the shape of an ordinance the principles of marine law as then understood and received in France. (p. 24)" I say as understood in France, for although the law of nations ought to be the same in every country, yet as the tribunals which administer the law are wholly independent of each other, it is impossible that some differences should not take place in the manner of interpreting and administering it in the different countries which acknowledge its authority. (p. 24)	尚未设有统理之法院，秉公不偏， 以断海案。 是以战者各自即有战利法院， 凭本国之权 在本国之疆内， 专司此等公案。(↑) 或有不服其所断者，即可上控于君而听其直断。 战利法院审此等案， 不按本国之律法， 乃按诸国之公法， 并本国与他国所立之盟约。 或任听法院稽察公师所论(↓) 而得公法可也， 或本国之君另定章程以示之亦可也。 然此章程，务执公法之真义而行纂定。 英国公师戈兰得论此云： "法国君主路易十四颁下《航海章程》， 人不料其制法于欧罗巴一洲， 但以其纂辑法国所明、所从海法之例， 以为本国之章程也。余只言法国所明、所从者， 盖公法虽不当随处变易， 然司公法者 各系自主，两不相倚， 不免有行之不同而解之互异也。

Whatever may have been since attempted it was not, at the period now referred to,	彼时
supposed that one State could make or alter the law of nations,	未闻一国能改革诸国之公法。
but it was judged convenient to establish certain principles of decision,	惟定此章程
partly for the purpose of giving a uniform rule to their own courts,	与本国之法院早为权衡，
and partly for the purpose of apprising neutrals what that rule was. (p.24)	而于局外者，并早为明告。
The French courts have well and properly understood (↓)	
the effect of the ordinances of Louis XIV.	此章程之如何有权，
	法国法院未尝不知，(↑)
They have not taken them as positive rules binding upon neutrals;	盖不强令局外者服之，
	惟断案时，(↓)
but they refer to them as establishing legitimate presumptions, from which they are warranted to draw the conclusion, which it is necessary for them to arrive at,	必申明其事，而即引此以为纲领也。”
before they are entitled to pronounce a sentence of condemnation." (↑)	
4. The adjudications of international tribunals, such as boards of arbitration and courts of prize.	一、各国所审断公案，即国使会同息争端，与法院审战利也。
As between these two sources of international law,	夫二者之间，
greater weight is justly attributable to the judgments of mixed tribunals, appointed by the joint consent of the two nations between whom they are to decide,	以两国公使即国使也会同断案为重。
than to those of admiralty courts established by	盖战利法院专恃一国之势，
and dependent on the instructions of one nation only.	而奉一国之命也。
5. Another depository of international law is to be found in the written opinions of official jurists,	一、法师论事
given confidentially to their own governments.	而寄秘书于本国也。
Only a small portion of the controversies which arise between States become public.	诸国交际而心怀不平，非遽两相公论也。
Before one State requires redress from another, for injuries sustained by itself, or its subjects,	盖此国若有所讨索于彼国。
it generally acts as an individual would do in a similar situation.	总效庶人之控告，
It consults its legal advisers,	先请法师平理
and is guided by their opinion to the law of the case.	而后行。
Where that opinion has been adverse to the sovereign client, and has been acted on,	若法师以己之君为非，

and the State which submitted to be bound by it was more powerful than its opponent in the dispute, we may confidently assume that the law of nations, such as it was then supposed to be, has been correctly laid down. The archives of the department of foreign affairs of every country contain a collection of such documents, the publication of which could form a valuable addition to the existing materials of international law.(p.25) 6. The history of the wars, negotiations, treaties of peace, and other transactions relating to the public intercourse of nations, may conclude this enumeration of the sources of international law.	其君之势虽较彼国更大，犹服法师之断， 则可谓 当时之公法秉公而断也。 此等秘卷一书，各国之外国部多有存积， 若著于卷册， 则于公法之学稗益必不浅也。 一、史鉴 听记 各国交战 及和约公议等情， 为公法来原之第六。

PART I. C.2 Chapter II. Nations and Sovereign States.	第二章 论邦国自治、自主之权
1. Subjects of international law. The peculiar subjects of international law （↓） are Nations, and those political societies of men called States.	第一节 公法所论 人成群立国， 而邦国交际有事， 此公法之所论也。（↑）
2. Definition of a State Cicero, and, after him, the modern public jurists, （↓） define a State to be, a body politic, or society of men, united together for the purpose of promoting their mutual safety and advantage by their combined strength. This definition cannot be admitted as entirely accurate and complete, unless it be understood with the following limitations:--- 1. It must be considered as excluding corporation, public or private, created by the State itself, under whose authority they exist, whatever may be the purposes for which the individuals composing such bodies politic, may be associated. Thus the great association of British merchants incorporated, first, by the crown, and afterwards by Parliament, for the purpose of carrying on trade to the East Indies, could not be considered as a State, （↓） even whilst it exercised the sovereign powers of war and peace in that quarter of the globe without the direct control of the crown, and still less can it be so considered since it has been subjected to that control. Those powers are exercised by the East India Company in subordination to the supreme power of the British empire, the external sovereignty of which is represented by the company towards the native princes and people,	第二节 何者为国 得哩云： “所谓国者， 惟人众 相合， 协力相护 以同立者也。” 今之公师亦从其说，（↑） 然犹属未尽而必限制之者， 其端有四： 一、当除民间大会 凭国权而立者， 无论其何故而立也。 即如英国昔有客商大会， 奉君命而立， 得国会申命， 为通商东印度等处。 此商会前虽行自主之权，在东方或战或和， 不待问于君， 尚不得称为一国，（↑） 况后每事必奉君命乎： 盖此商会之行权 全凭本国之权， 惟交际印度诸国之君民，则商会代本国而行，

whilst the British government itself represents the company towards other foreign sovereigns and States. 2. Nor can the denomination of a State be properly applied to （↓） voluntary associations of robbers or pirates, the outlaws of other societies, although they may be united together for the purpose of promoting their own mutual safety and advantage. 3. A State is also distinguishable from （↓） an unsettled horde of wandering savages not yet formed into a civil society. The legal idea of a State necessarily implies that of the habitual obedience of its members to those persons in whom the superiority is vested, and of a fixed abode, and definite territory belonging to the people by whom it is occupied. A State is also distinguishable from a Nation, since the former may be composed of different races of men, all subject to the same supreme authority. Thus the Austrian, Prussian, and Ottoman empires, are each composed of a variety of nations and people. （↑） So, also, the same nation or people may be subject to several States, as is the case with the Poles, subject to the dominion of Austria, Prussia, and Russia, respectively.	其于他国所有之事则本国为之经理。 一、盗贼为邦国所置于法外者， 虽相依同护得立， 亦不得称为一国。（↑） 蛮夷流徙无定所，往来无定规， 亦不为国。（↑） 盖为国之正义 无他， 庶人行事常服君上， 居住必有定所， 且有地土、疆界归其自主，此三者缺一即不为国矣。 有时同种之民相护得存，（↓） 犹不成为国也。 盖数种人民 同服一君者有之， 即如奥地利、普鲁士、土耳其三国是也； 一种人民分服数君者亦有之， 即如波兰民分服奥、普、俄三国是也。
3. Sovereign princes the subjects of international law. Sovereign princes may become the subjects of international law, in respect to their personal rights, or rights of property, growing out of their personal relations with States foreign to those over whom they rule, or with the sovereigns or citizens of those foreign States. These relations give rise to that branch of the science which treats of the rights of sovereigns in this respect.	**第三节　君身之私权** 君之私权有时归公法审断， 即如国君私自置买、继续基业等权。 或与他国之君民有关涉者， 则公法中有一派专论此等权利也。

4. Individuals, or corporations, the subjects of international law	**第四节 民人之私权**
Private individuals, or public and private corporations may in like manner, incidentally,	民人与民间之会，无论公私，
become the subjects of this law in regard to rights growing out of their international relations with foreign sovereigns and states, or their subjects and citizens.	有时亦同归公法审断，盖有权利与他国君民有关涉也。
These relations give rise to that branch of the science which treats of what has been termed private international law,	公法即有一派专论人民之私权，
and especially of the conflict between the municipal laws of different States.	并各国之律法有所不合者，
The terms sovereign and state used synonymously, or the former used metaphorically for the latter.	**君国通用**
But the peculiar objects of international law, are those direct relations which exist between nations and states.	然公法之主脑即诸国之互交直通也。
Where, indeed, the absolute or unlimited monarchical form of government prevails in any State,	若君权无限，
the person of the prince is necessarily identifies with the State itself:	则君身与国体无别。
l' Etat c'est moi.	法国路易十四所谓“国者，我也”，
Hence the public jurists frequently use the terms sovereign and state as synonymous.	此公法之所以君国通用也。
So also the term sovereign is sometimes used in a metaphorical sense merely to denote a state,	然此二字之通用，不拘于法度。
whatever may be the form of its government,	盖无论
whether monarchical,	其国系君主之、
or republican,	系民主之，
or mixed.	无论其君权之有限；无限者，皆借君以代国也。
5. Sovereignty defined.	**第五节 主权分内外**
Sovereignty is the supreme power by which any State is governed.	治国之上权，谓之主权。
This supreme power may be either internally	此上权或行于内，
or externally.	或行于外。
Internal sovereignty	
Internal sovereignty	行于内，
	则依各国之法度，(↓)
is that which is inherent in the people of any State,	或寓于民，
or vested in its ruler,	或归于君，
by its municipal constitution or fundamental laws,(↑)	
droit public interne,	论此者尝名之为“内公法”，
but which may more properly be termed	但不如称之为“国法”

constitutional law.	也。
External sovereignty	
External sovereignty	主权行于外者，
consists in the independence of one political society,	即本国自主
in respect to all other political societies.	而不听命于他国也，
It is by the exercise of this branch of sovereignty that(↓)	
the international relations of one political society	各国
are maintained, (↓)	
in peace and in war, with all other political societies.	平战、交际
	皆凭此权，(↑)
The law by which it is regulated has, therefore, been called external public law, *droit public externe,*	论此者尝名之为“外公法”，
but may more properly be termed international law.	俗称“公法”即此也。
	主权未失国未亡
The recognition of any State by other States, and its admission into the general society of nations, may depend, or may be made to depend, at the will of those other States,	若新立之国，蒙诸国相认，(双行小字：所谓认者，认其为自立自主之国而与之往来也。)
upon its internal constitution or form of government,	迎入大宗与否，悉由诸国情。或视其在内国法，
or the choice it may make of its rulers.	或视其国之君上而定，可也。
But whatever be its internal constitution, or form of government,	至于旧国，则其在内之国法无论何如，
or whoever may be its rulers,	执权者不拘何人，
or even if it be distracted with anarchy, through a violent contest for the government between different parties among the people,	即民间有纷争，
the State still subsists in contemplation of law,	公法视其国犹存。
until its sovereignty is completely extinguished (↓)	
by the final dissolution of the social tie,	必待内乱既甚，
or by some other cause	或外敌征服，
	而致其主权全灭，(↑)
which puts an end to the being of the State.	始视其国为亡矣。
6. Sovereignty, how acquired. (p. 30)	**第六节 在内之主权**
Sovereignty is acquired by a State,	一国之得有主权，
either at the origin of the civil society of which it is composed,	或由众民相合立国，
or when it separates itself from the community of which it previously formed a part,	或分裂于他国
and on which it was dependent.	而自立者，
This principle applies as well to internal as to external sovereignty.	其主权即可行于内外。
But an important distinction is to be noticed, in	其主权行于内者，不须他

this respect, between these two species of sovereignty. The internal sovereignty of a State does not, in any degree, depend upon its recognition by other States.	国认之。
A new State, springing into existence,	盖新立之国，
does not require the recognition of other State to confirm its internal sovereignty.	虽他国未认，亦能自主其内事，
The existence of the State *de facto* is sufficient, in this respect, to establish its sovereignty *de jure*. It is a State because it exists.	有其国即有其权也。
Thus the internal sovereignty of the United States of America was complete (↓)	即如美国之合邦，
from the time they declared themselves "free, sovereign, and independent States," on the 4th of July, 1776.	于一千七百七十六年间出诰云："以后必自主、自立，不再服英国。"
	从此其主权行于内者，全矣。(↑)
It was upon this principle that the Supreme Court determined, in 1808, (1)	故于一千八百零八年间，上法院断曰：(1)
that the several States composing the Union, (2)	"美国相合之各邦，(2)
so far as regards their municipal regulations, (3)	从出诰而后，(5)
became entitled, (4)	就其邦内律法，(3)
from the time when they declared themselves independent, (5)	随即各具自主之全权，(4)(6)
to all the rights and powers of sovereign State, (6)	
and that they did not derive them from concessions made by the British King. (7)	非由英王让而得之也。"(7)
The treaty of peace of 1782,	英国亦于一千七百八十二年间与美国立和约，
contained a recognition of their independence,	惟认其主权自行，
not a grant of it.	并非以此权授之也。
From hence it resulted, that	故出诰而后，
the laws of the several State governments were, from the date of the declaration of independence, the laws of sovereign States,	各邦制律法即是自主者之律法，
and as such were obligatory upon the people of such State from the time they were enacted.	而邦内之民无不当遵行也。
It was added, however, that the court did not mean to intimate the opinion, that even the law of any State of the Union, whose constitution of government had been recognized prior to the 4th of July, 1776, which law had been enacted prior to that period, would not have been equally obligatory.	非言各邦早有之律法，不亦当遵行也。
	在外之主权
The external sovereignty of any State,	至于自主之权行于外者，
on the other hand, may require recognition by other States in order to render it perfect and complete.	则必须他国认之，始能完全。
So long, indeed, as the new State confines its	但新立之国行权于己之疆

action to its own citizens, and to the limits of its own territory, it may well dispense with such recognition. But if it desires to enter into that great society of nations, all the members of which recognized rights to which they are mutually entitled, and duties which they may be called upon reciprocally to fulfill, such recognition becomes essentially necessary to the complete participation of the new State in all the advantages of this society. Every other State is at liberty to grant, or refuse, this recognition, subject to the consequences of its own conduct in this respect; and until such recognition becomes universal on the part of the other States, the new State entitled to the exercise of its external sovereignty as to those States only by whom that sovereignty has been recognized.	内， 则不必他国认之。 若欲人诸国之大宗， 则各国相认， 有权可行，有分当为。 他国若不认之，则此等权利不能同享也。 各国相认与否，均由自主， 且自当其干系也。 诸国之间若有未认之者， 则新立之国行其权于外， 只向所认之国行之可也。
7. Identity of a State The identity of a State consists in its having the same origin or commencement of existence; and its difference from all other States consists in its having a different origin or commencement of existence. A State, as to the individual members of which it is composed, is a fluctuating body; but in respect to the society, it is one and the same body, of which the existence is perpetually kept up by a constant succession of new members. This existence continues until it is interrupted by some change affecting the being of the State. **How affected by internal revolution** If this change be an internal revolution, merely altering the municipal constitution and form of government, the State remains the same; it neither loses any of its rights, nor is discharged from any of its obligations. The habitual obedience of the members of any political society to a superior authority must have once existed in order to constitute a sovereign State. But the temporary suspension of that obedience and of that authority, in consequence of a civil war, does not necessarily extinguish the being of the State, although it may affect for a time its ordinary	**第七节 不因内变而亡** 国之所以为国者，为其同一本也， 而国之与他国有异者，即其本有异也。 一国之人有亡而逝者， 惟其民尚存，而其国无异焉。 若无大变以灭之，则其国历代永存。 若系内变 而徒易国法与制度， 则其国仍一无二， 于其曾享之权利无所失， 于其当守之分亦无所减。 国之初立者，必由民之服君上。 然其因内变暂有不服， 不致其国至于亡也， 但其与他国所有交际之分

relations with other States. **Conduct of foreign States towards another nation involved in civil war.** Until the revolution is consummated, whilst the civil war involving a contest for the government continues, other States may remain indifferent spectators of the controversy, still continuing to treat the ancient government as sovereign, and the government *de facto* as a society entitled to the rights of war against its enemy; or may espouse the cause of the party which they believe to have justice on its side. In the first case, the foreign State fulfills all its obligations under the law of nations; and neither party has any right to complain, (↓) provided it maintains an impartial neutrality. In the latter, it becomes, of course, the enemy of the party against whom it declares itself, and the ally of the other; and as the positive law of nations makes no distinction, in this respect, between a just and an unjust war, the intervening State becomes entitled to all the rights of war against the opposite party. **Parties to civil war entitled to rights of war against each other.** If the foreign State professes neutrality, it is bound to allow impartially to both belligerent parties the free exercise of those rights which war gives to public enemies against each other; such as the right of blockade, and of capturing contraband and enemy's property. But the exercise of those rights, on the part of the revolting colony or province against the metropolitan country, may be modified by the obligation of treaties previously existing between that country and foreign States.	或暂有变耳。 **他国或旁观或相助** 其内变未成， 民间尚争国势， 则他国或旁观不与其事， 仍以国主视其旧君； 或视其叛民为俨然一国， 可享交战之权利， 或二者之间择其理直者而助之也可。 若旁观不与， 则外国必成其公法之分。 而其置身局外，守中不偏。 在战者彼此不得以为冤；(↑) 若择其理直者而助之，即为此之友而彼之敌也。 诸国之公法， 不审战者理之曲直， 助之之国攻敌，即可享交战之权利。 **争者皆得战权** 若他国置身局外， 必当守中不偏，而听凭战者相攻， 彼此俱用一切交战权利， 如封港、捕拿、禁物、敌货等类。 但叛民或属国攻本国，其得用此权利与否， 必视其本国与外国早立之盟约如何而定。
8. Identity of a State, how affected by external violence. If, on the other hand, the change be effected by external violence, as by conquest confirmed by treaties of peace,	**第八节 外敌致变** 若其国遭外凌而致变，即如被敌征服， 而后有和约以坚其事，

its effects upon the being of the State are to be determined by the stipulations of those treaties. The conquered and ceded country may be a portion only, or the whole of the vanished State. If the former, the original State still continues; if the latter, it ceases to exist. In neither case, the conquered territory may be incorporated into the conquering State as a province, or it may be united to it as a coordinate State with equal sovereign rights.	则其国之存亡如何?必视此和约之章程而断也。 征服而后，推让之地或系全国，或系数分。 若数分则本国尚存; 若全国,则国亡矣。 或全国，或数分， 既被征服，并合于服之之国， 或作藩属服其管辖， 或平行相合同享主权。
9. By the joint effect of internal and external violence confirmed by treaty Such a change in the being of a State may also be produced by the conjoint effect of internal revolution and foreign conquest, subsequently confirmed, or modified and adjusted by international compacts. Thus the House of Orange was expelled from the Seven United Provinces of the Netherlands, in 1797, in consequence of the French Revolution and the progress of the arms of France, and a democratic republic substituted in the place of the ancient Dutch constitution. At the same time the Belgic provinces, which had long been united to the Austrian monarchy as a coordinate State, were conquered by France, and annexed to the French republic by the treaties of Campo Formio and Luneville. On the restoration of the Prince of Orange, in 1813, he assumed the title of Sovereign Prince, and afterwards King of the Netherlands; and by the treaties of Vienna, the former Seven United Provinces were united with the Austrian Low Countries into one State, under his sovereignty. Here is an example of two States incorporated into one, so as to form a new State, the independent existence of each of the former States entirely ceasing in respect to the other; whilst the rights and obligations of both still continue in respect to other foreign States, except so far as they may be affected by the compacts creating the new State. In consequence of the revolution which took place	**第九节 内变外敌并至** 此等大变与国之存亡相涉者， 或系内叛外征并至而后有盟约， 以坚固改革之也。 即如一千七百九十七年间，荷兰七省有变， 法国征之而其王家黜焉， 于是易其国法而改作民主之国。 比利时诸省久与奥国平行相合， 维时被法征服， 后有盟约将其地归于法国。 十六年后荷兰王家复位， 初称主公， 后称荷兰王， 即有盟约将其七省与比利时诸省合为一国， 归其所治， 此乃两国合而为一新国也。 若彼此相待之分，则俱系全亡。 至其与他国往来之分，则二国可谓犹存，惟被其定立新国之盟约所改革而已。 至一千八百三十年，比利

in Belgium, in 1830, this country was again severed from Holland, and its independence as a separate kingdom acknowledged and guaranteed by the five great powers of Europe, ---- Austria, France, Great Britain, Prussia, and Russia. Prince Leopold of Saxecobourg having been subsequently elected king of the Belgians by the national Congress, the terms and conditions of the separation were stipulated by the treaty concluded on the 15th of November, 1831, between those powers and Belguim, which was declared by the conference of London to constitute the invariable basis of the separation, independence, neutrality, and state of territorial possession of Belgium, (↑) subject to such modifications as might be the result of direct negotiation between that kingdom and the Netherlands. P.33	时叛而与荷兰复分， 欧罗巴五大国即奥、法、英、普、俄皆认之为自主自立， 后比利时国会公举留波尔多为王， 于时与五大国立约，定分立之章程。 五大国之公使会于英都，公议出诰云： “此约即为比利时分立，永不变之章程。 断其疆界，(↓) 定其自主， 并其永守局外之分。 非比利时与荷兰自行公议，则于此不得改移。”
10. Province or colony asserting its independence, how considered by other foreign States. If the revolution in a State be effected by a province or colony shaking off its sovereignty, (1) so long as the independence of the new State is not acknowledged by other powers, (2) it may seem doubtful, (3) in an international point of view, (4) whether its sovereignty can be considered as complete, (5) however it may be regarded by its own government and citizens. (6) It has already been states, that (↓) whilst the contest for the sovereignty continues, and the civil war rages, other nations may either remain passive, allowing to both contending parties all the rights which war gives to public enemies; or may acknowledge the independence of the new State, forming with it treaties of amity and commerce; or may join in alliance with other party against the other.	**第十节 省部叛而自立** 国内遭省部叛君自立，(1) 若他国未认新立之国，(2) 则依公法论之， (4) 其主权虽行于民间， (6) 究系全妥与否， (5) 有可议也。 (3) 民间战争未息， 他国或旁观不与， 听战者彼此俱用交战之权利， 或认新立之国为自主， 与之立友谊并通商之约， 或会盟助此以攻彼， 上已略言。(↑)

In the first case, neither party has any right to complain （↓） so long as other nations maintain an impartial neutrality, and abide the event of the contest.	若 旁观不与，守中不偏， 静待战毕， 则彼此俱无町怨。（↑）
The two last cases involve questions	**未认而行主权** 若认新国，或助此以攻彼，则其理之何如，
which seem to belong rather to the science of politics than of international law; but the practice of nations,	揆之于公法，不如度之于国政也。 此等疑案，虽无定例以释之， 然犹可据诸国之常行以发明之也。
if it does not furnish an invariable rule for the solution of these questions, will, at least, shed some light upon them. The memorable examples of the Swiss Cantons and of the Seven United Provinces of the Netherlands,	间有二端最可以为鉴者， 即瑞士、荷兰也。 瑞士诸邦、荷兰七省，
which so long levied war, concluded peace, contracted alliances, and performed every other act of sovereignty, before their independence was finally acknowledged, （↑） ----that of the first by the German empire, and that of the latter by the Spain, ---- go far to show the general sense of mankind on this subject.	虽他国未认其自主，（↓） 彼则历年行其自主之权，交战、讲和、会盟等情。 瑞士竟蒙日耳曼国认之，荷兰竟蒙西班牙认之。
The acknowledgement of the independence of the United States of America by France, coupled with the assistance secretly rendered by the French court to the revolted colonies, was considered by Great Britain as an unjustifiable aggression, and under the circumstances, it probably was so.	**他国有先认者** 美国绝英自立之时，法国认之并暗助之， 此英国以为不公于己。 就事论之，法国之行实有不妥。
But had the French court conducted itself with good faith, and maintained an impartial neutrality between the two belligerent parties, it may be doubted whether the treaty of commerce, or even the eventual alliance between France and the United States, could have furnished any just ground for a declaration of war against the former by the British government.	然使法国行事有信， 置身局外，守中不偏， 其后虽与美国立约通商，会盟相助， 未必即启英国交战之端。
The more recent example of the acknowledgement of the independence of the	迩来 西班牙在亚美利加之属部

Spanish American provinces by the United States, Great Britain, and other powers, whilst the parent country still continued to withhold her assent, (↑) also concurs to illustrate the general understanding of nations, that where a revolted province or colony has declared and shown its ability to maintain its independence, the recognition of its sovereignty by other foreign States is a question of policy and prudence only. **Recognition of its independence by other foreign States.** This question must be determined by the sovereign legislative or executive power of these other States, and not by any subordinate authority, or by the private judgment of their individual subjects. Until the independence of the new State has been acknowledged, either by the foreign State where its sovereignty is drawn in question, or by the government of the country of which it was before a province, courts of justice and private individuals are bound to consider the ancient state of things as remaining unaltered.	叛而自立， 西班牙固辞不认，（↓） 而美、英并他国皆认之。 以是观之， 有一国之省部叛而自护自立，若能自主， 则他国认其自主与否， 惟问其于己之国政有益与否，此乃诸国之同意也。 **应认与否惟上权自定** 至于认新立之国，其有益、无益， 必有制法、 行法之权始能定之， 臣民均不足断也。 若从前所属之国尚未认之， 且某国若未认之， 则某国之法院并其民人必须由旧而行。
11. International effects of a change in the person of the sovereign or in the internal constitution of the State. The international effects produced (↓) by a change in the person of the sovereign or in the form of government of any State, may be considered:---- I. As to its treaties of alliance and commerce. II. Its public debts. III. Its public domain and private rights of property. IV. As to wrongs or injuries done to the government or citizens of another State. **Treaties** I. Treaties are divided by the text writers into *personal* and *real*. The former relate exclusively to the persons of the	**第十一节　易君变法** 邦国易君主、变国法之时， 其于公法如何，（↑） 可论有四： 会盟通商之约，一也； 国债，二也； 国土民产；三也； 他国被害并他国人民受屈，四也。 **于盟约如何** 一、公师论盟约有二种， 曰君约，曰国约。 “君约”者， 专指君之身家而言，

contracting parties, such as family alliances and treaties guaranteeing the throne to a particular sovereign and his family. They expire, of course, on the death of the king or the extinction of his family. The latter relate solely to the subject-matters of the convention, independently of the persons of the contracting parties. They continue to bind the State, whatever intervening changes may take place in its internal constitution, or in the persons of its rulers. The State continues the same, (↓) notwithstanding such change, and consequently the treaty relating to national objects remains in force (↓) so long as the nation exists as an independent State. The only exception to this general rule, as to *real* treaties, is where the convention relates to the form of government itself, and is intended to prevent any such change in the internal constitution of the State. The correctness of this distinction between personal and real treaties, laid down by Vattel, has been questioned by more modern public jurists as not being logically deduced from acknowledged principles. Still it must be admitted that certain changes in the internal constitution of one of the contracting States, or in the person of its sovereign, may have the effect of annulling preexisting treaties between their respective governments. The obligation of treaties, by whatever denomination they may be called, is founded, not merely upon the contract itself, but upon those mutual relations between the two States which may have induced them to enter into certain engagements. Whether the treaty be termed real or personal, it will continue (↓) so long as these relations exist. The moment they cease to exist, by means of a change in the social organization of one of the contracting parties,	即如保其身家在位，并和亲等情， 若君崩家灭，则此约自废矣。 “国约”者， 专指所议之事而言， 在其事不在其人。 虽易君主、变国法，其约仍存而无碍焉。 即有变易， 其国犹存，(↑) 其自主之权亦存， 故其约亦应历久不废也。(↑) 若其所立之约专系防国法之变，既变之后其约自废矣。 盟约分此二种本于发得耳， 迩来公师多有评之者， 谓其于理有不合也。 然国之易君主、变国法者， 有时亦致其约可废。 盖约之行， 无论名为何等之约， 不尽在约之具文，而在两国所以立约之故也。 无论称之为君约、国约， 其立约之故尚在， 其约即应存焉。(↑) 即如此国内变，

of such a nature and of such importance as would have prevented the other party from entering into the contract had he foreseen this change, the treaty ceases to be obligatory upon him.	至于此极，使彼国若能预知， 必不立约， 是既无立约之故，即不必遵约而行也。
Public debts II. As to public debts ---- whether due to or form the revolutionized State --- a mere change in the form of government, (↓) or in the person of the ruler,	**於国债如何** 二、就国债而论之， 无论其国负欠于人， 或人负欠于其国， 虽后易君主、变国法，(↑)
does not affect their obligation. The essential form of the State, that which constitutes it an independent community, remains the same; its accidental form only is changed. The debts being contracted in the name of the State, by its authorized agents, for its public use, the nation continues liable for them, (↓) notwithstanding the change in its internal constitution. The new government succeeds to the fiscal rights, and is bound to fulfill the fiscal obligations of the former government.	均与欠款无涉也。 盖其国犹然自主， 则其国体仍在， 所变者其迹，非其体也。 其公使代国借此欠款， 以资公用， 故其国法虽有内变， 但其国未亡， 则此债必偿。(↑)
It becomes entitled to the public domain and other property of the State, and is bound to pay its debts previously contracted.	盖新君既续旧君征收之权， 必当任旧君负欠之款；国土公业皆归新君管辖，故其国之所负欠者亦归其偿还，以昭公允。
Public domain and private rights of property III. As to the public domain and private rights of property. If the revolution be successful, and the internal change in the constitution of the State is finally confirmed by the event of the contest, the public domain passes to the new government; but his mutation is not necessarily attended with any alternation whatever in private rights of property. It may, however, be attended by such a change: it is competent for the national authority to work a transmutation, total or partial, of the property belonging to the vanquished party; and if actually confiscated, the fact must be taken	**于国土、民产如何** 三、就国土、民产论之， 内变既成， 国法既改， 则国土归新君管辖。 但国虽易主，与民产未必有涉， 非谓其必无涉也， 盖叛民之败事者，新君有权即可将其产入公。 果如是严行，与公法非不

for right. But to work such a transfer of proprietary rights, some positive and unequivocal act of confiscation is essential. If, on the other hand, the revolution in the government of the State is followed by a restoration of the ancient order of things, both public and private property, not actually confiscated, revert to the original proprietor on the restoration of the legitimate government, as in the case of conquest they revert to the former owners, on the evacuation of the territory occupied by the public enemy. The national domain, not actually alienated by any intermediate act of the State, returns to the sovereign along with the sovereignty. Private property, temporarily sequestered, returns to the former owner, as in the case of such property recaptured from an enemy in war on the principle of the *jus postliminii*. But if the national domain has been alienated, or the private property confiscated by some intervening act of the State, the question as to the validity of such transfer becomes more difficult of solution. Even the lawful sovereign of a country may, or may not, by the particular municipal constitution of the State, (↓) have the power of alienating the public domain. The general presumption, in mere internal transactions with his own subjects, is, that he is not so authorized. But in the case of international transactions, where foreigners and foreign governments are concerned, the authority is presumed to exist, (1) and may be inferred from the general treaty-making power, (2) unless there be some express limitation in the fundamental laws of the State. (3) So, also, where foreign governments and their subjects treat with the actual head of the State, or the government *de facto*, recognized by the acquiescence of the nation,	合， 然将民产易主， 先当显然入公，按例而行也。 倘变后又变而复旧政， 则公业、私产 未曾入公者 应复归原主， 与他国征服其地而后经退出之例同。 其公地未凭国权而让于人， 迨国权既复于旧君，则公地亦应同归于旧君。 民产暂据者复归原主， 与战时被敌人捕获而后经夺还之例同。 至公地凭国权而让于人， 民产凭国权而入公者， 则夫该地、该货之新主能坚守与否，非易断也。 治国之真主， 有权以推让公地与否， 必视其国法而定。(↑) 就己民而论则无之， 就他国而论则有之矣。 盖君如非为国法所限，(3) 既有权以立约，(1) 则让地之权亦隐括其中矣。(2) 若他国或他国之民， 有向其国所认之伪主

for the acquisition of any portion of the public domain or of private confiscated property,	售买公地及入公之民产，
the acts of such government must, on principle, be considered valid by the lawful sovereign (1)	真主既复，(2)
on his restoration, (2)	后虽视彼为叛逆，(3)
although they were the acts of him who is considered by the restored sovereign as an usurper. (3)	犹不能废其所行变卖等事。(1)
On the other hand, it seems that such alienations of public or private property to the subjects of the State,	若公地民产系从前已赐与己之民，
may be annulled or confirmed, (↓)	
as to their internal effects,	则为内事，
at the will of the restored legitimate sovereign,	而真主既复后，
	共事或准或废，(↑)
guided by such motives of policy as may influence his counsels,	惟问其合于君意，符于国政与否。
reserving the legal rights of *bone fidei* purchasers	若将产业复于原主，而此业实系价买，
under such alienation to be indemnified for ameliorations. (p. 43)	君必偿其价，并偿其费。
Where the price or equivalent of the property sold or exchanged has accrued to the actual use and profit of the State,	若该产卖价已归公用，
the transfer may be confirmed,	则君可允其事，
and the original proprietors indemnified out of the public treasury,	发帑赔偿原主。
as was done	即如
in respect to the lands of the emigrant French nobility,	乾隆年间法国民叛，
confiscated and sold, (↓)	
during the revolution.	弒其君而改其国法，废其世家。其世袭之人逃至国外，
	而法人将其产业入公。(↑)嗣于嘉庆年间旧朝复辟，遂不将已卖之产向售主索还，以归原主，乃发帑而偿之，盖此故也。
So, also, the sales of the national domains situate in the German and Belgian provinces, united to France during the revolution, and again detached from the French territory by the treaties of Paris and Vienna in 1814 and 1815, or in the countries composing the Rhenish confederation in the kingdom of Italy, and the Papal States,	彼时法国征服日耳曼、普鲁斯、意大里等国，将其公地入公变卖，
were, in general, confirmed by these treaties, by the Germanic Diet, or by the acts of the respective restored sovereigns.	其后各国原主复位，多不索还被卖之地，而和约内，特坚买主之权，亦此意也。
But a long and intricate litigation ensued before the Germanic Diet,	然其间有因而兴讼者，

in respect to the alienation of the domains in the countries composing the kingdom of Westphalia.	盖法国曾割据黑西、本瓦、普鲁斯三国之土地，而合为一小国。
The Elector of Hesse Cassel and the Duke of Brunswick refused to confirm these alienations in respect to their territory,	三国之君，内有二君，不愿允前君卖地之事。
whilst Prussia, which power had acknowledged the King of West-phalia,	惟普国一君允之。
also acknowledged the validity of his acts in the countries annexed to the Prussian dominions by the treaties of Vienna.	盖前已认小国之君，故不得不允其所行也。
IV. As to wrongs or injuries done to the government or citizen of another State;	**於他国被害者如何** 四、就他国被害，并他国之民受屈沦之，
--- it seems, that, on strict principle, the nation continues responsible to other States for the damages incurred for such wrongs or injuries, (↓)	
notwithstanding an intermediate change in the form of its government, or in the persons of its rulers.	虽曾易君主、变国法，
This principle was applied in all its rigor(↓)	其责任理无旁贷也。(↑)
by the victorious allied powers in their treaties of peace with France in 1814 and 1815.	即如一千八百卜四五年间，诸盟邦与法国交战， 既胜后，依此例从严向法国讨索赔偿。(↑)
More recent examples of its practical application have occurred (↓)	
in the negotiations between the United States and France, Holland, and Naples, relating to the spoliations committed on American commerce under the government of Napoleon and the vassal States connected with the French empire.	迩来美国以商人所受之害，向法郎西、荷兰、那不勒斯讨索。
The responsibility of the restored government of France for those acts of the preceding ruler was hardly denied by it, even during the reigns of the Bourbon kings of the elder branch, Louis XVIII. And Charles X.; and was expressly admitted by the present government (Louis Philippe' s) in the treaty of indemnities concluded with the United States, in 1831.	亦从此例也。(↑) 彼时此二国听命于拿破仑第一，法国既复于前朝，其君以拿破仑所行难以推诿，即明认之，与美国立约，而偿其害焉。
The application of the same principle to the measures of confiscation adopted by Murat in the kingdom of Naples was contested by the restored government of that country;	那不勒斯旧君既复，本欲以前君所行推诿，
but the discussions which ensued were at last terminated,	迨后与美国立约而偿其害，
in the same manner, by a treaty of indemnities concluded between the American and Neapolitan governments.	与法国同例。

12. Sovereign States defined.	**第十二节 释自主之义**
A sovereign State is generally defined to be any nation or people,	凡有邦国，
whatever may be the form of its internal constitution,	无论何等国法，
which governs itself independently of foreign powers.	若能自治其事而不听命于他国，则可谓自主者矣。
This definition, unless taken with great qualifications,	公师大抵如此而言，
cannot be admitted as entirely accurate.	然此说若无限制，恐贻错误。
Some States are completely sovereign and independent,	盖国之全然自主，
acknowledging no superior but the Supreme Ruler and Governor of the universe.	惟认天地至尊之主宰，不认他主者有之，
The sovereignty of other States is limited and qualified	国之主权被限者亦有之，
in various degrees.	且此中复有等差也。
Equality of sovereign States.	
All sovereign States	就公法而论，自主之国，
are equal in the eye of international law, (↓)	
whatever may be their relative power.	无论其国势大小，
	皆平行也。（↑）
The sovereignty of a particular State	一国遇事，
is not impaired (↓)	
by its occasional obedience to the commands of other States,	若偶然听命于他国，
or even the habitual influence exercised by them over its councils.	或常请议于他国，
	均与其主权无碍。（↑）
It is only when this obedience, or this influence,	但其听命请议，
assumes the form of express compact,	如已载于约而定为章程，
that the sovereignty of the State, inferior in power, is legally affected by its connection with the other.	则系受他国之节制，而主权自减矣。
Treaties of equal alliance,	凡国不相依附，
freely contracted between independent States,	平行会盟者，
do not impair their sovereignty.	则于其主权无所碍也。
Treaties of unequal alliance,	但其会盟若非平行，
guarantee,	惟立约恃他国保其事、
mediation,	主其议、
and protection,	护其疆等款，
	皆按盟约章程，（↓）
may have the effect of limiting and qualifying the sovereignty	以定其主权之限制。
according to the stipulations of the treaties. (↑)	
13. Semi-sovereign States	**第十三节 释半主之义**
States which are thus dependent on other States,	凡国恃他国

in respect to the exercise of certain rights, essential to the perfect external sovereignty, (↓)	以行其权者，
have been termed semi-sovereign States.	人称之为半主之国。盖无此全权，即不能全然自主也。（↑）
City of Cracow.	
Thus the city of Cracow, in Poland,	即如波兰之戈拉告一城
with its territory,	并其辖下土地，
was declared by the Congress of Vienna	维也纳公使会公议
to be a perpetually free,	立为一国，出告示许其永为自主
independent,	自立
and neutral State,	局外之国，
under the protection of Russia, Austria, and Prussia.	凭俄、奥、普三国之保护也。
By the final act of the Congress of Vienna, Art. 9,	按公使会第九条，
the three great powers, Austria, Russia, and Prussia, mutually engaged to respect,	俄、奥、普三国互相应允，
and cause to be respected, at all times, the neutrality of the free city of Cracow and its territory;	不强犯戈拉告局外之地，并不许他国强犯之。
and they further declared that no armed force should ever be introduced into it under any pretext whatever.	又告诸天下，无论何国兵旅，无论何故，皆不得过戈拉告之疆界。
It was at the same time reciprocally understood and expressly stipulated that	又互相应允，
no asylum or protection should be granted in the free city or upon the territory of Cracow to fugitives from justice, or deserters from the dominions of either of the said high powers,	戈拉告城内、城外，皆不准罪犯逋逃藏匿，
and that upon a demand of extradition being made by the competent authorities,	若他国之有司追讨捕逃之罪犯，
such individuals should be arrested and delivered up without delay under sufficient	戈拉告之官立当捕之，
escort to the guard charged to receive them at the frontier.	护送出疆交还。
United Stated of the Ionian Islands.	
By the convention concluded at Paris on the 5th of November, 1815, between Austria, Great Britain, Prussia, and Russia, it is declared (Art. 1,) that	一千八百十五年间，英、奥、普、俄四国立约于法国之巴勒城，
the islands of Corfu, Cephalonia, Zante, St. Maura, Ithaca, Cerigo and Paxo, with their dependencies, shall form a single, free, and independent State; under the denomination of the United States of the Ionian Islands.	其一条云：“以阿尼诸岛合成一国，自立自主者，名为以阿尼合邦。”
The second article provides that this State shall be placed under the immediate and exclusive protection	第二条云：“此国全赖大英君主并其后代保护。”

of His majesty the King of the United Kingdom of Great Britain and Ireland, his heirs and successors. By the third article it is provided that the United States of the Ionian Islands shall regulate, with the approbation of the protecting power, their interior organization: and to give all parts of this organization the consistency and necessary action, His Britannic Majesty will devote particular attention to the legislation and general administration of those States. (省略P. 47 He will appoint a Lord High commission who shall be invested with the necessary authority for this purpose.)	第三条云： “以阿尼合邦自治其国内之事， 当听其护主答应施行， 大英君主亦当鉴察其制法、行法等情。”
The fourth article declares, that, in order to carry into effect without delay these stipulations, the Lord High Commissioner shall regulate the forms of convoking a legislative assembly, of which he shall direct the operations, in order to frame a new constitutional charter for the State, to be ratified by His Britannic Majesty.	第四条云： “大英钦差驻扎该国，可聚其法会， 以主其议：”
The fifty article stipulated, that, in order to secure to the inhabitants of the United States of the Ionian Islands the advantages resulting from the high protection under which they are placed, as well as for the exercise of the rights incident to this protection, His Britannic Majesty shall have the right of occupying and garrisoning the fortresses and places of the said States. Their military forces shall be under the orders of the commander of the troops of His Britannic Majesty.	第五条云： “以阿尼合邦既蒙此保护， 当任大英君主屯兵于其关口、炮台等处， 其合邦之兵亦归英将之麾下。”
The sixty article provided that a special convention with the government of the United States of the Ionian Islands shall regulate, according to their revenues, the object relating to the maintenance of the fortresses and the payment of the British garrisons, and their numbers in the time of peace. (省略一句P. 47 The same convention shall also ascertain the relations which are to subsist between this armed force and the Ionian government.)	第六条云： “当另设章程， 定护兵之额，与合邦归粮之款。”
The seventh article declares that the merchant flag of the Ionian Islands shall bear, together with the colors and arms it bore previous to 1807, (省略P.47 those which His Britannic Majesty may grant as a sign of the protection under which the United Ionian States are placed; and to give more weight to this protection, all the Ionian ports are declared, as	第七条云： “合邦商船并本国旧旗，亦当统带英旗。”

to honorary and military rights, to be under the British jurisdiction, commercial agents only, or consuls charged only with the care of commercial relations, shall be accredited to the United States of the Ionian Islands; and they shall be subject to the same regulations to which consuls and commercial agents are subject in other independent States.)	
On comparing this act with the stipulations of the treaty of Vienna relating to the republic of Cracow, a material distinction will be perceived between the nature of the respective sovereignty granted to each of these two States.	以是观之，以阿尼自主之权，较之戈拉告相去远矣。
The “free, independent, and strictly neutral city of Cracow”	盖戈拉告
is completely sovereign, （↓）	
though under the protection of Austria, Prussia and Russia;	虽凭奥、普、俄三国之保护， 犹依盟约为自主自立，得谨守局外之国，犹可谓全然自主也。（↑）
whilst the Ionian Islands,	而以阿尼诸岛
although they are to from “a single free and independent State,”	虽云合为一国，自主自立
under the protection of Great Britain,	凭大英保护，
are closely connected with the protecting power both by the treaty itself	然不但依盟约章程与护之之国相附，
and by the constitution framed in pursuance of its stipulations,	且其定法亦必请示于英，
in such a manner as materially to abridge both its internal and external sovereignty.	则其自主之权行于内外者，皆有所减。
In practice,	其实
the United States of the Ionian Islands are not only constantly obedient to the commands of the protecting power,	以阿尼合邦不但听命于英，
but they are governed as a British colony by a Lord high Commissioner named by the British crown,	且有英国钦差驻扎，
who exercise the entire executive, and participates in the legislative power with the Senate and legislative Assembly, under the constitution of the State.)	以统辖其定法行法之权，与英屏藩无异。
Besides the free city of Cracow and the United States of the Ionian Islands,	除此二国外，
several other semi-sovereign or dependent States are recognized	欧罗巴更有半主数国，
by the existing public law of Europe. These are:	为公法所认者，
1. The principalities of Moldavia, Wallachia, and Servia, under the *suzerainele* of the Ottoman Porte and the protectorate of Russia,	即如摩尔达、袜拉几、塞尔维三邦，凭俄国保护而听命于土耳其。
as defined by the successive treaties between	此土、俄历历有约，而定

these two powers, confirmed by the treaty of Andrianople, 1829.	为章程者也。
2. The Principality of Monaco,	摩纳哥为公侯小国，
which had been under the protectorate of France from 1641 until the French revolution was replaced	前凭法国保护，
under the same protection by the treaty of Paris, 1814, art. 3, for which was substituted that of Sardinia by the treaty of Paris, 1815, art.1.	后依巴勒盟约改凭萨尔的尼保护。
3. The Republic of Polizza in Dalmatia under the Protectorate of Austria.	波里萨为民主之小国，凭奥国保护。
4. The former Germanic Empire was composed of a great number of States,	日耳曼国前为多邦相合，
which, although enjoying what was called territorial superiority, (*Landeshoheit*,)	然各邦虽有内治，
could not be considered as completely sovereign,	犹服日耳曼国皇定法、断法之权，（↓）
on account of their subjection to the legislative and judicial power of the emperor and the empire. (↑)	故不得为全然自主也。
These have all been absorbed in the sovereignty of the States (↓)	
composing the present Germanic Confederation,	今则日耳曼并无总统之皇，与前国法不同，惟有数国相联以为治，
with the exception of the Lordship of Kniphausen, on the North Sea,	其半主小国多被自主之国所兼并，（↑）
which still retains its former feudal relation to the Grand Duchy of Oldenburg,	独滨北海之诸侯国一处
and may, therefore, be considered as a semi-sovereign State.	尚率由旧章，听命于俄定堡公，
5. Egypt had been held by the Ottoman Porte, during the dominion of the Mamelukes,	所谓牛主之国焉。
rather as a vassal State than as a subject province.	埃及之国，前为马每路一党占踞揽权，彼时其服土耳其也，
The attempts of Mehemet Ali, after the destruction of the Mamelukes,	似乎藩属，不似省部。
to convert his title as a prince-vassal into absolute independence of the Sultan,	阿里巴沙灭其党后，
and even to extend his sway over other adjoining provinces of the empire,	更不愿以藩属事土耳其，乃欲自立焉，
produced the convention concluded at London the 15th July, 1840, between four of the great European powers, --- Austria, Great Britain, Prussia, and Russia,	不惟如此，犹欲臣服土国附近省部。
---- to which the Ottoman Porte acceded.	为此，英、奥、普、俄四大国公使会于伦敦而定章程，
In consequence of the measures subsequently taken	土国亦允其议。
	于是将埃及一邦归之巴

by the contracting parties for the execution of this treaty, the hereditary Pashalick of Egypt was finally vested by the Porte in Mehemet Ali, and his lineal descendants, on the payment of an annual tribute to the Sultan, as his *suzerain*. All the treaties and all the laws of the Ottoman Empire were to be applicable to Egypt, in the same manner as to other parts of the empire. But the Sultan consented that, on condition of the regular payment of this tribute, the Pasha should collect, in the name and as the delegate of the Sultan, the taxes and imposts legally established, it being, moreover, understood that the Pasha should defray all the expenses of the civil and military administration; and that the military and naval force maintained by him should always be considered as maintained for the service of the State.	沙， 并许其世代相传， 惟令其每年进贡于土王，仍尊之为主。 土国之律法、盟约、章程皆行于埃及， 与他处无异。 土王允许巴沙若每年进贡，如额无缺， 则王应征之税，巴沙即可代王收之。 又其邦内文武俸禄并一切费用，均出自巴沙， 且言定其水陆二师， 常归土国调用。
14. Tributary and vassal States. Tributary States, and States having a feudal relation to each other, are still considered as sovereign, so far as their sovereignty is not affected by this relation. Thus, it is evident that the tribute, formerly paid by the principal maritime powers of Europe to the Barbary States, did not at all affect the sovereignty and independence of the former. So also the King of Naples had been a nominal vassal of the Papal See, even since the eleventh century; but this feudal dependence, abolished in 1818, was never considered as impairing the sovereignty of the kingdom of Naples. **Relations between the Ottoman Porte and the Barbary States** The political relations between the Ottoman Porte and the Barbary States are of a very anomalous character. Their occasional obedience to the commands of the Sultan, accompanied with the irregular payment of tribute, does not prevent them from being considered by the Christina powers of Europe and America as independent States,	**第十四节 进贡藩属所存主权** 进贡之国 并藩邦， 公法就其所存主权多寡，而定其自主之分。 即如 欧罗巴滨海诸国，前进贡于巴巴里时， 于其自立、自主之权并无所碍。 七百年来，那不勒斯王尚有屏藩罗马教皇之名， 至四十年前始绝其进贡， 然不因其屏藩罗马，遂谓非自立自主之国也。 巴巴里之于土国，颇为奇异。 盖其听命既靡常， 其进贡又无定， 故欧罗巴与亚美利加奉教之国， 即未尝不视其为自主之国

with whom the international relations of war and peace are maintained,	也，
on the same footing as with other Mohammedan sovereignties.	因与立和好、交战之议，
During the Middle Age, and especially in the time of the Crusades,	与自主之回回国同例。
they were considered as pirates: *"Bugia ed aligieri, infamy nidi di corsair,"* As Tasso calls them.	中古时，
But they have long since acquired the character of lawful powers,	他国视巴巴里诸邦为贼盗党类，
possessing all those attributes which distinguish a lawful State from a mere association of robbers.	今则依例视为邦国久矣。
"The Algerines, Tripolitans, Tunisians, and those of Salee," says Bynkershoek, "are not pirates,	盖邦国之所以异于贼盗者，巴巴里皆有之。
but regular organized societies, who have a fixed territory and an established government,	宾克舍云："巴巴里各邦非贼盗党类，
with whom we are alternately at peace and at war,	乃俨然为邦国：盖有定地，有法度也。
as with other nations,	吾侪与之交战、讲和，
and who, therefore, are entitled to the same rights as other independent States.	与他国无异，
The European sovereigns often enter into treaties with them,	故当以他国自主之权利归之，
and the States-General have done it in several instances.	诸国之君屡有与立约者，
Cicero defines a regular enemy to be: Qui habet rempublicam, curiam, ararium, consensum et concordiam civium, retionem aliquam, si res ita tulisset, pacis et faderis. (Philip. 4, c. 14.)	即我荷兰亦多有之。"
All these things are to be found among the barbarians of Africa;	得哩《论战》有云："凡有治法、有仓库、有人和，并知盟约之义者，则为敌国，非贼盗也。"
for they pay the same regard to treaties of peace and alliance that other nations do,	得哩所言者，巴巴里人莫不有之，
who generally attend more to their convenience than to their engagements.	并遵和约会盟之义，与他国同。
And if they should not observe the faith of treaties with *the most scrupulous respect*,	他国之遵约，屡从其便，
it cannot be well required of them;	则巴巴里即有不谨信处，
for it would be required in vain of other sovereigns. (↓)	亦难以怪之。
Nay, if they should even act with more injustice than other nations do,	即有较他国更为不义，
they should not, on the account, as Huberus very properly observes, De Jure Civitat. l. iii. c. 5 & 4, n. ult.) lose the rights and privileges of sovereign States. "	他国亦不可因此遂不以自主之权利归之也。（↑）
The political relation of the Indian nations on this continent towards the United States,	美国疆内之红苗，恃美国保护。

is that of semi-sovereign States, under the exclusive protectorate of another power.	而可谓半主者也。
Some of these savage tribes have totally extinguished their national fire,	此苗灭其古火，古火谓历代不绝之火，如中国常明之灯。
and submitted themselves to the laws of the States within whose territorial limits they reside;	全服其所在之邦管辖者有之，
others have acknowledged, by treaty, that they hold their national existence at the will of the State;	立约而全凭与之立约之邦以为存亡者有之，
other retain a limited sovereignty, and the absolute proprietorship of the soil.	全存其地而权犹存数分者亦有之。
The latter is the case with the tribes to the west of Georgia.	若耳治邦之红苗即如此也。
Thus the Supreme Court of the United States determined, in 1831, that,	故于一千八百三十一年间，美国上法院断曰：
though the Cherokee nation of Indians, dwelling within the jurisdictional limits of Georgia,	“红苗住在若邦辖内者，
was not a “foreign State” in the sense in which that term is used in the Constitution,	并非律法所称之外国，
nor entitled, as such, to proceed in that Court against the State of Georgia,	故不得在本法院控告若邦”
yet the Cherokees constituted a *State*, or a distinct political society,	然该苗人俨然为一国，
capable of managing its own affairs and governing itself,	能自治、自主，
and that they had uniformly been treated as such since the first settlement of the country.	从开辟疆地以来，莫不以此权归之。
The numerous treaties made with them by the United States recognize them as a people capable of maintaining the relations of peace and war,	盖美国与之屡立和约，岂非认其公议平战之权，
and responsible in their political capacity.	并其自行自当之责耶?
Their relation to the United States was nevertheless peculiar.	然其与美国交际不比他国，
They were a domestic dependent nation;	盖彼之于我则不啻如家属，
their relation to us resembled that of a ward to his guardian;	而我之于彼则若受其托孤，
and they had an unquestionable right to the lands they occupied, until that right should be extinguished by a voluntary cession to our government.	而其所居之地，若非甘让于我则仍属己权，此断无疑议也。
The same decision was repeated by the Supreme Court, in another case, in 1832.	一千八百三十二年，上法院又审其案之相同者，
In this case, the Court declared that	而断曰：
the British crown had never attempted,	“我美未开国之前，（↓）英王从未
previous to the Revolution (↑)	
to interfere with the national affairs of the Indians,	窥探红苗之内治，
farther than to keep out the agents of foreign powers,	惟有不准其接他国之使，

who might seduce them into foreign alliances. The British government purchased the alliance and dependence of the Indian nations by subsidies, and purchased their lands, when they were willing to sell, at the price they were willing to take, but it never coerced a surrender of them. The British crown considered them as nations, competent to maintain the relations of peace and war, and of governing themselves under its protection. The United States, who succeeded to the rights of the British crown, in respect to the Indians, did the same, and no more; and the protection stipulated to be afforded to the Indians, and claimed by them, was understood by all parties as only binding the Indians to the United States, as dependent allies. A weak power does not surrender its independence and right to self-government, (↓) by associating with a stronger and taking its protection. This was the settled doctrine of the Law of Nations; and the Supreme Court therefore concluded and adjudged, that the Cherokee nation was a distinct community, occupying its own territory, with boundaries accurately described, within which the laws of Georgia could not rightfully have any force, and into which the citizens of that State had no right to enter (↓) but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of Congress.(p.54)	恐或诱之与他国立盟约也。 其招苗人会盟让权，乃酬之以银。 其取得彼地也，乃问其甘心与否， 而偿其所索之价值。 至于强之让地，则未之有也。 盖英国视之为邦国， 能定平战之议， 能恃大国而自治。 美国乃继英王之权， 至其待苗人也，亦承英王之政。 苗人求恃保护， 而美国许之， 则彼此均知无他，惟令苗人作友而相依于美也。” 弱国 相依于强国而得保护， 不因而弃其自立自治之权，（↑） 此公法之常例也。 法院于是断曰： “奇罗基苗人另为一国， 自据己地， 自有定疆。 若邦律法不得行于其疆内， 而若邦之人 若无苗人自许， 与照美国之和约章程所准， 则亦不得过其疆也。”（↑）
15. Single or united States States may be either single, or may be united together under a common sovereign prince,	**第十五节 或独或合** 邦国或系独立， 或系数邦相合， 以同奉一君而相合者有

or by a federal compact.	之， 以会盟而相合者亦有之。
16. *Personal* union under the same sovereign	**第十六节　相合而不失其主权**
1. If this union under a common sovereign is not an incorporate union, that is to say, if it is only *personal* in the reigning sovereign; or even if it is *real*, yet if the different component parts are united with a perfect equality of rights, （↓） the sovereignty of each State remains unimpaired.	数国之奉一君也， 若非以国相合， 但以君身相合者， 则于各国之主权无所碍也。 其以国相合者，若彼此均权，亦于自主之分无碍也。（↑）
Thus, the kingdom of Hanover was formerly held by the king of the united kingdom of Great Britain and Ireland, separately from his insular dominions. Hanover and the United Kingdom were subject to the same principle, without any dependence on each other, both kingdoms retaining their respective national rights of sovereignty. It is thus that the King of Prussia is also sovereign prince of Neufchatel, one of the Swiss Cantons; which does not, on that account, cease to maintain its relations with the Confederation, nor is it united with the Prussian monarchy. So, also, the kingdom of Sweden and Norway are united under one crowned head, each kingdom retaining its separate constitution, laws, and civil administration, the external sovereignty of each being represented by the king.	即如昔时英国之君主，兼治亚诺威尔小国， 而不合之于本国， 诺、英二国同奉一君， 各不相依， 而二国仍全存其主权是也。 又瑞士之牛邦，奉普国之王为君亦然， 既不分于瑞士之盟邦，又不合于普君之本国也。 瑞威敦、挪耳瓦二国亦合奉一君， 各存己之国法律例并一切内务， 惟其主权行于外者，则一君操之也。
17. Real union under the same sovereign	**第十七节　相合而不失其在内之主权**
The union of the different States composing the Austrian monarchy is a *real* union. The hereditary dominions of the House of Austria, the kingdom of Hungary and Bohemia, the Lombardo-Venetian kingdom, and other States, are all indissolubly united under the same scepter, but with distinct fundamental laws, and other political institutions. It appears to be an intelligible distinction	奥地利数国之相合也， 其奥君之故国，并匈牙里、波希米、威内萨等国， 皆合奉一君，而不得擅自相分， 然犹各存其国法政治也。 是奥国之以国相合，

between such a union as that of the Austrian States, and all other unions which are merely *personal* under the same crowned head, that, in the case of a *real* union, (1) though the separate sovereignty of each State may still subsist internally, in respect to its coordinate States and in respect to the imperial crown, (2) yet the sovereignty of each is merged in the general sovereignty of the empire, (3) as to their international relations with foreign powers. (4) The political unity of the States (5) which compose the Austrian Empire forms what the German publicists (6) call a community of States, (*Gesammtsstqat*); (7) a community which reposes on historical antecedents. (8)	与他国之以君身相合有别也。 盖其内事，(1) 各邦虽自行主权，(2) 其外事并君位，(4) 则主权合而为一也。(3) 数邦如此而合者，(5) 即所谓拼国也。(7) 所以然者，因各国固执其旧例，(8) 其合于奥也，因势之不得已也。(6)
18. Incorporate union 2. An incorporate union is such as that which subsists between Scotland and England, and between Great Britain and Ireland; forming out of the three kingdoms an empire, united under one crown and one legislature, although each may have distinct laws and a separate administration. The sovereignty, internal and external, of each original kingdom is completely merged in the united kingdom, thus formed by their successive unions.	**第十八节 相合而并失其内外之主权** 国之合而为一者，即如苏格兰、英吉利、阿尔兰合为大英一国是也。 其君位统于一， 其制法之会亦归于一， 但各国仍有己之律法、己之理治也。 各国之主权， 无论其行于内者、行于外者， 皆归于统一之国也。
19. Union between Russia and Poland. 3. The union established by the Congress of Vienna, between the empire of Russia and the kingdom of Poland, is of a more anomalous character. By the final act of the congress, the duchy of Warsaw, with the exception of the provinces and districts otherwise disposed of, was reunited to the Russian Empire; and it was stipulated that it should be irrevocably connected with that empire by its constitution, to be possessed by his majesty the Emperor of all the Russia(n)s, his heirs successors in perpetuity, with the title of King of Poland; his Majesty reserving the right to give to this State, enjoying a distinct administration, such	**第十九节 波兰始合于俄** 维也纳公使会将波兰归并于俄罗斯， 其归并之法更为异常。 其会将散时， 即以瓦琐都城并其辖地，复合于俄国，惟界内数邑另定隶属。 约上议定，瓦琐与俄一体相合，不得或分， 故俄国之君主并其后裔，世世当治之， 而以波兰王为别号，其国另有政治， 而俄君执权可随意增广其疆土。

interior extension as he should judge proper; and that the Poles, subject respectively to Russia, Austria, and Prussia, should obtain a representation and national institutions, regulated according to that mode of political existence which each government, to whom they belong, should think useful and proper to grant.	至波兰之民服俄者、服奥者、服普者， 则何官可代之而行事， 当制何等律法， 均听各国议定施行。
Charter accorded by the Emperor Alexander to the kingdom of Poland, in 1815. In pursuance of these stipulations, the Emperor Alexander granted a constitutional charter to the kingdom of Poland, on 15th (27th) November, 1815. By the provisions of this charter, the kingdom of Poland was declared to be united to the Russian Empire by its constitution; the sovereign authority in Poland was to be exercises only in conformity to it; the coronation of the King of Poland was to take place in the Polish capital, where he was bound o take an oath to observe the charter. The polish nation was to have a perpetual representation, (↓) composed of the king and the two chambers forming the Diet;	**继得国法权利** 俄国君主亚勒山德第一于一千八百十五年间，按此章程准波兰另有国法权利。 其书明言波兰一国与俄相合， 而俄君掌其主权治波，不得或越其国法也。 其加波兰王号也， 必在波兰都城行冠礼时 发誓不背其国法。 波兰 得有本国之国会，上下二房， 以代民行事。（↑）
in which body the legislative power was to be vested, including that of taxation. A distinct Polish national army and coinage, and distinct military orders, were to be preserved in the kingdom.	惟俄君同其议，而同执制法、征税之权， 其本国之圜法、兵旅、武爵仍当存之也。
Manifesto of the Emperor Nicholas, 1882 In consequence of the revolution and reconquest of Poland by Russia, a manifesto was issued by the Emperor Nicholas, on the 14th (26th) of February, 1832, by which the kingdom of Poland was declared to be perpetually united (*reuni*) to the Russian Empire, and to form an integral part thereof; the coronation of the emperor of Russia and Kings of Poland hereafter to take place at Moscow, by one and the same act; the Diet to be abolished, and the army of the empire and of the kingdom to form one army, without distinction of Russian or Polish troops; Poland to be separately administered by a Governor	**终则被俄所并** 波兰叛而俄国复征之， 于是俄君尼哥劳于一千八百三十二年颁诏云： “波兰一国此后与俄永远合一， 俄国冠礼并波兰冠礼亦合一而行于俄都， 并废其国会， 使所有兵旅与俄军合一， 不复分俄兵、波兵。” 俄君遂另封总督并忝议部

General and Council of Administration, appointed by the emperor, and to preserve its civil and criminal code, subject to alternation and revision by laws and ordinances prepared in the Polish Council of State, and subsequently examined and confirmed in the Section of the Council of State of the Russian Empire, called *The Section for the Affairs of Poland*; consultative Provincial States to be established in the different Polish provinces, to deliberate upon such affairs concerning the general interest of the kingdom of Poland as might be submitted to their consideration; the Assemblies of the Nobles, Communal Assemblies, and Council of the Waiwodes to be continued as formerly. Great Britain and France protested against this measure of the Russian government, as an infraction of the spirit if not of the letter of the treaties of Vienna.	官以治波兰， 而仍不废其律法。 惟波兰部官当重新斟酌， 后经俄所分立波兰部，监定施行， 每部皆立议土以斟酌利国之事， 而波兰从前爵会、绅会等仍存如故焉。 俄国行此事，英、法两国斥之， 谓虽不背维也纳盟约之文，实则背其义也。
20. Federal union. 4. Sovereign States permanently united together by a federal compact, either form a *system of confederated States*, (properly so called,) or a *supreme federal government*, which has been sometimes called a *compositive State*.	**第二十节 会盟永合有二** 自主之国，会盟永合者有二： 或众邦相盟而为众盟之邦， 或诸邦合盟而为合成之国也。
21. Confederated States, each retaining its own sovereignty. In the first case, the several States are connected together by a compact, which does not essentially differ from an ordinary treaty of equal alliance. Consequently the internal sovereignty of each member of the union remains unimpaired; the resolutions of the federal body being enforced, not as laws directly binding on the private individual subjects, but through the agency of each separate government, adopting them, and giving them the force of law within its own jurisdiction. Hence it follows, that each confederated individual State, and the federal body for the affairs of common interest, may become, each in its appropriate sphere, the object of distinct diplomatic relations with other nations.	**第二十一节 会盟连横** 众盟邦则数邦立约， 互相连横， 与诸国平行会盟无甚异， 其各邦在内之主权亦无少减。 盖总会之公议， 不能遽定为法，以制其人民， 必须各邦先许之，始立为法度，行于己之疆内。 故各邦或总会有切己之事， 俱可另交他国，无所限制。

22. Supreme federal government or compositive State.	**第二十二节 会盟为一**
In the second case, the federal government created by the act of union is sovereign and supreme, within the sphere of the powers granted to it by that act;	若合盟为一国，则所成之国其盟约所限定之事，皆以在上之主权统之，
and the government acts not only upon the States which are members of the confederation,	其权不但及盟约之各邦，
but directly on the citizens.	且可直及其庶民。
The sovereignty, both internal and external, of each several State is impaired (↓)	
by the powers thus granted to the federal governments.	各邦因让权于总会，以听其限制，
	则主权无论内外皆减焉。(↑)
The compositive State, which results from this league, is alone a sovereign power.	各邦不能自主，则其所合成之国独为自主者矣。
23. Germanic Confederation.	**第二十三节 日耳曼系众邦会盟**
Germany, as it has been constituted under the name of the Germanic Confederation,	日耳曼现为众盟邦，
presents the example of a system of sovereign States, united by an equal and permanent confederation.	即系自主之国各邦平行，会盟永合者也。
(省略 P. 59 All the sovereign princes and free cities of Germany, including the Emperor of Austria and the King of Prussia, in respect to their possessions which formerly belonged to the Germanic Empire, the King of Denmark for the duchy of Holstein, and the King of the Netherlands for the grand duchy of Luxembourg, are united in a perpetual league, under the name of the Germanic Confederation, established by the Federal Act of 1815, and completed and developed by several subsequent decrees.)	
The object of this union is declared to be the preservation of the external and internal security of Germany,	其盟云：“所以相合之故，原为保护日耳曼统一之地，使其内外平安，
the independence and inviolability of the confederated States.	仍于各邦自主之权无所妨碍，
All the members of the confederations, as such, are entitled to equal rights.	盟内各邦权利一归均平。
New States may be admitted into the union by the unanimous consent of the members.	众邦应允，则新邦可续入盟会。” 其会内则以奥国为盟主。
(省略 p.60-66 The affairs of the union are confided to a Federative Diet, which...The Germanic Confederation is a system of confederated States.)	
It follows, that	由是观之，
	盟内各邦若无明言以限制之，(↓)
not only the internal but the external sovereignty	则仍执内外之主权，无所

of the several States composing the Germanic Confederation, remains unimpaired, except so far as it may be affected by the express provisions of the fundamental laws authorizing the federal body to represent their external sovereignty. (↑) (省略 P. 67-71 In other respects, the several confederated States remain independent of each other,…)	减也。
24. United States of America The Constitution of the United States of America is of a very different nature from that of the Germanic Confederation. It is not merely a league of sovereign States, for their common defence against external and internal violence, but a supreme federal government, or compositive State, acting not only upon the sovereign members of the Union, but directly upon all its citizens in their individual and corporate capacities. It was established, as the Constitution expressly declares, by “the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to them and their posterity.” This constitution, and the laws made in pursuance thereof, and treaties made under the authority of the United States, are declared to be the supreme law of the land; and that the judges in every State shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding. **Legislative power of the Union.** The legislative power of the Union is vested in a Congress, consisting of a Senate, the members of which are chosen by the local legislatures of the several States,	**第二十四节 美国系众邦合一** 若美国之合邦，其合之之法与日耳曼迥不相同。 不惟为自主之国， 相连以防御内外强暴， 亦是合成之国秉上权， 以制盟内各邦， 并直及庶民者也。 其合盟有云： “此盟为合邦庶民所立， 而其所以立之之故， 盖欲相合更密， 坚公义、 保民安、 御外暴、 聚众庆， 且保自主之福爱及后世。” 此合盟与凭盟而制之法， 并盟约章程凭国权而立者， 即为国内无上之法。 虽各邦法度律例有所不合， 其法院亦必遵此无上之法而断也。 **上国制法之权** 合邦制法之权在其总会。 总会有上下二房， 在上房者，为各邦之邦会所选，

and a House of Representatives, elected by the people in each State. This Congress has power to levy taxes and duties, to pay the debts, and provide for the common defence and general welfare of the Union; to borrow money on the credit of the United States; to regulate commerce with foreign nations, among the several States, and with the Indian tribes; to establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcy throughout the Union; to coin money, and fix the standard of weights and measures; to establish post-offices and post-roads; to secure to authors and inventors the exclusive right to their writings and discoveries; to punish piracies and felonies on the high seas, and offences against the law of nations; to declare war, grant letter of marque and reprisal, and regulate captures by sea and land; to raise and support armies; to provide and maintain a navy; to make rules for the government of the land and naval forces; to exercise exclusive civil and criminal legislation over the district where the seat of the federal government is established, and over all forts, magazines, arsenals, and dock-yards belonging to the Union, and to make all laws necessary and proper to carry into execution all these and the other powers vested in the federal government by the Constitution.	在下房者为各邦之民人所举。 总会执权可征赋税， 以偿国债、 防害、保安， 而令合邦共好。 可凭合邦之信借钱， 可定内外通商章程， 定外人入籍之统规， 定亏空银钱之统规， 铸通宝、 定权量、 建信局、开递信驿路， 保著书制器者有专卖之利， 禁海盗罚海上之罪犯， 审一切干犯公法之案， 定交战之事， 赐强偿之牌， 定水陆捕拿之规， 招兵买粮， 造兵船、 养水师、 定水陆二军条规， 专治国都畿内并各处所属炮台、船厂、军器局等， 且制法令以成合盟所任之职， 凡此均属总会之权。
Executive power To give effect to this mass of sovereign authorities, the executive power is vested in a President of the United States, chosen by electors appointed in each State in such manner as the legislature thereof may direct.	**首领行法之权** 其主权职事，如此之繁，即有合邦之首领以统行之。首领乃美国之语，所称“伯理玺天德”者是也。 其登位也，系各邦派入公议选举，所派之人亦为各邦之民， 遵循其邦会之定例而公举者也。
The judicial power extends to all cases in law and equity arising under the constitution, law, and treaties of the Union,	**司法之权** 司法之权

(↓) and is vested in a Supreme Court, and such inferior tribunals as Congress may establish.	在上法院，并以下总会所设之法院。 所有干犯合邦律法盟约之案，听其审断，（↑）
The federal judiciary exercises under this grant of power the authority to examine the laws passed by Congress and the several State legislatures, and, in cases proper for judicial determination, to decide on the constitutional validity of such laws.	故总会并各邦会制法，均归合邦之法司,凭此权而察之。 遇事 即断其与国盟相合，可行与否。
The judicial power also extends to （↓） all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction;	所有关乎公使领事等案， 海上战利管辖等案， 上国所有之公案，
to controversies to which the United States shall be a party; to controversies between two or more States;	数邦所有争端，
between a State and citizens of another State;	此邦与彼邦之民所有之争端，
between citizens of different States;	彼此之民所有之争端，
between citizens of the same State claiming lands under grants of different States;	一邦之民凭二邦之权索地基而兴讼者，
and between a State, or the citizens thereof, and foreign States, citizens, or subjects.	各邦并各邦之民与他国或他国之民有讼事， 凡此皆属上国法司之权，可审而断也。（↑）
Treaty-making power The treaty-making power is vested exclusively in the President and Senate; all treaties negotiated with foreign States being subject to their ratification.	**立约之权** 立约之权全在首领，并总会之上房。 凡与他国所议之盟约，皆须首领与上房应允施行。
各邦所无之权 No State of the Union can enter into any treaty, alliance, or confederation;	国内各邦无权议立约据，
grant letters of marque and reprisal;	无权赐强偿之牌票，
coin money;	无铸通宝之权，
emit bills of credit;	无出钱票之权，
make any thing but gold and silver coin a tender in the payment of debts;	除金银而外无权制他物以偿债，
pass any bill of attainder, *ex post facto* law,	无权以罚及子孙定律以追治往事，
or law impairing the obligation of contracts;	无权制法以致人不守约据之信，
grant any title of nobility;	无权赐爵位。
lay any duties on imports or exports, except such as are necessary to execute its local inspection laws,	进口、出口之货，除偿验货之费而外，无权征他税。
the produce of which must be paid into the national	即此款亦入国库，

treasury; and such laws are subject to the revision and control of the Congress. Nor can any State, without the consent of Congress, lay any tonnage duty; keep troops or ships or war in time of peace; enter into any agreement or compact with another State or with a foreign power; or engage in war unless actually invaded, or in such imminent danger as does not admit of delay. The Union guarantees to every State a republican form of government, and engages to every State a republican form of government, and engages to protect each of them against invasion, and, on application of the legislature, or of the executive, when the legislature cannot be convened, against domestic violence. **The American Union is a supreme federal government** It is not within the province of this work to determine how far the internal sovereignty of the respective States composing the Union is impaired or modified by these constitutional provisions. But since all those powers, by which the international relations of these States are maintained with foreign States, in peace and in war, are expressly conferred by the constitution on the federal government, whilst the exercise of these powers by the several States is expressly prohibited, it is evident that the external sovereignty of the nation is exclusively vested in the Union. The independence of the respective States, in this respect, is merged in the sovereignty of the federal government, which thus becomes what the German public jurists call a *Bundesstaat*. (p.78)	而其验货之例亦归国会斟酌主持， 若国会不应许，各邦不可征船费。 平时不可养水师、陆兵， 不可与邻邦或外国立盟约。 若无敌过疆， 非势危不能稍待则不可交战。 美国保其诸邦各存民主之法， 且当护各邦无外暴内乱。 惟事当孔急，其邦会当请救， 或邦会不便聚，则由各邦制宪请之可也。 美国之合盟条款既如此，各邦在内之主权如何减革则不必论， 但其平战交际外国之权， 既按合盟尽让于其所合成之国， 而各邦禁用此权。 则其在外之主权，全在其所合成之国明矣。 各邦此等主权 皆归于上国之主权， 而其国即所谓合盟之国也。
25. Swiss Confederation The Swiss Confederation, as remodeled by the federal pact of 1815, consists of a union between the then twenty-two Cantons of Switzerland; the object of which is declared to be the preservation of their freedom, independence, and security	**第二十五节 与前二国异同如何** 瑞士合邦 于一千八百十五年间， 改其国法，有二十二邦相合。 其所以合之之故，乃以保其自主、自立，

against foreign attach, and of domestic order and tranquility. The several Cantons guarantee to each other their respective constitutions and territorial possessions. The confederation has a common army and treasury, supported by levies of men and contributions of money, in certain fixed proportions, among the different Cantons. In addition to these contributions, the military expenses of the Confederation are defrayed by duties on the importation of foreign merchandise, collected by the frontier Cantons, according to the tariff established by the Diet, and paid into the common treasury. The Diet consists of one deputy from every Canton, each having one vote, and assembles every year, alternately, at Berne, Zurich, and Lucern, which are called the directing Cantons, (*vorot.*) The Diet has the exclusive power of declaring war, and concluding treaties of peace, alliance, and commerce, with foreign States. A majority of three fourths of the votes is essential to the validity of these acts; for all other purposes, a majority is sufficient. Each Canton may conclude separate military capitulations and treaties, relating to economical matters and objects of police, with foreign powers; provided they do not contravene the federal pact, nor the constitutional rights of the other Cantons. The Diet provides for the internal and external security of the Confederation; directs the operations, and appoints the commanders of the federal army, and names the ministers deputed to other foreign States. The direction of affairs, when the Diet is not in session, is confided to the directing Canton, (*vorot.*) which is empowered to act during the recess. The character of directing Canton alternates every two years, between Zurich, Berne, and Lucerne. The Diet may delegate to the directing Canton, or *vorort*, special full powers, under extraordinary circumstances, to be exercised when the Diet is not in session; adding, when it thinks fit, federal	致无外敌侵扰， 无内变纷乱。 诸邦互保各邦，皆存其法度疆界， 上国有公军、公库， 而招兵征税， 各邦自有一定之额。 苟不足资军费， 则在沿边之诸邦，征税于入边之货而归之国库。 国会聚集每年一次，互在三大邦，国会之人共二十二，乃各邦所派一名。 宣战讲和、立结好通商之盟约，全属国会之权。 遇此等事，则须会内诸人四分之三应允，方可施行，他事则过半足矣。 各邦就己之兵旅，并己之内务可与外国立约据， 然此约据不得或背其合盟， 亦不得或犯他邦之权利。 国会固保诸邦内外， 主军事、 封将帅以领国兵， 派公使以出外国。 国会未聚 则三大邦之一代理国事， 三邦每二年互换代理。 国会既聚，遇急事可以全权授代理之邦，待其散后而行， 亦可随意派人忝行。

representatives, to assist the *vorot* in the direction of the affairs of the Confederation.	
In case of internal or external danger, each Canton has a right to require the aid of other Cantons;	若内外有危乱，则各邦可索救于他邦，
in which case, notice is to be immediately given to the *vorort*,	必先告代理之邦，召国会聚集，
in order that the Diet may be assembled, to provide the necessary measures of security.	以备防害保安之资。
Constitution of the Swiss Confederation compared with those of the Germanic Confederation and of the United States	
The compact, by which the sovereign Cantons of Switzerland are thus united, forms a federal body, which, in some respects, resembles the Germanic Confederation,	瑞士之合盟既如此，则其国法与日耳曼有所相似，
whilst in others it more nearly approximates to the American Constitution.	与美国亦有相似。
Each Canton retains its original sovereignty unimpaired, for all domestic purposes, even more completely than the German States;	就内务，各邦存其原有之权，一较日耳曼诸国更大。
but the power of making war, and of concluding treaties of peace, alliance, and commerce, with foreign States, being exclusively vested in the federal Diet,	至于交战与他国立盟约，则此权全在国会。
all the foreign relations of the country necessarily	盖与外国交际之事，
fall under the cognizance of that body.	皆归国会鉴定，
In this respect, the present Swiss Confederation differs materially	此与前时之国法迥异。
from that which existed before the French Revolution of 1789,	盖前时之合盟无他，
which was, in effect, a mere treaty of alliance for the common defence against external hostility,	惟以相护抵御外暴，
but which did not prevent the several Cantons from making separate treaties with each other, and with foreign powers.	但其各邦互相立约，或与外国立约者，无所限制。
Abortive attempts, since 1830, to change the federal pact of 1815.	
Since the French Revolution of 1830,	一千八百三十年而后，
various changes have taken place in the local constitutions of the different Cantons,	各邦之内治有所变，
tending to give them a more democratic character;	而其民主之权有增焉。
and several attempts have been made (↓)	
to revise the federal pact, so as to give it more of the character of a supreme federal government, or *Bundesstaat*, in respect to the internal relations of the Confederation.	屡有公议欲改其合盟，使其统权可及各邦内务，
	但此议未成。(↑)
Those attempts have all proved abortive; and	而瑞士一千八百十五年之

Switzerland still remains subject to the federal pact of 1815, except that three of the original Cantons, ---- Basle, Unterwalden, and Appenzel, --- have been dismembered, so as to increase the whole number of Cantons to twenty-five. (省略 P.81 But as each division of these three original Cantons is entitled to half a vote only in the Diet, the total number of voters still remains twenty-two, as under the original federal pact.)	合盟别无所易， 惟有三邦分剖， 致盟邦共数现有二十五。

PART SECOND ABSOLUTE INTERNATIONAL RIGHTS OF STATES CHAPTER I. RIGHT OF SELF-PERSERVATION AND INDEPENDENCE.	第二卷 论诸国自然之权 第一章 论其自护、自主之权
1. Rights of sovereign States, with respect to one another. THE rights, which sovereign States enjoy with regard to one another, may be divided into rights of two sorts: *primitive* or *absolute* rights; *conditional*, or *hypothetical rights*. Every State has certain sovereign rights, (1) to which it is entitled (2) as an independent (3) moral being; (4) in other words, because it is a State. (5) These rights are called the absolute international rights of States, because they are not limited to particular circumstances. The rights to which sovereign States are entitled, under particular circumstances, in their relations with others, may be termed their *conditional* international rights; and they cease with the circumstances which gave rise to them. They are consequences of a quality of a sovereign State, but consequences which are not permanent, and which are only produced under particular circumstances. Thus war, for example, confers on belligerent or neutral States certain rights, which cease with the existence of the war.	**第一节　操权二种** 凡自主之国相待，操权有二： 曰自有之原权， 曰偶有之特权。 夫国 之所以为国者，（2/5） 即因其为自主，(3) 而有义之当守，(4) 有权之可行也，(1) 此所谓自有之原权。 盖不出于事，不为事所限。 若自主之国相待，因事而得权， 此所谓偶有之特权。 盖有事而生，无事而没焉， 皆惟自主之国所可有， 然非其所常有， 乃遇事得之也。 即如战时， 致战者得战权， 战毕则战权自没。
2. Right of self-preservation. Of the absolute international rights of States, one of the most essential and important, and that which lies at the foundation of all the rest, is the right of self-preservation. It is not only a right with respect to other States, but a duty with respect to its own members, and the most solemn and important which the State owes to them. This right necessarily involves all other incidental rights,	**第二节　自护之权为大** 诸国自有之原权， 莫要于自护，此为基而其余诸权皆建于其上。 就他国论之，则为权之可行者。 就己民论之，则为分所不得不行也。 此权包含多般，

which are essential as means to give effect to the principal end.	盖凡有所不得已而用以自护者，皆属权之可为也。
Right of self-defence modified by the equal rights of other States, or by treaty.	
Among these is the right of self-defense.	
This again involves the right to require the military service of all its people, to levy troops	使其抵敌以自护可为， 则招军实、
and maintain a naval force,	养水师、
to build fortifications,	筑炮台，令庶民皆当兵勇，
and to impose and collect taxes for all these purposes.	征赋税以资兵费，亦属可为也。
It is evident that the exercise of these absolute sovereign rights can be controlled only by the equal correspondent rights of other States,	故此等自有之原权别无他限，然若使他国有危，则他国亦可执其自护之权而扼其行，
or by special compacts freely entered into with others, to modify the exercise of these rights.	或该国自甘立约而改革之，可也。
In the exercise of these means of defence, no independent State can be restricted by any foreign power.	若他国视我所为与彼之存亡有涉者，
But another nation may, by virtue of its own right of self-preservation,	或致疆界不宁，
if it sees in these preparations an occasion for alarm, or if it anticipates any possible danger of aggression,	即可以自护之权
demand explanations;	而问其故。
and good faith, as well as sound policy, requires that these inquiries, when they are reasonable and made with good intentions,	他国如此洽情顺理，善意问故，
should be satisfactorily answered.	则我当守信善政，剖析复答。
	立约改革推让均可
Thus, the absolute right to erect fortifications within the territory of the State	即如筑炮台，在己之疆内，属自有之权，
has sometimes been modified by treaties, (↓)	
where the erection of such fortifications has been deemed to threaten the safety of other communities,	然若其炮台致他国有危，
	屡有盟约以改革之。(↑)
or where such a concession has been extorted in the pride of victory,	强国得胜骄傲，
by a power strong enough to dictate the conditions of peace to its enemy.	令败者退让此权而得和亦有之。
Thus, by the Treaty of Utrecht, between Great Britain and France, confirmed by that of Aix-la-Chapelle, in 1748,	如英、法在乌达拉立约，
and of Paris, in 1763, the French government engaged to demolish the fortifications of Dunkirk.	法国许毁顿及耳客炮台：
This stipulation, so humiliating to France,	但此款于法为辱，
was effaced in the treaty of peace concluded between the two countries, in 1783, after the war of	而两国于一千七百八十三年复立和约而删之。

the American Revolution. By the treaty signed at Paris, in 1815, between the Allied Powers and France, it was stipulated that the fortifications of Huningen, within the French territory, which had been constantly a subject of uneasiness to the city of Basle, in the Helvetic Confederation, should be demolished, and should never be renewed or replaced by other fortifications, （↓） at a distance of less than three leagues from the city of Basle.	于一千八百十五年间，法国与五盟国立约， 许 毁虎凝炮台。盖虽在已之疆内， 常致瑞士不安， 故法国许不复建。 其距巴细耳城三十里之地， 亦不另添炮台。（↑）
3. Right of intervention or interference The right of every independent State （↓） to increase its national dominions, wealth, population, and power, by all innocent and lawful means; such as the pacific acquisition of new territory, the discovery and settlement of new countries, the extension of its navigation and fisheries, the improvement of its revenues, （↓） arts, agriculture, and commerce, the increase of its military and naval force; is an incontrovertible right of sovereignty, generally recognized by the usage and opinion of nations. It can be limited in its exercise only by the equal correspondent rights of other States, growing out of the same primeval right of self-preservation. Where the exercise of this right, by any of these means, directly affects the security of others, --- as where it immediately interferes with the actual exercise of the sovereign rights of other States, ---- there is no difficulty in assigning its precise limits. But where it merely involves a supposed contingent danger to the safety of others, arising out of the undue aggrandizement of a particular State, or the disturbance of what has been called the balance of power, questions of the greatest difficulty arise, which belong rather to the science of politics than of public law. The occasions on which （1）	**第三节 与闻他国政事之例** 开疆辟土. 致民众财丰国强， 若顺理而无害于他国， 此皆属自主者之权。（↑） 即如和议而加土地， 寻觅新域而徙民开拓， 增其航海捕鱼之业， 劝其稼穑，勉其百工，广其贸易， 大其兵旅， 增其年税，（↑） 凡此无不归其自主之权也， 而各国之常例认之，其行之也别无他限。 但他国同此原权者，或可扼之以自护也。 若行此权遂致他国难以自立、自主， 则其当以何者为限不难明矣： 若别无他害，惟惧其强盛致邻国有危， 或致诸国之势力不均， 则其当如何处之，不易定

the right of forcible interference has been exercised, （2） in order to prevent （3） the undue aggrandizement of a particular State, （4） by such innocent and lawful means as those above mentioned, （5） are comparatively few, （6） and cannot be justified in any case, （7） except in that where an excessive augmentation of its military and naval forces may give just ground of alarm to its neighbors. （8） The internal development of the resources of a country, or its acquisition of colonies and dependencies at a distance from Europe, has never been considered a just motive for such interference. It seems to be felt, with respect to the latter, that distant colonies and dependencies generally weaken, and always render more vulnerable the metropolitan State. And with respect to the former, although the wealth and population of a country is the most effectual means by which its power can be augmented, such an augmentation is too gradual to excite alarm.	也。 然此归国政，不归公法也： 此国循理而行，渐增强盛，（4） 无碍于他国，（5） 而令他国怀戒心（3） 以强御之者，（2） 古来无几。（1）（6） 若并未无故加增兵旅，而国恐惧，反生忌刻，欲以强御之者，（8） 实为不公也。（7） 欧罗巴诸国或内开财源， 或外添属邦在相距之远方， 则不以为强御之故。 其外添属邦，大约视为非增强反致弱， 盖因难保而易害也； 其内开财源，虽国之增强，莫要于民众国丰。
To which it must be added that the injustice and mischief of admitting that （↓） nations have a right to use force, for the express purpose of retarding the civilization and diminishing the prosperity of their inoffensive neighbors, are too revolting to allow such a right to be inserted in the international code. Interferences, therefore, to preserve the balance of power, have been generally confined to prevent a sovereign, already powerful, from incorporating conquered provinces into his territory, or increasing his dominions by marriage or inheritance, or exercising a dictatorial influence over the councils and conduct of other independent States.	然此二者积渐而不骤，即不致畏于邻国。 若云 此国有权， 遂使强以御彼国之兴化，以减彼国之安分而增荣， 则为不公之极。（↑） 其贻害至深，与人心不合，断不可入公法之条规。 其或有强御以保均势之法， 概以扼强君， 不令并吞其所征之国，

Each member of the great society of nations being entirely independent of every other, and living in what has been called a state of nature in respect to others, acknowledging no common sovereign, arbiter, or judge; the law which prevails between nations	或联亲、或继先而增土地， 盖恐其势过大，致邻国难以行自主之分耳。 夫诸国天然同居，不相倚傍，
being deficient in those external sanctions by which the laws of civil society are enforced among individuals; (↑) and the performance of the duties of international law being compelled by moral sanctions only, by fear on the part of nations of provoking general hostility, and incurring its probable evils (↓) in case they should violate this law;	无一人作统领之主， 所奉之法 不比各国之律法也，(↓) 无刑典以罚罪犯， 其所以遵之者 非外权，乃内情也。 故一国强盛过分，
an apprehension of the possible consequences of (1) the undue aggrandizement of any one nation upon the independence and the safety of others, (2) has induced the States of modern Europe to observe, (3) with systematic vigilance, every material disturbance (4) in the equilibrium of their respective forces. (5) This preventive policy has been the pretext (↓) of the most bloody	恐有不遵公法 而贻患于邻国。(↑) 故欧罗巴大洲内，(3) 倘国势失平，(2) 诸国即惊惧张皇，(1) 且必协力以压强护弱，(4) 保其均势之法。(5) 但其贪勇好战者， 每以防强守平为辞，(↑) 反致祸乱于天下。
and destructive wars waged in modern times, some of which have certainly originated in well-founded apprehensions of peril to the independence of weaker States, but the greater part have been founded upon insufficient reasons, disguising the real motives by which princes and cabinets have been influenced.	其实惧他国之谋并而兴戒者间或有之， 而暴君奸雄托词以构兵者较众焉。
Wherever the spirit of encroachment has really threatened the general security, it has commonly broken out in such overt acts as not only plainly indicated the ambitious purpose, but also furnished substantive grounds in themselves sufficient to justify a resort to arms by other nations.	夫强国蓄征伐之志于内， 屡有强暴之事形于外， 不免露其所怀之心， 亦足以启他国防御之端。
Wars of the Reformation. Such were the grounds of (1) the confederacies created, (2) and the wars undertaken to check (3) the aggrandizement (4)	即如一千六百年间，(1) 西班牙与日耳曼相合，(5) (2) 查理第五兼有之，(6)

of Spain and the house of Austria, （5） under Charles V. and his successor; （6） --- an object （7） finally accomplished by the treaty of Westphalia, （8） which so long constituted the written public law of Europe. （9）	更欲侵吞邻国，（4） 诸国于是协力御之，（3） 战久始立和约于韦似非略，（8） 后致国势均平， （7） 而为法于欧罗巴一洲。（9）
The long and violent struggle between the religious parties engendered by the Reformation in Germany, spread throughout Europe, and became closely connected with political interest and ambition.	三百年前，因教内丕变而兴兵者，亦然。
The great Catholic and Protestant powers mutually protected the adherents of their own faith in the bosom of rival States.	天主教与耶稣教之国，互护己之教友，
The repeated interference of Austria and Spain in favor of the Catholic faction in France, Germany, and England,	虽为他国之民，即天主教之住于法兰西、日耳曼、英吉利者，奥地利、西班牙屡有保护之，
and of the Protestant powers to protect their persecuted brethren in Germany, France, and the Netherlands, gave a peculiar coloring to the political transactions of the age.	而耶稣教之住于日耳曼、法兰西、荷兰者，北方诸国亦有保护之。
（省略P.93 This was still more heightened by the conduct of Catholic France under the ministry of Cardinal Richelieu, in sustaining, by a singular refinement of policy, the Protestant princes and people of Germany against the house of Austria, whilst she was persecuting with unrelenting severity her own subjects of the reformed faith. ）	
The balance of power adjusted by the peace of Westphalia was once more disturbed by the ambition of Louis XIV.,	均势之法又失于法国路易十四，
which compelled the Protestant States of Europe to unite with the house of Austria against the encroachments of France herself,	北方诸国助奥以扼之。
and induced the allies to patronize the English Revolution of 1688,	嗣后英国有变，诸盟帮助新君，
whilst the French monarch interfered to support the pretensions of the Stuarts.	而法国助旧君。
These great transactions furnished numerous examples of interference by the European States in the affairs of each other,	观此历代事，则各国屡有与闻他国政事，
where the interest and security of the interfering powers were supposed to be seriously affected by the domestic transactions of other nations,	或因其与己有利有害，
which can hardly be referred to any fixed and definite principle of international law,	难以均归一例，
or furnish a general rule fit to be observed in other apparently analogous cases.	亦不足为法于后世也。

4. Wars of the French Revolution.	**第四节 以法国为鉴**
The same remarks will apply to the more recent, but not less important events, growing out of the French Revolution.	乾隆年间，法国有大变，构兵纷纷，亦难归一例。
They furnish a strong admonition against attempting to reduce to a rule, and to incorporate into the code of nations,	观其事足可为以均势之法补入公法之条规者戒。
a principle so indefinite,	盖其理混而不明，
and so peculiarly liable to abuse, in its practical application.	设有误用，则贻害匪浅。
	（原译文位置：五国横连之故）
The successive coalitions formed by the great European monarchies against France subsequent to her first revolution of 1789, （↓）	
were avowedly designed to check the progress of her revolutionary principles, and the extension of her military power.	彼时法民之变，欲强令邻民亦同其变，
	故诸大国合盟以御之，（↑）
Such was the principle of intervention in the internal affairs of France, vowed by the Allied Courts, and by the publicists who sustained their cause.	其意将御民变而保各国之君位也。
Alliance of the five great European powers.	**（应在位置：五国横连之故）**
France, on her side, relying on the independence of nations, contended for non-intervention as a right.	法国则以其事乃自主之国所可为，而他国不得与闻也。
（省略 P. 94 The efforts of these coalitions ultimately resulted in the formation of an alliance, intended to be permanent, between the four great powers of Russia, Austria, Prussia, and Great Britain, to which France subsequently acceded, at the Congress of Aix-la-Chapelle, in 1818, constituting a sort of superintending authority in these powers over the international affairs of Europe, the precise extent and objects of which were never very accurately defined. As interpreted by those of the contracting powers, who were also the original parties to the compact called the Holy Alliance, this union was intended to form a perpetual system of intervention among the European States, adapted to prevent any such change in the internal forms of their respective governments, as might endanger the existence of the monarchical institutions which had been reestablished under the legitimate dynasties of their respective reigning houses. This general right of interference was sometimes defined so as to be applicable to every case of popular revolution, where the change in the form of government did not proceed from the voluntary concession of the reigning sovereign, or was not	

confirmed by his sanction, given under such circumstances as to remove all doubt of his having freely consented. At other times, it was extended to every revolutionary movement pronounced by these powers to endanger, in its consequence, immediate or remote, the social order to endanger, in its consequences, immediate or remote, the social order of Europe, or the particular safety of neighboring States. The events, which followed the Congress of Aix-la-Chapelle, prove the inefficacy of all the attempts that have been made to establish a general and invariable principle of the subject of intervention.) It is, in face, impossible to lay down an absolute rule on this subject; and every rule that wants that quality must necessarily be vague, and subject to the abuses to which human passions will give rise, in its practical application.	总之，如何方可预他国之内务，难归定条， 无定条则混而不明， 不明则易于误用而致害矣。
5. Congress of Aix-la-Chapelle, of Troppau and of Laybach. The measures adopted by Austria, Russia, and Prussia, at the Congress of Troppau and Laybach, in respect to the Neapolitan Revolution of 1820, were founded upon principles adapted to give the great powers of the European continent a perpetual pretext for interfering in the internal concerns of its different States. The British government expressly dissented from these principles, not only upon the ground of their being, if reciprocally acted on, contrary to the fundamental laws of Great Britain, but such as could not safely be admitted as part of a system of international law. In the circular despatch, addressed on this occasion to all its diplomatic agents, it was stated that, though no government could be more prepared than the British government was to uphold the right of any State or States to interfere, (↓) where their own immediate security or essential interest are seriously endangered by the internal transactions of another State, it regarded the assumption of such a right as only to be justified by the strongest necessity, and to be limited and regulated thereby; and did not admit that (↓)	**第五节 三国管制那不勒斯，英国驳之** 一千八百二十年间，那不勒斯有内变，奥、俄、普三国会同共议，预闻其事。 依其所论，则欧罗巴诸大国有管制小国内政之权， 英国驳之， 云：“若如所言，不但与英国大纲相背， 且补入公法于众更有妨害：” 彼时英国有书达三国公使云： “若彼国所行致此国有危， 则此国实有预闻之故，此例为我英国所许。(↑) 然非不得已则不可行， 即行之，而可止则止：

it could receive a general and indiscriminate application to all revolutionary movements, without reference to their immediate bearing upon some particular State or States, or that it could be made, prospectively, the basis of an alliance. The British government regarded its exercise as an exception to general principles of the greatest value and importance, and as one that only properly grows out of the special circumstances of the case; but it at the same time considered, that exceptions of this description never can, without the utmost danger, be so far reduced to rule, as to be incorporated into the ordinary diplomacy of States, or into the institutes of the Law of Nations.	若使势以御凡民之内变， 不问其有妨何国与否， 或豫先会盟以防之， 则我断断不许。”（↑） 如此预闻他国之内务， 英国以为从权(exception)， 若以权为经而补入公法，则必有大害矣。
6. Congress of Verona The British government also declined being a party to the proceedings of the Congress (1) held at Verona, (2) in 1822, (3) which ultimately led to an armed interference by France, (4) under the sanction of Austria, Russia, and Prussia, (5) in the internal affairs of Spain, (6) and the overthrow of the Spanish Constitution of the Cortes. (7) The British government disclaimed (1’) for itself, (2’) and denied to other powers, (3’) the right of requiring any changes in the internal institutions (4’) of independent States, (5’) with the menace of hostile attack in case of refusal. (6) It did not consider the Spanish Revolution as affording a case of that direct and imminent danger to the safety and interests of other States, which might justify a forcible interference. The original alliance between Great Britain and the other principal European powers, was specifically designed for the reconquest and liberation of the European continent from the military dominion of France; and, having subverted that dominion, it took the state of possession,	**第六节　四国管制西班牙，英不许之** 一千八百二十二年，(3) 奥、俄、普、法(5) 会在非罗那，(2) 以议西班牙内政，(6) 而后法国起兵征西班牙，(4) 废其国法。(7) 英国固辞，不预是会，(1) 若曰：“他国自主者，(5’) 我英(2’) 无此权以强令(6)改其内政。(4’) 他国有行之者，(3’) 我亦不许。(1’) 西班牙虽有内变， 于邻国无甚危迫， 安可强制之也。 且前英与诸国所以会盟 之本意无他， 惟以拯欧罗巴受法国侵暴。 法国之侵暴既除， 而和好既定，

as established by the peace, under the joint protection of the alliance. It never was, however, intended as an union for the government of the world, or for the superintendence of the internal affairs of other States. No proof had been produced to the British government of any design, (↓) on the part of Spain, to invade the territory of France; of any attempt to introduce disaffection among her soldiery; or of any project to undermine her political institutions; and, so long as the struggles and disturbances of Spain should be confined within the circle of her own territory, they could not be admitted by the British government to afford any plea for foreign interference. If the end of the last and the beginning of the present century saw all Europe combined against France, it was not on account of the internal changes which France though necessary for her own political and civil reformation; but because she attempted to propagate, first, her principles, and afterwards her dominion, by the sword.	则各国所有疆土皆赖此盟护之。 并非立盟以制天下，以监察他国内政。 所云西班牙将扰法国边界， 诱其兵旅， 易其法度， 未见有确据。（↑） 西班牙人在己之国内互相征战，而未出疆外， 则英国以他国无此管制权也。 前时统欧罗巴协力攻法国， 非因法国改变其内政， 实因法国强逼他国使遵其政 而服其法也。”
7. War between Spain and her American colonies. Both Great Britain and the United States, (1) on the same occasion, protested against the right (2) of the Allied Powers to interfere, by forcible means,(3) in the contest between Spain and her revolted American Colonies. (4) The British government declared its determination to remain strictly neutral, (↓) should the war be unhappily prolonged; but that the junction of any foreign power, in an enterprise of Spain against the colonies, would be viewed by it as constituting an entirely new question, and one upon which it must take such decision as the interest of Great Britain might require.	**第七节　四国管制西之叛邦，美英斥之** 西班牙在亚美利加之属邦叛而自立，(4) 奥、俄、普、法欲以势御之。(3) 英、美两国(1) 皆斥其事，谓其无此权也。(2) 英国出告云： “今动干戈，倘若久延不息， 我总置身局外。（↑） 但若他国助西班牙攻其属邦， 则另当斟酌。 如令我不认其属邦，则我不许。

That it could not enter into any stipulation of the independence of the colonies, nor wait indefinitely for an accommodation between Spain and the colonies;	如令我静待西班牙先认而我后认之，则我亦不许。
and that it would consider any foreign interference, by force or by menace, in the dispute between them,	至他国以势出于其间，
as a motive for recognizing the latter without delay.	则我立当认之。”
The United States government declared that	美国出告云：
it should consider any attempt, on the part of the allied European powers,	“欧罗巴横连之邦，
to extend their peculiar system to the American continent,	如欲行其政在亚美利加一洲之内，
as dangerous to the peace and safety of the Untied State.	则必致我美国难以久安常治。
With the existing colonies or dependencies of any European power they should not interfered,	其在亚美利加所有属邦，我向不管制，
and should not interfere;	以后亦不欲管制。
but with respect to the governments, whose independence they had recognized,	但业已自立而我曾认之者，
they could not view any interposition for the purpose of oppressing them,	倘他国出于其间以虐之
or controlling in any other manner their destiny,	或制其命，
in any other light than as a manifestation of an unfriendly disposition towards the United States.	则我必视之如与我国不和也。
They had declared their neutrality in the war between Spain and those new governments,	西班牙与此新立之国战，
at the time of their recognition;	我美国认之，
and to this neutrality they should continue to adhere,	而并告以我国将守局外之分。
provided no change should occur,	倘后无变更，
which, in their judgment, should make a correspondent change, on the part of the Untied States, indispensable to their own security.	致我美国防害，则我永守局外之分。
The late events in Spain and Portugal showed that	夫观西班牙、葡萄牙二国之近事，
Europe was still unsettled.	可知欧罗巴一洲未靖，
Of this important fact no stronger proof could be adduced than that (↓)	
the Allied Powers should have thought it proper, on any principle satisfactory to themselves, to have interposed by force in the internal concerns of Spain.	横连之邦擅自管制西班牙之内政，
	此为确据。(↑)
To what extent such interpositions might be carried, on the same principle, was a question	如此管制他国之内政者，将至何极?
on which all independent powers, whose governments differed from theirs,	他国之内政或有异者，
were interested, --- (↓)	
even those most remote,	虽地方辽远，

--- and none more so than the United States. The policy of the American government, (↓) in regard to Europe, adopted at an early stage of the war which had so long agitated that quarter of the globe, nevertheless remained the same. This policy was, not to interfere in the internal concerns of any of the European powers; to consider the government, *de facto*, as the legitimate government for them; to cultivate friendly relations with it, and to preserve those relations by a frank, firm and manly policy; meeting, in all instances, the just claims of every power, --- submitting to injuries from none. But, with regard to the American continents, circumstances were widely different. It was impossible that the Allied Powers should extend their political system to any portion of these continents, without endangering the peace and happiness of the United States. It was therefore impossible that the latter should behold such interposition in any form with indifference.	不得不深虑之。(↑) 深虑之者，莫甚于我美国也。 就欧罗巴而言， 我美国早定箴规，(↑) 后虽诸国久战， 我则坚守之。 各国内政，我则不谋之。 国既成立，我则认之。 与之论交际、敦友谊， 我则不伤之。 凡此堂堂修信，如各国仍有讨索于我，我则理直之。 各国横逆加害于我，我则防御之。 至亚美利加一洲内事，则地位迥异矣。 盖横连之邦如行其政于此一洲至微之国， 则我美国难守其福而安其地矣。 故横连之邦，无论何等出于其间，我美国不得不深虑之也。”
8. British interference in the affairs of Portugal, in 1826. Great Britain had limited herself to protesting against (↓) the interference of the French government in the internal affairs of Spain, and had refrained from interposing by force, to prevent the invasion of the peninsula by France. The constitution of the Cortes was overturned, and Ferdinand VII. restored to absolute power. These events were followed by the death of John VI., King of Portugal, in 1825. The constitution of Brazil had provided that its crown should never be united on the same head with that of Portugal; and Dom Pedro resigned the latter to his infant daughter, Dona Maria, appointing a regency to govern the kingdom during	**第八节　葡国有争，英管制之** 法国管制西班牙之内政， 英国始以言斥之，(↑) 后法国征其地，亦不以势御之。 迨国法既废， 旧君复位，其权因无所限。 后葡萄牙君约翰第六崩， 巴西君本应嗣位，惟巴西有律禁一君同戴两国之冕， 巴君于是让位于其女。女幼， 其父派大臣代为治国，

her minority,	
and, at the same time, granting a constitutional charter to the European dominions of the House of Braganza.	并赐民以国法简册，定君权之限制。
The Spanish government, restored to the plentitude of its absolute authority, and dreading the example of the peaceable establishment of a constitutional government in a neighboring kingdom,	西君全权既复，
countenanced the pretensions of Dom Miguel to the Portuguese crown,	有人谋僭葡萄牙君位，
and supported the efforts of his partisans to overthrow the regency and the charter.	西君暗助之， 意欲废其国法，逐其治臣， 恐己民效之而致变也。
Hostile inroads into the territory of Portugal were concerted in Spain, and executed with the connivance of the Spanish authorities,	
by Portuguese troops, belong to the party of the Pretender, who had deserted into Spain,	即准葡萄牙谋反之人，
and were received and succoured by the Spanish authorities on the frontiers.	借地招兵而袭葡疆：
Under these circumstances,	其时势甚迫，
the British government received an application from the regency of Portugal,	葡之治臣求救于英，
claiming,	谓
in virtue of the ancient treaties of alliance and friendship subsisting between the two crowns,	我二国旧有盟约，
the military aid of Great Britain (↓) against the hostile aggression of Spain.	现西班牙扰我之地， 英即当领兵以御之。(↑)
In acceding to that application, and sending a corps of British troops for the defence of Portugal,	英于是遣援兵前往，
it was stated by the British minister that	云：
the Portuguese Constitution was admitted to have proceeded from a legitimate source,	“葡之国法简册系真主所颁，
and it was recommended to Englishmen by the ready acceptance which it had met with from all orders of the Portuguese people.	更为葡民所悦。
But it would not be for the British nation to force it on the people of Portugal, (↓)	
if they were unwilling to receive it;	假使民不悦服， 则英国不可强其相服。(↑)
or if any schism should exist among the Portuguese themselves, as to its fitness and congeniality to the wants and wishes of the nation.	若葡民多有不服者，
	英亦不得制其事。(↑)
They went to Portugal	今英之往助葡萄牙，
in the discharge of a sacred obligation, (↓) contracted under ancient and modern treaties.	实因历代盟约 令我不得辞其责。(↑)

When there, nothing would be down by them to enforce the establishment of the constitution; but they must take care that nothing was done by others to prevent it from being fairly carried into effect. The hostile aggression of Spain, in countenancing the aiding the party opposed to the Portuguese Constitution, was in direct violation of repeated solemn assurances of the Spanish cabinet to the British government, engaging to abstain from such interference. The sole object of Great Britain was to obtain the faithful execution of those engagements. The former case of the invasion of Spain by France, having for its object to overturn the Spanish Constitution, was essentially different in its circumstances. France had given to Great Britain cause of war, by the aggression upon the independence of Spain. The British government might lawfully have interfered, on grounds of political expediency; but they were not bound to interfere, as they were now bound to interfere (↓) on behalf of Portugal, by the obligations of treaty. War might have been their free choice, if they had deemed it politic, in the case of Spain; interference on behalf of Portugal was their duty, unless they were prepared to abandon the principles of national faith and national honor.	我既至彼国， 绝不强制葡民复其国法， 然亦不任他国阻之者。 西班牙助人倾覆国法， 实与前言不合。盖西班牙曾寄书于我， 许 不管其事， 其所许者，我能令之成就足矣。我意无他， 惟令西班牙照其所许而行之耳。 前时法国征西班牙， 覆其国法， 与此不同。 盖法国强制西班牙不准其自主， 我英欲抵御之， 于公法未为不可， 然亦无必行之势也。 今则与葡萄牙 已有盟约， 而相助乃为必当之分。(↑) 前时战不战由我， 今时若不相助则为失信， 有玷我国声名已。”
9. Interference of the Christian powers of Europe, in favor of the Greeks. The interference of the Christian powers of Europe, in favor of the Greeks, (↓) who, after enduring ages of cruel oppression, had shaken off the Ottoman yoke, afford a further illustration of the principles of international law authorizing such an interference, (↓)	**第九节　希腊被虐，三国助之** 希腊历代受土耳其回回人凌虐， 欧罗巴奉教之国因助希腊自立，(↑) 此事又可引以示公法之例：

not only where the interests and safety of other powers are immediately affected by the internal transactions of a particular State,	盖不但某国内政致邻国有危,
but where the general interests of humanity are infringed by the excesses of a barbarous and despotic government.	公法可以相救，(↑) 即野蛮凶暴、杀戮无度， 亦可兴仁义之师而弹压之也。
These principles are fully recognized (1) in the treaty for the pacification of Greece, (2) concluded at London, (3) on the 6th of July, 1827, (4) between France, Great Britain, and Russian. (5)	英、法、俄三国 (5) 于一千八百二十七年间，(4) 会于英之都城，(3) 立约以平希腊。(2) 约内援此为例，(1)
The preamble of this treaty sets forth, that the three contracting parties were "penetrated with the necessity of putting an end to	其约略云： "希腊、土耳其两国相攻， 血流漂杵，
the sanguinary contest, which, by delivering up the Greek provinces and the isles of the Archipelago to all the disorders of anarchy, produces daily fresh impediments to the commerce of the European States, and gives occasion to piracies, which not only expose the subjects of the high contracting parties to considerable losses, but, besides, render necessary burdensome measures of protection and repression."	致希腊诸部并邻近海岛扰乱， 与欧罗巴贸易有损， 盗贼蜂起， 我三国屡受其害， 而自护抵御，兵费亦属不赀。
It then states that the British and French governments, having received a pressing request from the Greeks to interpose their mediation with the Porte, and being, as well as the Emperor of Russia,	希腊若求英、法两国从中调处，三国同心，
animated by the desire of stopping the effusion of blood, and of arresting the evils of all kinds which might arise from the continuance of such a state of things,	欲制其争战之凶残，免其贻害，
had resolved to unite their efforts, and to regulate the operations thereof by a formal treaty, with the view of reestablishing peace between the contending parties, by means of an arrangement, which was called for as much by humanity as by the interest of the repose of Europe. The treaty then provides, (art.1,) that the three contracting powers should offer their mediation (↓) to the Porte, by a joint declaration of their ambassadors at Constantinople;	故协力共议立约 以令战者复和。 此为仁政之当然， 欧罗巴之大利也。" 第一条云： "三国 驻土耳其之公使，联名公备文书与土君， 许代为折衷定议，(↑)
and that there should be made, at the same time, to the two contending parties, the demand of an immediate armistice,	并令彼此立即罢兵，

as a preliminary condition indispensable to opening any negotiation.	听候公议。”
Article 2d provides the terms of the arrangement to be made, as to the civil and political condition of Greece, in consequence of the principles of a previous understanding between Great Britain and Russia.	第二条略述英、俄前议希腊之内政、外交也。
By the 3d article it was agreed, that the details of this arrangement, and the limits of the territory to be included under it, should be settled in a separate negotiation between the high contracting powers and the two contending parties.	第三条云： “此事细目， 并土地、疆界等情， 须三大国与之另议而定也。”
To this public treaty an additional and secret article was added, stipulating that the high contracting parties would take immediate measures for establishing commercial relations with Greeks, by sending to them and receiving from them consular agents, (↓)	除以上公约外， 三国另添密约一条云： “三国当即通商于希腊。
so long as there should exist among them authorities capable of maintaining such relations.	希腊若有执权者 能尽交际之礼， 即当遣领事等官与之互相通问。(↑)
That if, within the term of one month, the Porte did not accept the proposed armistice, or if the Greeks refused to execute it, the high contracting parties should (省略 P.101 declare to that one of the two contending parties that should wish to continue hostilities, or to both, if it should become necessary, that the contracting powers intended to exert all the means, which circumstances might suggest to their prudence, to give immediate effect to the armistice,)by preventing, as far as might be in their power, all collision between the contending parties.	又先一月 令希腊、土耳其罢兵， 若有不愿罢兵者， 三大国必协力以遏其争战。”
The secret article concluded by declaring, that if these measures did not suffice to induce the Ottoman Porte to adopt the propositions made by the high contracting powers; or if, on the other hand, the Greeks should renounce the conditions stipulated in their favor, the contacting parities would nevertheless continue to prosecute the work of pacification of the basis agreed upon between them; and, in consequence, they authorized, from that time forward, their representatives in London to discuss and determine the ulterior measures to	又云： “如土耳其不允三国之议， 或希腊不循护之之章程， 三大国仍当遵约，息其争端也。 故准其公使驻扎英都者， 日后遇事共议，便宜而行

which it might become necessary to resort. The Greeks accepted the proffered mediation of the three powers, which the Turks rejected, and instructions were given to the commanders of the allied squadrons to compel the cessation of hostilities. This was effected by the result of the battle of Navarino, with the occupation of the Morea by French troops; and the independence of the Greek State was ultimately recognized by the Ottoman Porte, under the mediation of the contracting powers. If, as some writers have supposed, the Turks belong to a family or set of nations which is not bound by the general international law of Christendom, they have still no right to complain of the measures (↓) which the Christian powers thought proper to adopt for the protection of their religious brethren, oppressed by the Mohammedan rule. In a ruder age, (1) the nations of Europe, (2) impelled by a generous and enthusiastic feeling of sympathy, (3) inundated the plains of Asia (4) to recover the holy sepulcher (5) from the possession of infidels, (6) and to deliver the Christian pilgrims from the merciless oppressions practised by the Saracens. (7) The Protestant princes and States of Europe, (1') during the sixteenth and seventeenth centuries, (2') did not scruple to confederate and wage war, (3') in order to secure the freedom of religious worship for the votaries of their faith in the bosom of Catholic communities, (4') to whose subjects it was denied. (5) Still more justifiable (1) was the interference of the Christian powers of Europe to rescue a whole nation, (2) not merely from religious persecution, (3) but from the cruel alternative of being transported from their native land, or exterminated by their merciless oppressors. (4) The rights of human nature wantonly outraged by	也。” 三国之议，希腊受之， 土耳其却之。 三国于是令水师用力遏其争锋， 乃败土耳其之水师于那瓦利诺， 法国屯兵于木利耶以镇之， 而土耳其乃认希腊自立， 凭三大国之保护也。 或云土耳其等国， 不为奉教之公法所制。 然余意奉教之国，行事以护其同教之人被回回人所凌虐者， 则土耳其无可怨矣。(↑) 前时教化未盛，(1) 欧罗巴诸国 (2) 视教友往犹太省耶稣圣墓者，屡被回回人残害无度，(7) 慨然怜之，(3) 群起东征，(4) 以拯圣墓，(5) 不使不信者管辖其地。(6') 又于一千五六百年间，(2') 欧罗巴奉天主教之国，内有人民奉耶稣教者，(1') 每不准其崇奉教礼，(5') 奉耶稣教之诸国协力交战，(3') 使同教之人得以从教无阻。(4') 今希腊一国，不但遭回回人禁其教礼，(3) 又复被其残杀、抢掳，(4) 至外邦奉教之国兴师以救之，(2) 不亦宜乎? (1)

this cruel warfare, (1’) prosecuted for six years against a civilized and Christian people, (2’) to whose ancestors mankind are so largely indebted for the blessings of arts and of letters, (3’) were but tardily and imperfectly vindicated by this measure. (4’) “Whatever,” as Sir James mackintosh said, “a nation may lawfully defend for itself, it may defend for another people, if called upon to interpose.” The interference of the Christian powers, to put an end to this bloody contest might, therefore, have been safely rested upon this ground alone, without appealing to the interests of commerce and of the repose of Europe, which, as well as the interests of humanity, are alluded to in the treaty, as the determining motives of the high contracting parties.	况欧罗巴文教出于希腊，(3’) 而犹听其遭六年之凶暴，(2’) 则为天下人心所共愤，(1’) 而救之不亦缓耶？(4’) 英国公师麦金托士云:“各国为己保护何等权利， 亦可保护友国何等权利也。” 窃思奉教之国，欲兴师以息土国之残暴， 此理足矣。 则约内何必更提贸易之利， 并诸国之安， 方为管制之由来也。
10. Interference of Austria, G. Britain, Prussia, and Russia, in the internal affairs of the Ottoman Empire, in 1840. We have already seen, that(1) the relations which have prevailed between the Ottoman Empire and the other European States (2) have only recently brought the former within the pale of that public law by which the latter are governed, (3) and which was originally founded on that (4) community of manners, institutions, and religion, (5) which distinguish the nations of Christendom from (6) those of the Mohammedan world. (7) Yet the integrity and independence of that empire have been considered essential to the general balance of power, ever since the crescent ceased to be an object of dread to the western nations of Europe. The above-mentioned interference of three of the great Christina powers in the affairs of Greece had been complicated, (↓) by the separate war between Russia and the Ottoman Empire, which was terminated by the Treaty of Adrianople, in 1829,	**第十节　埃及叛土，五国理之** 土耳其与奉教之国交际，恃其保护，(2) 故迩来亦遵奉教之国所服之公法，(3) 上已略言。(1) 至奉教之国(6) 道学、箴规、风俗大体相同(5)， 此公法所由起也，(4) 皆与回回国不同：(7) 然土耳其能自立自主，不被他国征服割据，此乃欧罗巴均势之法最要关键。 昔时诸国惧其强，欲灭之，今则怜其弱，欲存之。 三国为希腊、土耳其主持中议， 时俄国与土耳其另有战争， 二事紊而难分，(↑) 竟于一千八百二十九年两国复和。 其后四年，会盟合兵。

followed by the treaty of alliance between the two empires, of Unkiar-Skelessi, in 1833.	其所以合兵之故，盖因埃及总督阿里背叛土耳其，欲自立。
The *casus faderis* of the latter treaty was brought on by the attempts of Mehemet Ali, Pasha of Egypt, to assert his independence,	阿里割据数部，
and of the Porte, which sought to recover its lost provinces.	土耳其君欲勘定之，
(省略 P.103 The *status quo*, which had been established between the Sultan and his vassal by the arrangement of Kutayah, in 1833, under the mediation of France and Great Britain, on which the peace of the Levant depended, and with it the peace of Europe was supposed to depend, was thus constantly threatened by the irreconcilable pretensions of the two great divisions of the Ottoman Empire.)	
The war again broke out between them in 1839, and the Turkish army was overthrown in the decisive battle of Nezib,	于一千八百三十九年，土耳其陆师败绩，
which was followed by the desertion of the fleet to Mehemet Ali,	水师遂降于阿里。
and by the death of Sultan Mahmoud II.	同时土耳其君又崩，
In this state of things, the western powers of Europe thought they perceived the necessity of interfering to save (↓)	
the Ottoman Empire from the double danger with which it was threatened; by the aggressions of the Pasha of Egypt on one side, and the exclusive protectorate of Russia on the other.	一面埃及攻之，一面俄罗斯护之，而土耳其在两国间势难自主，
	英、法等国于是共谋管制。(↑)
A long and intricate negotiation ensued between the five great European powers,	五大国共论此事已久，
from the voluminous documents	其中细微难于枚举，
relating to which the following general principles may be collected,	惟内有章程三条。
as having received the formal assent of all the parties to the negotiations, however divergent might be their respective views as to the application of those principles.	为各国所共许焉：
1. The right of the five great European powers to interfere in this contest	一、五大国所以秉权从中管制，以息此战争者，
was placed upon the ground	惟恐其贻患于欧罗巴
of its threatening, in its consequences, the general balance of power and the peace of Europe.	而有碍均势之法也。
The only difference of opinion arose (↓)	
as to the means by which the desirable end of preventing all future conflict between the two contending parties could best be accomplished.	至于防免后日之战争，

	则五国之意见彼时尚未同一也。(↑)
2. It was agreed that this interference could only take place on the formal application of the Sultan himself,	二、若非土耳其君自请五国公议，则五国不得管其事。
according to the rule laid down by the Congress of Aix-la-Chapelle, in 1818,	盖一千八百十八年，公使大会曾定章程云：
that the five great powers would never assume jurisdiction over questions concerning the rights and interests of another power,	“此后五大国不得擅自管制他国之事。
except at its request,	必须彼国先请其议，五国始可议其事，
and without inviting such power to take part in the conference.	然亦必请彼国公使会同定议焉。”
3. The death of Sultan Mahmoud being imminent, and the dangers of the Ottoman Empire having increased by a complication of disasters, each of the five powers declared its determination to maintain the independence of that empire, under the reigning dynasty;	三、五国皆允许保土耳其自主，
and as a necessary of that empire, under the reigning dynasty;	并保其君位得以世代相传，
and as a necessary consequence of this determination, that	且声明
neither of them should seek to profit by the present state of things to obtain an increase of territory	各国决不乘势以削其地、
or an exclusive influence.	专其权也。
The negotiations finally resulted in the conclusion of the convention of the 15th July, 1840, between four of the great European powers, Austria, Great Britain, Prussia, and Russia,	奥、英、普、俄四国，竟于一千八百四十年复立公议，
to which the Ottoman Porte acceded,	而土耳其允之，
and in consequence of which Mehemet Ali was compelled to relinquish the possession of all the provinces held by him,	四国乃令阿里让还从前窃据之地，
except Egypt, the hereditary pachalic of which was confirmed to him, according to the conditions contained in the separate article of the convention.	惟保其埃及一国得传及后代而已。
11. Interference of the five great European powers in the Belgic revolution of 1880.	**第十一节　比利时叛，五国议之**
The interference of the five great European powers represented in the conference of London, (↓)	
in the Belgic Revolution of 1830, affords an example of the application of this right to preserve the general peace,	一千八百三十年间，比利时叛荷兰自立。
and to adapt the new order of things to the stipulations of the treaties of Paris and Vienna, by	五大国会于伦敦，公议其事(↑)，仍不废其前时建立荷兰之约，惟重议章程，改之以合时

which the kingdom of the Netherlands had been created. We have given, in another work, a full account of (1) the long and intricate negotiations relating to the separation of Belgium from Holland, (2) which assumed alternately the character of a pacific mediation and of an armed intervention, according to the varying circumstances of the contest, (3) and which was finally terminated by a compromise between the two great opposite principles which so long threatened to disturb the established order and general peace of Europe. (4) The Belgic Revolution was recognized as an accomplished fact, (省略 P. 105 whilst its legal consequences were limited within the strictest bounds, by refusing to Belgium the attributes of the rights of conquest and of postliminy, and by depriving her of a great part of the province of Luxembourg, of the left bank of the Scheldt, and of the right bank of the Meuse.) The five great powers, representing Europe, consented to the separation of Belgium from Holland, and admitted the former (省略 P. 105among the independent States of Europe, upon conditions which were accepted by her and have become the bases of her public law.) These conditions were subsequently incorporated into a definitive treaty, concluded between Belgium and Holland in 1839, by which the independence of the former was finally recognized by the latter.	宜。 其所以行此权者，盖欲保诸国之安也。(4) 此事公议已久，(2) 其居间管制之者，或和而管之，或强而管之，(3) 余已细述于他书内，今不详录。(1) 比利时既自立， 五国认之， 荷兰后亦认之，与之立约焉。
12. Independence of the State in respect to its internal government. Every State, as a distinct moral being, independent of every other, may freely exercise all its sovereign rights in any manner not inconsistent with the equal rights of other States. Among these is that of establishing, altering, or abolishing its own municipal constitution of government. No foreign State can lawfully interfere with the exercise of this right, (↓) unless such interference is authorized by some special compact, or by such a clear case of necessity as immediately	**第十二节　各国自主其内事** 各国自主其事、自任其责， 均可随意行其主权， 惟不得有碍他国之权也。 其国法（双行小字：所谓“国法”者，即言其国系君主之，系民主之，并君权之有限、无限者，非同寻常之律法也。）或定、或改、或废，均属各国主权。 他国若无约据特许， 或并非势不得已而自护，

affects its own independence, freedom, and security. Non-interference is the general rule, to which cases of justifiable interference form exceptions limited by the necessity of each particular case.	则不可管制之。(↑) 盖不可管制者，经也； 可管制者，权也。 权者，被势所迫不得已而为之也。
13. Mediation of foreign States for the settlement of the internal dissentions of a State. Treaties of mediation and guaranty. The approved usage of nations authorizes (↓) the proposal by one State of its good offices or mediation for the settlement of the intestine dissensions of another State. When such offer is accepted by the contending parties, it becomes a just title for the interference of the mediating power. Such a title may also grow out of positive compact previously existing, such as treaties of mediation and guaranty. Of this nature was the guaranty by France and Sweden of the Germanic Constitution (1) at the peace of Westphalia in 1648, (2) the result of the thirty years' war waged by the princes and States of Germany (3) for the preservation of their civil and religious liberties against the ambition of the House of Austria.(4) The Republic of Geneva (1') was connected by an ancient alliance (2') with the Swiss Cantons of Berne and Zurich, in consequence of which they united with France, (3') in 1738, (4') in offering the joint mediation of the three powers (5') to the contending political parties by which the tranquility of the republic was disturbed. (6') The result of this mediation was the settlement of a constitution, which giving rise to new disputes in 1768, they were again adjusted by the intervention of the mediating powers. In 1782, the French government once more united with these Cantons and the court of Sardinia in mediating between	**第十三节　他国与闻，或临事相请，或未事有约** 此国遭内乱，彼国前来欲为调处， 本为正例。(↑) 若战者允许， 则来者即有权可主持于其间。 或此国早有约据， 许彼国遇事便可居间管理保护，则虽此国未请其调处，亦得有权矣。 前时日耳曼诸邦血战三十年之久，(3) 以御奥国而护其本国与本国之教理。(4) 至一千六百四十八年间复和。(2) 法兰西、瑞威敦二国与日耳曼立约，保其国法，即此例也。　(1) 一千七百三十八年,(4') 瑞士之日内哇(1') 一邦内乱。(6') 伯尔尼、苏黎二邦与法国共议，(3') 前来为之调处，(5') 盖三邦前有盟约如此也。(2') 调处既成， 复起衅端， 二邦与法复居间管理之， 于一千七百八十二年， 二邦与法兰西、萨尔的尼复主持于其间。

the aristocratic and democratic parties; but it appears to be very questionable how far these transactions, especially the last, can be reconciled with the respect due, on the strict principles of international law, to the just rights and independence of the smallest, not less than to those of the greatest States.	然此事尚有不合于理， 盖依公法， 自主之国不拘大小，皆不得夺其权也。
The present constitution of the Swiss Confederation was also adjusted, in 1813, by the mediation of the great allied powers, and subsequently recognized by them at the Congress of Vienna as the basis of the federative compact of Switzerland. By the same act the united Swiss Cantons guarantee their respective local constitutions of government. So also the local constitutions of the different States composing the Germanic Confederation may be guaranteed by the Diet on the application of the particular State in which the constitution is established; and this guarantee gives the Diet the right of determining all controversies respecting the interpretation and execution of the constitution thus established and guaranteed. And the Constitution of the United States of America guarantees to each State of the federal Union a republican form of government, and engages to protect each of them against invasion, and, on application of the local authorities, against domestic violence.	**盟邦互保** 瑞士近日国法， 亦为五大国于一千八百十三年居间管理之。 维也纳公使会，后认瑞士国法为诸邦合盟之纲领， 瑞士亦以之保护各邦法度也 日耳曼内各邦若请总会， 亦可以同例保其邦内法度。 总会既保之， 凡争端因解其国法、 行其国法而起者，皆归总会折断。 美国合邦之大法，保各邦永归民主， 无外敌侵伐。 倘有内乱而地方官有请，则当以国势为之弭乱。
14. Independence of every State in respect to the choice of its rulers. This perfect independence (1) of every sovereign State, (2) in respect to its political institutions, (3) extends to the choice of the supreme magistrate and other rulers, as well as to the form of government itself. In hereditary governments, the succession to the crown being regulated by the fundamental laws, all disputes respecting the succession are rightfully settled by the nation itself,	**第十四节　立君举官，他国不得与闻** 凡自主之国(2) 就其内政，(3) 自执全权而不依傍于他国，(1) 其君主、官长可以自行拣择， 其国法可以自为议定。 若君位系世传， 则嗣君必依国法而定。 或因嗣续而起争端，则本国亦可自理，

independently of the interference or control of foreign powers. So also in elective governments, the choice of the chief or other magistrates ought to be freely made, in the manner prescribed by the constitution of the State, without the intervention of any foreign influence or authority.	不必他国居间管理约束也。 若民主之国，则公举首领、官长均由自主， 一循国法， 他国亦不得行权势于其间也。
15. Exceptions growing out of compact or other just right of intervention. The only exceptions to the application of these general rules arise out of compact, such as treaties of alliance, guarantee, and mediation, (↓) to which the State itself whose concerns are in question has become a party; or formed by other powers in the exercise of a supposed right of intervention growing out of a necessity involving their own particular security, or some contingent danger affecting the general security of nations. Such, among others, were the wars relating to the Spanish succession, in the beginning of the eighteenth century, and to the Bavarian and Austrian succession, in the latter part of the same century. (↑) The history of modern Europe also affords many other examples of the actual interference of foreign powers (↓) in the choice of the sovereign of chief magistrate of those States where the choice was constitutionally determined by popular election, or by an elective council, such as in the cases of the head of the Germanic Empire, the King of Poland, and the Roman pontiff; but in these cases no argument can be drawn from the fact to the right. In the particular case, however, of the election of the pope, who is the supreme pontiff of the Roman Catholic Church, as well as a temporal sovereign, the Emperor of Austria, and the Kings of France and Spain have, by ancient usage, each a right to exclude one	**第十五节　立君举官而他国可与闻者** 以上一条为常例大纲，而间有异者， 惟因其国早有合盟保护、居间管理等约， 或因他国欲居间管理以自护， 而免贻乱于大局， 因为之共议章程也。(↑) 即如前百年，(↓) 西班牙、巴华里、奥地利三国各有争位之内乱，他国起兵而居间管理其事。 凡欧罗巴内， 此国循其国法，当自选其君， 而他国居间管理以定之。(↑) 不仅此三事也，即如日耳曼之统主、波兰王、罗马教皇，屡因他国主持其间，为之定位。 然欲因以前曾行之事，便为后日可行之事，则非矣。 若公举教皇一事， 不但为罗马君， 亦为天主教魁， 故临公举时，奥、法、西三国之君皆可与其事。 依古例，三国之君各有权

candidate.	可除争位者一人，则此人即不得举为教皇矣。
16. Quadruple alliance of 1834, between France Great Britain, Portugal, and Spain. The quadruple alliance, concluded in 1834 between France, Great Britain, (1) Spain and Portugal, (2) affords a remarkable example of actual interference (3) in the questions relating to the succession to the crown in the two latter kingdoms, (4) growing out of compacts to which they were parties, formed in the exercise of a supposed right of interference for the preservation of the peace of the Peninsula as well as the general peace of Europe. Having already stated in another work(↓) the historical circumstances which gave rise to the quadruple alliance, as well as its terms and conditions, it will only be necessary here to recapitulate the leading principles, which may be collected from the debate in the British Parliament, in 1835, upon the measures adopted by the British Government to carry into effect the stipulations of the treaty. The legality of the order in council permitting British subjects to engage in the military service of the Queen of Spain, (1) by exempting them from the general operation of the act of Parliament of 1819, forbidding them from enlisting in foreign military service, (2) was not called in question (3) by Sir Robert Peel and the other speakers on the part of the opposition. (4) Nor (↓) war the obligation of the treaty of quadruple alliance, by which the British government was bound to furnish arms and the aid of a naval force to the Queen of Spain, denied by them. Yet it was asserted, that without a declaration of war, it would be with the greatest difficulty that the	**第十六节 西、葡立君，英、法与闻之** 西班牙、葡萄牙(2) 前有君位之争，(4) 而英、法于一千八百三十四年与二国合立约据，(1) 居间管理其事。(3) 其所以居间管理之故有二： 一则因前有约据许其如此而行， 一则以其事与欧罗巴大局相关，不但于其西南边隅有涉也，故不得不行之。 四国横连起由何事，并其各条章程， 在他书曾略为记载，兹不赘述。(↑) 惟择其大端而录之， 欲详其事，必考大英国会因其章程所兴之公论。 有爵士毕耳者，并其同人，(4) 虽皆辨其事之不宜行，至于不守经而从权，(2) 准英民投西军，(1) 亦未尝以为不可。(3) 依四国横连之约， 英当助军器、水师于西， 亦未有不认其应为。(↑) 然使无宣战明文， 而徒默为助兵，恐此助兵

special obligation of giving naval aid could be fulfilled, without placing the force of such a compact in opposition to the general binding nature of international law. Whatever might be the special obligation imposed on Great Britain by the treaty, it could not warrant her in preventing a neutral State from receiving a supply of arms. She had no right, without a positive declaration of war, to stop the ships of a neutral country on the high seas. It was contended that the suspension of (↓) the foreign enlistment law was equivalent to a direct military interference in the domestic affairs of another nation. The general rule on which Great Britain had hitherto acted was that of non-interference. The only exceptions admitted to this rule were cases where the necessity was urgent and immediate; affecting, either on account of vicinage, or some special circumstances, the safety or vital interests of the State. To interfere (1) on the vague ground that (2) British interests would be promoted by the intervention; (3) on the plea that it would be for their advantage to see established a particular form of government in Spain, (4) would be to destroy altogether the general rule of non-intervention, (5) and to place the independence of every weak power at the mercy of its formidable neighbors. It was impossible to deny that an act which the British government permitted, authorizing British soldiers and subjects to enlist in the service of foreign power, and allowing them to be organized in Great Britain, was a recognition of the doctrine of the propriety of assisting by a military force a foreign government against an insurrection of its own subjects. When the Foreign Enlistment Bill was under consideration in the House of Commons,	一条 于公法之统例有所难合。 即令大英因前约有当助之分， 犹不能有权以阻他国运军器于西之敌国也。 盖无明诏宣战，即无权以拦截局外者行船于大海焉。 又云： “英国有律禁民投外国之军者， 以此律暂置而从权，(↑) 直为带兵而居间管理他国之内政也。 夫其不应“居间管理”，英国曾以为经(general rule)， 而其或有从权(exception)者， 惟因事急地近， 与国事有危险关系， 徒以(2) 西有此国法，(4) 英即有此裨益，(3) 而居间管理之，(1) 则其不可居间管理之大经全废。(5) 而弱国之有强邻者，皆危矣。 盖 英君若准兵民投外国之军， 且准借英地而入营， 此一事也,谓英使势助他国以 弹压其民也可。 况国会绅房议论出外投军一例，

the particular clause which empowered the king in council to suspend its operation was objected to on the ground, that	有一条云：‘ 君合议部遇事可暂置常禁。’ 人谓此条非也，盖无出外投军之特禁，则英民便可擅投他国而不获罪也。
if the king in council were permitted to issue an order suspending the law with reference to any belligerent nation, the government might be considered as sending a force under its own control. Lord Palmerston, in reply, stated: ---	若君合议部遇某国有战，便可出令暂置其禁， 则谓英国带兵而助彼国也亦可。” 巴麦斯敦侯答辨其事，有二：
1. That the object of the treaty of quadruple alliance, as expressed in the preamble, was to establish internal peace throughout the Peninsula, including Spain as well as Portugal; and means by which it was proposed to effect that object was the expulsion of the infants Don Carlos and Dom Miguel from Portugal. When Don Carlos returned to Spain, it was thought necessary to frame additional articles to the treaty in order to meet the new emergency.	一、四国所以横连，约内明言并无他故， 惟保西班牙、葡萄牙内安也。 而其所以保安，惟有一法， 即逐西班牙太子不准住葡萄牙。 太子即归西班牙， 约内另添章程以制其事。
One of these additional articles engaged His Britannic Majesty to furnish Her Catholic Majesty with such supplies of arms and warlike stores as Her Majesty might require, and further and assist Her Majesty with a naval force. The writers on the law of nations all agreed that any government, thus stipulating to furnish arms to another, must be considered as taking an active part in any contest in which the latter might be engaged; and the agreement to furnish a naval force, if necessary , was a still stronger demonstration to that effect. If, therefore, the recent order in council was objected to on the ground that it identified Great Britain with the cause of the existing government of Spain, the answer was, that, by the additional articles of the quadruple treaty, that identification had already been established, and that one of those articles went even beyond the measure which had been impugned.	内一条云： “西君须用军器若干，英君当借之， 更以水师助之。” 诸国之公师 皆以一国如此允许助兵， 即是与同彼国之战争也， 若允许以水师助之， 则为同战更明矣。 倘以迩来 我英国君主合议部出令置禁， 为与同西班牙之战而非之， 殊不知四国横连之盟， 其所另添之条款早已使然矣。

2. As to what had been alleged as to the danger of establishing a precedent for the interference of other countries,	一、至他国以英为鉴而居间管理，
he would merely observe; that in the first place this interference	则英所以间理之故
was founded on a treaty	出于约，
arising out of	而其所以立约之故，
the acknowledged right of succession of a sovereign, decided by the legitimate authorities of the country over which she ruled.	乃保执权者所认之真主也。
In the case of a civil war proceeding either from a disputed succession,	若争位致战，
or from a prolonged revolt,	或国内长乱，
no writer on international law denied that	公师皆以
other countries had a right, if they chose to exercise it, to take part with either of the two belligerent parties.	他国有权出于其间而随意为助。
Undoubtedly it was inexpedient to exercise that right	然此权苟非万不得已之事，
except under circumstances of a peculiar nature.	则不可行也。
That right, however, was general.	但诸国莫不有此权也。
If one country exercised it,	此国行之，
another might equally exercise it.	彼国亦可行之。
One state might support one party,	此国助此党，
another the other party;	彼国助彼党，
and whoever embarked in either cause must do so	但其助彼助此，
with their eyes open to the full extent of the possible consequences of their decision.	必当豫虑后事，
He contended, therefore, that the measure under consideration established no new principle,	决无新制律例，
and that it created no danger as a precedent.	决无启衅端也。
Every case must be judged by the considerations of prudence which belonged to it.	遇事必斟酌其利害，
The present case, therefore, must be judged by similar considerations.	此事岂独不然耶?
All that he maintained was,	余所争者无他，
that the recent proceeding did not go beyond the spirit of the engagement into which Great Britain had entered,	惟欲辨其所非之事本不离于英国约内所当为之分，
that it did not establish any new principle,	并不开新例，
and that the engagement was quite consistent with the law of nations.	而于公法自无所不合也。

Part II. Chapter II. Rights of Civil and Criminal Legislation.	第二章 论制定律法之权
1. Exclusive power of civil legislation.	**第一节 制律专权**
Every independent State	凡自主之国，
is entitled to the exclusive power of (↓) legislation,	制律
in respect to the personal rights and civil state and condition of its citizens,	定己民之分位、权利等情，
and in respect to all real and personal property situated within its territory,	并定疆内产业、植物、(双行小字：所谓植物者，即如房屋、田亩不能移动之类，不独树木然也。) 动物，
whether belonging to citizens or aliens.	无论属己民属外人，
	皆得操其专权。(↑)
But as it often happens that an individual possesses real property in a State other than that of his domicile,	然民或有产业不在本国者，
or that contracts are entered into and testaments executed by him in a country different from either,	或有在他国立契据、写遗嘱等情，
or that he is interested in successions *ab intestato*, in such third country;	或在他国有亲人死而无遗嘱本身继之，
it may happen that	如此，
he is, at the same time,	则一民
subject to	并服
two or three sovereign powers—	二三国之法。
to that of his native country or of his domicile,	其故土或其所居之地，固服之；
to that of the place where the property in question is situated,	其产业所在之地，亦服之；
and to that of the place where the contracts have been made or the acts executed.	其契据所写所成之地，又服之。
The allegiance to the sovereign power of his native country exists from the birth of the individual,	其服故土也，则直自始生之日
and continues till a change of nationality.	至弃绝本国而后已。
In the two other cases	至于产业所在之地、契据所写所成之地，
he is considered subject to the laws,	则虽云不尽服其法，
but only in a limited sense.	但就事而服之也。
In the foreign countries, where he possesses real property,	在外国有产业者，
he is called a non-resident land owner, (*sujet forain;*)	称为不住之地主；
in those in which the contracts are entered into,	在外国写成契据者，
a temporary resident, (*sujet passager*).	称为暂住之人民。
	变通之法
As, in general, each of these different countries is governed by a distinct legislation,	此数国律法不同，
conflicts between their laws often arise;	因而屡起争端。

that is to say, it is frequently a question (↓) which system of laws is applicable to the case. **Private international law.** The collection of rules for determining (↓) the conflicts between the civil and criminal laws of different States, is called private international law, to distinguish it from public international law, which regulates the relations of States.	何国之律法可制其事， 不易明也。(↑) 各国之律法如此不合而起争端， 别有条款以息之，(↑) 名曰“公法之私条”。 盖公法所以明各国交际之例，而此条所以变通各国律法之不合者，故称之为“私条”也。
2. Conflict of laws. The first general principle on this subject results immediately from the fact of the independence of nations. Every nation possesses and exercises exclusive sovereignty and jurisdiction throughout the full extent of its territory. It follows, from this principle, that the laws of every State control, of right,(↓) all the real and personal property within its territory, as well as the inhabitants of the territory within its territory, as well as the inhabitants of the territory, whether born there or not, and that they affect and regulate all the acts done, or contracts entered into within its limits. Consequently, “every State possesses the power of regulating the conditions on which the real or personal property, within its territory, may be held or transmitted; and of determining the state and capacity of all persons therein, as well as the validity of the contracts and other acts which arise there, and the rights and obligations which result from them; and, finally, of prescribing the conditions on which suits at law may be commenced and carried on within its territory. ” The second general principle is, “that no State can, by its laws, directly affect, bind, or regulate property beyond its own territory,	**第二节 变通之法，大纲有二** 夫变通律法，大纲有二：其一， 原本于各国自主之权，即各国疆内自操专权，以制法行法也。 故 凡疆内产业、植物、动物、居民， 无论生斯土者、自外来者， 按理皆当归地方律法管辖，(↑) 且疆内行止举动、契据事件， 莫不归其所制也。 各国疆内即有权以定植物、动物如何授受之例， 可定疆内之人何等分位、何等权利， 可断契据事件之或行或废， 并立契据者之分所当为， 及疆内兴讼之例等情。 其二， 无论是己民与否，非现住疆内者，各国不能以律法制之。

or control persons who do not reside within it, whether they be native-born subjects or not.	
This is a consequence of the first general principle;	此与第一纲同义，
a different system,	特反言以明其理，使不循此大纲，
which would recognize in each State the power of regulating persons or things beyond its territory,	谓此国有权以制疆外人物，则彼国虽在己之疆内，
would exclude the equality of rights among different States, and the exclusive sovereignty which belongs to each of them.”	亦不得专操其权，而各国之权利不得均平，有是理乎?
From the two principles, which have been stated, it follows that	即此二端论之，
all the effect, which foreign laws can have in the territory of a State, (↓)	
depends absolutely on the express or tacit consent of that State.	如非各国或默许、或明许，
	则他国之律法皆不得行于其疆内。(↑)
A State is not obliged to allow the application of foreign laws within its territory, but may absolutely refuse to give any effect to them.	各国有权或一概禁之、
It may pronounce this prohibition with regard to some of them only,	或禁此而允彼，
and permit others to be operative, in whole or in part.	并其所允行之律或可全行、或可限而行之，均可各随其意，不得强制也。
If the legislation of the State is positive either way,	国权既如何定律，
the tribunals must necessarily conform to it.	则法院断案必当遵之。
In the event only of the law being silent,	若本地无律可制其事，
the courts may judge, in the particular cases, how far to follow the foreign laws, and to apply their provisions.	则法院或可斟酌其间，仿照他国之律而行之也。
The express consent of a State, to the application of foreign laws within its territory,	至于明许他国之律法行于疆内者有二：
is given by acts passed by its legislative authority,	或制法者定议而许之，
or by treaties concluded with other States.	或公使会他国立约而允之。
Its tacit consent is manifested by the decisions of its judicial and administrative authorities,	其默许者亦有二：有司断案，
as well as by the writings of its publicists.	并公师论理，是也。
There is no obligation, (1)	行他国之律于本国中，(3)
recognized by legislators, public authorities, and publicists, (2)	各国之制法者、审法者、论法者，(2)
to regards foreign laws; (3)	皆以为情所可为，非分所必为。(1)
but their application is admitted, (4)	
only from considerations of utility and the mutual	故其或有行之者，(4)

convenience of States ---- *ex comitate, ob reciprocam utilitatem*. (5)	皆因彼此友谊有裨益也。(5)
The public good and the general interests of nations (↓)	
have caused to be accorded, every State, an operation more or less extended to foreign laws.	其实各国疆内无不准行他国之律法，惟有多寡之分。
	此固各国之共好使然，(↑)
Every nation has found its advantage in this course.	即各国之私益亦在其中。
The subjects of every State have various relations with those of other States;	盖其民与他国有交际之义，
they are interested in the business transacted and in the property situate abroad.	或在外贸易、或有产业在外国者，
Thence flows the necessity, or at least utility, for every State, in the proper interest of its subjects,	故各国如欲保护己民住在外者，
to accord certain effects to foreign laws,	必准他国之律法行于己之疆内，
and to acknowledge the validity of acts done in foreign countries,	而不废其按法而行之事也。
in order that its subjects may find in the same countries a reciprocal protection for their interests.	夫各国相需如此。
There is thus formed a tacit convention among nations for the application of foreign laws, founded upon reciprocal wants.	即可谓默许他国之律法行于疆内焉。
This understanding is not the same everywhere.	然其所默许者，未必处处皆同：
Some States have adopted the principle of complete reciprocity,	盖各国或将其所行而行以为例，
by treating foreigners in the same manner as their subjects are treated in the country to which they belong;	视他国待我民之住彼者，以待其民之住此者有之；
other States regard certain rights to be so absently inherent in the quality of citizens as to exclude foreigners from them;	或以己民本有权利外人不得同享者有之；
or they attach such an importance to some of their institutions,	或隆重本国之礼俗。
that they refuse the application of every foreign law incompatible with the spirit of those institutions.	视他国之律法有所不合即不准行者有之。
But, in modern times, all States have adopted, as a principle, the application within their territories of foreign laws;	然近时各国皆以他国律法准行己之疆内，以为通例，
subject, however, to the restrictions which the rights of sovereignty and the interest of their own subjects require.	但仍归其自主之权，并视己民之利益以定限制也。
This is the doctrine professed by all the publicists who have written on the subject.	各国公师论此，皆未有异说焉。

“Above all things,” says President Bohier, “ we must remember that, (↓) though the strict rule would authorize us to confine the operation of laws within their own territorial limits, their application has, nevertheless, been extended, from considerations of public utility, and oftentimes even from a kind of necessity.	卜熙尔云： “据理而论，尽可以律法局于疆内， 然各国从宽而准行疆外者， 不惟为共好起见， 亦因有不得已而然之势。”
But, when neighboring nations have permitted this extension, they are not to be deemed to have subjected themselves to a foreign statute; but to have allowed it, only because they have found in it their own interest by having, in similar cases, the same advantages for their own laws among their neighbors. This effect given to foreign laws is founded on a kind of comity of the law of nations; by which different peoples have tacitly agreed that they shall apply, whenever it is required by equity and common utility, provided they do not contravene any prohibitory enactment.”	此当谨识，不可忘也。(↑) 然各国既准邻国之律法行于己之疆内， 并非服其法也。 乃以为有益而准之， 使彼之疆内亦得互行我之法也。 外律如此行于内，公情非公法也。 盖各国默许准行之者， 缘与义利有相称， 而于禁令无相背也。
Huberus, one of the earliest and best writers on this subject, lays down the following general maxims, as adequate to solve all the intricate questions which may arise respecting it: --- 1. The laws of every State have force within the limits of that State, and bind all its subjects. 2. All persons within the limits of a State are considered as subjects, (↓) whether their residence is permanent or temporary. 3. By the comity of nations, whatever laws are carried into execution within the limits of any State, are considered as having the same effect everywhere, so far as they do not occasion a prejudice to the rights of other States and their citizens.	**简要三则** 胡北路，古之名师也。彼云： “变通争端曲节，以下三款足矣： 一、各国之律法行于己之疆内， 而其本民无不归其所辖也； 二、在疆内之人， 无论其住之暂久， 莫不归其辖下；(↑) 三、各国在己之疆内按律行事， 在疆外各处其事亦为坚固， 惟不得与各国人民之权利有所妨碍，此各国之友谊也。” **三则合一**

From these maxims, Huberus deduces the following general corollary, as applicable to the determination of all questions arising out of the conflict of the laws of different States, in respect to private rights of persons and property. All transactions in a court of justice, or out of court, whether testamentary or other conveyances, which are regularly done or executed according to the law of any particular place, are valid, (↓) even where a different law prevails, and where, had they been so transacted, they would not have been valid. On the other hand, transactions and instruments which are done or executed contrary to the laws of a country, as they are void at first, never can be valid; and this applies not only to those who permanently reside in the place where the transaction or instrument is done or executed, but to those who reside there only temporarily; with this exception only, that if another State, or its citizens, would be affected by any peculiar inconvenience of an important nature, by giving this effect to acts performed in another country, that State is not bound to give effect to those proceedings, or to consider them as valid within its jurisdiction. (P. 116)	胡氏复以三款合一，便得权衡， 以变通律法不合之争端， 无论关涉人民产业之事。 彼云：“法院断案， 凡人民遗嘱、契据等情， 若按地方律法， 则虽与他处律法有所歧异， 亦牢不可破。(↑) 倘契据事件与本国律法相背， 则在本国既不稳妥， 在他处亦不稳妥也。 不但长住者， 即暂住者亦归此例。 然若此事与他国有所妨害， 被害之国在己之疆内， 不必以其事为稳妥也。”
3. Lex loci rei sitae. Thus, real property is considered as not depending altogether upon the will of private individuals, but as having certain qualities impressed upon it by the laws of that country where it is situated, and which qualities remain indelible, (↓) whatever the laws of another State, or the private dispositions of its citizens, may provide to the contrary. That State, where this real property is situated, cannot suffer its own laws (↓)	**第三节　植物从物所在之律** 植物不全凭人民作主， 必从本地律法也。 无论他国律法如何， 并人民各存私见如何， 总不能不归该地方管辖。(↑)

in this respect to be changed by these dispositions, without great confusion and prejudice to its own interest. Hence it follows, that the law of a place where real property is situated governs exclusively as to the tenure, the title, and the descent of such property. This rule is applied,(↓) by the international jurisprudence of the United States and Great Britain, to the forms of conveyance of real property, both as between different parts of the same confederation or empire, and with respect to foreign countries. Hence it is that a deed or will of real property, executed in a foreign country, or in another State of the Union, must be executed with the formalities required by the laws of that State where the land lies. But this application of the rule is peculiar to American and British law. (↓) According to the international jurisprudence recognized among the different nations of the European continent, a deed or will, (1) executed according to the law of the place where it is made, (2) is valid; (3) not only as to personal, but as the real property, (4) wherever situated; (5) provided that property is allowed by the *lex loci rei sitae* to be alienated by deed or will; (6) and those cases excepted, where that law prescribes, as to instruments for the transfer of real property, particular forms,(↓) which can only be observed in the place where it is situated, such as the registry of a deed or the probate of a will.	即使人民各存私见，买卖、施与、遗留等情倘有不合， 其国亦不便改易律法，轻为迁就，恐致乱而贻害也。(↑) 故植物买卖、得失、传遗等事，莫不从其所在之律法焉。 英、美两国无论于本国所属各邦， 以及他国买卖、传遗， 皆从此例。(↑) 故契据、遗嘱写在他国， 或在本国所属各邦， 必从其物所在之律法定式。 但欧罗巴洲内诸国通行之例， 与此稍异。(↑) 无论动植物件，(4) 其遗嘱、契据(1) 只须从写立字契之地方律法。(2) 若其产业所在之地方律法，(5) 无售卖、遗传于外人之禁，(6) 则契据、遗嘱即牢不可破也。(3) 若地方律法定有例款， 必于其物所在之地记录契据，征验遗书， 植物始得更主，则立契者不得或违也。(↑)
4. Droit d' aubaine. The municipal laws of all European countries formerly prohibited aliens from holding real property within the territory of the State. During the prevalence of the feudal system,	**第四节 内治之权** 欧罗巴各国， 古时禁止外人在国内购买植物。 盖彼时大国内分封诸侯

	国， 若准买田产， 必服其所在诸侯管辖， 既因田产而服其诸侯，恐渐致酿成臣民有事二君之流弊故也。 **昔以外人遗物入公** 外人死在疆内，凡其所有，
the acquisition of property in land involved the notion of allegiance to the prince within whose dominions it law, which might be inconsistent with that which the proprietor owed to his native sovereign. It was also during the same rude ages that the *jus albinagii* or *droit d' aubaine* was established; by which all the property of a deceased foreigner (movable and immovable,) was confiscated to the use of the State, to the exclusion of his heirs, whether claiming *ab instestato*, or under a will or the decedent. In the progress of civiliazation, this barbarous and inhospitable usage has been, by degrees, almost entirely abolished. This improvement has been accomplished either by municipal regulations, or by international compacts founded upon the basis or reciprocity. Previous to the French Revolution of 1789, the *droit d' aubaine* had been either abolished or modified, (↓) by treaties between France and other States; and it was entirely abrogated by a decree of the Consitutent Assembly, 1791, with respect to all nations, without exception and without regard to reciprocity. This gratuitous concession was retracted, and the subject placed on its original footing of reciprocity by the Code-Napoleon, in 1803; but this part of the Civil Code was again repealed, by the Ordinance of the 14th July, 1819, admitting foreigners to the right of possessing both real and personal property in France, and of taking by succession *ab instestato*, or by will, in the same manner with native subjects. The analogous usage of the *droit de detraction*, or *droit de retrailte*, (jus detractus) by which a tax was levied upon the removal from one State to another of property acquired by succession or testamentary disposition, has also been reciprocally abolished in most	无分动植均须入公， 不问其有无遗嘱，其亲人皆不得继业。 后化导渐开， 此等野蛮不义之例渐废， 至今殆绝矣。 其所以改正之故， 或因新制地方律法， 或因诸国定立约据互相宽恕。 即如法国早与他国立约， 屡将此例或废或改，（↑） 至一千七百九十一年，国会制律始全废之。 虽他国待法民尚有行之者，法国亦不照其所行而行也。 于一千八百零三年重改例款，视他国待法民如何，便照其所行而行。 于一千八百十九年又废此例， 准外人购买产业、植物、动物于法国， 并准其继业， 无论有无遗嘱， 皆与本民无异。 **遗产徙外酌留数分** 前时更有一例与此相仿者， 如欲将所继产业徙至他国，则以其原业酌留数分于本国以归公用。 今则诸国互立约据而多有

civilized countries. The stipulations contained in the treaties of 1778 and 1801, between the United States and France, for the mutual abolition of the *droit d' aubaine* and the *droit de detraction* between the two countries, have expired with those treaties; and the provision in the treaty of 1794, between the United States and Great Britain, by which the citizens and subjects of the two countries, who then held lands within their respective territories, were to continue to hold them according to the nature and tenure of their respective estates and titles therein, was limited to titles existing at the signature of the treaty, and is rapidly becoming obsolete by the lapse of time. But by the stipulations contained in a great number of subsisting treaties, between the United States and various powers of Europe and America, it is provided, that "where on the death of any person holding real estate within the territories of the one party, such real estate would, by the laws of the land, descend on a citizen or subject of the other, were he not disqualified by alienage, such citizen or subject shall be allowed a reasonable time to sell the same, and to withdraw the proceeds without molestation, and exempt from all duties of *detraction* on the part of the government of the respective State."	废之者。 于一千七百七十八并一千八百零一两年间， 美、法两国立约， 互废此二例， 后其约亦旋废矣。 美、英两国于一千七百九十四年，有约互准 人民在彼此疆内存其从前已有之产业， 惟毋许嗣后再行添置， 故世远年湮，逐渐鲜少，至今已寥寥矣。 但美国与他国所立之和约， 多有条款云： "若此国人死而有遗产， 依律应传于彼国之人民， 则必宽该人民之限期， 令其售卖，取其价银。 而本国于其价银，不得遗留分毫焉。"
5. Lex domicilii. As to personal property, the *lex domicilii* of its owner prevails over the law of the country where such property is situated, so far as respects the rule of inheritance: ---- *mobilia ossibus inhaerent, personam sequuntur.* Thus the law of the place, where the owner of personal property was domiciled at the time of his decease, governs the succession *ab intestato* as to his personal effects wherever they may be situated. Yet it had once been doubted, (1) how far (2) a British subject (3) could, by changing his native domicile for a foreign domicile without the British empire, (4)	**第五节 动物从人所在之律** 至于动物，其继续之规必从其人所住之国，不从其物所在之地， 古语所云"动物贴骨跟身"是也。 故人死时，家住何地， 倘无遗嘱，其动物无论在何处，继之之例必从其家住之地。 英国原系数邦合为一国。若此邦之民(3) 迁居他邦，(6) 其传遗动物之例随处更改：(7)

change the rule of succession to his personal property in Great Britain; (5) though it was admitted that a change of domicile, within the empire, as from England to Scotland, (6) would have that effect. (7) But these doubts have been overruled in a more recent decision, by the Court of Delegates in England establishing the law, that the actual foreign domicile of a British subject is exclusively to govern, in respect to his testamentary disposition of personal property, as it would in the case of a mere foreigner. So also the law of a place (1) where any instrument, (2) relating to personal property, (3) is executed, by a party domiciled in that place, (4) governs, as to the external form, the interpretation, and the effect of the instrument: (5) *Locus regit actum*. (6) Thus (1’) a testament of personal property, if executed (2’) according to the formalities required by the law of the place where it is made, (3’) and where the party making it was domiciled at the time of its execution, (4’) is valid in every other country, (5’) and is to be interpreted and given effect to according to the *lex loci*. (6’) This principle, laid down by all the text-writers, was recently recognized in England in a case where a native of Scotland, domiciled in India, but who possessed heritable bonds in Scotland, as well as personal property there, and also in India, having executed a will in India, ineffectual to convey Scottish heritage; and a question having arisen (↓) whether his heir at law (who claimed the heritable bonds as heir) was also entitled to a share of the movable property as legatee under the will: It was held by Lord Chancellor Brougham, in delivering the judgment of the House of Lords affirming that of the court below, that the construction of the will, and the legal	若迁居外国，(4) 其例有更改与否，(2)(5) 曾有疑之者，(1) 但迩来有法师曾释其疑云： “人民居外而传遗动物者，其例从家所住， 与外人俱同。” 至人民家住某地而写(4) 书籍，(2) 关涉动物者，(3) 其式样、解说、施行皆从(5) 所在之地，(1) 古语云“地主事”是也。(6) 故(1’) 人家住某地，(4’) 而在彼写遗嘱传以动物，(2’) 若其嘱遵循地方律法，(3’) 则在他处其嘱亦坚固矣，(5’) 解之、行之皆从所立之地方律法。(6’) 公师皆许此例也。 英国迩来有法院从之断案， 苏格兰人迁居印度， 有产业并动物在故土， 在印度写遗嘱。 其嘱依苏格兰律法，不足传植物， 其所传者可凭遗嘱，而继其动物与否 亦有疑议，因而兴讼。(↑) 英国爵房断其案云： “解遗嘱、行遗嘱，

consequences of that construction, must be determined by the law of the land where it was made, and where the testator had his domicile, that is to say, by the law of England prevailing in that country; and this, although the will was made the subject of judicial inquiry in the tribunals of Scotland; for these courts also are bound to decide according to the law of the place where the will was made.	俱从遗者家住而写嘱之地。 今英吉利律法行于印度国，故必以英法解之行之也。” 虽苏格兰法院审其案，亦必从英吉利律法而断， 盖该法院不得不从其写嘱之地而断之也。
6. Personal status The sovereign power of municipal legislation also extends to the regulation of the personal rights of the citizens of the State, and to every thing affecting their civil state and condition. It extends (with certain exceptions) to the supreme police over all persons within the territory, whether citizens or not, and to all criminal offences committed by them within the same. Some of these exceptions arise from the positive law of nations, others are effect of special compact. **Laws relating to the state and capacity of persons may operate extra-territorially.** There are also certain cases where the municipal laws of the State, civil and criminal, operate beyond its territorial jurisdiction. These are, I. Laws relating to the state and capacity of persons. In general, the laws of the State, applicable to the civil condition and personal capacity of its citizens, operate upon them even when resident in a foreign country. Such are those universal personal qualities which take effect either from birth, such as citizenship, legitimacy, and illegitimacy; at a fixed time after birth, as minority and majority; or at an indeterminate time after birth,	**第六节 内治之权** 自主之国莫不有内治之权，皆可制律， 以限定人民之权利、分位等事。 有权可管辖疆内之人， 无论本国之民及外国之民， 并审罚其所犯之罪案， 此常例也。而其所异者，或由公法而起， 或因诸国相约而定其限制。 **法行于疆外者** 至地方律法、刑典行于疆外者， 亦有四种： **第一种定己民之分位** 第一种，乃限定人民之分位、权利也。 本国律法制己民之分位、权利者， 虽其民徙住他国，亦可随地而制之。 其人民生而即有之分位， 如本为何国之民， 或按例而生， 或背例而私生，（双行小字：婚配而生子则谓按例而生，未婚而生子则谓背例私生也。盖于嗣续产业、君位等事皆有关涉耳。） 其长而始有之分位，则如

as idiocy and lunacy, bankruptcy, marriage, and divorce, ascertained by the judgment of a competent tribunal. The laws of the State affecting all these personal qualities of its subjects travel with them wherever they go, and attach to them in whatever country they are resident. This general rule is, however, subject to the following exceptions:	成人年数，必届时而定也。 其无定之分位，如痴呆、亏欠、娶嫁、出妻、离夫等事， 皆归有司查明妥定。 凡此等，本国之律法随民而行， 无论住在何处，皆不能越此常例也。 然亦有三者与此不同。
Naturalization. 1. To the right of every independent sovereign State to naturalize foreigners and to confer upon them the privileges of their acquired domicile. (P.122) Even supposing a natural-born subject of one country cannot throw off his primitive allegiance, so as to cease to be responsible for criminal acts against his native country, it has been determined, both in Great Britain and the United States, that he may become by residence and naturalization in a foreign State entitled to all the commercial privileges of his acquired domicile and citizenship. Thus, by the treaty of 1794,between the United States and Great Britain, the trade to the countries beyond the Cape of Good Hope, within the limits of the East India Company's charter, was opened to American citizens, (P.127) whilst it still continued prohibited to British subjects: it was held by the Court of King's Bench that	**准外人人籍** 凡一国自主自立者，皆有权准外人人籍为本国之民， 并可以土著之权利授之。 或云人既生在某国， 则终身不能弃绝本国管辖， 如若获罪于本国，无论在何处仍当永听其法制。 英、美两国断案曰： “外人徙来，或住家、或人籍， 均得享其住家、人籍之地所有通商之权利。” 于一千七百九十四年间，两国立约， 内有一条准美国人通商于印度商会疆内之各处， 仍禁会外之英民往彼通商也。 后有住美国之英民往彼通商，因起公案，英国上法院断之曰：“ 人民生而服英国者往美住家，即以之为美民可也， 则英所允准美民之权利，该人亦可享之。 虽因事暂归故土， 犹不失其权利也。”
a natural-born British subject might become a citizen of the United States, and be entitled to all the advantages of trade conceded between his native country and that foreign country; and that the circumstance of his returning to his native country for a mere temporary purpose would not deprive him of those advantages. (P.130)	
Sovereign right of every independent State over the property within its territorial limits. 2. The sovereign right of every independent State to regulate the property within its territory constitutes another exception to the rule.	**制疆内之物** 二、凡一国自立自主者， 有权定律以制疆内之产业、货物。

Thus the personal capacity to contract a marriage, as to age, consent of parents, & c., is regulated by the law of the State of which the party is a subject; but the effects of a nuptial contract upon real property (*immobilia*) in another State are determined by the *lex loci rei sitae*. *Huberus*, indeed, lays down the contrary doctrine, upon the ground that the foreign law, in this case, does not affect the territory immediately, but only in an incidental manner, and that by the implied consent of the sovereign, for the benefit of his subjects, without prejudicing his or their rights. But the practice of nations is certainly different, and therefore no such consent can be implied to waive the local law which has impressed certain indelible qualities upon immovable property within the territorial jurisdiction.(P.136) As to personal property (*mobilia*) the *lex loci contractus* or *lex domicilii* may, in certain cases, prevail over that of the place where the property is situated. Huberus holds that not only the marriage contract itself, duly celebrated in a given place, is valid in all other places, but that the rights and effects of the contract, as depending upon the *lex loci*, are to be equally in force every where. If this rule be confined to personal property, it may be considered as confirmed by the unanimous authority of the public jurists, who unite in maintaining the doctrine that the incidents and effects of the marriage upon the property of the parties, wherever situated, are to be governed by the law of the matrimonial domicile, in the absence of any other positive nuptial contract. (↑)	故人之婚姻年数足否、父母许否， 虽按其本国之例俗而定， 但能否由婚姻而继业在他国者， 必从其产业所在之律法而断也。 胡北路不许其例，曾云：“ 该产业应从其人所服之律法。盖外国之律法行于疆内，非本于分之当然， 乃由于君之允准以使其然也。 其所以允之者，以于庶民有利， 与国权无害也。” 窃思诸国未有如此而行者， 难以为该国默许弃置地方律法，不管疆内之产业也。 至于动物， 则有时或遵其写契据家住之地方律法，而不遵其物所在之律法也。 胡北路云： “婚姻既按某处之律法而成， 即遍处坚固， 按该地律法应如何， 处处亦应如何无异。” 此说就动物论之，洵为允且当也， 公师莫不许之， 皆云： “若婚媾者， 另无继业契据，则其应如何，(↓) 即从其婚媾之地方律法而断。

But if there be an express ante-nuptial contract, the rights of the parties under it are to be governed by the *lex loci contractus*.	但未婚以前若有契据， 彼此应如何，必从其写契据地方律法而断也。”
Effect of bankrupt discharge and title of assignees in another country. By the general international law of Europe and America, （↓） a certificate of discharge obtained by a bankrupt in the country of which he is a subject, and where the contract was made and the parties domiciled, is valid to discharge the debtor in every other country;	凡负债而不能偿还， 若按本国律法，并彼此家住写契地方律法， 既经释放， 则负欠者无论至何国，皆可得免。 此欧罗巴、亚美利加公法之通例也（↑）
but the opinions of jurists and the practice of nations have been much divided upon the question, （↓） how far the title of his assignees or syndics will control his personal property situated in a foreign country, and prevent its being attached and distributed under the local laws in a different course from that prescribed by the bankrupt code of his own country.	若有货物在他国者，则所托之人能管之， 使债主不得背本国亏空之例而抄分之。 此论法师不同意，诸国不同行也。（↑）
According to the law of most European countries, （↓） the proceeding which is commenced in the country of the bankrupt’s domicile draws to itself the exclusive right to take and distribute the property.	然在亏空者家住之地，如有兴讼， 则其分抄全物之权亦随之。 欧罗巴各国多从此例。（↑）
The rule thus established is rested upon the general principle that personal (or movable) property is, by a legal fiction, considered as situated in the country where the bankrupt had his domicile.	其所以从此例者， 盖其动物无论在何处， 按之律法， 视若业已收归本国然。
But the principles of jurisprudence, as adopted in the United States, consider the *lex lori rei sitae* as prevailing over the *lex domicilii* in respect to creditor,	但美国律法则否， 就其债主而论，则遵其物所在之律法，不遵其人所住之地方律法。
and that the laws of other States cannot be permitted to have an extra-territorial operation to the prejudice of the authority, rights, and interest of the State where the property lies.	故其物在某邦， 即不准他邦之律行于其疆内，而废该邦之律也。

The Supreme Court of the United States has therefore determined, that (1) both the government under its prerogative priority, (2) and private creditors (3) attaching under the local laws, (4) are to be preferred (5) to the claim of the assignees (6) for the benefit of the general creditors (7) under a foreign bankrupt law, (8) although the debtor was domiciled and the contract made in a foreign country. (9)	美国上法院断曰：(1) “人欠债而不能偿还者，(7) 若家住他国，而在他国负欠，(9) 按他国之例，(8) 托货物于人，以偿其债者，(6) 则不但所欠于本国者应先偿之，(2) 即民间债主，(3) 按地方律法而追还者，(4) 亦必先偿之也。(5)若此款已偿，则其所托之人得管其余物。”
The *lex loci contractus* often causes exceptions to this rule. 3. The general rule as to the application of personal statues yields in some cases to the operation of the *lex loci contractus*. Thus a bankrupt’s certificate under the laws of his own country cannot operate in another State,(↓) to discharge him from his debts contracted with foreigners in a foreign country.	**律从写契地方** 三、所有随身之律有时逊于写契地方之律， 即如欠债而不能偿还者，按本国之律既得释放。 倘在他国于外人有所欠负， 则释放之凭不足释之，使不必偿该欠款也。(↑)
And though the personal capacity to enter into the nuptial contract as to age, consent of parents, and prohibited degrees of affinity, &c., is generally to be governed by the law of the State of which the party is a subject, the marriage ceremony is always regulated by the law of the place where it is celebrated; and if valid there, it is considered as valid everywhere else, (↓) unless made in fraud of the laws of the country of which the parties are domiciled subjects.(P.140)	又婚媾年数足否、 父母许否、 支派过近与否， 概从其本国之律法， 然其婚礼总按其婚姻之地而行， 在彼若稳妥， 而为亲者，无违其住地之法而为之， 则处处亦稳妥也。(↑)
7. Lexloci contracus. II. The municipal laws of the State may also operate beyond its territorial jurisdiction,(↓) where a contract made within the territory comes either directly or incidentally in question in the judicial	**第七节 第二种，就事而行于疆外者** 第二种， 若有契据写在某国， 而后在他国兴讼，

tribunals of a foreign State.	
A contract, valid by the law of the place where it is made,	则本国之律法可就事而行于疆外。(↑)
is, generally speaking, valid everywhere else.	契据按其所写之地方律法，若稳妥，
The general comity and mutual convenience of nations (1)	大抵处处亦必稳妥。
have established the rule, (2)	盖依诸国之通例，(2)
that the law of that place governs in every thing (3)	契据式样、解说、责任、变异等情，(4)
respecting the form, interpretation, obligation, and effect of the contract, (4)	如于他国并其人民之权利无所妨害，(5)
wherever the authority, rights, and interests of other States and their citizens are not thereby prejudiced. (5)	则皆从其所写之地方，(3)
	盖诸国之友谊共便使然。(1)
Exceptions to its operation.	**其不行者有四**
This qualification of the rule suggests the exceptions which arise to its application. And,	既云无妨害，则事之有妨害者，不归此例明矣。
	不合于物所在之律则不行
1. It cannot apply to cases properly governed by the *lex loci rei sitae*,	一、若应以物所在之律而断案，则以上之例不行。
(in the case, before put, of the effect of a nuptial contract upon real property in a foreign State,)	即如上言，人不能因婚姻、契据，便继产业在他国者。
or by the laws of another State relating to the personal state and capacity of its citizens.	若应以本国之律制人民之分位、权利者而断案，则其例亦不行。
	妨害于他国则不行
2. It cannot apply	二、若于
where it would injuriously conflict with the laws of another State relating to its police, its public health, its commerce, its revenue, and generally its sovereign authority, and the rights and interests of its citizens.	他国之主权、贸易、征税、人民权利、内治安泰有所妨害，则不行。
Thus, if goods are sold in a place (1)	即如商人在此国卖货，(1)
where they are not prohibited, (2)	许于他国交清，(3)
to be delivered in a place (3)	其货在此无禁。(2)
where they are prohibited, (4)	若在彼有禁。(4)
although the trade is perfectly lawful by the *lex loci contractus*, (5)	则该商不能在彼向买主追讨物价。(6)
the price cannot be recovered in the State where the goods are deliverable, (6)	盖其国若准追讨，(7)
because to enforce the contract there (7)	乃是准人犯自己之禁。(8)
would be to sanction a breach of its own commercial laws. (8)	
But the tribunals of one country do not take notice of, or enforce, either directly or incidentally, the laws of trade or revenue of another State,	但此国之法院不管彼国之税务，

and therefore an insurance of prohibited trade may be enforced in the tribunals of any other country than that where it is prohibited by the local laws.	故人保禁物者， 在禁地而外可以告官，追还其保价。
Foreign marriages. Huberus holds that the contract of marriage	胡北路以婚姻之契， 如非违背本国之律法而行，(↓)
is to be governed by the law of the place where it is celebrated, excepting fraudulent evasions of the law of the State to which they party is subject. (↑) Such are marriages contracted in a foreign State, and according to its laws,(↓) by persons who are minors, or otherwise incapable of contracting, by the law of their own country.	应从行礼地方律法。 人之年数或不足、 或按本国之律法别有阻碍不得为亲者， 若至他国而为之，即系违背本国律法也。(↑)
English Law. But according to the international marriage law of the British Empire, a clandestine marriage in Scotland, of parties originally domiciled in England,who resort to Scotland, for the sole purpose of evading the English marriage act, requiring the consent of parents or guardians, is considered valid in the English Ecclesiastical Courts. This jurisprudence is said to have been adopted upon the ground of its being a part of the general law and practice of Christendom, and that infinite confusion and mischief would ensue, (1) with respect to legitimacy, succession, and other personal and proprietary rights, (2) if the validity of the marriage contract was not determined by the law of the place where it was made. (3) The same principle has been recognized between the different States of the American Union,upon similar grounds of public policy.	但依英国之例， 凡人本住英吉利，而特往苏格兰私行婚姻， 以免按英法， 必问父母、主婚人等， 英国之教法院，犹以为牢不可破。 其所以如此者， 盖奉教诸国之通例亦如此， 若废之而不按行礼地方律法，(3) 则于人之嫡派、继业等权，(2) 恐流弊无穷也：(1) 美国之各邦，就他邦而婚姻者例同，其故亦同也。
French Law. On the other hand, the age of consent required by the French Civil Code is considered, by the law of France, as a personal quality of French subjects, following them wherever they remove; and, consequently, a marriage by a Frenchman,	至于法国之律法，则以人之年数足否为随身之事， 无论何往而随之。 故法人至外国而婚姻者，

within the required age, will not be regarded as valid by the French tribunals,(↓) though the parties may have been above the age required by the law of the place where it was contracted.	年数虽在彼为足，若按本国之律未足， 则本国之法院必以之为不妥也。(↑)
	遇契据应成于他国则不行
3. Wherever, from the nature of the contract itself, or the law of the place where it is made, or the expressed intention of the parties, the contract is to be executed in another country, every thing which concerns its execution is to be determined by the law of that country. (省略一句P.142. Those writers who affirm that this exception extends to every thing respecting the nature, the validity, and the interpretation of the contract, appear to have erred, in supposing that the authorities' are at variance on this question.) They will be found, on a critical examination, to establish the distinction between (↓) what relates to the validity and interpretation, and what relates to the execution of the contract.	三、若立契据者，其契据 或由所立地方律法、 或由立契者明言 应在他国成就， 则凡成就之事， 必从其国之律法也。 夫契据之成就者， 与征其虚实、解其辞义者有别：(↑)
By the usage of nations, the former is to be determined by the *lex loci contractus*, the latter by the law of the place where it is to be carried into execution. (P.142)	依诸国之常例， 征其虚实、解其辞义，均归其立契地方律法， 凡涉成就者，悉归其成之之地方律法。
8. Lex fori.	**第八节　遇案之应由法院条规而断者则不行**
4. As every sovereign State has the exclusive right of regulating the proceedings, in its own courts of justice, the *lex loci contractus* of another country cannot apply to such cases as are properly to be determined by the *lex fori* of that State where the contract is brought in question. Thus, if a contract made in one country is attempted to be enforced, or comes incidentally in question, in the judicial tribunals of another, every thing relating to the forms of proceeding, the rules of evidence, and of limitation, (or prescription,) is to be determined by the law of the State where the suit is pending, not of that where the contract is made.	四、各国法院审案条规，为各国自定。 若有成契之案当由法院条规而断者，则其立契之地方律法不得行也。 即如在此国立契据， 若至他国追成， 或因他故入公， 则凡涉讼狱条规如传证、限期等， 均归兴讼之地方律法， 不从立契之地方律法也。

9.Foreign sovereign, his ambassador, army, or fleet, within the territory of another State.	**第九节　第三种就人而行于疆外者**
III. The municipal institution of a State may also operate beyond the limits of its territorial jurisdiction, in the following cases: ---	第三种，包括三端：
1. The person of a foreign sovereign, going into the territory of another State,	一、此国之君主往彼国者，
is, by the general usage and comity of nations, (↓)	
exempt from the ordinary local jurisdiction.	不归彼国管辖， 此乃诸国友谊之常也。(↑)
Representing the power, dignity, and all the sovereign attributes of his own nation, (1)	若邻国准其君入疆，(2)
and going into the territory of another State, under the permission (2)	其君即不服邻国律法管辖，(4)
which (in time of peace) is implied from the absence of any prohibition, (3)	盖本国威权仍在君身故也。(1)
he is not amenable to the civil or criminal jurisdiction of the country where he temporarily resides. (4)	平时若无特禁，则可谓准之矣。(3)
2. The person of an ambassador, or other public minister,	二、钦差等国使
whilst within the territory of the State to which he is delegated,	在其所遣往疆内，
is also exempt from the local jurisdiction.	亦不归地方管辖。
His residence is considered as a continued residence in his own country,	一若仍在本国，
and he retains his national character,	全属本国管辖者然，
unmixed with that of the country where he locally resides.	而其驻扎之地方不得分管辖之权焉。
3. A foreign army or fleet, marching through, sailing over,	三、兵旅、水师驶行过他国疆域，
or stationed in the territory of another State,	或屯在他国疆内者，
with whom the foreign sovereign to whom they belong is in amity,	若其君与他国之君和好，
are also, in like manner, exempt from the civil and criminal jurisdiction of the place.	则不归地方律法管辖。
If there be no express prohibition,	倘无特禁，
the ports of a friendly State are considered as open to the public armed and commissioned ships belonging to another nation, with whom that State is at peace.	则友国兵船可随意出入海口，
Such ships are exempt from the jurisdiction of the local tribunals and authorities,(↓)	
whether they enter the ports under the license implied from the absence of any prohibition,	无论其因无禁而入，
or under an express permission stipulated by treaty.	或因条款特准而人，

	均不归其地方管辖。(↑)
But the private vessels (P.144) of one State, entering the ports of another,	但民船入他国海口，
are not exempt from the local jurisdiction,(↓)	
unless by express compact, and to the extent provided by such compact.	若无特立条款以限定之，
	则不得越地方管辖。(↑)
Decision of the Supreme Court of the United States, in the case of an American ship, seized in 1810, at St. Sebastien, by order of Napoleon.	**因一案覆论三端**
The above principles, (1)	一千八百零十年，(7)
respecting the exemption of vessels belonging to a foreign nation from the local jurisdiction, (2)	有美国民船一只，(4)
were asserted by the Supreme Court of the United States, (3)	被法国捕拿入公，(5)
in the celebrated case of The Exchange, a vessel which had originally belonged to an American citizen, (4)	改作兵船驶回本国，(6)
but had been seized and confiscated at St. Sebastien, in Spain, (5)	其原主讨还，(8)
and converted into a public armed vessel by the Emperor Napoleon, (6)	美国上法院循(3)
in 1810, (7)	以上之例，(1)
and was reclaimed by the original owner, on her arrival in the port of Philadelphia. (8)	以他国兵船不归地方管辖断之。(2)
In delivering the judgment of the Court in this case, Mr. Chief Justice Marshall stated that	时上法司推论此例，详辨三端曰：
the jurisdiction of courts of justice was a branch of that possessed by the nation	“法院所操之权无他，
as an independent sovereign power.	乃本国自立自主之权也。
The jurisdiction of the nation, within its own territory, is necessarily exclusive and absolute. (↓)	
It is susceptible of no limitation not imposed by itself.	若非自许不专其权，
	则本国管辖在己之疆内俱无限制。(↑)
Any restriction upon it, deriving validity from an external source,	设有一分限制自外而加，
would imply a diminution of its sovereignty to the extent of the restriction,	则其主权即有一分减损。
and an investment of that sovereignty, to the same extent,	盖他国加我一分限制，
in that power which could impose such restriction.	即为占我一分主权。
All exceptions, therefore, to the full and complete power of a nation, within its own territories,	故自主之国在己之疆内，或有不行其全权者，
must be traced up to the consent of the nation itself.	溯其由来皆出于自许，
They could flow from no other legitimate source.	若非自许，归非正、非法也。

This consent might be either express or implied.	自许者有二，或系明许、或系默许。
In the latter case it is less determinate, exposed more to the uncertainties of construction; but, if understood,	若默许者， 既无明言，恐有误解之弊， 然若能真知灼见，实系默许之事，
not less obligatory. The world being composed of distinct sovereignties, possessing equal rights and equal independence, whose mutual benefit is promoted by intercourse with each other, and by an interchange of those good offices which humanity dictates and its wants require,	则其责任无或轻也。 今邦国众多， 皆自主自立，国权均平， 交通往来皆得裨益，
all sovereigns have consented to a relaxation in practice, under certain peculiar circumstances, of that absolute and complete jurisdiction, within their respective territories, which sovereignty confers.	且诸国之君以仁义之道互相宽让， 在己之疆内不欲过严其主权。
This consent might, in some instances, be tested by common usage, and by common opinion growing out of that usage. A nation would justly be considered as violating its faith, although that faith might not be expressly plighted, (↓) which should suddenly, and without previous notice, exercise its territorial jurisdiction in a manner not consonant to the usages and received obligations of the civilized world.	既依常例，默许、宽让其主权者， 若未知照他国， 忽而严行其主权， 即为失信于他国也。(↑)
(省略 p.146This perfect equality and absolute independence of sovereigns and this common interest impelling them to mutual intercourse, has given rise to a class of cases, in which every sovereign is understood to waive the exercise of a part of that complete exclusive territorial jurisdiction, which has been stated to be the attribute of every nation.)	其默许、宽让之事，或分为三类： **君身过疆国权随之**
Exemption of the person of the foreign sovereign from the local jurisdiction. 1. One of these was the exemption of the person of the sovereign from arrest or detention within a foreign territory. If he enters that territory with the knowledge and license of its sovereign, that license, although containing no express stipulation exempting his person from arrest,	一、如君身虽在他国疆内，他国不得捕拿拦阻。 其过疆也，若彼国之君主知而准之， 虽无不准捕拿明条，

was universally understood to imply such stipulation.	尽人皆知其义之所在也。
Why had the whole civilized world concurred in this construction? The answer could not be mistaken.	服化之国皆如此讲解者，
A foreign sovereign (1)	盖明知其君过疆，(1)
was not understood as intending to subject himself to a jurisdiction(2)	不可弃其君威，伤其国体，(3)
incompatible with his dignity and the dignity of his nation, (3)	故不归他国管辖。(2)
and it was to avoid this subjection (4)	其所以请给准文，(5)
that the license had been obtained. (5)	盖欲免此辱也。(4)
The character of the person to whom it was given,	国君既得准文
and the object for which it was granted, equally required that it should be construed to impart full security to the person who had obtained it.	以期免辱，自当全护其身，
This security, however, need not be expressed;	其辞意必应如此讲解也。
it was implied from the circumstances of the case.(P.146)	即全护未有明言，其义自包括在内。
Should one sovereign enter the territory of another, without the consent of that other, expressed or implied,	至于君之不待邻国或明许或默许而过疆，
it would present a question which did not appear to be perfectly settled,	则当如何处之，尚无定例，
a decision of which was not necessary to any conclusion to which the court might come in the case under consideration.	然与本案无涉也。
If he did not thereby expose himself to the territorial jurisdiction of the sovereign whose dominions he had entered,	若云不归彼君管辖，
it would seem to be because all sovereigns implied engaged	必因诸国之君互相默许，
not to avail themselves of a power over their equal,(↓)	
which a romantic confidence in their magnanimity had placed in their hands.	彼既慨然深信而来，我必坦然坚信而待，
	绝毋乘机以势压之也。(↑)
Exemptions of foreign ministers from the local jurisdiction.	**使臣在外国权随之**
2. A second case, standing on the same principles with the first,(↓)	
was the immunity which all civilized nations allow to foreign ministers.	二、服化之国皆准他国使臣驻扎，不归地方管辖。
	此与以上之例义皆同也。(↑)
Whatever might be the principle on which this immunity might be established,	其不归管辖之故，
whether we consider the minister as in the place of the sovereign he represents,	或谓代君身行事，

or by a political fiction suppose him to be extra-territorial,	或谓其驻扎他国系属虚设，犹在本国然。
and, therefore, in point of law,	然推原其理，
not within the jurisdiction of the sovereign at whose court he resides;	所以不归管辖者，
still the immunity itself is granted by the governing power of the nation to which the minister is deputed.	皆由所住之国自许也。
This fiction of extra-territoriality could not be erected and supported against the will of the sovereign of the territory.	使所住之国未经允许，安得凭虚而作此在如不在之例?
He is supposed to assent to it. This consent is not expressed.	盖国君虽未明许而已默许之矣。
It was true that in some countries, and in the United States among others,	美国并余外数国，
a special law is enacted for the case.	皆有律法特条详此，
But the law obviously proceeds on the idea of prescribing the punishment of an act previously unlawful,(↓)	
not of granting to a foreign minister a privilege which he would not otherwise possess.	非以何等权利赐他国使臣，
	乃以禁犯公法之事故也。(↑)
The assent of the local sovereign to the very important and extensive exemptions from territorial jurisdiction which are admitted to attach to foreign ministers,	使臣不归他国管辖，其所住之国可谓曾许之，
is implied from the consideration, that, without such exemptions,	盖无此例，
every sovereign would hazard his own dignity (↓) by employing a public minister abroad.	则君遣使于他国，
	不免有伤国体也，(↑)
His minister would owe temporary and local allegiance to a foreign prince,	其使不免负事二君之难，
and would be less competent to the objects of his mission.	其本任安能办理裕如也。
A sovereign committing the interests of his nation with a foreign power to the care of a person whom he has selected for that purpose,	故国君与他国，或有关系甚重之事而选臣以任之，
cannot intend to subject his minister in any degree to that power;	非欲臣于彼国也。
and, therefore, a consent to receive him	是以彼国既允接待，
implies a consent that	即为默许。
he shall possess (P.147) those privileges which his principal intended he should retain, privileges which are essential to the dignity of his sovereign, and to the duties he is bound to perform.	其君欲存何等权利，以保国体、行本任，该使臣均可存之也。
In what cases a public minister, by infracting the laws of the country in which he resides,	至国使犯地方律法，

may subject himself to other punishment than will be inflicted by his own sovereign,	如何方可不专归己君惩办，
was an inquiry foreign to the present purpose.	于本案无涉，兹不复论。
If his crimes be such as to render him amenable to the local jurisdiction,	惟云国使若犯罪至此极，以致将地方律法惩办，
it must be because they forfeit the privileges annexed to his character;	必因其获罪以废使臣之权利也。
and the minister, by violating the conditions under which he was received as the representative of a foreign sovereign,	盖国使若敢违国君所以接之之大义，
has surrendered the immunities granted on those conditions;	即为擅弃国君所许之权利，
or, according to the true meaning of the original consent,	按其所以默许之真义，其人堪受之，我即许之，
has ceased to be entitled to them.	否则亦不许也。
Exemption from the local jurisdiction of foreign troops passing through the territory.	**兵旅过疆国权随之**
3. A third case,	三、
in which a sovereign is understood to cede a portion of his territorial jurisdiction, was where he allows the troops of a foreign prince to pass through his dominions.	国君准他国兵旅过疆，亦以地方管辖之权稍让。
In such case, without any express declaration waiving jurisdiction over the army to which this right of passage has been granted,	虽未明言推让管辖之权，
the sovereign who should attempt to exercise it would certainly be considered as violating his faith.	然行之则为失信。
By exercising it	盖若行之，
the purpose for which the free passage was granted would be defeated,	其所以准该兵旅过疆之意不得成也。
and a portion of the military force of a foreign independent nation would be diverted from those national objects and duties to which it was applicable,	且该兵旅若不归本国专权，
and would be withdrawn from the control of the sovereign whose power and whose safety might greatly depend on retaining the exclusive command and disposition of this force.	不但不得事其国，犹恐其国势将危矣。
The grant of a free passage, therefore,	故君准兵旅过疆，并不阻碍，
implies	即为默许。
a waiver of all jurisdiction over the troops during their passage,	途间不行管辖之权，
and permits the foreign general to use that discipline and to inflict those punishments which the government of his army may require.	而听其将帅按本国之军法行刑。
But if, without such express permission,	但试问兵旅若无明准
an army should be led through the territories of a foreign prince,	过他国之疆，
might the territorial jurisdiction be rightfully	其各兵各人应归地方管辖

exercised over the individuals composing that army? Without doubt, a military force can never gain immunities of any other description than those which war gives, by entering a foreign territory against the will of its sovereign. But if his consent, instead of being expressed by a particular license, be expressed by a general declaration that foreign troops may pass through a specified tract of country, a distinction between such general permission and a particular license is not perceived. It would seem reasonable, that every immunity which would be conferred by a special license, would be, in like manner, conferred by such general permission. It was obvious that the passage of an army through a foreign territory would probably be, at all times, inconvenient and injurious, and would often be imminently dangerous to the sovereign through whose dominions it passed. Such a passage would break down some of the most decisive distinctions between peace and war, and would reduce a nation to the necessity of resisting by way an act not absolutely hostile in its character, or of exposing itself to the stratagems and frauds of a power whose integrity might be doubted, and who might enter the country under deceitful pretexts. It is for reasons like those that the general license to foreigners to enter the dominions of a friendly power is never understood to extend to a military force; and an army marching into the dominions of another sovereign, without his special permission, may justly be considered as committing an act of hostility; and, even if not opposed by force, acquires no privilege by its irregular and improper conduct. It might, however, well be questioned whether any other than the sovereign of the State is capable of deciding that such military commander is acting without a license. **Exemption of foreign ships of war, entering the ports of any nation, under an express or implied permission.** But the rule which is applicable to (↓)	与否， 云：‘兵之无准而过疆也，若非强占，则不因而增加权利明矣。’ 然虽无特准， 若国君曾经出示总准外国兵旅过某地， 则与特准无异也。 特准者应得何等权利，凭其总准而过者亦应得之。 兵旅如此过疆， 难免贻害， 甚至邦国有危。 盖若擅过，则和战几乎无别。 其名虽非攻伐该国，而究不得不以势御之， 否则恐遭他变。 故总准外国人进友国为士商之会则有之矣， 若以兵旅则为例所未有也。 兵旅若无特准遽行过疆， 则意近攻战， 彼国即可用力御之。 如此背例，亦不应得何等权利，但其特准与否，全由国君自定，兵旅总归此例。 **兵船另归一例** 但

armies did not appear to be equally applicable to ships of war entering the ports of a friendly power.	兵船进友国之海口者， 事不相同。（↑）
The injury inseparable from the march of an army through an inhabited country, and the dangers often, indeed generally, attending it, do not ensue from admitting a ship of war, without special license into a friendly port. A different rule, therefore, with respect to this species of military force, had been generally adopted.	盖兵旅经过地方于民既有害， 于国恐有危。 至兵船进口，虽无特准，亦无此危害也。 故制水师者，例与陆兵不同。
If, for reasons of State, the ports of a nation generally, or any particular ports be closed against vessels of war generally, or against the vessels of any particular nation, notice is usually given of such determination.	若各国无论何故， 或将海口全行封禁，或封禁数口， 或不准某国之船进口， 必先行告禁，乃为常例。
If there be no prohibition, the ports of a friendly nation are considered as open to the public ships of all powers with whom it is at peace, and they are supposed to enter such ports, and to remain in them while allowed to remain, under the protection of the government of the place.	若无告禁， 则各国以为友国之兵船， 尽可出入， 其已在口停泊者， 若非明言饬退，则仍赖该国保护。
The treaties between civilized nations, in almost every instance, contain a stipulation to this effect in favor of (↓) vessels driven in by stress of weather or other urgent necessity.	“船只患风浪， 或别有不得已之故者， 服化之国互相立约，各有条款准其进海口。（↑）
In such cases the sovereign is bound by compact to authorize foreign vessels to enter his ports, and this is a license which he is not at liberty to retract.	国君既许此等船只进口， 不能旋许旋禁也。
If there be no treaty applicable to the case, and the sovereign, from motives deemed adequate by himself, permits his ports to remain open to the public ships of foreign friendly powers, the conclusion seems irresistible that they enter by his assent. And if they enter by his assent necessarily implied, no just reason is perceived for distinguishing their case from that of vessels which enter by express assent.	“虽无条款以制其事， 其君既未封禁海口，并未明禁友国兵船出入， 则可谓默准矣。 此等默准， 与特书明准无或别也。
The whole reasoning, upon which such exemption had been implied in the case of a sovereign or his minister, applies with full force to the exemption of ships of war in the case in question.	盖国君与国使过疆，不归他国管辖， 兵船进口或默准、或明许，亦不归他国管辖，其理俱同

“It is impossible to conceive,” said Vattel, “that a prince who sends an ambassador, or any other minister, can have any intention of subjecting him to the authority of a foreign power; and this consideration furnishes an additional argument, which completely establishes the independence of a public minister. If it cannot be reasonably presumed that his sovereign means to subject him to the authority of the prince to whom he is sent, the latter, in receiving the minister, consents to admit him on the footing of independence; and thus there exists between the two princes a tacit convention, (↓) which gives a new force to the natural obligation.”	也。” 发得耳云： ‘君遣使臣至他国办事， 非令其归他国管辖， 则国使不归管辖之例尤为彰明较者矣。’ 盖君若无意令其归彼君管辖， 彼君既接之， 即是允其不归管辖， 其理本应如此， 况两君已有默约乎。(↑)
Equally impossible was it to conceive, (↓) that a prince who stipulates a passages for his troops, or an asylum for his ships of war in distress, should mean to subject his army or his navy to the jurisdiction of a foreign sovereign.	“此君与彼君立约， 请准其兵旅过疆， 或准其兵船遇患避于海口， 非欲令其水陆兵师归彼国管辖也。(↑)
And if this could not be presumed, the sovereign of the port must be considered as having conceded the privilege to the extent in which it must have been understood to be asked. (P.150)	故此君之心意如何， 彼君许之， 其心意应亦无他也。
Distinction between public and private vessels. According to the judgment of the Supreme Court of the United States, where, without treaty, the ports of a nation are open to the public and private ships of a friendly power, whose subjects have also liberty, without special license, to enter the country for business or amusement, a clear distinction was to be drawn between (1) the rights accorded to private individuals, or private trading vessels, (2) and those accorded to public armed ships which constitute a part of the military force of the nation. (4)	本法院前时曾断他案，曰： ‘此国虽无条约明言， 若不禁兵船、商船进其海口， 不禁外人进其境内贸易、居住， 则其听凭水师、兵船之权利，(3) 与民船、商船(2) 自应有别。’(1)

When private individuals of one nation spread themselves through another as business or caprice may direct, mingling indiscriminately with the inhabitants of that other; or when merchant vessels enter for the purposes of trade, it would be obviously inconvenient and dangerous to society, (1) and would subject the laws to continual infraction, (2) and the government to degradation, (3) (省略P.151 if such individuals did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country. Nor can the foreign sovereign have any motive for wishing such exemption.) His subjects, then, passing into foreign countries, are not employed by him, nor are, they engaged in national pursuits. Consequently there are powerful motives for not exempting persons of this description from the jurisdiction of the country in which they are found, and no motive for requiring it. The implied license, therefore, under which they enter, can never be construed to grant such exemption. But the situation of a public armed ship was, in all respects, different. She constitutes a part of the military force of her nations, acts under the immediate and direct command of the sovereign, is employed by him in national objects. He has many and powerful motives for preventing those objects from being defeated by the interference of a foreign State. Such interference cannot take place without seriously affecting his power and his dignity. The implied license, therefore, under which such vessel enters a friendly port, may reasonably be construed, and it seemed to the court ought to be construed, as containing an exemption from the jurisdiction of the sovereign, within whose territory she claims the rites of hospitality. Upon these principles, by the unanimous consent of nations, a foreigner is amenable to the laws of the place; but certainly,	盖彼国之民与此国之民往来混杂， 或其商船进来贸易， 若该人、该船不暂服地方管辖，恐该国受辱，(3) 法难行(2) 而事易乱，(1)彼国必不欲其然也。 其民人往外国， 非为国与君也， 故行管辖之权，有重大之故， 而不行之，绝无缘故。 是以既默许其进来， 不可误认为默许不行管辖也。 “至兵船则地位迥异， 盖水师直奉君命 使权国事， 其君必不欲他国管辖而败其事。 若服他国管辖，必致辱其君。 故该船赖友国默许而进其海口， 法院即以为默许宾主相待， 而不用地方管辖， 各国皆以他国之人民，应服地方管辖，

in practice, nations had not yet asserted their jurisdiction over (P.151) the public armed ships of a foreign sovereign, entering a port open for their reception.	但开海口接他国之兵船，而即欲制服管辖者，未之有也。“
Bynkershoek, a public jurist of great reputation, had indeed maintained that	宾克舍曾云：
the property of a foreign sovereign was not distinguishable, by any legal exemption, from the property of an ordinary individual;	‘他国之物，按法不分于君民。’
and had quoted several cases in which courts of justice had exercised jurisdiction over cases	又引公案以证之。
in which a foreign sovereign was made a party defendant.	盖此公案虽被告系他国之君，法院仍得操审断之权，
Without indicating any opinion on this question,	其应分与否自不必详论。
it might safely be affirmed, that there is a manifest distinction between the private property of a person who happens to be a prince and that military force which supports the sovereign power, and maintains the dignity and independence of a nation.	然君物亦分公私，其私用之货物与护国之兵师，大有别矣。
A prince, by acquiring private property in a foreign country,	盖此国之君若至彼国置买私产，
may possibly be considered as subjecting that property to the territorial jurisdiction;	可谓默许，以该产归地方管辖，
he may be considered as, so far, laying down the prince and assuming the character of a private individual;	就该产论之，不为君而为民也。
but he cannot be presumed to do this with respect to any portion of that armed force which upholds his crown and the nation he is intrusted to govern.	至于保驾护国之兵师，则不能如是。
The only applicable case cited by Bynkershoek was	宾克舍所引公案颇多，其曰惟有二事稍同，
that of the Spanish ships of war, seized in1668, in Flushing, for a debt due from the King of Spain.	即西班牙王负欠于荷兰，
In that case the States-General interposed;	地方官捕拿其在彼停泊之兵船以偿债是也。后荷兰总会管理其事，
and there is reason to believe, from the manner in which the transaction is stated,	而史鉴述之不详。然观其词句，
that either by the interference of government, or by the decision of the tribunal, the vessels were released.	似乎总会或地方法院释放该兵船。
This case of the Spanish vessels was believed to be the only case(↓)	
furnished by the history of the world, of	自生民以来，
an attempt made by an individual to assert a claim against a foreign prince,	人民控讨他国之君，
by seizing the armed vessels of the nation.	而捕拿其国之兵船，
	惟有荷兰此一案而已。(↑)

That this proceeding was at once arrested (1) by the government, in a nation(2) which appears to have asserted the power of proceeding (3) against the private property of the prince, (4) would seem to furnish no feeble argument in support of the universality of the opinion in favor of the exemption claimed for ships of war. (5)	荷兰国会，(2) 虽以该君之私物，(4) 可服地方之权，(3) 犹释放其兵船，(1) 可为兵船不应归地方管辖之确据”．(5)
The distinction made in the laws of the United States between public and private ships, would appear to proceed from the same opinion.	美国律法于船只分公私， 亦同此意耳。
Without doubt, the sovereign of the place is capable of destroying this implication.	国君如不欲从此通例， 尽可出示令此等船只归地方法院审断。
He may claim and exercise jurisdiction, either by employing force, or by subjecting such vessels to the ordinary tribunals.	倘有强御不服者，即可以势制之。
But until such power be exerted in a manner not to be misunderstood, the sovereign cannot be considered as having imparted to the ordinary tribunals a jurisdiction which it would be a breach of faith to exercise.	然国君未曾明言以行此权， 绝不可谓此权已授于法院， 而法院若行之，则为失信于他国。
Those general statutory provisions, therefore, which are descriptive of the ordinary jurisdiction of the judicial tribunals, which give an individual, whose property has been wrested from him, a right to claim that property in the courts of the country in which it is found,	本国有律 准人民之失货者， 遇其物在何处，便在该处法院可行讨索。
ought not, in the opinion of the Supreme Court, to be so construed as to give them jurisdiction (↓) in a case in which the sovereign power had implicitly consented to waive its jurisdiction.	然遇君上所默许， 推让而不管辖之案， 则不可误解而谓地方法院有权以制之也。(↑)
The court came to the conclusion, that the vessel in question being a public armed ship, in the service of a foreign sovereign with whom the United States were at peace, and having entered an American port open for her reception, on the terms on which ships of war are generally permitted to enter the ports of a friendly power, must be considered as having come into the American territory under an implied promise that, while necessarily	上法院于是断曰： ‘该船既属公船， 又为兵船，美国既与其国和好， 不封禁海口准其进来， 而该兵船按照兵船出入之统例而来， 则可谓美国默许。 该船在此和平行事，

within it and demeaning herself in a friendly manner, she should be exempt from the jurisdiction of the country. (P. 153)	可不归地方管辖。’”
Law of France, as to the exemption of private vessels from the local jurisdiction.	**法国接待商船之例**
The maritime jurisprudence of France,	《法国航海章程》
in respect to foreign private vessels entering the French ports for the purposes of trade,	论他国民船通商于其海口者，
appears to be inconsistent with the principles established in the above judgment of the Supreme Court of the United States;	与美国上法院所断以上公案不甚吻合。
	按公法大理而言，(↓)
or, to speak more correctly, the legislation of France waives, in favor of such vessels, the exercise of the local jurisdiction to a greater extent than appears to be imperatively	不必如法国之推让地方管辖。
required by the general principles of international law. (↑)	
As it depends on the option of a nation	各国
to annex any conditions it thinks fit (↓)	
to the admission of foreign vessels,	既接他国船只，
public or private, into its ports,	无论公私进海口者，
	尽可定立条规以制之。(↑)
so it may extend, to any degree it may think fit, (1)	且该船既恃默许而来，(3)
the immunities (2),	按公法条例(4)
to which such vessels entering under an implied license, (3)	应得何等权利，(2)
are entitled by the general law and usage of nations. (4)	各国亦可商酌增减。(1)
The law of France,	按法国律法，
in respect to offences and tors committed on board foreign merchant vessels in French ports,	论罪案在他国商船停泊于法国海口者，
establishes a twofold distinction between:	则分二等：
1. Acts of mere interior discipline of the vessel,	事属该船内规，
or even crimes and offences committed by a person forming part of its officers and crew,	并该船班官人等，
against another person belonging to the same,	或有犯其班内之人，
where the peace of the port is not thereby disturbed.	惟不致乱于海口者，凡此为第一等；
2. Crimes and offences committed on board the vessel against person not forming part of its officers and crew,	若所犯之人非属班内，
or by any other than a person belonging to the same,	或犯之之人亦非班内，
or those committed by the officers and crew upon each other,	或班官班人互有所犯，

if the peace of the port is thereby disturbed.	而致乱于海口者，凡此为第二等。
	按此例罪分二等
In respect to acts of the first class,	第一等案，
the French tribunals decline taking jurisdiction.	地方法院均置不管，
The French law declares that	盖云：
	“应推诿其船所属之国自行管辖，（↓）
the rights of the power, to which the vessel belogs, should be respected,	该国不需地方官助之，
and that the local authority should not interfere,	则地方官不可管理其事。”
unless its aid is demanded. （↑）	
These acts,	故第一等案，
therefore, remain under the police and jurisdiction of the State to which the vessel belongs.	均归所属之国管辖。
In respect to those of the second class,	至于第二等案，
the local jurisdiction is asserted by those tribunals.	则地方官操其权，
It is based on the principle, that	盖云：
the protection accorded to foreign merchantmen in the French ports	“法国虽宽待保护他国之商船来其海口者，
cannot divest the territorial jurisdiction,	未尝推让地方官管辖，
so far as the interests of the State are affected;	以致有损于本国之体统也。
that a vessel admitted into a port of the State	船只既许进口，
is of right subjected to the police regulations of the place;	例应遵守地方禁令。
and that its crew are amenable to the tribunals of the country for offences committed on board of it against persons not belonging to the ship,	凡班官人等倘有犯不归船班之人，
as well as in actions for civil contracts entered into with them;	或与之买卖立据等情，
that the territorial jurisdiction for this class of cases is undeniable.	此等案不得不归地方官审断。”
It is on these principles that the French authorities and tribunals act, with regard to merchant ships lying within their waters.	此法国之法院宽待商船停泊在其海口之大例也。此等案推而不管，
The grounds upon which （↓）	
the jurisdiction is declined in one class of cases, and asserted in the other,	而于彼等案必行其权，
	其所以然，（↑）
are stated in a decision of the Council of State, pronounced in 1806. This decision arose from	见于议事部一千八百零六年所断之公案。
a conflict of jurisdiction	当时兴讼，
between the local authorities of France and the American consuls in the French ports,	由美国领事官住在法国海口者与地方官争权，
in the two following cases:	其事有二：
	公案二件

The first case was that of the American merchant vessel, The Newton, in the port of Antwerp; where the American consul and the local authorities both claimed exclusive jurisdiction over an assault committed by one of the seamen belonging to the crew against another, in the vessel’s boat. (↑)	第一事， 乃美国商船 名曰扭敦， 在法国海口停泊， 水手在舢板相争。(↓) 美国领事欲管其事，地方有司亦欲管其事。
The second was that of another American vessel, The Sally, in the port of Marseilles, where exclusive jurisdiction was claimed both by the local tribunals and by the American consul, (↓) as to a severe would inflicted by the mate on one of the seamen, in the alleged exercise of discipline over the crew.	第二事， 乃美国船 名曰撒力， 在法国海口停泊， 该船副主持刀砍伤水手一名， 而托词行内治之权， 美国领事与地方官因而争专理之权。(↑)
The Council of State pronounced against the jurisdiction of the local tribunals and authorities in both cases, and assigned the following reasons for its decision: “Considering that a neutral vessel cannot be indefinitely regarded as a neutral place, and that the protection granted to such vessels in the French ports cannot oust the territorial jurisdiction, so far as respects the public interests of the State; that, consequently, a neutral vessel admitted into the ports of the State is rightfully subject to the laws of the police of that place where she is received; that her officers and crew are also amenable to the tribunals of the country for (↓) offences and torts committed by them, even on board the vessel, against other persons than those belonging to the same, as well as for the civil contracts made with them; but that, in respect to offences and torts committed on board the vessel, by one of the officers and crew against another, the rights of the neutral power ought to be respected,	法国议事部 审其争端，断曰：“二事均不应归地方管辖。 夫外国之船不可混视为局外之地， 该船来海口者，法国虽保护之，并非推让管辖之权， 以致有损于本国体统。 故外国船既进海口者， 应遵地方法制。 班官人等在船上犯他人，不归其班者， 或与之买卖立据， 均归地方官审办。(↑) 但班官人等船上互相干犯， 仍应推诿其国秉权而断。

as exclusively concerning the internal discipline of the vessel, in which the local authorities ought out to interfere, unless their protection is demanded, or the peace and tranquility of the port is disturbed; the Council of State is of opinion that this distinction, indicated in the report of the Grand Judge, Minister of Justice, and comfortable to usage, is the only rule proper to be adopted, in respect to this matter; and applying this doctrine to the two specific cases (省略 P.156 in which the consuls of the United States have claimed jurisdiction; considering that one of these cases was that of an assault committed in the boat of the American ship Newton, by one of the crew upon another, and the other case was that of a severe would inflicted by the mate of the American ship Sally upon one of the seamen, for having made use of the boat without leave;) is of opinion that the jurisdiction claimed by the American consults ought to be allowed, and the French tribunals prohibited from taking cognizance of these cases.”	谓该案全属该船内治， 若不致骚扰海口， 不须相助， 则地方官不得管理。 上法师曾经批分此二等罪案， 本部深许其论。” 盖美国领事争权之二案均归此例， 于是断曰： “美国领事所争审断之权，应听其便， 更禁地方法院管理此等案件。”
Exemption of public or private vessel from the local jurisdiction does not extend to justify acts of aggression against the security of the State. Whatever may be (1) the nature and extent of the exemption (2) of the public or private vessels of one State (3) from the local jurisdiction (4) in the ports of another, (5) it is evident that this exemption, whether express or implied,(6) can never be construed to justify acts of hostility committed by such vessel, her officers, and crew, in violation of the law of nations, against the security of the State in whose ports she is received, or to exclude the local tribunals and authorities from resorting to such measures of self-defence as the security of the State may require. The just and salutary principle was asserted by the French Court of Cassation, in 1832,	**不得藉此例而谋为不轨** 虽云(1) 此国之船(3) 在彼国海口，(5) 或由明许、或由默许，(6) 不归地方管辖，(2)(4) 此例断不可误解 以使船只班官水手人等， 违公法而 有损于所到之国者即可幸免， 或使地方官不得行事， 以护其本国。 于一千八百三十三年，法国上法院循此例断案，

in the case of the private Saidinain steam-vessel, The Carlo Alberto which, after having landed on the southern coast of France the Duchess of Berry and several of her adherents,	即北里侯之夫人乘驾萨尔的尼火船，
with the view of exciting civil war in that country,	进法国海口，(↓) 托词避风，实欲滋事，地方官因而捕之。
put into a French port in distress. (↑) The judgment of the Court, pronounced upon the conclusions of M. Dupin Aine, Procureur-General, (↓) reversed the decision of the inferior tribunal, releasing the prisoners taken on board the vessel,	下法院断其案， 以为应行释放， 上法院覆审其案而反其原议，(↑)
upon the following grounds: 1. That the principle of the law of nations, according to which a foreign vessel, allied or neutral, is considered as forming part of the territory of the nation to which it belongs, and consequently is entitled to the privilege of the same inviolability with the territory itself, ceases to protect a vessel which commits acts of hostility in the French territory, inconsistent with its character of ally, or neutral; as if, for example, such vessel be chartered to serve as an instrument of conspiracy against the safety of the State, and after having landed some of the persons concerned in these acts, still continues to hover near the coast, with the rest of the conspirators on board, and at last puts into port under pretext of distress. 2. That supposing such allegation of distress be founded in fact, (1) it could not serve as a plea to exclude the jurisdiction of the local tribunals, (2) taking cognizance of a charge of high treason against the persons found on board, (3) after the vessel was compelled to put into port by stress of weather. (4)	其说有二： “一、依公法条款， 他国之船只 虽视如该国之土地 而不可犯， 然或有意弃和而攻击法国，则不得藉公法之例以护之。 今该船为谋反者所雇， 始则载其人至岸， 继则载其余党往返于海口近地， 终则托词避患进口，实为欲攻击法国也。 “二、即其真为避患而非托词，(1) 安能因偶有风浪之患，(4) 遂谓地方法院不可行管辖之权，(2) 以审其客人有无谋逆大罪乎?” (3)
The exemption of public ships from the local jurisdiction does not extend to their prize goods taken in violation of the neutrality of the country into which they are brought. So also it has been determined by the Supreme Court	**犯局外之权而捕拿船货进口必归地方管辖** 美国上法院亦断案云：

of the United States, that the exemption of foreign public ships, coming into the waters of a neutral State, from the local jurisdiction, does not extend to (↓) their prize ships, or goods captured by armaments fitted out in its ports, in violation of its neutrality, and of the laws enacted to enforce that neutrality. Such was their judgment in the case of (1) the Spanish ship Santissima Trinidad, (2) from which the cargo had been taken out, (3) on the high seas, (4) by armed vessels (5) commissioned by the United Provinces of the Rio de la Plata, (6) and fitted out in the ports of the United Sates (7) in violation of their neutrality. (8) The tacit permission, in virtue of which the ships of war of a friendly power are exempt from the jurisdiction of the country, cannot be so interpreted as to authorize them to violate the rights of sovereignty of the State, by committing acts of hostility against other nations, with an armament supplied in the ports, where they seek an asylum. In conformity with this principle, the court ordered restitution of the goods claimed by the Spanish owners, as wrongfully taken from them.	“公船进局外之海口，虽不归地方管辖， 然公船拖带其所捕拿船只进口， 则不从此例。”（↑） 故人若借局外之地， 备兵势而捕拿他国船物， 则为犯其局外之分而违其局外之法，该船物亦不从此例也。 南亚美利加有人(6) 借美国海口，(7) 违其局外之例(8) 而备兵船(5) 出大海，(4) 强勒西班牙船一只，(2) 捕拿其货物，(3) 法院即按此例断之。(1) 盖默许友国兵船来海口不归地方管辖， 此例断不可误解， 致令该船或有干犯国权之事， 或借避患之地备兵而攻伐他国。 法院于是断曰： “该船货物系违法强捕者，应还于原主。”
9. Jurisdiction of the State over its public and private vessels on the high seas. 4. Both the public and private vessels of every nation, on the high seas, and out of the territorial limits of any other State, are subject to the jurisdiction of the State to which they belong. Vattel says that the domain of a nation extends to all its just possessions; and by its possessions we are not to understand its territory only, but all the rights (droits) it enjoys.	**第十节 船只行于大海均归本国管辖** 各国之船只无论公私， 在大海 与在各国之疆外者， 均归其本国管辖。 发得耳云： “各国之属物所在，即为其土地。 所谓土地者，不仅指陆地而言， 凡可行权之处皆是也。

And he also considers the vessels of a nation on the high seas as portions of its territory. Grotius holds that sovereignty may be acquired over a portion of the sea, *ratione personarum, ut si classis qui maritimus est exercitus, alique in loco maris se habeat.* But, as one of his commentators, Rutherforth has observed, though there can be no doubt about the jurisdiction of a nation over the persons which compose its fleets when they are out at sea, it does not follow that the nation has jurisdiction over any portion of the ocean itself. It is not a permanent property which it acquires, but a mere temporary right of occupancy in a place which is common to all mankind, to be successively used by all as they have occasion. The jurisdiction which the nation has over its public and private vessels on the high seas, is exclusive only so far as respects offences against its own municipal laws. Piracy and other offences against the law of nations,(1) being crimes not against any particular State ,(2) but against all mankind ,(3) may be punished in the competent tribunal of any country,(4) where the offender may be found ,(5) or into which he may be carried, (6) although committed on board a foreign vessel on the high seas. (7) Though these offences may be tried (1’) in the competent court of any nation (2’) having, by lawful means, the custody of the offenders, (3’) yet the right of visitation and search does not exist in time of peace. (4’) This right cannot be employed for the purpose of executing upon foreign vessels and persons on the high seas(5’) the prohibition of a traffic, (6’) which is neither piratical or contrary to the law of nations, (7’)	故船只行于大海者， 亦为本国之土地也。” 虎哥云： “各国可因其人民所到而推广其权于大海。 盖兵旅在他国之陆地，本国固可从而管制，即水师在海亦莫不然。” 鲁氏注云： “水师在大海，本国固可管制， 岂可因而管其海也? 盖海乃万国共用， 不能专属一国，其所得者惟暂用之权耳。” 海外犯公法之案各国可行审办 各国船只无论公私，行于大海者， 其本国皆得操专权以管制之。然此例但言管制本国律法之案， 至于海盗等干犯公法,(1) 则非获罪于某国，(2) 乃获罪于万国也，(3) 无论捕之在何国，(5) 或捕之在大海，(7) 携至何国，(6) 其国若有法院能司其事者，便有权可审之也。(4) 各国按例缉获海盗等罪犯，(3’) 若有法院能司其事者，(2’) 即有权可审之，(1’) 但平时并无窥探、稽察之权。(4’) 若未有约据特许，(9’) 不可恃此权窥探、稽察他国之船只、人等行于大海者，(5’) 以禁其贸易。(6’) 即如海上贩运奴仆一事，(8’) 非犯公法亦不为海盗也。

(such, for example, as the slave trade,) (8’)	(7’)（双行小字：然诸国多有严禁且以海盗处之。）
unless the visitation and search be expressly permitted by international compact. (9’)	
Every State has an incontestable right	各国有权
to the service of all its members in the national defence,	可令庶民协力护国，
but it can give effect to this right only by lawful means.	但不按例而行，则不可行也。
Its right to reclaim the military service of its citizens	惟能行之于己民，
can be exercised only within its own territory,	或在己之疆内者，
or in some place not subject to the jurisdiction of any other nation.	或在他处不归他国管辖者，
The ocean is such a place,(↓)	
and any State may unquestionably there exercise,	故各国自操其权，
on board its own vessels,	可令己民在己之船
	只行于大海者，(↑)
its right of compelling the military or naval services of its subjects.	当兵护国。
But whether it may exercise the same right in respect to the vessels of other nations,	盖大海不归他国专管也，然若有本国之民在他国之船只行于大海者，可恃此权以强捕之与否，
is a question of more difficulty.	则不易断也。
	他国之船不可稽察
In respect to public commissioned vessels belonging to the State,	若公船属他国之君者，
their entire immunity from every species and purpose of search is generally conceded.	无论何故皆不能稽察，此通例无异说也。
As to private vessels belonging to the subjects of a foreign nation, the right to search them on the high seas, for deserters and other persons liable to military and naval service,	但私船属他国之民者，
has been uniformly asserted by Great Britain,	则英国以为可稽察，
and as constantly denied by the United States.	而美国常以为不可也。
This litigation between the two nations, who by the identity of their origin and language	二国文字皆同，言语亦同，
are the most deeply interested in the question,	此事关系较他国更重，
formed one of the principal objects of the late war between them.	故五十年前致彼此有动干戈之事焉。
It is to be hoped that (1)	窃思(1)
the sources of this controversy may be dried up by (2)	各国若不逼勒水手，(5)
the substitution of a registry of seamen, (3)	听其愿入水师者受之而限以年数，(4)
and a system of voluntary enlistment with limited service, (4)	且尽行记录，(3)
for the odious practice of impressment which has hitherto prevailed in the British navy, (5)	则此启衅之端自绝矣。(2)
and which can never be extended,	英国水师从前逼勒水手，

	即在本国行之，其事已属妄为，
even to the private ships of a foreign nation,	况欲行之于外国之船，无论公私者乎?
without provoking hostilities on the part of any maritime State capable of resisting such a pretension.	他国有力能抵御之，必至战争矣。
The subject was incidentally passed in review, though not directly treated of, (↓)	
in the negotiations which terminated in the treaty of Washington, 1842, between the United States and Great Britain.	于一千八百四十二年，美、英二国在美都议约，
	带论此事大略，究未定妥。(↑)
In a letter addressed by the American negotiator to the British plenipotentiary on the 8th August, 1842, it was stated that	美国议约大臣畏卜思达致书于英国钦差云：
no cause had produced, to so great an extent, and for so long a period, disturbing and irritating influences on the political relations of the United States and England,	“二国启衅之由，
as the impressment of seamen by the British cruisers from American merchant vessels.	莫如勒索水手一事。
From the commencement of the French revolution to the breaking out of the war between the two countries in 1812,	自一千七百八十九年直至一千八百十二年，
hardly a year elapsed without loud complaint and earnest remonstrance.	美国无一年不将此事与之论理斥劝。
A deep feeling of opposition to the right claimed,	英国徒恃有权，实为美国所深恶。
and to the practice exercised under it, and not unfrequently exercised without the least regard to what justice and humanity would have dictated, even if the right itself had been admitted,	况行此权屡背仁义而逞凶暴，
took possession of the public mind of America,	竟致众怒
and this feeling, it was well known, cooperated with other causes to produce the state of hostilities which ensued.	而开交战之端乎?
At different periods, both before and since the war, negotiations had taken place between the two governments,	不但战前二国公论其事，即战后
with the hope of finding some means of quieting these complaints.	亦有冀免结怨之由。
Sometimes the effectual abolition of the practice had been requested and treated of;	从而论之者，或请英竟废其例，
at other times, its temporary suspension;	或请英暂停其例，
and, at other time, again, the limitation of its exercise and some security against its enormous abuses.	或请英限制而行，以除大弊。
A common destiny had attended these efforts:	论者虽众，
they had all failed.	终归于虚，而一无所得。

The question stood at that moment where it stood fifty years ago.	其议已历五十年之久尚未定妥。
The nearest approach to a settlement was a convention, proposed in 1803,	于一千八百零三年，
and which had come to the point of signature, when it was broken off in consequence of (↓)	
the British government insisting that	英国钦差应允重定新例，云：
the "Narrow Seas" should be expressly excepted out of the sphere over which the contemplated stipulations against impressment should extend.	'他处不复行勒索，唯邻近之狭海当置例外。'
The American minister Mr. King, regarded this exception as quite inadmissible,	美国钦差
and chose rather to abandon the negotiation than to acquiesce in the doctrine which it proposed to establish.	不愿置之例外，
	其议将画押，因而又废。(↑)
England asserted the right of impressing British subjects.	英国以有权可随处勒索英民，
She asserted this as a legal exercise of the prerogative of the crown;	更云：'此权属于国君，本于国法。'
which prerogative was alleged to be founded on the English law of the perpetual and indissoluble allegiance of the subject,	盖按英国律法，君臣之义终身必守，颠沛造次，不可或离。
and his obligation, under all circumstances, and for his whole life, to render military service to the crown whenever required.	无论何时，君或有命皆当人军，
This statement, made in the words of eminent British jurists,	此乃英国法师之言也。
showed at once that	以此观之，
the English claim was far broader than the basis on which it was raised.	英欲行勒索之权，其本狭而其末广也。
The law relied on was English law; the obligations insisted on were obligations between the crown of England and its subjects.	盖其本在英法论君臣之义。
This law and these obligations, it was admitted, might be such as England chose they should be.	夫英国服何法，其君臣守何义，固由英自制，
But then they must be confined to the parties.	惟尽可行于己之疆内，
Impressment of seamen, out of and beyond the English territory, and from on board the ships of other nations,	若出疆向他国之船勒索水手，
was an interference with the rights of other nations;	则为干犯他国之权利。
it went, therefore, further than English prerogative could legally extend;	此英国之君权按理所不能及，
and was nothing	而其欲及之者无他，
but an attempt to enforce the peculiar law of England beyond the dominions and jurisdiction of the	乃强行英法在英之疆外，

crown. (省略 P. 162The claim asserted an extra-territorial authority for the law of British prerogative, and assumed to exercise this extra-territorial authority,) to the manifest injury of the citizens and subjects of other States, on board their own vessels, on the high seas. Every merchant vessel on those seas was rightfully considered as part of the territory of the country to which it belonged. The entry, therefore, into such vessel, by a belligerent power, was an act of force, and was, *prima facie*, a wrong, a trespass which could be justified only when done for some purpose allowed to form a sufficient justification by the law of nations. But a British cruiser enters an American vessel in order to take therefrom supposed British subjects; offering no justification therefore under the law of nations, but claiming the right under the law of England respecting the king's prerogative.(省略 P.162 This could not be defended. English soil, English territory, English jurisdiction, was the appropriate sphere for the operation of English law.) The ocean was the sphere of the law of nations; and any merchant vessel on the high seas was, by that law, under the protection of the laws of her own nation, and might claim immunity,(↓) unless in cases in which that law allows her to be entered or visited. If this notion of perpetual allegiance, and the consequent power of the prerogative, were the law of the word; if it formed part of the conventional code of nations, and was usually practiced, like the right of visiting neutral ships, for the purpose of discovering and seizing enemy's property; then impressment might be defended as a common right,	屈害他国之人民也。 今商船行于大海者， 按公法可谓本国之土地， 他国虽有战事，遇而登之， 即为强屈， 如非公法所许之重故，不可为也。 但英水师登美国商船， 并无他故，惟以捕拿英民， 欲辨其理，非引公法， 乃引英国律法所论之君权也。 今洋海乃万国公法所行之区， 故商船在大海者， 按公法可恃本国保护， 如非公法所许可稽察重故 则可免其稽察也。(↑) 夫英所云君臣之义终身不绝， 设如此说能通行于万国，为公法条款， 诸国所惯行， 与战者登局外之船捕拿敌货无异。 则此勒索之事， 便可为通行之权，

and there would be no remedy for the evil until the international code should be altered. But this was by no means the case. There was no such principle incorporated into the code of nations. The doctrine stood only as English law, not as international law; and English law could not be of force beyond English dominion. Whatever duties or relations that law creates between the sovereign and his subjects, could only be enforced within the realm, or within the proper possessions or territory of the sovereign. There might be quite as just a prerogative right to the property of subjects as to their personal services, in an exigency of the State;	而欲改之者无他， 惟改公法而已。 今公法并无此例， 其说本于英法， 不本于公法也。 英法不能行于英之疆外， 其所制君臣之分 惟行于英国之土地也。 若云君能令民无论在何处以力事之， 亦可云本国遇有紧急，君可令民无论在何处以物事之耶?
but no government thought of controlling, by its own laws, the property of its subjects situated abroad; much less did any government think of entering the territory of another power, for the purpose of seizing such property and appropriating it to its own use. As laws, the prerogatives of the crown of England have no obligation on person or property domiciled or situated abroad. "When, therefore," says an authority not unknown or unregarded on either side of the Atlantic, "we speak of the right of a State to bind its own native subjects everywhere, we speak only of its own claim and exercise of sovereignty over them,(↓) when they return within its own territorial jurisdiction, and not of its right to compel or require obedience to such laws on the part of other nations, within their own territorial sovereignty. On the contrary, every nation has an exclusive right to regulate persons and things within its own territory,(↓) according to its sovereign will and public policy. "	今人民有货在外者，本国以己之律管制，未之有也， 况过他国疆界，强捕货物以充己用，更无此理矣。 英国君权操之本国， 而于人民货物在外国者，一无所涉。 有名师为西洋两涯所共仰者，云： '所谓各国有权在各处以制其本民， 即谓其本民既复于疆内， 则本国便可行管辖之权，(↑) 非云可令在他国疆内遵己之律法也。 盖各国本操专权，随己之意见， 为己之公益， 以辖疆内之人物焉。'(↑)
But impressment was subject to objections of a much wider range.	"此勒索之事，不仅此数端可辨其非也。

If it could be justified in its application to those who are declared to be its only objects,	若云可行于己民，
it still remained true that, in its exercise, it touched the political rights of other governments,	其行时不免碍他国之权，
and endangered the security of their own native subjects and citizens.	致他国人民有损。
The sovereignty of the State was concerned in maintaining its exclusive jurisdiction and possession over (↓)	
its merchant ships on the seas,	盖各国商船行于大海者，专归本国主权，(↑)
except so far as the law of nations justifies intrusion upon that possession for special purposes; and all experience had shown that	而本国如非公法所许之故，不应听他国稽察。若听其稽察勒索，
no member of a crew, wherever born,	则船上之人无论生在何处，
was safe against impressment when a ship was visited.	皆难保其不受强制之屈矣。
In the calm and quiet which had succeeded the late war,	前战既息，
a condition so favorable for dispassionate consideration, England herself had evidently seen the harshness of impressment,	英国亦曾因此平情念及勒索水手，
even when exercised on seamen in her own merchant service;	虽在己之商船亦难免冤屈，
and she had adopted measures, calculated if not to renounce the power	于是虽不弃其权，
or to abolish the practice,	并不废其例。
yet, at least, to supersede its necessity, by other means of manning the royal navy,	又设他方以招人入师，
more compatible with justice and the rights of individuals, and far more conformable to the principles and sentiments of the age.	乃与盛世仁义之道相称矣。
Under these circumstances,	为此，
the government of the United States had used the occasion of the British minister' s pacific mission	我美国乘英国大臣平情来此，
to review the whole subject,	复论其事，
and to bring it to his notice and to that of his government.	望其国亦复议之。
It had reflected	我国此举，
on the past, pondered the condition of the present, and endeavored to anticipate, so far as it might be in its power, the probable future;	统筹前后，毫无遗漏，
and the American negotiator communicated to the British minister the following, as the result of those deliberations. The American government, then, was prepared to say that	即总其定议，致书于英国明言勒索水手之事，
the practice of impressing seamen from American vessels could not hereafter be allowed to take place.	嗣后不得再行于美国之船。

That practice was founded on principles which it did not recognize, and was invariably attended by consequences so unjust, so injurious, and of such formidable magnitude, as could not be submitted to. In the early disputes between the two governments, on this so long contested topic, the distinguished person to whose hands were first intrusted the seals of the Department of State declared, that “the simplest rule will be, that the vessel being American shall be evidence that the seamen on board are such.” Fifty years’ experience, the utter failure of many negotiations, and a careful reconsideration of the whole subject when the passions were laid, and no present interest or emergency existed to bias the judgement, had convinced the American government that this was not only the simplest and best, but the only rule, which could be adopted and observed, and the security of their citizens. That rule announced, therefore, what would hereafter be the principle maintained by their government. In every regularly documented American merchant vessel, the crew who navigated it would find their protection in the flag which was over them. (P.164)	盖其说实为我国所不许， 而其行不免致强屈流弊， 为我国所不服。 二国早论其事， 我美开国时，总理各国事务尚书云： ‘有简法以制之， 即以美船为凭，而以其水手皆为美国人也。’ 五十年来， 二国屡有更议，终未定妥。 今美国无急要之事，心无偏向， 深思其所谓简法者，言虽简而法实最美， 除此别无善策以保我国体而安我黎民也。 故嗣后我国必遵之为法， 凡美国商船照例领牌者， 则班内行船之人皆可举头望其旗号而得保护。”

第二卷. 第二章.(续)

11. Consular jurisdiction.	**第十一节　第四种因约而行于疆外者** **领事等官**
IV. The municipal laws and institutions of any State may operate beyond its own territory, and within the territory of another State, by special compact between the two States. Such are the treaties by which the consuls and other commercial agents of one nation are authorized to exercise, over their own countrymen, a jurisdiction within the territory of the State where they reside. The nature and extent of this peculiar jurisdiction depend upon the stipulations of the treaties between the two States. Among Christian nations	第四种，此国之律法可行于己之疆外， 而及于彼国之疆内者， 盖因二国相约而然。 即如二国立约，许此国之领事等官住在彼国疆内， 而行权于其本国人。 住在彼国者，其权如何，必由和约章程而定。 在奉教之国，

it is generally confined to the decision of controversies in civil cases, arising between the merchants, seamen, and other subjects of the State, in foreign countries;	惟准审断其本国水手、商人等住在外国者所有争端、
to the registering of wills, contracts, and other instruments executed in presence of the consul; and to the administration of the estates of their fellow-subjects, deceased within the territorial limits of the consulate.	记录、遗嘱、契据与各等文凭， 须在领事前画押者， 督办其本国人死在其管辖之界内者所遗之产业。
The resident consuls of the Christian powers in Turkey, the Barbary States, and other Mohammedan countries,	但奉教之国有领事住在土耳其、巴巴里等回回国，
exercise both civil and criminal jurisdiction over their country men,	审办争端、罪案二权并行。
to the exclusion of the local magistrates and tribunals.	盖其人民居彼者，不归地方官管辖。
This jurisdiction is ordinarily subject, in civil cases, to an appeal to the superior tribunals of their own country.	领事断案， 若系争端， 则输者或心怀不服，可上告于本国法院；
The criminal jurisdiction is usually limited to the infliction of pecuniary penalties;	若系罪犯， 轻者则概以金为罚，
and, in offences of a higher grade, the functions of the consul are similar to those of a police magistrate, or *juge d' instruction*.	重者
He collects the documentary and other proofs, and sends them, together with the prisoner, home to his own country for trial.	则传证录凭， 送至本国，并解人犯以待本国法院审断。
By the treaty of peace, amity, and commerce, concluded at Wang Hiya, 1844, between the United States and the Chinese Empire, it is stipulated, art.21, that	于一千八百四十四年，美国与中国立和约通商章程， 第二十一条云： “嗣后，中国民人与合众即美国之别名也国民人有争斗词讼交涉事件，中国民人由中国地方官捉拿审讯，照中国例治罪。
“citizens of the United States, who may commit any crime in China, shall be subject to be tried and punished only by the consul, or other public functionary of the United States thereto authorized, according to the laws of the United States.”	合众国民人 由领事等官捉拿审讯，照本国例治罪。 但须两得其平，秉公断结，不得各存偏护，致启争端。”
Art 25. “All questions in regard to rights, whether of property or of person, arising between	第二十五条又云： “合众民人在中国各港口

citizens of the United States in China shall be subject to the jurisdiction, and regulated by the authorities, of their own government. And all controversies occurring in China, between citizens of the United States and the subjects of any other government, shall be regulated by the treaties existing between the United States and such governments respectively, without interference on the part of China.(P.167)"	自因财产涉讼， 由本国领事等官讯明办理。 若合众国民人在中国与别国贸易之人因事争论者， 应听两造查照各本国所立条约办理， 中国官员均不得过问。"
12. Independence of the State, as to its judicial power. Every sovereign State is independent of every other, (↓) in the exercise of its judicial power. This general position must, of course, be qualified by the exceptions to its application, arising out of express compact, such as conventions with foreign States, and acts of confederation, by which the State may be united in a league with other States, for some common purpose. By the stipulations of these compacts, it may part with certain portions of its judicial power, or may modify its exercise with a view to the attainment of the object of the treaty or act of union.(P.171) Subject to these exceptions, the judicial power of every State is coextensive with its legislative power. At the same time, it does not embrace (↓) those cases in which the municipal institutions of another nation operate within the territory. Such are the cases of a foreign sovereign, or his public minister, fleet, or army, coming within the territorial limits of another State, which, as already observed, are, in general, exempt from the operation of the local laws.	**第十二节　审案之权各国自秉** 自主之国 审办犯法之案，尽可自秉其权， 不问于他国，(↑) 此大例也。 然若其国与他国有盟约相连，或特立约据， 则此权或有所减。 除此， 则各国审罚之权与制法之权并行不悖也。 惟他国律法行于疆内之案件， 自不归地方管辖。(↑) 即如他国之君主、国使、水师、陆兵过疆等事， 上交已略言之， 按大例均置于地方权外。
13. Extent of the judicial power over criminal offences. I. The judicial power of every independent State, then, extends, with the qualifications mentioned, ---- 1. To the punishment of all offences against the municipal laws of the State, by whomsoever committed, within the territory. 2. To the punishment of all such offences, by	**第十三节　四等罪案审罚可及** 除此权外之事，则自主之国审罚之权，可及于四等之案： 凡在疆内犯地方律法之事，无论犯之者何人，一也；

whomsoever committed,(↓) on board its public and private vessels on the high seas, and on board its public vessels in foreign ports.	凡在本国之公私船只行于大海者， 或在其公船停泊于他国海口者， 所有犯法之事，无论犯之者何人，二也；(↑)
3. To the punishment of all such offences by its subjects, wheresoever committed.	己民犯本国之律法者，无论在何处，三也；
4. To the punishment of piracy, and other offences against the law of nations, by whomsoever and wheresoever committed.	海盗等犯公法之案，无论犯之者何人，与所犯者何处，四也。
It is evident that a State cannot punish an offence against its municipal laws, committed within the territory of another State, unless by its own citizens; nor can it arrest the persons or property of the supposed offender within that territory; but it may arrest its own citizens in a place which is not within the jurisdiction of any other nation, as the high seas, and punish them for offences committed within such a place, or within the territory of a foreign State.	倘有人在彼国疆内犯此国律法，若非此国之民，则此国固不能审罚之。 即犯者为其本民，亦不能在他国疆内捕拿之。 但其本民既至他国管辖不及之地， 如在大海等处， 则可捕拿审罚其事。 无论犯事地方系在海上或在他国疆内，皆同此例也。
By the Common Law of England, which has been adopted, in this respect, in the United States, criminal offences are considered as altogether local, and are justiciable only by the courts of that country where the offence is committed.	按英国俗法， 罪案专归犯事地方审罚。
But this principle is peculiar to the jurisprudence of Great Britain and the United States; and even in these two countries it has been frequently disregarded by the positive legislation of each, in the enactment of statutes, under which offences committed by a subject or citizen, within the territorial limits of a foreign State, have been made punishable in the courts of that country to which the party owes allegiance, and whose laws he is bound to obey.	然此例惟行于英、美两国， 即两国亦未尝尽循之也， 皆有制律 令人民在他国犯本国之律法者， 必归本国律法审罚：
There is some contrariety in the opinions of different public jurists on this question; but the preponderance of their authority is greatly in favor of the jurisdiction of the courts of the offender’s country,(↓) in such a case, wherever such jurisdiction is expressly conferred upon those courts, by the local laws of that country.	公师论此稍有不同。 然各国律法， 若将管理此等罪案之权授于本国法院， 则公师多以其应归本国法

	院审罚。(↑)
This doctrine is also fully confirmed by the international usage and constant legislation of the different States of the European continent,	欧罗巴洲内诸国之常行，
by which crimes in general,	
or certain specified offences against the municipal code,	人民在他国者或犯罪案、
committed by a citizen or subject in a foreign country,	或犯何条律法，
are made punishable in the courts of his own.	必归其本国法院审办焉。
Laws of trade and navigation.	
Laws of trade and navigation cannot affect foreigner,	至于贸易航海之章程，
beyond the territorial limits of the State,	则不能及他国人民在疆外者，
but they are binding upon its citizens, wherever they may be.	但本国人民无论在何处，皆可治之也。
Thus, offences against the laws of a State,	即如本国律法，
prohibiting or regulating any particular traffic,	或禁止、或范围何等事业，
may be punished by its tribunals, when committed by its citizens, in whatever place;	则其人民或有犯者，无论在何处，本国法院可审办也。
but if committed by foreigners,	至他国人犯之，
such offences can only be thus punished (↓)	
when committed within the territory of the State,	如非在疆内而犯，
or on board of its vessels,	或在此国船上而犯，
in some place not within the jurisdiction of any other State.	或在他国管辖不及之处而犯，
	则不可审罚也。(↑)
Extradition of criminals.	**交还逃犯之例**
The public jurists are divided upon the question, (1)	自主之国(3)
how far (2)	遇己民或寄居之民曾犯法于他国，(5)
a sovereign State (3)	为人告发而他国向其讨索者，(6)
is obliged to deliver up persons, (4)	其应交还与否，(2) (4)
whether its own subjects or foreigner, charged with or convicted of crimes committed in another country, (5)	公师论之各有不同。(1)
upon the demand of a foreign State, or of its officers of justice. (6)	
Some of these writers maintain the doctrine, that,	有云：
according to the law and usage of nations,	“按公法条例、诸国常例，
every sovereign State is obliged to refuse (↓)	
an asylum to individuals accused of crimes affecting the general peace and security of society,	凡人民在他国曾犯凶乱之罪，
and whose extradition is demanded by the government of that country within whose jurisdiction the crime has been committed.	遇所犯之国讨索者，
	则不应袒庇。”(↑)
Such is the opinion of Grotius, Heineccius, Burlamaqui, Vattel , Rutherforth, Schmelzing, and Kent.	虎哥、发得耳、鲁氏、坚得等皆同此意。

According to Puffendorf, Voet, Martens, Kluber, Leyser, Kluit, Saalfeld, Schmaltz, Mittermeyer, and Heffter, on the other hand,	但布番多、海付达等
the extradition of fugitives from justice is a matter of imperfect obligation only;	以交还逃犯向无定例，交还可，不交还亦可。
and though it may be habitually practiced by certain States, as the result of mutual comity and convenience,	虽有数国因友谊曾行之，
requires to be confirmed and regulated by special compact,	必须约据特言，
in order to give it the force of an international law.	方可为公法也。
And the last-mentioned learned writer considers the very fact of the existence of	海氏云：
so many special treaties respecting this matter as conclusive evidence that	“诸国多有约据特论此事，
there is no such general usage among nations,	可见并非诸国之常例。
consisting a perfect obligation, and having the force of law properly so called.	公法之通道不得或违者比也。
Even under systems of confederated States,	虽在合盟之国，
such as the Germanic Confederation and the North American Union,	若日耳曼、亚美利加者，
this obligation is limited to the cases and conditions mentioned in the federal compacts. (P.176)	诸邦交还逃犯之事，惟从其盟约之明条而行焉。”
The negative doctrine, that, independent of special compact,	各国若无条约明言，
no State is bound to deliver up fugitives from justice upon the demand of a foreign State,	即无交还逃犯之分，
was maintained at an early period by the United States government,	此乃美国之古道，
and is confirmed by a considerable preponderance of judicial authority in the American courts of justice, both State and Federal.	故美国断案多有从其例。
The Constitution of the United States provides, (art. 4, s. 2,) that	美国之合盟第四条云：
“a person charged in any State with treason, felony, or other crime,	“倘有人在此邦负谋叛、盗窃等罪名，
who shall flee from justice, and be found in another State,	逃至彼邦，以冀幸免其刑，
shall, on demand of the executive authority of the State from which he fled,	若本邦行讨索，
be delivered up, to be removed to the State having jurisdiction of the crime.”	则彼邦必将该人交还之，以听审罚。”
By the 10th article of the treaty concluded at Washington on the 9th August, 182, between the United States and Great Britain, it was “agreed that	美、英两国于一千八百四十二年在美国京都立约，第十条云：
the United States and her Britannic Majesty shall, upon mutual requisitions by them, or their ministers, officers, or authorities, respectively made, deliver up to justice (↓)	

all persons, who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum, or shall be found, within the territories of the other:	“如有人民负凶杀、谋杀、强盗、烧房、抢掳、假冒钱票或知情故用假票等罪， 若犯在此国辖内而逃避于彼国，
Provided, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had been there committed; and the respective judges and other magistrates of the two governments (1) shall have power, jurisdiction, and authority, (2) upon complaint made under oath, (3) to issue a warrant (4) for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, --- to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitives. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.”	此国讨索，彼国必当交还，以按法审办。（↑） 然必须察其犯罪证据， 按地方律法 足以捕拿下狱；以待审断，方可行交还之事。 因此地方官(1) 遇人发誓而告者，(3) 即有权(2) 可出牌(4) 捕拿该逃犯， 查问其犯罪之据， 查问既实， 则必转达上司， 以便出令交还。 所有捕拿交还之资， 必由讨还者偿其费用。”
By the convention concluded at Washington on the 9th November, 1843, between the United States and France, it was agreed: “Art. 1. That the high contracting parties shall, on requisitions made in their name, through the medium of their respective diplomatic agents, deliver up to justice (↓) persons who, being accused of the crimes enumerated in the next following article, committed within the jurisdiction of the requiring party, shall seek an asylum or shall be found within the territories of the other: Provided,	美、法两国于一千八百四十三年在美国京都立约， 第一条云： “若有人民在此国辖内，负以下条约所列罪名 逃避于彼国者， 此国若有公使讨索，彼国必行交还，按法审办。（↑）

That this shall be done only when the fact of the commission of the crime shall be so established, as that the laws of the country, in which the fugitive or the person so accused shall be found, would justify his or her apprehension and commitment for trial, if the crime had been there committed.	但须确有实据始可按所在之律法捕拿下狱，以待审办，然后交还。”
“Art. 2.	第二条云：
Persons shall be so delivered up (↓)	
who shall be charged, according to the provisions of this convention, with any of the following crimes, to wit: murder, (comprehending the crimes designated in the French penal code by the terms assassination, parricide, infanticide, and poisoning,)	“人民犯凶杀、
or with an attempt to commit murder,	谋杀、
or with rape,	强奸、
or with forgery, or with arson,	冒票、
or with embezzlement by public officers, when the same is punishable with infamous punishment.	与官吏侵吞国帑等罪，
	按以上之条必行交还。”(↑)
Art. 3.	第三条云：
On the part of the French government the surrender shall be made only by authority of the Keeper of the Seals, Minister of Justice;	“法国交还之例必由正义大臣、掌国玺者，
and on the part of the Government of the United States, the surrender shall be made only by the authority of the Executive thereof.	美国交还之例专由治国上权。”
Art. 4. The expenses of any detention and delivery, effected in virtue of the preceding provisions,	第四条云：“交还之费
shall be borne and defrayed by the government in whose name the requisition shall have been made.	均向讨索者取偿。”
Art. 5.	第五条云：
The provisions of the present convention shall not be applied in any manner (↓)	
to the crimes enumerated in the second article, committed anterior to the date thereof,	“若以上所言罪名系犯事在约前者，
nor to any crime	或约后所犯，
or offence of a purely political character.”	专属国政之罪，
	皆不可恃此约讨索。”(↑)
The following additional article to the above conventions was concluded between the contracting parties at Washington on the 24th February, 1845,	一千八百四十五年又添一条云：
and subsequently ratified.(↓)	
“The crime of robbery, (省略 P. 179. defining the same to be the felonious and forcible taking from the person of another, of goods or money, to any value, by violence or putting him in fear);	“抢夺物件、
and the crime of burglary, (省略 P. 179. defining the	毁房强进等罪名，

same to be, breaking and entering by night into a mansion-house of another, with intent to commit felony; and the corresponding crimes included under the French law in the words *vol qualifie crime*,)	
not being embraced in the second article of the convention of extradition concluded between the United States and France on the 9th of November, 1843,	既不在第二条内，
	自当补遗。（↑）
it is agreed by the present article, between the high contracting parties, that	彼此允许
persons charged with those crimes	人民犯此等罪名者，
shall be respectively delivered up, in conformity with the first article of the said convention; (省略 P. 179. and the present article, when ratified by the parties, shall constitute a part of the said convention, and shall have the same fore as if it had been originally inserted in the same. ”)	亦按第一条交还。”
In the negotiation of treaties, stipulating for the extradition of persons accused or convicted of specified crimes,	诸国议立交还罪犯约据，
certain rules are generally followed,	大要有章程数款以限之。
and especially by constitutional governments.	君权有限之国，格外慎之。
The principle of these rules are, that a State should never authorize the extradition of its own citizens or subjects,	即如各国不将己民交与他国，
or of persons accused or convicted of political	若系谋反干国政之罪，不交还；
or purely local crimes,	若系该处以为罪，而他处不以为罪，亦不交还；
or of slight offences, but should confine the provision to such acts as are, by common accord, regarded as grave crimes. (P. 179)	如非人人共视为重罪者，亦不交还。
The delivering up by one State of deserters from the military or naval service of another	若有人脱离军营水师，逃避于他国，
also depends entirely upon mutual comity, or upon special compact between different nations. (P. 180)	则交还与否，必由友谊或由特约而定也。
14. Extraterritorial operation of a criminal sentence.	**第十四节 法院定拟旁行于疆外**
A criminal sentence pronounced under the municipal law in one State	凡有罪案在此国按地方律法审断，
can have no direct legal effect in another.	不能直行于他国，
If it is a sentence of conviction,	若定其人之罪，
it cannot be executed without the limits of the State in which it is pronounced, upon the person or property of the offender;	不能加刑于其身物在疆外者。
and if he is convicted of an infamous crime,	即其罪犯系可耻重案，
attended with civil disqualifications in his own country,	而削其为民之权利，
such a sentence can have no legal effect in another	但此议亦不直行于他国之

independent State. But a valid sentence, whether of conviction or acquitted, pronounced in one State, may have certain indirect and collateral effects in other States. If pronounced under the municipal law in the State where the supposed crime was committed, or to which the supposed offender owed allegiance, the sentence, either of conviction or acquittal, would, of course, be an effectual bar (*exceptio rei judicatae*) to a prosecution in any other State. If pronounced in any other foreign State than that where the offence is alleged to have been committed, or to which the party owed allegiance, the sentence would be a nullity, and of no avail to protect him against a prosecution in any other State having jurisdiction of the offence.	自主者。 此国之法院所断，或拟罪、或免罪， 犹可旁行于他国者， 即其案既在所犯之处，或在其人所属之国， 循该国律法审断， 则他国不可复行追究。 但审断若系在他国， 非其犯案之处、非其所属之国者， 则其所定拟，或坐罪、或释放，皆归于虚， 不能徇庇其人，使管辖之国不复行追究也。
15. Piracy under the law of nations. The judicial power of every State extends to the punishment of certain offences against the law of nations, among which is piracy. Piracy is defined (↓) by the text writers to be the offence of depredating on the seas, without being authorized by any sovereign State, or with commissions from different sovereigns at war with each other. The officers and crew of an armed vessel, commissioned against one nation, and depredating upon another, are not liable to be treated as pirates in thus exceeding their authority. The State by whom the commission is granted, being responsible to other nations for what is done by its commissioned cruisers, has the exclusive jurisdiction to try and punish all offences committed under color of its authority. The offence of depredating under commissions from different sovereigns, at war with each other, is clearly piratical, since the authority conferred by one is repugnant to the other; but it has been doubted how far it may be lawful to (↓) cruise under commissions from different sovereigns allied against a common enemy.	**第十五节 审断海盗之例** 犯公法之案有数种，各国刑权所能及者， 如海盗等类是也。 按公师所论， 凡船只在海上 未领自主之国所颁凭照， 或于二国交战之时，兼领其凭照而私行抢掳， 则为海盗也。(↑) 凡兵船领牌， 既注明专攻某国， 若乘机抢掳他国， 则其班主班人虽属越权而行，犹不可以海盗处之。 盖赐牌者 必任领牌者之责，若有托牌妄行， 则审断其事专归赐牌之国。 若遇二国交战而兼领其牌照，藉以强掳者， 则明为海盗无疑。 盖二牌既不相合，即不能并立也。 若二君和好，合攻他国，可否领二君之牌而航海，

	曾有名师议之。(↑)
The better opinion, however, seems to be, that although it might not amount to the crime of piracy,	虽不遽视为海盗，
still it would be irregular and illegal,	而终以为非理也。
because the two co-belligerents may have adopted,	盖二国处局外者，
different rules of conduct respecting neutrals,	或不同规，
or may be separately bound by engagements unknown to the party.	或此国有约为彼国所未知故也。
Pirates being the common enemies of all mankind,	至于海盗，则为万国之仇敌，
and all nations having an equal interest in their apprehension and punishment,	有能捕之、诛之者，自万国所同愿。
they may be lawfully captured on the high seas by the armed vessels of any particular State,	故各国兵船在海上皆可捕拿，
and brought within its territorial jurisdiction,	携至疆内，
for trial in its tribunals.	发交己之法院审断。
Distinction between piracy by the law of nations, and piracy under the municipal statutes.	**各国或另有海盗之例**
This proposition, however, must be confined to piracy as defined by the law of nations,	然此例专言公法之所谓海盗也，
and cannot be extended to offences which are made piracy by municipal legislation.	若各国律法另设何条指为海盗，则不归此例矣。
Piracy, under the law of nations,	公法所谓海盗，
may be tried and punished in the courts of justice of any nation, (↓)	
by whomsoever and wheresoever committed;	无论犯者为谁、犯在何处，
	各国法院皆可以审罚。(↑)
but piracy created by municipal statue can only be tried by that State within whose territorial jurisdiction,	若一国律法专以何事为海盗，则只此一国能审其事。
and on board of whose vessels, the offence thus created was committed.	然犯者非在其疆内与在其船上，亦不能追究之。
There are certain acts which are considered piracy by the internal laws of a State,	盖事犯何条，各国律法即指为海盗，
to which the law of nations does not attach the same signification.	而公法视之则未尽然也，
It is not by force of the international law that those who commit these acts are tried and punished,	此等罪案不得凭公法究办。
but in consequence of special laws which assimilate them to pirates,	不过彼国律法视同海盗一列耳，
and which can only be applied by the State which has enacted them,	故非制法之国不能审之，
and then with reference to its own subjects, and in places within its own jurisdiction.	若非其本民与在其辖内亦不能审之。
The crimes of murder and robbery, committed by foreigners on board of a foreign vessel, on the high seas,	凡某国船只行于大海，若在船内凶杀、抢掳，
are not justiciable in the tribunals of another country than that to which the vessel belongs;	不归他国法院管辖。

but if committed on board of a vessel not at the time belonging, in fact as well as right, to any foreign power or its subjects,	但该船若无所属之国，
but in possession of a crew acting in defiance of all law,	而班人蔑法妄行，
and acknowledging obedience to no flag whatsoever,	不服何国管辖，
these crimes may be punished as piracy under the law of nations,	则凶杀、抢掳之事，可凭公法以海盗处之。
in the courts of any nation having custody of the offenders.	其人经何国捕拿，即归何国审断。
Slave trade, whether prohibited by the law of nations.	**公禁贩卖人口**
The African slave trade,	阿非利加海旁贩卖黑人，运至他国为奴，
though prohibited by the municipal laws of most nations,	此事虽经多国严禁，
and declared to be piracy by the statutes of Great Britain and the United States, and, since the Treaty of 181, with Great Britain, by Austria, Prussia, and Russia,	又英、美、奥、普、俄诸国皆制律以海盗处之。
is not such by the general international law,	然按公法尚不为海盗，
and its interdiction cannot be enforced by the exercise of the ordinary right of visitation and search.	即不可恃有窥探、稽察之例以禁之。
That right does not exist, in time of peace, independently of special compact.	盖平时如非特约所许，则船只行于大海，自无权以稽察之也。
The African slave trade,	前时此等残忍之事，
once considered not only a lawful but desirable branch of commerce,	不但不为犯法，直为贸易大业，
a participation	诸国欲分其利，
in which was made the object of wars, negotiations, and treaties between different European States,	因有起战争、开公论、立约据等情。
is now denounced as an odious crime, by the almost universal consent of nations.	今则无不视为极恶之事，
This branch of commerce was, in the first instance, successively prohibited by the municipal laws of Denmark, the United States, and Great Britain,	其初禁者系丹国、美国、英国，
to their own subjects.	皆禁己民为之。
Its final abolition was stipulated by the treaties of Paris, Kiel, and Ghent, in 1814,	后于一千八百十四年，英、法、美等国立约合同剪除此业。
(省略 P. 186 confirmed by the declaration of the Congress of Vienna, of the 8th of February, 1815, and reiterated by the additional article annexed to the treaty of peace concluded at Paris, on the 20th November, 1815.)	
The accession of Spain and Portugal to the principle of the abolition was finally obtained, by the treaties between Great Britain and those powers, of the 23d September, 1817, and the 22d January, 1815.	于一千八百十七年，英与西班牙、葡萄牙立约，得二国允其议，更与巴西立约，

And by a convention concluded with Brazil, in 1826, it was made piratical for the subjects of that country to be engaged in the trade after the year 1830. By the treaties of the 30th November, 1831, and 22d May, 1833, between France and Great Britain, to which nearly all the maritime powers of Europe have subsequently acceded, the mutual right of search was conceded, within certain geographical limits, as a means of suppressing to slave trade. The provisions of these treaties were extended to a wider range by the Quintuple Treaty, concluded on the 26th December, 1841, between the five great European powers, (省略 P. 187-196 and subsequently ratifies between them, except by France, which power still remained only bound by her treaties of 1831 and 1833 with Great Britain. By the treaty concluded at Washington, the 9th August, 1842, between the United States and Great Britain, referring to the 10th article of the Treaty of Ghent, by which it had been agreed that both the contracting parties should use their best endeavors to promote the entire abolition of the traffic in slaves, it was provided, article 8, that "the parties mutually stipulate that each shall prepare, equip, and maintain in service, on the coast of Africa, a sufficient and adequate squadron, or naval force of vessels, of suitable numbers and descriptions, to carry in all not less than eighty guns, to enforce, separately and respectively, the laws, rights, and obligations of each of the two countries, for the suppression of the slave trade, the said squadrons to be independent of each other, but the two governments stipulating, nevertheless, to give such orders to the officers commanding their respective forces, as shall enable them most effectually to act in concert and cooperation, upon mutual consultation, as exigencies may arise, for the attainment of the true object of this article; copies of all such orders to be communicated by each government to the other, respectively." By the Treaty of the 29th May, 1845, between France and Great Britain, new stipulation were entered into between the two powers, by which a joint cooperation of their naval forces on the coast of Africa, for the suppression of the slave trade, was substituted for the mutual right of search, provided by the previous treaties of 1831 and 1833.)	至一千八百二十六年，该国亦禁己民为之，犯之者竟以海盗之法处之焉。 于一千八百三十三年，英法二国立约， 互相允许彼此船只行在某处，可以稽查， 以期断此业根株， 后欧罗巴海国几尽从其议。
16. Extent of the judicial power as to property within the territory. II. The judicial power of every State extends to (↓) all civil proceedings, *in rem*, relating to real or	**第十六节 疆内植物之争讼审权可及** 凡在疆内因植物、动物而

personal property within the territory.	起争讼者， 各国审事之权皆可及之。（↑）
This follows, in respect to real property, as a necessary consequence of the rule relating to the application of the *lex loci rei sitae*. As every thing relating to the tenure, title, and transfer of real property (immobilia) is regulated by the local law, so also the proceedings in courts of justice relating to that species of property, such as the rules of evidence ad of description, the forms of action and pleadings, must necessarily be governed by the same law.	就植物而论， 各从其地方律法，此乃应归其所在管辖之通例也。 其买卖文契、式样等情， 亦皆从地方律法。 所有兴讼并传证、辨论等情， 亦必从地方律法焉。
17. Distinction between the rule of decision and the rule of procedure as affecting cases *in rem*. A similar rule applies to (↓) all civil proceeding in rem, respecting personal property (*mobilia*) within the territory, which must also be regulated by the local law, with this qualification, that foreign laws may furnish the rule of decision in cases where they apply, (↓) whilst the forms of process, and rules of evidence and prescription are still governed by the *lex fori*. Thus the *lex domicilii* forms the law in respect to a testament of personal property or succession *ab intestate*, if the will is made, or the party on whom the succession devolves resides, in a foreign country; whilst at the same time the *lex fori* of the State in whose tribunals the suit is pending determines the forms of process and the rules of evidence and prescription. **Succession to personal property *ab intestato*** Though the distribution of the personal effects of an intestate is to be made according to the law of the place where the deceased was domiciled, it does not therefore follow that the distribution is in all cases to be made by the tribunals of that place to the exclusion of those of the country where the property is situate. Whether the tribunal of the State where the property lies	**第十七节　疆内动物之争讼审权可及** 若因动物起争讼， 其例相似也，（↑） 亦归地方律法， 但讼词式样、传证等情， 虽从地方法院条规， 而他国律法或可引用。（↑） 即如人死而嘱遗动物，则其遗嘱必归其所住地方律法。 或无遗嘱，而承受者住在他国，其所住地方律法必制其事， 但讼词式样、证据条规，均从审事之法院。 **继遗物之例** 人死而无遗嘱， 则分派其动物， 虽按其所住地方律法， 不可即谓其物所在之法院绝无预闻之权。 盖其物所在之法院，

is to decree distribution, or to remit the property abroad, is a matter of judicial discretion to be exercised according to the circumstances. It is the duty of every government to protect its own citizens in the recovery of their debts and other just claims; and in the case of a solvent estate it would be an unreasonable and useless comity (↓) to send the funds abroad, and the resident creditor after them. But if the estate be insolvent, it ought not to be sequestered for the exclusive benefit of the subjects of the State where it lies. In all civilized countries, foreigners in such a case, are entitled to prove their debts and share in the distribution.	或听凭本处分派， 或送至外国， 必因其时事而定： 各国本应保护己民， 助之讨索欠债： 故负欠者，其财产足以偿还， 若送至外国令本国债主随之在彼追讨， 则名虽循理，实于情不合。(↑) 倘两处皆有欠款，其产不足偿还， 则不应尽数先偿其所在之债。 盖服化之国 无不准他国之债主，来引确据而与分焉。
Foreign will, how carried into effect in another country. Though the forms, in which (↓) a testament of personal property, made in a foreign country, is to be executed, are regulated by the local law, such a testament cannot be carried into effect in the State where the property lies, until, in the language of the law of England, *probate* has been obtained in the proper tribunal of such State, or in the language of the civilian, it has been *homologated*, or registered, in such tribunal. So, also, a foreign executor, constituted such by the will of the testator, cannot exercise his authority in another State without taking out letters of administration in the proper local court. Nor can the administrator of a succession *ab intestato*, appointed *ex officio* under the laws of a foreign State, interfere with the personal property in another State belonging to the succession, without having his authority confirmed by the local tribunal.(↑)	遗嘱传动物者， 若写在他国， 其式样(↑) 虽从地方律法， 然欲按遗嘱而取其物， 则必于其物所在之国。 先投其法院以征验记录： 若遗嘱托他国人主其事， 则该人必投其物所在之法院，得准行之凭方可： 若无遗嘱， 而他国派人管理遗产， 其物所在之法院不准行，(↓) 则其人不得从而管理其事。

18. Conclusiveness of foreign sentences *in rem*.	**第十八节 以他国法院曾断为准**
The judgment or sentence of a foreign tribunal of competent jurisdiction proceeding *in rem*, such as the sentences of Prize Courts under the law of nations, or Admiralty and Exchequer, or other revenue courts, under the municipal law,	凡物在此国，既经战利、航海、征税等法院
are conclusive (↓)	
as to the proprietary interest in, and title to, the thing in question,	断其应谁属，
wherever the same coms incidentally in controversy in another State.	后虽在彼国，因他案复经稽查，
	必仍以前所断为准。(↑)
Whatever doubts may exist as to the conclusiveness of foreign sentences in respect of facts collaterally involved in the judgment,	即云他国法院审断不实，
the peace of the civilized world,	然既与其国相和，
and the general security and convenience of commerce,	通商安泰，
obviously require that full and complete effect should be given to such sentences,	则不得不尽许其应司之法院所断。
wherever the title to the specific property,	凡人有亏空，
which has been once determined in a competent tribunal, is again drawn in question in any other court or country.	按此国律法而得释放，
Transfer of property under foreign bankrupt proceedings.	
How far a bankruptcy declared under the laws of one country will affect (↓)	
the real and personal property of the bankrupt situate in another State,	若有植物、动物在他国，
	其释放之凭能护其物与否，(↑)
is a question of which the usage of nations, and the opinions of civilians, furnish no satisfactory solution.	诸国无常例，公师不同意。
Even as between coordinate States, belonging to the same common empire,	即二邦属一国者，
it has been doubted how far (↓)	
the assignment under the bankrupt laws of one country	其人在此邦亏空，按律法将产业托之于人，
will operate a transfer of property in another.	其所托者可管制在彼邦之产业与否，
	犹有疑议；(↑)
In respect to real property,	若其产系植物，
which generally has some indelible characteristics impressed upon it by the local law,	则不能脱于地方律法。
these difficulties are enhanced (↓)	
in those cases where the *lex loci rei sitae*	倘亏空者或代办之人，

requires some formal act to be done by the bankrupt, or his attorney, specially constituted, in the place where the property lies, in order to consummate the transfer. In those countries where the theory of the English bankrupt system, that the assignment transfers all the property of the bankrupt, wherever situate, is admitted in practice, the local tribunals would probably be ancillary to the execution of the assignment of compelling the bankrupt, or his attorney, to execute such formal acts as are required by the local laws to complete the conveyance. The practice of the English Court of Chancery, (1) in assuming jurisdiction (2) incidentally of questions affecting the title to lands in the British colonies, (3) in the exercise of its jurisdiction *in personam*, (4) where the party resides in England, (5) and thus compelling him, indirectly, to give effect to its decrees (6) as to real property situate out of its local jurisdiction, (7) seems very questionable on principle, (8) unless where it is restrained (↓) to the case of a party who has fraudulently obtained an undue advantage over other creditors by judicial proceedings instituted without personal notice to the defendant. But whatever effect may, in general, be attributed to the assignment in bankruptcy as to property situate in another State, it is evident that it cannot operate (↓) where one creditor has fairly obtained, by legal diligence, a specific lien and right of preference, under the laws of the country where the property is situate. (P.199)	于植物所在地方，必应按该处律法行事， 始能易主， 此例更难定矣。(↑) 按英国之法， 亏空者既以所有托于人， 则其物无论在何处， 必尽行易主。 英法所行之法院， 必令亏空者或代办者， 按例行事， 以便易主。 亏欠者身居英国，(5) 而置产在属国，(3) 则其产虽在本国法院所辖之外，(7) 而英国法院(1) 亦常因其人(4) 而带管其物，(2)(6) 其理属可疑。(8) 然若其行之，专以免债主在此地讨索， 不先知会被告， 使债主在他处者不得与分其物，则可许之也。(↑) 但亏空之人，将其物在他国者托人料理，虽云可行， 若债主按其物所在之律法先行控告，而法院准先告者先得， 则托其料理之人不得行矣。(↑)
19. **Extent of the judicial power over foreigners residing within the territory.** III. The judicial power of every State may be extended (↓) to all controversies respecting personal rights and	**第十九节　疆内因人民权利等争端审权可及** 凡因人之权利约据屈害而

contracts, or injuries to the person or property, when the party resides within the territory, wherever the cause of action may have originated.	起争端， 若其人住疆内， 无论争由何处， 皆为各国审断之权所可及。(↑)
This general principle is entirely independent of the rule of decision which is to govern the tribunal. The rule of decision may be the law of the country where the judge is sitting, or it may be the law of a foreign State in cases where it applies; but that does not affect the question of jurisdiction, which depends, or may be made to depend, exclusively upon the residence of the party.	至其法院循何法断之，毫无相涉， 或循法院所在律法而断， 或就事引用他国律法而断。 凡此与其权之可及不可及，概无所涉。 盖其可及与否，均由其人所住而定耳。
Depends upon municipal regulations. The operation of the general rule of international law, as to civil jurisdiction,(↓) extending to all person who owe even a temporary allegiance to the State,	按公法条例， 暂服何国，
may be limited by the positive institutions of any particular country. It is the duty, as well as the right, of (↓) every nation to administer justice to its own citizens;	该国即有权以制其争端。(↑) 但此例必被彼国律法所限， 盖各国审理己民之事， 不但为权所可为，亦属分所当为也。(↑)
but there is no uniform and constant practice of nations, (↓) as to taking cognizance of controversies between foreigners.	至他国人有争端， 则无定例处之。(↑)
It may be assumed or declined, at the discretion of each State, guided by such motives as may influence its juridical policy.	各国按其审事之规，可随意或理或否。
Law of England and America. All real and possessory actions may be brought, and indeed must be brought, in the place where the property lies; but the law of England, and of other countries where the English common law forms the basis of the local jurisprudence, considers (↓) all personal actions, whether arising *ex delicto* or *ex contraclu*,	若涉于植物以定其谁属，则必于其物所在而兴讼。 但涉于人身者， 无论系屈害、系买卖契据等案， 循英法(↑)

as transitory; and permits them to be brought in the domestic forum, (↓)	皆可随身更地，
whoever may be the parties, and wherever the cause of action may originate.	无论其案属何人， 无论其事由何处， 皆可在原告现住地方法院兴讼。(↑)
This rule is supported by a legal fiction, which supposes the injury to have been inflicted, or the contract to have been made, within the local jurisdiction.	盖虚设其案，本于法院之界内故也。数国行英法者，亦从此例。
In the countries which have modeled their municipal jurisprudence (↓)	
upon the Roman civil law, the maxim of that code, *actor sequitur forum rei*, is generally followed,	按罗马古法，告者必从其被告之所属而告之， 效罗马古法诸国概从此例。(↑)
and personal actions must therefore be brought in the tribunals of the place where the defendant has acquired a fixed domicile.	故涉身之讼， 必行于被告常住之地。
French law.	
By the law of France, foreigners who have established their domicile in the country by special license (autorisation) of the king,	按法国律法， 若外人蒙国君特准来住者，
are entitled to all civil rights, and, among (P.200) others, to that of suing in the local tribunals as French subjects.	即与本民同享权利， 并可赴诉地方法院追讨法国人。
Under other circumstances, these tribunals have jurisdiction where foreigners are parties in the following cases only: ---	否则外人有案，地方法院能司其事者，惟有三端：
1. Where the contract is made in France, or elsewhere, between foreigners and French subjects.	外人与法国人立契据，无论在法国、在何国，一也。
2. In commercial matters, on all contracts made in France, with whomsoever made, where the parties have elected a domicile, in which they are liable to be sued, (↓)	外人通商法国， 在法国立契据， 无论与法人、与他人， 既住法国之地，
either by the express terms of the contract, or by necessary implication resulting from its nature.	契据内或明言、或默许，
	应服其追讨之法，二也。(↑)
3. Where foreigners voluntarily submit their controversies to the decision of the French tribunals, by waiving a plea to the jurisdiction.	外人不辞管辖，自请法院为之断案，三也。
In all other cases, where foreigners not domiciled in France by special license of the king are concerned, the French tribunals decline jurisdiction, (↓)	除此三者， 他国人住在法国， 非蒙君主特准而住者，

even when the contract is made in France.	则契据虽立在法国， 其法院皆无管辖之责，而不审其案。(↑)
A late excellent writer on private international law considers this jurisprudence, which deprive a foreigner, not domiciled in France, of the faculty of bring a suit in the French tribunals against another foreigner, as inconsistent with the European law of nations.	迩来有名师论公法之私条， 以法国不准暂住之外人向法国法院追讨外人， 此规于公法实有不合也。
The Roman law had recognized the principle, that all contracts the most usual among men arise from the law of nations, *ex jure gentium*; in other words, these contracts are valid,(↓) whether made between foreigners, or between foreigners and citizens, or between citizens of the same State.	按罗马古法， 人之交易契据皆本于公法， 盖谓既有契据， 则无论立者系本国人、系外国人， 皆属坚固而不可废也。(↑)
This principle has been incorporated into the modern law of nations, which recognizes the right of foreigners to contract within the territorial limits of another State. This right necessarily draws after it the authority of the local tribunals to enforce the contracts thus made, whether the suit is brought by foreigners or by citizens.	今时之公法亦同此例， 盖以人民既有权在他国疆内以立契据， 地方法院即有权以成其事， 无论追讨者系外国人、系本民皆可。
The practice which prevails in some countries, of proceeding against absent parties, who are not only foreigners, but have not acquired a domicile within the territory, by means of some formal public notice, like that of the *viis et modis* of the Roman civil law, without actual personal notice of the suit, cannot be reconciled with the principles of international justice.	有数国准本民向暂住之外人追讨欠款， 出告白于道路。 虽所控之外人不在国内， 并不知其事，亦可兴讼结案。 此例实于公义大有不合。
So far, indeed, as it merely affects the specific property of the absent debtor within the territory, attaching it for the benefit of a particular creditor, who is thus permitted to gain a preference by superior diligence, or for the general benefit of all the creditors who come in within a certain fixed period, and claim the benefit of a ratable distribution, such a practice may be tolerated;	然其兴讼若专关乎本处所在货物， 使债主内有先他人告发者， 可先获其偿， 或使众债主限期 而酌分其物， 其事犹可允许。

and in the administration of international bankrupt law it is infrequently allowed to give a preference to the attaching creditor, (↓) against the law of what is termed the *locus concursus creditorum*, which is the place of the debtor's domicile.	盖按公法条例， 虽欠者之住地律法令众债主照数酌分其物， 但其物所在之律法有时或准先追讨者，可先得其欠款焉。(↑)
20. Distinction between the rule of decision and rule of proceeding, in cases of contract. Where the tribunal has jurisdiction, the rule of decision is the law applicable to the case, whether it be the municipal or a foreign code; but the rule of proceeding is generally determined by the *lex fori* of the place where the suit is pending. But it is not always easy to distinguish the rule of decision from the rule of proceeding. It may, however, be stated in general, that whatever belongs to the obligation of the contract is regulated by the *lex domicilii*, or the *lex loci contractus*, and whatever belongs to the remedy for enforcing the contract is regulated by the *lex fori*. If the tribunal is called upon to apply to the case the law of the country where it sits, as between persons domiciled in that country, no difficulty can possibly arise. As the obligation of the contract and the remedy to enforce it are both derived from the municipal law, the rule of decision and the rule of proceeding must be sought in the same cod. In other cases, it is necessary to distinguish with accuracy between the obligation and the remedy. The obligation of the contract, then, may be said to consist of the following parts:-- 1. The personal capacity of the parties to contract. (P. 202) 2. The will of the parties expressed, as to the terms and conditions of the contract. 3. The external form of the contract. The personal capacity of parties to contract depends upon those personal qualities which are annexed to their civil condition, by the municipal law of their own State,	**第二十节 断案之法、兴讼之例有别** 其法院若能司其案， 必循法之相合者断之， 无论其法为外国、为本国， 但其兴讼状式必从地方法院条例断案。 至断案之律法、兴讼之式状二者，颇有难辨。 大凡属契据之责皆从住所， 或从立契之所， 而属成其事者，皆从地方法院。 若原被告人住于法院所在之国，而法院按其地方律法断案， 则无所难。 盖契据之责、成契之方， 皆由地方律法断案与兴讼， 悉从一部律法， 否则契据之责、成契之方，须当细辨。 契据之必成者，其责有三： 其能成之，一也； 其甘心允许契内条例，二也； 其契据之式样，三也。此三者试略言之。 一、其人能成之与否， 必视本国律法所定属身之

	地位。
and which travel with them wherever they go,	盖此法随之而往，同之而居，
and attach to them in whatever foreign country they are temporarily resident.	即在他国亦不能或离。
Such are the privileges and disabilities conferred by the *lex domicilii* in respect to majority and minority, marriage and divorce, sanity or lunacy,	即如成人年足否、既婚、离婚、痴呆等类，
and which determine the capacity or incapacity of parties to contract,	凡此其人能相约与否，
independently of the law of the place where the contract is made,	无论其立契与讨索之地方律法如何，
or that of the place where it is sought to be enforced.	皆由其家住地方律法而定。
It is only those universal personal qualities, (省略 P.208 which the laws of all civilized nations concur in considering as essentially affecting the capacity to contract, which are exclusively regulated by the *lex domicilli*, and not those particular prohibitions or disabilities,)	此等属身永不相离之地位，
which are arbitrary in their nature and founded upon local policy;	不出于各国政治禁令也。
such as the prohibition, in some centuries, of noblemen and ecclesiastics from engaging in trade and forming commercial contracts.	即如某国禁止世爵、教士等人贸易立通商契据，而他国不禁也。
The qualities of a major or minor, of a married or single woman, &c., are universal personal qualities,	但人之年长、年幼，女之有夫、无夫，其所可与、其所不可者，
which, with all the incidents belonging to them,	此系属身之地位，随处不变耳。
are ascertained by the *lex domicilii*,	虽由其住地而定，
but which are also everywhere recognized as forming essential ingredients in the capacity to contract.	各国犹循之以断其约之妥与否焉。
Bankruptcy.	
How far bankruptcy ought to be considered as a privilege or disability of this nature,	亏空之人所可与其所不可，
	应否从此例，(↓)
and thus be restricted in its operation to the territory of that State	而但行于释放之国者，
under whose bankrupt code the proceedings take place, (↑)	
is, as already stated, a question of difficulty,	颇属难定，
in respect to which no constant and uniform usage prevails among nations.	盖诸国处此无常规也。
	若某国有律法释放亏空之人，(↓)
Supposing the bankrupt code of any country to form a part of the obligation of every contract made in that country with its citizens,	则其民循此例而买卖相约者，

and that every such contract is subject to the implied condition, that the debtor may be discharged from his obligation in the manner prescribed by the bankrupt laws, (↑) it would seem, on principle, that a certificate of discharge ought to be effectual in the tribunals of any other State where the creditor may bring his suit.	可谓默许。 若亏空即可按律得释放，而不偿其欠项， 则其人得释放于此国， 而其债主追讨于彼国，其文凭理应行于彼国。
If, on the other hand, the bankrupt code merely forms a part of the remedy for a breach of the contract, it belongs to the *lex fori*, which cannot operate extraterritorially within the jurisdiction of any other State having the exclusive right of regulating the proceedings in its own courts of justice; (↓) still less can it have such an operation where it is a mere partial modification of the remedy, such as an exemption from arrest, and imprisonment of the debtor's person on a *cessio bonorum*.	但若其亏空之 专制失约之弊， 则属地方法院条规， 而不能行于他国之自主者也。 若非专制失约之弊，但欲稍补其害， 即如免负欠者既让家业， 又遭捕拿下狱， 则更不能行于他国矣。(↑)
Such an exemption being strictly local in its nature, and to be administered, in all it details, by the tribunals of the State creating it, cannot form a law for those of any foreign State. But if the exemption from arrest and imprisonment, instead of being merely contingent upon the failure of the debtor to perform his obligation through insolvency, enters into and forms an essential ingredient in the original contract itself, by the law of the country where it is made, it cannot be enforced in any other State by the prohibited means. Thus by the law of France, and other countries where the *contrainte par corps* is limited to commercial debts, an ordinary debt contracted in that country by its subjects cannot be enforced by means of personal arrest in any other State, although the *lex fori* may authorize imprisonment for every description of debts.	凡此专属本国， 本国之法院必遵之， 不能为法于他国也。 至各国本有免拿下狱之例， 即可按照此例以为契据之要端， 而不能追捕于他国。 又法国之例， 如非通商之欠款，不准捕拿追讨。 故法人在本国，寻常负债者， 不能在他国捕拿追讨。 虽他国之法院条例不拘何等欠款，皆准捕拿也，然按公

The obligation of the contract consists of the will of the parties, expressed as to its terms and conditions. The interpretation of these depends, of course, upon the *lex loci contractus*, as do also the nature and extent of those implied conditions which are annexed to the contract by the local law or usage. Thus the rate of interest, unless fixed by the parties, is allowed by the law as damages for the detention of the debt, and the proceedings to recover these damages may strictly be considered as a part of the remedy. The rate of interest is, however, regulated by the law of the place where the contract is made, unless, indeed, it appears that the parties had in view the law of some other country. In that case, the lawful rate of interest of the place of payment, or to which the loan has reference, by security being taken upon property there situate, will control the *lex loci contractus*. **The external form of the contract constitutes an essential part of its obligation.** This must be regulated by the law of the place of contract, which determines whether it must be in writing, or under seal, or executed with certain formalities before a notary, or other public officer, and how arrested. A want of compliance with these requisites renders the contract void *ab initio*, and being void by the law of the place, it cannot be carried into effect in any other State. But a mere fiscal regulation does not operate extraterritorially; (1) and therefore (2) the want of a stamp, (3) required by the local law to be impressed on an instrument, (4) cannot be objected (5) where it is sought to be enforced (6) in the tribunals of another country. (7) There is an essential difference between the form	法仍不准捕拿追讨。 二、成契之责， 在立契者甘心允许契内条例。 解此条例 固从立契地方律法， 并契内有何事为默许者，亦视地方律法而定。 即如人有拖欠过期，而契上未言利息几何， 债主即可按律追讨法所应得之利息， 以补受拖欠之亏，此乃补亏之方所当然也。 若立契者非视他国之律而立，则其利息必按立契地方律法所定。 若视他国之律而立， 或许在彼偿欠， 或典押在彼之货物， 则其利息几何必从彼处之法，不从立契之地。 三、成契之责，必视其契之式样。 其式样必从立契之地以定， 或写明、或加印、或在书吏前当如何证据， 若律法须如此，而立契者不遵之，则其契为虚。 其地方律法既以之为虚，则不能追成于他国。 但地方税例不行于他国，(1) 故(2) 地方律法倘令用印于契纸，(4) 非以辨其事之虚实，乃乘其交易而征税，(6) 其契虽无此印，(3) 他国法院(7) 不得遂以为虚。(5) 其契之式样与契外之证据

of the contract and the extrinsic evidence by which the contract is to be proved. Thus the *lex loci contractus* may require certain constructs to be in writing, and attested in a particular manner, and a want of compliance with these forms will render them entirely void. But if these forms (1) are actually complied with, the extrinsic evidence, (2) by which the existence and terms of the contract (3) are to be proved (4) in a foreign tribunal, (5) is regulated by the lex fori. (6)	有别， 即如立契地方律法或令如何写明见证， 则无此者皆虚。 然其契(1) 虽循此而立，(2) 若经他国稽察，(5) 犹须按照该国法院条规引用外据，(3) 以证其事，(4) 方可施行。(6)
21. Conclusiveness of foreign judgments in personal actions. The most eminent public jurists concur in asserting the principle, that (1) a final judgment, rendered in (2) a personal action, (3) in the courts of competent jurisdiction (4) of one State, (5) ought to have the conclusive effect of a *res adjudicata* (6) in every other State, (7) wherever it is pleaded in bar of another action for the same cause. (8) But no sovereign is bound, (↓) unless by special compact, to execute within his dominions a judgment rendered by the tribunals of another State; and if execution be sought by suit upon the (P. 205) judgment, or otherwise, the tribunal in which the suit is brought, or from which execution is sought, is, on principle, at liberty to examine into the merits of such judgment, and to give effect to it or not, as may be found just and equitable. The general comity, utility, and convenience of nations have, however, established a usage among most civilized States, by which the final judgments of foreign courts of competent jurisdiction are reciprocally carried into execution,	**第二十一节 涉身之案他国既断本国从否** 在此国(5) 若有涉身之案，(3) 如该犯应得罪名等类，(8) 其法院(4) 业已判断，(2) 则公师多以(1) 他国(7) 亦当视为已断，(6) 不准复审。(2) 但两国未有约据、条款特许， 则此国法院所断， 彼国之君在己之疆内不必遵行。(↑) 若有人以彼国法院曾经判断，便来追求， 则其现告之法院 循理有权可复审其从前所断之是非， 义则行之，不义则废之。 然诸国以友谊公益， 各循常例， 既经可司之法院断案， 则他国多照而行之，

under certain regulations and restrictions, which differ in different countries.	但仍视各国之条规所限制何如耳。
Law of England.	
By the law of England,	按英法，
the judgment of a foreign tribunal, of competent jurisdiction,	若有案在他国曾经审断，
is conclusive where the same matter comes incidentally in controversy between the same parties;	其前案随带而出。
	若彼时讼者，即此时讼者，（↓）
and full effect is given to the *exception rei judicatae*,	则彼时所断之案必为准，而不准复审也。
where it is pleaded in bar of a new suit for the same cause of action. （↑）	
A foreign judgment is *prima facie* evidence, （↓）	
where the party claiming the benefit of it applies to the English courts to enforce it,	倘有人因他国曾断，向英国法院追求著实办理，
	必以之为据，（↑）
and it lies on the defendant to impeach the justice of it, or to show that it was irregularly obtained.	惟仍准被告者分辨前案审断不公之处。
If this is not shown, it is received as evidence of a debt,	案关欠债，而被告者无可分辨，
for which a new judgment is rendered in the English court,	则前时所断法院以为欠债之确据，
and execution awarded.	按之而断，照之而行也。
But if it appears by the record of the proceedings, on which the original judgment was founded,	但其案初断时，
that it was unjustly or fraudulently obtained,	或系不合于义、或系行欺，
without actual personal notice to the party affected by it;	并不传知被告之人，
or if it is clearly and unequivocally shown, by extrinsic evidence, that （↓）	
the judgment has manifestly proceeded upon false premises or inadequate reasons, or upon a palpable mistake of local or foreign law;	或系法院误解律法、或并无证据凭空而断，
	此诸情弊既经败露，又有确据，（↑）
it will not be enforced by the English tribunals.	则英国法院必不施行也。
American law.	
The same jurisprudence prevails in the United States of America, in respect to judgments and decrees rendered by the tribunals of a State foreign to the Union.	论他国曾断之案，则美国与英国例同。
As between the different States of the Union itself,	至本国内某邦曾断之案，
a judgment obtained in one State has the same credit and effect in all the other States,	则他邦亦信而行之，
which it has by the laws of that State where it was obtained; that is, it has the conclusive effect of a domestic judgment.	与本邦曾经审断者无异也。

Law of France. The law of France restrains the operation of foreign judgments within narrower limits. Judgments obtained in a foreign country against French subjects are not conclusive,(↓) either where the same matter comes again incidentally in controversy, or where a direct suit is brought to enforce the judgment in the French tribunals.	法国之律法，不如此信从他国所断。 盖法民在他国被告而负， 其案在本国法院或系随带而出、 或仍专案控告追审， 则法国不以其所断为准。(↑)
And this want of comity is even carried so far, that, where a French subject commences a suit in a foreign tribunal, and judgment is rendered against him, the exception of *lis finita* is not admitted as a bar to a new action by the same party, in the tribunals of his own country. If the judgment in question has been obtained against a foreigner, subject to the jurisdiction of the tribunal where it was pronounced, it is conclusive in bar of a new action in the French tribunals, between the same parties. But the party who seeks to enforce it must bring a new suit upon it, in which the judgment is *prima facie* evidence only; the defendant being permitted to contest the merits, and to show not only that it was irregularly obtained, but that it is unjust and illegal.	即原告者系法民在他国法院已负， 其国亦不以曾断之故而禁其复告于本国法院。 但负者若系他国之人， 属审案之法院管辖者， 则其案既断，不能再行讼于法国之法院。 然其胜者欲追行， 必重新控告， 而其案之曾经审断，惟系迹涉疑似之据， 被告者即可辨其是非， 证其为背义越例而断也。
The execution of foreign judgments *in personam* is reciprocally allowed, by the law and usage of the different States of the Germanic Confederation, and of the European continent in general, except Spain, Portugal, Russia, Sweden, Norway, France, and the countries whose legislation is based on the French civil code.	涉身之案既断， 欧罗巴各国皆互相遵行， 惟西、葡、俄、法、瑞威敦等国不行之， 更有数国律法仿照法国者亦不行之。
Foreign divorces. A decree of divorce obtained in a foreign country, by a fraudulent evasion of the laws of the State to which the parties belong, would seem, on principle, to be clearly void in the country of their domicile, where the marriage took place, though valid under the laws of the country where the divorce was obtained.	若有意行欺，欲脱本国律法至他国而离婚者， 及其既归，虽离婚之国以为实， 而成婚之国依理应仍以为虚。

Such are divorces obtained by parties going into (P.207) another country for sole purpose of obtaining a dissolution of the nuptial contract,(↓) for causes not allowed by the laws of their own country, or where those laws do not permit a divorce *a vincula* for any cause whatever.	即如其国或禁何故不得离婚、 或尽禁离婚， 而人故意至他国以得离婚，(↑)
This subject has been thrown into almost inextricable confusion, (↓) by the contrariety of decisions between the tribunals of England and Scotland; the courts the former refusing to recognized (↓) divorces *a vincula* pronounced by the Scottish tribunals, between English subjects who had not acquired a *bona fide* permanent domicile in Scotland;	英吉利、苏格兰二邦法院断此等案彼此矛盾， 而不划一。(↑) 盖英邦之民至苏邦离婚者， 若非常住于苏邦， 则英邦法院必不认其事。(↑)
whilst the Scottish courts persist in granting such divorces (↓) in cases where, by the law of England, Ireland, and the colonies connected with the United Kingdom, the authority of parliament alone is competent to dissolve the marriage, so as to enable either party, during the lifetime of the other, again to contract lawful wedlock.	且离婚之案依英吉利、阿尔兰并英国属邦之律法， 惟国会可断， 使此未死，彼可另婚。 而苏邦法院仍欲断之，未为合也。(↑)
In the most recent English decision on this subject, (1) the House of Lords, sitting as a Court of Appeals in a case coming from Scotland, (2) and considering itself bound to administers the law of Scotland, determined that (3) the Scottish courts had, by the law of that country, a rightful jurisdiction (4) to decree a divorce (5) between parties actually domiciled in Scotland, (6) notwithstanding the marriage was contracted in England. (7) But the Court did not decide (8) what effect such a divorce would have, if brought directly in question in an English court of justice. (9)	英、苏、阿三邦合为大英一国。迩来有案为苏邦曾断者，(1) 人上告国会，而国会之爵房覆审，(2) 按苏法断曰：(3) “其婚虽成于英邦，(7 其人若实住于苏邦，(6) 则苏邦法院有权(4) 可离其婚。(5) 但其婚既离，若经英邦法院稽查，理应如何，(9) 则爵房尚未定也。”(8)
In the United States, the rule appears to be conclusively settled that the *lex loci* of the State, in which the parties are *bona fide*	按美国律法， 人若实住此邦，

domiciled, gives jurisdiction to the local courts to decree a divorce, (1) for any cause recognized as sufficient by the local law, (2) without regard to the law of that State where the marriage was originally contracted. (3) This, of course, excludes such divorces as are obtained in fraudulent evasion of the laws of one State, by parties removing into another for the sole purpose of procuring a divorce. (P.209)	无论其成婚之邦律法如何，(3) 倘其欲离之故与此邦之法吻合，(2) 则此邦即可离其婚也。(1) 惟行欺逃脱本邦律法， 故意迁徙他邦以得离婚者，不在此例。

PART II. CHAPTER III. RIGHTS OF QUALITY	第三章　论诸国平行之权
1.Natural equality of States modified by compact or usage The natural equality of sovereign States （1） may be modified by positive compact, （2） or by consent implied from constant usage, （3） so as to entitle one State to superiority over another in respect to certain external objects, such as rank, （4） titles, （5） and other ceremonial distinctions. （6）	**第一节　分尊卑出于相许** 自主之国本皆平行均权，（1） 其后等级判高低、（4） 名号分尊卑、（5） 礼款别轻重者，（6） 盖有特条明许之，（2） 或由常行以为默许之。（3）
2.Royal honors Thus the international law of Europe has attributed to certain States what are called *royal honors*, which are actually enjoyed by every empire or kingdom in Europe, by the Pope, the grand duchies in Germany, and the Germanic and Swiss Confederations. They were also formerly conceded to the German empire, and to some of the great republics, such as the Untied Netherlands and Venice. These *royal honors* entitle the States by which they are possessed to precedence over all others who do not enjoy the same rank, with the exclusive right of sending to other States public ministers of the first rank, as ambassadors, together with certain other distinctive titles and ceremonies.	**第二节　得王礼之国** 欧罗巴诸国，按公法有应得王礼、不应得王礼者。 君主之国皆有之， 即罗马教皇、 日耳曼诸侯并日耳曼、 瑞士合盟之国亦有之。 前时亦归王礼于民主之大国， 如荷兰合邦与威内萨是也。 无王礼之国，应推让王礼者， 惟王礼者能遣 第一等国使， 更有名号礼款专属之。
3. Precedence among princes and States enjoying royal honors Among the princes who enjoy this rank, the Catholic powers concede the precedency to the Pope, or sovereign pontiff but Russia and the Protestant States of Europe consider him as Bishop of Rome only, and a sovereign prince in Italy, and such of them as enjoy royal honors refuse him the precedence. The Emperor of Germany, under the former constitution of the empire, was entitled to precedence over all other temporal princes, as the supposed successor of Charlemagne and of the Caesars in the empire of the West; but since the dissolution of the late Germanic	**第三节　得王礼者分位次** 得王礼之诸国， 奉天主教者， 概让首位于罗马教皇。 但俄罗斯并奉耶稣教诸国，惟视为罗马之主教， 兼治意大里诸邦之一者， 即不以首位归之。 昔者日耳曼有皇时， 诸国归之礼款较重于他国之君， 盖以为继续罗马古皇之位故也。 但日耳曼既改国法，

constitution, and the abdication of the titles and prerogatives of its head by the Emperor of Austria, the precedence of this sovereign over other princes of the same rank may be considered questionable. The various contests between crowned heads for precedence are matter of curious historical research as illustrative of European manners at different periods; but the practical importance of these discussions has been greatly diminished (↓) by the progress of civilization, which no longer permits the serious interests of mankind to be sacrificed to such vain pretensions.	彼时统理之皇，今为奥地利之君主， 较同等之君应得首位与否， 尚可议也。 欧罗巴诸国之君，古来屡有争首位者。 考此等战争， 皆从前流俗然也， 今教化既盛， 为君者不至如此争虚礼，而贻害于民。 公法内此等辨论，即不如前时之紧要。(↑)
The great Republics. The text-writers commonly assigned to what were called the *great republics*, who were entitled to royal honors, a rank inferior to crowned heads of that class; and the United Netherlands, Venice, and Switzerland, certainly did formerly yield the precedence to emperors and reigning kings, though they contested it with the electors and other inferior princes entitled to royal honors. But disputes of this sort have commonly been determined by the relative power of the contending parties, (↓) rather than by any general rule derived from the form of government.	公师论此， 以民主之大国应得王礼， 惟当逊于同等之君。 荷兰之合邦、威内萨、瑞士等国， 前时推让皇帝君王之国， 而于公卿、诸侯之国虽得王礼者，亦不肯相让焉。 但此等争端， 概不以国法， 惟以国势而断之也。(↑)
Cromwell knew how to make the dignity and equality of the English Commonwealth respected by the crowned heads of Europe; and in the different treaties between the French Republic and other powers, it was expressly stipulated that the same ceremonial as to rank and etiquette should be observed between them and France which had subsisted before the revolution. Those monarchical sovereigns who are not crowned heads,	工卫尔，英之能人也，既叛君行霸自立，虽不挂君号、不戴君冠， 亦能令欧罗巴之诸君无不畏其威，认其国系平行均权也。 法国之民前时叛君而立民主之国，与他国议约时， 常添一条云： “前君之礼款，毋得或损减。” 至公卿、诸侯不戴君冠而行君权、

but who enjoy royal honors, concede the precedence on all occasions to emperors and kings. (p.211) Monarchical sovereigns who do not enjoy royal honors yield the precedence to those princes who are entitled to these honors. **Semi-sovereign or dependent States rank below sovereign States.** Semi-sovereign States, and those under the protection or *Suzerainete* of another sovereign State, necessarily rank below that State on which they are dependent. But where third parties are concerned, their relative rank must be determined by other considerations; and they may even take precedence of States completely sovereign, as was the case with the electors under the former constitution of the Germanic empire, in respect to other princes not entitled to royal honors. These different points respecting the relative rank of sovereigns and States have never been determined by any positive regulation or international compact: they rest on usage and general acquiescence. And abortive attempt was made (↓) at the Congress of Vienna to classify the different States of Europe, with a view to determine their relative rank. At the sitting of the 10th December, 1814, the plenipotentiaries of the eight powers who signed the treaty of peace at Paris, named a committee to which this subject was referred. At the sitting of the 9th February, 1815, the report of the committee, which proposed to establish three classes of powers, relatively to the rank of their respective ministers, was discussed by the Congress; but doubts having arisen respecting (↓) this classification, and especially as to the rank assigned to the great republics, the question was indefinitely postpones, and a regulation established determining merely the relative rank of the diplomatic agents of crowned heads.	享王礼者， 无不推让皇帝、君王也。 又其行君权而不享王礼者， 无不推让享王礼之诸侯也。 自主之国依于他国者， 等级下于所依之国，此不待言矣。 然与他国交际，其尊卑非如此以定， 而转先于自主者，亦不无其国也。 即如前时日耳曼之大诸侯，虽未自主，而既得王礼， 便尊于自主之他国未得王礼者。 各国君主尊卑之礼款，既无盟约特言， 皆恃常例，由默许也。 于一千八百十四年，维也纳之国使会议分欧罗巴诸国之等级， 迄久未成，(↑) 有八国在巴勒立和约，其公使 派数人创其议。 及复会创议者，陈其议于众云： “诸国应按其使臣之尊卑而分为三等。” 众使同议时，民主之大国不愿居下， 他国亦有不允之者，(↑) 其议即置而不复论矣。 彼时惟定条款， 以别君王所遣使臣之等级。

4. Usage of the *alternat*. Where the rank between different States is equal or undetermined, different expedients have been resorted to for the purpose of avoiding a contest, and at the same time reserving the respective rights and pretensions of the parities. Among these is what is called the usage of the *alternat*, by which the rank and places of different powers are changed from time to time, either in a certain regular order, or one determined by lot. Thus, in drawing up public treaties and conventions, it is the usage of certain powers (1) to *alternate*, both in the preamble and the signatures, (2) so that each power occupies, in the copy intended to be delivered to it, the first place. (3) The regulation of the Congress of Vienna, above referred to, provides that in acts and treaties between those powers which admit the *alternat*, the order to be observed by the different ministers shall be determined by lot. Another expedient which has frequently been adopted to avoid controversies respecting the order of signatures to treaties and other public acts, is that of signing in the order assigned by the French alphabet to the respective Powers represented by their minister.	**第四节　互易之方** 若两国交通，而其等级或系平行、或系未定， 则有数法可用，以免争端， 而存各国之体统。 一谓互易之法， 各国或轮流而得首位、 或抽签而得之。 即如立约时， 此本开端并盖关防系此国在先，彼本则系彼国在先，(2) 及互换时，则各得其所居先之本以存，(3) 此数国之礼也。(1) 维也纳国使会定条款云：“ 诸国用互易之礼者， 其使臣位次先后，惟以抽签而定。” 更有一法 以定盖关防次序而免争端， 即循法国字母之次序而盖画。
5. Language used in diplomatic intercourse. The primitive equality of nations authorizes each nation to make use of its own language in treating with others, and this right is still, in a certain degree, preserved in the practice of some States. But general convenience early suggested(↓) the use of the Latin language in the diplomatic intercourse between the different nations of Europe. Towards the end of the fifteenth century, the preponderance of Spain contributed to the general diffusion of the Castilian tongue as the ordinary medium of political correspondence.	**第五节　公用之文字** 诸国本有平行之权， 与他国共议时，俱用己之言语文字， 尽可从此例者，不无其国也。 但刺丁古文在欧罗巴系通行，而诸国用以共议， 前以为便。(↑) 三百年前， 欧罗巴各国莫大于西班牙， 连合该管属国众多， 故文移事件概从西班牙文字。

This, again, has been superseded by the language of France, which, since the age of Louis XIV., has become the almost universal diplomatic idiom of the civilized world.	惟二百年来，诸国文移公论几尽用法国言语文字。
Those States which still retain the use of their national language in treaties and diplomatic correspondence,	若议约通问用本国言语文字，
usually annex to the papers transmitted by them a translation in the language of the opposite party,	则附以译本，
wherever it is understood that this comity will be reciprocated.	概为各国相待之礼。
Such is the usage of the Germanic Confederation, of Spin, and the Italian courts.	日耳曼、西班牙、意大里大小诸国从此例。
Those States which have a common language	至数国言语文字相同者，
generally use it in their transactions with each other.	其交通往来概用之。
Such is the case between the Germanic Confederation and its different members, and between the respective members themselves;	如日耳曼合盟各邦皆用日耳曼语，
between the different States of Italy;	意大里诸国皆用意大里语，
and between Great Britain and the United States of America.	英、美两国皆用英语。
6. Titles of sovereign princes and States.	**第六节 君国之尊号**
All Sovereign princes or States may assume what ever titles of dignity they think fit, and may exact from their own subjects these marks of honor.	各国自主者，可随意自立尊号令己民推戴，
But their recognition by other States is not a matter of strict right, especially in the case of new titles of higher dignity, assumed by sovereigns.	但无权令他国认之也。
Thus the royal title of King of Prussia, which was assumed by Frederick I.	如菲哩特第一前为班丁堡侯，
in 1701, was first acknowledged by the Emperor of Germany,	于一千七百零一年初称普鲁士王号，日耳曼之皇先认之，
and subsequently by the other princes and States of Europe.	后欧罗巴诸国亦认之，
It was not acknowledged by the Pope until the reign of Frederick William II. in 1786, and by the Tue-tonic knights until 1792, this once famous military order still retaining the shadow of its antiquated claims to the Duchy of Prussia until that period.	至其末认之而众口一词，相距九十余年。
So also the title of Emperor of all the Russias, which was taken by the Czar, Peter the Great, in 1701,	彼得第一于一千七百零一年初称诸俄之皇号，
was successively acknowledged by Prussia, the United Netherlands,	普鲁士、荷兰先认，
and Sweden in 1723, by Denmark in 1732, by Turkey in 1739, by the emperor and the empire in 1745-6, by France in 1745, by Spain in 1750, and by the Republic of Poland in 1764.	而他国后认之，至其末认之而众口一词，相距六十余年。

In the recognition of this title by France, a reservation of the rights of precedence claimed by that crown was insisted on, and a stipulation entered into by Russia in the form of a *Reversale*, that this change of title should make no alteration in the ceremonies observed between the two courts. On the accession of the Empress Catharine II. in 1762, she refused to renew this stipulation in that form, but *declared* that the imperial title should make no change in the ceremonial observed between the two courts. This declaration was answered by the court of Versailles in a counter declaration, renewing the recognition of that title, upon the express condition, that, if any alteration should be made by the court of St. Petersburg in the rules previously observed by the two courts as to rank and precedence, the French crown would resume its ancient style, and cease to give the title of Imperial to that of Russia. (P.214) The title of emperor, from the historical associations with which it is connected, was formerly considered the most eminent and honorable among all sovereign titles; but it was never regarded by other crowned heads as conferring, except in the single case of the Emperor of Germany, any prerogative or precedence over those princes.	及法国认之时， 与俄国特立约据，以存法国前时之尊位，云： “不因更易名号， 致变两国相待之礼数。” 及俄罗斯皇后加他邻第二登位， 不愿复立此条， 惟行国书许不因用皇号致易二国相待之礼。 法国覆书仍认其皇号，惟云： “俄国若变相待之礼， 法国将复用己之尊称， 而不认俄之皇号。” 前者，君王之称莫尊于皇号，盖以为嗣续罗马之古皇故也。 但日耳曼皇之外，他国之君立此号者，即以为较诸国君王更有尊位，未之有也。
7. Maritime ceremonials. The usage of nations has established certain maritime ceremonials to be observed, either on the ocean, or those parts of the sea over which a sort of supremacy is claimed by a particular State. Among these is the salute by striking the flag or the sails, or by firing a certain number of guns on approaching a fleet or a ship of war, or entering a fortified port or harbor.(↑) Every sovereign State has the exclusive right, in virtue of its independence and equality, to regulate the maritime ceremonial to be observed by its own vessels towards each other, or towards those of another nation,	**第七节 航海礼款** 诸国常例， 定有航海礼款， 或当行于大海者、 或当行于各国之狭海者， 即如见该国之兵船、或进海口卫所，(↓) 即当下旗、下篷、放炮等事，以为尊之之礼。 自主之国既行均权， 即可随意制定本国船只之礼，

on the high seas, or within its own territorial jurisdiction. It was a similar right to regulate (1) the ceremonial to be observed (2) within its own exclusive jurisdiction (3) by the vessels of all nations, (4) as well with respect to each other, (5) as towards its own fortresses and ships of war, (6) and the reciprocal honors to be rendered by the latter to foreign ships. (7)	或行于大海、 或行于己之疆内， 或遇本国船只、或遇他国船只(4) 应用何礼，(2) 即他国之船只进己之疆内，(3) 或相遇而用礼，(5) 或过本国之兵船卫所而用礼应当如何，(6) 亦属各国自定。(1) 所过之船只、卫所，答礼如何亦然。(7)
These regulations are established either by its own municipal ordinances, or by reciprocal treaties with other maritime powers.	凡此或系各国自立为法者， 或彼此议约立为章程者。
Where the dominion claimed by the State is contested by foreign nations, as in the case of Great Britain in the Narrow Seas,	若此国欲管辖某处，而彼国争之， 即如英国有欲专管邻近狭海之事，
the maritime honors to be rendered by its flag are also the subject of contention. The disputes on this subject have not unfrequently formed the motives or pretexts for war between the powers asserting these pretensions, and those by whom they were resisted.	则此航海之礼亦为其所争。 诸国因而起论，遂托词以为战，故不一而足也。
The maritime honors required by Denmark, in consequence of the supremacy claimed by that power over the Sound and Belts, at the entrance of the Baltic Sea, have been regulated and modified by different treaties with other States, and especially by the convention of the 15th of January, 1829, between Russia and Denmark, suppressing most of the formalities required by former treaties.	丹国欲专管波罗的狭海，令他国船只来往者待以尊礼， 此屡经各国相约，限定改革。 如俄、丹两国于一千八百二十九年立约， 多废前时航海之礼，
This convention is to continue in force until a general regulation shall be established among all the maritime powers of Europe, according to the protocol of the Congress of Aix la Chapelle, signed on the 9th November, 1818, by the terms of which it was agreed, by the ministers of the five great powers, Austria, France, Great Britain, Prussia, and Russia, that the existing regulations observed by them should be referred to the ministerial conferences at London, and that the other maritime powers should be invited to communicate their views of the subject in order to form some such general regulation.	后在沙北尔国使会，英、法、奥、普、俄五大国立约款， 以彼时航海之礼委议于伦敦国使会， 又请各国同议， 以定通行之礼。

第二卷第四章

Chapter IV. Rights of Property	第四章 论各国掌物之权
1. National proprietary rights The exclusive right of every independent State to its territory and other property, is founded upon the title originally acquired by occupancy, conquest, or cession, and subsequently confirmed （↓） by the presumption arising from the lapse of time, or by treaties and other compacts with foreign States.	**第一节 掌物之权所由来** 自主之国各有权掌管己之土地、公物， 或由开拓、 或由征服、 或由推让。 历时既久， 他国立约认之， 其权皆坚固焉。（↑）
2. Public and private property This exclusive right includes （1） the public property or domain of the State, （2） and those things belonging to private individuals, or bodies corporate, （3） within its territorial limits. （4）	**第二节 民物亦归此权** 国中土地、公物，（2） 并疆内（4） 民物、民间公会之物，（3） 皆属此专掌之权。（1）
3. Eminent domain The right of the State to its public property or domain is *absolute*, （1） and excludes that of its own subjects （2） as well as other nations. （3） The national proprietary right, （↓） in respect to those things belonging to private individuals, or bodies corporate, within its territorial limits, is *absolute*, so far as it excludes that of other nations; but, in respect to the members of the State, it is *paramount* only, and forms what is called the eminent domain; that is, the right, （1） in case of necessity （2） or for the public safety, （3） of disposing of all the property of every kind within the limits of the State. （4）(P.217)	**第三节 民物听命于上权** 其掌公土、公物之权本无限制，（1） 不但他国不得搀越，（3） 即己民亦不与焉。（2） 至疆内人民 并民间公会之物， 则管制之权（↑） 亦不为他国所限， 惟就本民论之， 应听命于君上。 盖君上遇不得已之势，(2) 无论何等疆内之物，（4） 均有权（1） 以用之保国保民。（3）
4. Prescription The writers on natural law have questioned （↓） how far that peculiar species of presumption, arising from the lapse of time, which is called prescription, is justly applicable, as between nation and nation; but the constant and approved practice of nations	**第四节 历久为牢固之例** 主权历时既久，可谓坚固， 此乃常例。 以此例理国事，公与不公， 公师多有议论。（↑）

shows that, （↓） by whatever name it be called, the uninterrupted possession of territory, or other property, for a certain length of time, by one State, excludes the claim of every other; in the same manner as, by the law of nature and the municipal code of every civilized nation, a similar possession by an individual excludes the claim of every other person to the article of property in question. This rule is founded upon the supposition, confirmed by constant experience, that every person will naturally seek to enjoy that which belongs to him; and the inference fairly to be drawn from （↓） his silence and neglect, of the original defect of his title, or his intention to relinquish it.	然无论如何名其例， 诸国常有循之者，（↑） 皆以此国掌某地某物既久，则可以为己有， 而他国不与焉。 按性法， 人民得物而掌之日久，亦可以为己有，而他人不与焉。 各国之律法条款亦然，其理何也? 若谓人概不欲弃置己物， 乃至日久，无言寻觅者， 或疑其固非本主， 或谓其不欲留此物而早已弃之，可也。（↑）
5. Conquest and discovery confirmed by compact and the lapse of time. The title of almost all the nations of Europe to the territory now possessed by them, in that quarter of the world, was originally derived from conquest, which has been subsequently confirmed（↓） by long possession and international compacts, to which all the European States have successively become parties. Their claim to the possessions held by them in the New World, discovered by Columbus and other adventurers, （↓） and to the territories which they have acquired on the continents and islands of Africa and Asia, was originally derived from discovery, or conquest and colonization, and has since been confirmed in the same manner, by positive compact. Independently of these sources of title, the general consent of mankind has established the principle, that （↓） long and uninterrupted possession by one nation excludes the claim of every other.	**第五节 权由征服寻觅而来者** 欧罗巴各国掌其本土之权， 几尽由征服而来， 惟其掌之既久， 并得他国立约认之， 即为牢固。（↑） 至其属地，或在亚美利加，或在阿非利加、亚细亚与各海洲等处， 其掌之之权，（↑） 或由寻觅、 或由征服迁居， 既经诸国立约认之，亦为牢固。 即使其间或有来历不明者， 人皆以此国掌管既久，他国即不应过问，

Whether this general consent be considered as an implied contract, or as positive law, all nations are equally bound by it; since all are parties to it, since none can safely disregards it without impugning its own title to its possessions, and since it is founded upon mutual utility, and tends to promote the general welfare of mankind. (省略 P.219-233)	此为定例。(↑) 既云人皆以为例， 无论名为默许、 名为定法， 各国均应遵之。 其应遵者有三：一则人皆许之， 一则人若不许便致己物有危， 一则人之共益必须如此。
6. Maritime territorial jurisdiction The maritime territory of every State extended to the ports, harbors, bays, mouth of rivers, and adjacent parts of the sea inclosed by headlands, belonging to the same State. The general usage of nations (↓) superadds to this extent of territorial jurisdiction a distance of a martin league, or as far as a cannon-shot will reach from the shore, along all the coasts of the State. Within these limits, its right of property and territorial jurisdiction are absolute, and excluded those of every other nation.	**第六节 管沿海近处之权** 各国所管海面及海口、 澳湾、长矶所抱之海， 此外更有沿海各处，离岸十里之遥， 依常例亦归其管辖也。(↑) 盖炮弹所及之处， 国权亦及焉， 凡此全属其管辖而他国不与也。
7. Extent of the term *coasts* or *shore* The term "coasts" includes the natural appendages of the territory which rise out of the water, (↓) although these islands are not of sufficient firmness to be inhabited or fortified; but it does not properly comprehend all the shoals which form sunken continuations of the land perpetually covered with water. The rule of law on this subject is, *terra dominium finitur, ubi finitur armoraum vis*; and since the introduction of fire-arms, that distance has usually been recognized to be about three miles from the shore. In a case before Sir W. Scott, (Lord Stowell,) respecting the legality of a capture alleged to be made within the neutral territory of the United States, at the mouth of the river Mississippi,	**第七节 长滩应随近岸** 沿海所有长滩， 虽系流沙，不足以居人， 亦应随近岸归该国管辖。(↑) 但水底浅处不从此例。 按公法制此，惟有一例， 即上言炮弹所及之处，国权亦及之也。 前时，英兵捕拿敌船在美国长江口外，因而兴讼。

a question arose as to what was to be deemed the shore, since there are a number of little mud islands, composed of earth and trees, drifted down by the river, which form a kind of portico to the main land.	或以为犯美国局外之权，盖长江口外更有长滩；
It was contended that these were not to be considered as any part of the American territory ---- that they were a sort of “no man’s land,” not of consistency enough to support the purposes of life, uninhabited, and resorted to only for shooting and taking birds’ nests. It was argued that the line of territory was to be taken only from the Balize, which is a fort raised on made land by the former Spanish possessors.	或以此沙滩不足以居人，即可为无主之地。
But the learned judge was of a different opinion, and determined that the protection of the territory was to be reckoned from these islands, and that they are the natural appendages of the coast on which they border, and from which, indeed, there were formed.	英国法师斯果德断其案曰：
Their elements were derived immediately from the territory;	“此沙滩既随流而出，
and, on the principle of alluvium and increment, on which so much is to be found in the books of law, *Quod vis fluminis de tuo pradio detraxerit, et vinino pradio attulerit, palam tuum remanet*,	本系美土，虽有变迁，依古例仍属原主，
even if it had been carried over to an adjoining territory.	故其在内之海亦属美国。
Whether they were composed of earth or solid rock would not vary the right of dominion, for the right of dominion does not depend upon the texture of the soil.	英兵在彼捕船，系犯美国局外之权。”
The King’s Chambers	
The exclusive territorial jurisdiction of the British crown over the inclosed parts of the sea along the coasts of the island of Great Britain, has immemorially extended to those bays called the *King’s Chambers*; (省略 P.235 that is, portions of the sea cut off by lines drawn from one promontory to another. A similar jurisdiction is also asserted by the United States over the Delaware Bay, and other bays and estuaries forming portions of their territory. It appears from Sir Leoline Jenkins, that both in the reigns of James I. and Charles II.)	英国海旁有大湾数处，名为王房，亦属本国专主。
The security of British commerce was provided for, by express prohibitions against the roving or hovering of foreign ships of war so near the neutral coasts and harbors of Great Britain (省略 P.235 as to disturb or threaten vessels homeward or outward bound; and that captures by such foreign cruisers, even of their enemies’ vessels, would be restored by the Court of Admiralty, if made within the Kings’ Chambers. So, also, the British “Hovering Act,” passed in 1736, (9	船只既入此处，即不许敌船追捕，

Geo, II. Cap. 35,) assumes,) for certain revenue purposes, a jurisdiction of four leagues from the coasts, by prohibiting foreign goods to be transshipped within that distance, without payment of duties. A similar provision is contained in the revenue laws of the United States; and both these provisions have been declared, by judicial authority in each country, to be consistent with the law and usage of nations. (p.235)	且不许商船于三十五里内开舱卸货，如欲卸货，必纳进口税。 美国之例亦同。 二国法院皆以此例与公法甚吻合也。
8. Right of fishery The right of fishing in the waters adjacent to the coasts of any nation, within its territorial limits, belongs exclusively to the subjects of the State. (省略 P. 236-238 The exercise of this right, between France and Great Britain, was regulated by a Convention…)	**第八节 捕鱼之权** 各国人民有专权捕鱼， 在沿海本国辖内等处， 他国之民不与焉。
9. Claims to portions of the sea upon the ground of prescription. Beside those bays, gulfs, straits, mouths of rivers, and estuaries which are inclosed by capes and headlands belonging to the territory of the State, a jurisdiction and right of property over certain other portions of the sea have been claimed by different nations, on the ground of immemorial use. Such, for example, was the sovereignty formerly claimed by the Republic of Venice over the Adriatic. The maritime supremacy claimed by Great Britain over what are called the Narrow Seas has generally been asserted merely by requiring certain honors to the British flag in those seas, which have been rendered or refused by other nations, according to circumstances, but the claim itself has never been sanctioned by general acquiescence. Straits are passages communicating from one sea to another. (1) If the navigation of the two seats thus connected is free, (2) the navigation of the channel by which they are connected ought also to be free. (3) Even if such strait be bounded on both sides by the territory of the same sovereign, (4) and is at the same time so narrow as to be commanded by cannon shot from both shores, (5)	**第九节 管小海之权** 除澳湾、 海峡、 港口之外， 更有海面数处各国自以为可专主者， 盖谓古来有此权也。 即如威内萨前时欲专主邻近之长海， 英国欲专主邻近之狭海，故令他国进其狭海者行礼以认其权。 但行其礼者有之，不行其礼者亦有之， 盖其管狭海之权各国未皆允许，不能为例也。 若有狭港通连两海者，(1) 虽两涯共属一君，(4) 而两岸之炮台皆能管及之，(5) 其两海既为各国所常往来，(2) 则航其通连之港，就理而论，亦应无少阻碍。(3) 盖各国皆有航两海之权，(9)

the exclusive territorial jurisdiction of that sovereign over such strait (7) is controlled by (8) the right of other nations to communicate with the seas thus connected. (9) Such right may, however, be modified (1) by special compact, adopting those regulations (2) which are indispensably necessary to the security of the State whose interior waters thus form the channel of communication between different seas, the navigation of which is free to other nations. (3)	故其君专主之权(7) 应从而逊让焉。(8) 然遇其国不得已以期自护，(3) 则可与各国立约定章(2) 以限其进港。(1)
Thus the passage of the strait may remain free to the private merchant vessels of those nations having a right to navigate the seas it connects, whilst it is shut to all foreign armed ships in time of peace. (↑)	即和平时有约，(↓) 准各国商船进港， 不准兵船进港，亦可也。
The Black Sea, the Bosphorus, and the Dardanelles So long as the shores of the Black Sea were exclusively possessed by Turkey, that sea might with propriety be considered a *mare clausum*; and there seems no reason to question the right of the Ottoman Porte to exclude other nations from navigating the passage which connects it with the Mediterranean, both shores of this passage being at the same time portions of the Turkish territory; but since the territorial acquisitions made by Russia, and the commercial establishments formed by her on the shores of the Euxine,	前时，黑海四围皆属土耳其， 名为闭海， 土耳其禁他国航其通连之港， 盖缘其港两岸亦属土耳其也。 但后黑海之岸多归俄罗斯， 即不为闭海，(↓)
both that empire and the other maritime powers have become entitled to participate in the commerce of the Black Sea, and consequently to the free navigation of the Dardanelles and the Bosphorus. (↑) This right was expressly recognized by the seventh article of the treaty of Adrianople, concluded in 1829, between Russia and the Porte, both as to Russian vessels and those of other European States in amity with Turkey. The right of foreign vessels to navigate the interior waters of Turkey, which connect the Black Sea with the Mediterranean, does not extend to ships of war. The ancient rule of the Ottoman Empire, established for its own security, by which the entry of foreign vessels of war into the canal of Constantinople, including the strait of the Dardanelles and that of the Black Sea, has been at all	而他国有权航其通连之港。 于一千八百二十九年，土耳其已立约认此例矣。 然他国之兵船不得过土耳其内港， 土耳其古来设有此例， 以御患而自护。 于一千八百四十一年，英、法、奥、普、俄五大国亦与之立约，而认其例焉。

times prohibited, was expressly recognized by the treaty concluded at London the 13th July, 1841, between the five great European powers and the Ottoman Porte. (省略 p.242 By the 1st article of this treaty,… By the 2nd article it was provided, …By the 3rd article, ….) **Danish sovereignty over the Sound and the Belts** The supremacy asserted by the King of Denmark over the Sound and the two Belts which form the outlet of the Baltic Sea into the ocean, is rested by the Danish public jurists upon immemorial prescription, sanctioned by a long succession of treaties with other powers. According to these writers, the Danish claim of sovereignty has been exercised from the earliest times (1) beneficially (2) for the protection of commerce (3) against pirates and other enemies by means of guard-ships, (4) and against the perils of the sea (5) by the establishment of lights and land-marks. (6) The Danes continued for several centuries masters of the coasts on both sides of the Sound, the province of Scania not having been ceded to Sweden until the treaty of Roeskild, in 1658, confirmed by that of 1660, in which it was stipulated that Sweden should never lay claim to the Sound tolls in consequence of the cession, but should content herself with a compensation for keeping up the light-houses on the coast of Scania. The exclusive right of Denmark was recognized as early as 1368, by a treaty with the Hanseatic republics, and by that of 1490, with Henry VII. Of England, (省略 P. 243 which forbids English vessels from passing the Great Belt as well as the Sound, unless in case of unavoidable necessity; in which case they were to pay the same duties at Wyborg as if they had passed the Sound at Elsinore.) The treaty concluded at Spire, in 1544, with the Emperor Charles V., (省略 P. 243 which has commonly been referred to as the origin, or at least the first recognition, of the Danish claim to the Sound tolls,) merely stipulates, in general terms, that the merchants of the Low Countries frequenting the ports of Denmark should pay the same duties as formerly. The treaty concluded at Christianople, in 1645, between Denmark and the United Provinces of the	至于丹国欲专管波罗的狭海， 其国公师以常住为主，系历来旧例， 诸国屡有立约认之， 且自丹国管此狭海，(1) 派设兵船巡捕海盗，(4) 使各国通商无阻，(3) 建塔立标，燃灯其上，(6) 导海舶出入免危，(5) 是于诸国不无公益也。(2) 其狭海两岸数百年来俱属丹国管辖， 于一千六百五十八年丹国让北岸于瑞威敦， 但立约云： “瑞威敦不得共分其进口税。 惟其所建塔标，丹国当偿其费。” 日耳曼数邦于一千三百六十八年立约，认丹国得专此权。 英国于一千四百九十年， 日耳曼之皇查里第五于一千五百四十年， 亦续次立约认之。 荷兰于一千六百四十五年与丹国立约，重定税规。

Netherlands, is the earliest convention with any foreign power by which the amount of duties to be levied on the passage of the Sound and Belts was definitely ascertained. (省略 p.243A tariff of specific duties…. Their value to be paid.) These two treaties of 1645 and 1701, are constantly referred to in all subsequent treaties, as furnishing the standard by which the rates of these duties are to be measured as to *privileged* nations. Those *not privileged*, pay according to a more ancient tariff for the specific articles, and one and a quarter per centum on unspecified articles. (省略.p.244 整节 **Convention of 1841**) **Qu. Whether the Baltic Sea is *mare clausum*?** The Baltic Sea is considered by the maritime powers bordering on its coasts as *mare clausum* against the exercise of hostilities upon its waters by other States, whilst the Baltic powers are at peace. (↑) This principle was proclaimed in the treaties of armed neutrality in 1780 and 1800, and by the treaty of 179, between Denmark and Sweden, guaranteeing the tranquility of that sea. (省略一段：In the Russian declaration of war against Great Britain of 1807, the inviolability of that sea and the reciprocal guarantees of the powers that boarder upon it (guarantees said to have been contracted with the knowledge of the British government) were stated as aggravations of the British proceedings in entering the Sound and attacking the Danish capital in that year.) In the British answer to this declaration it was denied that Great Britain had at any time acquiesced in the principles upon which the inviolability of the Baltic is maintained; (省略 p. 245 一段：however she might, at particular periods, have forborne, for special reasons influencing her conduct at the time, to act in contradiction to them. Such forbearance never could have applied but to a state of peace and real neutrality in the north; and she could not be expected to recur to it after France had been suffered, by the conquest of Prussia, to establish herself in full sovereignty along the whole coast, from Dantzic to Lubeck.)	其曾经立约之国亦照此约定为章程， 而无约之国仍按旧章纳税，较为稍重。 （省略：1841 年丹麦与英国之间关于税收优惠的协定） 沿海诸国以波罗的为闭海， 盖谓沿海诸国和好无事，(↓) 他国若有战争，不得进波罗的海接仗， 而我沿海之国得享升平。 惟英国不视之为闭海也。
10. Controversy respecting the dominion of	**第十节 大海不归专管**

the seas. The controversy, how far the open sea or main ocean, beyond the immediate vicinity of the coasts, may be appropriated by one nation to the exclusion of others, which once exercised the pens of the ablest and more learned European jurists, can hardly be considered open at this day. (省略 p.246-248) II. In the second place, the sea is an element which belongs equally to all men like the air. No nations, then, has the right to appropriate it, even though it might be physically possible to do so. It is thus demonstrated, that the sea cannot become the exclusive property of any nation. (省略 p. 248-252 And, consequently, the use of the sea, for these purposes, remains open and common to all mankind.)	之例 洋海离岸既远，各国可否专管， 前有名师议及， 今则不复有此议， 而公法论之无二致矣。 诚以大海本万国公用， 与天气、日光理同， 无人可私据之， 而阻万国通行往来耳。
11. Rivers forming part of the territory of the State. The territory of the State includes the lakes, seas and rivers, entirely inclosed within its limits. The river(1) which flow through the territory (2) also form a part of the domain, (3) from their sources to their mouths, (4) or as far as they flow within the territory, (5) including the bays or estuaries formed by their junction with the sea. (6) Where a navigable river forms the boundary of conterminous States, the middle of the channel, or *Thalweg*, is common to both; but this presumption may be destroyed (↓) by actual proof of prior occupancy and long undisturbed possession, giving to one of the riparian proprietors the exclusive title to the entire river.	第十一节 疆内江湖亦为国土 各国疆内所有湖海江河皆为国土，应归其专管也。 江河(1) 发源于外，(4) 匝(顺)流过疆者，(2)(5) 并其人海之澳湾等处，(6) 亦为国土，应归其专管也。(3) 至江河夹于二国之间者， 则以中流为界， 二国同享其水利。 若系一国先得而早行专辖， 则按理(↑) 仍当归其专辖也。
12. Right of innocent passage on rivers flowing through different States Things of which the use is inexhaustible, such as the sea and the running water, cannot be so appropriated as to exclude others from using these elements in any manner which does not occasion a loss or inconvenience to the proprietor. This is what is called an *innocent use*. Thus we have seen that the jurisdiction possessed	第十二节 无损可用之例 凡物之为用不穷者， 一人不可据为己有而禁他人共用， 惟他人用之，应无损于其物之主， 所谓无损则可用是也。 即如(1)

by one nation (1) over sounds, (2) straits, and other arms of the sea, (3) leading through its own territory to that of another, (4) or to other seas common to all nations, (5) does not exclude others from the right of (6) innocent passage through these communications. (7) The same principle is applicable to (8) rivers flowing from one State through the territory of another into the sea, (9) or into the territory of a third State. (10) The right to navigating, (1’) for commercial purposes, (2’) a river which flows through the territories of different States, (3’) is common to (4’) all the nations inhabiting the different parts of its banks; (5’) but this right of innocent passage being what the text-writers call an *imperfect right*, its exercise is necessarily modified by the safety and convenience of the State affected by it, and can only be effectually secured by mutual convention regulating the mode of its exercise.	一国疆内(4) 有狭海，(2) 或通大海、(3) 或通邻境，(5) 不可禁止(6) 他国无损而往来，(7) 此与上(8) 所言江河发源此国(9) 而过流彼国者(10) 例同。(8) 故江河若流过数国者，(3’) 沿流居民(5’) 皆得享其水利，(1’)(4’) 而商舶皆可往来，(2’) 然此国无损过疆之权， 仍为彼国自护之权所限， 欲保其往来之利， 惟有立约以定章程。
13. Incidental right to use the banks of the rivers. It seems that this right draws after it (↓) the incidental right of using all the means which are necessary to the secure enjoyment of the principal right itself. Thus the Roman law, which considered navigable rivers as public or common property, declared that the right to the use of the shores was incident to that of the water; and that the right to navigate a river involved the right to moor vessels to its banks, to lade and unlade cargoes, &c. The public jurists apply this principle of the Roman civil law to the same case between nations, and infer the right to use the adjacent land for these purposes, as means necessary to the attainment of the end for which the free navigation of the water is permitted.	**第十三节 他事随行之例** 无损而过疆，若属有权可行， 则他事即随之以行。(↑) 如罗马古例， 以江河为公区， 而往来者即可因而登岸停船、 起卸货物等类是也。 公师 以此例许 诸国之民， 同沾江河之利。 若事不得已， 即可往来其岸，否则恐水利有难享者矣。

14. These rights *imperfect* in their nature The incidental right, like the principal right itself, is imperfect in its nature, and the mutual convenience of both parties (↓) must be consulted in its exercise.	**第十四节 同上** 如此同享水利，俱得登岸， 非经乃权也， 故其可行与否， 必视二国之便而定。(↑)
15. Modification of these rights by compact. Those who are interested in the enjoyment of these rights may renounce them entirely, or consent to modify them in such manner as mutual convenience and policy may dictate. A remarkable instance of such a renunciation is found in the treaty of Westphalia, 1648, confirmed by subsequent treaties, by which the navigation of the river Scheldt was closed to the Belgic provinces, in favor of the Dutch. (省略 P. 254 The forcible opening of this navigation by the French on the occupation of Belgium by the arms of the French Republic, in 1792, in violation of these treaties, was one of the principal ostensible causes of the war between France on one side, and Great Britain and Holland on the other. By the treaties of Vienna, the Belgic provinces were united to Holland under the same sovereign, and the navigation of the Scheldt was placed on the same footing of freedom with that of the Rhine and other great European rivers.) And by the treaty of 1831, for the separation of Holland from Belgium, the free navigation of the Scheldt was, in like manner, secured, subject to certain duties, to be collected by the Dutch government.	**第十五节 同享水利之权可让可改** 有此同享水利之权者， 或可推让、 或可酌改， 即如 比利时前通斯加尔达江， 后让于荷兰。 今有约仍许比利时往来其江无阻， 惟当归税于荷兰。
16. Treaties of Vienna respecting the great European rivers. By the treaty of Vienna, in 1815, the commercial navigation of rivers, which separate different States, or flow through their respective territories, was declared to be entirely free (↓) in their whole course, from the point where each river becomes navigable to its mouth; provided that the regulations relating to the police of the navigation should be observed, which regulations were to be uniform,	**第十六节 同航大江之例** 维也纳之国使会于一千八百十五年，定章程云： “江河流过数国， 或界连数国者， 自可通船之处直至其口， 皆得往来无阻。(↑) 惟当遵循沿流各国安民条例， 此条例亦不应随处变易，

and as favorable as possible to the commerce of all nations. (省略P. 255By the *Annexe* xvi. to the final act of the Congress of Vienna, the free navigation of the Rhine is…, by an act signed at Dresden the 12th December, 1821. And the stipulations between the different powers interested in the free navigation of the Vistula and other rivers of ancient Poland, ..The same treaty also extends the general principles adopted by the Congress relating to the navigation of rivers to that of the Po.) (17/18/19三节省略)	致碍诸国通商。” （双行小字：以下三节详载各国同用某处江河，因立约据条款大例与上俱同，但其细微曲节无关紧要，故未译出。）

PART THIRD. INTERNATIONAL RIGHTS OF STATES IN THEIR PACIFIC RELATIONS	第三卷 论诸国平时往来之权
CHAPTER I. RIGHTS OF LEGATION.	第一章 论通使之权
1. Usage of permanent diplomatic missions. There is no circumstance which marks more distinctly the progress of modern civilization, than the institution of permanent diplomatic missions between different States. The rights of ambassadors were known, and, in some degree, respected by the classic nations of antiquity. (省略 P.273 During the middle ages they were less distinctly recognized, and it was not until the seventeenth century that they were firmly established.) The institution of resident permanent legations at all the European courts took place (1) subsequently to the peace of Westphalia, (2) and was rendered expedient (3) by the increasing interest of the different States in each other's affairs, growing out of more extensive commercial and political relations, (4) and more refined speculations respecting the balance of power, (5) giving them the right of mutual inspection as to all transactions by which that balance might be affected. (6) Hence the rights of legation have become definitely ascertained and incorporated into the international code. (7)	第一节 钦差驻扎外国 古来教化渐行， 诸国以礼相待， 即有通使之例， 惟近今又有钦差驻扎各国之例。(1) 缘近二百年内，(2) 各国通商、交际更密，每有不明之事，(4) 特派钦差以治理之。(1) 又恐各国有恃强凌弱，而碍于均势之法，(6) 故设驻京钦差以防之也。(5) 此万国公法所以立有章程，定通使往来之权 。(7)
2. Right to send and obligation to receive, public ministers. Every independent State has a right to send public ministers to, and receive ministers from, any other sovereign State with which it desires to maintain the relations of peace and amity. (↑) No State, strictly speaking, is obliged, by the positive law of nations, to send or receive public ministers, although the usage and comity of nations seem to have established a sort of reciprocal duty in this respect. It is evident, however, that this cannot be more than an imperfect obligation and must be modified by the nature and importance of the relations to be maintained between different States by means of diplomatic intercourse.	第二节 可遣可受 自主之国， 若欲互相和好，(↓) 即有权可遣使、受使，他国不得阻抑。 若不愿遣使，他国亦不得相强。 惟就常例而论，倘不通使，似近于不和。 然通使虽为当行之礼，断无必行之势， 其行与否，当视其交情厚薄、事务紧要而定。

3. Rights of legation, to what States belonging.	**第三节 何等之国可以通使**
How far the rights of legation belong to dependent or semi-sovereign States,	至属国、半主之国，其通使
must depend upon the nature of their peculiar relation to the superior State under whose protection they are placed.	必视所属、所倚之大国秉有何权 。
Thus, by the treaty concluded at Kainardgi, in 1774, between Russian and the Porte, the provinces of Moldavia and Wallachia, placed under the protection of the former power,	如马喇达、瓦喇加二邦属土耳其管辖，凭俄罗斯为中保，依俄、土二国所立之约，
have the right of sending charges d’affaires of the Greek communion to represent them at the court of Constantinople.	即可遣己之教友为使臣驻土耳其都城，办理公事。
So also of confederated States; their right of sending public ministers to each other, or to foreign States,	合盟之邦互相通使，或遣使至外国，
depend upon the peculiar nature and constitution of the union by which they are bound together.	其可否必视其合盟之法而定。
Under the constitution of the former German Empire, and that of the present Germanic Confederation, this right is preserved to all the princes and States composing the federal union.	日耳曼有数十邦合盟，而各邦尚存通使之权 ，
Such was also the former Constitution of the United Provinces of the Low Countries,	荷兰从前亦然，
and such is now that of the Swiss Confederation.	瑞士各邦亦用此权 。
By the constitution of the United States of America every State	但美国之合邦，其合盟之法
is expressly forbidden from entering, without the consent of Congress, into any treaty, alliance, or confederation, with any other State of the Union, or with a foreign State, or from entering, without the same consent, into any agreement or compact with another State, or with a foreign power.	特禁各邦或与邻邦、或与外国通使立约，有条款云：“若非美国总会允准，不得与外国及本国之邻邦擅自立约。”
The original power of sending and receiving public ministers（↓）	
is essentially modified, if it be not entirely taken away, by this prohibition.	此乃减革通使原权几乎澌灭者也。
	遣使、接使，其职属国内何部，俱归其国法自定。（↑）

4. How affected by civil war or contest for the sovereignty.	**第四节 国乱通使**
(省略 P. 275 The question, to what department of the government belongs the right of sending and receiving public ministers, also depends upon the municipal constitution of the State.)	
In monarchies,	在君主之国，
whether absolute or constitutional,	无论其权之有限、无限，
this prerogative usually resides in the sovereign.	通使之事大抵归国君定夺。
In republics,	在民主之国，
it is vested either in the chief magistrate,	或系首领执掌，
or in a senate or council, conjointly with, or exclusive of such magistrate.	或系国会执掌，或系首领、国会合行执掌。
In the case of a revolution, civil war, or other contest for the sovereignty, although, strictly speaking,	若遇国内有争夺及篡逆等事，
the nation has the exclusive right of (↓)	
determining in whom the legitimate authority of the country resides,	国权竟应谁属，
	惟己民可以自定。(↑)
yet foreign States must of necessity judge for themselves whether they will recognized the government *de facto*,	而他国或以新君既立，
by sending to, and receiving ambassadors from it;	认而与之通使；
or whether they will continue their accustomed diplomatic relations with the prince whom they choose to regard as the legitimate sovereign,	或以旧君为正，照常通使；
or suspend altogether these relations with the nation in question.	或均绝其往来，俱可。
So, also, where an empire is severed by the revolt of a province or colony declaring and maintaining its independence,	若大国之属邦省部分争自立，
foreign States are governed by expediency in determining whether they will commence diplomatic intercourse with the new State,	他国或与新邦通使，
or wait for its recognition by the metropolitan country.	或俟本国认其自立之后始行通使，均无不可，惟视其便而已。
For the purpose of avoiding the difficulties which might arise from a formal and positive decision of these questions, diplomatic agents are frequently substituted, who are clothes with the powers, and	凡遇此等事，可遣使秉权办理，
enjoy the immunities of ministers, though they are not invested with the representative character, nor entitled to diplomatic honors.	而不加国使名号以免连累。
5. Conditional reception of foreign ministers.	**第五节 先议后接**
As no State is under a *perfect* obligation to receive ministers from another,	接使即非不得已之事，可以接，可以不接。

it may annex such conditions to their reception as it thinks fit; but when once received, they are, in all other respects, entitled to the privileges annexed by the law of nations to their public character. Thus some governments have established it as a rule not to receive one of their own native subjects as a minister from a foreign power; and a government may receive one of its own subjects, (↓) under the expressed condition that he shall continue amenable to the local laws and jurisdiction. So, also, one court may absolutely refuse to receive a particular individual as minister from another court, alleging the motives on which such refusal is grounded.	如欲相接，即可先定如何相接之法， 既接之后， 必以万国律例所定之款待。归之即如己民，出外为他国之臣。 奉他国之命使回本国，本国不接者有之， 抑或先为议定， 奉遣回本国，在疆内必仍服本国律法， 而后接者亦有之。(↑) 若其人不足见重，即非本国之臣亦可拒而不接， 但必知会其国，明其不接之由。盖所以不接者，在其人不在其国也。
6. Classification of public ministers. The primitive law of nations makes no other distinction between the different classes of public minister, than that which arises from the nature of their functions; but the modern usage of Europe having introduced into the voluntary law of nations certain distinctions in this respect, which ,for want of exact definition, became the perpetual source of controversies, uniform rules were al last adopted by the Congress of Vienna, and that of Aix-la-Chapelle, which put an end to those disputes. By the rules thus established, public ministers are divided into the four following classes: 1. Ambassadors, and papal legates or nuncios. 2. Envoys, ministers, or others accredited to sovereigns (aupres des souverains.)3. Ministers resident accredited to sovereigns.4. Charges d’affaires accredited to the minister of foreign affairs. Ambassadors and other public ministers of the first class are exclusively entitled to what is called the representative character, being considered as peculiarly representing the sovereign or State by whom they are delegated, and entitled to the same honors to which their constituent would be entitled, were be personally present. This must, however, be taken in a general sense, as	**第六节 公使等级** 万国公法之初兴，分使臣尊卑，惟因其所任之职而定。 后渐有分别， 每起衅端， 故诸国公议，分别使臣品级，以为款待之制。 现今使臣分为四等， 第一等使臣系代君行事， 其余三等系代国行事； 第一等使臣应以君礼款待，一若其君亲来者。 律例虽如是云云，

indicating the sort of honors to which they are entitled; but the exact ceremonial to be observed towards this class of ministers depends upon usage, which has fluctuated at different periods of European history. There is a slight shade of difference between ambassadors ordinary and extraordinary; (省略 P. 278 the former designation being exclusively applied to those sent on permanent missions, the latter to those employed on a particular or extraordinary occasion,) though it is sometimes extended to those residing at a foreign court for an indeterminate period. The right of sending ambassadors is exclusively confined to crowned heads, the great republics, and other States entitled to royal honors. All other public ministers are destitute of that particular character which is supposed to be derived from representing generally the person and dignity of the sovereign. They represent him only in respect to the particular business committed to their charge at the courts to which they are accredited. (省略 P. 278 Ministers of the second class are envoys, envoys extraordinary, ministers plenipotentiary, envoys extraordinary ad ministers plenipotentiary, and internuncios of the pope.) So far as the relative rank of diplomatic agents may be determined by the nature of their respective functions, there is no essential difference between public ministers of the first class and those of the second. Both are accredited by the sovereign, or supreme executive power of the State, to a foreign sovereign. The distinction between ambassadors, and envoys was originally grounded upon the supposition, that the former are authorized to negotiate directly with the sovereign himself; whilst the latter, although accredited to him, are only authorized to treat with the minister of foreign affairs or other person empowered by the sovereign. (省略 P. 279 The authority to treat directly with the sovereign was supposed to involve a higher degree of confidence, and to entitle the person, on whom it was conferred, to the honors due to the highest rank of public ministers.) This distinction, so far as it is founded upon any essential difference between the functions of the two	然款待礼制随时变迁，不能拘于一致。 钦差有常任、特使之别， 亦有常任兼特使之名者。 遣发第一等钦差， 惟君主之国或民主之大国方可。 其余三等，既非代君之身， 但奉命行事，故不能借君之威福也。 若以职守分钦差品级， 则第一与第二可为同等， 盖皆领国君之信凭， 以寄于所往之国君也。 前此其所以别者，因惟 第一等钦差可与他国之君面议， 第二等钦差虽亦寄信于他国之君， 仅能与其君所派之大臣议事耳。 然其职任虽似有别，

classes of diplomatic agents, is more apparent than real. The usage of all times, and especially the more recent times, authorizes public ministers of every class to confer, on all suitable occasions, with the sovereign at whose court they are accredited, on the political relations between the two States. But even at those periods when the etiquette of European courts confined this privilege to ambassadors, such verbal conferences with the sovereign were never considered as binding official acts . Negotiations were then, as now, conducted and concluded with the minister of foreign affairs, and it is through him that the determinations of the sovereign are made known to foreign ministers of every class. (省略 P.279 If this observation be applicable as between States, according to whose constitutions of government negotiations may, under certain circumstances, be conducted directly between their respective sovereigns, it is still more applicable to representative governments, whether constitutional monarchies or republics.) In the former, the sovereign acts, or is supposed to act, only through his responsible ministers, and can only bind the State and pledge the national faith through their agency. In the latter, the supreme executive magistrate cannot be supposed to have any relations with a foreign sovereign, such as would require or authorize direct negotiations between them (↓) respecting the mutual interests of the two States. In the third class are included ministers, ministers resident, residents and ministers charges d' affairs, accredited to sovereigns. Charges d' affairs, accredited to the ministers of foreign affairs of the court at which they reside, are either charges d' affairs *ad hoc*, who are originally sent and accredited by their governments, or charges d' affairs *per interim*, substituted in the place of the minister of their respective nations during his absence.	而实无以异也。 依常例， 各等使臣遇有机会，皆可朝君面议大事。 虽前欧罗巴诸国 但准头等钦差朝君面议， 然其所面议之事，未闻即为裁决而不复与臣议也。 盖无论昔时、今时， 外来使臣概与本国之君所派部臣议成公事， 则君旨所在即可从其臣而知。 君主之国，此君虽可遣使直达彼君， 而犹必与部臣妥议公事， 况民主之国，能不如是行乎? 盖首领 系代民行事， 不能私交他国之君故也。(↑) 第三等使臣，皆寄信凭于他国之君者。 第四等使臣，寄信凭于部臣， 有因事特使者、 有摄行钦差事者。

According to the rule prescribed by the Congress of Vienna, and which has since been generally adopted, public ministers take rank between themselves, in each class, according to the date of the official notification of their arrival at the court to which they are accredited. The same decision of the Congress of Vienna has also abolished all distinctions of rank between public ministers, arising from consanguinity and family or political relations between their different courts.	按公议条规， 若各国使臣同等而同寄信凭者，即就来日先后为次。 前此国君或因公使为国戚，或因另有殊爵，即破格尊礼。今则定有成规，专视公使之等级分别款待，不得执偏见，故为低昂。
A State which has a right to send public ministers of different classes, may determine for itself what rank it chooses to confer upon its diplomatic agents; but usage generally requires that those who maintain permanent missions near the government of each other should send and receive ministers of equal rank. One minister may represent his sovereign at different courts, and a State may send several ministers to the same court. A minister or ministers may also have full powers to treat with foreign States, as at a Congress of different nations, (↓) without being accredited to any particular courts.	能遣各等使臣之国， 其遣使加衔固可自定， 但交遣使臣驻扎京都者，当平行等级，不得故有尊卑。 有时使臣可一人寄信凭于数国， 亦有数人为使同往一国者。 有时使臣有全权可与他国议事， 但凭内不明指何国。 如数国使臣会同，即可与各国使臣相议，便宜而行。(↑)
Consuls, and other commercial agents, not being accredited to the sovereign or minister of foreign affairs, are not, in general, considered as public ministers; but the consuls maintained by the Christina Powers of Europe and America near the Barbary States are accredited and treated as public ministers.	领事与办通商官员， 不寄信凭于君相者， 即不为使臣。 惟驻扎巴巴里等回回国之领事， 概寄国信者，即为使臣。
7. Letters of credence. Every diplomatic agent, in order to be received in that character, and to enjoy the privileges and honors attached to his rank, must be furnished with a letter of credence. (↑) In the case of an ambassador, envoy, or minister, of either of the three first classes, this letter of credence is addressed by the sovereign, or other chief magistrate of his own State, to the sovereign or State to whom the minister is delegated. In the case of the a charge d' affaires, it is addresses by the secretary, or minister of state charged	**第七节 信凭式款** 国使 如不寄信凭，(↓) 则不能以使臣之礼仪权利归之。 上三等使臣 寄信凭于君， 第四等则寄信凭于部臣。

with the department of foreign affairs, to the minister of foreign affairs of the other government. It may in the form of a *cabinet letter*, but is more generally in that of a *letter of council*. If the latter, it is signed by the sovereign or chief magistrate, and sealed with the great seal of State. The minister is furnished with an authenticated copy, to be delivered to the minister of foreign affairs, on asking an audience for the purpose of delivering the original to the sovereign, or other chief magistrate of the State, to whom he is sent. The letter of credence states the general object of his mission, and requests that full faith and credit may be given to what he shall say on the part of his court.	其信凭或为密函、 或为公函。 若系公函，其君必加玺印， 使臣另备副本 以便交部臣验明， 约日朝觐，亲呈玺书。 信凭内必先言使臣因何而来， 其代国办事必保其言行可信。
8. Full power The full power, authorizing the minister to negotiate, may be inserted in the letter of credence, but it is more drawn up in the form of letters-patent. In general, sent to a Congress are not provided with a letter of credence, but only with a full power, of which they reciprocally exchange copies with each other, or deposit them in the hands of the mediating power or residing minister.	**第八节 全权之凭** 商议立约全权之据，可在信凭内总括， 或另缮一角， 其式略与公诰（双行小字：即如君之谕旨可人人共视者）同。 数国使臣会同时，不寄信凭 但寄全权之据， 或彼此互换， 或存中保与盟主之手。
9. Instructions. The instructions of the minister are for his own direction only, (↓) and not to be communicated to the government to which he is accredited, unless he is ordered by his own government to communicate them *in extenso*, or partially; or unless, in the exercise of his discretion, he deems it expedient to make such a communication.	**第九节 训条之规** 凡使臣另有训条秘书， 非其君寄示他国， 乃训诲其臣应如何行事者，(↑) 本国之君未尝命以将训条秘书呈进他国之君，使臣即不必呈进。 然有时变通达权，亦可由使臣便宜而行。
10. Passport. A public minister, proceeding to his destined post in time of peace, requires no other protection than a passport from his own government. In time of war,	**第十节 牌票护身** 国使赴任他国 如值太平， 惟带本国牌票以护其身足矣。 若至敌国， 或经过敌国之界，(↓)

he must be provided with a safe conduct or passport, from the government of the State with which his own country is in hostilities, (↑) to enable him to travel securely through its territories.	必须至所过之国给以护身牌票， 方可安行。
11. Duties of a public minister, on arriving at his post. It is the duty of every public minister, on arriving at his destined post, to notify his arrival to the minister of foreign affairs. If the foreign minister is of the first class, this notification is usually communicated by a secretary of embassy or legation, or other person attached to the mission, who hands to the minister of foreign affairs a copy of the letter of credence, at the same time requesting an audience of the sovereign for his principal. Ministers of the second and third classes generally notify their arrival by letter to the minister of foreign affairs, requesting him to take the orders of the sovereign, as to the delivery of their letters of credence. Charges d' affaires, who are not accredited to the sovereign, notify their arrival in the same manner, at the same time requesting an audience of the minister of foreign affairs for the purpose of delivering their letters of credence.	**第十一节 莅任之规** 公使莅任 必须报会部臣， 若系第一等钦差， 或命幕下记室及随从员弁 将信凭副本呈送部臣， 请其谕日，以便钦差朝见。 至二、三等之使臣， 则亲自出名照会部臣， 请其代禀国君， 如何呈递信凭： 若署理使臣，不寄信凭于君者， 当报会部臣， 请其谕日以便面交信凭。
12. Audience of the sovereign, or chief magistrate. Ambassadors, and other ministers of the first class, are entitled to a *public* audience of the sovereign; but this ceremony is not necessary to enable them to enter on their function, and together with the ceremony of the *solemn entry*, (↓) which was formerly practiced with respect to this class of ministers, is now usually dispensed with, and they are received in a *private* audience, in the same manner as other minister. At this audience the letter of credence is delivered, and the minister pronounces a complimentary discourse, to which the sovereign replies. In republican States,	**第十二节 延见之规** 第一等国使， 可在公朝觐见。 前此多设仪仗款接， 今则私觐公见，率从简便，(↑) 概以内朝延见， 与二、三等国使同例。 其延见时，国使献玺书于君， 善言称颂， 君亦当善言慰答。 在民主之国，

the foreign minister is received in a similar manner, by the chief executive magistrate or council, charged with the foreign affairs of the nation.	国使谒见首领亦然， 或部臣延接亦可。
13. Diplomatic etiquette. The usage of civilized nations has established a certain etiquette, to be observed by (↓) the members of the diplomatic corps, resident at the same court, towards each other, and towards the members of the government to which they are accredited. The duties which comity requires to be observed, in this respect, belong rather to the code of manners than of laws, and can hardly be made the subject of positive sanction; but there are certain established rules in respect to them, the non-observance of which may be attended with inconvenience in the performance of more serious and important duties. Such are the visits of etiquette, which the diplomatic ceremonial of Europe requires to be rendered and reciprocated, (↓) between public ministers resident at the same court.	**第十三节 交好礼款** 国使在任，与所至之国往来，或与他国使臣往来， 皆有款例。(↑) 凡此系是礼仪， 并非律法， 然若视礼仪为小节，恐有碍于大事。 数国使臣驻扎一国京都，往来拜会皆礼款也。(↑)
14. Privileges of a public minister From the moment a public minister enters the territory of the State to which he is sent, during the time of his residence, and until he leaves the country, he is entitled to an entire exemption from the local jurisdiction, both civil and criminal. Representing the rights, interests, and dignity of the sovereign or State by whom he is delegated, his person is sacred and inviolable. To give a more lively idea of this complete exemption from the local jurisdiction, the fiction of extraterritoriality has been invented, (↓) by which the minister, though actually in a foreign country, is supposed still to remain within the territory of his own sovereign. He continues still subject to the laws of his own country, which govern his personal *status* and rights of property, whether derived from contract, inheritance, or testament. His children born aboard are considered as natives. This exemption from the local laws and jurisdiction is found upon mutual utility,	**第十四节 国使权利** 国使至外国者， 自进疆至出疆， 俱不归地方管辖，不得拿问。 缘国使既代君国行权 ，即当敬其君以及其臣，而不可冒犯。 其驻扎外国，权利与在本国等， 所谓不在而在也。(↑) 其继业、鬻产均照本国律法， 若有子女生于外国，亦仍为本国人民。 任国使以如此旷典者，

growing out of the necessity that public ministers should be entirely independent of the local authority, in order to fulfill the duties of their mission. The act of sending the minister on the one hand, and of receiving him on the other, amounts to a tacit compact between the two States, that he shall be subject only to the authority of his own nation. The passports or safe conduct, granted by his own government in time of peace, or by the government to which he is sent tin time of war, are sufficient evidence of his public character for this purpose.	盖不如此即 难以一事权焉。 此国遣使 而彼国接之， 即为默许 其但服本国之权而已。 和好时，本国所给护身牌票， 或所往之国倘有战争给与护身牌票， 均可证其职位而免人拿问也。
15. Exceptions to the general rule of exemption from the local jurisdiction. This immunity extends, not only to (↓) the person of the minister, but to his family and suite, secretaries of legation and other secretaries, his servants, movable effects, and the house in which he resides. The minister's person is, in general, entirely exempt both from the civil and criminal jurisdiction of the country where he resides. To this general exemption there may be the following exceptions: 1. This exemption from the jurisdiction of the local tribunals and authorities does not apply to the *contentious* jurisdiction, which may be conferred on those tribunals by the minister voluntarily making himself a party to a suit at law. 2. If he is a citizen or subject of the country to which he is sent, and that country has not renounced its authority over him, he remains still subject to its jurisdiction. But it may be questionable whether his reception as a minister from another power, without any express reservation as to his previous allegiance, ought not to be considered as a renunciation of this claim, since such reception implies a tacit convention between the two States that he shall be entirely exempt from the local jurisdiction. 3. If he is at the same time in the service of the power who receives him as a minister, as	**第十五节 例外之事** 国使之妻子及从事员弁、记室、代书、佣工、器具、私衙、公馆 皆置权外，他国不得管辖。(↑) 国使不归他国管辖，固为常经， 但其应从权者有四条： 其一、在彼国公署若有讼狱，而国使竟干涉其事，则就其事而听彼国管辖可。 其二、若他国使臣原系本国之人， 而本国尚未弃管辖之权 ， 自应仍服管辖。 然本国认其为使， 而未言及该人曾为我国之臣， 即是默许不行管辖之权 。 其三、若准本国之臣兼为他国之使，复回本国，

sometimes happens among the German courts, he continues still subject to the local jurisdiction.	则其人仍服本国管辖明矣。
4. In case of offences committed by public ministers, affecting the existence and safety of the State where they reside, if the danger is urgent, their persons and papers may be seized,	其四、若使臣谋害所驻之国， 事至危急， 即可收其人并其文凭卷册，
and they may be sent out of the country. In all other cases, it appears to be the established usage of nations to request their recall by their own sovereign, which, if unreasonably refused by him, would unquestionably authorize the offended State to send away the offender. There may be other cases which might, under circumstances of sufficient aggravation,	送出疆外。 然势未甚迫，必当通知其国调回该使， 倘其国不允， 始可收其人远送疆外。 倘国使犯有重案，
warrant the State thus offended in proceeding against an ambassador as a public enemy, or in inflicting punishment upon his person, if justice should be refused by his own sovereign. (↑)	而其君推诿不理，(↓) 即视其人为仇敌，捕拿而自行审办可也。
But the circumstances which would authorize such a proceeding are hardly capable of precise definition, nor can any general rule be collected from the examples to be found (↓)	但如何方可用此权 ， 颇有难言者矣。
in the history of nations, where public ministers have thrown off their public character, and plotted against the safety of the State to which they were accredited.	古来 国使弃其分内事， 反行图害驻扎之国
These anomalous exceptions to the general rule resolve themselves into the paramount right of self-preservation and necessily . Grotius distinguishes here between what may be done in the way of self-defense and what may be done in the way of punishment. (↓)	不无其人，处置其人亦非一致，(↑) 其法总归于 不得已而自护焉。 虎哥云：
Though the law of nations will not allow an ambassador's life to be taken away as a punishment for a crime after it has been committed,	“国使虽不可杀害，
yet this law does not oblige the State to suffer him	然秉自护之权者，(↑) 未便听其逞强跋扈也。”

to use violence without endeavoring to resist it.	
16. Personal exemption extending to his family, secretaries, servants, &c. The wife and family, servants and suite, of the minister, participate in the inviolability attached to his public character. The secretaries of embassy and legation are especially entitled, as official persons, to the privileges of the diplomatic corps, in respect to their exemption from the local jurisdiction. The municipal laws of some, and the usages of most nations, require an official list of the domestic servants of foreign ministers to be communicated to the secretary or minister of foreign affairs, in order to entitle them to the benefit of this exemption. It follows from the principle of the extraterritoriality of the minister, his family, and other persons attached to the legation, or belonging to his suite, and their exemption from the local laws and jurisdiction of the country where they reside, that the civil and criminal jurisdiction over these persons rests with the minister, to be exercised according to the laws and usages of his own country. In respect to civil jurisdiction, both contentious and voluntary, this rule is, with some exceptions, followed in the practice of nations. But in respect to criminal offences committed by his domestics, although in strictness the minister has a right to try and punish them, the modern usage merely authorizes him to arrest and send them for trial to their own country. He may, also, in the exercise of his discretion, discharge them from his service, or deliver them up for trial under the laws of the State where he resides; as he may renounce any other privilege to which he is entitles by the public law.	**第十六节 家人置权外** 国使之妻子、佣工、从事员弁 既置权外，即归不可拿问之例。 记室有重职者，亦不归他国管辖。 各国常例， 使臣先开名单送部， 始照此而行。 既言国使身家及从事员弁、佣工人等 只服本国，不归他国管辖， 惟其人有争讼罪犯， 应听其使照本国律法自行审办。 凡遇争讼 从此例者居多。 至于罪犯， 国使虽秉执审断之权 ， 然大抵不过拘禁其人，送交本犯所属之国，以便审办。 或逐出不用， 或提交任所法司照律惩治。 盖公法所赐国使权利，无不可通融之事。
17. Exemption of the minister's house and property. The personal effects or movables belonging to the minister, within the territory of the State where he resides,	**第十七节 房屋器具置权外** 既言国使住房、器具

are entirely exempt from the local jurisdiction; so, also, of his dwelling-house; but any other real property, or immovables, of which he may be possessed within the foreign territory, is subject to its laws and jurisdiction. Nor is the personal property of which he may be possessed as a merchant carrying on trade, or in a fiduciary character, as an executor, &c., exempt from the operation of the local laws. (P. 287-298 省略 Discussion between the American and Prussian governments, respecting the exemption of public ministers from the local jurisdiction.)	不归他国管辖， 则其所有田产、植物与不能随身携带者。 自应归地方管辖，与本国民产无异。 若国使而为商贾买卖与凡经手遗产， 此等财货亦归地方管辖。
18. Duties and taxes. The person and personal effects of the minister are not liable to taxation. He is exempt from the payment of duties (↓) on the importation of articles for his own personal use and that of his family. But this latter exemption is, at present, the usage of most nations, limited to a fixed sum during the continuance of the mission. He is liable to the payment of tolls and postages. The hotel in which he resides, though exempt from the quartering of troops, (↓) is subject to taxation, in common with the other real property of the country, whether it belongs to him or to his government. And though, in general, his house is inviolable, and cannot be entered, without his permission, by policy, custom-house, or excise officers, yet the abuse of this privilege, by which it was converted in some countries into an asylum for fugitives from justice, has caused it to be very much restrained by the recent usage of nations.	**第十八节 纳税之规** 国使本身不纳丁税，器物不纳货税， 其余自用家用各物进口， 亦可不令纳税。(↑) 按今通例， 所免进口税已有定数，若逾此额仍应照所逾之数完纳。 至于卡费、寄信费，则国使输纳亦与常人无异。 所住公馆 无论属淮，每年亦当交纳官租， 但他国不得屯兵其内。(↑) 若非国使自许，则巡捕、关吏不能进其住屋， 但不可恃以庇匿罪犯。 从前国使曾有藏匿罪犯者， 故现今此权少减。
19. Messengers and couriers. The practice of nations has also extended the inviolability of public ministers to the messengers and couriers, (↓) sent with despatches to or from the legations established in different countries.	**第十九节 寄公信者** 按常例， 国使遣人赍发公文，或去或来， 其人其书皆不可阻拿。

They are exempt from every species of visitation and search, (↓) in passing through the territories of those powers with whom their own government is in amity.	(↑) 经过友邦之疆， 无论何故不得待查问，(↑)
For the purpose of giving effect to this exemption, they must be provided with passports from their own government, attesting their official character; and, in the case of despatches sent by sea, the vessel or *aviso* must also be provided with a commission or pass. In time of war, a special arrangement, by means of a cartel or flag of truce, furnished with passports, not only from their own government, but from its enemy, is necessary, for the purpose of securing these despatch vessels from interruption, as between the belligerent powers. But an ambassador, or other public minister, resident in a neutral country for the purpose of preserving the relations of peace and amity between the neutral State and his own government, has a right freely to send his despatches in a neutral vessel, which cannot lawfully be interrupted by the cruisers of a power at war with his own country. (省略 P. 299)	但当随带本国牌票， 以昭信守。 若由水路驶船寄信， 亦当有本国牌票。 战时寄信之船，须战者两国计议，允给以白旗护票， 方可开行， 不遭凶险。 但钦差使臣驻扎局外之国， 以保和平为务， 若用局外之船赍发公文， 敌国兵船不可阻拿。
20. Public minister passing through the territory of another State than that to which he is accredited. The opinion of public jurists appears to be somewhat divided upon the question of (↓) the respect and protection to which a public minister is entitled, in passing through the territories of a State other than that to which he is accredited. The inviolability of ambassadors, under the law of nations, is understood by Grotius and Bynekershoek, among others, as binding only on whom they are sent, and by whom they are received. Wicquefort, in particular, who has ever been considered as the stoutest champion of ambassadorial rights, asserts that (↓) the assassination of the ministers of the French king, Francis I., in the territories of the Emperor	**第二十节　路过他国** 国使尚未抵任，路过他国当如何尊礼保护， 公师所论不一。(↑) 虎哥与宾克舍论国使特公法而不可犯者， 专指所往之国而言，与他国无涉也。 前有法国钦差经过日耳曼地界被杀，

Charles V.	
though an atrocious murder,	越克甫云：（↑） “此事固为凶杀，
was no breach of the law of nations, as to the privileges of ambassadors.	并非犯国使之权利也。
It might be regarded as a violation of the rights of innocent passage,	盖凡人过疆无害于我，而我杀之，已属违悖公法，
aggravated by the circumstance of the dignified character of the persons on whom the crime was committed,	况爵尊位重者乎?
--- and might even be considered a just cause of war against the emperor,	其或因此而遂有战争，自无不可，
without involving the question of protection in the character of ambassador,	但与公法保护公使之条规无所干涉。
which arises exclusively from a legal presumption which can only exist between the sovereigns from and to whom he is sent.	盖惟遣之之君与所至之君知其为国使也。”
Vattel, on the other hand, states that	发得耳云：
passports are necessary (↓)	
to an ambassador, in passing through different territories on his way to his destine post,	国使赴任，路过他国，
	须带牌票(↑)
in order to make known his public character.	以昭职守。
It is true that the sovereign to whom he is sent is more especially bound to cause to be respected the rights attached to that character;	至之君以国使特来我国，尊而护之。
but he is not the less entitled to be treated, in the territory of a third power, with the respect due to the envoy of a friendly sovereign.	然所历之友邦以其为友国使臣过疆，亦当尊而护之无异也。
He is, above all, entitled to enjoy complete personal security; (↓)	
to injure and insult him would be to injure and insult his sovereign and entire nation; to arrest him,	如以无义无礼慢待国使，即以无义无礼慢待其国也， 况捕其人、害其身耶?
	(↑)
or commit any other act of violence against his person, would be to infringe the rights of legation which belong to every sovereign.	此即为伤害万国之君，干犯万国遣使之权也。
Fancis I. was therefore fully justified in complaining of the assassination of his ambassadors,	法王以国使被杀告罪于日耳曼，理固当然。
and, as Charles V. refused satisfaction,	日耳曼不审其事，
in declaring war against him.	法国起兵讨之，亦势所必至。
“If an innocent passage, with complete security, is due to a private individual,	“凡民无损于人，安行道路，尚不可不保护，
with still more reason is it due to the public minister of a sovereign, who is executing the orders of his master, and travelling on the business of his nation.	况他国大臣奉君命以行君国大事乎?
I say an *innocent passage*; for if the journey of the minister is liable to just suspicion, as to its motives	国使若无损过疆，固不可阻碍。

and object;	
if the sovereign, through whose territories he is about to pass,	若猜度其所以往他国之故，
has reason to apprehend that he may abuse the liberty of entering them for sinister purposes,	即是谋害于我国，
he may abuse the passage.	遂疑其将用过疆之权利以恣横行，则禁而不许可也。
But he cannot maltreat him, or suffer others to maltreat him.	如明许之而暗害之，或任凭他人暗害之，断无此理矣。
If he has not sufficient reasons for refusing the passage,	倘无当禁之故，
he may take such precautions as are necessary to prevent the privilege being abused by the minister."	犹恐其怀不良之心，亦唯有加意提防而已。"
He afterwards limits this right of passage to the ambassadors of sovereigns, with whom the State through which the attempt to pass is, at the time, in the relations of peace and amity;	又云："倘遣使者非友国，其使不可恃有过疆之权 。
and adduces, in support of this limitation of the , the case of Marshall Belle-Isle, French ambassador at the Prussian court, in 1744, (France and Great Britain being then at war,)	如英法前有战争，法国使臣驻在普鲁斯都城者回国时，
who, in attempting to pass through Hanover, was arrested and carried off a prisoner to England.	路过英君所治小国，小国之人即擒送英国，此不为犯国使之权利也。"
Bynkershoek maintains that	宾克舍云：
ambassadors, passing through the territories of another State than that to which they are accredited,	"国使赴任路过他国，
are amenable to the local jurisdiction, both civil and criminal,	必服其国管辖，
in the same manner with other aliens, who owe a temporary allegiance to the State.	与他国暂寓之人无异。"
(省略一段 p. 302. He interprets the edict of the States-General, of 1679, exempting from arrest "the persons, domestics, and effects of ambassadors, *hier te lande komende, residerende of passernde*," [...]. He considers the last-mentioned term *passerende* as referring not to those who, coming from abroad, merely pass through the territories of the State in order to proceed to another country, but to those only who are about to leave the State where they have been resident as ministers accredited to its government.)	
This appear to Merlin to be a forced interpretation.	麦尔林云：
(省略一段 P. 303 "The word passer in French, and *passerende* in Dutch," says he, "was never used to designate a person returning from a given place; but is applicable to one who, [...]. If it be objected, as Bynekershoek does object, that the States-General (that is, the authors of this very law) caused to be arrested) , in 1717, the Baron de Gortz, ambassador of Sweden	

at the court of London, at the request of George I., against the security of whose crown he had been plotting, the answer to this example is furnished by Bynkershoek himself. 'The only reason,' says he, 'alleged by the States-General for this proceeding was, that this ambassador had not presented to them his letters of credence.' This reason, (continues Merlin,) is not the less conclusive for being the only one alleged by the States-General.) (↓)	
When it is said that an ambassador is entitled, in the territories through which he merely passes, to the independence belonging to his public character,	"国使过疆不归地方管辖，
it must be understood with this qualification, that he travels as *an ambassador*; that is to say,	但于将人疆时
after having caused himself to be announced as such,	必须先行知会其国，
and having obtained permission to pass in that character.	准其人疆与否。
This permission places the sovereign, by whom it has been granted, under the same obligation	如既许之，则此国之君即当尊而护之，
as if the public minister had been accredited to and received by him.	与所至之君无异。
Without this permission,	倘犹未许，
the ambassador must be considered as an ordinary traveler,	则国使即同路人，
and there is nothing to prevent his being arrested for the same causes which would justify the arrest of a private individual."	如犯当捕拿之罪，即可捕拿，与民人无异。
	如前瑞威敦国使本驻伦敦，有图害英国之事，于路过荷兰时，英君托荷兰代捕送交，荷兰遵照而行焉，此不为犯国使之权利，盖其人并未以国使文凭示荷兰也。"(↑)
To these observations of the learned and accurate Merlin it may be added, that	总之，
the inviolability of a public minister in this case	他国使臣过疆，
depends upon the same principle with that of his sovereign, coming into the territory of a friendly State by the permission,	无论明许默许，俱当保护。(↓) 其不可或犯者，与遣之之君亲自过疆同例。
express or implied, of the local government. (↑)	
Both are equally entitled to the protection of that government,	盖同其君身之尊也，
against every act of violence and every species of restraint, inconsistent with their sacred character.	是宜保护以免扰害、阻止。
We have used the term *permission*, *express* or *implied*;	不但明许者当如是行，即默许者亦皆当如是行也。
because a public minister accredited to one country	盖国使过疆，

who enters the territory of another, making known his official character in the usual manner, is as much entitled to avail himself of the permission which is implied from the absence of any prohibition, as would be the sovereign himself in a similar case.	既照例告知， 而此国未尝禁止，即可为默许矣。
21. Freedom of religious worship. A minister resident in a foreign country is entitled to the privilege of religious worship in his own private chapel, according to the peculiar forms of his national faith, although it may not be generally tolerated by the laws of the State where he resides. Ever since the epoch of the Reformation, this privilege has been secured, (1) by convention or usage, (2) between the Catholic and Protestant nations of Europe. (3) It is also enjoyed by the public ministers and consuls (↓) from the Christian powers in Turkey and the Barbary States. The increasing spirit of religious freedom and liberality has gradually extended this privilege to the establishment, in most countries, of public chapels, attached to the different foreign embassies, in which not only foreigners of the same nation, but even natives of the country of the same religion, are allowed the free exercise of their peculiar worship. This doe not, in general, extend to public processions, the use of bells, or other external rites celebrated beyond the walls of the chapel.	**第二十一节 礼拜不可禁止** 国使驻扎他国， 若在自己教堂礼拜， 可照本国教礼而行。 三百年来， 天主教与耶稣教之邦，(1) 或有特约，或有常例，(2) 互相遵照。(3) 在土耳其与巴巴里之邦， 国使、领事等官礼拜亦无阻碍。(↑) 迩来人情较前更为宽宏， 大抵准国使起造教堂， 不但自己与本国人礼拜， 即民间归教者 亦准其同在一处礼拜焉。 但其教若未曾准行， 不得鸣钟赛会， 并堂外一切礼节：
22. Consuls not entitled to the peculiar privileges of public ministers. Consuls are not public ministers. Whatever protection they may be entitled to in the discharge of their official duties, and whatever special privileges may be conferred upon them by the local laws and usages, or by international compact, they are not entitled, by the general law of nations, to the peculiar immunities of ambassadors. No State is bound to permit the residence of foreign	**第二十二节 领事权利** 领事官不在使臣之列。 各处律例及和约章程或准额外赐以权利， 但领事等官不与分万国公法所定国使之权利也。 若无和约明言，(↓) 他国即可不准领事官驻扎

consuls, unless it has stipulated by convention to receive them. (↑) They are to be approved and admitted by the local sovereign, and, if guilty of illegal or improper conduct, are liable to have the exequatur, which is granted them, withdrawn, and may be punished by the laws of the State where they reside, or sent back to their own country, at the discretion of the government which they have offended. In civil and criminal cases they are subject to the local law, in the same manner with other foreign residents owing a temporary allegiance to the State.	其国， 故必须所往国君准行方可办事。 若有横逆不道之举， 准行之凭即可收回， 或照律审断， 或送交其国， 均从地主之便。 至有争讼罪案， 领事官俱服地方律法， 与他国之人民无所异焉：
23. Termination of public mission. The mission of a foreign minister resident at a foreign court, or at a Congress of ambassadors, may terminate during his life in one of the following modes:---- 1. By the expiration of the period fixed for the duration of the mission; or, where the minister is constituted *ad interim* only, by the return of the ordinary minister to his post. In either of these cases a formal recall is unnecessary. 2. When the object of the mission is fulfilled, as in the case of embassies of mere ceremony; or, where the mission is special, (↑) and the object of the negotiation is attained or has failed. 3. By the recall of the minister. 4. By the decease or abdication of his own sovereign, or the sovereign to whom he is accredited. In either of these cases, it is necessary that his letters of credence should be renewed; which, in the former instance, is sometimes done in the letter of notification written by the successor of the deceased sovereign to the prince at whose court the minister resides. In the latter case, he is provided with new letters of credence; but where there is reason to believe that the mission	**第二十三节 国使卸任** 使臣驻扎他国， 或派往国使大会， 其卸任之故有七： 其一，或任满、 或代理 而正官来。 其二，则因事特遣，(↓) 而其事或成 或不成也。 其三，则本国召回也。 其四，或本国或所驻之国遇君崩及退位等事， 则必须再覆信凭。 若系本国君故，不必另缮信凭， 嗣君业已继位，照例告诸友邦，即于内声明先君所寄之信凭可也。 若系所驻之国君故，则本国必须重行新凭，以便呈示嗣君。 然使新凭未至而其公事尚

will be suspended for a short time only, a negotiation already commenced may be continued with the same minister confidentially *sub spe rati*. 5. When the minister, on account of any violation of the law of nations, or any important incident in the course of his negotiation, assumes on himself the responsibility of declaring his mission terminated. 6. When, on account of the minister's misconduct or the measures of his government, the court at which he resides thinks fit to send him away without waiting for his recall. 7. By a change in the diplomatic rank of the minister. When, by any of the circumstances above mentioned, the minister is suspended from his functions, and in whatever manner his mission is terminated, he still remains entitled to all the privileges of his public character until his return to his own country	未完结，倘冀其人必速复任，即可彼此相信，恃旧凭而了其事。 其五，国使或因所驻之国有干犯万国律例之事， 或遇不测之大事， 自不能辞其责而不卸任也。 其六，或国使自有不法之事， 或其本国有横行之举， 彼国即可不俟其国书，先命回国。 其七，则国使品级职任或有升降也。 凡遇此等情事，国使虽不行其职任， 犹可享国使之权利， 至回本国而后已。
6. Letter of recall. A formal letter of recall must be sent to the minister by his government: 1.Where the object of his mission has been accomplished, or has failed. 2. Where he is recalled from motives which do not affect the friendly relations of the two governments. In these two cases, nearly the same formalities are observed as on the arrival of the minister. He delivers a copy of his letter of recall to the minister of foreign affairs, and asks an audience of the sovereign, for the purpose of taking leave. At this audience the minister delivers the original of his letter of recall to the sovereign, with a complimentary address adapted to the occasion. If the minister is recalled on account of a misunderstanding between the two governments, the peculiar circumstances of the case must determine whether a formal letter of recall is to be sent to him, or whether he may quit the residence without waiting for it; whether the minister is to demand, and whether the	**第二十四节　公使召回** 本国行特书与使臣而召回者，其故有二： 因争奉遣，其事或成 或不成，召回本国，一也； 因他事不与两国友谊相涉而召回者，二也。 若因此二故而召回， 则使臣辞任与莅任礼无甚异， 当即先钞其召回之国书一函 送交部臣， 请彼国之君诹日面辞， 见君则献原本之书， 善言相辞。 若因两国不睦而召之回， 则本国或行公文撤回、 或公使不俟国书先离其地、 或请见君面辞，并君准其

sovereign is to grant him, an audience of leave. Where the diplomatic rank of the minister is raised or lowered, as where an envoy becomes an ambassador, or an ambassador has fulfilled his functions as such, and is to remain as a minister of the second or third class, he presents his letter of recall, and a letter of credence in his new character. Where the mission is terminated by the death of the minister, his body is to be decently interred, or it may be sent home for interment; but the external religious ceremonies to be observed on this occasion depend upon the laws and usages of the place. The secretary of legation, or, if there be no secretary, the minister of some allied power, is to place the seals upon his effects, and the local authorities have no right to interfere, (↓) unless in case of necessity. All questions respecting the succession *ab intestato* to the minister's movable property, or the validity of his testament, are to be determined by the laws of his own country. His effects may be removed from the country where he resides, without the payment of any *droit d'aubaine* or *detraction*. Although in strictness the personal privileges of the minister expire with the termination of his mission by death, the custom of nations entitles the widow and family of the deceased minister, together with their domestics, to a continuance, for a limited period, of the same immunities which they enjoyed during his lifetime. It is the usage of certain courts to give presents to foreign ministers on their recall, and on other special occasions. Some governments prohibit their ministers from receiving such presents. Such was formerly the rule observed by the Venetian Republic, and such is now the law of the United States.	相见与否，凡此皆就事而定也。 国使升降， 如二、三等之使臣升为钦差， 或特派钦差任满 改为第二、第三等驻扎之使臣， 即缴召回国书并新职信凭，送部验明。 若国使卒于任所， 必葬如其礼， 或将殡送回本国。 但办丧之礼 应照所在之仪制， 其辖下记室当将所遗文案各物一并封缄，如无记室者，友邦使臣可代行封缄。 但非万不得已之事， 地方官必不可擅动其物，亦不可擅自加封。（↑） 若有遗嘱，则遗嘱之行废，均照本国之律法而定。或无遗嘱， 谁可继业亦归本国律法所定。 其行囊、器具出疆不纳税等款，按公法细解。 国使既卒，其权利当绝。 惟依常例， 其寡妇与家人 得暂享其在世所享之益处。 数国常例， 凡使臣返国或遇有可贺等事，俱可备礼相送， 亦有数国禁其使臣收纳情仪礼物者。 威内塞从前自主之时，并美国现今律法，俱禁使臣受礼他国。

PART III. Chapter II. Rights of Negotiation and Treaties.	第二章 论商议立约之权
1. Faculty of contracting by treaty, how limited or modified.	第一节 限制若何
The power of negotiation and contracting public treaties between nation and nation exists in full vigor in (↓)	
every sovereign State	凡自主之国，
which has not parted with this portion of its sovereignty,	如未经退让本权，
or agreed to modify its exercise by compact with other States.	或早立盟约限制所为，
	即可出其自主之权，与他国商议立约。(↑)
Semi-sovereign or dependent States	属国与半主之国
have, in general, only a limited faculty of contracting in this manner;	立约之权有所限制，
and even sovereign and independent States may restrain or modify this faculty by treaties of alliance or confederation with others.	即自主者亦可因特盟而减削其立约之权。
Thus the several states of the North American Union	即如美国之合邦系特盟而联合者，
are expressly prohibited from entering into any treaty with foreign powers,	其相盟之法度，严禁各邦或与外国、
or with each other,	或与邻邦私自立约，
without the consent of the Congress;	必须国会允准，方可立约。
whilst the sovereign members of the Germanic Confederation	但日耳曼之盟邦
retain the power of concluding treaties of alliance and commerce,	各具立约之权，
not inconsistent with the fundamental laws of the Confederation.	惟不得与联合之盟约相悖耳。
The constitution or fundamental law of every particular State must determine (↓)	
in whom is vested the power of negotiating and contracting treaties with foreign powers.	至于商议立约谁主其事，
	各听国法所定。(↑)
In absolute, and even in constitutional monarchies,	君主之国
it is usually vested in the reigning sovereign.	则盟约归君掌握，
In republics,	民主之国
the chief magistrate, senate,	则首领或国会、
or executive council	或理事部院，
is intrusted with the exercise of this sovereign power.	均可任其权焉。
2. Form of treaty.	第二节 盟约式款
No particular form of words is essential to the	两国立约，所应遵守之

conclusion and validity of a binding compact between nations. The mutual consent of the contracting parties may be given expressly or tacitly; and in the first case, either verbally or in writing. It may be expressed by an instrument signed by the plenipotentiaries of both parties, or by a declaration, and counter declaration, or in the form of letters or notes exchanged between them. But modern usage requires that verbal agreements should be, as soon as possible, reduced to writing in order to avoid disputes; and all mere verbal communications preceding the final signature of a written convention are considered as merged in the instrument itself. The consent of the parties may be given tacitly, (↓) in the case of an agreement made under an imperfect authority, by acting under it as if duly concluded.	责，不拘式款如何， 有明言而立者，有默许而立者，均当谨守。 明言者，或口宣盟词、或文载盟府、 或两国全权大臣盖关防于公函、 或两国互行告示 及互换照会，俱可。 但依近今常例， 口宣盟词必急速载明， 以免日后争端。 若盟约业已尽录， 而未盖关防之先， 所另有口议皆不足为准。 默许者， 乃两国立约之人其权不足，但既经以口相盟，虽无和约明文， 亦可采其言而行焉。(↑) 其言既已允行， 即与执权者之立约无异。
3. Cartels, truces, and capitulations. There are certain compacts between nations which are concluded, not in virtue of any special authority, (↓) but in the exercise of a general implied power confided to certain public agents, as incidental to their official stations. Such are the official acts of generals and admirals, suspending or limiting the exercise of hostilities within the sphere of their respective military or naval commands, by means of special license to trade, of cartels for the exchange of prisoners, of truces for the suspension of arms, or capitulations for the surrender of a fortress, city, or province.	**第三节 约据章程** 有数种约据， 各国大臣监办职内事务，即可商定， 不必特授商议之权而后能定。(↑) 即如带兵将帅或水师提督 于交战之时， 可发给牌票准人通商， 并议换俘虏、 相约停兵、 降城退兵等款。

These conventions do not, in general, require the ratification of the supreme power of the State, unless such a ratification be expressly reserved in the act itself. (↑)	此等条约， 若未有明言，(↓) 即不必呈请君上加用玺书以为凭据也。
4. Sponsions. Such acts or engagements, when made without authority, or exceeding the limits of the authority under which they purport to be made, are called *sponsions.* These conventions must be confirmed by express or tacit ratification. The former is given in positive terms, and with the usual forms; the latter is implied from the fact of acting under the agreement as if bound by its stipulations. Mere silence is not sufficient to nfer a ratification by either party, though good faith requires that (↓) the party refusing it should notify its determination to the other party, in order to prevent the latter from carrying its own part of the agreement into effect. If, however, it has been totally or partially executed by either party, acting in good faith upon the supposition that the agent was duly authorized, the party thus acting is entitled to be indemnified or replaced in his former situation.	**第四节 擅约准废** 约据若无权而立， 或越权而立者， 谓之擅自立约。 必待请命君上，或明许或默许，方可施行。 明许者，行文准议，从常例也。 默许者，则不俟行文， 即依其所约之事而行也。 若默无所言， 即不足为默许之凭。 然若有不准此擅约之意， 必当行文知照彼国， 以免依约而行之误， 不然则于信义有亏矣。(↑) 若彼国信此国立约之人实有权足以议事， 业经议准昭信， 厥后彼国或有爽约而不肯诺， 必当赔偿一切度支， 仍还原制。
5. Full power and ratification. As to other public treaties: (1) in order to enable a public minister or other diplomatic agent to conclude and sign a treaty with the government to which he is accredited, (2) he must be furnished with a *full power*, (3) independent of his general *letter of credence*. (4) Grotius, and after him Puffendorf, consider treaties and conventions, thus negotiated and signed, as binding upon the sovereign in whose name they are concluded,	**第五节 公约准废** 至于公约，(1) 除国使所带信凭外，(4) 必执全权之凭，(3) 方可商定画押。(2) 虎哥与布氏俱云： “公约照例商定画押， 君国必当遵守。全权大臣既能秉权代君行事，则其

	君自当允其所行。”
in the same manner as many other contract made by a duly authorized agent binds his principal,	盖命他人摄行，即与躬亲无异，
according to the general rules of civil jurisprudence.	各国律法实有此意也。
Grotius makes a distinction between the procuration which is communicated to the other contracting party,	虎哥又云：“全权之凭而外，
and the instructions which are known only to the principal and his agent.	使臣另有训条秘书，唯其君所知者。
According to him, the sovereign is bound by the acts of his ambassadors, (1)	若行事或越训条秘书(3)
within the limits of his patent full-power, (2)	而未越全权之公凭，(2)
although the latter may have transcended or violated his secret instructions. (3) (省略 p. 320-321)	则其君亦当允守其约。”(1)
But if the minister exceed his authority, or undertake to treat points not contained in his full-power and instructions,	宾克舍云：“使臣若于公凭秘书内所无之事越权商议，
the sovereign is fully justified in delaying, or even refusing his ratification.	则君或待后再议、或全废其事
The peculiar circumstances of each particular case must determine whether the rule or the exception ought to be applied.	均可。”
Vattel considers	发得耳云：
the sovereign as bound by the acts of his minister, (↓)	
within the limits of his credentials, unless the power of ratifying be expressly reserved, according to the practice already established at the time when he wrote.	“信凭内倘无必俟其君准行之语，
	则使臣所行，国君必准。”(↑)
“Sovereigns treat with each other through the medium of their attorneys or agents, who are invested with sufficient powers for the purpose, and are commonly called plenipotentiaries.	盖两君以臣相交，特授全权。
To their office we may apply all the rules of natural law	依律法，正必从副，
which respect things done by commission.	此等大臣即君之副也。
The rights of the agent are determined by the instructions that are given him.	副者，必遵其主之训而行，所执何权亦由其主之训而定。
He must not deviate from them;	倘未越权行事，
but every promise which he makes, within the terms of his commission, and within the extent of his powers, binds his constituent.	凡所许者，君必成就之。
“At present,	然今之常例，
in order to avoid all danger and difficulty, (↓)	
princes reserve to themselves the power of ratifying what has been concluded in their name by	君虽派臣代议，犹留准否之权于君，

their ministers. (省略一段 p.322) But before a sovereign can honorably refuse to ratify that which has been concluded in virtue of a full power, he must have strong and solid reasons, and, in particular, he must show that his minister has deviated from his instructions." (省略 P.322-323. The slightest reflection will show how wide is the difference between the power given by sovereigns to their ministers to negotiate treaties respecting …"The forms in which one State…) A Plenipotentiary, to obtain credit with a State on an equality with his master, must be invested with powers to do, and agree to, all that could be done and agreed to by his master himself, even to the alienating the best part of his territories. But the exercise of these vast powers, always under the understood control of non-ratification, is regulated by his instruction." (省略 P.323-325.The exposition of the approved practice of nations, from which alone the law of nations applicable to this matter …) But several classes of cases may be enumerated, in which, it is conceived, such refusal might be justified, (↓) even where the minister had not transcended or violated his instructions. Among these the following may be mentioned: -- 1. Treaties may be avoided, even subsequent to ratification, upon the ground of the impossibility, physical or moral, of fulfilling their stipulations. Physical impossibility is where the party making the stipulation is disabled from fulfilling it for want of the necessary physical means depending on himself. Moral impossibility is where the execution of the engagement would affect injuriously the rights of third parties. It follows, in both cases, that if the impossibility of fulfilling the treaty arises, or is discovered previous to the exchange of ratifications, it may be refused on this ground. 2. Upon the ground of mutual error in the parties respecting a matter of fact, which, had it been known in its true circumstances,	所以免争端也。(↑) 但臣执全权商议，君必准议而行。 若不明指其臣违训越权，或别有重大之故，而无端废约不准，则耻孰甚焉。 总之，使臣执全权议约， 虽已明言其君必将准行， 若有违训事件，则君不必准也。 全权钦差虽未违训， 而犹可废其议于约未定之际者(↑) 有三： 其一，因事之终不能成也， 或本国无力可成， 或成其约必贻屈害于他国， 则其约虽已准行， 遇此二事即可废也。 其二，因未知而误议也， 议毕倘有大事显露，为两国前所未及知者。

would have prevented the conclusion of the treaty. Here, also, if the error be discovered previous to the ratification, it may be withheld upon this ground. 3. In case of a change of circumstances, on which the validity of the treaty is made to depend, either by an express stipulation, (*clausula rebus sic stantibus*,) or by the nature of the treaty itself. As such a change of circumstances would avoid the treaty, even after ratification, so if it take place previous to the ratification, it will afford a strong and solid reason for withholding that sanction. Every treaty is binding on the contracting parties from the date of its signature, unless it contain an express stipulation to the contrary. The exchange of ratification has a retroactive effect, confirming the treaty from its date. (省略 P.327)	若早知之，定不立约， 今既败露， 即可废其议焉。 其三，事之有大变也， 或约上明言因事而立， 或约之大义含有此意。 厥后其事大变，时势迥异， 则其约自废也。 约盟既商定画押， 倘无必俟互换明言， 则立当遵行而不待互换矣。
6. The treaty-making power dependent on the municipal constitution. The municipal constitution of every particular State determines in whom resides the authority to ratify treaties negotiated and concluded with foreign powers, so as to render them obligatory upon the nation. In absolute monarchies, it is the prerogative for the sovereign himself (↓) to confirm the act of his plenipotentiary by his final sanction. In certain limited or constitutional monarchies, the consent of the legislative power of the nation is, in some cases, required for that purpose. In some republics, as in that of the United States of America, the advice and consent of the Senate are essential, to enable the chief executive magistrate to pledge the national faith in this form. In all these case, it is, consequently, an implied condition in negotiating with foreign powers, that the treaties concluded by the executive government shall be subject to ratification in the manner prescribed by the fundamental laws of the State. (省略一段 p.329) But, in practice, the full powers given by the	**第六节 谁执定约之权** 约盟既商定画押， 谁执准行之权，使必遵守， 均听各国律法所定。 若君权之无所限制者， 则钦差所行之事或准或废， 必俟君命而定。(↑) 倘君权有所限制， 则概由定法之部院会议议定后，其君方能施行。 民主之国多由长老院同议同准， 首领方可代国加用印信。 凡与别国商议者，虽未明言如何加用印信， 亦必俟其国照己之律法加用印信也。 美国派授全权钦差未尝

government of the United States to their plenipotentiaries always expressly reserve the ratification of the treaties concluded by them, by the President, with the advice and consent of the Senate. (↑)	不注明， 必俟首领与长老院同议，(↓) 加用印信，此已明言而免争竞者也。
7. Auxiliary legislative measures, how far necessary to the validity of a treaty. The treaty, when thus ratified, is obligatory upon the contracting States, independently of the auxiliary legislative measures, which may be necessary on the part of either, in order to carry it into complete effect. Where, indeed, such auxiliary legislation becomes necessary, in consequence of some limitation upon the treaty-making power, (省略 P.329 expressed in the fundamental laws of the State, or necessarily implied from the distribution of its constitutional powers, --- such, for example, as a prohibition of alienating the national domain,) --- then the treaty may be considered as imperfect in its obligation, until the national assent has been given in the forms required by the municipal constitution. A general power to make treaties of peace necessarily implies a power to decide the terms on which they shall be made; and, among these, may properly be included the cession of the public territory and other property, as well as of private property included in the eminent domain annexed to the national sovereignty. If there be no limitation expressed in the fundamental laws of the State, or necessarily implied from the distribution of its constitutional authorities on the treaty-making power in this respect, it necessarily extends to the alienation of public and private property, when deemed necessary or expedient. Commercial treaties, which have the effect of altering the existing laws of trade and navigation of the contracting parties, may require the sanction of the legislative power in each State for their execution. Thus the commercial treaty of Utrecht, between France and Great Britain, by which the trade between	**第七节　因约改法** 既加用印信，必照约而行， 若须改添律法始可成行，则亦必改添焉。 若国法有限制立约之权， 则必俟其照律应允，方可施行。 能立和约者， 必能定约内务等章程。 即如让公地、国产 及民间私产， 缘民间产业亦当服其国之上权也。 若律法无加限制于立约者， 或遇有不得已之事， 则无论公业私产退让他国，皆属之此权也。 至于通商之约， 若有所改革于本国通商、航海之律者， 则必由执掌定法之权者应允而后可行。 即如从前英、法二国立约彼此贸易，

the two countries was to be placed on the footing of reciprocity, was never carried into effect; (1) the British Parliament having rejected the bill (2) which was brought in for the purpose of modifying the existing laws of trade and navigation, so as to adapt them to the stipulations of the treaty. (3) In treaties requiring the appropriation of moneys for their execution, it is the usual practice of the British government to stipulate that the king will recommend to parliament to make the grant necessary for that purpose. Under the Constitution of the United States, by which treaties made and ratified by the President, with the advice and consent of the Senate, are declared to be "the supreme law of the land," it seems to be understood that the Congress is bound to redeem the national faith thus pledged, and to pass the laws necessary to carry the treaty into effect. (p.330)	以后章程不得歧视， 其约与英国航海之律不合，(3) 国会不愿改焉，(2) 故其约不能行。(1) 英国已立约据开销国帑， 条约上屡为添补一款云： "必待君主转令国会，发帑应用，方可施行。" 美国合法有一条云： "首领与长老院商定之约盟， 即为美国律法， 国会不得悖信而定不合之律法。" 是即以盟约为律法，而允改其不合者，以便遵行勿替也。
8.Freedom of consent, how far necessary to the validity of treaties. By the general *principles* of private jurisprudence, recognized by most, if not all, civilized countries, a contract obtained by violence is void. Freedom of consent is essential to the validity of every agreement, and contracts obtained under duress are void, because the general welfare of society requires that they should be so. If they were binding, the timid would constantly be forced by threats, or by violence, into a surrender of their just rights. The notoriety of the rule that such engagements are void, makes the attempt to extort them among the rarest of human crimes. On the other hand, the welfare society requires that the engagements entered into by a nation under such duress as is implied by the defeat of its military forces, the distress of its people, and the occupation of its territories by an enemy,	**第八节　被逼立约** 人之立契据也， 倘有恃强逼勒者， 则其事必虚。 盖使逼勒之约无不遵守， 将强者逼勒，弱者退让，必至为常。 今则众人皆知， 遇有此等契据，决无必成之理， 故逼人立约者概不多见。 至于各国相待， 有被逼立约者， 犹必遵守。(↓) 被逼维何，即兵败民饥、敌人盘踞地方等类，如此被逼立约，

should be held binding; (↑) for if they were not, wars could only be terminated by the utter subjugation and ruin of the weaker party. Nor does inadequacy of consideration, (1) or inequality in the conditions of (2) a treaty between nations, (3) such as might be sufficient to set aside a contract (4) as between private individuals (5) on the ground of gross inequality(6) or enormous lesion, (7) form a sufficient reason for refusing to execute the treaty. (8)	倘不遵守，则战争定无了期， 必至被敌征服尽灭而后已焉。 民人立契据，(5) 倘此得便宜而彼受委屈，(6) 其所损益大相悬殊，(7) 即可以为逼害而废其事。(8) 但各国立约，(3) 不能因利害迥异(2) 而废也，(4) 虽曾被逼，(1)犹必谨守为是。
9. Transitory conventions perpetual in their nature. General compacts between nations may be divided into what are called *transitory conventions*, and *treaties* properly so termed. The first are perpetual in their nature, so that, being once carried into effect, they subsist independent of any change in the sovereignty and form of government of the contracting parties; and although their operation may, in some cases, be suspended during war, they revive on the return of peace without any express stipulation. Such are treaties of cession, boundary, or exchange of territory, or those which create a permanent servitude in favor of one nation within the territory of another. Thus the treaty of peace of 1783, between Great Britain and the United States, by which the independence of the latter was acknowledged, prohibited future confiscations of property; and the treaty of 1794, between the same parties, confirmed the titles of British subjects holding lands in the United States, and of American citizens holding lands in Great Britain, which might otherwise be forfeited for alienage.	**第九节　恒约不因战废** 盟约有二种， 恒约、 常约是也。 恒约者，乃是永远流传， 一经成立， 即君王更换、国政变迁，其约必不废焉。 即二国不睦之时，其约虽停而不行， 然俟两国复和之日，其约亦必复旧照行， 不必另为创议也。 让地换地、改立疆界、臣服他国等事， 俱归恒约。 即如一千七百八十三年间，英国认美国自主， 两国立约言明以后不再取彼此人民产业入公。 一千七百九十四年复立条约，内云： “英国人在美国有田产者， 美国人在英国有田产者， 不可因系他国之民即废其业。”

Under these stipulations,	照此章程，
the Supreme Court of the United States determined,	美国之上法院断案云：
that the title both of British natural subjects and of corporations to lands in America	“英国人民在美国有田产，
was protected by the treaty of peace,	本恃和约保护。
and confirmed by the treaty of 1794,	而一千七百九十四年之约复坚固之，
so that it could not be forfeited by any intermediate legislative act, or other proceeding, for alienage.	不能因其间有新定禁令，便废其产。”
Even supposing the treaties were abrogated by the war which broke out between the two countries in 1812,	或疑两国于一千八百十二年复有战争，遂谓其约已废。
it would not follow that the rights of property already vested under those treaties could be devested by supervening hostilities.	然所废者约，而恃约所置之产则必不废。
The extinction of the treaties would no more extinguish（↓）	
the title to the real property acquired or secured under their stipulations	盖己民恃何等律法置立产业，
than the repeal of a municipal law affects rights of property vested under its provisions.	即后有更废律法之事，
	而恃以所置之产业，岂亦与之俱废乎？（↑）
（省略 P. 333 But independent of this incontestable principle, on which the security of all property rests, the court was not inclined to admit the doctrine, that treaties become, by war between the two contracting parties, *ipso facto* extinguished, if not revived by an express or implied renewal of the return of peace. Whatever might be the latitude of doctrine laid down by elementary writers on the law of nations, dealing in general terms in relation to the subject，）	
it was satisfied that the doctrine contended for was not universally true.（↓）	
There might be treaties of such a nature as to their object and import, as that war would necessarily put an end to them;	又云盟约有别，遇战争之时而其约自废者有之，即永远可存者亦有之，
	缘所约之事常存不变故也。（↑）
but where treaties contemplated a permanent arrangement of territory, and other national rights,	如所约于定疆界自主自护等权有相关者，
or in their terms were meant to provide for the event of an intervening war，（↓）	
it would be against every principle of just interpretation to hold them extinguished by war.	若因不平而废，实乃与理不合也。
	况约上明言不因干戈而废乎？（↑）
If such were the law, even the treaty of 1783, so far as it fixed the limits of the Untied States, and	即如英、美两国立约，认美国自主定其疆界，

acknowledged their independence, would be gone, and they would have had again to struggle for both, upon original revolutionary principles. Such a construction was never asserted, and would be so monstrous as to supersede all reasoning. The court, therefore, concluded that treaties stipulating for permanent rights and general arrangements, and professing to aim at perpetuity, and to deal with the case of war as well as of peace, do not cease on the occurrence of war, but are, at most, only suspended while it lasts; and unless they are waived by the parties, or new and repugnant stipulations are made, revive upon the return of peace. (省略 P.334-342.)	其后复有战争之事，岂前约遂因之而废耶? 若然，则必有复逞干戈以定自主之权者矣，岂有是理哉? 上法院即断此案曰： “为常存之事而立约者， 无论平时、战时，其约皆存。 即遇交战，亦必不废， 但不过暂停而不行耳。 若非立约者公议而废， 或另立不能相合之章程， 则前所立之约复和，即能以复行矣。”
10. Treaties, the operation of which cease in certain cases. *Treaties*, property so called, or *faedera*, are those of friendship and alliance, commerce, and navigation, which, even if perpetual in terms, expire of course: --- 1. In case either of the contracting parties loses its existence as an independent State. 2. Where the internal constitution of government of either State is so changed, as to render the treaty inapplicable under circumstances different from those with a view to which it was concluded. Here the distinction laid down by institutional writers between *real* and *personal* treaties becomes important. The first bind the contracting parties independently of any change in the sovereignty, or in the rulers of the State. The latter include only treaties of mere personal alliance, such as are expressly made with a view to the person of the actual ruler or reigning sovereign, and though they bind the State during his existence, expire with his natural life or his public connection with the State. 3. In case of war between the contracting parties; unless such stipulations as are made expressly	**第十节　常约存废** 常约者，随常之约也， 即和约会盟、通商、航海各议。 约内虽云永远奉行， 然或屡废者，其废之之故有四： 其一，乃因国亡而废者。 其二，乃国法大变致前约万不相合， 地位迥异而废者。 盖约有属国体者，有属君身者。 属国体者，即更换朝代亦当守而不废。 属君身者，乃君与他国但为己益而合同者， 君亡则其约自废焉。 其三，立约之国失和而有战争，其约旋废。 但其中所有预防、限制

with a view to a rapture, such as the period of time allowed to the respective subjects to retire with their effects, or other limitations of the general rights of war. Such is the stipulation contained in the 10th article of the Treaty of 194, between Great Britain and the United States, --- providing that private debts and shares or moneys in the public funds, or in public or private banks belonging to private individuals, should never, in the event of war, be sequestered or confiscated. There can be no doubt that the obligation of this article would not be impaired by a supervening war, being the very contingency meant to be provided for, and that it must remain in full force (↓) until mutually agreed to be rescinded.	交战章程， 即如预定日期准敌国人民携带财产出疆等类，皆当存之也。 查英、美两国于一千七百九十四年立约，第十款云： “若有彼此人民欠债， 或存银于国库，或存于民间钱庄， 如两国有战争时， 凡此不可取之入公。” 此乃预防、规制，岂可因战争而废哉? 盖所预防者，即战争也。 故非两国公议而废者， 其约必永存焉。(↑)
4. Treaties expire by their own limitation, unless revived by express agreement, or when their stipulations are fulfilled by the respective parties, or when a total change of circumstances renders them no longer obligatory.	其四，约内倘有限定日期，限期已满， 苟无公议复新之，其约自废。 若因事而立，事成其约自废。 或事有大变，地位全异， 势不能行，其约亦废。
11. Treaties revived and confirmed on the renewal of peace. More international compacts, and especially treaties of peace, are of a mixed character, and contain articles of both kinds, which renders it frequently difficult to distinguish between (↓) those stipulations which are perpetual in their nature, and such as are extinguished by war between the contracting parties, or by such changes of circumstances as affect the being of either party, and thus render the compact inapplicable to the new condition of things. It is for this reason, and from abundance of caution, that stipulations are frequently inserted in treaties of peace, expressly reviving and confirming	**第十一节 盟约多兼二种** 两国之会盟和约，多兼二种。 条款内应归恒约，流传不息者有之； 应归常约，每遇战争或地位大变，致其约有不合而废者有之。 故约内条款当归何种，或存或废，颇有难辨。(↑) 为此商定和约者，有时特补条款， 明言

the treaties formerly subsisting between the contracting parties, and containing stipulations of a permanent character, or in some other mode excluding the conclusion that the obligation of such antecedent treaties is meant to be waived by either party.	从前约内所有永存不变之事，皆可复行不废也。
The reiterated confirmations of the treaties of Westphalia and Utrecht,	即如数国在外似非利与乌得喇二处立约，
in almost every subsequent treaty of peace or commerce between the same parties,	约后屡有战争，
constituted a sort of written code of conventional law,	复和犹必复新前约而坚固之。
by which the distribution of power and territory among the principal European States was permanently settled,	此二约竟为欧罗巴分疆定权之公法焉，
until violently disturbed by the partition of Poland and the wars of the French revolution.	至波兰亡灭，法郎西并吞邻国，此约始废。
The arrangement of territory and political relations substituted by the treaties of Vienna for the ancient conventional law of Europe,	在维也那所立之约继之，其分疆定权之本意
and doubtless intended to be of a similar permanent character,	原欲常存，
have already undergone, in consequence of the French, Polish, and Belgic revolutions of 1830, very important modifications, of which we have given an account in another work.	但因一千八百三十年法郎西、波兰、比利时皆有大变，约内大端颇有更改，故此约虽未尽废，亦非原约之制矣。
12. Treaties of guaranty.	**第十二节 保护之约**
The convention of guaranty is one of the most usual international contracts.	盟约内有一种最为习见者，名为保约，
It is an engagement by which one State promises to aid another where it is interrupted, or threatened to be disturbed, in the peaceable enjoyment of its rights by a third power.	即是此国允许保护彼国之主权，以免他国之侵暴。
It may be applied to every species of right and obligation that can exist between nations;	无论何权何利，
to the possession and boundaries of territories,	或疆界之不改者，
the sovereignty of the State, (↓)	
its constitution of government,	或法度之不变者，
	或自主之无限者，(↑)
the right of succession, & c.;	或君王之继位者，皆可恃此等盟约以保之。
but it is most commonly applied to treaties of peace.	然其为用也，莫大于保和约之不背矣，
The guaranty may also be contained in a distinct and separate convention,	或别立一约以保之，
or included among the stipulations annexed to the principal treaty intended to be guaranteed. It then becomes an accessary obligation.	或即在原约内另添一款可也。
The guaranty may be stipulated by a third power not	保约之立，有局外之国

a party to the principal treaty, by one of the contracting parties in favor of another, or mutually between all the parties. Thus, by the treaty of peace concluded at Aix-la-Chapelle in 1748, the eight high contracting parties mutually guaranteed to each other all the stipulations of the treaty. The guaranteeing party is bound to nothing more than to render the assistance stipulated. If it prove insufficient, he is not obliged to indemnify the power to whom his aid has been promised. Nor is he bound to interfere to the prejudice of the just rights of a third party, or in violation of a previous treaty rendering the guaranty inapplicable in a particular case. Guaranties apply only to rights and possessions existing the time they are stipulated. (省略一段 P.345 It was upon these grounds that Louis XV. Declared, in 1741, in favor of the Elector of Bavaria….) These writers make a distinction between a *Surety* and a *Guarantee*. Thus Vattel lays it down, that where the matter relate to things which another may do or give as well as he who makes the original promise, as, for instance, the payment of sum of money, it is safer to demand a *surety* (caution) than a *guarantee* (garant). For the surety is bound to make good the promise in default of the principal; (1) whereas the guarantee is only obliged to use his best endeavors to obtain a performance of the promise from him who has made it. (2)	自为保护者， 有立约之国数国互相保护者。 即如一千七百四十八年， 欧罗巴有八国共立和约，互相保护，盖保其章程之必当永守也。 保约之所许者，不过遇事相助而已。 其事若败， 不任其咎。 若系他国理直而当助之国理曲，不必相助。 若其事与前约不合，亦不必相助也。 唯现今所有之权、所有之物，可以保之，而后日增加之物权，则不能预保也。 公师有云：“保与护，其义有别。 能赔偿者曰‘保’，(1) 不能赔偿而但协力以助者曰‘护’。” (2) 故发得耳云： “事物之能赔者， 立护不如立保也。”
13. Treaties of alliance. Treaties of alliance may be either defensive or offensive. In the first case, the engagements of the ally extend only to a war really and truly defensive; (1) to a war of aggression first commenced, in point of fact, against the other contracting party. (2) In the second, the ally engaged generally to cooperate in hostilities against a specified power,	**第十三节 合兵之盟** 立约合兵，名为会盟，盖有二种： 一则相护以抵御，(1) 一则相助以攻伐。(3) 其抵御攻伐，或有一定之敌，(2)

(3) or against any power with whom the other party may be engaged in war. (4) An alliance may also be both offensive and defensive. (5)	或无论何敌，皆许合兵协助，(4) 亦有会盟兼此二种者。(5)
14. Distinction between general alliance and treaties of limited succour and subsidy. General alliances are to be distinguished from treaties of limited succor and subsidy. Where one State stipulates to furnish to another a limited succor of troops, ships of war, money, or provisions, without any promise looking to an eventual engagement in general hostilities, such a treaty does not necessarily render the party furnishing this limited succor, the enemy of the opposite belligerent. It only becomes such, so far as respects the auxiliary forces thus supplied; in all other respects it remains neutral. Such for example, have long been the accustomed relations of (↓) the confederated Cantons of Switzerland with the other European powers.	**第十四节　立约助兵** 会盟合兵与立约助兵甚有分别。 有时此国与彼国约许助兵马若干、战船若干、帑银粮草若干， 并非应许与敌国同结仇怨。 有此等约而助兵者， 不必为敌国之敌。 为敌者，不过所助兵马、船只而已， 其余则仍系局外，于事无干。 如瑞士合邦助邻近诸国， 常从是例。(↑)
15. *Casus faederis* of a defensive alliance. Grotius, and the other text writers, hold that the *casus faederis* of a defensive alliance does not apply to the case of a war manifestly unjust, that is, to a war of aggression on the part of the power claiming the benefit of the alliance. And it is even said to be a tacit condition annexed to every treaty made in time of peace, stipulating to afford succors in time of war, that the stipulation is applicable only to a just war. To promise assistance in an unjust war would be an obligation to commit injustice; and no such contract is valid. But, it is added, this tacit restriction in the terms of a general alliance can be applied only to a manifest case of unjust aggression on the part of the other contracting party, and cannot be used as a pretext to elude the performance of a positive and unequivocal engagement,	**第十五节　相护之例** 公师云： “有互相抵御之盟者， 理曲不必助兵。” 所谓理曲者，即该国贪利而故启争端也： 平时立约许战时助兵， 虽未明言如何方可助兵， 其实指理直而始助也： 若理曲而许助，则是助其横行， 此等盟约断无得成之理。 即合兵之约亦有此默限，然必遇显系横行者，方可不助， 断不可藉词以背助兵之约，

without justly exposing the ally to the imputation of bad faith.	而负失信之名。
In doubtful cases, the presumption ought rather to be in favor of our confederate, and of the justice of his quarrel. (P.346)	如果是非难辨，应仍以友邦之谊，照约相助为是。
The application of these general principles must depend upon the nature and terms of the particular guaranties contained in the treaty in question. This will best be illustrated by specific examples.	凡此当如何而行，必依约内相保之言为定。
Alliance between Great Britain and Holland.	
Thus, the States-General of Holland were engaged, previously to the war of 1756, between France and Great Britain,	即如一千七百五十六年英法战争之时，荷兰合邦前与英国立相保相护之盟
in three different guaranties and defensive treaties with the latter power.	已有三次。
The first was the original defensive alliance, forming the basis of all the subsequent compacts between the two countries, concluded at Westminister in 1678.	第一次立互相抵敌盟约，
In the preamble to this treaty, the preservation of each other's dominions was stated as the cause of making it;	所言立约之故系彼此相护疆界，
and it stipulated a mutual guaranty of all they already enjoyed,	彼此允许现今所有之地，
or might thereafter acquire by treaties of peace,	或将来依和约而得之地，
"in Europe only." They further guaranteed all treaties which were at that time made,	但在欧罗巴大洲即相保其无少损失，
or might thereafter conjointly be made, with any other power.	且两国与别国所立和约，互相保其必成。
They stipulated also to defend and preserve each other in the possession of all towns and fortresses which did at that time belong, or should in future belong, to either of them;	其城池、炮台俱当相护，
and, that for this purpose when either nation was attacked or molested,	倘被敌国攻击，
the other should immediately succor it with a certain number of troops and ships, and should be obliged to break with the aggressor in two months after the party that was already at war should require it;	即当率领船只、兵马赴援，
and that they should then act conjointly, with all their forces, to bring the common enemy to a reasonable accommodation.	务当视友之敌如己之敌，尽力以制之也。
The second defensive alliance then subsisting between Great Britain and Holland was that stipulated by the treaties of barrier and succession, of 1709 and 1713,	第二次立约，
by which the Dutch barrier on the side of Flanders	许保荷兰毗连比利时疆

was guaranteed on the one part, and the Protestant succession to the British crown, on the other; and it was mutually stipulated, that, in case either party should be attacked, the other should furnish, at the requisition of the injured party, certain specified succors; and if the danger should be such as to require a greater force, the other ally should be obliged to augment his succors, and ultimately to act with all his power in open war against the aggressor. The third and last defensive alliance between the same powers, was the treaty concluded at the Hague in 1717, to which France was also a party. The object of this treaty was declared to be the preservation of each other reciprocally, and the possession of their dominions, as established by the treaty of Utrecht. The contracting parties stipulated to defend all and each of the articles of the said treaty, as far as they relate to the contracting parties respectively, or each of them in particular; and they guarantee all the kingdoms, provinces, states, rights, and advantages, which each of the parties at the signing of that treaty possessed, confining this guarantee to Europe only. The succors stipulated by this treaty were similar to those above mentioned; first, interposition of good offices, then a certain number of forces, and lastly, declaration of war. This treaty was renewed by the quadruple alliance of 1718, and by the treaty of Aix-la-Chapelle, 1748. It was alleged on the part of the British court, that the States-General had refused to comply with the terms of these treaties, although Minorca, a possession *in Europe* which had been secured to Great Britain by the treaty of Utrecht, was attacked by France. Two answers were given by the Dutch government to the demand of the stipulated succors: ---- 1. That Great Britain was the aggressor in the war; and that, unless she had been first attacked by France, the *casus faederis* did not arise. 2. That admitting that France was the aggressor in	界无所损失， 许保英国君位必世传耶稣教人。 如有敌国来攻， 始应助兵若干， 继而事急更必多加援兵， 终则尽力合兵与敌相战。 第三次，法国亦与同其约， 所约之故乃系三国相保疆界。 照乌得喇前约所定， 并相保前约一切章程， 于我三国或有关涉者。 又保各国立前约时所有之属邦、省部权利在欧罗巴者无所损减。 互相救援与前次相同， 初则善为调处， 继则助兵若干， 终则相与力战。 一千七百十八年及四十八年间，有四国两次复申此约。 英国评荷兰云： “前约章程该国会有不符。 有小岛为英国属地，而法国来攻此岛时，荷兰竟未赴援。” 后荷兰行文辨其故有二： 其一谓英国故意生事， 先攻法国， 否则法国必无此举； 其二谓在欧罗巴先动兵

Europe, yet it was only in consequence of the hostilities previously commenced in America, which were expressly excepted from the terms of the guarantees. To the first of these objections it was irresistibly replied by the elder Lord Liverpool, that although the treaties which contained these guarantees were called defensive treaties only, yet the words of them, and particularly that of 1678, which was the basis of all the rest, by no means expressed the point clearly in the sense of the objection, since they guaranteed “all the rights and possessions” of both parties, against “all kings, princes, republics, and states;” so that if either should “be attacked or molested by hostile act, or open war, or in any other manner disturbed in the possession of his states, territories, rights, immunities, and freedom of commerce, ” it was then declared what should be done in defence of these objects of the guarantee, by the ally who was not at war, but it was nowhere mentioned as necessary that the attack of these should be the first injury or attack. “Nor,” continues Lord Liverpool, “doth this loose manner of expression appear to have been an omission or inaccuracy. They who framed these guarantees certainly chose to leave this question, without any further explanation, to that good faith which must ultimately decide upon all contracts between sovereign States. It is not presumed that they hereby meant, that either party should be obliged to support every act of violence or injustice which his ally might be prompted to commit through views of interest or ambition; but, on the other hand, they were cautious of affording too frequent opportunities to pretend that the case of the guarantees did not exist, and of eluding thereby the principal intention of the alliance; both these inconveniences were equally to be avoided; and they wisely thought fit to guard against the latter, no less than the former. They knew that in every war between civilized	者虽系法国， 但所以动兵之故，实因英国先在亚美利驾攻伐法国属邦， 此皆不在相保盟约之内，故未赴援也。 英国辩云： “两国所立之约虽名为护约， 然所有之地、所执之权， 无论何君何民， 或明攻或暗袭， 有干犯其权或阻挠其通商者， 即应协同相护， 并未言先动兵者即为罪魁也。 约内言此虽不甚详细，唯既立约以昭示后世， 有信行者决不谬解。 且未言 何等横行必须助护， 并无庸藉理曲而辞助也。（↑） 此二弊， 立约者不谨防其一，且更防其二矣。 盖服化之国

nations,	断无无故而交战之理，(↓)
each party endeavors to throw upon the other the odium and guilt of the first act of provocation and aggression; and that the worst of causes was never without its excuse. (↑) (省略P. 349 They foresaw that this alone would unavoidably give sufficient occasion to endless cavils and disputes, whenever the infidelity of an ally inclined him to avail himself of them.)	其遇有战争必互相诿罪。
To have confined, therefore, the case of the guarantee by a more minute description of it, and under closer restriction of form,	约内并不细辨者，
would have subjected to still greater uncertainty a point which, from the nature of the thing itself, was already too liable to doubt: ---- they were sensible that the cases would be infinitely various; (省略P.349 that the motives to self-defence, though just, might not always be apparent; that an artful enemy might disguise the most alarming preparations; and that an injured nation might be necessitated to commit even a preventive hostility, before the danger which caused it could be publicly known.)	盖恐辨愈细则弊愈多，
Upon such considerations, these negotiators wisely thought proper to give the greatest latitude to this question, (1) and to leave it open to a fair and liberal construction, (2) such as might be expected from friends, whose interests these treaties were supposed to have forever united." (3)	且既已彼此永远和好成为友国，(3) 解约必当以情以理，(2) 决不可以辞害意也。(1)
His lordship's answer to the next objection, that the hostilities commenced by France in Europe	若如荷兰所言， 法国在欧罗巴境内先行动兵，
were only in consequence of hostilities previously commenced in America, seems equally satisfactory, and will serve to illustrate the good faith by which these contracts ought to be interpreted.	系因英国在亚美利驾早有交战之事，
"If the reasoning on which this objection is founded is admitted,	是彼此藉口效尤，
it would alone be sufficient to destroy the effects of every guarantee, and to extinguish that confidence which nations mutually place in each other, on the faith of defensive alliances;	则立约合兵相护，几同无用废纸，
it points out to the enemy a certain method of avoiding the inconvenience of such an alliance;	何能恃约以为护助。

it shows him where he ought to begin his attack. Let only the first effort be made upon some place not included in the guarantee, and after that, he may pursue his views against its very object, without any apprehension of the consequence. Let France first attack some little spot belonging to Holland, in America, and her barrier would be no longer guaranteed. To argue in this manner is to trifle with the most solemn engagements. (省略 P.350 The proper object of guarantees is the preservation of some particular country to some particular power. The treaties above mentioned promise the defence of the dominions of each party in Europe, simply and absolutely, whenever they are attacked or molested. If , in the present war, the first attack was made out of Europe, it is manifest that long ago an attack hath been made in Europe; and that is, beyond a doubt, the case of these guarantees. ” “Let us try, however, if we cannot discover what hath once been the opinion of Holland upon a point of this nature. It hath already been observed that the defensive alliance between England and Holland, of 1678, is but a copy of the first twelve articles of the French Treaty of 1662.) Soon after Holland had concluded this last alliance with France, she became engaged in a war with England. The attack then began, as in the present case, out of Europe, on the coast of Guinea; and the cause of the war was also the same, --- a disputed right to certain possessions out of the bounds of Europe, some in Africa, and others in the East Indies. Hostilities having continued for some time in those parts, they afterwards commenced also in Europe. Immediately upon this, Holland declared that the case of that guarantee did exist, and demanded the succors which were stipulated. I need not produce the memorials of their ministers to prove this; history sufficiently informs us that France acknowledged the claim, granted the succors, and entered even into open war in the defence of her ally. Here, then, we have the sentiments of Holland on the same article, in a case minutely parallel. The conduct of France also pleads in favor of the same opinion, though her concession, in this respect, checked at that time her youthful monarch in the first	盖敌国欲用计反问， 必先攻约上无名之地， 其友邦即谓衅端在欧罗巴疆外，因而辞助， 为政者不当如此轻听失信也。 且荷兰自相矛盾者，盖前与法国有相护之约， 后与英交战所争者乃在亚美利驾之地。 战争起于欧罗巴之外，延及欧罗巴境内， 荷兰执相护之约，索救兵于法国， 法往助之。 即此而论，不但法郎西解约之义与我相同， 即荷兰索法国救兵时亦与我相同。 何以此时按兵不助，

essay of his ambition, delayed for some moths his entrance into the Spanish provinces, and brought on him the enmity of England.” **Alliance between Great Britain and Portugal.** （省略一段 P.351.） The treaty of alliance, originally concluded between these powers in 1642, immediately after the revolt of the Portuguese nation against Spain, and the establishment of the House of Braganza on the throne, was renewed, in 1654, by the Protector, Cromwell, and again confirmed by the Treaty of 1661, between Charles II. and Alfonzo VI., for the marriage of the former prince with Catharine of Braganza. This last-mentioned treaty fixes the aid to be given, and declares that Great Britain will succor Portugal “on all occasions, when that country is attacked.” By a secret article, Charles II., in consideration of the cession of Tangier and Bombay, binds himself “to defend the colonies and conquests of Portugal against all enemies, present or future.” （省略 P. 351 In 1703, another treaty of defensive and perpetual alliance was concluded at Lisbon, between Great Britain and the States-General on the one side, and the King of Portugal on the other; the guarantees contained in which were again confirmed by the treaties of peace at Utrecht, between Portugal and France, in 1713, and between Portugal and Spain, in 1715. ） On the emigration of the Portuguese royal family to Brazil, in 1807, a convention was concluded between Great Britain and Portugal, by which the latter kingdom is guaranteed to the lawful heir of the House of Braganza, and the British government promises never to recognize any other ruler. By the more recent treaty between the two powers, concluded at Rio (P. 352) Janeiro, in 1810, （省略 P. 352 it was declared, “that the two powers have agreed on an alliance for defence, and reciprocal guarantee against every hostile attack, conformably to the treaties already subsiding between them, the stipulations of which shall remain in full force, and are renewed by the present treaty in their fullest and most extensive interpretation.” This treaty confirms	实为失信于友国也。” 一千六百四十二年， 葡萄牙叛西班牙自立， 虽与英国立协护相保之约，于一千六百六十一年复坚其约云： “无论因何故，敌国来攻葡萄牙，英国必须救之。” 又另有密款云： “葡萄牙让丹吉耳并门买地方与英国， 为此英国允许 无论何敌来攻葡萄牙现在所有，并将来所得地方，自今以后，英国皆当竭力保护之。” 一千八百零七年，葡萄牙王迁于巴西， 英国又与立约， 保其后裔永远继位， 断不认别人为君等语。 一千八百十年又立约，

the stipulation of Great Britain to acknowledge no other sovereign of Portugal but the heir of the House of Braganza.) The Treaty of Vienna, of the 22nd January, 1815, between Great Britain and Portugal, contains the following article: --- "The treaty of alliance at Rio Janeiro, of the 19th February, 1810, being founded on temporary circumstances, which have happily ceased to exist, the said treaty is hereby declared to be of no effect; without prejudice, however, to the ancient treaties of alliance, friendship, and guarantee, which have so long and so happily subsisted between the two crowns, and which are hereby renewed by the high contracting parties, and acknowledged to be of full force and effect. " Such was the nature of the compacts of alliance and guarantee subsisting between Great Britain and Portugal, at the time when the interference of Spain in the affairs of the latter kingdom compelled the British government to interfere, for the protection of the Portuguese nation against the hostile designs of the Spanish court. (省略 p. 352.-354)	于一千八百十五年复立约， 内有款云： "一千八百十年之约， 系因时而支， 现今时事与前不同，前约既无所用， 应归为废纸。 但历代所有相护相保友谊，仍无少改损， 因重新坚固其款而施行焉。" 其后西班牙与法国谋夺葡萄牙君位， 英国即照约护之，是其明证也。
16. Hostages for the execution of treaties. The execution of a treaty is sometimes secured by *hostages* given by one party to the other. The most recent and remarkable example of this practice occurred at the peace of Aix-la-Chapelle, in 1748; where the restitution of Cape Breton, in North America, by Great Britain to France, was secured (↓) by several British peers sent as hostages to Paris.	**第十六节 交质以坚信** 古时两国立约， 往往交质以坚其信， 至一千七百四十八年，尚有行之者： 如英国允许日后给还法国属地， 因先遣诸侯数人为质，以要其事之必成。(↑)
17. Interpretation of treaties. Public treaties are to be interpreted like other laws and contracts. Such is the inevitable imperfection and ambiguity of all human language, that the mere words alone of any writing, literally expounded, will go a very little way towards explaining its	**第十七节 解说盟约** 解说约盟与解说别样律法无异， 无论何国语言文字， 概是书不尽言，言不尽意也。 但解其词者不免有害其

meaning. Certain technical rules of interpretation have, therefore, been adopted by writers on ethics and public law, to explain the meaning of international compacts, (↓) in cases of doubt. These rules are fully expounded by Grotius and his commentators; and the reader is referred especially to the principles laid down by Vattel and Rutherforth, as containing the most complete view of this important subject.	义， 故别有解说约盟之条， 遇有疑难 即可引用，(↑) 详见发得耳二卷第十七章。
18. Mediation. Negotiations are sometimes conducted under the mediation of a third power, spontaneously tendering its good offices for this purpose, or upon the request of one or both of the litigating powers, or in virtue of a previous stipulation for that purpose. If the mediation is spontaneously offered, it may be refused by either party; but if it is the result of a previous agreement between the two parties, it cannot be refused without a breach of good faith. (省略 P. 355 When accepted by both parties, it becomes the right the duty of the mediating power to interpose its advice, with a view to the adjustment of their differences.) It thus becomes a party to the negotiation, but has no authority to constrain either party to adopt its opinion. Nor is it obliged to guarantee the performance of the treaty concluded under its mediation, though, in point of fact, it frequently does so.	**第十八节 中保之例** 两国有争论时，有别国调处其间， 或不请而来， 或请之而后来，或一国请之来，或两国请之来， 或因前约有善为调处之语而来作中保者。 若系自行前来， 彼两国俱可辞而不受。 若两国早有成言，有凭何国为中之语， 辞而不受即为失信。 为中者固得与同议论， 但无强逼彼此依从之权， 亦不能保其约之必成， 然为中者大概亦兼为保也。
19. Diplomatic history. The art of negotiation seems, from its very nature, hardly capable of being reduced to a systematic science. It depends essentially on personal character and qualities, united with a knowledge of the world and experience in business. These talents may be strengthened by the study of	**第十九节 主持公论之学** 主持公论，当别为一派学问， 但其事浩繁难以经纬而定其规模。 人纵有贤德才能， 若未广见闻，谙练世务，则不能当其任。 然博览吏鉴、稽考盟约，

history, and especially the history of diplomatic negotiations; but the want of them can hardly be supplied by any knowledge derived merely from books. (省略 P.356-357.)	可为有助。 但其人倘短于肆应之才，即不能旁搜远绍，而洞悉其精微也。

PART FOURTH INTERNATIONAL RIGHTS OF STATES IN THEIR HOSTILE RELATIONS	第四卷 论交战条规
CHAPTER I. COMMENCEMENT OF WAR, AND ITS IMMEIDATE EFFECTS.	第一章 论战始
1. Redress by forcible means between nations. The independent societies of men, called States, acknowledge no common arbiter or judge, (↓) except such as are constituted by special compact(P.361).	第一节　用力伸冤 自主之国遇有争端， 若非公议凭中剖明， 即无人执权以断其案。(↑)
The law by which they are governed, or profess to be governed, is deficient in those positive sanctions which are annexed to the municipal code of each distinct society.(P.361)	所服者惟有一法，乃万国之公法也。此法虽名为律例， 不似各国之律法，使民畏刑而始遵也。
Every State has therefore a right to resort to force, (↓) as the only means of redress for injuries inflicted upon it by others,	所以各国 倘受侵凌，别无他策以伸其冤， 惟有用力以抵御报复耳。(↑)
in the same manner as individuals would be entitled to that remedy (↓) were they not subject to the laws of civil society.	譬如 人民 居王法不及之地，无可赴诉， 只好量力自护。(↑)
Each State is also entitled to judge for itself, (↓) what are the nature and extent of the injuries which will justify such a means of redress.	至邦国 有何等委屈始可用力， 惟各国自断焉。(↑)
Among the various modes of terminating the differences between nations, by forcible means short of actual war,	两国争端， 用力而解，犹不至交战者，
are the following: 1. By laying an embargo or sequestration (1) on the ships and goods, or other property of the offending nation, (2) found within the territory (3) of the injured State. (4) 2. By taking forcible possession of the thing in controversy, by securing to yourself by force, and refusing to the other nation, the enjoyment of	其法有四： 此国负屈，(4) 将彼国船只、财货(2) 在其国疆内者(3) 捕拿，先行查封备抵，一也。(1) 所争之物土，强据为己有， 不使彼国得操其权，二

the right drawn in question. 3. By exercising the right of vindictive retaliation, (*retorsio facti,*) or of amicable retaliation, (*retorsion de droit*); by which last, the one nation applies, in its transactions with the other, the same rule of conduct (↓) by which that other is governed under similar circumstances. 4. By making reprisals upon the persons and things belonging to the offending nation, until a satisfactory reparation is made for the alleged injury.	也。 报施之术，或以怨报怨， 或仍前和好， 彼待我有不恕之来， 我即如法以报之，三也。(↑) 捕拿彼国人民财物留备抵偿， 俟彼补足从前亏我之事，即将其物归还，四也。
2. Reprisals. This last seems to extend to (↓) every species of forcible means for procuring redress, short of actual war, and, of course, to include all the others above enumerated. Reprisals are *negative*, (↓) when a State refuses to fulfill a perfect obligation which it has contracted, or to permit another nation to enjoy a right which it claims. They are *positive*, when they consist in seizing the persons and effects belonging to the other nation, in order to obtain satisfaction. Reprisals are also either *general* or *special*. They are *general*, when a State which has received, or supposes it has received, an injury from another nation, delivers commissions to its officers and subjects to take the person and property belonging to the other nation, (↓) wherever the same way be found. It is, according to present usage, the first step which is usually taken at the commencement of a public war, and may be considered as amounting to a declaration of hostilities, unless satisfaction is made by the offending	**第二节　强偿之例** 用力自行伸冤而不至交战者， 总名为强偿之例。(↑) 其强偿，有分内、外者。内者， 即如约内已所当行各条， 有时因负屈而不照行，(↑) 或因故将彼国应得之权，使其不能再得。 外者， 即如捕拿彼国人物 以备抵偿。 再强偿，有分浑、特者。 浑者，即如一国既受冤屈， 发给臣民牌照， 准其无论在何处， 遇彼国人物，即行捕拿。(↑) 就近今规矩而论， 此等举动即为交战之始。 盖至此时，彼国必知我已实有争战之意， 若不速行抵偿，即难免

State. *Special* reprisals are, (1) where letters of marquee are granted, (2) in time of peace, (3) to particular individuals who have suffered an injury from the government or subjects of another nation. (4) (P.362) Reprisals are to be granted (↓) only in case of a clear and open denial of justice. The right of granting them is vested in the sovereign or supreme power of the State, and, in former times, was regulated by treaties and by the municipal ordinances of different nations. Thus, in English, the statute of 4 Hen. V., cap. 7, declares, “That is any subjects of the realm are oppressed in time of peace by any foreigners, the king will grant marquee in due form to all that feel themselves grieved” which form is specially pointed out, and directed to be observed for obtaining special letters of marquee (↓) by French subjects against those other nations; but these special reprisals in time of peace have almost entirely fallen into disuse.	交战矣。 所谓特者，(1) 即如和好时，(3) 偶有人民受别国冤抑，(4) 遂给以牌照，准其自行捕拿抵偿。(2) 此等强偿牌照， 必须因 彼国明行欺压，屡次告诉仍不按理为之昭雪， 方可发给，否则断不可轻行发给也。(↑) 赐强偿牌照， 其权操之国君。 从前 诸国有约盟，各国有律法以范围之。 即如英国有律法云： “本国之民 若遭别国强暴冤屈， 即可以正模牌照赐与受屈者，俾其自行捕拿抵偿。” 法国人遭别国冤屈强暴者， 当如何而行，方可赐以抵偿之牌照，法国航海条规亦详论之。(↑) 和好时特赐强偿牌照， 今已不行，从前或有之也。
3. Effect of reprisals. Any of these acts of reprisal, or resort to forcible means of redress between nations, may assume the character of war (↓) in case adequate satisfaction is refused by the offending State. “Reprisals,” says Vattel, “are used between nation and nation,	**第三节　强偿之用** 无论自行强偿， 无论如何用力以伸己屈， 倘负罪之国不愿抵偿， 则在我师出有名，非黩武矣。(↑) 发得耳云：“所谓强偿者， 乃此国讨偿于彼国，

in order to do themselves justice (↓) when they cannot otherwise obtain it. If a nation has taken possession of what belongs to another, if it refuse to pay a debt, to repair an injury, or to give adequate satisfaction for it, the latter may seize something belonging to the former, and apply it to its own advantage, (↓) till it obtains payment of what is due, together with interest and damages; or keep it as a pledge till the offending nation has refused ample satisfaction. The effects thus seized are preserved, (↓) while there is any hope of obtaining satisfaction or justice. As soon as that hope disappears they are confiscated, and then reprisals are accomplished. If the two nations, upon this ground of quarrel, come to an open rapture, satisfaction is considered as refused from the moment that war is declared, or hostilities commenced and then, also, the effects seized may be confiscated. ”	而彼国不偿， 则只得自理己屈也。(↑) 若彼国曾据此国之财货产业， 或不愿还偿抵补等情， 受屈者即可捕拿其物， 俟彼国业已偿还，并给与抵害之费， 或以为己用，(↑) 或存之为质， 知彼不赔偿而后用，俱可。 倘冀日后理直， 则必存而不用。(↑) 至绝无可望， 即可以之入公而抵偿， 始可谓有成矣。 若两国失和交战， 其不肯理直，何待言哉? 前所捕拿抵偿之物皆可入公，不必耽延也。”
4. Embargo previous to declaration of hostilities. Thus, where an embargo was laid on Dutch property in the ports of Great Britain, (↓) on the rupture of the peace of Amiens, in 1803, under such circumstances as were considered by the British government as constituting a hostile aggression on the part of Holland, Sir W. Scott, (Lord Stowell,) in delivering his judgment in this case, said, that “the seizure was at first equivocal; and if the matter in dispute had terminated in reconciliation, the seizure would have been converted into a mere civil embargo, so terminated. Such would have been the	**第四节　战前捕物或有二解** 即如英、荷两国失和， 于一千八百零三年英国以荷兰先待我有不公之举， 即封其疆内船只、货物，司货者因此告状，(↑) 英国公师斯果得断曰： “封船捕物，固有二解。 复和 则系暂封， 而必交还；

retroactive effect of that course of circumstances. On the contrary, if the transaction end in hostility, the retroactive effect is exactly the other way. It impresses the direct hostile character upon the original seizure; it is declared to be no embargo; it is no longer an equivocal act, subject to two interpretations; there is a declaration of the animus by which it is done that it was done *hostili animo*, and it is to be considered as a hostile measure, *ab initio*, against persons guilty of injuries which they refuse to redeem, by any amicable alteration of their measure. This is the necessary course, if no particular compact intervenes for the restoration of such property, taken before a formal declaration of hostilities.”	若至交战， 则捕拿入公。 为战之始，均当俟以后方知其事之如何， 和则为暂封， 战则为战事而非封矣。”
5. Right of making war, in whom vested. The right of making war, as well as authorizing reprisals, or other acts of vindictive retaliation, belongs, in every civilized nation, to the supreme power of the State. The exercise of this right is regulated by the fundamental laws or municipal constitution in each country, and may be delegated to its inferior authorities in remote possessions, or even to a commercial corporation--- such, for example, as the British East India Company--- exercising, under the authority of the State, sovereign rights in respect to foreign nations.	**第五节　定战之权** 定交战、准强偿并报复等事， 其权固属于君， 而各国自有律法以范围之。 然有时托授远处部属，使交通别国者，盖虽服本国所辖，仍可若自主而行之也。 即如印度前系英国通商大会 任其国权，其与邻国交战与否，本国准其自定也。
6. Public or solemn war A contest by force between independent sovereign States is called a public war. If it is declared in form, or duly commenced, it entitles both the belligerent parties to all the rights of war against each other. The voluntary or positive law of nations makes no distinction, in this respect, between a just and an unjust war. A war in form, or duly commenced, is to be considered, as to its effects, as just on both sides. Whatever is permitted by the laws of war to one of the belligerent parties is equally permitted to the other. (P. 364)	**第六节　公战之权** 自主之国角力交战， 名为公战。 若依规模宣知， 或照例始战， 即为光明正大。 公法不偏视之， 亦不辨其曲直。 若准此国行何等之权， 亦必准彼国行何等之权。
7. Perfect or imperfect war.	**第七节　战有三等**

A *perfect* war is (↓) where one whole nation is at war with another nation, and all the members of both nations are authorized to commit hostilities against all the members of the other, in every case and under every circumstance permitted by the general laws of war. An *imperfect* war is (↓) limited as to places, persons and things. A civil war between the different members of the same society is what Grotius calls a mixed war; it is, according to him, public on the side of the established government, and private on the part of the people resisting its authority. But the general usage of nations regards such a war as entitling both the contending parties to all the rights of war (↓) as against each other, and even as respects neutral nations.	两国交战， 倘准全国之民无论何时何处协力攻战， 而不犯条规者， 此名为全战。(↑) 倘限定何处、何人、何物， 则名为限战。(↑) 民间有战争，虎哥名之为“杂战”。 盖云 就国权而论之，可为“公战”; 就背叛者而论之，则为“私战”。 但依常例，二者 或就敌人、 或就局外， 均得交战之权利。(↑)
8. Declaration of war, how far necessary. A formal declaration of war to the enemy was once considered necessary (↓) to legalize hostilities between nations. It was uniformly practiced by the ancient Romans, and by the States of modern Europe until about the middle of the seventeenth century. The latest example of this kind was the declaration of war (1) by France against Spain, at Brussels, in 1635, (2) by heralds at arms, (3) according to the forms observed during the middle age. (4 The present usage is to publish a manifesto, within the territory of the State declaring war, announcing the existent of hostilities, and the motives for commencing them. This publication may be necessary for the	**第八节　宣战之例** 从前交战者， 必先宣知，否则不为公战。(↑) 古时罗马国常依此例， 而欧罗巴诸国直至一千六百年间亦俱遵守， 于一千六百三十五年法国与西班牙交战，(2) 犹以彼时之例(4) 遣兵使以宣知焉。(3) 其后诸国无用此例者，而宣知敌国之例遂废矣。(1) 今时之例， 惟于己之疆内先行颁诏， 预告交战， 限制己民与敌往来，(↓) 并言其所以交战之故。

instruction and direction of the subjects of the belligerent State in respect to their intercourse with the enemy, and regarding certain effects which the voluntary law of nations attributes to war in form. (↑) Without such a declaration, it might be difficult to distinguish in a treaty of peace those acts which are to be accounted lawful effects of war, from those which either nation may consider as naked wrongs, and for which they may, under certain circumstances, claim reparation. (P.365)	若无告示， 恐日后立和约时难以分别 公战 与强屈之害。 夫强屈之害，有时 可讨理直，若公战则不可也。

9. Enemy's property found in the territory on the commencement of war, how far liable to confiscation. As no declaration , or other notice to the enemy, of the existence of war, is necessary, in order to legalize hostilities, (↑) and as the property of the enemy is, in general, liable to seizure and confiscation as prize of war, it would seem to follow as a consequence, that the property belonging to him and found within the territory of the belligerent State at the commencement of hostilities, is liable to the same fate with his other property wheresoever situated. But there is a great diversity of opinions upon this subject among institutional writers, and the tendency of modern usage between nations seems to be, to exempt such property from the operations of war. (省略 P. 366 One of the exceptions to the general rule, laid down by the text written, which subjects all the property of the enemy to capture, respects property locally situated within the jurisdiction of a neutral State;) but this exemption is referred to the right of the neutral State, not to any privilege which the situation gives to the hostile owner. Does reason, or the approved practice of nations, suggest any other exception? With the Romans, (1)	**第九节　敌货在我疆内者** 将战，(↓) 不必先行宣知，方为公战。 且敌国货物 无论何在， 既可捕为战利， 则其疆内货物与疆外者， 或当从一律俱可捕拿也。 然公师论此多有不同。 而现今常例， 凡敌货在己疆内与在局外之地者，皆置于战权之外，而不可捕拿。 在局外之地，所以不可捕拿者， 非因敌国之权而然，实尊友国之权而然也。 别物应置于战权之外与否，当再议之。 古时罗马常例，(1)

who considered it lawful(2) to enslave, or even to kill (3) an enemy found within the territory of the State (4) on the breaking out of war, (5) it would very naturally follow that his property found in the same situation would become the spoil of the first taker. Grotius, whose great work on the laws of the war and peace appeared in 1625, adopts as the basis of his opinion upon this question the rules of the Roman law, but qualifies them by the more humane sentiments which began to prevail in the intercourse of mankind at the time he wrote. In respect to debts, due to private persons, he considers the right to demand them as suspended only during the war, and reviving with the peace. Bynkershoek, who wrote about the year 1737, adopts the same rules, and follows them to all their consequences. He holds that, as no declaration of war to the enemy is necessary, no notice is necessary to legalize the capture of his property, unless he has, by express compact, reserved the right to withdraw it on the breaking out of hostilities. This rule he extends to things in action, as debts and credits, as well as to things in possession. He adduces, in confirmation of this doctrine, a variety of examples from the conduct of different States, (↓) embracing a period of something more than a century, beginning in the year 1556 and ending in 1657. But he acknowledges that the right had been questioned, and especially by the State-General of Holland; and he adduces no precedent of its exercise later than the year 1667, seventy years before his publication. Against the ancient examples cited by him, there is the negative usage of the subsequent period of nearly a century and a half previously to the wars of the French revolution. During all this period, the only exception to be found is the case of the Silesian loan, in 1753. in the argument of	始战之时，(5) 敌国人尚在我之疆内者，(4) 或捕为奴仆，或竟杀之，(3) 尚不以为背理，(2) 又何论货物乎? 虎哥 论此事大抵以罗马律为准， 但其意稍宽。 盖其时人情风俗渐为仁厚。 据虎氏，凡有债欠， 遇见战事必暂置不讨， 然讨之之权不废，唯俟复和时再行讨索耳。 宾氏书与虎哥同义，而更为详细， 其论云： “欲战之始，既不必宣知于敌， 则将欲捕拿其货物又何必先行通知乎? 但若约内议明， 遇战收回货物，则必当通知。 债负等事亦从此例。” 遂引诸国之事为证云： “近今一百年内 概从此例。”(↑) 然又云：“荷兰与别国尚有疑议者。” 宾克舍未著书之先七十年间， 既著书之后一百五十年间， 惟有一人如此行者，

the English civilians against the reprisals made (1) by the King of Prussia in that case, (2) on account of the capture of Prussian vessels by the cruisers of Great Britain, (3) it is stated that “it would not be easy to find an instance (↓) where a prince had thought fit to make reprisals upon a debt due from himself to private men. There is a confidence that this will not be done. (↓) A private man lends money to a prince upon an engagement of honor; because a prince cannot be compelled, like other men, by a court of justice. So scrupulously did England and France(1) adhere to this public faith, that (2) even during the war,” (alluding to the war terminated by the peace of Aix-la-Chapelle,) (3) “they suffered no inquiry to be made whether any part of the public debt was due to the subjects of the enemy, (4) thought it is certain many English had money in the French funds, (5) and many French had money in ours.” (6) Vattel, who wrote about twenty years after Bynkershoek, after laying down the general principle, that the property of the enemy is liable to seizure and confiscation, qualifies it by the exception of real property (*les immeubles*) held by the enemy’s subjects within the belligerent State, which having been acquired by the consent of the sovereign, is to be considered as on the same footing with the property of his own subjects, and not liable to confiscation *jure belli*. But he adds that the rents and profits may be sequestrated, in order to prevent their being remitted to the enemy. As to debts, and other things in action, he holds that war gives the same right to them as to the other property belonging to the enemy. (↑) He then quotes the example referred to by Grotius, of	即普鲁斯王。(2) 因英国捕拿其船只，(3) 以所欠英民之债负入公以为抵偿，(1) 英国法师论之云： “若受害于彼国，而以所欠彼民之债负为抵偿者， 鲜有其人。(↑) 盖贷财于君， 非信其必还，则不为也，(↑) 缘不可以律法讨之耳。” 英法(1) 交战之时，(3) 虽英有多人曾经借钱于法，(5) 法有多人曾经借钱于英，(6) 皆不问其事，并不将所欠敌国人民之款项入公，(4) 其守公信之重有如此者。(2) 发得耳云： “敌人财物 固可捕拿， 但地基房屋 既为本国准其所得， 则与本民之地基房屋无异， 而不可捕拿矣。 惟所有年租出产暂行封守， 免送敌国。 债负 与货物无异，(↓) 亦可入公。” 又云： “亚利三德破推拜地

	方，（↓）
the hundred talents due by the Thebans to the Thessalians,	得所欠于得撒利人一百担金，即送于得撒利，
of which Alexander had become master by right of conquest, （↑）	
but which he remitted to the Thessalians as an act of favor;	但此乃出于恩施，非分所应送也。
and proceeds to state, that the “sovereign has naturally the same right over what his subjects may be indebted to the enemy;	盖依常例，即以此金入公，无不可者。
therefore he may confiscate debts of this nature, if the term of payment happen in time of war, or at least he may prohibit his subjects from paying while the war lasts.”	夫敌君破地，尚可以债负充公，何况本国之君乎?
But at present, the advantage and safety of commerce have induced （↓）	
all the sovereigns of Europe to relax from this rigor.	现今欧罗巴各国无一敢严行此权者，
And as this custom has been generally received, he who should act contrary to it would injure the public faith; since foreigners have confided in his subjects only in the firm persuasion that the general usage would be observed.	盖恐有伤于公信、
	无益于通商故也。（↑）
The State does not even touch the sums which it owes to the enemy;	至国家自欠于敌人之债，则不能不还。
everywhere, in case of war, the funds confided to the public,	缘无论何处，有托公信而存钱物者，
are exempt from seizure and confiscation.	皆置于捕拿之权外。”
（省略一段 p.368 In another passage, Vattel gives the reason of this exemption. “…”）	
Again he says:	又云：“
“The sovereign declaring war can neither detain（↓）	
those subjects of the enemy who were within his dominions at the time of the declaration,	敌国之民，始战时在疆内者，
	不但不能强留其人，（↑）
nor their effects.	即货物亦不能强留。
They came into this country	盖其人疆，
on the public faith;	系托公信而来，
by permitting them to enter his territories, and continue there,	既准其居住，
he has tacitly promised them liberty and perfect security for their return.	则当战始亦必准其出疆，岂非默许乎?
He ought, then, to allow them a reasonable time	战始尤当限以日期，
to retire with their effects,	使之搬运货物而去。
and if they remain beyond the time fixed,	如过期迟滞，不急行搬运，
he may treat them as enemies;	即可以敌视之，

but only as enemies disarmed.” It appears, then, to be the modern rule of international usage, that (1) property of the enemy found within the territory of the belligerent State, or debts due to his subjects by the government or individuals, at the commencement of hostilities, (2) are not liable to be seized and confiscated as prize of war. (3) This rule is frequently enforced by treaty stipulations, but unless it be thus enforced, it cannot be considered as an inflexible, (↓) though an established rule. (P.369 省略一段“The rule,… which may continually vary.”)	但不可视同带有兵仗之敌耳。” 由此观之， 战之始，(2) 所有敌国货物在我疆内者， 或负债欠于彼民者，无论欠者为君为民， 皆不可捕拿入公，(3) 此现今常例也。(1) 但约内若无明言， 虽系常例， 恐有人悖之矣。(↑)
10. Rule of reciprocity Among these considerations is the conduct observed by the enemy. If he confiscates property found within his territory, or debts due to our subjects on the breaking out of war, it would certainly be just, and it may, under certain circumstances, be politic, to retort upon his subjects by a similar proceeding. (↑) This principle of reciprocity operates in many cases of international law. It is stated by Sir W. Scott to be the constant practice of Great Britain, on the breaking out of war, to condemn property seized before the war, if the enemy condemns, and to restore if the enemy restores. “It is,” says he, “a principle sanctioned by that great foundation of the law of England, Magna Charta itself, which prescribes, that, (↓) at the commencement of a war, the enemy’s merchants shall be kept and treated as our own merchants are kept and treated in their country.”	**第十节　照行而行** 若 敌人捕拿我民之货物在其疆内者， 或将所欠我民之债负入公， 则我照彼所行而行，(↓) 不为不义， 而且或有益也。 照所行而行， 公法多有以为例者。 斯果德云： “英国与别国交战， 若在战之先， 敌国所有捕拿英货，日后倘行入公，则英国亦以其货入公， 倘有给还，英亦将其货给还。 且始战时， 敌国之商人留之不准出境， 视敌国待我商人如何，即以彼所待我者待之。 此我英建国大法之一款也。”(↑)

And it is also stated in the report of the English civilians, in 1753, before referred to, in order to enforce their argument that (↓) the King of Prussia could not justly extend his reprisals to the Silesan loan, that "French ships and effects, wrongfully taken, (↓) after Spanish war, and before the French war, have, during the heat of the war with France, and since, been restored by sentence of your Majesty's courts to the French owners. No such ships or effects ever were attempted to be confiscated as enemy's property, here, during the war; because, had it not been for the wrong first done, these effects would not have been in you Majesty's dominions. " (P.369)	有英国法师 以普君不准其民还债， 诉于英国君主云：(↑) "从前英西交战， 误拿法国船只，(↑) 后虽与法国交战， 有司秉公断为必还。 此等船只、货物， 从未有当敌物而充公者， 盖误行捕得也。"
11. Droits of Admiralty. The ancient law of England seems thus to have surpassed in liberality its modern practice. In the recent maritime wars commenced by that country, it has been the constant usage to seize and condemn as droits of admiralty (↓) the property of the enemy found in its ports at the breaking out of hostilities, and this practice does not appear to have been influenced by the corresponding conduct of the enemy in that respect. As has been observed by an English writer…(P. 370 省略一段) **Seizure of enemy's property found within the territorial limits of the belligerent State, on the declaration of war.** During the war between the United States and Great Britain, which commenced in 1812, it was determined by the Supreme Court, that the enemy's property, found within the territory of the United States on the declaration of war, could not be seized and condemned as prize of war,	**第十一节　敌物在疆内者不即入公** 按英国近今所行， 凡敌国船只、货物在其海口者，立即捕拿， 以属战利，(↑) 并不俟知敌国所行如何而后照而行之。 此其现在之例，不如旧法之宽宏矣。 一千八百十二年英美战争之时， 美国上法院断云： "如非国会另定律法准之，(↓) 则敌国货物 在疆内者 不得捕拿， 并不可因宣战便以敌货为己有，而遂以之入公也。

without some legislative act expressly authorizing its confiscation. (↑) (省略P.371-372 The court held that the law of Congress declaring war was not such an act. That declaration did not, by its own operation, so vest the property of the enemy in the government, as to support judicial proceedings for its seizure and confiscation.) It vested only a right to confiscate, the assertion of which depended on the will of the sovereign power. The judgment of the court stated, that the universal practice of (↓) forbearing to seize and confiscate debts and credits, the principle universally received, that the right to them revives on the restoration of peace, would seem to prove that war is not an absolute confiscation of this property, but that it simply confers the right of confiscation. Between debts contracted (↓) under the faith of laws, and property acquired in the course of trade (↓) on the faith of the same laws, reason draws no distinction; and although, in practice, (↓) vessels with their cargoes found in port at the declaration of war may have been seized, it was not believed that modern usage would sanction the seizure of (↓) the goods of an enemy on land, which were required in peace in the course of trade. (省略P. 374 Such a proceeding was rare, and would be deemed a harsh exercise of the rights of war. But although the practice in this respect might not be uniform, that circumstance did not essentially affect the question.) The inquiry was, whether such property vests in the sovereign by the mere declaration of war, or remains subject to a right of confiscation, the exercise of which	但有可捕之权而已， 其行与不行惟国会能定之。” 又云： “不以债负入公， 俟复和仍准追索， 既为常例，(↑) 则货物不因战始即绝于原主。 盖并无必入公之势，但有可入公之权耳。” 任信律法 而负债于别国之人，(↑) 与任信律法 得货物于别国者，(↑) 毫无分别。 夫船只在海口者遇战，其船货一并捕拿， 虽例属可行，(↑) 然货物在岸上以和平贸易而得者。 按诸国之常行，概不捕拿也。(↑) 试问 战之始，该货即归君主为己物乎， 抑但属入公之权乎? 若属入公之权，

depends upon the national will:	则君主行与不行均可随意。
and the rule which applies to one case, so far as respects the operation of a declaration of war on the thing itself,	所行于一物，
must apply to all others over which war gives an equal right.	即为法于万物，
The right of the sovereign to confiscate debts being precisely the same with the right to confiscate other property found in the country, the operation of a declaration of war on debts, and on other property found within the country must be the same.	捕拿入公与捕拿疆内别货，其权无异。
Even Bynkershoek, who maintains the broad principle, that	据宾氏所论，
in war every thing done against an enemy is lawful; that (↓)	
he may be destroyed, though unarmed and defenseless;	敌人虽不带军仗者，
that fraud,	以奸计灭之、
or even poison, may be employed against him;	以毒物害之，
that a most unlimited right is acquired to his person and property;	制其身、夺其物，
	皆属战权。(↑)
admits that war does not transfer to the sovereign a debt due to his enemy;	然债负有当还于敌者，不可因战而入公，
and therefore, if payment of such debt be not exacted, peace revives the former right of the creditor;	迨复和时，债主可以追讨，其权无少减也。(双行小字：所引宾氏此论，盖以陪证债负之当还。至其论战，有忍心害理者，则无足取也。)
(省略 P. 375 “because,” he says, “the occupation which is had by war consists more in fact than in law.” He adds to his observations on this subject: “Let it not, however, be supposed that it is only true of actions that they are not condemned *ipso jure*, for other things also belonging to the enemy may be concealed and escape confiscation.”)	
Vattel says, that	发得耳云：
“the sovereign can neither detain the persons nor the property of (↓)	
those subjects of the enemy,	“敌国人民
who are within his dominions	在我疆内者，
at the time of the declaration.”	于宣战时，
	其人其货不可强留。”(↑)
It was true that this rule was, in terms, applied by Vattel	发氏此论，
to the property of those only who are personally	但指人民
within the territory at the commencement of hostilities;	现居疆内者而言。
but it applied equally to	然推其理，
things in action and to things in possession;	即其人不在疆内，其货物亦不得强据留之。债负亦当依照此例。
(省略 P. 375 and if war did, of itself, without any further exercise of the sovereign will, vest the	

property of the enemy in the sovereign, the presence of the owner could not exempt it from this operation of war. Nor could a reason be perceived for maintaining that the public faith is more entirely pledged for the security of property, trusted in the territory of the nation in time of peace, if it be accompanied by its owner, than if it be confided to the care of others.) The modern rule, then, would seem to be, that (↓) tangible property belonging to an enemy, and found in the country at the commencement of war, ought not to be immediately confiscated; and in almost every commercial treaty an article is inserted, stipulating for the right to withdraw such property. (P. 376-379 省略 This rule appears to be….)	总之，敌人货物、债负 在疆内者， 战之始 不应立时入公， 现今常例也。(↑) 故立约时，大概有一款云： “凡有战事，其货物可即收回。”
12. Debts due to the enemy. In respect to debts due to an enemy, previously to the commencement of hostilities, the law of Great Britain pursues a policy of a more liberal, or at least of a wiser character, than in respect to droits of admiralty. (P.379) A maritime power, which has an overwhelming naval superiority, may have an interest, or may suppose it has an interest, in asserting the right of confiscating enemy’s property, seized before an actual capital, must generally be the creditor of every other commercial country, can certainly have no interest in confiscating debts due to an enemy, (↑) since that enemy might, in almost every instance, retaliate with much more injurious effect (P.379). Hence, though the prerogative of confiscating such debts, and compelling their payment to the crown, still theoretically exists, it is seldom or ever practically exerted. The right of the original creditor to sue for the recovery of the debt is not extinguished; it is only suspended during the war, and revives, in full force, on the restoration of peace. Such, too, is the law and practice of the United States. The debts due by American citizens to British subjects before the war of the Revolution, and not actually confiscated,	**第十二节　债欠于敌** 敌人债负， 英国律法 处之 较敌人船只稍宽。 但英亦为通商大国， 在各国欠英之债负甚多， 捕拿债负之款，(↓) 于英甚为无益。 盖别国亦将如此而行， 未免以小失大矣。 故英君虽有捕拿债负之权， 而断不行之。 故按英法，至复和时，债主讨索之权亦复也。 现今美国于债负亦同此例。 即如与英分立之前，有欠债于英人者，

were judicially considered as revived, together with the right to sue for their recovery on the restoration of peace between the two countries.	迨复和后即准债主复行讨索，
(P. 379-380 省略一段 The impediments which had existed to the collection of British debts,…but this stipulation proving ineffectual for the complete indemnification of the creditors,)	
the controversy between the two countries on this subject was finally adjusted, by the payment of a sum *en bloc* by the government of the United States, for the use of the British creditors.	竟出帑银以偿其款。
The commercial treaty of 1794	于一千七百九十四年通商约内，
also contained an express declaration, that	特立一款云：
it was unjust and impolitic (↓)	
that private contracts should be impaired by national differences;	“诸国战争不许人民还债，
	不但不公，而且本有损害。(↑)
with a mutual stipulation, that “neither the debts due from individual of the one nation to individual of the other, nor slaves, nor moneys	此后英、美两国无论何等战争，其人民有互相债负，
which they may have in the public funds, or in the public or private banks,	或存银物在某店、在国库者，
shall ever, in any event of war, or national differences, be sequestered or confiscated.”	决不捕拿入公。”
On the commencement of hostilities between France and Great Britain, in 1793,	一千七百九十三年，英法交战，
the former power sequestrated the debts and other property belonging to the subjects of her enemy,	法以英人货物并所欠于英人之债负入公，
which decree was retaliated by a countervailing measure on the part of the British government.	后英即仿其所行而行之。
By the additional articles to the treaty of peace between the two powers, concluded at Paris, in April, 1814,	一千八百十四年，在法国京都立和约时，
the sequestrations were removed on both sides,	两国旋废从前入公之议。
and commissaries were appointed to liquidate the claims of British subjects for the value of their property unduly confiscated by the French authorities, and also for the total or partial loss of the debts due to them, or other property unduly retained under sequestration, subsequently to 1792.	法国派使查明抵偿所欠英人债负货物，
	而法国先时入公之物，英国并不以现存者还之。(↓)
The engagement thus extorted from France may be considered as a severe application of the rights of conquest to a fallen enemy,	此乃英国严行得胜之权，

rather than a measure of even-handed justice; since it does not appear that French property, seized in the ports of Great Britain and at sea, in anticipation of hostilities, and subsequently condemned as droits of admiralty, was restored to the original owners under this treaty, on the return of peace between the two countries.(↑)	原非执中不偏之道也。
So, also, on the rupture between Great Britain and Denmark, in 1807, the Danish ships and other property, which had been seized in the British ports and on the high seas, (↓) before the actual declaration of hostilities,	一千八百七年，英与丹国交战， 未宣战时， 先行捕拿在各海口并大海上船只，(↑)
were condemned as droits of admiralty by the retrospective operation of the declaration.	战后以之入公。
The Danish government issued an ordinance retaliating this seizure, by (↓) sequestrating all debts due from Danish to British subjects, and causing them to be paid into the Danish royal treasury. (P.381. 省略一段 The English Court of King's Bench determined that…)	丹国即不许 己民还债于英， 于是收其银入库， 以为报复。(↑)
13. Trading with the enemy, unlawful on the part of subjects of the belligerent State. One of the immediate consequences of the commencement of hostilities is, the interdiction of all commercial intercourse between the subjects of the States at war, (↓) without the license of their respective governments.	**第十三节　与敌贸易** 始战时， 若无有特示准行， 即不许两国之人民交易往来。(↑)
In Sir W. Scott's judgment, in the case of The Hoop, this is stated to be a principle of universal law,(↓) and not peculiar to the maritime jurisprudence of English.	斯果德云： "此 非英法， 乃公法也。"(↑)
It is laid down by Bynkershoek as a universal principle of law. "There can be no doubt," says that writer, "that, from the nature of war itself, (1) all commercial intercourse ceases between enemies. Although there be no special interdiction of such intercourse, as is often the case, commerce is forbidden	宾克舍云： "既有交战之事， 通商贸易自然闭歇。 故虽无特诏禁止， 亦不啻有禁之者，

by the mere operation of the law of war. Declarations of war themselves sufficiently manifest it, for they enjoin on every subject to attack the subjects of the other prince, seize on their goods, and do them all the harm in their power. The utilities, however, of merchants, and the mutual wants of nations, have almost got the better of the law of war, as to commerce. Hence it is alternately permitted and forbidden in time of war, as princes think it most for the interests of their subjects. A commercial nation is anxious to trade, and accommodates the laws of war to the greater or lesser want that it may be in of the goods of others. Thus, sometimes a mutual commerce is permitted generally; sometimes as to certain merchandises only, while others are prohibited; and sometimes it is prohibited altogether. But in whatever manner it may be permitted, whether generally or specially, it is always, in my opinion, so far a suspension of the laws of war; and in this manner there is partly war and partly peace between the subjects of both countries.” (省略 P. 383 It appears from these passages to have been the law of Holland. Valin states it to have been the law of France, whether the trade was attempted to be carried on in national or neutral vessels;) and it appears from a case cited (in The Hoop) to affirmed to be a general principle of law in most of the countries of Europe. Sir W. Scott proceeds to state two grounds upon which (↓) this sort of communication is forbidden. The first is, that “by the law and constitution of Great Britain the sovereign alone has the power of declaring war and peace. He alone, therefore, who has the power of entirely removing the state of war, has the power of removing it in part, by permitting, where he sees proper, that commercial intercourse which	此历来交战条规也。” 盖宣战者，乃令 我国人民攻击彼国人民， 捕拿其货， 并协力以剿之。 然因通商大有裨益，以应各国需用。 故鲜有严行此例者。 战时通商或准或禁， 俱随各国便宜而行， 故或两国准令通商者有之， 或特准何物通商余物停止者有之， 抑或全禁一物不通者有之。 全禁不通一物，乃经也， 余则其权尔， 权则为半战半和矣。 欧罗巴诸国律法大抵皆如是也。 斯果德云： “战时不准往来而私自交接者，即是犯法。” 其可辨者有二：（↑） 其一，盖照国法， 应和、应战皆君自定， 全和在君， 半和亦在君。

is a partial suspension of the war. There may be occasions on which such an intercourse may be highly expedient; but it is not for individuals to determine on the expediency of such occasions, on their own notions of commerce merely, and possibly on grounds of private advantage, not very reconcilable with the general interests of the State. It is for the State alone, (1) on more enlarged views of policy, and of all the circumstances that may be connected with such an intercourse, (2) to determine when it shall be permitted, (3) and under what regulations. (4) No principle ought to be held more sacred than that (1') this intercourse cannot subsist on any other footing (2') than that of the direct permission of the State. (3')	有时交接为有益之事， 但人民不得以己之私利为公益也。 其当与不当，(3) 唯君(1) 之广鉴万事，(2) 可准而定其章程。(4) 盖君不准，(3') 民即不得通商，(2') 此为遵法。(1')
Who can be insensible to the consequences that might follow: if every person in time of war had a right to carry on a commercial intercourse with the enemy,and, under color of that, had the means of carrying on any other species of intercourse he might think fit? The inconvenience to the public might be extreme; and where is the inconvenience on the other side, that (↓) the merchant should be compelled, in such a situation of the two countries, to carry on his trade between them (if necessary) under the eye and control of the government charged with the care of the public safety?	若 战时倘有人民 借贸易之名 作通敌之事， 其流弊必至无穷。 惟领照服稽查而贸易者， 其与正理即无所损。(↑)
"Another principle of law, of a less politic nature, but equally general in its reception and direct in its application, forbids this sort of communications, as fundamentally inconsistent with the relation existing between the two belligerent countries; and that is, the total inability to sustain any contract, by an appeal to the tribunals of the one country, on the part of the subjects of the other. (省略一段 p.384. In the law of almost every country, the character of alien enemy carries with it a disability	其二， 此国之民与彼国之民有交易， 当战时， 即不能告官讨债。

to sue, or to sustain, in the language of the civilians, a *persona standi in judicio*. A state in which contracts cannot be enforced, cannot be a state of legal commerce. (If the parties who are to contract have no right to compel the performance of the contract, nor even to appear in a court of justice for that purpose, can there be a stronger proof that the law imposes a legal inability to contract?)	
To such transactions it gives no sanction; they have no legal existence;	此等贸易既在律法之外，
and the whole of such commerce	若私行为之者，
is attempted without its protection, and against its authority.	即违律而犯法。
(省略一句 p. 384. Bykershoek expresses himself with force upon this argument …)	
Sir W. Scott then notices the constant current of decisions in the British Courts of Prize,	果德多引公案以证此规，
where the rule had been rigidly enforced in cases where acts of parliament had, on different occasions, been made to relax the Navigation Law, and other revenue acts;	即如国会公议、
where the government had authorized, under the sanction of an act of parliament,	君主颁诏
a homeward trade from the enemy’ s possessions,	准运货物自敌国之地而来，
but had not specifically protected an outward trade to the same,	但不言将己货贩于敌国。
though intimately connected with that homeward trade, and almost necessary to its existence; where strong claims, not merely of convenience, but of necessity, excused it on the part of the individual;	虽其间商人有迫于势之无可如何者，
where cargoes had been laden before the war,	如未战之先货已装好，
but the parties had not used all possible diligence to countermand the voyage, after the first notice of hostilities;	或托人代办，耽延未及知照，凡此因未明准，战利法院亦有定其罪者，
(省略 P. 384 and where it had been enforced, not only against British subjects, but also against those of its allies in the war, upon the supposition that the rule was founded upon a universal principle, which States allied in war had a right to notice and apply mutually to each other’ s subjects. ”)	
Such, according to this eminent civilian, are the general principles of the rule	以为公法通行之例也。
(P. 385 省略一段 under which the public law of Europe, and the municipal law of its different States, have interdicted all commerce with an enemy. It is thus sanctioned by the double authority of public and of private jurisprudence; and is founded both upon the sound and salutary principle forbidding all intercourse	

with an enemy, unless by permission of the sovereign or State, and upon the doctrine that he who is *hostis*--- who has no *persona standi in judicio*, no means of enforcing contracts, cannot make contracts, unless by such permission.)	
Decisions of the American courts, as to trading with the public enemy.	
The same principles were applied by the American courts of justice to the intercourse of their citizens with the enemy,	今美国法院亦许此例。
on the breaking out of the late war between the United States and Great Britain.	即如英、美两国未战以前，
A case occurred in which a citizen had purchased a quantity of goods within the British territory, a long time previous to the declaration of hostilities,	有美国人在英地置货屯
and had deposited them on an island near the frontier;	于邻近海岛，
upon the breaking out of hostilities,	及战之始，
his agents had hired a vessel to proceed to the place of deposit, and bring away the goods;	其代办雇船运回本国，
on her return she was captured,	路经美国兵船捕拿，
and with the cargo, condemned as prize of war(P.385).	法院即断船货为战利，一并入公。
(P.385-7. 省略 It was contended for the claimant that ….)	
So where hostilities had broken out, and the vessel in question,	若船只已在海外，
with a full knowledge of the war,	船主知有战争，
and unpressed by any peculiar danger,	且无风浪之危，
changed her course	乃自改向
and sought an enemy’s ports,	竟至敌国海口，
where she traded and took in a cargo,	贸易装货
it was determined to be a cause of confiscation.	亦可入公。
(省略: P.387If such an act could be justified, It would be in vain to prohibit trade with an enemy. The subsequent traffic in the enemy’s country, by which her return cargo was obtained, connected itself with a voluntary sailing for a hostile port; nor did the circumstance that she was carried by force into one part of the enemy’s dominions, when her actual destination was another, break the chain. The conduct of this ship was much less to be defended than that of The Rapid.)	
So, also, where goods were purchased some time before the war, by the agent of an American citizen in Great Britain,	战前有商人在英国置货者，
but not shipped until nearly a year after the declaration of hostilities,	争战至一年之久始得运回，
they were pronounced liable to confiscation.	本国即定为入公。
Supposing a citizen had a right, on the breaking out	盖虽云货在外国可以收

of hostilities, to withdraw from the enemy's country his property, purchased before the war,	回，
on which the Court gave no opinion, such right must be exercised with due diligence, and within a reasonable time after a knowledge of hostilities.	然当急行而不可缓办也。
To admit a citizen to withdraw property from a hostile country a long time after the commencement of war, upon the pretext of its having been purchased before the war,	若俟至日久，犹准收货回国，
would lead to the most injurious consequences, and hold out temptations to	难保无
every species of fraudulent and illegal traffic with the enemy.	私通敌国大弊，
To such a unlimited extent the right could not exist.	故不能不定为入公也。
In another case, the vessel, owned by citizens of the United States, sailed from thence before the war, with a cargo or freight, on a voyage to Liverpool and the north of Europe, and thence back to the United States.	又美国船只于战前载货赴英，
She arrived in Liverpool, there discharged her cargo,	到英出货，
and took in another at Hull, and sailed for Petersburg under a British license, granted the 8th June, 1812, authorizing the export of mahogany to Russia, and the importation of a return cargo to England.	领英国牌照装货至俄，
On her arrival at St. Petersburg	及至俄国，
she received news of the war,	知美英交战，
and sailed to London with a Russian cargo, consigned to British merchants; wintered in Sweden, and, in the spring of 1813,	旋又装货回英，
sailed under convoy of a British man-of-war for England,	有英国兵船护送，
where she arrived and delivered her cargo,	出货后
and sailed for the United States in ballast, under a British license,	即带英国牌照驶回美国，
and was captured near Boston light-house.	在海外遇本国兵船捕拿。
The Court states, in …(P. 388-389.省略) It was, in short, a voyage from the neutral country, by the way of the enemy's country,	战利法院即依沿路通敌之例，
and, consequently, the vessel, during any part of that voyage, if seized for any conduct subjecting her to confiscation as prize of war, was seized in *delicto*.	定之入公。
We have seen what is the rule of public and municipal law on this subject, and what are the sanctions by which it is guarded.	总之，诸国公法、各国律例皆禁交接敌国，
(省略一段 P.389Various attempts have been made to…)	
In all other cases, an express license from the government is held to be necessary, to legalize	若无领照，未经明准而通之者，即为犯法，捕其货物

commercial intercourse with the enemy.	可也。
14. Trade with the common enemy, unlawful on the part of allied subjects. (P.390)	**第十四节　合兵之民通商敌国**
Not only is such intercourse with the enemy, on the part of the subjects of the belligerent State,	至数国合兵而战，（↓） 而仍有私通敌国者，
prohibited and punished with confiscation in the Prize Courts of their own country,	不但本国可捕其货物，
but, during a conjoint war, （↑）	
no subject of an ally can trade with the common enemy, without being liable to the forfeiture, in the Prize Courts of the ally, of his property engaged in such trade.	即友国之战利法院亦可捕之入公。
This rule is a corollary of the other; and is founded upon the principle, that such trade is forbidden to the subjects of the co-belligerent （↓）	
by the municipal law of his own country,	盖此事为本国律法、
by the universal law of nations,	万国公法
and by the express or implied terms of the treaty of alliance subsisting between the allied powers.	并同战约盟之章程
	所严为禁者。（↑）
And as the former rule can be relaxed	本国之民贩货入敌，
only by the permission of the sovereign power of the State,	非国君准行不可。
so this can be relaxed only by the permission of the allied nations, according to their mutual agreement.	合兵而战非友邦应许，亦不可贩货入敌也。
A declaration of hostilities	盖其合兵之约，
naturally carries with it an interdiction of all commercial intercourse.	即是默允不准通敌。
Where one State only is at war,	若攻敌者只有一国，
this interdiction may be relaxed, as to its own subjects, without injuring any other State;	其例或可少宽。
but when allied nations are pursuing a common cause against a common enemy, there is an implied, if not an express contract, that neither of the co-belligerent States shall do any thing to defeat the common object.	若数国合兵协力攻敌，
If one State allows its subjects to carry on an uninterrupted trade with the enemy,	倘不严行禁止，
the consequence will be, that it will supply aid and comfort to the enemy, which may be injurious to the common cause.	诚恐于战事大有损害也。
It should seem that it is not enough, therefore, to satisfy（↓）	
the Prize Court of one of the allied States,	故战利法院遇有此等案， 断不可（↑）
to say that the other has allowed this practice to its own subjects;	因友邦曾准己民与敌通商，便以我民亦可与之通商也，
it should also be shown, either that the practice	必当辨明其事与战事毫

is of such a nature as cannot interfere with the common operations, or that it has the allowance of the other confederate State.	无妨碍， 或为友邦所许，否则不能不定其罪也。
15. Contracts with the enemy prohibited. It follows as a corollary from the principle, interdicting all commercial and other pacific intercourse with the public enemy, that every species of private contract made with his subjects during the war is unlawful. The rule thus deduced is applicable to (↓) insurance on enemy's property and trade; to the drawing and negotiating of bills of exchange between subjects of the powers at war; to the remission of funds, in money or bills, to the enemy's country; to commercial partnerships entered into between the subjects of the two countries, after the declaration of war, or existing previous to the declaration; which last are dissolved by the mere force and act of the war itself, although, as to other contracts, it only suspends the remedy.	**第十五节　不可与敌立契据** 既不准与敌民贸易往来， 若在战时有与敌私立契据等情， 皆为犯法。 即如保敌货、 出钱票、 兑换银两、 送银票实物于敌国， 或宣战后仍与敌国人民合伙， 皆为犯此规例。(↑) 若战前本系合伙， 至战时其事自废。 唯战前所有别样契据则不可废， 但其讨索之权暂停耳。
16. Persons domiciled in the enemy's country liable to reprisals. Grotius, in the second chapter of his third book, where he is treating of the liability of the property of subjects for the injuries committed by the State to other communities, lays down that "by the law of nations, all the subjects of the offending State, who are such from a permanent cause, whether natives, or emigrants from another country, are liable to reprisals, but not so those who are only travelling or sojourning for a little time; --- (省略 P. 392 for reprisals," says he, "have been introduced as a species of charge imposed in order to pay the debts of the public; from which are exempt those who are only temporarily subject to the laws.) Ambassadors and their goods	**第十六节　敌民居于疆内者** 虎哥云： "一国受害于别国， 按公法 不但可捕其民之货以为抵偿， 即他国之民常住在彼疆内者， 亦可拿其货物以为抵偿。 惟人疆路过及暂住者，不可妄拿。 至别国使臣并其货物，

are, however, excepted from this liability of subjects, but not those sent to an enemy.” (P.392-394 省略 In the fourth chapter of the same book,…) Whatever may be the extent of the claims of a man’s native country upon his political allegiance, (省略 P.393 there can be no doubt that the natural-born subject of one country may become the citizen of another, in time of peace, for the purposes of trade, and) may become entitled to all the commercial privileges attached to his required domicile. On the other hand, if war breaks out between his adopted country and his native country, or any other, (1) his property becomes liable to reprisals (2) in the same manner as the effects of those (3) who owe a permanent allegiance to the enemy State. (4)	固不在此权之内， 但使臣遣往敌国者则不得免也。” 人若迁居别国， 久与彼民同享通商之利。 倘遇战事，(1) 即应同当其患，(4) 家货可为抵偿，(2) 与彼国人民无异。(3)
17. Species of residence constituting domicile. As to what species of residence constitutes such a domicile as will render the party liable to reprisals, the text writers are deficient in definitions and details. Their defects are supplied by the precedents furnished by the British prize courts, (省略 P. 394 which, if they have not applied the principle with undue severity in the case of neutrals, have certainly not mitigated it in its application to that of British subjects resident in the enemy’s country on the commencement of hostilities.) In the judgment of the Lords of Appeal in Prize Causes, upon the cases arising out of the capture of St. Eustatius by Admiral Rodney, delivered in 1785, by Lord Camden, he stated that (省略 P. 394-395 “if a man went into a foreign country upon a visit, to travel for health, to settle a particular business, or the like, he thought it would be hard to seized upon his goods; but a residence, not attended with these circumstances, ought to be considered as a permanent residents.” In applying the evidence and the law of the resident foreigners in St. Eustatius, he said, that) “in every point of view, they ought to be considered resident subjects. (↓) Their persons, their lives, their industry, were employed for the benefit of the State under	**第十七节　何谓迁住别国** 何谓迁居别国， 始可拿为抵偿， 公师虽未详辨。 然有英国法院公案可援引以明其例。 从前英破荷兰属地时，即英人之住于彼地者，其家赀一并捕拿以为抵偿，后有告官讨还之事， 法院断曰： “其人既身居彼地， 其生计亦在彼国， 且平素皆系用力以利彼

whose protection they lived;	国，并赖彼国保护， 则是与彼国人民无异。（↑）
and if war broke out, they continuing to reside there, paid their proportion of taxes, imposts, and the like, equally with natural-born subjects, and no doubt come within that description.”	遇战仍居彼地， 不回本国， 况捐钱投税 俱与彼民一律， 当即与彼民视同一致， 不能退还其家赀。”
“Time,” says Sir W. Scott, “is the grand ingredient in constituting domicile. In most cases, it is unavoidably conclusive. （↓）	
It is not unfrequently said, that if a person comes only for a special purpose, that shall not fix a domicile. (P. 395-396.省略 This is not to be taken in an unqualified latitude, and without some respect to the time which such a purpose may or shall occupy; for … This matter is to be taken in the compound ratio of the time and the occupation, with a great preponderance on the article of time: be the occupation what it may, it cannot happen, with but few exceptions, that mere length of time shall not constitute a domicile.”)	或云因事而偶住者， 不得谓迁居， 但斯果德言：“必当视其时之久暂，并当视其事之为业与否，方可定案。”（↑）
In the case of The Indian Chief, determined in 1800, Mr. Johnson, a citizen of the United States, domiciled in England, had engaged in a mercantile enterprise to the British East indies, a trade prohibited to British subject, but allowed to American citizens under the commercial treaty of 1794, between the United States and Great Britain. The vessel came into a British port on its return voyage, (1) and was seized as engaged in illicit trade. (2) Mr. Johnson, having then left England, (3)	前英国律法惟准商会之人通商印度， 禁止他人私往贸易， 至一千七百九十四年和约明许美国人民通商印度。 时有美国人住于英地通商印度者，及其船回入英国海口，(1) 即被英捕拿，目为犯禁。(2) 其时该商已离英地，转回本国。(3)
was determined not to be a British subject at the time of capture, and restitution was decreed. （↓）	
In delivering his judgment in this case, Sir W. Scott said, “Taking it to be clear that the national character of Mr. Johnson, as a British merchant, was founded in residence only, that it was acquired by residence, and rested on that circumstance alone, it must be held, that, from the moment he turned his back on the country where he had resided, on his way to	故法院断曰： “其人常住英国，可谓英商， 转回本国

his own country,
he was in the act of resuming his original character,
and must be considered as an American.

即不为英商，
应听其复从本名，仍为美国商人。”
于是即断其事不为犯禁，遂命以船还之。（↑）

The character that is gained by residence, ceases by non-residence. It is an adventitious character, and no longer adheres to him from the moment that he puts himself in motion, *bona fide*, to quit the country, *sine animo revertendi.*” （↓）

The native character easily reverts

本名易复

The native character easily reverts, and it requires fewer circumstances to constitute domicile, in the case of a native subject,
than to impress the national character on one who is originally of another country.
Thus, the property of a Frenchman

如彼国人在此国或为业或常住者，即可视为己民。

若已住外国而回本国者，欲复其本名，更为容易。
即如一千八百年间，有法国人本住法国属邦，地名海底，

who had been residing, and was probably naturalized, in the United States,
but who had returned to St. Domingoo, and shipped from thence the produce of that island to France,
was condemned in the High Court of Admiralty.

后往美国居住，即为美国人民，
复回海底装货至法，
经英船捕拿，法院即以其为法国人，而定其货入公。
盖曰：“既回本土，本名即复，不得不视为法国人也。”（↑）

（省略一段 P.397 In the Indian Chief, the case of Mr. Dutilth is referred to by the claimant’s counsel, as having obtained restitution, though at the time of sailing he was resident in the enemy’s country: but the decision of the Lords of Appeal, in 1800, is mentioned by Sir C. Robinson, in which different portions of Mr. Dutilth’s property were condemned or restored, according to the circumstances of his residence at the time of capture. That decision is more particularly stated by Sir J. Nicholl, at the hearing of the cases of The Harmony before the Lords, July 7, 1803. “The case of Mr. Dutilth also illustrates the present. He came to Europe about the end of July, 1793, at the time when there was a great deal of alarm on account of the state of commerce. ）

He went to Holland,

曾有美国人至荷兰贸易，

then not only in a state of amity, but of alliance with this country;
he continued there until the French entered.

荷兰本与英国和睦无事，
后经法国征服占据，

(P.397 省略一段 During the whole time he was there, he was without any establishment; he had no counting-house; he had no contracts nor dealings with contractors there; he employed merchants there to sell his property, paying them a commission. Upon the French entering, he applied for advice to know what was left for him to do under the circumstance, having remained there on account of the doubtful state of mercantile credit, which not only affected Dutch and American, but English houses, who were all looking after the state of credit in that country. In 1794, when the French came there, Mr. D. applied to Mr. Adams, the American minister, who advised him to say until he could get a passport. He continued there until the latter end of that year, and having would up his concerns, came away.)	
Some part of his property was captured before he came there.	彼时英法交战，而该商之货屡遭英兵捕拿，战利法院断曰：
That part which was taken before he came there was restored to him, (The Fair American, Adm., 1796,) (↓)	“该商在荷兰时，被拿之货当令入公。
but that part which was taken while he was there was condemned,	若出荷兰后，被拿之货即当给还。”(↑)
and that because he was in Holland at the time of the capture.”	盖谓在荷兰境内即为法商，出荷兰境外可为美商也。
(P. 898-899.省略 The Hannibal and Pomona, Lords, 1800. The case of The Diana,…)	
Case of persons removing from the enemy’ s country on the breaking out of war.	
The case of The Ocean, determined in 1804, was a claim (↓)	
relating to British subjects settled in foreign States in time of amity, and taking early measures to withdraw themselves on the breaking out of war.	又有英人住于荷兰，
It appeared that the claimant had been settled as a partner in a house of trade in Holland,	为荷兰商行伙伴，
but that he had made arrangements for the dissolution of the partnership,	经法国占据其地，英法战时，其人定意欲离行伙回本国，
and was prevented from removing personally only by the violent detention of all British subjects who happened to be within the territories of the enemy at the breaking out of the war.	但因法国禁止出疆，故其事未果，
	后经英人捕拿其货，乃告官讨还。(↑)
In this case Sir W. Scott said (1)	法院断曰：(1)
“It would, I think, be going further than the law requires, (2)	“若因其人前在荷兰为业，(4)

to conclude this person by his former occupation, (3) and by his present constrained residence in France, (4) so as not to admit him to have taken himself out of the effect of supervening hostilities, by the means which he had used for his removal. (5) On sufficient proof being made of the property, I shall be disposed to hold him entitled to restitution.”(6)	虽经法国强留，使不得回国，(5) 便拿其货物入公，(3) 未免执法太严。”(2) 于是断为可还其物。(6)
In a note to this case, Sir C. Robinson states that the situation of British subjects, wishing to remove from the enemy’s country on the event of a war, but prevented by the sudden occurrence of hostilities from taking measures sufficiently early to obtain restitution,	有法师记此案，
formed not unfrequently a case of considerable hardship in the Prize Court. He advises person so situated, on their actual removal, to make application to government for a special pass, rather than to trust valuable property to the effect of a mere intention to remove, dubious as that intention may frequently appear under the circumstances that prevent it from being carried into execution.	批注云：“战利法院断此等案多有难处。 故 人民之住外国者， 遇有战事，务必力讨特赐牌照以便出疆， 否则虽有将回之意， 虚而无凭， 恐其货物一经捕拿，难保其不入公也。”
(P. 400.省略一段 And Sir W. Scott, in the case of The Dree Gebroeders, observes, “that pretences of withdrawing funds are, at all times, to be watched with considerable jealousy; …” But in a subsequent case, where an indulgence was allowed by the court for the withdrawal of British property…)	
Decisions of the American Courts. The same principles, as to the effect of domicile, or commercial inhabitancy in the enemy’s country, were adopted by the prize tribunals of the United States, during the late war with Great Britain.	美英战时，美国战利法院亦许此例。
The rule was applied to the case of native British subjects, who had emigrated to the United States long before the war, and became naturalized citizens under the laws of the Union, as well as to native citizens residing in Great Britain at the time of the declaration. The naturalized citizens in question had, long prior to the declaration of war, returned to their native country, where they were domiciled and engaged in trade at the time the shipments in question were made.	有英国数人久住美国， 视同美国人民， 后于战前 复回英国为业，

The goods were shipped before they had a knowledge of the war. At the time of capture, (1) one of the claimants was yet in the enemy’s country, (2) but had, since he heard of the capture, expressed his anxiety to return to the United States, (3) but had been prevented by various causes set forth in his affidavit. (4) Another had actually returned some time after the capture, and a third was still in the enemy’s country. (P. 401-407 省略数页 In pronouncing its judgment in this case, the Supreme Court stated that, there being no dispute as to the facts upon which the domicile of the claimants was asserted, the questions of law to be considered were two: First,… and secondly, …Upon the first of these question, …On this ground the courts of England have decided, that a person who removes to …The double privilege claimed seems too unreasonable to be granted)	装货出海，并未知有战事， 经美国兵船捕拿，(1) 即行告官讨还。内有一人尚在英国，(2) 意欲回国，(3) 因有阻碍未果，(4) 又有一人于捕货后归回美国， 更有一人仍住英国未回。法院皆断其货入公，不得给还。
18. Merchants residing in the east. The national character of (↓) merchants residing in Europe and America is derived from that of the country in which they reside. In the eastern parts of the world, European persons, trading under the shelter and protection of the factories founded there, take their national character from that association under which they live and carry on their trade: this distinction arises from the nature and habits of the countries. In the western part of world, alien merchants mix in the society of the natives; access and intermixture are permitted, and they become incorporated to nearly the full extent. But in the east, from almost the oldest times, an immiscible character has been kept up; foreigners are not admitted into the general body and mass of the nation; they continue strangers and sojourners, as all their fathers were. Thus, with respect to establishments in Turkey, (1) the British courts of prize, (2) during war with Holland, (3) determined that (4) a merchant, carrying on trade at Smyrna, under the	**第十八节　西人住于东土者** 商人住在西土各国为业者， 按律法视之与己民同例。(↑) 商人在东土者， 即以商会得名。 盖西东风俗不同。 在西土，别国人与本国人交际无所阻碍， 在东土则不然。 所谓异邦人羁旅于外方是也。 英荷交战时，(3) 有英商在土耳其贸易，恃荷兰领事保护，(5) 战利法院(2) 断以(4)

protection of the Dutch consul, (5) was to be considered a Dutchman, (6) and condemned his property as belong to an enemy. (7) And thus in China, and generally throughout the east, (↓) persons admitted into a factory are not known in their own peculiar national character: and not being permitted to assume the character of the country, are considered only in the character of that association of factory. But these principles are considered not to be applicable to the vast territories occupied by the British in Hindostan; (省略一段 P.408 because, as Sir W. Scott observes, "though the sovereignty of the Mogul is occasionally brought forward for the purposes of policy, it hardly exists otherwise than as a phantom: it is not applied in any way for the regulation of their establishments. Great Britain exercises the power of declaring war and peace, which is among the strongest marks of actual sovereignty; and if the high and empyrean sovereignty of the Mogul is sometimes brought down from the clouds, as it were, for the purposes of policy, it by no means interferes with the actual authority which that county, and the East India Company, a creature of that country, exercise there with full effect.") Merchants residing there are hence considered as British subjects."	为可视同荷兰人，(6) 即可视其货为敌货，于是将其货捕拿入公。(7) 西人在中国入商会者， 不问其本国为何国， 按律法不视为中国人， 皆就所属之商会而定其名。 凡住于东土者，概从此例，(↑) 惟印度虽属东土，不归此例， 盖既系英之属国，则住彼通商之人皆应服英律，即可视为英人。
19. House of trade in the enemy's country In general, the national character of a person, as neutral or enemy, is determined by that of his domicile; but the property of a person may acquire a hostile character, (↓) independently of his national character, derived from personal residence. Thus the property of (1) a house of trade established in the enemy's country (2) is considered liable to capture and condemnation as prize. (3) This rule does not apply to cases arising (4)	**第十九节　商行设于敌国** 人民孰为敌人， 孰为局外， 当就其居处而定。 但有时虽不住于敌国， 而其货物仍可以敌货看待者，(↑) 即如商行设于敌国，(2) 其货物(1) 可定为入公。(3) 若系素常和平时开行贸易者，(6)

at the commencement of war, in reference to (5) persons who, during peace, had habitually carried on trade in the enemy's country, though not resident there, (6) and are therefore entitled to time to (7) withdraw from that commerce. (8) But if a person enters into a house of trade in the enemy's country, or continues that connection during the war, he cannot protect himself (↓) by mere residence in a neutral country.	照例战前(5) 即当限以日期，(7) 令其收回货物，(8) 不可立即捕拿。(4) 若系交战后始入敌国进商行， 或前时在彼而未经离伙者， 均不得藉口身住局外， 以期幸免捕拿其货， (↑)此以行为断之例也。
20. Converse of the rule. (P. 409) The converse of (↓) this rule of the British prize courts, which has also been adopted by those of America, is not extended to the case of a merchant residing in a hostile country, and having a share in a house of trade in a neutral country. (↓) Residence in a neutral country (1) will not protect his share (2) in a house established in the enemy's country, (3) though residence in the enemy's country (4) will condemn his share (5) in a house established in a neutral country. (6) (省略 P. 409 It is impossible not to see, in this want of reciprocity, strong marks of the partiality towards the interests of captors, which is perhaps inseparable from a prize code framed by judicial legislation in a belligerent country, and adapted to encourage its naval exertions.)	**第二十节　身在敌国行在局外** 英、美两国之战利法院皆从此例， 虽欲反其道而行之， (↑) 则不可免。 盖商行在敌国(3) 而其身在局外者，(1) 概不能保护其货，(2) 则行在局外(6) 亦可因其身在敌国，(4) 而捕拿其货。(5) 此以身为断之例也。 (↑)
21. Produce of the enemy's territory considered as hostile, so long as it belongs to the owner of the soil, whatever may be his national character or personal domicile. The produce of an enemy's colony, or other territory, is to be considered as hostile property so long as it belongs to the owner of the soil, (↑) whatever may be his national character in other respects, or wherever may be his place of resident. This rule of the British prize courts	**第二十一节　敌国土产属地主时即为敌货** 敌国土产， 或其属邦土产 未脱地主之手，(↓) 即为敌货， 无论属于何人， 住于何处，皆可捕拿。 此条本系英国战利法院

was adopted by the Supreme Court of the United States, during the late war with Great Britain, in the following case. The island of Santa Cruz, belonging to the King of Denmark, was subdued during the late European war by the arms of his Britannic Majesty. (↑) Adrain Benjamin Benzon, an officer of the Danish government, and a proprietor of land in the island, withdrew from the island on its surrender, and had since resided in Denmark. The property of the inhabitants being secured to them by the capitulation, he still remained his estate in the island under the management of an agent, who shipped thirty hogsheads of sugar, the produce of that agent, on board a British ship, and consigned to a commercial house in London, on account and risk of the owner. On her passage the vessel was captured by an American privateer, and brought in for adjudication. The sugars were condemned in the court below as prize of war, and the sentence of condemnation was affirmed on appeal by the Supreme Court. In pronouncing its judgment, it was stated by the court, that (省略一句P.410some doubt had been suggested whether Santa Cruz, while in the possession of Great Britain, could properly be considered as a British island. But for this doubt there could be no foundation.) Although acquisitions, made during war, are not considered as permanent, until confirmed by treaty, yet to every commercial and belligerent purpose (↓) they are considered as a part of the domain of the conqueror, so long as he retains the possession and government of them. The island of Santa Cruz, after its capitulation, remained a British island (↓) until it was restored to Denmark. (P.410-411 省略 The question was, whether the produce of a plantation in that island, shipped by the proprietor himself, who was a Dane residing in Denmark, must be considered as British, and therefore enemy's property. In arguing this question the counsel for the	所定， 后美国战利法院亦依以断案。 有海岛本属丹国， 被英兵占踞，(↓) 其岛民降服于英，写明人民田产不得捕拿入公。 有丹国武官田产托人管理， 而自返其国者， 管业之人 装糖三十桶在英船上， 言明有所妨害全在货主， 海上经美国兵船捕拿其货， 法院即以此三十桶糖定为战利， 盖曰： “彼海岛为英占踞， 虽无盟约以坚固其事， 但今系英该管， 就商事而论，(↑) 未经交还丹国， 必视为英国属地，(↑)

claimants had made two points. …) The produce of a person's own plantation in the colony of the enemy, though shipped in time of peace, is liable to be considered as the property of the enemy, by reason that the proprietor has incorporated himself with the permanent interests of the nation as a holder of the soil, and is to be taken as a part of that country in that particular transaction, (↓) independent of his own personal residence and occupation. (省略 P. 411-413)	土产 即为敌货。 虽地主系属局外， 亦可捕拿入公也。”(↑)
22. National character of ships So, also, in general, and unless under special circumstances, the character of ships depends on the national character of the owner, as ascertained by his domicile; (↑) but if a vessel is navigating under the flag and pass of a foreign country, she is to be considered as bearing the national character of the country under whose flag she sails: she makes a part of its navigation, and is in every respect liable to be considered as a vessel of the country; for ships have a peculiar character impressed upon them by the special nature of their documents, and are always held to the character with which they are so invested, to the exclusion of any claims of interest which persons resident in neutral countries may actually have in them. (↑) But where the cargo is laden on board in time of peace, and documented as foreign property in the same manner with the ship, with the view of avoiding alien duties, the sailing under the foreign flag and pass is not held conclusive as to the cargo. A distinction is made between the ship, which is held bound by the character (↓) imposed upon it by the authority of the government from which all the documents issue,	**第二十二节　船因船户得名** 人以住处得名，(↓) 船以船户得名。 但借用别国牌照、旗号航海者， 即从牌照、旗号得名， 自当与该国船只一例看待， 无论其船户系局外与否，(↓) 必就牌照而定其名焉。 若系和好时，装载货物 当别国之货记录， 以免彼国征赋重税， 与船之领别国旗、照同例， 则不必因旗号定货入公也。 盖船与货有别， 船系国权赐与牌照， 即从其国得名而不能脱免。(↑)

and the goods, whose character has no such dependence upon the authority of the State. In time of war a more strict principle may be necessary; (↓) but where the transaction takes place in peace, and without any expectation of war, the cargo ought not to be involved in the condemnation of the vessel, which, under these circumstances, is considered as incorporated into the navigation of that country whose flag and pass she bears.	至货物 则系主人自行记录，不凭国权。 若系平时装载， 亦应虑及战争之将起， 即不可与船同定入公。 若战时装载货物记录，从严办理可也。(↑)
23. Sailing under the enemy's license. We have already seen that (1) no commercial intercourse can be lawfully carried on between the subjects of States (2) at war with each other, except by the special permission of their respective governments. As such intercourse can only be legalized (↓) in the subjects of one belligerent State by a license from their own government, it is evident that the use of such a license from the enemy must be illegal, (↓) unless authorized by their own government; for it is the sovereign power of the State alone which is competent to act on the considerations of policy (↓) by which such an exception from the ordinary consequences of war must be controlled. And this principle is applicable not only to (↓) a license protecting a direct commercial intercourse with the enemy, but to a voyage to a country in alliance with the enemy, or even to a neutral port; for the very act of purchasing or procuring the license from the enemy is an intercourse with him prohibited by the laws of war:	**第二十三节　领照于敌国** 战时，敌国人民 若非国君应许， 则不能交际往来，(2) 上已言及。(1) 凡人若不得本国牌照，擅敢私行通敌者， 即为犯法。(↑) 若领敌国牌照， 非本国准领者， 亦为犯法。(↑) 盖此事系在例外，其与公事有益有损， 则惟执政者能定之。(↑) 非惟领照于敌国与之通商者犯此例， 即领敌照驶船往敌国之友邦 或往局外之邦者， 亦犯之。(↑) 盖其领照于敌国， 即为交战条规所严禁。

and even supposing it to be gratuitously issued, it must be for the special purpose of furthering the enemy’s interests, by securing supplies necessary to prosecute the war, to which the subjects of the belligerent State have no right to lend their aid, (↓) by sailing under these documents of protection.	敌国所以赐其牌照者， 原为己之裨益， 以应战争之用耳， 我国之民岂可领其牌照， 借为保护 而相助乎?(↑)

CHAPTER II. Rights of War as between Enemies	第二章 论敌国交战之权
1. Rights of war against an enemy.	第一节 害敌有限
In general it may be stated, that the rights of war, in respect to the enemy,	战者于敌可行何权，
are to be measured by the object of the war.	必视其因何而战，
Until that object is attained,	其事未成
the belligerent has, strictly speaking, a right	则尽法以成之，
to use every means necessary to accomplish the end for which he has taken up arms.	皆属战者之权。
We have already seen that the practice of the ancient world,	古人以为
and even the opinion of some modern writers on public law, (↓)	
made no distinction as to the means to be employed for this purpose.	战时无不可用之法，
	即迩来公师同其说者，不无其人。(↑)
Even such institutional writers as Bynkershoek and Wolf,	宾、俄二氏
who lived in the most learned and not least civilized countries of Europe,	虽其本国教化兴隆，文学淹博，
at the commencement of the eighteenth century, assert the broad principle, that	尚于一千八百年间明言
every thing done against an enemy is lawful;	如能加害于敌，无不可为之事。
that he may be destroyed, though unarmed and defenceless;	即不带兵仗无以护身者亦可捕杀，
that fraud, and even poison, may be employed against him;	诡谋、设毒亦可试用，
and that an unlimited right is acquired by the victor to his person and property.	其身、其货既已擒拿，均归胜者之权而无所限制。
Such, however,	但
was not the sentiment and practice of enlightened Europe at the period when they wrote;	欧罗巴诸国不从其论，并未如此凶残而行也。
since Grotius had long before inculcated milder and more humane principles,	盖虎哥早以仁义之道而论交战条规矣，
which Vattel subsequently enforced and illustrated,	发得耳继之昭著其义，
and which are adopted by the unanimous concurrence of all the public jurists of the present age.	近今公师无一不从之者。
2. Limits to the rights of war against the persons of an enemy.	第二节 害敌之权至何而止
The law of nature has not precisely determined (1)	若王法不及之处，(6)
how far an individual is allowed to make use of force, (2)	人有害我者，(4)
either to defend himself (3)	我用力保护自身，(3)
against an attempted injury, (4)	或令其抵偿，(5)
or to obtain reparation (5)	或报复于彼，(7)
	当何所底止？(2)

when refused by the aggressor, (6) or to bring an offender to punishment. (7) We can only collect from this law the general rule, (8) that such use of force as is necessary for obtaining these ends is not forbidden. (9) The same principle applies to the conduct of sovereign States, existing in a state of natural independence with respect to each other. No use of force is lawful, except so far as it is necessary.	以理法论之颇为难定，(1) 惟尽力以成其事而后已，(8) 不为违理也。(8) 邦国交际之道亦然， 至于用力若非不得已之事，即是违理也。虽为不得已，而加害过分者亦是违理也。
A belligerent has, therefore, no right to take away the lives of those subjects of the enemy whom he can subdue by any other means. (↑) Those who are actually in arms, and continue to resist, may be lawfully killed; but the inhabitants of the enemy's country who are not in arms, or who, being in arms, submit and surrender themselves, may not be slain, because their destruction is not necessary for obtaining the just ends of war. Those ends may be accomplished by (↓) making prisoners of those who are taken in arms, or compelling them to give security that they will not bear arms against the victor for a limited period, or during the continuance of the war.	是以战者 若有别法以降敌，(↓) 即不可杀其国之兵民， 惟带兵仗抗拒而不降者可杀， 其不带兵仗或带兵仗而投降者皆不可杀， 盖虽杀之亦无益于战事。 或可生擒拘系； 或限以日期令其交保， 以保其所限日内必不再带兵仗而来攻我； 或不限日期令其交保，直俟战毕终不带兵仗而来攻我也， 皆于大事无害而反有益焉。(↑)
The killing of(↓) prisoners can only be justifiable in those extreme cases where resistance on their part, or on the part of others who come to their rescue, renders it impossible to keep them. Both reason and general opinion concur in showing, (↓) that nothing but the strongest necessity will justify such an act.	生擒者 若非其人抗逆不服， 又非敌兵来救谋为内应， 致难守住， 则断不可因他故杀之。(↑) 总之，非万不得已之势， 杀生擒者实为伤天害

	理，(↑)其必获罪于天而不能免也。
3. Exchange of prisoners of war.	**第三节 互换俘虏**
According to the law of war, as still practiced by savage nations, (↓)	
prisoners taken in war are put to death.	生擒者杀之， 夷狄交战常例也。(↑)
Among the more polished nations of antiquity,	古时少知礼义之邦
this practice gradually gave way to	渐革旧规，
that of making slaves of them.	即不残害其命，但捕其身为奴，
For this, again, was substituted that of ransoming,	继而听其以金赎身，
which continued through the feudal wars of the middle age.	直至数百年前尚有行之者。
The present usage of exchanging prisoners was not firmly established in Europe until some time in the course of the seventeenth century.	二百年来，互换俘虏以为定制，
Even now, this usage is not obligatory among nations who choose to insist upon a ransom for the prisoners taken by them,	然索金为赎不为犯公法也。
or to leave their own countrymen in the enemy's hands until the termination of the war.	或竟不赎，直至战毕时始行赎还，亦不为犯公法也。
Cartels for the mutual exchange of prisoners of war	若互换俘虏，
are regulated by special convention between the belligerent States, (↓)	
according to their respective interest and views of policy.	则两国各出己意，
	定立章程可也。(↑)
Sometimes prisoners of war are permitted, by capitulation, to return to their own country,	有时困兵投降，言明必准我回国，
upon condition not to serve again during the war,	并应允我国若无虏兵若干释放以为抵换，必不复来攻战，
or until duly exchanged;	后经虏兵抵换则仍可与战也。
and officers are frequently released upon their parole,	有官弁被虏者，则常以言出为凭而释之，
subject to the same condition.	盖信其未经抵换必不带兵故也。
Good faith and humanity ought to preside over (↓)	
the execution of these compacts,	凡遇此等事，必须
	仁以主议，信以行言。(↑)
which are designed to mitigate the evils of war,	盖其意乃免交战之凶残，
without defeating its legitimate purposes.	非致其战之不成也。
By the modern usage of nations, (↓)	

commissaries are permitted to reside in the respective belligerent countries, to negotiate and carry into effect the arrangements necessary for this object. Breach of good faith in these transactions can be punished only by withholding from the party guilty of such violation the advantages stipulated by the cartel; or, in cases which may be supposed to warrant such a resort, by reprisals or vindictive retaliation.	现今遣使驻扎敌国办理换虏， 以为常例。（↑） 若有失约之罪， 固不能加以刑罚，唯有不归其约内所许益处， 或遇重大之故亦可报复。
4. Persons exempt from acts of hostility. All the members of the enemy State may lawfully be treated as enemies (↓) in a public war; but it does not therefore follow, that all these enemies may be lawfully treated alike; though we may lawfully destroy some of them, it does not therefore follow, that we may lawfully destroy all. For the general rule, derived from the natural law, is still the same, that no use of force against an enemy is lawful, (↓) unless it is necessary to accomplish the purposes of war. The custom of civilized nations, founded upon this principle, has therefore exempted (↓) the persons of the sovereign and his family, the members of the civil government, women and children, cultivators of the earth, artisans, laborers, merchants, men of science and letters, and, generally, all other public or private individuals engaged in the ordinary civil pursuits of life, (↓) from the direct effect of military operations, unless actually taken in arms, or guilty of some misconduct in violation of the usages of war, by which they forfeit their immunity.	**第四节 何等人不可杀害** 凡遇有公战， 敌国人民俱可以敌视之，（↑） 惟不可 一律看待。 盖敌人有分别也，其间有公法所许灭者，不可混视而尽灭之。 盖有大纲 本于天理， 以总括万事而不变易， 苟非不得已以成大事， 则不可另行加害于敌也。（↑） 按奉教诸国常例， 有数等人虽战时不可害其身，即如 国君并其家属、 文官、士人、 妇人、孩提、 农夫、工匠、负贩、商贾 与民间各等行业 不属武事者， 无论公私均不可特意加害。（↑） 第带兵仗交战， 或别犯交战条规者， 即失此权利。

5. Enemy's property, how far subject to capture and confiscation.	**第五节 敌人之产业**
The application of the same principle	上节所言之大纲，
has also limited and restrained	亦含限制
the operations of war against the territory and other property of the enemy.	战者抄掠敌人地方财货之意。
From the moment one State is at war with another,	夫两国交战，
it has, on general principles, a right to seize on all the enemy's property,	此国本有权可捕彼国之物，
of whatsoever kind and wheresoever found,	无论何等何处，
and to appropriate the property thus taken to its own use,	均可拿为己用，
or to that of the captors.	或赏赐己兵。
By the ancient law of nations,	若依古例，
even what were called *res sacra* were not exempt from capture and confiscation.	虽庙内奉神圣物亦不免于捕拿入公，
Cicero has conveyed this idea in his expressive metaphorical language, in the Fourth Oration against Verres, where he says that	德哩所云
"Victory made all the sacred things of the Syracusans *profane*."	"败则圣物亦为凡物"是也。
But by the modern usage of nations, which has now acquired the force of law,	但按现今严例，
	万国所必遵者有数等。房屋、物件战时置于害外，(↓)
temples of religion,	即如敬神庙宇、
public edifices devoted to civil purposes only,	文职公廨、
monuments of art, and repositories of science,	学堂书房并奇异之名物等类，
are exempted from the general operations of war. (↑)	
Private property on land	民间货物在岸上者
is also exempt from confiscation,	亦置于战权之外。
with exception of such (↓)	
as may become booty in special cases,	但于疆场之上夺来货物，
when taken from enemies in the field or in besieged towns,	或攻人城池而得其货者，
	则皆不得恃此权利幸免。(↑)
and of military contributions levied upon the inhabitants of the hostile territory.	至破人敌境令其民捐输军费，与例不悖。
This exemption extends even to the case of an absolute and unqualified conquest of the enemy's country.	但实系何人何物应置害外，此等款例，虽征服并吞敌国者亦必遵而行之也。
In ancient times,	依古例，
both the movable and immovable property of the vanquished passes to the conqueror.	动物、植物皆归胜者，
Such was the Roman law of war, often asserted with	即如罗马律法甚严，其

unrelenting severity; (1) and such was the fate of the Roman provinces (2) subdued by the northern barbarians, (3) on the decline and fall of the western empire. (4) A large portion, from one third to two thirds, of the lands belonging to the vanquished provincials, was confiscated and partitioned among their conquerors. The last example in Europe of such a conquest was that of England, by William of Normandy. Since that period, among the civilized nations of Christendom, conquest, even when confirmed by a treaty of peace, has been followed by no general or partial transmutation of landed property. The property belonging to the government of the vanquished nation passes to the victorious State, which also takes the place of the former sovereign, in respect to the eminent domain. In other respects, private rights are unaffected by conquest.	视征服之地，每有如此而行者。(1) 及国势衰微，(4) 经北狄征服，(3) 自亦循环受报，(2) 乡间田产，狄君于是将其三分之二 入公。 八百年前，挪满君韦良征服英国，其待英人也亦复如此。 以后 奉教之国交战， 虽有征服地方立和约而定为属邦者， 亦并无将其田产、植物强换主人之事。 惟征服之国所有公地、公物 皆归胜者， 民间私产则归其在上之主权， 谓其年租、税银悉奉得胜之君。 此外并无所变易。
6. Ravaging the enemy's territory, when lawful? The exceptions to these general mitigations of the extreme rights of war, considered as a contest of force, all grow out of the same original principle of natural law, which authorizes us to use against an enemy such a degree of violence, (↓) and such only, as may be necessary to secure the object of hostilities. The same general rule, which determines (1) how far it is lawful to destroy the persons of enemies, (2) will serve as a guide in judging (3) how far it is lawful to ravage or lay waste their country. (4) If this be necessary, in order to accomplish the just ends of war,	**第六节 抄掠敌境** 以上数款， 皆为限制交战之权而设， 使两国角力之时 不至凶残过分。 盖以力攻敌虽属可行， 然得已则已， 尤天理所当然， 而不可肆其凶暴也。(↑) 敌国何人可杀，(2) 既有大纲以定之，(1) 至抄掠地方复当如何，(4) 亦依此大纲而断也。(3) 若因恐战事不成，不得已而为之，

it may be lawfully done, but not otherwise. Thus, if the progress of an enemy cannot be stopped, nor our own frontier secured, or if the approaches to a town intended to be attacked cannot be made without laying waste the intermediate territory, the extreme case may justify a resort to measures not warranted by the ordinary purposes of war. If modern usage has sanctioned any other exceptions, they will be found in the right of reprisals, or vindictive retaliation. The whole international code is founded upon reciprocity. The rules it prescribes are observed by one nation, in confidence that they will be so by others. Where, then, the established usages of war are violated by an enemy, and there are no other means of restraining his excesses, retaliation may justly be resorted to by the suffering nation, in order to compel the enemy to return to the observance of the law which he has violated. **Discussions between the American and British governments upon this subject, during the late war.** The last war between the United States and Great Britain was marked by a series of destructive measures on the part of the latter, directed against both persons and property hitherto deemed exempt from hostilities by the general usage of civilized nations. These measures were attempted to be justified, as acts of retaliation for similar excesses on the part of the American forces on the frontiers of Canada, in a letter addressed (省略一句 P.421 to Mr. Secretary Monroe, by Admiral Cochrance, commanding the British naval forces on the North American station, dated on board his flagship in the Patuxent river, on the 18th of August, 1814.) In this communication it was stated that the British admiral, having been called upon by the government-general of the Canadas to aid him in carrying into effect measures of retaliation against the inhabitants of the United States,	则不为犯法， 否则断断不可也。 即如敌来攻我，我兵不能截住， 我疆难于保守， 或攻击城池无路前进， 则附近村庄任其烧毁， 但此乃万不得已之势， 为交战所鲜有者，虽偶尔从权，实交战条规所禁也。 诸国遵守公法， 全赖彼此相应， 此国所以遵守者， 盖信彼国不犯之故。 敌国若有干犯交战常例， 倘无别法以扼其狂， 尽可照行还报， 令其不敢复蹈前辙。 前时英、美两国交战， 英国屡次捕人毁货， 为交战条例所置于害外者。 英国水师提督行文辨其事， 谓美国兵犯其属部加拿大时，曾行此不法之事， 故其来书云： “加拿大总督曾禀我， 以美国之人擅毁我国民物，（↓） 请即还报复仇。

for the wanton destruction committed by their army in Upper Canada, （↑）	
it had become the duty of the admiral to issue to the naval forces under his command an order to destroy and lay waste such towns and districts on the coast as might to found assailable.	本提督于是令下，遂命水师烧毁美国之海旁城邑。”
In the answer of the American government to this communication, dated at Washington on the 6th of September, 1814, it was stated that	美国答其书云：
（省略 P. 422it had seen, with the greatest surprise, that this system of devastation which had been practiced by the British forces, so manifestly contrary to the usages of civilized warfare, was placed on the ground of retaliation. ）	
No sooner were the United States compelled to resort to war against Great Britain,	“我之与英交战实系不得已，
than they resolved to wage it in a manner most consonant to the principles of humanity, and to those friendly relations which it was desirable to preserve between the two nations, after the restoration of peace.	原不欲弃仁义而遗臭于后世也，
They perceived, however, with the deepest regret, that a spirit alike just and humane, was neither cherished nor acted on by the British government.	但英不惟挑唆
Without dwelling on the deplorable cruelties committed by the Indian savages, （省略一段 P. 422in the British ranks and in British pay, at the river Raisin, which had never been disavowed or atoned for, ）	红苗广行凶杀，
（省略一段 P. 422 the American government referred, as more particularly connected with the subject of the above communication, to the wanton desolation that was committed, in 1813, at Havre-de-Grace and Georgetown, in the Chesapeake Bay. ）	
These villages were burnt and ravaged by the British naval forces, to the ruin of their unarmed inhabitants,	且于去岁先烧毁我海口数镇，
（省略一段 P. 422 who saw with astonishment that they derived no protection to their property from the laws of war. During the same season, scenes of invasion and pillage, carried on under the same authority, were witnessed all along the shores of the Chesapeake, to an extent inflicting the most serious private distress, and under circumstances that justified the suspicion, that revenge and cupidity, rather than the manly motives that should dictate the hostility of a high-minded foe, led to their perpetration. ）	
The late destruction of the houses of the government at Washington, was another act which came necessarily into view.	迩来又破我京都。
In the wars of modern Europe, no example of the kind, even among nations the most hostile to each other, could	夫烧毁公宇一事，为欧罗巴诸国所不敢行者，

be traced. In the course of ten years past, the capitals of the principal powers of the European continent had been conquered, and occupied alternately by the victorious armies of each other, and no instance of such wanton and unjustifiable destruction had been seen. They must go back to distant and barbarous ages, to find a parallel for the acts of which the American government complained. Although these acts of desolation invited, if they did not impose on that government the necessity of retaliation, yet in no instance had it been authorized. The burning of the village of Newark, in Upper Canada, posterior to the early outrages above enumerated, was not executed on the principle of retaliation. The village of Newark adjoined Fort George, and its destruction was justified, by the officers who ordered it, (↑) on the ground that it became necessary in the military operations there. The act, however, was disavowed by the American government. The burning which took place at Long Point was unauthorized by the government, and the conduct of the officer had been subjected to the investigation of a military tribunal. For the burning at St. David's, committed by stragglers, the officer who commanded in that quarter was dismissed, without a trial, for not preventing it. (省略 P.423 一段) That the government would always be ready to enter into reciprocal arrangements; but should the British government adhere to a system of desolation, (↓) so contrary to the views and practices of the United States, so revolting to humanity, and so repugnant to the sentiment and usages of the civilized world, whilst it would be seen with the deepest regret, it must and would be met with a determination and constancy becoming a free people, (↓)	十年来诸国之京都屡被占踞， 皆无如此烧毁者。 古时教化未开之先，间或有之， 此殆欲强逼我之还报耳。 而我从来不许我兵行此等事以复己仇。 即我兵后毁英地一小村， 非以还报前屈， 乃据总兵禀称（↓） 此村与炮台毗连， 不毁其村，即不能攻击炮台， 盖实不得已之举。 然我国犹不许其事， 而拿该总兵交军营刑官审究。 至于第二村系乱兵所毁， 而该地总兵业已黜革， 为不能预防其事故也。 英国以义待我，我无不以义报之。 但英 所为之事与人情不合， 与教化之理相悖， 我则深耻之。 若欲仍行此等不法之事，（↑）

contending in a just cause for their essential rights and their dearest interests. 省略一段(p.424-425)	我以自主之国，有自护之权， 必将尽力抵御，不能少有所让也。”（↑）
In the debate which took place in the House of Commons on the 11th of April, 1815, on the address of the Prince Regent on the treaty of peace with the United States, Sir James Mackintosh (省略 p.425.accused the ministers of culpable delay in opening the negotiations at Ghent; which, he said could not be explained, except on the miserable policy of protracting the war for the sake of striking a blow against America. The disgrace of the naval war, of balanced success between the British navy and the new-born marine of America, was to be redeemed by protracted warfare, and by pouring their victorious armies upon the American continent. That opportunity, fatally for them, arose. If the Congress had opened in June, it was impossible that they should have sent out orders for the attack on Washington.)	次年，英之国会议论其事， 有英国公师麦金督士者云：
They would have been saved from that success, which he considered as a thousand times more disgraceful and disastrous than the worst defeat.	“如此而胜，不如败之愈也。
It was a success which had made their naval power hateful and alarming to all Europe.	盖此事不惟遗臭于欧罗巴诸国，并使之恨且惧焉， 尤令美国之人齐心记怨，后将喜英被敌而助敌以攻之也，
It was a success which gave the hearts of the American propel to every enemy who might rise against England. It was an enterprise which most exasperated a people, and least weakened a government, of any recorded in the annals of war.	于长久之政既有大害，
For every justifiable purpose of present warfare, it was almost impotent. (省略几句 P.425 To every wise object of prospective policy, it was hostile. It was an attack, not against the strength of the resources of a State, but against the national honor and public affections of a people. After twenty-five years of the fiercest warfare, in which very great capital of the European continent had been spared, he had almost said respected, by enemies,)	更与当时战事毫无裨益。
it was reserved for England to violate all that decent courtesy towards the seats of national dignity, which, in the midst of enmity, manifest the respect of nations for each other,	惟我英创此大恶，
by an expedition deliberately and principally directed against palaces of government, halls of legislation,	夫邻国尊爵所居、
tribunals of justice,	法院所集、
repositories of the muniments of property, and of the	文契史鉴所藏，

records of history; objects, among civilized nations, exempted from the ravages of war, and secured, as far as possible, even from its accidental operation, (省略一段 p.425-426because they contribute nothing to the means of hostility, but are consecrated to purposes of peace, and minister to the common and perpetual interest of all human society...It seemed to him an aggravation of this atrocious measure, that … To make such retaliation just, there must always be clear prof of the outrage; The value of a capital is not to be estimated by its houses, … To put all these respectable feelings of a great people, sanctified by the illustrious name of Washington, on a level with half a dozen wooden sheds in the temporary seat of a provincial government,) was an act of intolerable insolence, and implied as much contempt for the feelings of America as for the common sense of mankind. **Restitution of the works of art in the Museum of the Louuvre at Paris in 1815, to the countries from which they had been taken during the wars of the French revolution.** The invasion of France by the allied powers of Europe, in 1815, (1) was followed by the forcible restitution of (2) the pictures, statues, and other monuments of art, (3) collected from different conquered countries (4) during the wars of the French revolution, (5) and deposited in the museum of the Louvre. (6) (省略一段 p.426-429)	服化之邦 有定例置于战权外者， 惟恐偶遭伤害也，而我竟率兵特毁之，甚为可耻。 此非独藐视美国之人， 实乃藐视万国之公法也。” 法君拿波良第一曾经征服多国，(5) 尽将其(4) 奇妙名物(3) 掳至法都，(6) 后诸国合兵破其京师，(1) 议和约时云“此物皆是战权外物”，即将各物分开，交还原主。(2)
7. Distinction between private property, taken at sea, or on land. The progress of civilization has slowly, but constantly, tended to soften the extreme severity of the operations of war by land; but it still remains unrelaxed in respect to maritime warfare, in which the private property of the enemy taken at sea or afloat in port, is indiscriminately liable to capture and confiscation. This inequality in the operation of the laws of war, by land and by sea, has been justified by alleging the usage of considering private property, when captured (↓) in cities taken by storm,	**第七节 水陆捕拿不同一例** 陆路交战，其法较前更宽， 虽敌国民物不准抢劫，但水师交战其例尚严， 即敌国民物在大海之上，或在港口船上者， 皆可捕拿， 此乃水陆不同一例。 有人议之云： “陆路围城而破之者，

as booty; and the well-known fact that contributions are levied upon territories occupied by a hostile army, in lieu of a general confiscation of the property belonging to the inhabitants; and that the object of wars by land being conquest, or the acquisition of territory to be exchanged as an equivalent for other territory lost, the regard of the victor for those who are to be or have been his subjects, naturally restrains him from the exercise of his extreme rights in this particular; whereas, the object of maritime wars is the destruction of the enemy's commerce and navigation, the sources and sinews of his naval power --- which object can only be attained (↓) by the capture and confiscation of private property.	常有掳民货(↑) 为战利， 攻进敌国占据其地，亦常令其民捐助， 以免其货入公者。 此乃陆路交战之例， 与水师捕拿民物似异而实同也。 且陆路所以不捕拿抢劫者， 盖胜者屡以所踞之地为己地、所服之民为己民，故不欲以敌视之也。 若海上之战， 则以敌国通商获利， 恐得钱粮足以养兵， 故捕拿民物以绝其利薮， 使不能不复行和好也。”(↑)
8. What persons are authorized to engage in hostilities against the enemy. The effect of a state of war, lawfully declared to exist, is to place all the subjects of each belligerent power in a state of mutual hostility. The usage of nations has modified this maxim, by legalizing such acts of hostility only as are committed by those who are authorized by the express or implied command of the State. Such are the regularly commissioned naval and military forces of the nation, and all others called out in its defence, or spontaneously defending themselves in case of urgent necessity, without any express authority for that purpose. Cicero tells us, in his *Offices*, that by the Roman fecial law, no person could lawfully engage in battle with the public enemy, (↓)	**第八节 何人可以害敌** 既照例宣战， 两国人民互相视若仇敌， 本系战例，但诸国渐有变易此规者。 若奉国权派令以害敌人， 无论其令之或明或默，固可竭力以害之，但其未曾派令而私以害敌者，即为公法所严禁也。 水师、陆卒及乡勇， 固皆护国者，战时即可害敌， 且敌来攻击，庶民自护， 不得已而害之，则不为违例。 按罗马律法，

without being regularly enrolled and taking the military oath. This was a regulation sanctioned both by policy and religion. The horrors of war would indeed be greatly aggravated, (↓) if every individual of the belligerent States was allowed to plunder and slay indiscriminately the enemy's subjects, without being in any manner accountable for his conduct. Hence it is that in land wars, irregular bands of marauders are liable to be treated as lawless banditti, not entitled to the protection of (↓) the mitigated usages of war as practiced by civilized nations.	凡人若不登名入军，发立军誓， 则不得与敌交战，(↑) 此例与天理相合，与人世有益。 盖两国之民若云相遇即可相杀，任凭劫掠， 又无统领以制其所行， 则交战更为凶残。(↑) 所以陆路交战时， 有散兵劫掠 必以之为强盗，置于法外。 依例而战者，即依例而款待之， 但法外掳掠者，不得借战名以护其身耳。(↑)
9. Non-commissioned captures. It must probably be considered as a remnant of the barbarous practices (1) of those ages when maritime war and piracy (2) were synonymous, that (3) captures (4) made by private armed vessels, (5) without a commission, not merely in self-defence, (6) but even by attacking the enemy, (7) are considered lawful, (8) (省略 p.430not indeed for the purpose of vesting the enemy's property thus seized in the captors, but to prevent their conduct from being regarded as piratical, either by their own government or by the other belligerent State.) Property thus seized is condemned to the government as prize of war, or, as these captures are technically called, Droits of Admiralty. The same principle is applied to (↓) the capture made by armed vessels commissioned against one power, when war breaks out with another;	**第九节 船无战牌而捕货者** 古之时，海船几与强盗(2) 抢掳(4) 相同，无所差别。(3) 而水师战例至今尚有一款，犹为彼时遗风，(1) 不但领战牌之民船，(5) 即未曾领战牌之民船，(6) 若攻击敌人，(7) 捕拿其货，(4) 不为犯例。(8) 但其所捕拿之货物定为人公， 而不归己用耳。 兵船领牌照以攻伐某国， 若后与别国有战事，乘机攻击，

the captures made from that other are condemned, not to the captors, but to the government.	与上无殊，（↑） 所捕之货亦定入公， 不归捕者战利也。
10. Privateers. The practice of cruising with private armed vessels commissioned by the State, has been hitherto sanctioned by the laws of every maritime nation, as a legitimate means of destroying the commerce of an enemy. （↑） This practice has been justly arraigned as liable to gross abuses, as tending to encourage a spirit of lawless depredation, and as being in glaring contradiction to the more mitigated modes of warfare practices by land. Powerful efforts have been made by humane and enlightened individuals to suppress it, （↓） as inconsistent with the liberal spirit of the age. The treaty negotiated by Franklin, （↓） between the United States and Prussian, in 1785, by which it was stipulated that, in case of war, neither power should commission privateers to depredate upon the commerce of the other, furnishes an example worthy of applause and imitation. But this stipulation was not revived on the renewal of the treaty, in 1799; and it is much to be feared that, so long as maritime captures of private property are tolerated, this particular mode of injuring the enemy’s commerce will continue to be practiced, especially where it affords the means of countervailing the superiority of the public marine of an enemy.	**第十节 民船领战牌者** 赐照与民船， 使之巡洋以绝敌国贸易之利，（↓） 向来各国皆为常规矣， 但有人驳之云： “极其流弊 必启人民盗掠之心， 且与陆路宽仁之例不合。” 故后有仁人明师， 以其与盛世教化大相径庭， 每力劝诸国禁革此例。（↑） 即如美国与普鲁斯于一千七百八十五年间立约， 为佛蓝林所议定者，（↑） 约上有一款云： “日后我两国倘有交战， 彼此必不赐牌与民船， 令之抢劫敌国商货。” 此议极美，足可为法于天下。 但四年后复新和约，遗去此款，为可惜耳。 兵船捕民货，或民船领牌照以捕货，俱归一理。 诸国既不废其一，更难望废其二矣。 盖兵船不多之国，可以之抵御海势强盛之国，此为尤不肯废之故。
11. Title to property captured in war. The title to property lawfully taken in war may,	**第十一节 被捕之货可讨与否** 战时照例捕货，

upon general principles, (↓) be considered as immediately divested from the original owner, and transferred to the captor. This general principle is modified by the positive law of nations, in its application both to personal and real property. As to personal property, or movables, the title is, in general, considered as lost to the former proprietor, as soon as the enemy has acquired a firm possession; (↑) which, as a general rule, is considered as taking place after the lapse of twenty-four hours, or after the booty has been carried into a place of safety, *infra presidia* of the captor.	既捕之后，其货与原主已绝， 全属捕之之人， 此大例也。(↑) 然各国有律法以限制之， 论动物， 若捕货者能以坚守，(↓) 则货物系已失其原主。 所谓坚守者， 如历一昼夜之久， 或将其货寄于城池、营垒之内， 原主即不能讨还矣。
12. Recaptures and salvage. As to ships and goods captured at sea, and afterwards recaptured, rules are adopted somewhat different from those which are applicable to other personal property. These rules depend upon the nature of the different classes of cases to which they are to be applied. Thus the recapture may be made either from a pirate; (a)from a captor, clothed with a lawful commission, but not an enemy; or, lastly, from an enemy. **Recaptures from pirates** 1. In the first case, there can be no doubt the (↓) property ought to be restored to the original owner; for as pirates have no lawful right to make captures, the property has not been divested. The owner has merely been deprived of his possession, to which he is restored by the recapture. For the service thus rendered to him, the recaptor is entitled to a remuneration in the nature of salvage. Thus, by the Marine ordinance of Louis XIV., of 1681, liv.iii. tit.9, des Prises, art 10, it is provided, that the ships and effects of the subjects or allies of France,	**第十二节 夺回救货之例** 若论海上船只、货物 被敌人捕拿 后经夺回者， 其例与别样动物少异。 然此类区别有三，各有款例以治其事： 被海盗所掳者，一也； 人非敌人，惟领牌照而捕之者，二也； 被敌兵捕拿，三也。 其一，海盗所掳者， 如经夺回，必当复归原主， 断无疑议。(↑) 盖强盗既无捕货之权， 原主即未失有货之权明矣。 然替货主夺回此货者， 照例当得救货之赏。 法国海法有条云： “法民或友邦之民，有船只、货物

retaken from pirates,	被海盗所掳，而后经救回者，
and claimed within a year and a day after being reported at the Admiralty,	限于一年零一日内，货主可上控于海法院。
shall be restored to the owner, upon payment of the one third of the value of the vessel and goods, as salvage.	其例以三分之二还于原主，以一分为救货之赏。”
And the same is the law of Great Britain, but there is no doubt that the municipal law of any particular State may ordain a different rule as to its own subjects.	英法亦照此例。
Thus the former usage of Holland and Venice	荷兰与威内萨前有定例，
gave the whole property to the retakers,	凡攻盗而夺回之民货，全行充赏，以为勉励剿灭海盗之款，
on the principle of public utility;	盖此于公不为无益也。
as does that of Spain,	西班牙例，
if the property has been in the possession of the pirates twenty-four hours.	必货入盗手历一昼夜，方不准原主讨还。
Valin, in his commentary upon the above article of the French Ordinance, is of opinion that	发林论法国海法之例云：
(省略P.438if the recapture be made by a foreigner, who is the subject of a State, the law of which gives to the recaptors the whole of the property, it could not be restored to the former owner: and he cites, in support of this opinion, a decree of the Parliament of Bordeaux, in favor of a Dutch subject, who had retaken a French vessel from pirates. To this interpreatation Pothier objects that the laws of Holland having no power over Frenchmen and their property within the territory of France, the French subject could not thereby be deprived of the property in his vessel, which was not divested by the piratical capture according to the law of nations, and that it ought consequently to be restored to him upon payment of the salvage prescribed by the ordinance. Under the term *allies* in this article are included neutrals; and Valin holds that)	
the property of the subjects of friendly powers, retaken from pirates by French captors,	“友邦之货被盗所掳，而经我国人夺回者，
	倘其海法系以货全归捕者，(↓)
ought not to be restored to them upon the payment of salvage,	即不当还原主。”
if the law of their own country gives it wholly to the retakers; (↑)	
otherwise there would be a defect of reciprocity,	盖照其所行而行，
which would offend against that impartial justice due from one State to another.	亦不违公义之道也。
Recapture of neutral property.	

2. If the property be retaken (↓) from a captor clothed with a lawful commission, but not an enemy, there would still be as little doubt that it must be restored to the original owner. For the act of taking being in itself a wrongful act, could not change the property, which must still remain in him. If, however, the neutral vessel thus recaptured, were laden with contraband goods destined to an enemy of the first captor, it may, perhaps, be doubted whether they should be restored, inasmuch as they were liable to be confiscated as prize of war to the first captor. Martens states the case of a Dutch ship, captured by the British, under the rule of the war of 1756, and recaptured by the French, which was adjudged to be restored by the Council of Prizes, upon the ground that the Dutch vessel could not have been justly condemned in the British prize courts. But if the case had been that of a trade, considered contraband by the law of nations and treaties, the original owner would not have been entitled to restitution. In general, no salvage is due (↓) for the recapture of neutral vessels and goods, upon the principle that the liberation of a *bona fidei* neutral from the hands of the enemy of the captor is no beneficial service to the neutral, (↓) inasmuch as the same enemy would be compelled by the tribunals of his own country to make restitution of the property thus unjustly seized. (省略 440-443 It was upon this principle that the Courts of Admiralty, both of Great Britain and the United States, during the maritime war which was terminated by the peace of Amiens, pronounced salvage to be due upon	其二， 兵船及领牌民船非属敌国者，捕拿货物， 其货后经夺回，(↑) 当还原主，亦不得异议。 盖既系误行捕货， 不能绝其有货之权。 若其船虽属友邦， 但所载之货多系犯禁之物， 且欲售与敌国者， 被捕则不必给还， 盖捕者照例即可以为战利也。 即如前有荷兰船被英所捕， 经法国之战利法院 断还原主， 盖云： “此荷兰船，照例英国战利法院不得定为入公，故我亦不能定为入公焉。” 然若该船货物系犯公法，与盟约所禁者， 则原主不得讨还。 至局外之船只、货物经人夺回， 则不行救货之赏。(↑) 盖 既系局外捕之者即不当捕， 战利法院必令之交还， 夺回者固与货主无益，故不得讨赏也。(↑)

neutral property retaken from French cruisers. During the revolution in France, great irregularity and confusion had arisen in the prize code formerly adopted, and had crept into the tribunals of that country, by which neutral property was liable to condemnation upon grounds both unjust and unknown to the law of nations. The recapture of neutral property, which might have been exposed to confiscation by means of this irregularity and confusion, was, therefore, considered by the American and British courts of prize, as a meritorious service, and was accordingly remunerated by the payment of salvage. …)	
Recapture from an enemy.	
3. Lastly, the recapture may be made from an enemy.	其三，至于敌人所捕旋经夺回之物，
The *jus postliminii* was a fiction of the Roman law,	罗马国古法
by which persons or things taken by the enemy were held to be restored to their former state, when coming again under the power of the nation to which they formerly belonged.	以为复归原主。
It was applied to (↓)	
free persons or slaves returning *postiliminii*; and to real property and certain movables, such as ships of war and private vessels,	其人民、仆婢、植物、动物以及兵船、民船
	皆从此例，(↑)
except fishing and pleasure boats. (↓)	
These things, therefore, when retaken, were restored to the original proprietor,	凡此者若经夺回皆还原主，
as if they had never been out of his control and possession.	与未失之时无异，
	惟捕鱼、戏玩之船不在此例。(↑)
Grotius attests, and his authority is supported by that of the Consolato del Mare, that	虎哥云：
by the ancient maritime law of Europe,	“古之海法，
if the thing captured were carried *infra presidia* of the enemy,	其物既进于城池、营垒，
the *jus poliliminii* was considered as forfeited,	复原之权即为已失，
and the former owner was not entitled to restitution.	故货主不能讨还。
Grotius also states, that by the more recent law established among the European nations,	迩来之公法，
a possession of twenty-four hours	捕者能坚守一昼夜之久，
was deemed sufficient to divest the property of the original proprietor,	虽不进营垒，(↓)
even if the captured thing had not been carried *infra pradisia*. (↑)	亦为已绝主权。”
And Loccenius considers	陆济尼云：
the rule of the twenty-four hours possession	“历一昼夜之久，其货之权即与原主相绝，

as the general law of Christendom at the time when he wrote. So, also, Bynkershoek states the general maritime law to be, that (↓) if a ship or goods be carried *infra pradisia* of the enemy, or of his ally, or of a neutral, the title of the original proprietor is completely divested. （省略 444-456）	为现今之通例。” 宾克舍云： “船只、货物既进城池、营垒， 无论其处系敌国、 系友国、 系局外者， 皆与原主之权断绝， 此乃海法之通例也。”（↑）
13. **Validity of maritime captures, determined in the courts of the captor’s country. Condemnation of property lying in the ports of an ally.** The validity of maritime captures must be determined in a court of the captor’s government, sitting either in his own country or in that of its ally. This rule of jurisdiction applies, (↓) whether the captured property be carried into a port of the captor’s country, into that of an ally, or into a neutral port. Respecting the *first* case, there can be no doubt. In the *second* case, where the property is carried into the port of an ally, there is nothing to prevent the government of the country, although it cannot itself condemn, from permitting the exercise of that final act of hostility, the condemnation of the property of one belligerent to the other; there is a common interest between the two government, and both may be presumed to authorize any measures conducting to give effect to their arms, and to consider each other’s ports as mutually subservient. Such an adjudication is therefore sufficient, in regard to property taken in the course of the operations of a common war. **Property carried into a neutral port.** But where the property is carried into a *neutral* port, it may appear, on principle, more doubtful (↓)	**第十三节　审所捕之船归捕者本国之法院** 海上捕拿船只、货物， 必须捕者之本国法院审断其案。 其法院或驻本国， 或驻盟邦俱可， 抑或带进盟邦， 或带往局外者之海口， 亦无不可，(↑)惟不能驻局外之国耳，若审事则必归本国法院。 带回本国者，固归本国法院审事。 至其带往盟邦者， 则盟邦无权以审之， 然盟邦既与之协力同战， 即准彼国法院借地驻扎， 以成两国友谊， 亦无不合。 若带往局外海口者，

whether the validity of a capture can be determined even by a court of prize established in the captor's country; and the reasoning of Sir W. Scott, in the case of The Henrick and Maria, is certainly very cogent, as tending to show the irregularity of the practice; but he considered that the English Court of Admiralty had gone too far in its own practice (↓) of condemning captured vessels lying in neutral ports, to recall it to the proper purity of the original principle. (省略P.458 In delivering the judgment of the Court of Appeal in the same case, Sir William Grant also held that Great Britian was concluded, by her own inveterate practice, and that neutral merchants were sufficiently warranted in purchasing under such a sentence of condemnation, by the constant adjudications of the British tribunals.) The same rule has been adopted by the Supreme Court of the United States, as being justifiable on principles of convenience to belligerents as well as neutrals; and though the prize was in fact within a neutral jurisdiction, it was still to be considered as under the control of the captor, whose possession is considered as that of his sovereign.	不但不得借地审事，即法院在本国能司其事与否，亦属可疑。(↑) 斯果德云： “此事与理不甚吻合，然我国法院 将船只在局外之海口者定之入公， 已为常事，恐难骤改也。”(↑) 美国上法院亦照此例审断， 以其与战国及局外之国皆有便益， 盖云：“所捕之船虽带至局外， 而其所属仍应在捕者之国。”
14. Jurisdiction of the courts of the captor, how far exclusive. This jurisdiction of the national courts of the captor, to determine the validity of (↓) captures made in war under the authority of his government, is exclusive of the judicial authority of every other country, with two exceptions only: ----1. Where the capture is made within the territorial limits of a neutral State. 2. Where it is made by armed vessles fitted out within the neutral territory. In either of these cases, the judicial tribunals of the neutral State have jurisdiction to determine the validity of the captures thus made, and to vindicate its neutrality (↓)	**第十四节 局外之法院审案** 凡有人借本国之权，战时捕船只、货物， 其本国固可专司其事，定其可否，(↑) 不必问于别国。 然所限制者有二： 捕在局外之地者一也， 在局外之地备船而捕者二也。 遇此二事，则该地法院有权可断其事之合例与否。

by restoring the property of its own subjects, or of other States, in amity with it, to the original owners. These exceptions to the exclusive jurisdiction of the national courts of the captor, (1) have been extended by the municipal regulations (2) of some countries to the restitution of the property of their own subjects, (3) in all cases where the same has been unlawfully captured, (4) and afterwards brought into their ports; (5) thus assuming to the neutral tribunal the jurisdiction of the question of prize or no prize, (6) wherever the captured property is brought within the neutral territory. (7) Such a regulation is contained in the marine ordinance of Louis XIV., of 1681, and its justice is vindicated by Valin, upon the ground that this is done by way of compensation (↓) for the privilege of asylum granted to the captor and his prizes in the neutral port. There can be no doubt that such a condition may be expressly annexed by the neutral State to the privilege of bringing belligerent prizes into its ports, which it may grant or refuse at its pleasure, provided it be done impartially to all the belligerent powers; but such a condition is not implied in a mere general permission to enter the neutral ports. The captor, who avails himself of such a permission, does not thereby lose the military possession of the captured property, which gives to the prize courts of his own country exclusive jurisdiction to determine the lawfulness of the capture. This jurisdiction may be exercised (↓) either whilst the captured property is lying in the	不合，则将其船货还于原主， 无论系己民、系友国之民， 此乃保护局外者之权利故也。(↑) 有时地方律法有条款云：(2) “我国若守局外，而我民货物被别国误捕，(4) 带至本国海口者，(5) 总归本国法院审讯，(1) 给还原主。”(3) 此即货物带至局外之海口，(7) 局外法院定其货物可捕与否，(6) 法国海法有如是之一条也。 发林云：“此非不公也， 盖 局外之国应许战国捕船带进己国海口，彼即听局外之国审察， 以免己民受屈，亦为恕道也。”(↑) 局外之国于捕船带至己国海口者， 或准或禁， 均听其便， 但须秉公而行，不可徇私偏视。 若准其来，明言必归我法院审断可也。若非明言，但准进海口，则不必操其审权。 而捕者不因其许带货物进入海口， 即失管货之权， 其本国仍有审事之权明矣。 无论其船货所在，或在

neural port, or the prize may be carried thence *infra pradisia* of the captor's country where the tribunal is sitting. In either case, the claim of any neutral proprietor, even a subject of the State into whose ports the captured vessel or goods may have been carried, must, in general, be asserted in the prize court of the belligerent country, which alone has jurisdiction of (↓) the question of prize or no prize. (P. 459)	局外海口停泊、 或已带回本国炮台、营垒之内， 皆可行此权也。(↑) 货主虽系局外之人， 亦必听战国法院审案焉， 盖其捕拿合例与否， 惟战国法院有权可断耳。(↑)
15. Condemnation by consular tribunal siting in the neutral country. This jurisdiction cannot be exercised by a delegated authority in the neutral country, such as a consular tribunal sitting in the neutral port, and acting in pursuance of instruction from the captor's State. Such a judicial authority, in the matter of prize of war, cannot be conceded by the neutral State to the agents of a belligerent power within its own territory, where even the neutral government itself has no right to exercise such a jurisdiction, (↓) except in cases where its own neutral jurisdiction and sovereignty have been violated by the capture. A sentence of condemnation, pronounced by a belligerent consul (↓) in a neutral port, is, therefore, considered as insufficient to transfer the property in vessels or goods captured as prize of war, and carried into such port for adjudication.	**第十五节 领事在局外之地者不足断此案** 审此等案， 不能委权于人住于局外之国者， 即领事等官奉命驻扎外国行事，亦不能审之。 虽局外之国愿听其借地审案，亦必不能。 盖除干犯局外权利之案， 则局外之国自无权以审别案，不能授权于人也。(↑) 故有船只、货物捕为战利， 携进局外海口者， 战国领事官住于彼地，虽审其案，(↑) 亦不足断其船只、货物竟为谁属也。
16. Responsibility of the captor's government for the acts of its commissioned cruisers and courts. The jurisdiction of the court of the capturing nation is conclusive upon the question of property in the captured thing.	**第十六节 照例所捕在国不在民** 捕者之国，其法院既已断案， 当即了结， 不得再论捕拿之合例与否。

Its sentence forecloses all controversy respecting the validity of the capture, as between claimant and captors, and those claiming under them, and terminates all ordinary judicial inquiry upon the subject-matter. But where the responsibility of the captors ceases, that of the State begins. It is responsible to other States (↓) for the acts of the captors under its commission, the moment these acts are confirmed by the definite sentence of the tribunals which it has appointed to determine the validity of captures in war.	捕者、讨者并两造所属者， 俱不得再行控告。 然其案既经法院审断，则民事即为国事， 而别国仍可向其国讨索也。 盖捕者既系凭照而捕， 法院又系凭权 而断其事之有罪与否， 皆其国任之矣。(↑)
Unjust sentence of a foreign court, ground of reprisals. Grotius states that a judicial sentence, plainly against right, (*in re minime dubia*,) to the prejudice of a foreigner, entitles his nation to obtain reparation by reprisals: ---- "For the authority of the judge (says he,) is not of the same force against strangers as against subjects. Here is the difference: subjects are bound up and concluded by the sentence of the judge, though it be unjust , so that they cannot lawfully oppose its execution, nor by force recover their own right, on account of the controlling efficacy of that authority under which they live. But strangers have coercive power, (that is, of reprisals, of which the author is treating,) though it be not lawful to use it so long as they can obtain their right in the ordinary course of justice." So, also, Bynkershoek, in treating the same subject, puts an unjust judgment upon the same footing with naked violence, in authorizing reprisals on the part of the State(↓) whose subjects have been thus injured by the tribunals of another State. And Vattel, in enumerating the different modes in which justice may be refused so as to authorize reprisals, mentions (↓) "a judgment manifestly unjust and partial;"	**枉理断案自行理直** 虎哥云： "别国法院倘显有枉理断案致我受害. 我国即可用力自行抵偿。 "盖法司行权 于己民与他国之民不同， 其案既断，己民必服， 虽知有不平， 亦不得以力理直， 至别国则自执理直之权而可以求伸矣。 然若能凭法得义，即不可恃强讨索也。 宾克舍云： "枉理断案与擅行强暴，同是一致。 故别国受此屈抑， 即可用力自行抵偿。"(↑) 发得耳云： "若法院显有屈抑断案，

	别国不必尽服，（↑）
and though he states what is undeniable, that the judgments of the ordinary tribunals ought not to be called in question upon frivolous or doubtful grounds, yet he is manifestly far from attributing to them that sanctity which would absolutely preclude foreigners from seeking redress against them.	然亦不应为小故辄轻易不服也。”
These principles are sanctioned by	故依此例，
the authority of numerous treaties between the different powers of Europe regulating the subject of reprisals, and declaring that	诸国和约屡有条款云：
they shall not be granted （↓）	
unless in case of *the denial of justice*.	“如非明违公义，
	不准自行抵偿。”（↑）
An unjust sentence must certainly be considered a denial of justice, unless the mere privilege of being heard before condemnation is all that is included in the idea of justice.	然屈抑断案即是故违公义矣。
Distinction between municipal tribunals and courts of prize.	
	地方法堂与战利法院有别，（↓）
Even supposing that unjust judgements of municipal tribunals	地方法堂审事不公，
do not form a ground of reprisals,	人民不得因而自行抵偿。
there is evidently a wide distinction in this respect between the ordinary tribunals of the State, （↑）	
proceeding under the municipal law	盖有司凭地方律法以行，
as their rule of decision,	在其地者必当服其辖也。
and prize tribunals,	若战利法院
appointed by its authority, and professing to administer the law of nations	则凭万国公法而行，
to foreigners as well as subjects.	当无本国、别国之分。
The ordinary municipal tribunals acquire jurisdiction over the person or property of a foreigner	地方法堂之辖，别国人
by his consent,	或有明许、或有默许，
either *expressed* by his voluntarily bringing the suit,	在其堂上控叩，即是明许；
or *implied* by the fact of his bringing his person or property within the territory.	以己之身家货物寄托疆内，即为默许。
But when courts of prize exercise their jurisdiction	但战利法院所辖者，
over vessels captured at sea,	海上捕拿之船只、
the property of foreigners	货物，
is brought by force within the territory of the State	既系强为捕拿，
by which those tribunals are constituted. （↓）	
By natural law, the tribunals of the captor’s country	恐难秉公审断也。

are no more the rightful exclusive judges of captures in war, made on the high seas from under the neutral flag, than are the tribunals of the neutral country.	盖此地之官审彼地之货，难免偏袒， 然依诸国常例，则所捕之货专归捕拿之法院审断。（↑）
（省略一段 462-464 The equality of nations would, on principle, seem to forbid the exercise of a jurisdiction thus acquired by force and violence, … But the moment the decision of the tribunal of the last resort has been pronounced, supposing it not to be warranted by the facts of the case, and by the law of nations applied to those facts, and justice has been thus finally denied, the capture and the condemnation become the acts of the State, for which the sovereign is responsible to the government of the claimant. … because it has no jurisdiction over them, either in respect of their persons, or of the things that are the subject of the controversy.）	
If justice, therefore, is not done to them, they may apply to their own State for a remedy; which may, consistently with the law of nations, give them a remedy, either by solemn war or reprisals.	但遇枉法断案加害于局外者， 其国仍可代为伸屈， 小则自行抵偿，大则兴兵构战。
In order to determine when their right to apply to their own State begins, we must inquire when the exclusive right of the other State to judge in this controversy ends. As this exclusive right is nothing else but the right of the State, to which the captors belong, to examine into the conduct of its own members before it becomes answerable for what they have done, such exclusive right cannot end（↓） until their conduct has been thoroughly examined.	若问事至何时方可告于本国， 曰： “必战者审案之权既穷而后可。” 战者审案之权，无非 查究其国属官所为合例与否， 合例则君任其事，违例则臣当其咎， 若非审结， 其权即末为穷也。（↑）
（省略 p.465 Natural equity will not allow that the State should be answerable for their acts, until those acts are examined by all the ways which the State has appointed for this purpose. ）	
Since, therefore, it is usual in maritime countries to establish not only inferior courts of marine, to judge what is and what is not lawful prize, but likewise superior courts of review,	又战利法院有大小之别， 初审归小者， 复审归大者。

to which the parties may appeal, (↓) if they think themselves aggrieved by the inferior courts; (省略几句 the subjects of a neutral State can have no right to apply to their own State for a remedy against an erroneous sentence of an inferior court, till they have appealed to the superior court, or to the several superior courts, if there are more courts of this sort than one, and till the sentence has been confirmed in all of them. For these courts are so many means appointed by the State, to which the captors belong, to examine into their conduct; and, till their conduct has been examined by all these means, the State's exclusive right of judging continues.) After the sentence of the inferior court has been thus confirmed, the foreign claimants may apply to their own State for a remedy, if they think themselves aggrieved; but the law of nations will not entitle them to a remedy, (↓) unless they have been actually aggrieved. (省略一段 465-469 When the matter is carried thus far, …)	其人倘被小法院屈抑枉断, 即可告于大法院,(↑) 若大法院仍照初拟, 始可告于本国。 但依公法, 本国必当查其实属受屈与否, 方可自行伸理。(↑)
17. Title to real property, how transferred in war. ---- *jus postliminii*. We have seen that (↓) a firm possession, (1) or the sentence of a competent court, (2) is sufficient to confirm the captor's title (3) to personal property or movables (4) taken in war. (5) A different rule is applied to real property, or immovable. The original owner of this species of property is entitled to what is called the benefit of postliminy, and the title acquired in war must be confirmed by a treaty of peace before it can be considered as completely valid. This rule cannot be frequently applied to the case of mere private property, which by the general usage of modern nations is exempt from confiscation. It only becomes practically important in questions arising out of (1) alienations of real property, belonging to the	**第十七节 植物如何还主** 战者(5) 捕拿动物,(4) 或能坚守,(1) 或经法院审断,(2) 其物即归战者。(3) 至于植物,其律不同。 上已明言,(↑) 故可依复原之例而讨还也。 盖捕者之权, 必须和约条款以坚固之, 方可不复归还。 然此例与民产相关甚少, 盖按迩来常例, 民产不能入公故也。 惟(1) 战者(3) 占踞地方,(4)

government, (2) made by the opposite belligerent, (3) while in the military occupation of the country. (4) Such a title must be expressly confirmed (5) by the treaty of peace, (6) or by the general operation of the cession of territory made by the enemy in such treaty. (7) Until such confirmation, it continues liable to be divested by the *just postliminii*. The purchaser of any portion of the national domain takes it at the peril of being evicted by the original sovereign owner when he is restored to the possession of his dominions.	将公地、公物入官者(2) 必须(1) 和约(6) 或让地之约(7) 坚固其事，(5) 否则仍归复原之例。 倘有人先行购买此等田亩、房屋， 及其地复归原主， 买者即不得据之。
18. Good faith towards enemies. Grotius has devoted a whole chapter of his great work to prove, by the consenting testimony of all ages and nations, that (↓) good faith ought to be observed towards an enemy. And even Bynkershoek, who holds that every other sort of fraud may be practiced towards him, prohibits perfidy, (省略理由 p.470upon the ground that his character of enemy cease by the compact with him, so far as the terms of that compact extend. "I allow of any kind of deceit," says he, "perfidy alone excepted, not because any thing is unlawful against an enemy,) but because when our faith has been pledged to him, so far as the promise extends, he ceases to be an enemy." Indeed, without this mitigation, the horrors of war would be indefinite in extent and interminable in duration. The usage of civilized nations has therefore introduced certain *commercial belli*, by which the violence of war may be allayed, so far as is consistent with its object and purposes, and something of a pacific intercourse may be kept up, which may led, in time, to an adjustment of differences, and ultimately to peace.	**第十八节 守信于敌** 虎哥之书内有一章专论 战者当坚守信行， 即引诸国古今之事以证其道。(↑) 宾克舍亦 以战时不得背相约之信， 盖云： "既与敌相约， 就所约之事 即可暂不为敌。 若云战时不必守信， 则贻战争之害于无穷矣，安能立约以复和耶? 是以诸国定有战时交际之礼， 使不致过于凶残。 盖战时预留和地，然后彼此可以议和， 所谓战中有和是也。
19. Truce or armistice. There are various modes in which the extreme rigor of the rights of war may be relaxed at the pleasure of the respective belligerent parties.	**第十九节 停兵之约** 战者之战权可相时用宽，

Among these is that of a suspension of hostilities, by means of a truce or armistice. This may be either general or special. If it be general in its application to all hostilities in every place, and is to endure for a very long or indefinite period, it amounts in effect to a temporary peace, except that it leaves undecided the controversy in which the war originated. Such were the truces formerly concluded between the Christian powers and the Turks. Such, too, was the armistice concluded, in 1609, between Spain and her revolted provinces in the Netherlands. A partial truce is limited to certain places, such as the suspension of hostilities, which may take place between two contending armies, or between a besieged fortress and the army by which it is invested.	即如彼此议立停兵之约等款是也。 夫停兵之约，有全有特。 全者，则各处停兵， 或定多日、 或无限期， 与讲和略同。 但讲和尚未议定， 则所战之故仍在耳。 奉教之国与土耳其交战，屡有如此停兵者。 荷兰前叛西班牙时，战久而后停兵亦此意也。 特者，则在限定之地 暂时停兵，不相攻击。 如两军在于战地， 或在围困之城池、炮台等处相约暂时停兵，不相攻击。
20. Power to conclude an armistice. (省略 p.471The power to conclude a universal armistice or suspension of hostilities is not necessarily implied in the ordinary official authority of the general of admiral commanding in chief the military or naval forces of the State.) The conclusion of such a general truce requires either the previous special authority of the supreme power of the State, or a subsequent ratification by such power. A partial truce or limited suspension of hostilities may be concluded (↓) between the military and naval officers of the respective belligerent States, without any special authority for that purpose, where, from the nature and extent of their commands, such an authority is necessarily implied as essential to the fulfillment of their official duties.	**第二十节　约停之权** 至于全停者， 将帅不得擅自定拟，必须其国特授其权于先， 或特准其事于后，方为妥善， 若就地暂停战事， 则两国之将帅 虽无特派之权， 亦可约定。(↑) 盖有用兵之权者，其暂为停兵之权已自包括在内矣。
21. Period of its operation. A suspension of hostilities binds the contracting parties, and all acting immediately under their direction, from the time it is concluded; but it must be duly promulgated in order to have a	**第二十一节　自何时遵行** 将帅停兵， 其麾下人众必须谨守其约。

force of legal obligation with regard to the other subjects of the belligerent States; (↓) so that if, before such notification, they have committed any act of hostility, they are not personally responsible, unless their ignorance be imputable to their own fault or negligence. But as the supreme power of the State is bound to fulfill its own engagements, (1) or those made by its authority, (2) express or implied, (3) the government of the captor is bound, (4) in the case of a suspension of hostilities by sea, (5) to restore (6) all prizes made in contravention of the armistice. (7) To prevent the disputes and difficulties arising from such questions, (8) it is usual to stipulate in the convention of armistice, as in treaties of peace, (9) a prospective period within which hostilities are to cease, (10) with a due regard to the situation and distance of places. (11)	但其约若尚未宣布民间， 他处兵民或有违之者，不为犯法。(↑) 即兵民有攻击之事，亦不任背约之责。 然已知而犹故为不知，则背约之责不能免矣。 至海上停兵，(5) 厥后倘有违约误捕船只，(7) 其国必当 (4) 交还。(6) 盖其约既系藉国权而立，(2) 则无论明许、默许，(3) 其国必当成就之也。(1) 停兵之约(9) 与和约所限日期远近，(10) 大抵视地方之遐迩而定，(11) 俾皆知悉而免争端。(8)
22. Rules for interpreting conventions of truce. Besides the general maxims applicable to the interpretation of all international compacts, there are some rules peculiarly applicable to conventions for the suspension of hostilities. The *first* of these peculiar rules, as laid down by Vattel, is that each party may do within his own territory, or within the limits prescribed by the armistice, whatever he could do in time of peace. Thus either of the belligerent parties may levy and march troops, collect provisions and other munitions of war, receive reinforcements from his allies, or repair the fortifications of a place not actually besieged. The *second* rule is, that neither party can take advantage of the truce to execute, without peril to himself, (↓) what the continuance of hostilities might have	**第二十二节 解说停兵之约** 除解说约盟之例外， 更有数款专解停兵之约： 其一， 停兵时，各在己地或在约上所限境内行事， 皆与平时无异。 即如调兵、招兵、 收粮、 制造军器、 接受友国援兵皆可， 若非围困之地，修理炮台、城池亦可。 其二， 凡战时所难行者，

disabled him from doing. Such an act would be a fraudulent violation of the armistice. For example: ---- in the case of a truce between the commander of a fortified town and the army besieging it, neither party is at liberty to continue works, constructed either for attack or defence, or to erect new fortifications for such purposes. Nor can the garrison avail itself of the truce to introduce provisions or succours into the town, (↓) through the passages or in any other manner which the besieging army would have been competent to obstruct and prevent, had hostilities not been interrupted by the armistice. The third rule stated by Vattel, is rather a corollary from the preceding rules than a distinct principle capable of any separate application. And the truce merely suspends hostilities without terminating the war, all things are to remain in their antecedent state in the places, the possession of which was specially contested at the time of the conclusion of the armistice. It is obvious that the contracting parties may, by express compact, derogate in any and every respect from these general conditions.	不得借停兵之故暗自兴作，(↑) 否则是违信背约。 即如敌军围困我城，倘立停兵之约， 不但不得互相攻击，即我处修理城池，彼处添造营垒等事，亦不得为。 若战时彼军所截住道路， 停兵时我军不得藉以私带粮草、援兵经过其路。(↑) 其三， 停兵并非和好， 故于所战地方，凡事仍守原制。 此三者，立约之人固可随意明言增减，若浑言停兵，未明立条款，则必照以上三端而行。
23. Recommencement of hostilities on the expiration of truce. At the expiration of the period stipulated in the truce, hostilities recommence as a matter of course, without any new declaration of war. But if the truce has been concluded for an indefinite, or for a very long period, good faith and humanity concur in requiring previous notice to be given to the enemy of an intention to terminate what he may justly regard as equivalent to a treaty of peace. (↑) Such was the duty inculcated (1) by the Fecial college upon the Romans, (2) at the expiration of along truce (3) which they had made with the people of Veii. (4)	**第二十三节 停兵期满复战** 停兵约上所限日期已满， 自必复战， 毋庸另宣矣。 然约上若无限定日期， 或所约之时长久， 即与和约无甚差别。(↓) 如将再战，必须通知敌国，方与仁义不悖。 古时罗马国与费国(2) 有战事，停兵长久后将复战，(5) 费国人不俟停兵期满，

That people had recommenced hostilities (5) before the expiration of the time limited in the truce. (6) Still it was held necessary for the Romans (7) to send heralds and demand satisfaction (8) before renewing the war. (9)	(3) (6) 即兴先期交战之议，(4) 罗马国人仍以礼处之，(7) 遣使讨偿，(8) 与战始同例，而后再行交战，(9) 其遵例有如此者。(1)
24. Capitulation for the surrender of troops and fortresses. Capitulations for the surrender of troops, fortresses, and particular districts of country, fall natural within the scope of the general powers entrusted to military and naval commanders. Stipulations between the governor of a besieged place, and the general or admiral commanding the forces by which it is invested, if necessarily connected with the surrender, do not require the subsequent sanction of their respective sovereigns. Such are the usual stipulations for the security of the religion and privileges of the inhabitants, that the garrison shall not bear arms against the conquerors for a limited period, and other like clauses properly incident to the particular nature of the transaction. But if the commander of the fortified town undertake to stipulate for the perpetual cession of that place, or enter into other engagements not fairly within the scope of his implied authority, his promise amounts to a mere *sponsion*. The celebrated convention made by the Roman consults with the Samnites, at the Caudine Forks, was of this nature. The conduct of the Roman senate in disavowing this ignominious compact, is approved by Grotius and Vattel, who hold that the Samnites were not entitled to be placed in *status quo*, (省略理由 p.474because they must have known that the Roman consuls were wholly unauthorized to make such a convention. This consideration seems sufficient to justify the Romans in acting on this occasion according to their uniform uncompromising policy,)	**第二十四节 投降约款** 定款让城池、炮台地方，并以兵投降等事 俱归将帅执权。 若有城邑被困， 其守土官弁与攻城将士定款投降， 不必俟两国君上允准而后行也。盖此为不得已而暂行投降，非永远让地方者比。 即如定款， 准城内人民遵自己教规， 享自己权利， 限定日期令降兵不得再带军仗， 凡此当事者皆能自行商定。 若守土官约定永远让地等事， 即为越权擅许。 古时罗马国将军二人与敌国定款，还地于敌国， 国会耻之， 以为越权而行，

by delivering up to the Samnites the authors of the treaty, and preserving in the war until this formidable enemy was finally subjugated. （省略 474-475）	立提二人送交敌国， 废其原约，仍旧交战， 终能攻服其地。
25. Passports, safe-conducts, and licenses. Passports, safe-conducts, and licenses, (↓) are documents granted in war to protect persons and property from the general operation of hostilities. The competency of the authority to issue them depends on the general principles already noticed. This sovereign authority may be vested in military and naval commanders, or in certain civil officers, either expressly, or by inevitable implication from the nature and extent of their general trust. Such documents are to be interpreted by the same rules of liberality and good faith with other acts of the sovereign power.	**第二十五节 护身等票** 战时赐文凭以护身家财货，乃常有之事。 即如过路票、护身票、准行照等件，(↑) 谁执权以出之， 上已略言梗概。 其权 或系君上特授于将帅及文职大员， 或其臣所当之任自能包括之。 至其文凭之意，解之者必当从宽宏诚信而解之也。
26. Licenses to trade with the enemy. Thus a license granted by the belligerent State to its own subjects, or to the subjects of its enemy, to carry on a trade interdicted by war, operates as a dispensation with the laws of war, so far as its terms can be fairly construed to extend. The adverse belligerent party may justly consider such documents of protection as *per se* a ground of capture and confiscation; but the maritime tribunals of the State, under whose authority they are issued, are bound to consider them as lawful relaxations of the ordinary state of war. A license is an act proceeding from the sovereign authority of the State, which alone is competent to (↓) decide on all the considerations of political and commercial expediency, by which such and exception from the ordinary consequences of war must be controlled. Licenses, being high acts of sovereignty,	**第二十六节 凭照与敌贸易** 即如战者赐照与己民， 或与敌国之民， 准其不依交战规条而贸易者， 敌国即可因其有照， 用捕其人， 以其货入公。 但出照之国，其法院 必当仍以其照为凭。 战时给发此等牌照， 必视其事与公务有无利益而后定， 其权则皆操之君上。(↑) 凡奉有特赐便宜行事之照， 则是假以国权，

are necessarily *stricti juris*, and must not be carried further than the intention of the authority which grants them may be supposed to extend. Not that they are to be construed with pedantic accuracy, or that every small deviation should be held to vitiate their fair effect. An excess in the quantity of goods permitted might not be considered as noxious to any extent, but a variation in their quality or substance might be more significant, because a liberty assumed of importing one species of goods, under a license to import another might lead to very dangerous consequences. The limitations of time, persons, and places, specified in the license, are also material. The great principle in these cases is, that subjects are not to trade with the enemy, nor the enemy's subjects with the belligerent State, without the special permission of the government; (↑) and a material object of the control which the government exercises over such a trade is, that (↓) it may judge of the fitness of the persons, and under what restrictions of time and place such an exemption form the ordinary laws of war may be extended. Such are the general principles laid down by Sir W. Scott for the interpretation of these documents; but Grotius lays down the general rule, that safe-conducts, of which these licenses are a species, are to be liberally construed; *laxa quam stricta interpretation admittenda est*. And during the last war, license were eventually interpreted with great liberality in the British Courts of Prize.	务须敬谨遵守， 断不可假公济私而行权外之事也。 解照之意固应从宽， 不必因小弊 便谓其照不足护其身货。 即如其货虽多于照内数日， 若于事无大损伤，即不当视为凭虚也。 然若照上明注何等货色，而其货色迥非所注， 其间流弊更深，此而视同无照亦未为不可。 照内所限定姓氏、地方等事， 最为紧要。 凡此俱有大纲， 若无特准之照，（↓） 我民不得与敌国交易， 敌民亦不得与我民交易。 若有特照准何人、何时、何处可置战外往来交易者， 必须其国自行斟酌度量而后定也。（↑） 虎哥云： “解说护票必当从宽，准行之照亦同一例。” 前时英美交战， 英国战利法院解说准行之照，往往从宽。
27. Authority to grant licenses. It was made a question in some cases in those courts, how far these documents could protect against British capture, on account of the nature and extent of the authority of the persons by whom they were issued.	**第二十七节 何权足以出照** 彼时有人议论 出照之人何权方足护货，使不得捕拿。

The leading case on this subject is that of The Hope, an American ship, (1) laden with corn and flour, (2) captured (3) whilst proceeding from the United States to the ports of the Peninsula (4) occupied by the British troops, (5) and claimed as protected by an instrument granted by the British consul at Boston, (6) accompanied by a certified copy of a letter from the admiral on the Halifax station. (7)	即如美国有船一只，(1) 载谷麦等货(2) 至西班牙，(4) 维时英兵占据其地，(5) 其船有英国领事驻扎美国者所发执照，(6) 又有英国水师提督驻扎美国海傍者所给书函，(7) 后在海上经英船捕获，(3)
In pronouncing judgment in this case, Sir W. Scott observed, that the instrument of protection, in order to be effectual, must come from those who have a competent authority to grant such a protection, but that the papers in question came from persons who were vested with no such authority.	法院断云： “赐护照者其权倘有不足，其照即无所用。 今赐该船之照者，其人本无此权，其照又安足护其货乎?
To exempt the property of enemies from the effect of hostilities is a very high act of sovereign authority; if at any time of hostilities is a very high act of sovereign authority; if at any time delegated to persons in a subordinate station, it must be exercised either by those who have a special commission grated to them for the particular business, and who, in legal language, are called *mandatories*; or by persons in whom such a power is vested in virtue of any situation to which it may be considered incidental.	且置敌货于战权外者， 惟君上能主之。 若臣下代为， 必须特授文凭， 或其职包括此权方可。
It was quite clear that no consul in any country, particularly in an enemy’s country, is vested with any such power in virtue of his station. *Ei rei non praponitur*, and, therefore, his acts in relation to it are not binding.	无论领事官系是何等，住于何处， 其职分并无此权。 今该领事擅自发照， 殊为越权而行，何足为凭?
Neither does the admiral, on any station, possess such authority. He has, indeed, power relative to the ships under his immediate command, and can restrain them from committing acts of hostility; but he cannot go beyond that; he cannot grant a safeguard of this kind beyond the limits of his own station. (省略 477-478)	且水师提督无论何处者，亦无此权。 盖其权 只可令所辖兵船不得捕拿商船耳， 至于辖外则不能矣， 其所给书函又焉能护其货哉?”
28. Ransom of captured property.	**第二十八节 捕货讨**

The contract (1) made for the ransom (2) of enemy's property, taken at sea, (3) is generally carried into effect (4) by means of a safe-conduct granted by the captors, (5) permitting the captured vessel and cargo to proceed to a designated port, (6) within a limited time. (7) Unless prohibited by the law of the captor's own country, (↓) this document furnishes a complete legal protection against the cruisers of the same nation, or its allies, during the period, and within the geographical limits, prescribed by its terms. This protection results from the general authority to capture, which is delegated by the belligerent State to its commissioned cruisers, and which involves the power to ransom captured property, when judged advantageous. If the ransomed vessel is lost by the perils of the sea, before her arrival, the obligation to pay the sum stipulated for her ransom is not thereby extinguished. The captor guarantees the captured vessel against being interrupted in its course, or retaken, by other cruises of his nation, or its allies, (↓) but he does not insure against losses by the perils of the seas. Even where it is expressly agreed that the loss of the vessel by these perils shall discharge the captured from the payment of the ransom, this clause is restrained to the case of a total loss on the high seas, and is not extended to shipwreck or stranding, which might afford the master a temptation fraudulently to cast away his vessel, in order to save the most valuable part of the cargo, and avoid the payment of the ransom.	**赎** 海上捕拿敌国之货，(3) 彼以金赎回，(2) 则放出时大概赐以(1)(4) 护票，(5) 限期(6) 准其前往所定之处。(7) 此等护票， 倘非律法所禁，(↑) 则该照可以保全。 无论本国 与盟邦之水师， 凡在所限之处、所限之时， 皆不得捕拿阻碍。 兵船所以能出护票者， 惟因其国特授以捕拿之权， 则收赎之权已包括在内， 故可便宜而行。 所赎之船若在海上遭风，或至沉没， 赎金仍当交纳。 盖捕者 不保其不遇风涛， 但保其不被己船或友邦之船捕拿而已。(↑) 即票上或有注明， 若遭风坏许其船不交纳赎金， 亦专指海上沉没之船而言， 与岸上搁浅、撞坏等事并无相涉。 其意盖恐船主故坏其船， 私移其货 而幸免赎金也。

Where the ransomed vessel, having exceeded the time or deviated from the course prescribed by the ransom-bill, is retaken, the debtors of the ransom are discharged from their obligation, which is merged in the prize, and the amount is deducted from the net proceeds thereof, and paid to the first captor, whilst the residue is paid to the second captor. So, if the captor, after having ransomed a vessel belonging to the enemy, is himself taken by the enemy, together with the ransom-bill, of which he is the bearer, this ransom-bill becomes a part of the capture made by the enemy; and the persons of the hostile nation who were debtors of the ransom are thereby discharged from their obligation. The death of the hostage taken for the faithful performance of the contract on the part of the captured, does not discharge the contract; for the captor trusts to him as a collateral security only, (1) and, by losing it, does not also lose his original security, (2) unless there is an express agreement to that effect. (3) Sir William Scott states, in the case of The Hoop, that, as to ransoms, which are contracts arising *ex jure belli*, and tolerated as such, the enemy was not permitted to sue in the British courts of justice in his own proper person for the payment of the ransom, (↓) even before British subjects were prohibited by the statute 22 Geo.III. cap.25, from ransoming enemy's property; but the payment was enforced by an action brought by the imprisoned hostage in the courts of his own country, for the recovery of his freedom. But the effect of such a contract, like that of every other which may be lawfully entered into between belligerents, is to suspend the character of enemy, so far as respects the parties to the ransom-bill; and, consequently, the technical objection of the want of a *persona standi in judicio* cannot, on principle,	倘其船既已收赎立票 而耽延过限， 或改往别路复经捕拿， 前欠赎金船主可不交纳。 盖后捕者既以其船为已有， 则售卖时即当归赎金于先捕者， 而存其余以为己利。 倘捕者 存有赎契， 旋被他敌所捕， 其赎契一经查出， 亦归后捕者， 与原捕无涉。若当赎者既为同国，不必交纳契上所许赎金，其契即作废纸。 若捕者留人为质，其人虽死， 其约仍不废也。 盖约上若无特言，(3) 其约之成废不尽赖为质者，(2) 而所以留质之故，不过坚固所约之事，恐有不守者耳。(1) 斯果德云： “英国未曾禁民赎敌货之先， 亦禁敌人自来法院讨索赎金。(↑) 惟所留之质可遣人在本国法院告官 以求脱免， 而赎货之事遂可随之酌办。”

prevent a suit being brought by the captor, directly on the ransom-bill. (↓) And this appears to be the practice in the maritime courts of the European continent. P.479	但欧罗巴洲内各国法院皆准敌国自来讨还， 盖云：“既立赎货之约，就事而论，则不为敌也。”（↑）

第四卷第三章

Chapter III. Rights of War as to Neutrals.	第三章 论战时局外之权
1. Definition of neutrality.	**第一节　解局外之意**
It deserves to be remarked, that there are no words in the Greek or Latin language	罗马、希腊二国论交战条规，
which precisely answer to the English expressions, neutral and neutrality.	未有提及局外之意。
（省略一段：480 The terms *neutralis*, *neutralitas*, which are used by some modern writers are barbarisms, …The Roman civilians and historians make use of the words ….and they are have no substantive whatever corresponding to *neutrality*. The cause of deficiency is obvious.）	
According to the laws of war, observed even by the most civilized nations of antiquity,	盖古时
the right of one nation to remain at peace, （↓）	
whilst other neighboring nations were engaged in war,	两国交战，
was not admitted to exist.	邻国不得坐视，（↑）
He who was not an ally was an enemy;	不为友即为敌。
and as no intermediate relation was known,	友敌之间并无中立之势，
so no word had been invented to express such relation.	故两国文字从无局外之语也。
（省略一段：480 The modern public jurists, who wrote in the Latin language, were consequently driven to the necessity of inventing terms, to express those international relations which were unknown to the Pagan nations of antiquity, and which had grown out of a milder dispensation, struggling against the inveterate customs of the dark ages which preceded the revival of letters. Grotius terms neutral *medii*, “middle men.” Bynkershoek, in treating of the subject of neutrality, says:---“Non hostes appello, qui neutrarum partium sunt, nec ex faedere his illisve quicquam debent; si quid debeant, Faederati sunt, non simplicitur Amici”	今则交战之例较为宽宏，不强令邻国与分其事。
(注 2：”I call *neutrals* (non hostes) those who take part with neither of the belligerent powers,	
and who are not bound to either by any alliance. If they are so bound, they are no longer *neutrals* but *allies.*”).	盖按公法而论，局外者本有权利，自不可犯。
2.Different species of neutrality.	**第二节　全半二等**
There are two species of neutrality recognized by international law.	局外之权有二：
These are, 1st. Natural, or perfect neutrality;	曰全，
and 2nd. Imperfect, qualified, or conventional neutrality.	曰半。
3. Perfect neutrality	**第三节　局外之全权**
1. Natural, or perfect neutrality, is that (1)	凡自主之国(2)

which every sovereign State (2) has a right, (3) independent of positive compact, (4) to observe (5) in respect to the wars in which other States may be engaged. (6)	遇他国交战，(6) 若无盟约限制，(4) 即可(3) 置身局外，不与其事，(5) 此所谓局外之全权也。(1)
The right of every independent State to remain at peace, whilst other States are engaged in war, is an incontestable attribute of sovereignty.	自主之国本有此权，无可疑议，否则不为自主矣。
It is, however, obviously impossible, that neutral nations should be wholly unaffected by the existence of war (↓) between those communities with whom they continue to maintain their accustomed relations of friendship and commerce.	然 虽为局外， 倘与战者仍欲友善往来， 则于战事不得不有关切之情也。(↑)
The rights of neutrality are connected with correspondent duties. Among these duties is that of impartiality between the contending parties. The neutral is the common friend of both parties,	在局外者既有权可行，即当有义必守。 尤以守中不偏为大。 局外之国与两国俱有友谊， 即不得厚此薄彼。
and consequently is not at liberty to favor one party to the detriment of the other. Bynekershoek states it to be “the duty of neutrals to be every way careful not to interfere in the war, and to do equal and exact justice to both parties.	宾克舍云： “局外者固当自尽其道， 不与其所争， 然更当均平公正，一律相视。
Bello se non interponant,” that is to say, “as to what relates to the war, let them not prefer one party to the other, and this is the only proper conduct for neutrals. A neutral has nothing to do with the justice or injustice of the war; it is not for him to sit as judge between his friends, who are at war with each other, and to grant or refuse more or less to the one or the other, as he thinks that their cause is more or less just or unjust. If I am a neutral, I ought not to be useful to the one, in order that I may hurt the other.” These, Bynkershoek adds, are “the duties applicable to the condition of those powers who are not bound by any alliance,	即战而论， 亦不得有所偏厚于其间。 至其战之合义与否，既无关于局外， 则局外者不得擅自判断， 亦不得以此国之理稍足而善视之，彼国之理或绌而恶视之也。” 盖既为局外，即不当助此害彼， 此乃 无盟约以限制者，

but are in a state of *perfect* neutrality. These I merely call *friends*, in order to distinguish them from confederates and allies.”	故有全权以守局外之分焉。
4. Imperfect neutrality. 2. Imperfect, qualified, or conventional neutrality, is that which is modified by special compact. The public law of Europe affords several examples of this species of neutrality. **Neutrality of the Swiss Confederation.** 1. Thus the political independence of the confederated Cantons of Switzerland, which had so long existed in fact, was first formally recognized by the Germanic Empire, of which they originally constituted an integral portion, at the peace of Westphalia, in 1648. The Swiss Cantons had observed a prudent neutrality during the thirty years war, (↑) and from this period to the war of the French Revolution, their neutrality had been, with some slight exceptions, respected by the bordering States. But this neutrality was qualified by the special compact existing between the Confederation, or the separate Cantons and foreign States, forming treaties of alliance or capitulations for the enlistment of Swiss troops in the service of those States. The policy of respecting the neutrality of Switzerland was mutually felt (↓) by the two great monarchies of France and Austria, during their long contest for supremacy under the houses of Bourbon and Hapsburg. Such is the peculiar geographical position of Switzerland, between Germany, France, and Italy, among the stupendous mountain chains from which flow the great rivers, the Danube, the Rhine, the Rhone, and the Po, (省略 483-485.that if the passage through the Swiss territories were open to the Austrian armies, they might communicate freely from the valley of the Danube to the valley of the Po, and thus menace the frontier of France from Basle to Nice. To guard against this impending	**第四节　局外之半权** 倘与战者早有盟约限制，致必遵行，即谓局外之半权。 **瑞士之局外** 即如从前瑞士系日耳曼联邦之一，日耳曼于一千六百四十八年间先认其自主。 此时之前，欧罗巴北方诸国战争三十余年，(↓) 而瑞士为政甚智，未尝或同其事。 厥后一百五十年之久， 遇邻国交战，皆听其自守局外之权。 然此权系约议所限制者。 盖邻国与其会盟者有之， 与其立约借兵者亦有之。 法、奥两国 互相争大，屡次交战， 皆以瑞士虽介居其间，实为局外而不可犯。(↑) 此乃欧罗巴诸国之公益也。 盖瑞士在欧罗巴之中， 北有日耳曼，南有意大利，东有奥，西有法， 四大江由之发源，通流别国，实一大洲之通衢也。其山岳巅嶷有如坚城， 瑞士守其狭隘，邻国交战不能过其境地。 故瑞士置身局外，彼此交界之处皆有所藉而得安。

danger, France must be fortified along the whole of this frontier;…Nor is this neutrality less essential to the security of Austria. … During the wars of the French Revolution… A treaty of alliance was simultaneously concluded… According to the stipulations of this treaty….When the allied armies advanced to invade the French territory, the Austrian corps…The perpetual neutrality of Swizerland was, nevertheless, recognized by the final act of the Congress of Vienna,…)	
On the reestablishment of the general peace, a declaration was signed at Paris, (1)	于一千八百十五年间，(2)
on the 20th November, 1815, (2)	英、奥、俄、法、普五大国(3)
by the four allied powers and France, (3)	立约，(1)
by which these five powers formally recognized the perpetual neutrality of Switzerland, (4)	内有条款云：(6)
and guaranteed the integrity and inviolability of her territory within its new limits, (5)	“倘后诸国有交战事，必准瑞士谨守局外，(4)
as established by the final act of the Congress of Vienna, and by the treaty of Paris of the above date. (6)	不准别国兵马据其地，或过其疆。”(5)
(省略一段 486.)	
Neutrality of Belgium.	**比利时之局外**
2. The geographical position of Belgium, (1)	比利时(1)
forming a natural barrier between France on the one side, and Germany and Holland on the other, (2)	亦与瑞士相似，(4) 界在日、法、荷三国之间，(2)
would seem to render the independence and neutrality of the first mentioned country as essential to the preservation of peace between the latter powers, (3)	倘不能自主而守局外之权，则此三国难以久和。(3)
as is that of Switzerland to its maintenance between France and Austria. (4)	
(省略一段 486.Belgium covers the most vulnerable point of the northern frontier of France…But so long as the low countries belonged to the house of Austria, either of the Spanish or the German branch,)	
these provinces had been, for successive ages, the battle-ground on which the great contending powers of Europe struggled for the supremacy.	其地从前屡为别国疆场，
(省略一段 486.The security of the independence of Holland against the encroachments of France was provided for by the barrier-treaties… The kingdom of the Netherlands was created by the Congress of Vienna, in 1815, for the purpose of forming a barrier for Germany against France; and on the dissolution of that kingdom into its original component parts,)	
the perpetual neutrality of Belgium was guaranteed by the five great European powers,	故五大国迩来立约，认其自主，
and made an essential condition of the recognition of her independence, in the treaties for the separation of Belgium from Holland.	时又添列条款，保其永守局外。
Neutrality of Cracow.	**革喇高之局外**

3. We have already seen that by the final act of the Congress of Vienna, 1815, art.6, the city of Cracow,	革喇高一城
with its territory,	并其属地界
is declared to be a perpetually free, independent, and neutral State, under the joint protection of Austria, Prussia, and Russia.	在俄、奥、普三国之间，即赖三国保护得永远自主，守其局外之权。
The neutrality, (1)	然三国(7)
thus created by special compact (2)	或有亡匿背叛，(6)
and guaranteed by the three protecting powers, (3)	彼亦不得为其逋逃薮也。(5)
is made dependent upon the reciprocal obligation of the city of Cracow (4)	瑞士、比利时、革喇高三国(3)
not to afford (5)	永守局外之权，(1)
an asylum, or protection, to fugitives from justice, or military deserters (6)	系欧罗巴公法定例。(2)
belonging to the territories of those powers. (7)	如此定约而守局外之权，(4)
(省略P. 487How far the neutrality of the free and independent State thus created has been actually respected by the protecting powers, or how far the successive temporary occupations of its territory by their military forces, and how far their repeated forcible interference in its internal affairs, may have been justified by the non-fulfillment of the above obligation on the part of Cracow, or by other circumstances authorizing such interference according to the general principles of international law, are questions which have given rise to diplomatic discussions between the great European powers, contracting parties to the treaties of Vienna, but which are foreign to the present object. The permanent neutrality of Switzerland, Belgium, and Cracow, has thus been solemnly recognized as part of the public law of Europe.)	
But the conventional neutrality thus created differs essentially from that natural or perfect neutrality which every State has a right to observe, independent of special compact, in respect to the wars in which other States may be engaged.	与自主之国自行全权而守局外地位者不同。
The consequences of the latter species of neutrality only arise in case of hostilities.	盖以全权守局外者，遇邻国战时固当守之。
It does not exist in time of peace,	若和平时则无所限制，
during which the State is at liberty to contract any eventual engagements it thinks fit as to political relations with other States.	尽可与会盟立约等情。
A permanently neutral State,	但永守局外之国
on the other hand, by accepting this condition of its political existence,	既被约盟所限，
is bound to avoid in time of peace every engagement	赖以得存其国，即和平时亦必谨防连累，
which might prevent its observing the duties of neutrality in time of war.	恐临战时难守局外之权也。

As an independent State, it may lawfully exercise, in its intercourse with other States, all the attributes of external sovereignty. It may form treaties of amity, and even of alliance with other States; provided it does not thereby incur obligations, which, though perfectly lawful in time of peace, would prevent its fulfilling the duties of neutrality in time of war. Under this distinction, treaties of offensive alliance, applicable to a specific case of war between any two or more powers, or guaranteeing their possessions, are of course interdicted to the permanently neutral State. But this interdiction does not extend to (1) defensive alliances formed with (2) other neutral States (3) for the maintenance of the neutrality of the contracting parties against any power by which it might be threatened with violation. (4) The question remains, whether this restriction on the sovereign power of the permanently neutral State is confined to political alliances and guarantees, or whether it extends to treaties of commerce and navigation with other States. Here it again becomes necessary to distinguish between the two cases of natural and perfect, or qualified and conventional neutrality. In the case of ordinary neutrality, (1) the neutral State (2) is at liberty (3) to regulate its commercial relations with other States (4) according to its own view of its national interests, (5) provided this liberty be not exercised so as to affect that impartiality which the neutral is bound to observe towards the respective belligerent power(s). (6) Vattel states, that the impartiality which a neutral nation is bound to observe, relates solely to the war. “ In whatever doing not relate to the war, a neutral and impartial nation will not refuse to one of the belligerent parties, on account of its present quarrel, what it grants to the other.	既为自主， 则与别国交际 似可行其全权， 能立和约会盟等事。 然所约之事，若不合其局外之分，则不可立。 或与邻国合兵同战， 或代保疆界， 则尤不可擅许。 至若别有一国同守局外者，(3) 与之立相护之约，(2) 以期协力同守局外之权，(14) 自无不可。(1) 或问 永守局外之国与邻国相约合政、合兵等事固不可， 但不知其有权可立通商、航海之约与否？ 曰：(1) “守局外者，(2) 大概与别国立通商章程，(4) 倘无连累，(6) 致与战事有所偏倚，(5) 则可从便宜而行。”(3) 发得耳云： “守局外者， 非战时即无干涉， 故凡遇战争无干涉之事， 局外者施于此必施于彼。

This does not deprive the neutral of the liberty of making the advantage of the State the rule of its conduct in its negotiations, its friendly connections, and its commerce. (省略一段 489. When this reason induces it to give preferences in things which are at the free disposal of the possessor, the neutral nation only makes use of its right, and is not chargeable with partiality. But to refuse any of these things to one of the belligerent parties, merely because he is not at war with the other, and in order to favor the latter, would be departing from the line of strict neutrality.”) These general principles must be modified in their application to a permanently neutral State. (省略一段 489.The liberty of regulating its commercial relations with other foreign States, according to its own views of its national interests, which is an essential attribute of national independence, does not authorize the permanently neutral State to contract obligations in time of peace inconsistent with its peculiar duties in time of war.)	若永守局外之国， 虽有权 可立通商章程， 但其行此权， 必视其局外之地位何如而后行者，盖恐有所连累也。”
5. Neutrality modified by a limited alliance with one of the belligerent parties. Neutrality may also be modified by antecedent engagements, (↓) by which the neutral is bound to one of the parties to the war. Thus the neutral may be bound by treaty, previous to the war, to furnish one of the belligerent parties with a limited succor in money, troops, ships or munitions of war, or to open his ports to the armed vessels of his ally, with their prizes. The fulfillment of such an obligation does not necessarily forfeit his neutral character, nor render him the enemy of the other belligerent nation, because it does not render him the general associate of its enemy. How far a neutrality, thus limited, (1) may be tolerated by the opposite belligerent, (2) must often depend more upon considerations of policy (3) than of strict right. (4)	**第五节　局外之权被约限制** 局外者倘与战者早有盟约， 其权即被盟约限制减革。(↑) 即如战前立约， 许助兵丁、船只、军器、钱粮等若干， 或准友邦并其所捕船只进海口等事， 虽有遵守此约而行者， 亦不必视为弃绝局外之权 而以敌待之也。 局外有如此连累，战者当何等相待，(2) 听其置身局外与否，(1) 皆应从公益，(3)

Thus, where Denmark, in consequences of a previous treaty of defensive alliance, furnished limited succors in ships and troops to the Empress Catharine II. of Russia, in the war of 1788 against Sweden, the abstract right of the Danish court to remain neutral, (↓) except so far as regarded the stipulated succors, was scarcely contested by Sweden and the allied mediating powers. But it is evident, from the history of these transactions, that if the war had continued, the neutrality of Denmark would not have been tolerated by these powers, unless she had withheld from her ally the succors stipulated by the treaty of 1773, (↓) or Russia had consented to dispense with its fulfillment.	不能拘守于例也。(4) 即如丹国前与俄国有协护之盟， 于一千七百八十八年间， 俄国与瑞威敦交战， 而丹国照约助俄国兵丁、船只若干， 此外丹国仍守局外之权，(↑) 而瑞国与诸友邦亦未议其不可。 然观彼时之史纪， 倘战事或延久长， 则丹国必不助俄， 或俄国必辞助而不受， 否则瑞国与诸友邦皆不听其执守局外之权矣。(↑)
6. Qualified neutrality, arising out of antecedent treaty stipulations, admitting the armed vessels and prizes of one belligerent into the neutral ports, whilst those of the other are excluded. Another case of qualified neutrality arises out of treaty stipulations antecedent to the commencement of hostilities, by which the neutral may be bound to admit the vessels of war of one of the belligerent parties, with their prizes, into his ports, whilst those of the other may be entirely excluded, or only admitted under limitations and restrictions. Thus, by the treaty of amity and commerce of 1778, between the United States and France, the latter secured to herself two special privileges in the American ports: --- 1. Admission for her privateers, with their prizes, to the exclusion of her enemies.	**第六节　因前约准此而禁彼** 有时局外之国早被盟约限制， 或准战者之一国兵船捕拿敌船进口， 至其敌船进口则不准也， 即或准之， 亦必另加限制。 即如美、法于一千七百七十八年间立友好通商之约， 法国因此得格外权利二款： 其民船领兵照者， 能带所捕之敌船进口， 而敌国有此等船只则不得入口，一也；

2. Admission for her public ships of war, in case of urgent necessity, to refresh, victual, repair, &c. but not exclusively of other nations at war with her. Under these stipulations, the United States not being expressly bound to exclude the public ships of the enemies of France, granted an asylum to British vessels and those of other powers at war with her.	法国兵船 遇急 便可进口买粮、修理，二也。 第二款内 美国未曾应许禁法国之敌船进口， 故别国虽与法国有战，美国即准其进口，以避海患。
Great Britain and Holland still complained of the exclusive privileges allowed to France in respect to her privateers and prizes, whilst France herself was not satisfied with the interpretation of the treaty by which the public ships of her enemies were admitted into the American ports. To the former, it was answered by the American government, that (1) they enjoyed a perfect quality, qualified only (2) by the exclusive admission of the privateers and prizes of France, (3) which was the effect of a treaty made long before, (4) for valuable considerations, (5) not with a view to circumstances such as had occurred in the war of the French Revolution, (6) nor against any nation in particular, but against all nations in general, (7)	英国、荷兰于是评斥美国所准法国第一款之权利偏而不公。 法国亦谓美国准我敌进口，此举非从友谊而解第二款之权利也。 至英、荷所论，美国答之云：(1) “与法立约已历长久，(4) 准其领兵照之船只进口，(3) 乃偿其宿惠，(5) 并非预期今日之事，(6) 特立此偏倚之约也。(2) 除此一款外，余俱均匀，(7)
and which might, therefore, be observed without giving just offence to any. On the other hand, the minister of France asserted the right of arming and equipping vessels for war, and of enlisting men, within the neutral territory of the United States. Examining this question under the law of nations and the general usage of mankind, (↓) the American government	何得藉口以相怨谤哉?” 法国钦差倚恃前约， 意欲在美国疆内招兵备船， 美国 于是令人查究公法，(↑)
produced proofs, from the most enlightened and approved writers on the subject, that a neutral nation must, in respect to the war, observe an exact impartiality towards the belligerent parties; that favors to the one, to the prejudice of the other, would import a fraudulent neutrality, of which no nation would be the dupe; that no succor ought to be given to either, unless	即引诸国之常例、名师之公认云： “战时局外之国必当守中不偏， 有利于此国而致害于彼国者， 局外者不当如是以愚他国也。 设无前约先已言明，

stipulated by treaty, in men, arms, or any thing else, directly serving for war; that the right of raising troops being one of the rights of sovereignty, and consequently appertaining exclusively to the nation itself, no foreign power can levy men within the territory without its consent; that, finally, the Treaty of 1778, making it unlawful for the enemies of France to arm in the United States, could not be construed affirmatively into a permission to the French to arm in those ports, the treaty being express as to the prohibition, but silent as to the permission.	彼此战者俱不得借兵丁、军仗， 且招兵一事专属君国上权，君苟不许， 则别国不能借其疆内而行此矣。 前约有云， 法国之敌不得在美国借用兵力， 但此言亦不能为法可借美之兵力作解耳。”
7. Hostilities within the territory of the neutral State. The rights of war can be exercised only within the territory of the belligerent powers, upon the high seas, or in a territory belonging to no one. Hence it follows, that hostilities cannot lawfully be exercised within the territorial jurisdiction of the neutral State, which is the common friend of both parties.	**第七节　在局外之地不可行战权** 战权所行之处有三： 战者疆内，一也； 海上，二也； 无主之地，三也。三者之外，战权即不可行。 至局外之国与二战国均系友谊，无分彼此， 故在其疆内行战权者即为干犯公法。
8. Passage through the neutral territory. This exemption extends to the passage of an army or fleet (1) through the limits of the territorial jurisdiction, (2) which can hardly be considered an innocent passage (3) such as one nation has a right to demand from another and, (4) even if it were such an innocent passage, (5) is one of those *imperfect* rights, (6) the exercise of which depends upon the consent of the proprietor, and which cannot be compelled against his will. (7) It may be granted or withheld, at the discretion of the neutral State; but its being granted is no ground of complain (↓) on the part of the other belligerent power, provided the same privilege is granted to him, unless there be sufficient reasons for withholding it.	**第八节　经过局外之疆** 调兵马、船只皆属战事，(1) 不能行于局外之地。(2) 各国于和平之时，过境者若无所损害，(5) 固可有权索路，(4) 惟不得强为通行耳。(1) 但战时过境，非属善意，(3) 不得保其必无所损，(6) 愈不能有所勉强而径行假道矣。(7) 局外者或准或禁，皆可任意。 若准战者俱各得此权利， 彼此即不得有所怨望，

The extent of the maritime territorial jurisdiction of every State bordering on the sea has already been described. P.492	（↑） 倘准此而禁彼，而其禁之之故实系稳妥，亦不得有所怨望。
9. Captures within the maritime territorial jurisdiction, or by vessels stationed within it, or hovering on the coasts. Not only are all captures made by the belligerent cruisers within the limits of this jurisdiction （↑） absolutely illegal and void, but captured （↓） made by armed vessels stationed in a bay or river, or in the mouth of a river, or in the harbor of a neutral State, for the purpose of exercising the rights of war from this station, are also invalid. Thus, where a British privateer stationed itself within the river Mississippi, in the neutral territory of the United States, for the purpose of exercising the rights of war from the river, by standing off and on, obtaining information at the Balize, and overhauling vessels in their course down the river, and made the capture in question within three English miles of the alluvial islands formed at its mouth, restitution of the captured vessel was decreed by Sir W. Scott. So, also, where a belligerent ship, lying within neutral territory, made a capture with her boats out of the neutral territory, the capture was held to be invalid; for though the hostile force employed was applied to the captured vessel lying out of the territory, yet no such use of a neutral territory for the purposes of war is to be permitted. This prohibition is not to be extended to *remote* uses,	**第九节　沿海辖内捕船** 在局外者管辖所及之处，（↓） 战船捕敌国之船只、货物， 不但为犯法， 而其事必废， 且战船停泊于其港口 以为征战之地步， 则其所捕船只、货物（↑） 亦多不稳。 即如英国领兵照民船 而停泊 在美国长江口内 局外之地， 盖为出入得通消息之便， 后有敌船出口， 即捕之在沙头十里之内。 英国法院断之，以为必还。 战船 停泊在局外之地， 若舢板出疆捕拿船只、货物， 法院亦以为不妥。 盖战力虽在疆外而用，实为倚恃兵船停泊疆内而行也。 故借局外之地 以便交战之用， 既与理不合，更为公法所严禁也。 惟进局外之地买粮食

such as procuring provisions and refreshments, which the law of nations universally tolerates; but no *proximate* acts of war are in any manner to be allowed to originate on neutral ground.	等需用之物， 非于严禁耳。 总之，与交战之事甚有相关者， 皆不得行于局外之地，亦不得由局外之地而起也。
10. Vessels chased into the neutral territory, and there captured. Although the immunity of the neutral territory (↓) from the exercise of any act of hostility is generally admitted, yet an exception to it has been attempted (↓) to be raised in the case of a hostile vessel met on the high seas and pursued; which it is said may, in the pursuit, be chased within the limits of a neutral territory. The only text writer of authority who has maintained this anomalous principle is Bynkershoek. He admits that he had never seen it mentioned in the writings of the public jurists, or among any of the European nations, the Dutch only excepted; thus leaving the inference open, that even if reasonable in itself, such a practice never rested upon authority, nor was sanctioned by general usage. The extreme caution, too, with which he guards this license to belligerents, can hardly be reconciled with the practical exercise of it; for how is an enemy to be pursued in a hostile manner within the jurisdiction of a friendly power, without imminent danger of injuring the subjects and property of the latter? (省略P.493 *Dum fervet opus*--- in the heat and animation excited against the flying foe, there is too much reason to presume that little regard will be paid to the consequences that may ensue to the neutral.) There is, then, no exception to the rule, that every voluntary entrance into neutral territory, with hostile purposes, is absolutely unlawful.	**第十节　追至局外之地而捕者** 凡属战事， 皆不得行于局外之地，(↑) 此固通例。 然有人云： “遇有敌船在大海者， 即追过局外之疆而捕之可也。” 此论实不合理。(↑) 除宾克舍一人外，无名师许之者， 且彼亦曾云： “公法书中未见此说。” 欧罗巴大洲内 惟荷兰一国有之， 此事之不合于理也明矣。 即谓合理， 然行者甚少， 殊不足引以为例。 况宾氏于战国追敌之事警戒再三者， 诚恐人友国之境不能无所损害也，若致局外者危险不安，岂可为乎? 盖当血战时， 安有间暇防及友国之民人不致一同受害? 是故 战者有战意擅人局外之地， 即是犯公法， 以为定论。

“When the fact is established,” (1) says Sir W. Scott, (2) “it overrules every other consideration. (3) The capture is done away; the property must be restored, (4) notwithstanding that it may actually belong to the enemy.” (5) P.493	斯果德云：(2) “于局外之疆内而捕者，(1) 不须他问，(3) 即使货系敌货，(5) 亦必交还。”(4)
11. Claim on the ground of violation of neutral territory must be sanctioned by the neutral State. Though it is the duty of the captor’s country to make restitution (↓) of the property thus captured within the territorial jurisdiction of the neutral State, yet it is a technical rule of the prize courts to restore to the individual claimant, in such a case, (↓) only on the application of the neutral government whose territory has been thus violated. This rule is founded upon the principle, that the neutral State alone has been injured by the capture, and that the hostile claimant has no right to appear for the purpose of suggesting the invalidity of the capture.	**第十一节　局外者讨还** 在局外之境捕得货物， 捕者固当交还，(↑) 然战利法院定有常规， 必俟所犯局外之国讨之， 始可交还原主。(↑) 盖受屈者惟局外之国， 若敌人则无权 自来问其捕拿之合例与否也。
10. Restitution by the neutral State of property captured within its jurisdiction, or otherwise in violation of its neutrality. Where a capture of enemy’s property is made within neutral territory, (1) or by armaments unlawfully fitted out within the same, (2) it is the right as well as the duty of the neutral State, (3) where the property thus taken comes into its possession, (4) to restore it (5) to the original owners. (6) (省略 P.495 This restitution is generally made through the agency of the courts of admiralty and maritime jurisdiction. Traces of the exercise of such a jurisdiction are found at a very early period in the writings of Sir Leoline Jenkins, who was Judge of the English High Court of Admiralty in the reigns of Charles II. and James II.) **Captures within the places called the *King’s Chambers*.** In a letter to the king in council, (1’) dated October 11, 1675, (2’)	**第十二节　犯局外之权而捕之货，局外者自必交还赔偿** 局外者不但将(3) 疆内所捕之货(1) 交还，(5) 即战者有借地私备船只、兵丁，无论何往而捕货者，(2) 该货既入局外者之手，(4) 亦当交还原主。(6) 即如一千六百七十五年间,(2’)

relating to a French privateer seized at Harwich with her prize, (a Hamburg vessel bound to London,) (3’)	法国与日耳曼有战事，法船捕日耳曼船一只在英国滨海辖地，(3’)
Sir Leoline states several questions arising in the case, among which was, (4’)	战利法院之枭司(4’)
(省略 p. 495 一段 “Whether this Hamburger, being taken within one of your Majesty’ chambers, and being bound for one of your ports, ought not to be set free by your Majesty’s authority, notwithstanding he were, if taken upon the high seas out of those chambers, a lawful prize.)	入告其君(1’)
I do humbly conceive he ought to be set free,	将日耳曼船只交还，
upon a full and clear proof that he was within one of the king’s chambers at the time of the seizure, which he, in his first memorial, sets forth to have been eight Leagues at sea, over against Harwich.	盖系在王房(双行小字：英国海涯大湾之总名也) 君主辖内所捕故也。
(省略 495-496 一段 King James…by proclamation,…and all foreign ships, when they are within the king’s chambers, being understood as to be within the places intended in those directions, must be in safety and indemnity, …)	
Whatever doubts there may be as to the extent of the territorial jurisdiction thus asserted, as entitled to the neutral immunity,	所谓王房者实系局外与否，固无庸论，
there can be none (↓)	
as to the sense entertained by this eminent civilian	但按枭司之意，
respecting the right and the duty of the neutral sovereign	在其辖内所捕之物，
to make restitution where his territory is violated.	局外者自当交还，
	此不可稍有所疑也。(↑)
(省略 p. 496 一小节 **Extent of the neutral jurisdiction along the coasts and within the bays and rivers.** When the maritime war commenced in Europe, in 1793, …)	
The 25th article of the treaty of 1794, between Great Britain and the United States, stipulated that	英、美两国有约云：
“neither of the said parties shall permit the ships or goods belonging to the citizens or subjects of the other, to be taken within cannot shot of the coast,	“两国之船只货物在两国海傍火炮所及之处，
nor in any of the bays, ports, or rivers, of their territories,	或在江河、海口、海湾，
by ships of war, or others, having commissions from any prince, republic, or State whatever.	必不任别国之兵船来捕也。
But in case it should so happen, the party whose territorial rights shall thus have been violated,	倘有干犯局外之地而来捕者，
shall use his utmost endeavors to obtain from the offending party full and ample satisfaction for the vessel or vessels so taken, whether the same be vessels of war or merchant vessels.”	必当尽力以令犯者偿还。”
Previously to this treaty with Great Britain, the	美国早与法、普、荷三

United States were bound by treaties with three of the belligerent nations, (France, Prussia, and Holland,) to protect and defend, “by all the means in their power,” (↓) the vessels are effects of those nations in their ports or waters, or on the seas near their shores, and to recover and restore the same (↓) to the right owner when taken from them. But they were not bound to make compensation (↓) if *all the means in their power* were used, and failed in their effect. Though they had, when the war commenced, no similar treaty with Great Britain, (↓) it was the President’s opinion that they should apply to that nation the same rule which, under this article, was to govern the others above-mentioned; and even extend it to captures made on the high seas, and brought into the American ports, if made by vessels which had been armed within them. In the constitutional arrangement of the different authorities of the American Federal Union, (1) doubts were at first entertained (2) whether it belonged to the executive government, or the judiciary department, (3) to perform the duty of inquiring into (4) captures made within the neutral territory, or by armed vessels originally equipped (5) or the force of which had been augmented the same, (6) and of making restitution to the injured party. (7) But it has been long since settled that (8) this duty appropriately belongs to the federal tribunals, acting as courts of admiralty and maritime jurisdiction. (9)	国有约云： “彼此有船只在立约者之海傍、港口、江河等处， 必当竭力保护，(↑) 经敌捕拿亦 当竭力讨索交还。(↑) ”若既尽力讨索而并无所得， 亦未言自行赔偿也。(↑) 华盛顿云： “虽与英国尚未立约，(↑) 然看视英船亦当归此例。 不特此也， 即敌国借我海口备船捕拿英国船货， 虽在大海捕得， 倘若进我国海口，亦必交还。” 若战者犯美国境地捕船，(5) 或借地备船而捕之，(6) 审案(4) 交还，(7) 依国法分派。(1) 权柄系属何部，(3) 此前时议论也，(2) 但今上法院任其职，(9) 已为定例矣。(8)
13. Limitations of the neutral jurisdiction to restore in cases of illegal capture. It has been judicially determined that this peculiar jurisdiction to inqire (1) into the validity of captures (2) made in violation of the neutral immunity, (3) will be exercise only for the purpose of restoring the	**第十三节 交还之权有限制** 若(1) 战者擅进局外之境，(3)(5) 致被敌人所捕，(2) 则局外者有权可为讨

specific property, (4) when voluntarily brought within the territory, (5) and does not extend to the infliction of vindictive damages, as in ordinary cases of maritime injuries. (6) And it seems to be doubtful whether this jurisdiction will be exercised where the property has been once carried *infra pradisia* of the captor's country, and there regularly condemned in a competent court of prize. However this may be in cases where the property has come into the bands of a *bona fide* purchaser, without notice of the unlawfulness of the capture, (1) it has been determined that (2) the neutral court of admiralty (3) will restore it to the original owner, (4) where it is found in the hands of the captor himself, (5) claiming under the sentence of condemnation. (6) But the illegal equipment will not affect the validity of a capture, made after the cruise to which the outfit had been applied, is actually terminated.	还，(4) 惟不能加刑罚于捕之者耳。(6) 若所捕之船已带至敌国疆内， 被法院照例定为战利， 或有不知而误买之者，其后可讨还与否，尚有可议之处。(1) 然但定为战利，(6) 而其船尚在捕者之手，(5) 局外之战利法院(3) 必行讨还，(4) 无可疑议。(2) 至于悖法私借局外之地，特备船只以捕敌货，则必当讨还。但其船若已驶回本国，而后出洋捕拿敌货，其事系属公正，则该货即不在讨还之例。
14. Right of asylum in neutral ports dependent on the consent of the neutral State. An opinion is expressed by some text writers, that belligerent cruisers, not only are entitled to seek an asylum and hospitality in neutral ports, but have a right to bring in and sell their prizes within those ports. But there seems to be nothing in the established principles of public law (1) which can prevent the neutral State from withholding the exercise of this privilege impartially from all the belligerent powers; (2) or even from granting it to one of them, (3) and refusing it to others, (4) where stipulated by treaties existing previous to the war. (5) The usage of nations, as testified in their marine ordinances, sufficiently shows that this is a rightful exercise of the sovereign authority which every State possesses, to regulate the police of its own sea-ports, and to preserve the public peace within its own territory. But the absence of a positive prohibition	**第十四节　在局外之地避患、买粮、卖赃** 公师有云： “战者兵船 进局外港口停泊避海患及买粮等事，不但可行， 即随带所捕之敌船货物售卖亦可。 但局外之国或守中不偏，两者并准并禁，(2) 或被盟约限制(5) 即准此(3) 而禁彼，(4) 皆与公法常例无所不合也。(1)” 夫各国如此而行， 固能自操其权。 盖各国莫不有权 以管理己之海口， 以保护己之疆界故也。 然必先行禁止，

implies a permission to enter the neutral ports for these purposes.	否则即为默许两国之船只并进港口， 停泊买粮及卖所捕之船只货物矣。
15. Neutral impartiality, in what it consists. Vattel states that the impartiality, which a neutral nation ought to observe between the belligerent parties, consists of two points. 1. To give no assistance where there is no previous stipulation to give it; nor voluntarily to furnish troops, arms, ammunition, or any thing or direct use in war. "I do not say to *give assistance equally*, but to give no assistance: for it would be absurd that a State should assist it the same time two enemies. And besides, it would be impossible to do it with equality: the same things, the like number of troops, the like quantity of arms, of munitions, &c., furnished under different circumstances, are no longer equivalent succors. 2. In whatever does not relate to the war, (1) the neutral (2) must not refuse to one of the parties, (3) merely because he is at war with the other, (4) what she grants to that other." (5)	**第十五节　守中有二事** 发得耳云： "局外之国照例守中不偏， 有二事： "其一，若未有前约以许之， 即不可助兵马、军器、炮火等类， 至云并助两国尤为与理不合， 盖不能均平而助之矣， 缘所助之兵马、军器、炮火等类，数目虽同， 其时之缓急、其地之得失， 不免有异也。 "其二，交战无涉之事，(1) 局外之国(2) 所准于此，(5) 不可因战(4) 而禁于彼。"(3)
16. Arming and equipping vessels, and enlisting men within the neutral territory, by either belligerent, unlawful. These principles were appealed to by the American government, (1) when its neutrality was attempted to be violated (2) on the commencement of the European war, in 1793, (3) by arming and equipping vessels, and enlisting men within the ports of the United States, by the respective belligerent powers, to cruise against each other. (4) It was stated that if the neutral power might not, consistently with its neutrality, furnish men to either party for their aid in war, as little could either enroll them in the neutral territory. The authority both of Wolfius and Vattel was appealed to in order to show, that the levying of troops is an exclusive prerogative of sovereignty,	**第十六节　借局外之地招兵备船即为犯法** 一千七百九十三年，欧罗巴诸国鏖战，(3) 有人欲在美国海口借船招兵，(4) 美国即引上节所言(1) 以却之(2) 云： "局外之国助兵己为不合， 若听战者自来招兵，岂有合乎?" 又引俄、发二氏之书以证 招兵专属君国之权，

which no foreign power can lawfully exercise within the territory of another State, without its express permission. The testimony of these and other writers on the law and usage of nations was sufficient to show, that (1) the United States, (2) in prohibiting all the belligerent powers from equipping, arming, and manning vessels of war in their ports, (3) had exercised a right and a duty with justice and moderation. By their treaties with several of the belligerent powers, treaties forming part of the law of the land, they had established a state of peace with them. (1) But without appealing to treaties, (2) they were at peace with them all (3) by the law of nature;(4) for, by the natural law, man is at peace with man, till some aggression is committed, which by the same law authorizes one to destroy another, as his enemy. For the citizens of the United States, then, to commit murders and depredations on the members of other nations, or to combine to do it, appeared to the American government as much against the laws of the land as to murder or rob, or combine to murder or rob, their own citizens; and as much to require punishment, if done within their limits, where they had a territorial jurisdiction, or, on the high seas, where they had a personal jurisdiction, that is to say, one which reached their own citizens only; this being an appropriate part of each nation, on an element where each has a common jurisdiction.	别国不问其国而擅自为之，即属犯法，于是禁止战者备船招兵于美国之海口。 美国(2) 此举(3) 按诸公师之论，(1) 不但权所可为， 分所当为， 且系正直宽仁而为之也。 战者之内有数国早与美国立和约， 其约已存为地方律法矣， 即使未经立约，(2) 而其国与美国无争，(3) 亦可谓和好之国，(1) 此乃天地自然之公法也。(4) 盖照理而论， 人无屈抑致可灭敌，即系和好。 今美国未经受屈， 若美国之人民欲杀诸国之人民， 而掳掠其货物， 其与诛杀己民、抢劫其货固无少异，是岂不悖律法哉? 其悖法同其刑罚亦当一致， 故无论在己之疆内， 或在海上管辖所及之处，皆必严禁也。
17. Prohibition enforced by municipal statues. The same principles were afterwards incorporated in a law of Congress passed in 1794, and revised and reenacted in 1818,	**第十七节　律法禁之** 一千七百九十四年，美之国会定有一法， 于一千八百十八年间

by which it is declared to be a misdemeanor (1) for any person, (2) within the jurisdiction of the United States, (3) to augment the force of any armed vessel, belonging to one foreign power at war with another power, (0) with whom they are at peace; (4) or to prepare any military expedition against the territories of any foreign nation with whom they are at peace; (5) or to hire or enlist troops or seamen for foreign military or naval service; (6) or to be concerned in fitting out any vessel, to cruise or commit hostilities in foreign service, against a nation at peace with them: and the vessels, (7) in this latter case, is made subject to forfeiture. (8) The President is also authorized to employ force to compel any foreign vessel to depart, (9) which by the law of nations or treaties (10) ought not to remain within the United States, (11) and to employ generally the public force in enforcing the duties of neutrality prescribed by the law. (4)	复申之 云： “别国有战争时，(0) 倘有人民(2) 在美国辖内(3) 投其兵船者，(4) 或招兵往攻我素所和好之国，(5) 或招兵丁水手为他国所用，(6) 抑或备船以巡洋助他国行战，(7) 皆为犯法，(1) 所备之船皆可捕拿入公。(8) 倘公法及和约章程(10) 所不准船只在美国海口停泊，而竟敢停泊者，(11) 首领可以驱逐。”(9) 盖首领可凭国势、照律法以自保其局外之权也。(4)
Foreign Enlistment Act. The example of America was soon followed by Great Britain, in the act of Parliament 59 Geo. III. Ch. 69, entitled, “An act to prevent (↓) the Enlisting or Engagement of His Majesty’s Subjects to serve in foreign Service, and the Fitting out or Equipping in His Majesty’s Dominions Vessels for warlike purposes, without His Majesty’s License. ” The previous statutes, 9 and 29 Geo. II., enacted for the purpose of preventing the formation of Jacobite armies in France and Spain, annexed capital punishment as for a felony, to the offence of entering the service of a foreign State. The 59 Geo. III. Ch. 69, commonly called the Foreign Enlistment Act, provided a less severe punishment, and also supplied a defect in the former law, by introducing after the words “king, prince, state, or potentate,” the words “colony or district assuming the powers of a government,” in order to reach the case of those who entered the service of unacknowledged as well as of acknowledged	**投军别国** 后英国 又定律法， 凡英民投军别国， 与夫未奉君命而私备战船于英之疆内者， 皆禁止之。(↑) 从前英有旧律， 凡英国人投于别国者， 杀无赦。 今改例较宽，刑亦少减， 又定条款 以防人备船只、买炮火等事，

States. The act also provided for preventing and punishing the offence of fitting out armed vessels, or supplying them with warlike stores, upon which the former law had been entirely silent. (省略 501-503)	犯之者加刑焉。
18. Immunity of the neutral territory, how far it extends to neutral vessels on the high seas. The unlawfulness (↓) of belligerent captures, made within the territorial jurisdiction of a neutral State, is incontestably established on principle, usage, and authority. Does this immunity of the neutral territory from the exercise of acts of hostility within its limits, extend to the vessels of the nation on the high seas, and without the jurisdiction of any other State? We have already seen, that (↓) both the public and private vessels of every independent nation on the high seas, and without the territorial limits of any other State, are subject to the municipal jurisdiction of the State to which they belong. This jurisdiction is exclusive, only so far as respects offences against the municipal laws of the State to which the vessel belongs. It excludes the exercise of the jurisdiction of every other State under its municipal laws, but it does not exclude the exercise of the jurisdiction of other nations, as to crimes under international law; such as piracy, and other offences, which all nations have an equal right to judge and to punish. Does it, then, exclude the exercise of the belligerent right of capturing enemy's property? This right of capture is confessedly such a right as may be exercised within the territory of the belligerent State, within the enemy's territory, or in a place belonging to no one; in short, in any place except the territory of a neutral State. Is the vessel of a neutral nation on the high seas such a place?	**第十八节　局外之船于大海何如** 在局外疆内捕拿船只、货物， 即是犯法，(↑) 有诸国常例、名师公论、天理当然以证之。 或问局外之国所享权利， 可及其船只在海上否? 云："自主之国，其公船、私船驶于大海， 不在别国疆内者， 专服本国管辖， 早已明言。(↑) 其管辖之权， 专视 所犯本国律法之案， 此等案件别国不得以己之律法治之。 然有获罪于万国公法者， 即如为盗等类， 审罚此等罪犯，各国之权均属一致。 本国管辖之权既不阻各国拿问公法之罪犯，则战者有权捕拿敌货，本国可阻之否乎? 夫捕拿之权， 或在捕者之本国， 或在敌国， 或在无主之地， 在此三处自是可行， 不知局外之船在海上者，亦属此三处否耶?"

Distinction between public and private vessels. A distinction has been here taken between the public and the private vessels of a nation. In respect to its *public* vessels, it is universally admitted, that neither the right of visitation and search, of capture, nor any other belligerent right, can be exercised on board such a vessel on the high seas. A public vessel, belonging to an independent sovereign, is exempt from every species of visitation and search, even within the territorial jurisdiction of another State, *a fortiori*, must it be exempt from the exercise of belligerent rights on the ocean, which belongs exclusively to no one nation? In respect to *private* vessels, it has been said that case is different. They form no part of the neutral territory, and, when within the territory of another State, are not exempt from the local jurisdiction. That portion of the ocean which is temporarily occupied by them forms no part of the neutral territory; nor does the vessel itself, which is a movable thing, (↓) the property of private individuals, form any part of the territory of that power to whose subjects it belongs. The jurisdiction which that power may lawfully exercise over the vessel on the high seas, is a jurisdiction over the persons and property of its citizens; it is not a territorial jurisdiction. Being upon the ocean, it is a place where no particular nation has jurisdiction; and where, consequently, all nations may equally exercise their international rights.	人云局外之船有公私之别， 公船 则战者不得稽查， 不得捕拿， 一切战权俱不得行于此船之内。 盖公船 即在别国疆内，犹不得稽查， 况在大海乎?其不得与之行战权明矣。 私船 则有云不视为局外之地。 盖在别国疆内 即服别国管辖， 其所在之海面 亦非局外之地， 且其船本属民人， 不属君国， 本系动物，并非植物。(↑) 本国之管辖在海上者， 亦惟管其人民货物， 非同治地之权。 故在海面 一国不能专行己权， 而万国实可同权也。
19. Usage of nations subjecting enemy's goods in neutral vessels to capture. Whatever may be the true original abstract principle of natural law on this subject, it is undeniable that the constant usage and practice of belligerent nations, from the earliest times, have subjected enemy's goods in neutral vessels	**第十九节　捕拿敌货在局外之船者为常事** 凡此应当如何办理，众论各别， 但战者古今之常行，俱同一致。 敌国之货物虽在局外

to capture and condemnation, as prize of war. This constant and universal usage has only been interrupted by treaty stipulations, forming a temporary conventional law between the parties to such stipulations.	之船只， 亦必捕为战利。 或有异者， 盖因约盟特定章程而然耳。
20. Neutral vessels laden with enemy's goods subject to confiscation by the ordinances of some States. The regulations and practice of certain maritime nations, at different periods, have not only considered the *goods* of an enemy, laden in the ships of a friend, liable to capture, but have doomed to confiscation the neutral vessel on board of which these goods were laden. This practice has been sought to be justified, upon a supposed analogy with that provision of the Roman law, which involved the vehicle of prohibited commodities in the confiscation pronounced against the prohibited goods themselves. Thus, by the marine ordinance of Louis XIV., of 1681, all vessels laden with enemy's goods are declared lawful prize of war. The contrary rule had been adopted by the preceding prize ordinances of France, and was again revived by the reglement of 1744, by which it was declared, that "in case there should be found on board of neutral vessels, of whatever nation, goods, or effects belonging to his Majesty's enemies, the goods or effects shall be good prize, and the vessel shall be restored." (省略一句 P. 505 Valin, in his commentary upon the ordinance, admits that the more rigid rule, which continued to prevail in the French prize tribunals from 1681 to 1744, was peculiar to the jurisprudence of France and Spain;) but that the usage of other nations was only to confiscate the goods of the enemy.	**第二十节　载敌货之船有时捕为战利** 数国前有章程， 不但敌货在局外之船者 尽可捕拿， 即载货之船亦必入公。 盖罗马古法 常连载货之船只、车辆一并入公， 故法国初定航海章程，内有一款云： "载敌货之船可捕为战利。" 后定新例云： "敌货在局外之船可捕， 但其船必还于原主。" 今各国常例， 惟捕拿敌货而已。
21. Goods of a friend on board the ships of an enemy, liable to confiscation by the prize codes of some nations. Although by the general usage of nations, independently of treaty stipulations, (↓) the goods of an enemy, found on board the ships of a friend, are liable to capture and condemnation, yet the converse rule, (↓) which subjects to confiscation the goods of a friend, on board the vessels of an enemy,	**第二十一节　捕拿友货在敌国之船有人行之** 敌货在友邦之船者皆可捕拿， 此常例也。(↑) 至敌船装载友邦之货，若云其货亦可捕拿，

is manifestly contrary to reason and justice.	此事于理不合，与义相悖矣。（↑）
It may, indeed, afford, as Grotius has stated, a presumption that the goods are enemy's property;	不可因其在敌船即疑其为敌货也，
but it is such a presumption as will readily yield to contrary proof, and not of that class of presumptions which the civilians call *presumptions juris et de jure*,	盖定案者必当确有凭据，
and which are conclusive upon the party.	始可行耳。
But however unreasonable and unjust this maxim may be,	此规虽甚不义，
it has been incorporated into the prize codes of certain nations, and enforced by them at different periods.(省略 P. 505 Thus, by the French ordinances of 1538, 1543, and 1584, the goods of a friend, laden on board the ships of an enemy, are declared good and lawful prize. The contrary was provided by the subsequent declaration of 1650; but by the marine ordinance of Louis XIV., of 1691, the former rule was again established.)	尚有数国曾以为律法，而其法院遂遵以审事也。
Valin and Pothier are able to find no better argument in support of this rule, than that	发林、破退二氏辨此云：
those who lade their goods on board an enemy's vessels thereby favor the commerce of the enemy,	“友邦之人载货于敌船，
and by this act are considered in law as submitting themselves to abide the fate of the vessels;	即是助敌贸易得利，更系默许将其货与所载敌船归为一例，故可捕拿。”
and Valin asks,	发林又云：
“How can it be that the goods of friends and allies, found in an enemy's ship,	“友国之人载货于敌船，
should not be liable to confiscation,	当捕为战利。
whilst even those of subjects are liable to it?”	盖友国之民，岂能视之更加于已民乎?”
To which Pothier himself furnishes the proper answer: that,	答云：
in respect to goods, the property of the king's subjects,	“民货
	所以捕拿者，实因犯禁通敌而然。（↓）
in lading them on board an enemy's vessels they contravene the law which interdicts to them all commercial intercourse with the enemy,	若局外者则无通敌之禁，岂可一例而治之?
an deserve to lose their goods for this violation of the law. （↑）	
The fallacy of the argument by which this rule is attempted to be supported, consists in assuming, what requires to be proved, that, （↓）	
by the act of lading his goods on board an enemy's vessel, the neutral submits himself to abide the fate of the vessel;	至于载货者，自愿与船同其吉凶。”
	此说殊为无凭，（↑）
for it cannot be pretended that the goods are	况局外者载货，无论何

subjected to capture and confiscation *ex re*, since their character of neutral property exempts them from this liability. Nor can it be shown that they are thus liable *ex delicto*, unless it be first proved that the act of lading them on board is an offence against the law of nation.	船载之，并非公法所禁，
It is therefore with reason that Bynkershoek concludes that	故宾氏云：
this rule, where merely established by the prize ordinances of a belligerent power,	“两国交战，而其法院擅自定例，将局外之货装在敌船者捕为战利，
cannot be defended on sound principle.	实与情理不合。”
Where, indeed, it is made by special compact the equivalent for the converse maxim,	若于局外者早立约据，
that *free ships make free goods*, this relaxation of belligerent pretensions may be fairly coupled with a correspondent concession by the neutral,	明言局外之船所载即为局外之货，
that *enemy ships should make enemy goods*.	敌船所载即为敌货，则无不可。如此，则战者之权少宽，而局外之权少让矣。
These two maxims have been, in fact, commonly thus coupled in the various treaties on this subject,	此二款大概相连，
with a view to simplify the judicial inquiries into the proprietary interest of the ship and cargo,	其意盖以便法院稽查审断，
by resolving them into the mere question of the national character of the ship.	使不必问其货系谁属，便可从其船而定耳。
22. The two maxims, of *free ships free goods* and *enemy ships enemy goods*, not necessarily connected.	**第二十二节　二规非不可相离**
The two maxims are not, however, inseparable.	此二款并非不可相离，
The primitive law, independently of international compact, rests on the simple principle, that (↓)	
war gives a right to capture the goods of an enemy,	盖战者有权可捕敌物，
but gives no right to capture the goods of a friend.	无权可捕友邦之物，
	此为公法明例也。(↑)
The right to capture an enemy’s property has no limit but of the *place* where the goods are found,	而捕拿敌物之权，除其所在而外别无限制。
which, if neutral, will protect them from capture.	倘其所在系局外之处，则以地得护，不能捕拿。
We have already seen that a neutral vessel on the high seas is not such a place.	然局外之船在大海者，不视为局外之地，又何妨于捕拿乎?
The exemption of neutral property from capture	至于局外之货其可捕者，
has no other exceptions than those arising from the carrying of contraband, breach of blockade, and other analogous cases,	惟因系禁货贩至禁地与夫犯封等事，
where the conduct of the neutral gives to the belligerent a right to treat his property as enemy’s property.	遇此则可看视友邦之货有如敌货。
	局外之旗不能护敌国

The neutral flag constitutes no protection to an enemy's property,	之货，
and the belligerent flag communicates no hostile character to neutral property.	战者之旗不能使局外之货变为敌货，
States have changed this simple and natural principle of the law of nations,	此乃公法自然之理也。
by mutual compact, in whole or in part, according as them believed it to be for their interest;	而诸国立约每有更改者，
but the one maxim, that *free ships make free goods*,	虽云局外之船所载之货可为局外之货，
does not necessarily imply the converse proposition, that *enemy ships make enemy goods*.	然不必即谓敌船所载便为敌货也。
The stipulation, that neutral bottoms shall make neutral goods, is a concession made by the belligerent to the neutral, and gives to the neutral flag a capacity not given to it by the primitive law of nations.	盖局外之旗，按公法本不能保护敌货，而战者自许其可护。
On the other hand, the stipulation subjecting neutral property, found in the vessel of an enemy, to confiscation as prize of war,	局外之货虽在敌船，按公法本不可捕，
is concession made by the neutral to the belligerent,	而局外者许其可捕，即是自愿退让其权利。
and takes from the neutral a privilege he possessed under the preexisting law of nations;	然战者虽让其一，而局外者不必让其二也。
but neither reason nor usage renders the two concessions so indissoluble,	盖依理而论之，此二款可以分立，
that the one cannot exist without the other.	不必合为一例也。
It was upon these ground that the Supreme Court of the United States determined that (↓)	
the Treaty of 1795, between them and Spain,	美国前与西班牙立约，
which stipulated that free ships should make free goods,	许局外之船所载即为局外之货，
did not necessarily imply the converse proposition, that enemy ships should make enemy goods,	上法院解之云：(↑)“并非默许敌船所载便为敌货，
the treaty being silent as to the latter;	盖许其一，
and that, consequently, the goods of a Spanish subject, found on board the vessel of an enemy of the United States, were not liable to confiscation as prize of war.	未必许其二也。
And although it was alleged, that (1)	故(1)
the prize law of Spain would subject the property of American citizens to condemnation, when found on board the vessels of her enemy, (2)	西班牙人有货装在美国敌人之船，不得拿为战利，(4)
the court refused to (3)	虽美国之货在西班牙之敌船者，彼必捕拿，(2)
condemn Spanish property, found on board a vessel of their enemy, (4)	然我国法院亦不将其货入公。(3)
upon the principle of reciprocity; (5)	盖美国既无新定章程(7)
because the American government had not manifested its will to retaliate upon Spain; (6)	

and until this will was manifested by some legislative act, (7) the court was bound by the general law of nations constituting a part of the law of the land. (8)	令我照彼所行而行，(5) (6) 则本法院必以万国公法为地方律法，而遵之定案也。”(8)
23. Conventional law as to *free ships free goods*. The conventional law, in respect to the rule now in question, has fluctuated at different periods, according to the fluctuating policy and interests of the different maritime States of Europe. It has been much more flexible than the consuetudinary law; but there is a great preponderance of modern treaties in favor of the maxim, *free ships free goods*, sometimes, but not always, connected with the correlative maxim, *enemy ships enemy goods*; (省略 508-534 so that it may be said that, for two centuries past, there has been a constant tendency to establish, by compact, the principle, that the neutrality of the ship should exempt the cargo, even if enemy's property, from capture and confiscation as prize of war.)	**第二十三节　约款论局外之船载敌货者** 论局外之船载敌货者、敌船载局外之货者， 诸国所行不一，其例亦无常。 然迩来所立约款， 多定局外之船所载即为局外之货， 因而合定敌船所载即为敌货者亦颇有之。

24. Contraband of war. The general freedom of neutral commerce with the respective belligerent powers is subject to some exceptions. Among these is the trade with the enemy in certain articles called contraband of war. The almost unanimous authority of elementary writer, of prize ordinances, and of treaties, agrees to enumerate among these all warlike instruments, or material by their own nature fit to be used in war. Beyond these, there is some difficulty in reconciling the conflicting authorities derived from the opinions of public jurist, the fluctuating usage among nations, and the texts of various conventions designed to give to that usage the fixed form of positive law. Grotius, in considering this subject, makes a distinction between those things which are useful only for the purposes of war, those which are not so, and those which are susceptible of indiscriminate use in war and peace. The *first*, he agrees with all other text writers in prohibiting neutrals from carrying to the enemy, as well as in permitting the *second* to be so carried;	**第二十四节　战时禁物** 局外之国与战者通商，固可照常， 然更有货为战时所禁者，则不得私行贩卖于敌国，致干公法。 若问何为战时禁物，曰军器、火药等类，皆为禁物。 至于他物则难断其为禁与否。 虎哥云：“货物有三等： 有专应战用者，一也； 有不为应战用者，二也； 有战时、平时俱可用者，三也。 其一等之货公师皆禁局外者贩卖于敌， 第二等之货则皆许其

the *third* class, such as money, provisions, ships and naval stores, he sometimes prohibits, and at others permits, according to the existing circumstances of the war. Vattel makes somewhat of a similar distinction, though he includes timber and naval stores among those articles which are particularly useful for the purposes of war, and are always liable to capture as contraband; and considers provisions as such only under certain circumstances, “when there are hops of reducing the enemy by famine.” (省略 544-554) In the treaty subsequently concluded between Great Britain and the United States, on the 19th November, 1794, it was stipulated, (article 18,) that under the denomination of contraband should be comprised all arms and implements serving for the purposes of war, “and also timber for ship-building, tar or rosin, copper in sheets, sails, hemp, and cordage, and generally whatever may serve directly to the equipment of vessel, unwrought iron and fir planks only excepted.” The article then goes on to provide, that “whereas *the difficulty of agreeing on the precise cases, in which alone provisions and other articles, not generally contraband, may be regarded as such*, renders it expedient to provide against the inconveniences and misunderstandings which might thence arise; it is further agreed, that whenever any such articles, so becoming contraband according to the existing law of nations, shall for that reason be seized, the same shall not be confiscated; but the owners thereof shall be speedily and completely indemnified; and the captors, or, in their default, the government under whose authority they act, shall pay to the masters or owners of such vessels the full value of all such articles, with a reasonable mercantile profit thereon, together with the freight, and also the demurrage incident to such detention. ” (省略 555-561)	贩卖于敌， 第三等之货如银钱、粮草、船只等类， 其或禁或许， 必视其时势而后定焉。” 发得耳亦同此论， 且云：“木料与船上所用之物皆归第一类，不归第三类。 盖为交战所急要之需， 即当以为禁物。 至于粮饷， 倘与围困城池转运接济，亦归第一类。” 英美条约有款云： “战时禁物， 即军器、火药等类， 造船木料、松油、铜片、风篷、绳索、麻斤， 大概制造装修船只各物俱在例禁。 惟生铁、松板不在禁内， 至于口粮等物何时当禁，颇为难定。” 故两国言明，嗣后彼此观时度势， 或以此等货物有背公法而运者， 尽可捕拿，以免济敌。 然此举必当全行赔偿， 照其原价计偿本利， 并偿其装货及废时之费。

25. Transportation of military persons and despatches in the enemy's service.	**第二十五节　寄公信，载兵弁、公使者**
Of the same nature with carrying of contraband goods (↓)	
is the transportation of military persons or despatches in the service of the enemy.	为敌国寄公信、载兵弁， 皆归运载禁物之例。(↑)
A neutral vessel, which is used as a transport for the enemy's forces,	局外之船载战国之兵者，
is subject to confiscation, (↓)	
if captured by the opposite belligerent.	倘经敌人捕拿， 即可入公。(↑)
Nor will	
the fact of her having been impressed by violence into the enemy's service,	虽系战者逼勒装载兵丁，实非得已，
exempt her.	亦不能免于捕拿。
The master cannot be permitted to aver that he was an involuntary agent.	盖为之者，其或愿或不愿，殊难凭信。
Were an act of force exercised by one belligerent power on a neutral ship or person	若因强逼
to be considered a justification for an act, contrary to the known duties of the neutral character,	即可得释，
there would be an end of any prohibition under the law of nations	恐后之装载禁物者皆可藉口于勉强而幸免矣。
to carry contraband,	如此则运载禁物不但不能禁止，
or to engage in any other hostile act.	即助战者之战必亦不能禁止也。
If any loss is sustained in such a service,	故局外者倘被逼勒犯禁，致有损失，
the neutral yielding to such demands must seek redress from the government which has imposed the restraint upon him.	则惟向强之之国讨偿耳。
As to the number of military persons necessary to subject the vessel to confiscation,	若问载兵弁若干方可定其船入公，
it is difficult to define; since fewer persons of high quality and character may be of much more importance than a much greater number of persons of lower condition.	云不必论其人数众寡。
To carry a veteran general, under some circumstances, might be a much more noxious act than (↓)	
the conveyance of a whole regiment.	盖有时运一师之众， 不如运一将者(↑)
The consequences of such assistance are greater,	为其助敌之战力无穷也。
and therefore the belligerent has a stronger right to prevent and punish it;	故敌国定必谨防严罚，
nor is it material, in the judgment of the Prize Court, (↓)	

whether the master be ignorant of the character of the service on which he is engaged.	即船主不知而为之，
	法院殊难因其不知而宽之也。（↑）
It is deemed sufficient if there has been an injury arising to the belligerent from the employment in which the vessel is found. If imposition be practiced, it operates as force;	倘实系不知，
and if redress is to be sought against any person, it must be against those who have, by means either of compulsion or deceit, exposed the property to danger; otherwise such opportunities of conveyance would be constantly used,	亦惟向欺骗者讨偿，
and it would be almost impossible, in the greater number of cases, to prove the privity of the immediate offender. P.565	而不能怨捕拿之人矣。
The fraudulently carrying the despatches of the enemy will also subject the neutral vessel, in which they are transported,	为战者私寄公信，
to capture and confiscation.	敌国可捕拿入公。
The consequences of such a service are indefinite, infinitely beyond the effect of any contraband that can be conveyed.	盖寄信较之诸多禁物干系更重。
“The carrying of two or three cargoes of military stores,” says Sir W. Scott,	斯果德云：“载军器、炮火者，
“is necessarily an assistance of a limited nature;	其助敌有限，
but in the transmission of despatches	惟私寄信函者，其助敌无穷。”
may be conveyed the entire plan of a campaign,	盖片纸能括交战之大局，
that may defeat all the plans of the other belligerent in that quarter of the world.	可定两国之胜负。
It is true, as it has been said, that *one ball* might take off a Charles the XIIth, and might produce the most disastrous effects in a campaign;	至云一弹而伤猛将，
but that is a consequence so remote and accidental,	此乃偶然事耳，
that, in the contemplation of human events, it is a sort of evanescent quantity of which no account is taken;	断无仅送一弹遂可制人死命者。
and the practice has been, accordingly, that it is in considerable quantities only that the offence of contraband is contemplated. The case of despatches is very different; it is impossible to limit a letter to so small a size as not to be capable of producing the most important consequences.	故运弹者，其数必多。
It is a service, therefore,	若公书代寄，
which in whatever degree it exists,	无论其书之多少，
can only be considered in one character—as an act of the most hostile nature.	均可必其于战事大有干系也。
The offence of fraudulently carrying despatches in	其干系既较别物甚巨，

the service of the enemy being, then, greater than that of carrying contraband under any circumstances, it becomes absolutely necessary, as well as just, to resort to some other penalty than that inflicted in cases of contraband. The confiscation of the noxious article, which constitutes the penalty in contraband, where the vessel and cargo do not belong to the same person, would be ridiculous when applied to *despatches*. There would be *no* freight dependent on their transportation, and therefore this penalty could not, in the nature of things, be applied. The vehicle in which they are carried must, therefore, be confiscated.” But carrying the despatches of an ambassador or other public minister of the enemy, resident in a neutral country, is an exception to the enemy, to the reasoning on which the above general rule is founded. “They are despatches from persons (1) who are, in a peculiar manner, the favorite object of the protection of the law of nations, (2) residing in the neutral country (3) for the purpose of preserving the relations of amity between that State and their own government. (4) On this ground, a very material distinction arises, with respect to the right of furnishing the conveyance. The neutral country has a right to preserve its relations with the enemy, and you are not at liberty to concluded that any communication between them can partake, in any degree, of the nature of hostility against you. The limits assigned to the operations of war against ambassadors, by writers on public law, are, that the belligerent may exercise his right of war against them, (1) wherever the character of hostility exists: (2) he may stop the ambassador of his enemy on his passage; (3) but when he has arrived in the neutral country, and taken on himself the functions of his office, and has been admitted in his representative character, he becomes a sort of *middle man*, entitled to peculiar privileges, as set apart for the preservation of the relations of amity and peace, in maintaining which all nations are, in some degree, interested. (省略 P. 566-567 If it be argued, that he retains his national character unmixed, and that even his residence	故其罚亦较别物更重。 别物则以入公为罚， 若以信函入公，何足为罚耶? 故必当将寄信船只一并入公，以为刑罚。 然或战者有使臣驻扎局外之国，其所寄书信 又当另归一例。 盖 其住于局外之国者，(1) (3) 原欲彼国与其本国和好，(4) 故万国公法尤为格外保护，(2) 即局外之国代其寄信，亦无不可。 盖局外之国与战者照常往来，系因和好， 非欲助战也。 在战者行战之处，倘彼此遣使出外，(2) 俱可捕其人、截其路。(1) (3) 但其臣既至局外之地， 蒙君国以礼接受，视为使臣， 即可恃公法保护。

is considered as a residence in his own country; it is answered, that this is a fiction of law, invented for his further protection only, and as such a fiction, it is not to be extended beyond the reasoning on which it depends. It was intended as a privilege; and cannot be urged to his disadvantage. Could it be said that he would, no that principle, be subject to any of the rights of war in the neutral territory? Certainly not: he is there for the purpose of carrying on the relations of peace and amity, for the interest of his own country primarily, but, at the same time, for the furtherance and protection of the interests which the neutral country also has in the continuance of those relations. It is to be considered also, with regard to this question, what may be due to the convenience of the neutral State; for its interests may require that the intercourse of correspondence with the enemy's country should not be altogether interdicted. It might be thought to amount almost to a declaration, that an ambassador from the enemy shall not reside in the neutral State, if he is declared to be debarred from the only means of communicating with his own. For to what useful purpose can he reside there, without the opportunity of such a communication? It is too much to say that all the business of the two States shall be transacted by the minister of the neutral State resident in the enemy's country.) The practice of nations has allowed to neutral States the privilege of receiving ministers from the belligerent powers, and of an immediate negotiation with them."	盖万国常例， 准局外之国接受战者之使臣故也。
26. Penalty for the carrying of contraband. In general, where the ship and cargo do not belong to the same person, the contraband articles only are confiscated, and the carrier-master is refused his freight, (↓) to which he is entitled upon innocent articles which are condemned as enemy's property. But where the ship and the innocent articles of the cargo belong to the owner of the contraband, they are all involved in the same penalty. And even where the ship and the cargo do not belong to the same person, the carriage of contraband, under the fraudulent circumstances of false papers and false destination, will work a confiscation of the ship as well as the cargo. The same effect has likewise been held to be produced	**第二十六节 载禁物之干系** 若船只载禁物者，其船、其货不同一主， 其禁物固可捕拿入公， 至其所载他物倘系敌货，亦可入公。 惟载货之使费，则不必给还也。(↑) 但若其船并所载货色皆属一主， 则均当视同禁物一例。 即不属一主而假冒船照， 托词他往者， 后经查出，船、货均可捕拿入公。 倘友国立有条约，(4)

(1) by the carriage of contraband articles in a ship, (2) the owner of which (3) is bound by the express obligation of the treaties subsisting between his own country and the capturing country, (4) to refrain from carrying such articles to the enemy. (5) In such a case, it is said that the ship throws off her neutral character, (6) and is liable to be treated at once as an enemy's vessel, (7) and as a violator of the solemn compacts of the country to which she belongs. (8) The general rule as to contraband articles, as laid down by Sir W. Scott, is, that(1') the articles must be taken in delicto, (2') in the actual prosecution of the voyage to an enemy's port. (3') "Under the present understanding of the law of nations, (4') you cannot generally take the proceeds in the return voyage. (5') From the moment of quitting port on a hostile destination, indeed, the offence is complete, and it is not necessary to wait till the goods are actually endeavoring to enter the enemy's port; but beyond that, if the goods are not taken in *delicto*, and in the actual prosecution of such a voyage, the penalty is not now generally held to attach. " But the same learned judge applied a different rule in other cases of contraband, carried from Europe to the East Indies, with false papers and false destination, intended to conceal the real object of the expedition, where the return cargo, the proceeds of the outward cargo taken on the return voyage, was held liable to condemnation. P.568 (省略一段 P. 569 Although the general policy of the American government, in tis diplomatic negotiations, has aimed to limit the catalogue of contraband by confining it strictly to munitions of war, excluding all articles of promiscuous use,) a remarkable case occurred during the late war between Great Britain and the United States,	特禁运物至敌，(5) 而其船(3) 竟背约私运禁物者， (2) 一经捕拿，并船入公。 (1) 盖其船不守局外之约， (8) 即不为局外之船，(6) 视如敌船自无不可也。 (7) 斯果德云：(1') "禁物运往敌国， (3') 即遇于道路亦可捕拿。 (2') 但其货若已到彼售卖，其船带所售之银钱复行驶回，(5') 照现今公法，(4') 不当捕拿。(5') 其船始出口往敌国， 其罪已成， 不必俟至彼疆方为禁物， 故遇于道路即可捕拿， 至于售卖之后亦无甚干系也。" 有船只自欧罗巴至印度， 假冒船照托词别往， 售卖货物后转回， 在路被捕， 斯果德断其可以入公。 又美国前与英国战时，有瑞船一只载英国口粮至

	西班牙以济英军之用，经美国民船捕拿， 美国法院即从斯果德之论
in which the Supreme Court of the latter appears to have been disposed to adopt all the principles of Sir W. Scott, as to provisions becoming contraband under certain circumstances. (↓) (省略一段 P. 569 But as that was not the case of a cargo of neutral property, supposed to be liable to capture… the question was, whether the neutral master was entitled to his freight, … Upon the actual question before the court, it seemed there would have been no difference of opinion among the American judges in the case of an ordinary war;…) Under these circumstance a majority of the judges were of the opinion that the voyage was illegal,	而断其事系犯法， 其货为敌货，即当入公，(↑)
and that the neutral carrier was not entitled to his freight on the cargo condemned as enemy's property. It was stated in the judgment of the court, that it had been solemnly adjudged in the British prize courts,	其载货使费亦不给还船主。 盖
that being engaged in the transport service of the enemy, or in the conveyance of military persons in his employment, or the carrying of despatches, are acts of hostility which subject the property to confiscation. (省略一页左右 P.570-571 In these cases, the fact that the voyage was to a neutral port was not thought to change the character of the transaction. The principle of these determinations was asserted to be, that the party must… Now these cases could not be distinguished, in principle, from that before the court. … The court was, therefore, of opinion that the voyage in which the vessel was engaged was illicit, and inconsistent with the duties of neutrality,)	无论敌兵何在，运粮以济其用， 即为助敌， 将其船严定入公，实无不可。
and that it was a very lenient administration of justice to confine that penalty to a mere denial of freight.	若仅罚其船费，尚属从宽办理也。
27. Rule of the war of 1756. (省略一段 P.572-573. It had been contended in argument in the above case, that the exportation of grain from Ireland being generally prohibited, a neutral could not lawfully engage in that trade during war, …The court deemed it unnecessary to consider the principles on which that rule is rested by the British prize courts, not regarding them as applicable to the case in judgment. But the legality of the rule itself has always been contested by the American government, and it appears in its origin	**第二十七节　通商战者之属部**

to have been founded upon very different principles from those which have more recently been urged in its defence.) During the war of 1756,	一千七百五十六年，英、法有战事。
the French government, finding the trade with their colonies almost entirely cut off by the maritime superiority of Great Britain,	英国水师众多，致法国难通海外属部，
relaxed their monopoly of that trade, and allowed the Dutch, then neutral, to carry on the commerce between the mother country and her colonies, under special licenses or passes, granted for this particular purpose, excluding, at the same time, all other neutrals from the same trade.	法国于是特准荷兰通商其各处属部，
Many Dutch vessels so employed were captured by the British cruisers, and, together with their cargoes, were condemned by the prize courts,	而荷兰船旋为英人捕拿，
upon the principle, that by such employment they were,	盖谓法国向不准通商属部，兹特准荷兰一国与之通商，
in effect, incorporated into the French navigation, having adopted the commerce and character of the enemy,	岂非荷兰代法国行通商之事乎?
and identified themselves with his interests and purposes.	置之于法船一例可也。
(省略一页左右 P.574.They were, in the judgment of these courts, to be considered like transports in the enemy’s service, and hence liable to capture and condemnation, upon the same principle with property condemned for carrying military persons or despatches. In these cases, the property was considered,.. So, where a neutral is engaged in a trade, … There is all the difference between this principle and the more modern doctrine… The former is clasrely cuase of confiscation,.. The Rule of the War of 1756 was originally… The principle of the rule was frequently vindicated by Sir W. Scott, in his masterly judgments in the High Court of Admiralty and in the writings of other British public jurisist of great leaning and ablity.)	
But the conclusiveness of their reasonings was ably contested by different American statesmen,	美国不允此规，
and failed to procure the acquiescence of all powers in this prohibition of their trade with the enemy’s colonies.	更有数国不愿禁止局外者通商战者之属部焉。
（省略一段 574-575.The question continued a fruitful source of contention between Great Britain and those powers, until they became her allies or enemies at the close of the war; but its practical importance will probably be hereafter must dimished by the revolution which ahs since taken place in the colonial system of Europe.)	

28. Breach of blockade.	第二十八节　封港犯封
Another exception to the general freedom of neutral commerce in time of war, (1)	有城池地方被战者围困，(3)
is to be found (2)	局外者不得与之贸易，(1)
in the trade to ports or places besieged or blockaded by one of the belligerent powers. (3)	封港亦同一例。(2)
The more ancient text writers all require that the siege or blockage should actually exist, (4)	但围困地方、封闭港口以禁船只往来，(4)
and be carried on by an adequate force, (5)	不可仅以出示虚言，(6)
and not merely declared by proclamation, (6)	必须用大势力以阻遏之，(5)
in order to render commercial intercourse with the port or place unlawful on the part of neutrals.(7)	此后倘仍有贸易船只往围困封禁地方而售卖者，方为犯法。(7)
Thus Grotius (1’)	虎哥云：(1’)
forbids the carrying any thing to besieged or blockaded places, (2’)	“战者围困城池、封港等事，(5’)
“*if* it might impede the execution of the belligerent’s lawful designs, (3’)	局外者倘知其事，(4’)
and if the carriers might have known of the siege or blockade; (4’)	不得运物往彼接济，(2’)
as in the case of a town actually invested, or a port closely blockade; and when a surrender or peace is already expected to take place. (5’) ”	恐与困之者有所妨碍。”(3’)
And Bynkershoek, in commenting upon this passage, holds	宾氏云：
it to be “unlawful to carry any thing, whether contraband or not, to a place thus circumstanced;	“不但军器，即粮草等物亦不可运往围困之处。
since those who are within may be compelled to surrender, not merely by the direct application of force, but also by the want of provisions and other necessaries. (省略一句P.576 If, therefore, it should be lawful to carry to them what they are in need of, the belligerent might thereby be compelled to raise the siege or blockade, which would be doing him an injury, and therefore unjust.)	盖其地被困，无物接济，安知其不立时纳降耶?
And because it cannot be known what articles the besieged may want,	其所需者不能预定何物，
the law forbids, in general terms, carrying *any thing* to them; otherwise disputes and altercations would arise to which there would be no end.”	故无论运载何等货色，皆为干犯公法。”
(省略一段576. Bynkershoek appears to have mistaken the true sense of the above-cited passage from Grotius, in supposing that the latter meant to require,…. But that he concurred with Grotius in requiring a strict and actual siege or blockade, such as… is evident from his subsequent remarks in the same chapter,…)	
He holds the decrees to be perfectly justifiable, so far as they prohibited the carrying of contraband of war	又云：“运载战时禁物至敌军者，原属可禁，

to the enemy’s camp; “but, as to other things, whether they were or were not lawfully prohibited, depends entirely upon the circumstance of the place being besieged or not.” (省略一段 577. So, also, in commenting upon the decree of the States-General of the 26th June, 1630, declaring the ports of Flanders…. He states that this decree was, for some time, not carried into execution, by the acutral presence of a sufficient naval force, during which period …)	但凡物可禁不可禁， 当视其地之被困与否。
What things must be proved to constitute a violation of blockade. “To constitute a violation of blockade,” says Sir W. Scott, “three things must be proved: 1st. The existence of an actual blockade; 2ndly. The knowledge of the party supposed to have offended; and, 3rd. Some act of violation, either by going in or coming out with a cargo laden after the commencement of blockade.”	**犯封三问** 斯果德云：“凡人犯封港之禁而被人告发者， 须有三事必以确切凭据证之，方可定罪： 其封港之禁实而非虚，一也； 犯之者知而故犯，二也； 封港后其人实有运货出入，三也。”试略明其大意：
Actual presence of the blockading force. 1. The definition of a lawful (1) maritime blockade, requiring the actual presence of a maritime force, stationed at the entrance of the port, (2) sufficiently near to prevent communication, (3) as given by the text writers, (4) is confirmed by the authority of numerous modern treaties, and especially by the Convention of 1801, between Great Britain and Russia, intended as a final adjustment of the disputed pointes of maritime law, which had given rise to the armed neutrality of 1780 and of 1801. (5) P.577	**实势行封** 其一，按公师明言(4) 并诸国盟约，(5) 封港必须势力具(2) 足以禁其内外不能相通，(3) 方为妥协。(1)
The only exception to the general rule, which requires the actual presence of an adequate force to constitute a lawful blockade, arises out of the circumstance of the occasional temporary absence of the blockading squadron, produced by accident, (↓) as in the case of a storm, which does not suspend the legal operation of the	但 遇人力不能抵御之患， 如遭大风等事， 致守封港之船只飘泊出洋，虽暂时不在其处，(↑) 亦不得遂为弛封。

blockade. The law considers an attempt to (1) take advantage of such an accidental removal of (2) a fraudulent attempt to break the blockade. (3)	若藉有患之故而乘势破封者，(2) 公法(1) 断为犯规。(3)
Knowledge of the party. 2. As a proclamation, or general public notification, is not of itself sufficient to constitute a legal blockade, so neither can a knowledge of the existence of such a blockade by imputed to the party, *merely*, in consequence of a such a proclamation or notification. Not only must an actual blockade exist, (1) but a knowledge of it must be brought home to the party, (2) in order to show that it has been violated. (3)	**犯者知之** 其二，仅用虚言禁阻不为封港， 不得因有预示便谓已知。 盖封港者，(3) 不但须先有封港实事，(1) 亦须有实在凭据，以证其人系知而故犯，破之者方可谓为犯封。(3)
As, on the one hand, a declaration of blockade which is not supported by the fact cannot be deemed legally to exist, so, on the other hand, the fact, duly notified to the party on the spot, is of itself sufficient to affect him with a knowledge of it; for the public notifications between governments can be meant only for the information of individuals; but if the individual is personally informed, that purpose is still better obtained that by a public declaration.	若仅示以将要封港而不使势实封， 公法不以为有封也。 但有兵势足以行封， 更当在其处出示告知外人， 方为完备。
Where the vessel sails from a country lying sufficiently near to the blockaded port to have constant information of the state of the blockade, whether it is continued or is relaxed, no special notice is necessary; for the public declaration in this case implies notice to the party, after sufficient time has elapse to receive the declaration at the port whence the vessel sails.	若船只自邻近而来者， 自当知悉封港之宽严， 故不必另外通书达知。 盖封港之始，业经出示告知， 为日既久， 且两地相隔无多，定可深知消息矣。
But where the country lies at such a distance that the inhabitants cannot have this constant information, they may lawfully send their vessels conjecturally, upon the expectation of finding the blockade broken up, after it has existed for a considerable time. (↑) In this case, the party has a right to make a fair	倘地方辽阔， 难以常通音耗， 或因时日久长，冀望弛封，(↓) 载货往彼， 将至时当探听实信， 守港者亦不必遽行捕

inquiry whether be involved in the penalties affixed to a violation of it,	拿。
unless, upon such inquiry, he receives notice of the existence of the blockade.	若已告知而仍来售卖，便可捕拿入公矣。
“There are,” says Sir W. Scott, “two sorts of blockade:	斯果德云：“封港有二等，
one by the *simple* fact only, (↓)	有告而封者，
the other by a notification accompanied with the fact.	亦有不告而封者。(↑)
In the former case,	若不告而封者，
when the fact ceases otherwise than by accident, or the shifting of the wind,	倘非因风浪等患而暂退，
there is immediately an end of the blockade;	其退即为弛封。
but where the fact is accompanied by public notification from the government of a belligerent country to neutral governments,	若告而封者，
I apprehend, *prima facie*, the blockade must by supposed to exist till it has been publicly repealed.	倘其弛封时未曾明告，则不得谓弛封也。
It is the duty, undoubtedly, of a belligerent country, which has made the notification of blockade,	战者行封港事，既系明告而封，
to notify in the same way, and immediately, the discontinuance of it;	其弛封时亦当速告而弛，
to suffer the fact to cease, and to apply the notification again at a distant time, would be a fraud on neutral nations, and a conduct which we are not to suppose that any country would pursue.	否则即为使诈于局外之国矣。
I do not say that a blockade of this sort may not, in any case, expire *de facto*; but I say that such a conduct is not hastily to be presumed against any nation;	故凡有告而行封者，
and, therefore, till such a case is clearly made out, I shall hold that a blockade by notification is, *prima facie*, to be presumed to continue till the notification is revoked.	倘未明告弛封，我必以其未弛封而断案也。”
” And in another case he says: ----	又云：
“The effect of a notification to any foreign government	“告知别国，
would clearly be to include all the individuals of that nation;	即是告知其国人。
it would be nugatory, if individuals were allowed to plead their ignorance of it;	若准人民托词未知，则告为何用耶?
it is the duty of foreign governments to communicate the information to their subjects,	其本国既知，即当家喻户晓，
whose interest they are bound to protect.	以免人民陷于罪害也。
I shall hold, therefore, that a neutral master can never be heard to aver against a notification of blockade that he is ignorant of it.	故局外之船主托词不知，于法院断案全无关涉。
If he is really ignorant of it,	倘实为不知，
it may be subject of representation to his own government, and may raise a claim of compensation from	或可向本国讨偿，

them, but it can be no plea in the court of a belligerent.	但在战者之法院不得以不知为词而讨偿也。
In the case of a blockade *de facto* only, it may be otherwise but this is a case of a blockade by notification.	若系不告而封， 当或有不知者， 既已有告则不得藉口于不知矣。
Another distinction between a notified blockade and a blockade existing de facto only, is, that in the former the act of sailing for a blockaded place is sufficient to constitute the offence. (省略 P. 580 It is to be presumed that the notification will be formally revoked, and that due notice will be given of it; till that is done, the port is to be considered as closed up;)	即行船往向所封之处， 便为已犯违封之罪。
and from the moment of quitting port to sail on such a destination, the offence of violating the blockade is complete, and the property engaged in it subject to confiscation.	盖既经出洋， 其罪已成， 即可捕拿入公。
It may be different in a blockade existing *de facto* only; there no presumption arises as to the continuance, and the ignorance of the party may be admitted as an excuse for sailing on a doubtful and provisional destination. (”)	故不曾有开港之告，即不可度为已开。 倘系不告而封者，或可度为已开，而以不知其未开为词耳。”
A more definite rule, as to the notification of an existing blockade, has been frequent provided by conventional stipulations (↓) between different maritime powers.	沿海诸国， 屡有章程定如何行告封港，(↑)
Thus, by the 18th article of the Treaty of 1794, between Great Britian and the United States, it was declared: --- “That whereas it frequently happens that vessels sail for a port or place belonging to an enemy, without knowing that the same is either besieged, blockaded, or invested, it is agreed that every vessel so circumstanced may be turned away from such port or place; but she shall not be detained, nor her cargo, if not contraband, be confiscated, unless, after notice, she shall again attempt to enter; (↓) but she shall be permitted to go to any other port or place she may think proper.”	即如英美和约有一款云： “倘有不知地方被封而行船前往者， 不可捕拿。 所载之货如非战时禁物，亦不得捕之入公。 必须告知，任其他往， 若复来图谋人口，即为犯封，便可捕拿入公。”(↑)
This stipulation, which is equivalent to that contained in previous treaties between Great Britain and	英国早与欧罗巴北方诸国立约，亦有如此之条款

the Baltic powers, having been disregarded by the naval authorities and prize courts in the West Indies, the attention of the British government was called to the subject by an official communication from the American government. In consequence of this communication, instructions were sent out, in the year 1804, by the Board of Admiralty, to the naval commanders and judges of the Vice-Admiralty, to the naval commanders and judges of the Vice-Admiralty Courts, not to consider any blockade of the French West India islands as existing, unless in respect to particular ports which were actually invested; and then not to capture vessels bound to such ports, unless they should previously have been warned not to enter them. The stipulation in the treaty intended to be enforced by these instructions seems to be a correct exposition of the law of nations, and is admitted by the contracting parties to be a correct exposition of that law, or to constitute a rule between themselves in place of it. Neither the law of nations nor the treaty admits of the condemnation of a neutral vessel for the mere intention to enter a blockaded port, unconnected with any fact. (省略P. 581 In the above-cited cases, the fact of sailing was coupled with the intention, and the condemnation was thus founded upon a supposed actual breach of the blockade. Sailing for a blockaded port, knowing it to be blockaded, was there construed into an attempt to enter that port, and was, therefore, adjudged a breach of blockade from the departure of the vessel.) But the fact of clearing out for a blockaded port is, in itself, innocent, (↓) unless it be accompanied with a knowledge of the blockade. The right to treat the vessel as an enemy, is declared by Vattel, (liv.iii. sect, 177,) to be founded on the *attempt* to enter; and certainly this attempt must be made by a person knowing the fact. The import of the treaty, and of the instructions issued in pursuance of the treaty, is, that a vessel cannot be placed in the situation of one having a notice of the blockade, until she is warned off. They gave her a right to inquire of the blockading	也。 英国水师与战利法院在西印度地方屡有犯之者， 美国即以此款告之， 英国于是行文， 戒饬水师及战利法院之在西印度者云： “其属法国之海岛仅有数处，实势封港，其外则不可以为封， 且船只虽往所封之处，倘无前示而后复来者，亦不得捕拿。” 此训条与以上约款， 皆明公法之实义也。 盖照公法， 船只将往所封之处，不可因徒有其意而遂捕之入公。 即向往所封之处， 若非明知有封， 亦无所谓罪也。(↑) 发氏云：“其所以捕拿之故，惟图谋入口者而已。” 盖有图谋者，必系明知已封故也， 按英美和约， 其不告而封者，倘有船只前来，必先以封禁示知，

squadron, (↓) if she had not previously received this warning from one capable of giving it, and consequently dispensed with her making that inquiry elsewhere.	若未经示知 则该船即可向封港者询问。(↑)
A neutral vessel might thus lawfully sail for a blockaded port, knowing it to be blockaded; and being found sailing towards such a port would not constitute an attempt to break the blockade, (↓) unless she should be actually warned off.	故局外之船开往所封之处， 若未先以封禁示之， 则不得为犯封之罪也。(↑)
Where an enemy's port was declared in a state of blockade by notification, and at the same time when the notification was issued news arrived that the blockading squadron had been driven off by a superior force of the enemy, the blockade was held by the Prize Court to be null and defective from the beginning, (↓) in the main circumstance that is essentially necessary to give it legal operation; and that it would be unjust to hold neutral vessels to the observance of a notification, accompanied by a circumstance that defeated its effect.	有行文告封港者， 而同时得报云 封港之水师已经被敌击退， 厥后再行封港， 有船只入口被人捕拿， 战利法院断其不可入公。(↑)
This case was, therefore, considered as independent of the presumption arising from notification in other instances; the notification being defeated, it must have been shown that the actual blockade was again resumed, and the vessel would have been entitled to a warning, if any such blockade had existed when she arrived of the port. The mere at of sailing for the port, under the dubious state of the actual blockade at the time, was deemed insufficient to fix upon the vessel the penalty for breaking the blockade.	盖虽复有封港之事， 然未尝复申封港之告， 其初告以师败归为废纸， 而船只往彼者，焉知复有封港之事? 倘非先示而后犯者， 即不得捕拿焉。
(省略一段 582)	
Some act of violation. 3. Besides the knowledge of the party, some act of violation is essential to a breach of blockade; as either going in or coming out of the port with a cargo laden after the commencement of the blockade.	**实事犯封** 其三，虽已实知， 必有实事方为犯封， 即如封港后，装载货物而驶船出入口门者是。

Thus, by the edict of the States-General of Holland, of 1630, relative to the blockade of the ports of Flanders, it was ordered that the vessels and goods of neutrals which should be found going in or coming out of the said ports, or so near thereto as to show beyond a doubt that they were endeavoring to run into them; or which, from the documents on board, should appear bound to the said ports, although they should be found at a distance from them, should be confiscated, (↓) unless they should, voluntarily, before coming in sight of or being chased by the Dutch ships of war, change their intention, while the thing was yet undone, and alter their course.	一千六百三十年，荷兰封禁比利时海口， 出示云："局外之船出入该处， 或驶近焉，始可必其实往彼处， 或有牌照为证。 当未经荷兰兵船看见， 及尾追之时必须先行转向别往， 否则捕拿入公。"（↑）
Bynkershoek, in commenting upon this part of the decree, defends the reasonableness of the provision which affects vessels *found so near to the blockaded ports as to show beyond a doubt that they were endeavoring to run into them*, upon the ground of legal presumption, with the exception of the extreme and well-proved necessity only. Still more reasonable is the infliction of the penalty of confiscation, where the intention is expressly avowed by the papers found on board.	宾氏辨其事为情理兼尽。 盖驶近所封之处， 如非避风浪等患，可必其将犯封禁而捕之， 况其有牌照以证其所往乎?
The third article of the same edict also subjected to confiscation(↓) such vessels and their cargoes as should come out of the said ports, not having been forced into them by stress of weather, although they should be captured at a distance from them, unless they had, after leaving the enemy's port, performed their voyage to a port of their own country, or to some other neutral or free port, in which came they should be exempt from condemnation; but if, in coming out of the said ports of Flanders, they should be pursued by the Dutch ships of war, and chased into another port, such as their own, or that of their destination, and found on the high seas coming out of *such port*, in that case they might be captured and condemned. Bynkershoek considers this provision as distinguishing (↓) the case of a vessel having broken the blockade, and	示文更有一款云： "船只出所封海口， 如非避风浪等患进而复出者， 虽已远离其处， 亦可捕拿。（↑） 但已回至本国或别往局外之地，而后出洋者， 不可因前有干犯而捕拿也。 然出所封之海口， 荷兰兵船见之，追至本国及别国海口， 更俟其出时， 或于大海遇之， 即行捕拿入公可也。" 宾氏云： "其安然回国

afterwards terminated her voyage by proceeding voluntarily to her destined port, and that of a vessel chased and compelled to take refuge; which latter might still be captured after leaving the port in which she had taken refuge. And in conformity with these principles is the more modern law and practice. With respect to violating a blockage by coming out with a cargo, (1) the time of shipment is very material; (2) for although it might be hard to (3) refuse a neutral liberty to retire (4) with a cargo already laden, and by that act already become neutral property; (5) yet, after the commencement of a blockade, a neutral cannot be allowed to interpose, in any way, to assist the exportation of the property of the enemy. (6) A neutral ship departing can only take away a cargo *bona fide* purchased and delivered before the commencement of the blockade; if she afterwards take on board a cargo, it is a violation of the blockade. But where a ship was transferred from one neutral merchant to another in a blockaded port, and sailed out in ballast, she was determined not to have violated the blockade. So where goods were sent into the blockaded port before the commencement of the blockade, (1) but reshipped by order of the neutral proprietor, (2) as found unsaleable, during the blockade, (3) they were held entitled to restitution. (4) For the same rule which permits neutrals to withdraw their vessels from a blockaded port extends also, with equal justice, to merchandise sent in before the blockade, and withdrawn *bona fide* by the neutral proprietor. After the commencement of a blockade, a neutral is no longer at liberty to make any purchase in that port. Thus, where a ship which had been purchased by a neutral of the enemy in a blockaded port, and sailed on a voyage to the neutral country, had been driven by stress of weather into a	与兵船追之而回者， 大有分别。(↑) 现今公法亦然。其追回者，出口即可捕拿；安然而回者，则不可俟其出口而捕拿之也。” 至于载货出口犯封，(1) 其载货系何日装揽大有关涉。(2) 盖局外者货已装好，即为己货。(5) 若不准其出外运回本国，(4) 恐为太严。(3) 但封港以后，局外不得助敌运货出外耳。(6) 局外之船可将早买早交之货载运出口， 若封港后再行装载者， 即为犯封。 局外之人卖船只与局外者， 其船空身出口， 不为犯封。 局外之货早经人口，(1) 若无售买者，(3) 货主以之复载出口别往，(2) 虽已封港，兵船捕拿定断交还。(4) 盖此事与局外者驶船出所封之海口同为一例也。 封港后， 局外者不得在封禁之处再买货物。 依此例， 前时有战者在封港之处卖船与局外者， 及其出口往局外之国， 因避风驶进敌国海口，

belligerent port, where she was seized, she was held liable to condemnation under the general rule. That the vessel had been purchased out of the proceeds of the cargo of another vessel, was considered as an unavailing circumstance on a question of blockade. If the ship has been purchased in a blockaded port, (↓) *that* alone is the illegal act, and it is perfectly immaterial out of what funds the purchase was effected. Another distinction taken in argument was, that the vessel had terminated her voyage, and therefore that the penalty would no longer attach. But this was also overruled, because the port into which she had been driven was not represented as forming any part of her original destination. It was therefore impossible to consider this accident as any discontinuance of the voyage, or as a defeasance of the penalty which had been incurred. A maritime blockade is not violated (↓) by sending goods to the blockaded port, or by bringing them from the same, through the interior canal navigation or land carriage of the country. A blockade may be of different descriptions. A mere maritime blockade, effected by a force operating only at sea, can have no operation upon the interior communications of the port. The legal blockade can extend no further than the actual blockade can be applied. If the place by be not invested on the land side, its interior communications with other ports cannot be cut off. If the blockade be rendered imperfect by this rule of construction, it must be ascribed to its physical inadequacy,	即被捕拿， 而战利法院定为入公， 盖云：“虽托售卖己船所载之货，得钱另买敌船为词， 此与断案毫无关涉。” 盖犯法之事，并非在买敌船， 亦不问其以何货买得， 惟因其在封港之处买卖故耳。(↑) 又云： “该船虽属犯法，若能过海进口， 即不可加刑。 然 其所进之口非其所往之口，乃避风患不得已而进者， 即当视同仍在道路无异， 何可因而幸免耶?” 倘有人从里河或陆路运货至封港之处， 或自封港之处运回， 则不为犯封。(↑) 盖封港有数等， 海封全赖水师， 其里河与陆路即无关涉。 盖水师所不及之处，公法不以为封也。 其地倘或未经陆兵截断道路， 尽可由里河陆路交易别口。 或云依此说，则封港终不能成矣。 曰：此乃势不足之故。

by which the extent of its legal pretensions is unavoidably limited. But goods shipped in a river, having been previously sent in lighters along the coast from the blockaded port, with the ship under charter-party proceeding also from the blockaded port in ballast to take them on board, were held liable to confiscation. (省略P. 585 This case is very different from the preceding, because there the communication had been by inland navigation, which was in no manner and in no part of it subject to the blockade.) The offence incurred by a breach of blockade generally remains during the voyage; but the offence never travels on with the vessel further than to the end of the return voyage, although if she is taken in any part of that voyage, she is taken *in delicto*. This is deemed reasonable, because no other opportunity is afforded to the belligerent cruisers to vindicate the violated law. But where the blockade has been raised (↓) between the time of sailing and the capture, the penalty does not attach; because the blockade being gone, the necessity of applying the penalty to prevent future transgression no longer exists. When the blockade is raised, a veil is thrown over every thing that has been done, and the vessel is no longer taken *in delicto*. The *delictum* may have been completed at one period, but it is by subsequent events done away. P.586	盖势不能及之处，其禁亦不能及焉。 但有船被雇 空身出口，停泊邻近， 而内河运来之货载于剥船，沿递转运， 即可捕拿入公，盖海岸即为战势能及之处也。 犯封之罪，若仍在道路，即不能解免。 然亦不可因前趟曾有犯封，遂定其罪， 往返既毕即为一趟，若返时于路被捕，即以为罪孽犹在，而定之入公， 非为违越情理， 盖战者之兵船别无警戒之法故也。 然该商船未经捕拿之先， 倘已弛封，（↑） 则不能定为入公。 盖封港之事既废， 警人犯封亦无所益，故不可徒加刑罚， 且封一弛， 则封前之事即置若罔闻矣。
29. Right of visitation and search. The right of visitation and search of neutral vessels at sea is a belligerent right, essential to the exercise of the right of (↓) capturing enemy's property, contraband of war, and vessels committing a breach of blockade. Even if the right of capturing enemy's property be ever so strictly limited, and the rule of *free ships free goods* be adopted, the right of visitation and search is essential, in order to determine whether the ships themselves are neutral, and documented as such, according to the law of nations and treaties;	**第二十九节　往视稽查** 战者在大海之上遇局外之船，可以往视稽查， 否则敌船及犯封之船，并载战时禁物敌货等船， 皆不能捕拿矣。（↑） 虽云局外之船所载皆为局外之货， 倘不往视稽查，安知其船为局外之船乎?

for, as Bynkershoek observes,	宾氏云：
“It is lawful to detain a neutral vessel, in order to ascertain,	“船系局外与否，
not by the flag merely, which may be fraudulently assumed,	旗号不足为凭，
but by the documents themselves on board, whether she is really neutral.”	战者即可立时截止，登船查看牌照。”
Indeed it seems that the practice of maritime captures could not exist without it. (↓)	
Accordingly the text writers generally concur in recognizing the existence of this right.	诸国公师皆许此规，
	盖无稽查之例，则在海上捕拿之事，亦将何所倚恃而行耶？（↑）
The international law on this subject is ably summed up by Sir W. Scott, (↓)	
in the case of The Maria, where the exercise of the right was attempted to be resisted by the interposition of a convoy of Swedish ships of war.	前有英国兵船欲稽查瑞国商船，而瑞国兵船护之，不许稽查。
	斯果德断云：（↑）
In delivering the judgment of the High Court of Admiralty in that memorable case, this learned civilian lays down the three following principles of law:----	“公法制此，纲领有三：
1. That the right of visiting and search (↓)	“其一，倘战者之兵船牌照实系妥善，
merchant-ships on the high seas,	则在大海遇见商船，
whatever be the ships, the cargoes, the destinations, is an incontestable right of the lawfully commissioned cruisers of a belligerent nation.	无论其所载何等货物，其往何处海口，
	皆可前往稽查。此权无可疑议。（↑）
“I say, be the ships, the cargoes, and the destinations what they may, because, till they are visited and searched,	若不前往稽查，
it does not appear what the ships, or the destination are; and it is for the purpose of ascertaining these points that the necessity of this right of visitation and search exists.	安知其为何等船只，所往系何处海口耶？
(省略两句 P. 589This right is so clear in principle, that no man can deny it who admits the right of maritime capture; because if you are not at liberty to ascertain by sufficient inquiry whether there is property that can legally be captured, it is impossible to capture. Even those who contend for the inadmissible rule that *free ships make free goods*, must admit the exercise of this right at least for the purpose of ascertaining whether the ships are free ships or not.)	
The right is equally clear in practice; for practice is uniform and universal upon the subject.	此不惟合乎情理，

The many European treaties which refer to this right, refer to it as preexisting, and merely regulate the exercise of it. All writers upon the law of nations unanimously acknowledge it, without the exception even of Hubner himself, the great champion of neutral privileges.”	更有诸国之常行以证之。 且诸国之盟约言及此权者，未尝以为创作，实皆率由旧章。但其间或增加条款以范围之耳，况诸国之公师无不许之者乎？“
2. That the authority of the neutral sovereign being forcibly interposed cannot legally vary the rights of a lawfully commissioned belligerent cruiser.	其二，战者之兵船依例执牌，即有权以稽查局外之船，虽局外之君亦无权以阻碍之。
“Two sovereigns may unquestionably agree, if they think fit, as in some late instances they have agreed, by special covenant, that the presence of one of their armed ships along with their merchant-ships shall be mutually understood to imply that nothing is to be found in that convoy of merchantships inconsistent with amity or neutrality; and if they consent to accept this pledge, no third party has a right to quarrel with it, any more than any other pledge which they may agree mutually to accept. But surely no sovereign can legally compel the acceptance of such a security by mere force. The only security known to the law of nations upon this subject, independently of all special covenant, is the right of personal visitation and search, to be exercised by those who have the interest in making it.”	两君或特议章程云： ‘倘商船有兵船押护， 即可明知所载之人口、货物，与局外之分、友国之情，无不合者。’ 议立此等约款，固无不可， 然若此国之君不欲如是， 彼国之君即不能强令认其兵船之押护者， 以保其商船必不装载犯禁货物。 盖无特盟而欲保其不犯战规者， 依公法仅有前往稽查一策而已。“
3. That the penalty for the violent contravention of this right is the confiscation of the property so withheld from visitation and search. “For the proof of this I need only refer to Vattel, one of the most correct and certainly not the least indulgent of modern professors of public law. In book iii. C. 7, sect. 114, he expresses himself thus: --- ‘On ne peut empecher le transport des effets de contrebande, si l’on ne visite pas les vaisseaux neutres. On est doc en droit de les visiter. Quelques nations puissantes ont refuse en dif…(589 页，此处略)’	其三，若恃强抵御、不许稽查者，则捕其货入公，以为刑罚可也。” 斯果德引发氏之言以证之曰： “倘不稽查局外之船，即无以阻其运载禁物，此稽查之权所由来也。强悍不服者前或有之，但近今常例，局外之船倘有不服稽查者，虽无他咎，即此一事可以为战利，定之入公焉。”
Vattel is here to be considered not as a lawyer merely delivering an opinion, but as a witness asserting a	法国航海章程第十二款亦可为证云：

fact--- the fact that such is the existing practice of modern Europe. Conformably to this principle, we find in the celebrated French ordinance of 1681, now in force, article 12,	
'That every vessel shall be good prize in case of resistance and combat;'	“凡船只不服稽查，战争强御者可以捕为战利。”
and Valin, in his smaller Commentary, p. 81, says expressly, that,	法林解此语云：
although the expression is in the conjunctive,	“虽有‘战争’二字，其意盖在强御，
yet the *resistance alone is sufficient*.	强御则已足为捕拿之故。”
He refers to the Spanish ordinance, 1718,	西班牙后定章程
evidently coped from it,	而录法国此语，
in which it is expressed in the disjunctive, 'in case of resistance or combat.'	惟添一“或”字云：“或强御或战争，不服稽查者，必捕拿入公。”
And recent instances are at band and within view, in which it appears that Spain continues to act upon this principle. The first time it occurs to my notice on the inquiries I have been able to make in the institutes of our own country respecting matters of this nature, except what occurs in the Black Book of the Admiralty, is in the order of council, 1664, art. 12, which directs,	英国律法有一款云：
'That when any ship, met withal by the royal navy or other ship commissionated, shall fight or make resistance,	“凡船只遇见公船，胆敢与之交战，恃强抵御者，
the ship and goods shall be adjudged lawful prize.'	即当定为战利。
A similar article occurs in the proclamation of 1672. I am, therefore, warranted in saying, that it was the rule and the undisputed rule of the British admiralty.	法院以此为常经，
I will not say that rule may not have been broken in upon, in some instances, by considerations of comity or of policy,	或有因友谊、公益而暂为从权者，
by which it may be fit that the administration of this species of law should be tempered in the hands of those tribunals which have a right to entertain and apply them;	盖亦随时宽严之一道也，
for no man can deny that a State may recede from its extreme rights, and that its supreme councils are authorized to determine in what cases it may be fit to do so, the particular captor having, in no case, any other right and title than what the State itself would possess under the same facts of capture.	但其经制从未或废耳。”
（省略P. 590.But I stand with confidence upon all principles of reason, ---- upon the distince authority of Vattel, ---- upon the institutes of other great maritime countries, as well as those of our own country, when I venture to lay it down that, by the law of nations, as now understood, a deliberate and continued resistance to	

search, on the part of a neutral vessel, to a lawful cruiser, is followed by the legal consequence of confiscation.” The judgement of condemnation pronounced in this case was followed by the treaty of armed neutrality, entered into by the Baltic powers, in 1800, which league was dissolved by the death of the Emperor Paul;)	
and the points in controversy between those powers and Great Britain were finally adjusted by the convention of 5th June, 1801.	一千八百零一年，英国与北方沿海诸国议立章程，
By the 4th article of this convention,	第四款改限旧规，
the right of search as to merchant vessels sailing under neutral convoy was modified,	但准君国之兵船可以稽查商船有局外保护者，
by limiting it to public ships of war of the belligerent party, excluding private armed vessels.	惟民船领兵照者不能行稽查也。
Subject to this modification,	厥后，
the pretension of resisting by means of convoy the exercise of the belligerent right of search, was surrendered by Russia and the other northern powers,	俄国并其余北方诸国任战者可行稽查，即虽有兵船保护，商船不复有强御之事，
and various regulations were provided to prevent the abuse of that right to the injury of neutral commerce.	仍恐稽查尚有弊端，更定章程以为限制。
(省略 P. 591 As has already been observed, the object of this treaty is expressly declared by the contracting parties, in its preamble, to be the settlement of the differences which had grown out of the armed neutrality by “an invariable determination of their principles upon the rights of neutrality in their application to their respective monarchies.”)	
The 8th article also provides that	其第八款云：
“the principle and measures adopted by the present act, shall be alike applicable to all the maritime wars in which one of the two powers may be engaged,	“凡遇海战，倘我一国有涉
whilst the other remains neutral.	而其他无涉者，
These stipulations shall consequently be regarded as permanent,	则此章程必当永远遵守，
and shall serve as a constant rule for the contracting parties in matters of commerce and navigation.” P. 591	以为我通商航海卷四之常规也。”
30. Forcible resistance by an enemy master.	**第三十节　敌人为船主而强御者**
In the case of The Maria,	上节所言护洋之船强御稽查者，
the resistance of the convoying ship was held to be a resistance of the whole fleet of merchant vessels under convoy,	法院断其案曰：“其所护商船亦当与分其罪，
and subjected the whole to confiscation.	一皆定为入公。”
This was a case of neutral property	此乃局外之货，
condemned for an attempted resistance	定为入公者，
by a neutral armed vessel to the exercise of the right	盖以局外之船有强御

of visitation and search, by a lawfully commissioned belligerent cruiser. But the forcible resistance by an enemy master will not, in general, affect neutral property laden on board an enemy's merchant vessel; for an attempt on his part to rescue his vessel from the possession of the captor, is nothing more than the hostile act of a hostile person, who has a perfect right to make such an attempt. "If a *neutral* master," says Sir W. Scott, "attempt a rescue, or to withdraw himself from search, he violates a duty which is imposed upon him by the law of nations, to submit to search, and to come in for inquiry as to the property of the ship or cargo; (省略 P. 592 and if he violates this obligation by a recurrence to force, the consequence will undoubtedly reach the property of his owner; and it would, I think, extend also to the whole property intrusted to his care, and thus fraudulently attempted to be withdrawn from the operation of the rights of war.) With an *enemy* master, the case is very different; no duty is violated by such an act on his part ---- *lupum auribus teneo*, and if he can withdraw himself he has a right so to do." P.592	稽查之罪故耳。 若其船系敌船，虽有强御之事， 则与所载局外之货无涉。 盖其所以抵御之故， 非冀免稽查，乃冀免捕拿也， 倘能力护己船，自无不可。 斯果德云："局外之船主倘遇稽查， 或故为逃避，或强御不服， 即为负分悖法， 其干系连及所管船只、货物矣。 若船主系敌人，其案迥异。 盖敌船原无本分，倘能逃避亦无不可。"
31. Right of a neutral to carry his goods in an armed enemy vessel. The question (↓) how far a neutral merchant has a right to lade his goods on board an armed enemy vessel, and how far his property is involved in the consequences of resistance by the enemy master, was agitated (↓) both in the British and American prize courts, during the last war between Great Britain and the United States. In a case adjudged by the Supreme Court of the United States, in 1815, it was determined, that a neutral had a right to character and lade his goods on board a belligerent armed merchant ship, without forfeiting his neutral character, (↓) unless he actually concurred and participated in the enemy master's resistance to capture.	**第三十一节　局外者借敌人之兵船载货** 局外之商人町以敌国之战船装载货物与否， 敌主交战，其货有干系与否， 此二端英、美两国之法院于从前交战时， 曾经议之颇详。(↑) 美国法院断 局外者可以雇觅战者之护洋船载货， 倘不助船主同战， 即不失其局外之分。

Contemporaneously with this decision of the American court, Sir W. Scott held directly the contrary doctrine, and decreed salvage (↓) for the recapture of neutral Portuguese property, previously taken by an American cruiser from on board an armed British vessel, upon the ground that the American prize courts might justly have condemned the property. In reviewing its former decision, in a subsequent case adjudged in 1818, the American court confirmed it; and, alluding to the decisions in the English High Court of Admiralty, stated, that if a similar case should against occur in that court, and the decisions of the American court should in the mean time have reached the learned judge, he would be called upon to acknowledge that the danger of condemnation in the United States courts was not as great as he had imagined. In determining the last-mentioned case, the American court distinguished it both from those where neutral vessels were condemned for the unneutral act of the convoying vessel, and those where neutral vessels had been condemned for placing themselves under enemy's convoy. (省略一小段 P. 594 With regard to the first class of cases, it was well known that they originated in the capture of the Swedish convoy, at the time when Great Britain had resolved to throw down the glove to all the world, on the contested principles of the northern maritime confederacy.But, independently of this, there was several considerations which presented an obvious distinction between both classes of cases and that under consideration. A convoy was an association for a hostile object.) In undertaking it, a State spreads over the merchant vessels an immunity from search which belongs only to a national ship; and by joining a convoy, every individual vessel puts off her pacific character, (↓) and undertakes for the discharge of duties which belong only to the military marine.	(↑) 而斯果德断案则反乎此。 有葡萄牙商人雇觅英国护洋船载货， 后被美国兵船捕拿，旋经英国兵船救出。 斯果德断货主必行救货之赏，(↑) 盖云："不得英国兵船救转，美国法院必然定之入公矣。" 美国法院后审别案，复坚前议曰： "若后遇有此等案件， 斯果德不必再以美国将定局外之货入公为虑。 盖此事不比 局外之船借敌国以为保护， 或因护船强御而定为入公。 则凡一国派船保护商船者， 乃冀其免敌稽查， 与公船无异。 而商船所以借护者，非恃局外之权， 乃托兵船之势也。

	既已入帮，即不复为和好之船，而乃为兵船矣。(↑)
If, then, the association be voluntary,	故入帮若系自愿而入者，
the neutral, in suffering the fate of the entire convoy, has only to regret his own folly in wedding his fortune to theirs;	其吉凶必与护者共之，
or if involved in the resistance of the convoying ship,	一经捕拿，
he shares the fate to which the leader of his own choice is liable in case of capture.	决无赔偿交还等事也。”
32. Neutral vessels under enemy's convoy, liable to capture?	**第三十二节　局外之船借敌人之保护可捕拿**
The Danish government issued, in 1810,	一千八百零四年，丹英战争，
an ordinance	丹国定立章程云：
relating to captures, which declared to be good and lawful prize (↓)	
“such vessels as, notwithstanding their flag is considered neutral, as well with regard to Great Britain as the powers at war with the same nation, still, either in the Atlantic or Baltic, have made use of English convoy.”	“凡船只曾经借用英国保护者，虽属局外，
	皆可捕拿以为战利。(↑)”
Under this ordinance,	依此章程，
many American neutral vessels were captured, and, with their cargoes, condemned in the Danish prize courts for offending against its provisions.	美国商船多只并所载货物均被丹国捕拿入公，
In the course of the discussions which subsequently took place between the American and Danish governments respecting the legality of these condemnations,	因此遂起公论，
the principles upon which the ordinance was grounded were questioned by the United States government,	美国云：
as inconsistent with the established rules of international law.	“此事与公法不合。
It was insisted that the prize ordinances of Denmark, or of any other particular State,	盖丹国一邦若欲另加战利章程，
could not make or alter the general law of nations, (↓)	
nor introduce a new rule binding on neutral powers.	使局外者遵行焉，
	而改公法之常规，其可得乎?(↑)
The right of the Danish monarch to legislate for his own subjects and his own tribunals, was incontestable;	谅丹君如此示谕己之水师，实无他意，
（省略几句 P. 595 but before his edicts could operate upon foreigner carrying on their commerce upon the seas, which are the common property of all nations, it must be	

shown that they were conformable to the law by which all are bound.) It was, however, unnecessary to suppose, that in issuing these instructions to its cruises,(↓) the Danish government intended to do any thing more than merely to lay down rules of decision for its own tribunals, conformable to what that government understood to be just principles of public law. But the observation became important when it was considered, that the law of nations nowhere existed in the written code accessible to all, and to whose authority all deferred; and that the present question regarded the application of a principle (to say the least) of doubtful authority, to the confiscation of neutral property for a supposed offence committed, not by the owner, but by his agent the master, without the knowledge or orders of the owner, under a belligerent edict, retrospective in its operation, because unknown to those whom it was to affect. (省略几页 595-603 The principle laid down in the ordinance, as interpreted by the Danish tribunals, was, that the fact of having navigated under enemy's convoy… A voyage, or the innocence of her conduct in other respects. … The American vessels in question were engaged in their accustomed lawful trade, … The illegality of the act on the part of the neutral master, for which the property of their owners… Even admitting, then, that the neutral American had no right to put himself under convoy or in order to avoid the exercise of the right …) The negotiation finally resulted in the signature of a treaty, in 1830, between the United States and Denmark, by which the latter power stipulated to indemnify the American claimants generally for the seizure of their property by the payment of a fixed sum *en bloc*, leaving it to the American government to apportion it by commissioners appointed by itself, and authorized to determine "according to the principles of justice, equity, and the law of nations," with a declaration that the conversation, having no other object than to terminate all the claims, "can never hereafter be invoked, by one party or the other, as a precedent or rule for the future."	不过执己见发明公法之意，以为本国法院之权衡而已。 然公法尚未尽录一书 以便万人得所考查， 而使万国必当遵守， 安可恃未明之理将局外之船入公耶?（↑） 况于先所犯者， 突然定立捕拿之例， 则是非欲警戒于后事，乃系追禁于前事矣，有是理乎?” 此案议论既久，厥后特立约款， 丹国出银总偿美国船货， 美国派令大臣分赔各商， 均照公义。 惟云："此案专系停息争端， 彼此不得援以为例也。”

第四卷第四章

CHPATER IV. TREATY OF PEACE	第四章 论和约章程
1. Power of making peace dependent on the municipal constitution The power of concluding peace, (↓) like that of declaring war, depends upon the municipal constitution of the State.	**第一节　谁执和权惟国法所定** 宣战之权 谁执其端，必视各国之法度，
These authorities are generally associated.	至议和之权亦然。(↑) 人能操其一者，大抵亦能操其二。
In unlimited monarchies, both reside in the sovereign; and even in limited or constitutional monarchies, each may be vested in the crown.	若君权无限之国， 其权柄固归君主掌握； 即君权有限之国， 有时亦并以二者之权柄托于君手。
Such is the British Constitution, at least in form;	即如英国之国法， 于君权既加限制，而君主犹执宣战、议和之权，然此徒名耳，
but it is well known, that in its practical administration, the real power of making war actually resides in the Parliament, without whose approbation it cannot be carried on, and which body has consequently the power of compelling the crown to make peace, (↓) by withholding the supplies necessary to prose cute hostilities.	盖其实权仍在国会， 国会如有不允， 即可不发国帑及预备军饷等事。
The American Constitution vests the power of declaring war in the two houses of Congress, with the assent of the President. By the forms of the Constitution, the President has the exclusive power of making treaties of peace, which, when ratifies with the advice and consent of the Senate, become the supreme law of the land, and have the effect of repealing the declaration of war and all other laws of Congress, and of the several States which stand in the way of their stipulations. But the Congress may at any time compel the President to make peace, by refusing the means of carrying on war.	苟无帑银粮饷，虽欲战而不和，必不能矣。(↑) 按美国之国法，则国会与首领并任宣战之权， 若议和之权惟首领执之。 然虽如此云云，但另有一款明言复和之议，必须国会上房应允，方为妥善。 国会既允，则前时宣战之照并所有不合之律法，一并全废。 倘首领不愿议和，国会即可绝其粮饷，无力复战，则不能不议和也。
In France the King has, by the express terms of the constitutional charter, power to declare war, to make	法国之国法，交战、议和、立合兵、通商等章程，皆在君手。

treaties of peace, of alliance, and of commerce; but the real power of making both peace and war resides in the Chambers, which have the authority of granting or refusing the means of prosecuting hostilities.	然战和之实权，仍在议事部院。 盖其行战需用粮饷，或准或禁，该部院主之也。
2. Power of making treaties of peace limited in its extent The power of making treaties of peace, like that of making other treaties with foreign States, is, or may be, limited in its extent by the national constitution. We have already seen that a general authority to make treaties of peace necessarily implies a power to stipulate the conditions of peace; and among these may properly be involved the cession of the public territory and other property, as well as of private property included in the eminent domain. （省略 If, then, there be no limitation, expressed in the fundamental laws of the State, or necessarily implied from the distribution of its constitutional authorities, on the treaty-making power in this respect, it necessarily extends to the alienation of public and private property, when deemed necessary for the national safety or policy.） The duty of making compensation to individuals, whose private property is thus sacrificed to the general welfare, is inculcated by public jurists, as correlative to the sovereign right of alienating those things which are included in the eminent domain; but this duty must have its limits. No government can be supposed to be able, consistently with the welfare of the whole community, to assume the burden of losses produced by conquest, or the violent dismemberment of the State. Where, then, the cession of territory is the result of coercion and conquest, forming a case of imperious necessity beyond the power of the State to control, it does not impose any obligation upon the government to indemnify those who may suffer a loss of property by the cession. The fundamental laws of most free governments limit the treaty-making power, in respect to the dismemberment of the State, either by an express prohibition, or by necessary implication from the nature of the constitution. Thus, even under the constitution of the old French	**第二节　立和约之权有限制** 操议和之权者， 自有定立章程之权， 即让地方公业，并辖下民产，均亦包括在内。 公师有云:“倘为公益许退让地方,毁坏民产,必当赔偿。” 盖有权可行,即有分当守， 然此分亦非无穷尽也。 假如被敌国攻破，或民间分争,其赔偿之款如是之重大，国家安能任此无涯之累负哉? 倘有地方或被敌占据，或受人挟制， 不得已而让于敌国， 则其人民虽曾受害深重，亦不必赔偿。 自主之国虽有立约大权，托授君主， 然分让地土之权，大概无有也。 故或立条款特禁，或其国法暗寓禁止之义，以绝其事。 一千六百年间，法君与日

monarchy, the States-General of the kingdom declared that Francis I. had no power to dismember the kingdom, as was attempted by the Treaty of Madrid, concluded by that monarch; and that not merely upon the ground that he was a prisoner, (↓) but that the assent of the nation, represented in the States-General, was essential to the validity of the treaty.	耳曼皇立约在西班牙京都，分让国土， 而民举之绅士概不允准，其约遂归为废纸。
The cession of the province of Burgundy was therefore annulled, as contrary to the fundamental laws of the kingdom;	不但因王在缧绁之中不能自主，(↑) 即让地之事， 若未经众民所举之绅爵应允，即是越权而行，且与国法相悖。
and the provincial Sates of that duchy, according to Mezeray, declared, that “never having been other than subjects of the crown of France, they would die in that allegiance; and if abandoned by the king, they would take up arms, and maintain by force their independence, rather than pass under a foreign dominion.”	不但国会不允， 即彼省之民告白云： “我地自古迄今，惟服从法国一君， 若纳降别国，宁死不愿也。 倘吾君必欲弃掷我等， 亦惟有各持兵仗自立自护而已，决不投服别国辖下也。”
But when the ancient feudal constitution of France was gradually abolished by the disuse of the States-General, and the absolute monarchy became firmly established under Richelieu and Louis XIV., the authority of ceding portions of the public territory, as the price of peace, passed into the hands of the king, in whom all the other powers of government were concentrated. （省略一段 The different constitutions established in France, subsequently to the Revolution of 1789, limited this authority in the hands of the executive in various degrees. The provision in the Constitution of 1795, by which the recently conquered countries on the left bank of the Rhine were annexed to the French territory, became an insuperable obstacle to the conclusion of peace in the conferences at Lisle. ）	后法国众省之国会被废， 而法君路益十四坚执无限之权， 于是分让国土以得议和，此权亦归其一人掌之。
By the Constitutional Charter of 1830, the king is invested with the power of making peace, without any limitation of this authority, other than that which is implied in the general distribution of the constitutional powers of the government.	一千八百三十年复新国法，复立国会，限制君权。 然立约之权尚在君手， 惟不得或越国法，分派执权之大义。

Still it is believed that, according to the general understanding of French public jurists,	法国公师有云：
the assent of the Chambers, clothed with the forms of a legislative act,	“王倘分让国土，必须众省之国会允准，
is considered essential to the ultimate validity of a treaty ceding any portion of the national territory.	方为坚固。
The extent and limits of the territory being defined by the municipal laws,	疆界系在国法内录定者，
the treaty-making power is not considered sufficient to repeal those laws.	立约之权不足以废国法而改疆界也。”
In Great Britain, the treaty-making power, as a branch of the regal prerogative,	据英国之国法，君之操权立约为大，
has in theory no limits;	名虽无所限制，
but it is practically limited by the general controlling authority of Parliament;	而实则国会总制之。
whose approbation is necessary to carry into effect a treaty, by which the existing territorial arrangements of the empire are altered.	盖君倘有立约改革国政、地土等事，
In confederated governments, the extent of the treaty-making power, in this respect, must depend upon the nature of the confederation.	国会若不应允，即不得径行焉。
If the union consists of a system of confederated States, each retaining its own sovereignty complete and unimpaired,	在合盟之国，其立约之权有限、无限，必视其合之之法而定。
it is evident that the federal head,	倘系数国各自为主，无所减限，会盟联合，
even if invested with the general power of making treaties of peace for the confederacy,	其盟主虽有代众立和约之权，然即一邦之地，
cannot lawfully alienate the whole or any portion of the territory of any member of the union,	断不能擅自分让，
without the express assent of that member.	必俟其邦应允始可行也。
Such was the theory of the ancient Germanic Constitution;	古时日耳曼曾有此合法，
the dismemberment of its territory was contrary to the fundamental laws and maxims of the empire;	分让国土，固与国法之大纲相悖。
and such is believed to be the actual constitution of the present Germanic Confederation.	即今之国法实义，亦未尝准此也。
This theory of the public law of Germany has often been compelled to yield in practice to imperious necessity;	然虽国法无许分让土地，但若势处危极，屡至于不得已而让者，
such as that which forced the cession to France of the territories belonging to the States of the empire, on the left bank of the Rhine, by the Treaty of Luneville, in 1800.	即如一千八百年间立约退让**莲那江**左于法国是也。
Even in the case of a supreme federal government, or composite State, like that of the United States of America,	美国即是合成之国，总权归于上国，
it may, perhaps, be doubted how far the mere	然其众邦之一若不应允，

general treaty-making power, vested in the federal heads, necessarily carries with it that of alienating the territory of any member of the union without its consent.	则立约之权犹不足以让其土地于别国矣。
3. Effects of a treaty of peace The effect of a treaty of peace is to put an end to the war, and to abolish the subject of it. It is an agreement to waive all discussion concerning the respective rights and claims of the parties, and to bury in oblivion the original causes of the war. It forbids the revival of the same war by resuming hostilities for the original causes which first kindled it, or for whatever may have occurred in the course of it. But the reciprocal stipulation of perpetual peace and amity between the parties does not imply that they are never again to make war against each other for any cause whatever. The peace relates to the war which it terminates; and is perpetual, in the sense that the war cannot be revived for the same cause. This will not, however, preclude the right to claim and resist, if the grievance which originally kindled the war be repeated --- for that would furnish a new injury and a new cause of war, equally just with the former. If an abstract right be in question between the parties, on which the treaty of peace is silent, it follows, that all previous complaints and injury, arising under such claim, are thrown into oblivion, by the *amnestry*, necessarily implied, if not expressed; but the claim itself is not thereby settled either one way or the other. In the absence of express renunciation or recognition, it remains open for future discussion. And even a specific arrangement of a matter in dispute, if it be special and limited, has reference only to that particular mode of asserting the claim, and does not preclude the party from any subsequent pretensions to the same thing on other grounds. Hence the utility in practice of requiring a	**第三节　和约息争** 和约既立， 战争自毕， 且其所以战争之故业已除去矣。 况彼此应允，不复议论曲直， 则其本来启衅之端，俨若瘗藏于地，必当永远湔除而不复记忆。 即此后不得更援前案， 或因战时曾行之事再起争端。 故彼此应许永远和好，即是就其事而永和也， 非谓一和之后，虽别有启衅之端，亦将恃有此约而不顾耳。 若此国复翻前案，彼国虽曾立和约，犹可抵御。 盖虽属旧日之事， 实系新出之害也。 倘二国论理争权，意各有别， 因启战争，此后和约条款如不剖明其是非，则彼此俱未降心相从也， 厥后复开议论，亦无不可。 惟战时所加所受之害，必当永不记忆。 且所论之理、所争之权，一经和约剖明，其争竟便息。 倘因他故争战，亦非所禁， 惟欲永息争端，必须和约

general renunciation of all pretensions to the thing in controversy, which has the effect of precluding for ever the assertion of the claim in any mode. The treaty of peace does not extinguish claims founded upon (↓) debts contracted or injuries inflicted previously to the war, and unconnected with its causes, unless there be an express stipulation to that effect . Nor does it affect private injuries unconnected with the causes which produced the war. Hence debts previously contracted between the respective subjects, though the remedy for their recovery is suspended during the war, are revived on the restoration of peace, (↓) unless actually confiscated, in the mean time, in the rigorous exercise of the strict rights of war, contrary to the milder practice or recent times. There are even cases where debts contracted, or injuries committed, between the respective subjects of the belligerent nations during the war, may become the ground of a valid claim, as in the case of ransombills, and of contracts made by prisoners of war for subsistence, (↓) or in the course of trade carried on under a license. In all these cases, the remedy may be asserted subsequently to the peace.	注明，业已让权服理， 嗣后无论何时何故，俱不得再争其事。 战前所有彼此欠债，与加受屈害者，若与交战缘故无涉，虽有和约明言息争， 倘无条款辨理明晰， 则此等事件随后可以再行理论。(↑) 且彼此人民战前所有权利、所受屈抑，如非战争之故，和约即与之无涉。 故两国人民互有欠款， 虽战时不得讨偿， 若非已定入公者， 至复和时仍可再讨。(↑) 至于以债入公，虽属战权，然未免过严， 当今仁义之世，少有行之者。 即战时民间贸易所欠之债、所受之害， 有时和后俱可再为讨偿理直。 即如人民以准行牌照曾经与敌贸易， 或在缧绁之中写给票据、售买粮食、赎己身己物等事，(↑) 凡此于和后皆可理直。
4. *Uti possidetis* the basis of ever treaty of peace, unless the contrary be expressed The treaty of peace leaves every thing in the state in which it found it, unless there be some express stipulation to the contrary. The existing state of possession is maintained,(↓) except so far as altered by the terms of the	**第四节　各守所有** 立约之时，彼此所有之地方， 约上若无明言让还，

treaty. If nothing by said about the conquered country or places, they remain with the conqueror, and his title cannot afterwards be called in question.	嗣后即各自存守。(↑)
During the continuance of the war, the conqueror in possession has only a usufructuary right,	战时胜者所据地方，惟执暂用之权，
and the latent title of the former sovereign continues,	盖前君之权隐而未灭也。
until the treaty of peace,	至复和时，
by its silent operation,	约上或明言退让，
or express provisions,	或未言交还，
extinguishes his title for ever.	则前君之权即为全灭，不得再相争较也。
The restoration of the conquered territory to its original sovereign,	和约倘许
by the treaty of peace,	交还地方，
carries with it the restoration of all persons and things which have been temporarily under the enemy's dominion, to their original state.	则人口、产业等件俱各复于原主，
This general rule is applied, without exception, to real property or immovables.	田产、植物皆从此例。
The title acquired in war to this species of property,	战时所得管辖之权，
until confirmed by a treaty of peace,	倘无和约坚固之，
confers a mere temporary right of possession.	不过暂守、暂用而已。
The propriety right cannot be transferred by the conqueror to a third party,	胜者暂权，不能转授于他人。
so as to entitle him to claim against the former owner, on the restoration of the territory to the original sovereign.	土地复还原君时，田产、房屋等件亦必归还原主。
If, on the other hand, the conquered territory is ceded by the treaty of peace to the conqueror,	但若胜者已售于他人，后立和约时其土地倘有退让于得胜之国，
such an intermediate transfer is thereby confirmed, and the title of the purchaser becomes valid and complete.	则卖产之事即为坚固，其产不复还于原主，买者之权亦妥矣。
In respect to personal property or movables,	至于动物，
a different rule is applied.	其规例少异。
The title of the enemy or things of this description is considered complete against the original owner after twenty-four hours' possession,	敌国能守一昼夜后即为己物，原主不得讨还。
in respect to booty on land.	此为陆师条规。
The same rule was formerly considered applicable to captures at sea;	若其物系海上捕得，从前亦归此例，
but the more modern usage of maritime nations requires a formal sentence of condemnation as prized of war,	但今之规例必须战利法院审断入公，
in order to preclude the right of the original owner to restitution on payment of salvage.	原主之权方为绝灭。

But since the *jus postliminii* doe not, strictly speaking, operate after the peace; if the treaty of peace contains no express stipulation respecting captured property, it remains in the condition in which the treaty finds it, and is thus tacitly ceded to the actual possessor. The *jus postliminnii* is a right which belongs exclusively to a state of war; and therefore a transfer to a neutral, before the peace, even without a judicial sentence of condemnation, is valid, if there has been no recovery or recapture before the peace. The intervention of peace covers all defects of title, and vests a lawful possession in the neutral, in the same manner as it quiets the title of the hostile captor himself.	否则缴出救货之赏，其所失物便当交还。 倘和约无条款以处之， 万事均当守其和时之地步， 而所捕者之货即为默让于有之者。 复原之例，全属战时。 故战者捕物卖与局外，倘未曾救还，及其复和，原主不得再讨， 而买者之权即为坚固， 与捕者无异矣。
5. From what time the treaty of peace commences its operation A treaty of peace binds the contracting parties from the time of its signature. Hostilities are to cease between them from that time, unless some other period be probided in the treaty itself. But the treaty binds the subjects of the belligerent nations only from the time it is notified to them. Any intermediate acts of hostility committed by them before it was known, cannot be punished as criminal acts, though it is the duty of the State to make restitution of the property seized subsequently to the conclusion of the treaty; and, in order to avoid disputes respecting the consequences of such acts, (↓) it is usual to provide, in the treaty itself, the periods at which hostilities are to cease in different places. Grotius intimates an opinion that individuals are not responsible, even *civiliter*, for hostilities thus continued after the conclusion of peace, so long as they are ignorant of the fact, although it is the duty of the State to make	**第五节　和约自何日为始** 和约一经画押，则立约者日后俱当奉行。 倘约上无另限日期，均当立即罢兵息战。 惟两国之人民必俟和约之议既已告知，方可令其遵守。 若值既立之后未知之先，或有彼此战争残害， 则不可以为犯法而加刑也， 但所捕之货物必当交还。 大抵 约上 预限息战日期， 必按地方远近而定， 以免人托为不知而故行残害。(↑) 虎哥云： “人不知和约之立，致有加害于敌，不为罪案。受害者亦不能控告，而令之偿害也。 惟所捕之货倘未毁失，其

restitution, wherever the property has not been actually lost or destroyed. But the better opinion seems to be, that wherever a capture takes place at sea, after the signature of the treaty of peace, mere ignorance of the fact will not protect the captor from civil responsibility in damages; and that, if he acted in good faith, his own government must protect him and save him harmless. When a place or country is exempted from hostility by articles of peace, it is the duty of the State to give its subjects timely notice of the fact; and it is bound in justice to indemnify its officers and subjects who act in ignorance of the fact. In such a case it is the actual wrong-doer who is made responsible to the injured party, and not the superior commanding officer of the fleet, unless he be on the spot, and actually participating in the transaction. Nor will damages be decreed by the Prize Court, even against the actual wrong-doer, after a lapse of a great length of time. When the treaty of peace contains an express stipulation that hostilities are to cease in a given place at certain time, and a capture is made previous to the expiration of the period limited, but with a knowledge of the peace on the part of the captor, the capture is still invalid; for since constructive knowledge of the peace, after the periods limited in the different parts of the world, renders the capture void, much more ought actual knowledge of the peace to produce that effect. It may, however, be questionable whether any thing short of an official notification from his own government would be sufficient, in such a case, to affect the captor with the legal consequences of actual knowledge. And where a capture of a British vessel was made by an American cruiser, (1) before the period fixed for the cessation of hostilities (2) by the Treaty of Ghent, (3) in 1814, (4) and in ignorance of the fact, (5)	国必当交还。” 但此说不如今之公师所云： “既和之后，在海外捕船， 捕者不得托词于不知以冀幸免，必须赔偿所害也。 倘系实有不知， 则其所赔偿者，本国亦必赏还之焉。” 若有特立章程将某处地方置于战外， 必须君国预先晓谕其民，告知其事。 倘其臣民有不知而犯者，则君国当任其咎，而保其无损也。 凡遇此等事，被害者必向害之者讨偿。 倘水师总管不在其处，即可不与其事。 若犯者日期久远，战利法院亦不必断其赔还也。 和约倘有条款明限某处某时息战， 若有人知和约之已立，而仍敢捕拿船只货物者，虽限期未到， 则所捕船、物必当交还。 盖限期既到之后，虽有不知者，尚谓其已知而其事立废，况实知而犯者，不更当废其事乎? 然若其国之执政者未尝径行告知， 即难以明知故犯之罪加之于彼也。 一千八百十四年(4) 英、美立和约，(3) 当限期未到之时，(2) 有英国商船被美国兵船所捕，(1) 携入江口，期满旋经英国兵船救还，(6)

----- but the prize had not been carried *infra presidia* and condemned, and while at sea was recaptured by a British ship of war, after the period fixed for the cessation of hostilities, but without knowledge of the peace,(6)	此皆不知和约之已立者，(5)
---- it was judicially determined, that	后经法院审断云：
the possession of the vessel by an American cruiser was a lawful possession,	“其船既为美国兵船所捕，和后即为美国所主，
and that the British recaptor could not, after the peace, lawfully use force to divest this lawful possession.	而英人用力夺回，殊属犯法，
The restoration of peace put an end, from the time limited, to all force;	此必当还于原捕者也。”
and then the general principle applied, that things acquired in war remain,	盖复和定限日期既满，全息力争，
as to title and possession, precisely as they stood when the peace took place.	凡事皆当守其和时之地步。
The *uti possidetis* is the basis of every treaty of peace,	和时所有,即和后所有也。
unless the contrary be expressly stipulated.	立和约时倘别无他言，
Peace gives a final and perfect title to captures without condemnation,	必听两国各守所有。即有船只被捕而未经审断，和约即断其应属捕者，
and as it forbids all force, it destroys all hope of recovery,	而禁失者用力救还，并绝其复得之望，
as mush as if the captured vessel was carried *infra presidia* and judicially condemned.	与携带进口法院审断无异。
6. In what condition things taken are to be restored	**第六节　交还之形状当何如**
Things stipulated to be restored by the treaty,	约上所许交还之物，
	若无别议，(↓)
are to be restored in the condition in which they were first taken,	必照捕时之形状还之。
unless there be an express provision to the contrary;(↑)	
but this does not refer to alternations which have been the natural effect of time, or of the operations of war.	然为时已久致有损坏，或遇不得已之害，则不能按照原制也。
A fortress or town is to be restored as it was when taken, so far as it still remains in that condition when the peace is concluded.	即如城池、炮台占据之时，其状若何，至立约时必依所存原状交还。
There is no obligation to repair, as well as restore, a dismantled fortress or a ravaged territory.	惟圮毁之炮台、焚掠之地方，不必先行代为修理而后交还。
The peace extinguishes all claim for damaged done in war, or arising from the operations of war. (↓)	
Things are to be restored in the condition in which the peace found them;	还物必照和时之形状，
and to dismantle a fortification or waste a country after the conclusion of peace, and previously to the	倘和约既立而交还日期未到，

surrender, would be an act of perfidy. If the conqueror has repaired the fortifications, and reestablished the place in the state it was in before the siege, he is bound to restore it in the same condition. But if he has constructed new works, he may demolish them; and, in general, in order to avoid disputes, (↓) it is advisable to stipulate in the treaty precisely in what condition the places occupied by the enemy are to be restored.	其间乘机拆毁炮台、焚掠地方，(↑) 即为失信悖理。 若胜者已修理炮台与原时无异， 和后交还必依和时之形状而还之。 至另有建造营垒、炮台等， 务尽可自行拆毁， 然约内理当明言，何等形状须要复还， 以免争端。(↑)
7. Breach of the treaty The violation of any one article of the treaty is a violation of the whole treaty; for all the articles are dependent on each other, and one is to be deemed a condition of the other. A violation of any single article abrogates the whole treaty, if the injured party so elects to consider it. This may, however ,be prevented by an express stipulation, that if one article be broken, the others shall nevertheless continue in full force. If the treaty is violated by one of the contracting parties, either by proceedings incompatible with its general spirit, or by a specific breach of any one of its articles, it becomes not absolutely void, but voidable at the election of the injured party. If he prefers not to come to a rupture, the treaty remains valid and obligatory. He may waive or remit the infraction committed, or he may demand a just satisfaction.	**第七节　犯条悖约** 若悖约中一款， 即是悖其全约盖诸款相依， 缺一不可。 故悖其一款， 受屈者视同悖其全约可也。 但有时约内特有条款云： “虽有偶犯所约之一款， 而两国犹必遵守其余诸款，与初无异。” 倘立约之一国明犯约内一款， 或其所行者与和约之义大相悖谬， 则其约虽尚未废置，已有可废之势矣。 然其废与不废， 惟在受屈者主之而已。 倘受屈者不欲弃和， 其约仍在， 二国俱当照常遵守。 至其所犯之事，或置而不论、 或谅而概免、 或执义讨索赔偿焉，均无不可。
8. Disputes respecting its breach, how adjusted.	**第八节　和约争端如何可息**

Treaties of peace are to be interpreted by the same rules with other treaties. Disputes respecting their meaning or alleged infraction may be adjusted by amicable negotiation between the contracting parties, by the mediation of friendly powers, or by reference to the arbitration of some one power selected by the parties. This latter office has recently been assumed, in several instances, by the five great powers of Europe, with the view of preventing the disturbance of the general peace, (↓) by a partial infraction of the territorial arrangements stipulated by the treaties of Vienna, in consequence of the internal revolutions which have taken place in some of the States constituted by those treaties. Such are the protocols of the conference of London, by which a suspension of hostilities between Holland and Belgium was enforced, and terms of separation between the two countries proposed, which, when accepted by both, became the basis of a permanent peace. The objections to this species of interference, and the difficulty of reconciling it with the independence of the smaller powers, are obvious; but it is clearly distinguishable from that (↓) general right of superintendence over the internal affairs of other States, asserted by the powers who were the original parties to the Holy Alliance, for the purpose of preventing changes in the municipal constitutions not proceeding from the voluntary concession of the reigning sovereign, or supposed in their consequences, immediate or remote, to threaten the social order of Europe. The proceedings of the conference treated the revolution, by which the union between Holland and Belgium, established by the Congress of Vienna, had been dissolved, as an irrevocable event; and confirmed the independence, (1) neutrality, (2)	至于解说和约之义， 其权衡与别样盟约俱同。 或意有未明而疑有干犯者，其中有数法可息争端： 两国坚执友谊，重议妥善，一也； 其一国邀请友邦，善为调处，二也； 两国并请他国，秉公理断，三也。 迩来 欧罗巴五大国 常有自行听断之事， 以免小犯之端致乱大局。(↑) 即如前时荷兰、比利时交战，诸国遣使会于伦敦，公启和议，令两国守之， 以为永和之纲领。 大国如此管理小国之事，则小国难以自主明矣。 然此与自称圣盟之国欲管理别国之事者， 大相悬殊。(↑) 盖此乃就事而主持和议，彼则强制诸国使不易君改法， 恐致变于欧罗巴大洲也。 伦敦公使会 以荷兰、比利时虽曾被数国公论，而致联合者， 今则复分， 不能再有挽回之术。 即照五国前与比利时所立

and state of territorial possession of Belgium, (3) upon the conditions contained in the Treaty of the 15th November, 1831, between the five powers and that kingdom, （4） subject to such modifications as might ultimately be the result of direct negotiations between Holland and Belgium.	约款，（4） 坚其自主，(1) 保其疆界，(3) 并定其永守局外之权。(2) 至欲改革约内章程，仍准 荷兰、比利时两国自行商议而定也。