

THE CORRESPONDENCE AND PUBLIC PAPERS

OF

JOHN JAY

VOL. IV.

1794--1826

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THE CORRESPONDENCE AND PUBLIC PAPERS

OF

JOHN JAY

FIRST CHIEF-JUSTICE OF THE UNITED STATES, MEMBER AND PRESIDENT OF THE
CONTINENTAL CONGRESS, MINISTER TO SPAIN, MEMBER OF COMMISSION
TO NEGOTIATE TREATY OF INDEPENDENCE, ENVOY TO GREAT
BRITAIN, GOVERNOR OF NEW YORK, ETC.

1794-1826

EDITED BY

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VOL. IV.

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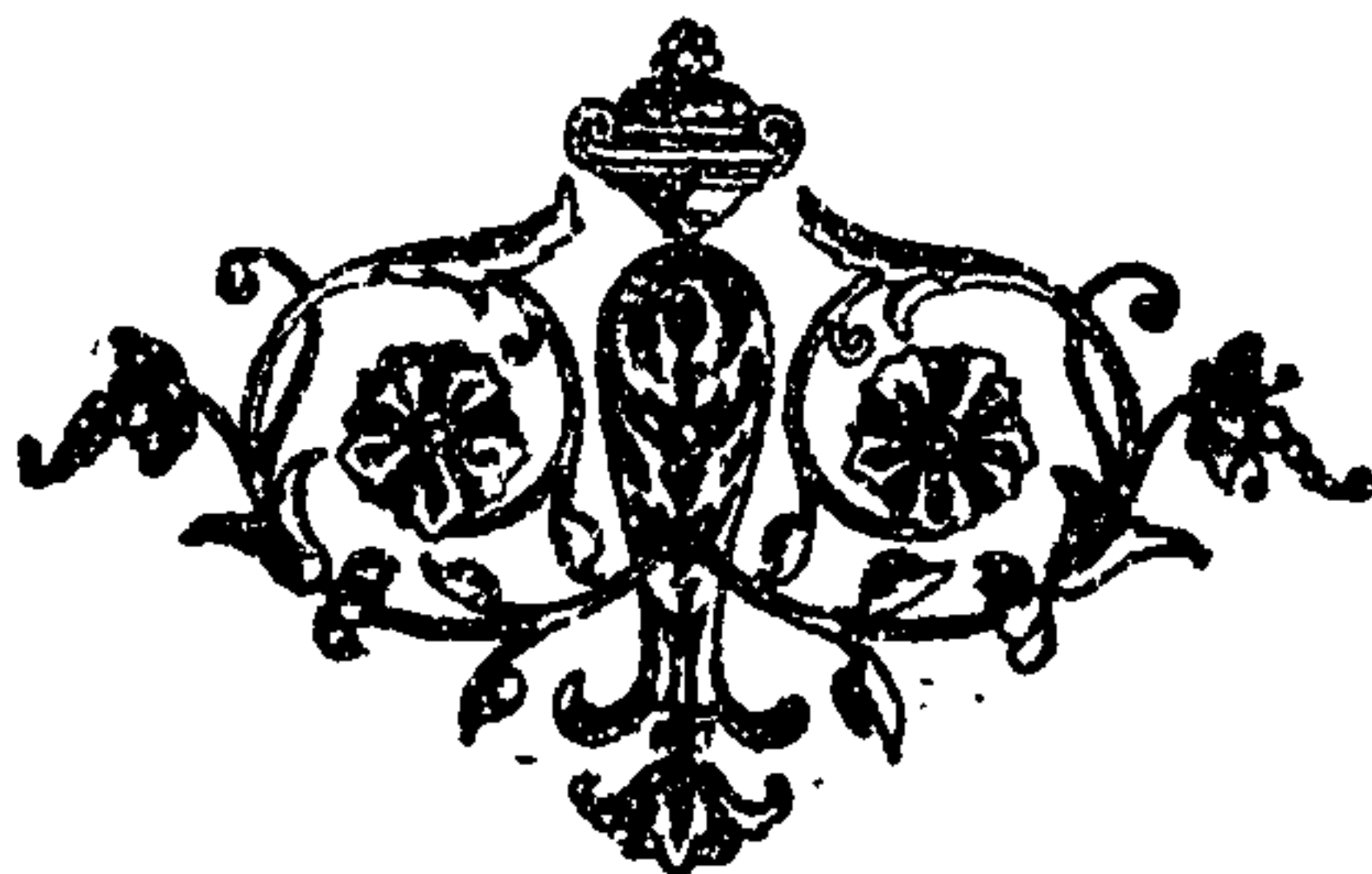
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With the best wishes that your health and longevity may be such as to give additional weight to your remarks respecting them,

I am, dear sir,

Your faithful and obedient servant,

JOHN JAY.

JAY TO JOHN MURRAY, JUN.

BEDFORD, 12th October, 1816.

Accept, my good friend, my thanks for your kind letter of the 22d ult., and for the pamphlets enclosed with it. They came to my hands on the 2d inst. The state of my health is such, that I can read or write but little at a time without fatigue; and, therefore, I cannot prudently venture on the task you recommend.

Whether war of *every* description is prohibited by the gospel, is one of those questions on which the excitement of any of the passions can produce no light. An answer to it can result only from careful investigation and fair reasoning.

It appears to me that the gospel not only recognizes the whole moral law, and extends and perfects our knowledge of it, but also enjoins on *all* mankind the observance of it. Being ordained by a legislator of *infinite* wisdom and rectitude, and in whom there is "no variableness," it must be free from imperfection, and therefore never has, nor ever will require amendment or alteration. Hence I conclude that the moral law is exactly the same now that it was before the flood.

That all those wars and fightings are unlawful, which

proceed from culpable desires and designs (or in Scripture language from lusts), on the one side or on the other, is too clear to require proof. As to wars of an opposite description, and many such there have been, I believe they are as lawful to the unoffending party in our days, as they were in the days of Abraham. He waged war against and defeated the five kings. He piously dedicated a tenth of the spoils; and, instead of being blamed, was blessed.

What should we think of a human legislator who should authorize or encourage infractions of his own laws? If wars of every kind and description are prohibited by the moral law, I see no way of reconciling such a prohibition with those parts of Scripture which record institutions, declarations, and interpositions of the Almighty which manifestly evince the contrary. If *every* war is sinful, how did it happen that the *sin* of waging *any* war is not specified among the numerous sins and offences which are mentioned and reproved in both the Testaments?

To collect and arrange the many facts and arguments which relate to this subject would require more time and application than I am able to bestow. The foregoing are hinted merely to exhibit some of the reasons on which my opinion rests.

It certainly is very desirable that a pacific disposition should prevail among all nations. The most effectual way of producing it is by extending the prevalence and influence of the gospel. *Real* Christians will abstain from violating the rights of others, and therefore will not provoke war.

Almost all nations have peace or war at the will and pleasure of rulers whom they do not elect, and who are not always wise or virtuous. Providence has given to our people the choice of their rulers, and it is the duty as well as the privilege and interest of our Christian nation to select and prefer Christians for their rulers.

The sentiment expressed in the extract from your brother's letter corresponds with his benevolent disposition. He has been "diligent in well-doing," and his works will not cease to receive, as well as deserve, commendation. When you write to him, assure him of my esteem and regard.

I thank you for the kind wishes expressed in the conclusion of your letter. They refer to topics on which I have been accustomed to meditate, and are far more important than any which belong to this transient scene.

With the best wishes for your welfare, in the most enlarged sense,

I remain, your obliged friend,

JOHN JAY.

JAY TO GOUVERNEUR MORRIS.

BEDFORD, 28th October, 1816.

DEAR MORRIS :

Having heard much of your discourse before the New York Historical Society, it gave me pleasure to receive a copy of it, and to find from the direction that I owed it to your friendly attention. It abounds in interesting remarks ; the diction is elevated

JAY TO JOHN MURRAY, JUN.

BEDFORD, 15th April, 1818.

MY GOOD FRIEND :

In my letter to you of the 16th October last, I hinted that I might perhaps write and send you a few more lines on the question, whether war of every description is forbidden by the gospel.

I will now add some remarks to those which were inserted in my answer to your first letter. In that answer, the lawfulness of war, in certain cases, was inferred from those Divine *positive* institutions which authorized and regulated it. For although those institutions were not dictated by the moral law, yet they cannot be understood to authorize what the moral law forbids.

The moral or natural law was given by the Sovereign of the universe to all mankind; with them it was co-eval, and with them it will be co-existent. Being founded by infinite wisdom and goodness on essential right, which never varies, it can require no amendment or alteration.

Divine positive ordinances and institutions, on the other hand, being founded on expediency, which is not always perpetual or immutable, admit of, and have received, alteration and limitation in sundry instances.

There were several Divine *positive* ordinances and institutions at very early periods. Some of them were of limited obligation, as circumcision; others of them were of universal obligation, as the Sabbath,

marriage, sacrifices, the particular punishment for murder.

The Lord of the *Sabbath* caused the day to be changed. The ordinances of Moses suffered the Israelites to exercise more than the original liberty allowed to marriage, but our Saviour repealed that indulgence. When sacrifices had answered their purpose as types of the great Sacrifice, etc., they ceased. The punishment for murder has undergone no alteration, either by Moses or by Christ.

I advert to this distinction between the moral law and positive institutions, because it enables us to distinguish the reasonings which apply to the one, from those which apply *only* to the other—ordinances being mutable, but the moral law always the same.

To this you observe, by way of objection, that the law was given by Moses, but that grace and truth came by Jesus Christ; and hence that, even as it relates to the *moral law*, a more *perfect* system is enjoined by the gospel than was required under the law, which admitted of an eye for an eye, and a tooth for a tooth, tolerating a spirit of retaliation. And further, that, if the moral law was the same now that it was before the flood, we must call in question those precepts of the gospel which prohibit some things *allowed* of and practised by the patriarchs.

It is true that the law was given by Moses, not however in his individual or private capacity, but as the agent or instrument, and by the authority of the Almighty. The law demanded exact obedience, and

proclaimed: "Cursed is every one that continueth not in all things which are written in the book of the law to do them." The law was inexorable, and by requiring *perfect* obedience, under a penalty so inevitable and dreadful, operated as a schoolmaster to bring us to Christ for *mercy*.

Mercy, and grace, and favour did come by Jesus Christ; and also that truth which verified the promises and predictions concerning him, and which exposed and corrected the various errors which had been imbibed respecting the Supreme Being, his attributes, laws, and dispensations. Uninspired commentators have dishonoured the law, by ascribing to it, in certain cases, a sense and meaning which it did not authorize, and which our Saviour rejected and reproved.

The inspired prophets, on the contrary, express the most exalted ideas of the law. They declare that the law of the Lord is *perfect*; that the statutes of the Lord are *right*; and that the commandment of the Lord is *pure*; that God would *magnify* the law and make it honourable, etc.

Our Saviour himself assures us that he came not to destroy the law and the prophets, but to fulfil; that whoever shall do and teach the commandments, shall be called great in the kingdom of heaven; that it is easier for heaven and earth to pass, than one tittle of the law to fail. This certainly amounts to a full approbation of it. Even after the resurrection of our Lord, and after the descent of the Holy Spirit, and after the miraculous conversion of Paul, and after

the direct revelation of the Christian dispensation to him, he pronounced this memorable encomium on the law, viz.: "The law is *holy*, and the commandments *holy, just, and good*."

It is true that one of the *positive* ordinances of Moses, to which you allude, did ordain retaliation, or, in other words, a tooth for a tooth. But we are to recollect that it was ordained, not as a rule to regulate the conduct of private individuals towards each other, but as a legal penalty or punishment for certain offences. Retaliation is also manifest in the punishment prescribed for murder—life for life. Legal punishments are adjusted and inflicted by the law and magistrate, and not by unauthorized individuals. These and all other positive laws or ordinances established by Divine direction, must of necessity be consistent with the moral law. It certainly was not the design of the law or ordinance in question, to encourage a spirit of personal or private revenge. On the contrary, there are express injunctions in the law of Moses which inculcate a very different spirit; such as these: "Thou shalt not avenge, nor bear any grudge against the children of thy people; but thou shalt love thy neighbour as thyself." "Love the stranger, for ye were strangers in Egypt." "If thou meet thy enemy's ox or his ass going astray, thou shalt surely bring it back to him," etc., etc.

There is reason to believe that Solomon understood the law in its true sense, and we have his opinion as to retaliation of injuries, viz.: "Say not, I will recompense evil; but wait upon the Lord, and He will

save thee." Again : " Say not, I will do to him as he hath done to me. I will render to the man according to his work." And again : " If thine enemy be hungry, give him bread to eat ; and if he be thirsty, give him water to drink ; for thou shalt heap coals of fire upon his head, and the Lord shall reward thee."

But a greater than Solomon has removed all doubts on this point. On being asked by a Jewish lawyer, which was the great commandment in the law, our Saviour answered : " Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind. This is the *first* and the great commandment, and the *second* is like unto it : Thou shalt love thy neighbour as thyself. On *these* two commandments hang all the law and the prophets." It is manifest, therefore, that the love of God and the love of man are enjoined by the law ; and as the genuine love of the one comprehends that of the other, the apostle assures us that " Love is the fulfilling of the *law*."

It is, nevertheless, certain, that erroneous opinions respecting retaliation, and who were to be regarded as *neighbours*, had long prevailed, and that our Saviour blamed and corrected those and many other unfounded doctrines.

That the patriarchs sometimes violated the moral law, is a position not to be disputed. They were men, and subject to the frailties of our fallen nature. But I do not know nor believe, that any of them violated the moral law by the authority or with the approbation of the Almighty. I can find no instance

of it in the Bible. Nor do I know of any action done according to the moral law, that is censured or forbidden by the gospel. On the contrary, it appears to me that the gospel strongly enforces the whole moral law, and clears it from the vain traditions and absurd comments which had obscured and misapplied certain parts of it.

As, therefore, Divine ordinances did authorize just war, as those ordinances were necessarily consistent with the moral law, and as the moral law is incorporated in the Christian dispensation, I think it follows that the right to wage *just* and *necessary* war is admitted, and not abolished, by the gospel.

You seem to doubt whether there ever was a *just* war, and that it would puzzle even Solomon to find one.

Had such a doubt been proposed to Solomon, an answer to it would probably have been suggested to him by a very memorable and interesting war which occurred in his day. I allude to the war in which his brother Absalom on the one side, and his father David on the other, were the belligerent parties. That war was caused by, and proceeded from, "the lusts" of Absalom, and was horribly wicked. But the war waged against him by David was not caused by, nor did proceed from, "the lusts" of David, but was right, just, and necessary. Had David submitted to be dethroned by his detestable son, he would, in my opinion, have violated his moral duty and betrayed his official trust.

Although just war is not forbidden by the gospel

in express terms, yet you think an implied prohibition of all war, without exception, is deducible from the answer of our Lord to Pilate, viz.: "If my kingdom were of this world, then would my servants fight," etc.

At the conclusion of the Last Supper, our Lord said to his disciples: "He that hath no sword, let him now sell his garment and buy one." They answered: "Lord, here are two swords." He replied: "It is enough."

It is not to be presumed that our Lord would have ordered swords to be provided, but for some purpose for which a sword was requisite; nor that he would have been satisfied with *two*, if more had been necessary.

Whatever may have been the purposes for which swords were ordered, it is certain that the use of one of those swords soon caused an event which confirmed the subsequent defence of our Lord before Pilate, and also produced other important results. When the officers and their band arrived, with swords and with staves, to take Jesus, they who were about him saw what would follow. "They said unto him: Lord, shall we smite with the sword?" It does not appear that any of the eleven disciples who were with him, except one, made the least attempt to defend him. But Peter, probably inferring from the order for swords, that they were now to be used, proceeded to "smite a servant of the high-priest, and cut off his right ear." Jesus (perhaps, among other reasons, to abate inducements to prosecute Peter for that violent attack) healed the ear.

He ordered Peter to put his sword into its sheath, and gave two reasons for it. The *first* related to himself, and amounted to this, that he would make no opposition, saying: "The cup which my Father hath given me, shall I not drink?" The *second* related to Peter, viz., they who take the sword, shall perish by the sword; doubtless meaning that they who take and use a sword, as Peter had just done, without lawful authority, and against lawful authority, incur the penalty and risk of perishing by the sword. This meaning seems to be attached to those words by the occasion and circumstances which prompted them. If understood in their unlimited latitude, they would contradict the experience and testimony of all ages, it being manifest that many military men die peaceably in their beds.

The disciples did believe and expect that Jesus had come to establish a *temporal* kingdom. "They trusted that it had been he which should have redeemed Israel." "They knew not the Scripture, that he must rise again from the dead; questioning one with another what the rising from the dead should mean." Even after his resurrection, they appear to have entertained the same belief and expectation; for on the very day he ascended, they asked him: "Lord, wilt thou at *this* time restore the kingdom to Israel?"

The order for swords, and the declaration that *two* were *enough*, tended to confirm that belief and expectation, and to inspire a confidence that he who had commanded the winds and the waves, and had raised the dead to life, was able, as well as willing, to render

the *two* swords sufficient to vanquish his enemies. Could anything less than such a firm belief and confidence have prompted eleven *such* men, and with only two swords among them, to offer to "smite with the sword" the armed band, which, under officers appointed by the Jewish rulers, had come to apprehend their Master?

Great must have been the disappointment and astonishment of the disciples, when Jesus unexpectedly and peaceably submitted to the power and malice of his enemies, directing Peter to sheath his sword, and hinting to him the danger he had incurred by drawing it: amazed and terrified, they forsook him and fled. This catastrophe so surprised and subdued the intrepidity of Peter, that he was no longer "ready to go with his Master to prison and to death."

It seems that perplexity, consternation, and tumultuous feelings overwhelmed his faith and reflection, and that his agitations, receiving fresh excitement from the danger and dread of discovery, which soon after ensued, impelled him with heedless precipitation to deny his Master. This denial proved bitter to Peter, and it taught him and others that spiritual strength can be sustained only by the spiritual bread which cometh down from heaven.

The Jews accused Jesus before Pilate of aspiring to the *temporal* sovereignty of their nation, in violation of the regal rights of Cæsar. Jesus, in his defence, admitted that he was king, but declared that his kingdom was not of *this* world. For the

truth of this assertion, he appealed to the peaceable behaviour of his adherents, saying: "*If my kingdom were of this world, then would my servants fight, that I should not be delivered to the Jews, but now is my kingdom not from hence.*"

Pilate, who doubtless well knew what had been the conduct of Jesus, both before and at the time of his apprehension, was satisfied, but the Jews were not. They exclaimed: "If thou let this man go, thou art not Cæsar's friend; whosoever maketh himself a king, speaketh against Cæsar." "We have no king but Cæsar."

You and I understand the words in question very differently. Is there the least reason to infer from the belief and conduct of the disciples, that they were restrained from fighting by the consideration that their Master's kingdom was *not of this world*? On the contrary, did they not believe and expect that he had come to restore one of the kingdoms of *this* world to Israel? The fact is, that they were ready and willing to fight. Did they not ask him: "Lord, shall we smite with the sword?" It was *his* will, therefore, and not *their* will, which restrained them from fighting; and for that restraint he assigned a very conclusive reason, viz., because his kingdom was not of this world.

To the advancement and support of his *spiritual* sovereignty over his *spiritual* kingdom, soldiers and swords and corporeal exertions were inapplicable and useless. But, on the other hand, soldiers and swords and corporeal exertions are necessary to

enable the several temporal rulers of the states and kingdoms of this world to maintain their authority and protect themselves and their people ; and our Saviour expressly declared that *if* his kingdom had been of *this* world, *then* would his servants fight to protect him ; or, in other words, that *then*, and in *that* case, he would not have restrained them from fighting. The lawfulness of such fighting, therefore, instead of being denied, is admitted and confirmed by that declaration.

This exposition coincides with the answer given by John the Baptist (who was "filled with the Holy Ghost") to the *soldiers* who asked him what they should do, viz. : "Do violence to no man, neither accuse any falsely, and be *content* with your *wages*." Can these words be rationally understood as meaning that they should receive wages for *nothing* ; or that, when ordered to march against the enemy, they should refuse to proceed ; or that, on meeting the enemy, they should either run away, or passively submit to be captured or slaughtered ? This would be attaching a meaning to his answer very foreign to the sense of the words in which he expressed it.

Had the gospel regarded war as being in every case sinful, it seems strange that the apostle Paul should have been so unguarded as, in teaching the importance of *faith*, to use an argument which clearly proves the lawfulness of war, viz. : "That it was through faith that Gideon, David, and others waxed valiant in fight, and turned to flight the armies of aliens" ; thereby confirming the declaration of David,

that it was God who had “girded him with strength to battle ; and had taught his hands to war, and his fingers to fight.”

The gospel appears to me to consider the servants of Christ as having two capacities or characters, with correspondent duties to sustain and fulfil.

Being subjects of his *spiritual* kingdom, they are bound in that capacity to fight, pursuant to his orders, with *spiritual* weapons, against his and their spiritual enemies.

Being also subjects and partakers in the rights and interests of a temporal or worldly state or kingdom, they are in that capacity bound, whenever lawfully required, to fight with weapons in just and necessary war, against the *worldly* enemies of that state or kingdom.

Another view may be taken of the subject. The depravity which mankind inherited from their first parents, introduced wickedness into the world. That wickedness rendered human government necessary to restrain the violence and injustice resulting from it. To facilitate the establishment and administration of government, the human race became, in the course of Providence, divided into separate and distinct nations. Every nation instituted a government, with authority and power to protect it against domestic and foreign aggressions. Each government provided for the *internal* peace and security of the nation, by laws for punishing their offending subjects. The law of all the nations prescribed the conduct which they were to observe towards each other, and allowed war to be

waged by an innocent against an offending nation, when rendered just and necessary by unprovoked, atrocious, and unredressed injuries.

Thus two kinds of justifiable warfare arose : one against domestic malefactors ; the other against foreign aggressors. The first being regulated by the law of the land ; the second by the law of nations ; and both consistently with the moral law.

As to the *first* species of warfare, in every state or kingdom, the government or executive ruler has, throughout all ages, pursued, and often at the expense of blood, attacked, captured, and subdued murderers, robbers, and other offenders ; by force confining them in chains and in prisons, and by force inflicting on them punishment ; never rendering to them good for evil, for that duty attaches to individuals in their personal or private capacities, but not to rulers or magistrates in their official capacities. This species of war has constantly and universally been deemed just and indispensable. On this topic the gospel is explicit. It commands us to obey the higher powers or ruler. It reminds us that "he beareth not the sword in vain" ; that "he is the minister of God, and a revenger to execute wrath upon him that doeth evil." Now, if he is not to bear the *sword* in *vain*, it follows that he is to *use* it to execute wrath on evil-doers, and consequently to draw blood and to kill on proper occasions.

As to the *second* species of warfare, it certainly is as reasonable and as right that a nation be secure against injustice, disorder, and rapine from without

as from within ; and therefore it is the right and duty of the government or ruler to use force and the sword to protect and maintain the rights of his people against evil-doers of another nation. The reason and necessity of using force and the sword being the same in both cases, the right or the law must be the same also.

We are commanded to render to our government, or to our Cæsar, "the things that are Cæsar's" that is, the things which belong to him, and not the things which do not belong to him. And surely this command cannot be construed to intend or imply that we ought to render to the Cæsar of another nation more than belongs to him.

In case some powerful Cæsar should demand of us to receive and obey a king of his nomination, and unite with him in all his wars, or that he would commence hostilities against us, what answer would it be proper for us to give to such a demand? In my opinion, we ought to refuse, and vigorously defend our independence by arms. To what other expedient could we have recourse? I cannot think that the gospel authorizes or encourages us, on such an occasion, to abstain from resistance, and to expect miracles to deliver us.

A very feeble unprepared nation, on receiving such a demand, might hesitate and find it expedient to adopt the policy intimated in the gospel, viz.: "What king, going to war against another king, sitteth not down first and consulteth whether he be able with ten thousand to meet him that cometh against

him with twenty thousand ; or else he sendeth an embassy, and desireth conditions of peace"—that is, makes the best bargain he can.

If the United States should unanimously RESOLVE never more to use the sword, would a certified copy of it prove to be an effectual Mediterranean passport? Would it reform the predatory rulers of Africa, or persuade the successive potentates of Europe to observe towards us the conduct of *real* Christians? On the contrary, would it not present new facilities, and consequently produce new excitements, to the gratification of avarice and ambition?

It is true that even just war is attended with evils, and so likewise is the administration of government and of justice ; but is that a good reason for abolishing either of them? They are means by which greater evils are averted. Among the various means necessary to obviate or remove, or repress, or to mitigate the various calamities, dangers, and exigencies, to which in this life we are exposed, how few are to be found which do not subject us to troubles, privations, and inconveniences of one kind or other. To prevent the incursion or continuance of evils, we must submit to the use of those means, whether agreeable or otherwise, which reason and experience prescribe.

It is also true, and to be lamented, that war, however just and necessary, sends many persons out of this world who are ill prepared for a better. And so also does the law in all countries. So also does navigation, and other occupations. Are they *therefore* all sinful and forbidden?

However desirable the abolition of all wars may be, yet until the morals and manners of mankind are greatly changed, it will be found impracticable. We are taught that national sins will be punished, and war is one of the punishments. The prophets predict wars at so late a period as the restoration of the Israelites. Who or what can hinder the occurrence of those wars?

I nevertheless believe, and have perfect faith in the prophecy, that the time will come when "the nations will beat their swords into ploughshares, and their spears into pruning-hooks; when nation shall not lift up sword against nation, neither shall they learn war any more." But does not this prophecy clearly imply, and give us plainly to understand, that in the *meanwhile*, and *until* the arrival of that blessed period, the nations will not beat their swords into ploughshares, nor their spears into pruning-hooks; that nation will not forbear to lift up sword against nation, nor cease to learn war?

It may be asked, Are we to do nothing to hasten the arrival of that happy period? Literally, no created being can either accelerate or retard its arrival. It will not arrive sooner nor later than the appointed time.

There certainly is reason to expect, that as great providential events have usually been preceded and introduced by the intervention of providential means to prepare the way for them, so the great event in question will be preceded and introduced in like manner. It is, I think, more than probable, that the unexpected and singular co-operation and the extra-

ordinary zeal and efforts of almost all Christian nations to extend the light and knowledge of the gospel, and to inculcate its doctrines, are among those preparatory means. It is the duty of Christians to promote the prevalence and success of such means, and to look forward with faith and hope to the result of them.

But whatever may be the time or the means adopted by Providence for the abolition of war, I think we may, without presumption, conclude that mankind must be prepared and fitted for the reception, enjoyment, and preservation of universal permanent peace, before they will be blessed with it. Are they as yet fitted for it? Certainly not. Even if it was practicable, would it be wise to disarm the good before "the wicked cease from troubling"? By what other means than arms and military force can unoffending rulers and nations protect their rights against unprovoked aggressions from within and from without? Are there any other means to which they could recur, and on the efficacy of which they could rely? To this question I have not as yet heard, nor seen, a direct and precise answer.

These remarks would have been written and sent sooner had my health been better. Expedition not being requisite, I attended to them only at intervals which allowed and invited me to do so.

We differ in opinion, and, I am persuaded, with equal sincerity.

With real esteem and regard, I remain,

Your friend,

JOHN JAY.