

flexibility of interpretation, applied to the Constitution of the United States, for which I know no parallel in English judicature, and which seems to me to exceed the latitude of interpretation observed by your judges in relation to acts of Congress. I refer as examples, to the emancipation of the slaves by President Lincoln during the civil war, which was justified as an act covered by the necessities of the case and within the "war power" conferred on the executive by the Constitution; and also to the judicial declaration by the Supreme Court of the validity of the act of Congress making greenbacks legal tender, on the ground that certain express powers as to currency being vested in Congress by the Constitution, the power of giving forced circulation to paper flowed from them as a desirable, if not a necessary, implication. With us no such difficulties arise. Our constitution is unwritten and the legislature is omnipotent. With you the constitution is written and the judicial power interprets it and may declare the highest act of Congress null and void as unconstitutional. With us there can, in the strict sense of the words, be no such thing as an unconstitutional act of Parliament.

I turn now to the consideration of what characterizes the later tendencies of international law. In a word it is their greater humanity.

When Menelik, Emperor of Abyssinia, was recently reported to have cut off the right arms and feet of 500 prisoners, the civilized world felt a thrill of horror. Yet the time was when to treat prisoners as slaves and permanently to disable them from again bearing arms, were regarded as common incidents of belligerent capture. Such acts would once have excited no more indignation than did the inhumanities of the African slave trade before the days of Clarkson and Wilberforce.

Let us hope that it is no longer possible to do as Louis XIV did in his devastations of the Palatinate, or to do so as he threatened to do, break down the dykes and overwhelm with disaster the low countries. Let us hope, too, that no modern Napoleon would dare to decree as the first Napoleon did in his famous or infamous *seront brûlés* edict of 1810. The force of public opinion is too strong and it has reached a higher moral plane.

A bare recital of some of the important respects in which the evils of war have been mitigated by more humane customs must suffice.

Amongst them are: (1) the greater immunity from attack of the persons and property of enemy-subjects in a hostile country; (2) the restrictions imposed on the active operations of a belligerent when occupying an enemy's country; (3) the recognized distinction between subjects of the enemy, combatant and non-combatant; (4) the deference accorded to cartels, safe conducts and flag of truce; (5) the protection secured for ambulances and hospitals and for all engaged in tending the sick and wounded—of which the Geneva Red Cross Convention of 1864 is a notable illustration; (6) the condemnation of the use of instruments of warfare which cause needless suffering.

[To be concluded in next issue.]