

was something to be valorized: the American Revolution. This was presumably a just war that set the stage for the inevitable spread of democracy in the New World in the *post bellum* era:

Those who will know how to take advantage of this great example shall never forget what they owe to America, where the standard of liberty was laid out for the entire universe; and when one asks them what the discovery of this continent produced, they will respond that it was very cruel in the beginning and that during several centuries, it compensated great evils with only weak advantages, but having softened, humanized, and enlightened the nations by happy experiences that one could not do elsewhere, [America] showed to all the true path to liberty, and that civil liberty, preferable to savage liberty, has grown deep roots in North America and has extended its branches to Europe, and will come to cover little by little all the parts of the world.<sup>4</sup>

But there is something troubling implied in this adulation. Speaking of the triumph of American democracy, the anonymous author writes that "with the proximate and universal regeneration for which we hope and of which we are already tasting the first fruits, one essential element is lacking: whether the Indians can participate? Will we finish by repopulating their native lands and the homeland of their ancestors only by destroying them? That is the direction towards which our clearing of the land and the progress of our colonies is pointing."<sup>5</sup> The answer is troubling as it highlights a future of inevitable "just" wars: "The route that all peoples should follow is too well marked for them not to see it. All those who are not enchained by the passions or besotted by vice will be civilized and free when they want to be so; *all the rest are incapable or unworthy of being so*."<sup>6</sup> To the extent that this conclusion captures the Western mindset—a similar stance is seen in Thomas Jefferson's writings just before the Revolution and later in Alexis de Tocqueville's works while traveling a generation after—there is a sense that the American Revolution heralds a new era, one in which democracy and coexistence with the "savages" of the New World are incompatible.

The question of whether the Revolution was a just war or not is, of course, much debated.<sup>7</sup> What is interesting about the *Coup d'Œil* is that it foretells of a postwar world in which American democracy, once established, sets a bellacose stance toward the "savages." The *just post bellum* phase of the American Revolution came, indeed, to be defined by something of a moral imperative: the spread of democracy entails the extermination of native tribes *via* just war.

The *Coup d'Œil* is not just a curious moment in intellectual history, but

### 13 NEUTRALITY, RACE, AND WARS OF EXTERMINATION

Native Americans in the Aftermath  
of the American Revolution

Daniel R. Brunstetter

In 1780 the Academy of Science, Letters, and Arts of Lyon sponsored an essay competition asking European intellectuals to consider the following questions: "Was the discovery of the Americas injurious or useful to the human species? If good came of it, what are the ways in which to conserve and increase them? If it produced evils, what are the ways to remedy them?"<sup>1</sup> While not framed in just war terms, the questions implicitly asked Enlightenment-era European intellectuals to weigh the calamities resulting from the Spanish conquest of the New World with the (perceived) benefits of the recent American Revolution. Regarding the former, the famous inquiry in the sixteenth century about just war and indigenous rights resulting from the Spanish conquest arguably revolutionized how Europeans thought about *ius ad bellum*, or when to go to war.<sup>2</sup> Spanish thinkers such as Francisco de Vitoria, Francisco Suárez, and Domingo de Soto lamented the massacres of indigenous populations, denied the right of Europeans to wage just war on religious grounds, and articulated the sovereign rights of "barbarians" under the law of nations. These arguments marked a significant shift in just war thinking away from the holy-war paradigm toward a more secular perspective.<sup>3</sup> But these concerns were of scant interest to the Enlightenment-era judges of the Academy of Lyon.

What is peculiar about this intellectual competition, sponsored by the Abbé Raynal, was that no winner was declared (for the responses were deemed too unworthy because they tended to focus too much on the calamities of the Spanish conquest). But a summary of the "right" answer was printed some years later as the *Coup d'Œil sur les quatre concours qui ont eu lieu en l'Académie des Sciences Belles-Lettres et Arts de Lyon pour le prix offert par M. l'Abbé Raynal sur la découverte de l'Amérique*. In this summary, the massacre of native populations by Spanish conquistadors was duly criticized—these were not just wars against barbarians, but rather massacres committed by religious zealots and glory hunters. Yet there

rather a philosophical watershed that reflects a broader trend about how the American Revolution's *jus post bellum* phase would be perceived from an Enlightenment perspective. The document's conclusions reflect a shifting understanding regarding just war against so-called barbarians implicit in one of the era's leading just war thinkers, Emer de Vattel, as well as new ideas about the link between just war, sovereignty, and the spread of democracy. Whatever agreements of neutrality or coexistence might have existed before or even during the early stages of the Revolutionary War, these became unsustainable once the Americans emerged victorious. This begs the following questions: Why did a policy of American Indian neutrality before and during the early phases of the war become impossible in the *post bellum* phase? And why did a policy of wars of extermination waged by the Americans against American Indian tribes emerge?

To answer these questions requires exploring the tensions between the principle of neutrality, the birth of democracy by "just war," and the racialization of American-"savage" relations in the *jus post bellum* phase of the Revolution. While many tribes attempted to remain neutral during the Revolutionary War, this turned out to be a doomed strategy that had dramatic effects in the postwar era. The tensions of neutrality found in Vattel's work *The Law of Nations* (1758), which was a hugely influential text on just war in the Enlightenment that held patchy influence in colonial North America (mostly among elites), combined with the perceived necessities of sovereign responsibility from the victorious American perspective and the desperate attempts by American Indians to preserve their independence in a world of democratic settler expansion, arguably influenced *post bellum* realities. This *post bellum* context tapped into troubling, underlyingly racial caveats inherent in Vattel's just war thinking that, from the American perspective, arguably could have justified wars of extermination against the Native tribes.

This conclusion raises serious concerns about the relationship between the American Revolution and the legacy of just war thinking, particularly *jus post bellum*. "Rehabilitation," among the most accepted contemporary notions of justice after war, did not apply in the eighteenth century.<sup>8</sup> Rather, *jus post bellum* was couched in terms of punishment and retribution (a view most contemporary just war scholars argue against), which is expressed clearly in Vattel's work. That being said, in the case of American Indians, there was an important caveat. Again, Vattel provides the theoretical insight: while a just peace could be sought with the "civilized," it might not be possible with some "savages," against whom wars of *extermination* could be waged under certain circumstances. Vattel did not mention New World peoples specifically, however; read in the context of the *post bellum* American Revolution, his ideas could have intimidated something

along the lines of the following: while peace was made with the British, with the cession of certain lands as part of a just retribution, wars of extermination could, under certain conditions, be justifiable against the Native tribes inhabiting these lands if they did not accept the terms of the peace. Thus did European norms of *jus post bellum* blend with racially infused ideals in the wake of the American Revolution to devastating and morally problematic effect.

### Relations with American Indians before and during the American Revolution

The Treaty of Paris of 1783, negotiated between the United States and Great Britain, ended the Revolutionary War. Of significant import is that these negotiations did not include the American Indian tribes that had aligned with the British and that the British ceded territory—what is sometimes referred to as the "Old Northwest," the frontier lands that stretched from the Appalachian and Allegheny Mountains to the Mississippi River—to the fledgling United States.

From the perspective of many Native tribes, these lands were not Great Britain's to give, meaning the United States had no right to expand settlements into these territories. From the U.S. perspective, the land was obtained by right of conquest; Native tribes, because they had sided with the vanquished, were subject to the conditions of the peace treaty that ended the war. The *post bellum* era thus began with the seeds of conflict already planted. To understand how this would lead to wars of extermination requires taking a closer look at how the affected tribes came to side with the British. Doing so reveals a connection between the dilemmas of neutrality and the *post bellum* tensions poised to erupt into conflict.

The political geography of North America during the century prior to the Revolution was extremely complex. Various European imperial powers (Great Britain, France, and Spain) had laid claim to large swaths of land and had fought multiple wars. Individual Native tribes positioned themselves within these imperial disputes, playing a complicated game of diplomacy that involved neutrality and alliances, negotiations and war. They often also had their own intertribal rivalries, though there were also times of punctuated pan-American Indian alliances. Wars were fought, treaties were signed, and the game of diplomacy was renewed.

The Iroquois are a case in point. Following the peace settlement of 1701, the Iroquois began a policy of general neutrality with the French and British. This was broken on several occasions, including Queen Anne's War (1702–13), King

George's War (1744–48), and the French and Indian War (1754–63), but always resorted because they believed it was in their best interest to preserve their autonomy by not siding permanently with one colonial power over the other. This was a sage foreign policy, but it was a potentially treacherous path to follow in the context of feuding imperial rivalries. Indeed, at times, the Iroquois Confederacy, or constituent members of it, broke neutrality to align with one side or the other. But after hostilities ceased, even if the power dynamics had slightly shifted, a return to the policy of neutrality remained an option. While American Indian sovereignty was not fully conceived—the British claimed dominion over land and the peoples who lived on it by way of the Treaty of Utrecht (1713)—politically deft and militarily strong tribes such as the Iroquois were able to act like sovereign entities, making decisions and pursuing actions they perceived to be in their own interests.<sup>9</sup> Such political maneuvering worked insofar as the Iroquois remained a respected power that neither Britain nor France wanted to engage in full-out war, one that maintained some sense of Vattelian sovereignty (as described in chapter 3 above). To quote one French governor near the end of Queen Anne's War: "It is a matter of importance to us . . . not to be at war with that tribe if we can possibly help it, and the five Iroquois villages are more to be feared than the whole of New England."<sup>10</sup> According to one British official, the Iroquois believed it was prudent to "keep the balance betwixt [the English and French]. . . . [I]f the Five Nations would now observe an exact neutrality, they would be courted and feared by both sides."<sup>11</sup> The American Revolution, however, changed the rules of the diplomatic game. The reason is found in the dilemmas of the eighteenth-century notion of neutrality and the consequences of breaking it.

Among the most influential European texts on war and neutrality at the time was Vattel's *Law of Nations*. The book arguably influenced British and American leaders in North America, including George Washington.<sup>12</sup> Earlier in chapter 10, T. Cole Jones describes that while leadership on both sides accepted the restraining *jus in bello* mechanisms found in the works of Vattel (and others), the nature of warfare in colonial North America often made these difficult to implement. The same could be said of neutrality, a reality that Vattel himself was keenly aware. In Book III ("Of War") Vattel devotes an entire chapter to the "obligations and rights flowing from neutrality." He offers a clear definition: "Neutral nations are those who, in time of war, do not take any part in the contest, but remain common friends to both parties, without favouring the arms of the one to the prejudice of the other." "If a nation does not show perfect impartiality, then this leads to what he calls "fraudulent neutrality," which carries with it significant consequences.<sup>13</sup>

Neutrality is a diplomatic strategy a nation can employ "to secure her own peace, when the flames of war are kindling in her neighborhood."<sup>14</sup> In colonial America the flames of war were often kindled between European powers posturing for economic or political advantages over one another with the resources of the New World pawns in a global colonial struggle. But American Indian nations were not mere pawns in a European game of diplomacy. As Colin Calloway explains, Europeans "entered a world in which various Indian groups pursued different foreign policies with regard to other Indian friends and enemies. . . . International and inter-colonial rivalries added to and complicated intertribal rivalries, turning North America into a kaleidoscope of competing, overlapping, and changing foreign policies."<sup>15</sup> Pursuing tribal-centric interests was, however, a tricky game when European colonial powers were at war in adjacent lands. A close reading of Vattel illuminates the tensions of neutrality that American Indian tribes would have faced from the perspective of Europeans versed in eighteenth-century laws of war.

The first challenge of neutrality involves persuading warring neighbors of one's true neutrality. Vattel concedes the right to a party at war to pursue its own self-defense by attacking any sovereign power in league with a declared enemy. He thus explains: "I should have just cause to consider that nation as leagued with my enemy, and in this case, the care of my own safety would authorize me to treat her as such."<sup>16</sup> The burden, it seems, is on the neutral nation to prove its *bonne foi* to remain neutral. Among the requirements for doing so is to continue trading with both powers and not refuse to one what is granted to another. "If the neutral state," writes Vattel, "grants or refuses a passage to one of the parties at war, we ought in like manner to grant or refuse it to the other, unless a change of circumstances affords her substantial reasons for acting otherwise. Without such reasons, to grant one party what she refuses to the other, would be a partial distinction, and a departure from the line of strict neutrality."<sup>17</sup>

This becomes complicated when put in the context of war. For example, Vattel concedes that an "innocent passage is due to all nations with whom a state is at peace, and this duty extends to troops as well as individuals."<sup>18</sup> But of course this is dangerous. If one foreign power demands passage of its troops for benevolent purposes, this could nevertheless be interpreted as having underlying intentions, such as attacking an enemy outpost or occupying the neutral nation's territory. Vattel was not immune to such fears:

When the passage is not of absolute necessity, the bare danger which attends the admission of a powerful army into our territory, may authorize us to refuse them permission. We may have reason to apprehend

that they will be tempted to take possession of the country. . . . Let it not be said with [Hugo] Grotius, that he who requires the passage is not to be deprived of his right on account of our unjust fears. A probable fear, founded on good reasons, gives us right to avoid whatever may realize it.<sup>19</sup>

This was a plausible scenario in the sovereign kaleidoscope of colonial North America. For example, during King George's War, the Iroquois's policy of neutrality prohibited the passage of French troops through their territory for bellicose purposes. Neutral passage was permissible "unless the French should come through our settlements to hurt our Bretheren the English, which we would not permit."<sup>20</sup>

Vattel was well aware of such scenarios. Thus, he contends, "if the neutral sovereign has good reasons for refusing a passage, he is not obliged to grant it."<sup>21</sup> He then concludes, "The tranquillity, therefore, and the common safety of nations requires that each should be mistress of her own territory, and at liberty to refuse every foreign army an entrance, when she has not departed from her natural liberties in that respect, by treaties."<sup>22</sup> But this is a slippery slope, for it requires judgment laced with uncertainty about the intentions of the non-neutral parties as well as observance of treaties not always signed under equal conditions. Errors of judgment or perceived breaches of treaty could be fatal, for they could signal to the refused party that the nation in question is practicing fraudulent neutrality.

The consequences of fraudulent neutrality were grave. Vattel explains that "if the refusal be evidently unjust . . . if the passage be unquestionably innocent—a nation may do herself justice, and take by force what is unjustly denied her." Refusing innocent passage thus would be considered a breach of neutrality, though Vattel is keenly aware of the difficulties in assessing the intentions of one's enemy: "we have already observed that it is very difficult for the passage of an army to be absolutely innocent, and the evils it may occasion, and the dangers that may attend it,—so complicated are they in their nature, and so numerous are the circumstances with which they are connected,—that to foresee and provide for every thing is next to impossible."<sup>23</sup> This was, in many ways, the situation that American Indian tribes faced. How should a tribe act amid feuding "brothers"? The collapse of colonial authority coupled with the emigration of land-hungry settlers that neither the British nor the Americans could control threatened the tribes' security and, with this, any hope of sustained neutrality.

While a few tribes sided directly with the Americans out of ideological concerns (for example, the Indians of Stockbridge and the Carawbas) and

others fought settler advancements (such the Cherokees), many tribes were less committed in the beginning. Indeed, James H. O'Donnell cites the Cherokees' doomed resistance as a benchmark for other tribes to stay out of a "white man's quarrel."<sup>24</sup> Yet even if a tribe sought neutrality, it was required to make diplomatic decisions under conditions of uncertainty that ultimately jeopardized its impartial standing. For example, the Delawares and Shawnees pursued neutrality initially but were brutally torn asunder by American settlers; for them, the natural choice was to side with the British. The American Revolution even split the alliance that had bound the confederated tribes of the Iroquois, with some siding with the Americans and others with the British. Armstrong Starkey has described the typical stance within tribes facing evolving conditions before and during the American Revolution as one involving a generational split, with elders arguing for pacification, while younger leaders promoted armed resistance.<sup>24</sup>

The political solutions to the dilemmas of neutrality were not straightforward, as readers of Vattel would readily surmise. Indeed, he added caveats to his claims regarding "very uncommon cases," and the American Revolution was most certainly a case that fit this bill. One such caveat implicated American Indians' stance of neutrality. Imagine an American fighting the British and considering American Indian neutrality while reading this passage:

But if necessity authorizes me to pass, the conditions on which the passage will be granted may be accepted or rejected, according to the manner of the people I am treating with. Suppose I am to cross the country of a barbarous, savage, perfidious nation—shall I leave myself at their discretion, by giving up my arms and causing my troops to march in divisions? No one, I presume, will condemn me to take so dangerous a step. . . . Since necessity authorizes me to pass, a kind of new necessity arises for my passing in such a posture as will secure me from any ambushade or violence.<sup>25</sup>

Given the pervasive view that American Indians were "savages," then any reasonable American commander would follow Vattel's advice and invoke the policy of necessity.

Now imagine the British perspective. Vattel exhorts, "as we are not bound to grant even innocent passage except for just causes, we may refuse it to him who requires it for a war that is evidently unjust—as, for instance, to invade a country without any reason, or even a coloured pretext."<sup>26</sup> From the British perspective, the American cause was unjust, meaning that American Indians ought to refuse passage of rebel troops. Placing emphasis on this interpretation would give the British reason to look unfavorably on those tribes that granted

equal sovereign privileges to the Americans—that is, the equal treatment neutral nations owe to sovereign warring nations.

Finally, from the American Indian perspective, yet another reading of Vattel would send an alternative message, namely concerning the right to refuse passage to armed groups with uncertain intentions. Whether or not any Natives were versed in Vattel is beside the point; those Anglo leaders interpreting their actions would likely have been. Vattel opines that “another fear may also warrant her [a neutral] in refusing a passage, namely, that of involving her country in the disorders and calamities of war. . . . The infinite evils of such a situation are an unexceptionable reason for refusing the passage. . . . He who attempts to force a passage, does an injury to the neutral nation, and gives her most just cause to unite her arms with those of his adversary.”<sup>27</sup> Tribes thus would be just in resisting against those Americans who tried to force their passage, though this would, of course, break their pledge of neutrality. This was, perhaps inevitably, the course of action that Native tribes concerned with protecting their own sovereign interest took during the Revolution. As Starkey observes, “Indian communities . . . were riven by questions of war or negotiation, alliance or neutrality. While they disagreed among themselves on how best to conduct their relations with their European neighbors, their goal remained the same. They were not concerned with American Independence or of the integrity of the British empire except as those issues affected their own way of life.”<sup>28</sup>

Neutrality was, as is evident in Vattel’s explications, a tension-laden foreign-policy option. In the context of the American Revolution, it proved impossible to maintain. And once neutrality is broken, then the rights of belligerents apply. This transformation has consequences, especially at a war’s end. In the case of the American Revolution, those on the losing side had to abide by the terms of the treaty that concluded the conflict.

It is important to take a slight detour here to discuss eighteenth-century *jus post bellum* norms. Vattel is widely recognized for his contributions to just war thinking, with the literature focusing on how he sought to moderate *jus in bello* norms and his contribution to the secularization of just war.<sup>29</sup> Yet scholars tend to overlook the point that his view on *jus post bellum* also captures essential norms of the eighteenth century. When thinking about *jus post bellum* at the time of the American Revolution, it is important to recognize that much of just war thinking was framed in notions of punishment. This is especially true with Vattel. Thus, the justice after war was framed in terms of restitution or retribution—that is, making a defeated enemy pay for the damage caused. One sees this in Vattel, especially in Book IV of *Law of Nations*, which focuses

on the restoration of peace. The following passage captures the essence of the prevailing view of *jus post bellum*.

The love of peace should equally prevent us from embarking in a war without necessity, and from persevering in it after the necessity has ceased to exist. When a sovereign has been compelled to take up arms for just and important reasons, he may carry on the operations of war till he has attained its lawful end, which is, to procure justice and safety. (Book III. §28.)

If the cause be dubious, the just end of war can only be to bring the enemy to an equitable compromise (Book III. §38); and consequently the war must not be continued beyond that point. The moment our enemy proposes or consents to such compromise, it is our duty to desist from hostilities.

But if we have to do with a perfidious enemy, it would be imprudent to trust either his words or his oaths. In such case, justice allows and prudence requires that we should avail ourselves of a successful war, and follow up our advantages, till we have humbled a dangerous and excessive power, or compelled the enemy to give us sufficient security for the time to come.

Finally, if the enemy obstinately rejects equitable conditions, he himself forces us to continue our progress till we have obtained a complete and decisive victory, by which he is absolutely reduced and subjected. (Book III. Chap. VIII. IX. XIII)<sup>30</sup>

Note that Book III, section 28 refers to where Vattel lays out the *jus ad bellum* criteria, thus drawing a link between *jus ad bellum* and *jus post bellum* based in justice and security. Justice, from Vattel’s point of view, is viewed through the lens of retribution. Thus, Book III, chapters VIII, IX, and XIII discuss what things a victor can take from the enemy during the war as part of compensation for the damages done and to ensure future security. This all adds up to a retribution-based view of *jus post bellum* that runs contrary to twenty-first-century formulations, though insofar as Vattel is representative of the times, this helped inform the way the postwar period was imagined.

What does all this mean for the aftermath of the American Revolution? At least from an American perspective, this meant that American Indians were required to respect the stipulation that their lands had been ceded by way of treaty as compensation for the damages done during the war. That the tribes were not privy to the negotiations was apparently of no concern—their land was forfeit by right of conquest. To quote Vattel: “Immovable possessions, lands,

towns, [and] provinces . . . become the property of the enemy who makes himself master of them: but it is only by the treaty of peace, or the entire submission and extinction of the state to which those towns and provinces belonged, that the acquisition is completed."<sup>31</sup>

The gamble—or perhaps the inevitable necessity—of making choices in times of upheaval carries a price, according to the *jus post bellum* standards of the day. In the preceding chapter, William Anthony Hay describes how Great Britain used the peace process to consolidate its remaining imperial power vis-à-vis other European powers. For American Indian tribes that sided with the British, there was indignation at being, for all intents and purposes, abandoned.

With the American star on the rise, the rules of diplomacy that had governed colonial North America began to change. Despite being militarily and financially fragile, the newly founded United States began to dictate the terms of diplomatic negotiations. Prior to the Revolution, American Indian tribes played off European powers against each other, using alliances to further their own interests, often at the expense of other Native rivals. Europeans played the game of diplomacy in a way that respected traditional indigenous customs. But the founding of the United States changed the power balance. As Calloway concludes: "The 'middle ground' arrangements that first the French and then the British had maintained with American Indian tribes dissolved as American invaders discarded old ways of conducting Indian diplomacy and attempted to dictate from a position of strength. The new nation was interested less in having Indian allies and more in having Indian land."<sup>32</sup> Assuming the territory was theirs by right of conquest, the Americans were indeed able to dictate the terms, and in a *post bellum* era, just war norms were such that this could be done harshly with recalcitrant foes who refused to accept the dictates of peace.

### The Laws of War, Race, and Perpetual Enmity in the Wake of the Revolution

Inherent in eighteenth-century just war thinking was the perception that the rules of war applied to conflicts between civilized nations, not in those with so-called barbarians. At the dawn of international law in the sixteenth century, when the Spanish scholastics argued that even barbarians had sovereign rights, Vitoria intimated that the rules could be different when fighting "true barbarians."<sup>33</sup> Vestiges of this hierarchy persisted into eighteenth-century just war thinking.

Theodore Christov argues in chapter 3 that the Americans sought to exercise the right of Vattelian sovereignty to earn a place on the international stage as an

equal among nations. This concept of sovereignty had a humanizing aspect that Vattel imagined would lead to the observance of justice among nations. And if war broke out, then its horrors would be limited to the extent possible by the *jus in bello* rules of war. That being said, Vattel's *Law of Nations* offers caveats to both ideals.

"If there were a people," writes Vattel, "who made open profession of trampling justice under foot,—who despised and violated the rights of others whenever they found an opportunity,—the interest of human society would authorize all the other nations to form a confederacy in order to humble and chastise the delinquents. . . . [T]he safety of the human race requires that she should be repressed."<sup>34</sup> Vattel's comments do not single out specific peoples, nor do they, on the surface, entail racial proclamations. But they do tap into a deeply ingalitarian element of just war thinking by suggesting that the civilized could unite against those who despised (European conceptions of) justice. When put into the context of the American Revolution, those perceived to despise justice were the "savages."

Despite periods of cultural coexistence, one area in which American Indians and Europeans were clearly distinguishable was the manner in which they *imagined* the ideals of warfare. While several previous chapters establish the ideals of European warfare, and deviations from them, in the context of the American Revolution, what is important here are two observations: first, the ideals of *jus in bello* rules, such as sparing civilians and taking care of prisoners, were aspired to by Europeans and (some) Americans in the context of inter-European conflicts (of course, these notions were far from being universally respected); and second, the perception that American Indians did not abide by the (European) rules of war but rather waged merciless warfare that ignored all civilized restraints.<sup>35</sup> Stories of Native savagery, especially on the frontiers, fueled this perception. Despite different cultures of warfare, the belief that European standards ought to be the universal norm placed the tribes, in the mindset of many Americans, in the category of "savages." And within the norms of European warfare, different standards of treatment were justified when dealing with such peoples. Pondering the duties of restraint when confronting "savages," Vattel writes:

If the people do not voluntarily submit, the state of war still persists. A conqueror who has taken up arms . . . whose intention it was to subdue a fierce and savage people, and once [and] for all to reduce an obstinate enemy,—such a conqueror may with justice lay burthens on the conquered nation, both as a compensation for the expenses of the war, and as punishment. He may, according to the degree of indocility apparent

in their disposition, govern them with a tighter reign, so as to curb and subdue their impetuous spirit: he may even, if necessary, keep them for some time in a kind of slavery.<sup>36</sup>

Again, Vattel does not single out specific peoples; he only consents to such a state of affairs when more moderate ways have failed, and then only until the conquered can become citizens under a just and inclusive regime. Yet in the context of the aftermath of the American Revolution, these moderating hopes came face to face with the harsh realities of a racially divided new world order.

From the American perspective, the refusal of American Indian tribes to abide by the Treaty of Paris and vacate the ceded lands meant that the United States was justified in continuing the conflict against them. The on-the-ground reality was quite complex. Some tribes sought peaceful coexistence with the new nation but, harassed by advancing settlers who operated according to often-independent agendas, also defended themselves with force when necessary. This then led to accusations that they were not abiding by the treaty, which when coupled with accounts of brutal killings of settlers, fueled the stereotype of American Indians as "merciless savages." Other tribes refused to accept the conditions of the treaty, to which they did not consent, from the start and chose to fight (sometimes as part of a loose confederacy). There is not space here to delve into the details of this multifaceted struggle, so the focus instead will be on the ultimate consequences of this toxic situation—namely, that it rendered impossible the moderate hopes of Vattel's philosophy of war, leaving North America stagnated in the racially tinged caveats of his thought.

Thinking back to the philosophical musing at the beginning of this chapter, one can understand how the stage was set for wars of extermination. In the *Camp d'Oeil*, Enlightenment optimism sided with the ideals of the revolutionaries, who had rediscovered man's original liberty in the forests of North America and grafted it onto a newly founded democracy. To resist the spread of democracy, which Americans (and some Europeans) perceived the Natives as doing, was a sign of racial inferiority. It signaled that the two cultures could not coexist, that one would eventually come to perish by the fires of war.

After the Revolution, North America was characterized by multiple visions of sovereignty. On the one hand there was the view that American Indians were sovereign peoples, with a right to territories in which to live and with whom the fledgling United States could make treaties. This was the vestige of the colonial era, the dying embers of the "middle ground."<sup>37</sup> And indeed, the United States made countless treaties with numerous tribes.<sup>38</sup> But the value of these agreements was undermined by an alternative understanding of sovereignty

gaining traction, which denied American Indians the right to occupy ancestral lands as *American Indians*. This was the view that ultimately came to dominate, and its acceptance contributed to the contextual brew feeding the wars of extermination.

Echoing ideas found in the treatises of John Locke, some Americans argued that North America was inhabited by "savages" who were, for all intents and purposes, stateless beings.<sup>39</sup> Locke's ideas, which parallel the viewpoint embraced by the *Camp d'Oeil*, highlight the contours of a framework that was beginning to gain a strong foothold in the philosophical imagination of Enlightenment-era thinkers and statesmen. The focus in the *Camp d'Oeil* is not on the treatment of the American Indians by settlers, which was not always magnanimous, but on how the settlers embraced a liberty possible only in North America in order to shed the yolk of European despotism: "Ever since diverse groups of Europeans, chased out of their homeland by the persecution from which they suffered, brought to America their industry, their talents, their religion, manufacturing, sciences, arts and especially their mores, America is no longer condemned to being a vast desert or savage region. When all these means, which are the true forces of humanity, are allowed to be deployed under a free sky . . . they are sure to triumph."<sup>40</sup>

The forests of North America provided territory, vast tracts of unused (in the Lockean sense) land on which to live and refound a society based on liberty. As Carole Pateman documents, the American colonists' arguments tapped into a philosophical tradition in which uncultivated land, or *terra nullius*, was open to appropriation.<sup>41</sup> She goes on to explain that American Indians "are not part of the settler contract—but they are henceforth subject to it, and their lives, lands, and nations re-ordered by it."<sup>42</sup> The influence of these arguments was evident on the eve of the Revolution and would grow in power and scope following the American victory: "The settler political theory that developed in the interstices of the British empire," explains Craig Yirush, "was intimately connected to the dispossession of the indigenous peoples of North America. Indeed, it was the settlers [American colonials] rather than the Crown who argued that the American Indians were, in effect, stateless, and therefore could be pushed aside in the scramble for land following the defeat of the French in 1763 and the British in 1783."<sup>43</sup>

The interlude between these imperial defeats offers a philosophical snapshot of American diplomatic relations with American Indians, laced with racial and bellicose overtones. In 1774, on the eve of the First Continental Congress, Thomas Jefferson penned *A Summary View of the Rights of British America* in which he argues that land ownership—what he calls "possessions" in colonial

America—is “undoubtedly of the allodial nature. . . . [E]ach individual of the society may appropriate to himself such lands as he finds vacant, and occupancy will give him title.”<sup>44</sup> This argument made several assumptions, among them that settler rights to the land were more valid than tribal rights and that the way American Indians used the land was inferior to European uses. This view of sovereignty fueled the settler mentality, namely that lands used by American Indians were there for the taking. Moreover, it was buttressed by increasingly racialized relations in North America.

The American view of Natives was different than that of the British. While stories of indigenous brutality were common, this did not undermine, in the eyes of the British, tribal rights to sovereignty. But the settler mentality painted a different picture as savagery translated into racial inferiority. Unlike the coexistence of the “middle ground,” there was a growing perception among Americans that they were living between the tyrants of the Old World and the “merciless savages” of the New World. The Declaration of Independence (1776) gives us a picture of what settlers exercising their “right” to possess vacant lands had to face on the frontier: “He [King George III] has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare, is undisputed destruction of all ages, sexes and conditions.”<sup>45</sup> What is clear here from the American perspective is that the “Indian savages” were in no manner neutral but rather bedfellows with the British. The term “merciless” is significant as is the belief that indigenous rules of war were the opposite of the “civilized” laws of European warfare. The implication seems to be that cohabitation was impossible, meaning that either the Americans had to forfeit their “right” to expand, American Indian tribes had to move, or a war in which only one would survive would ensue. But because American rights were deemed superior to those of the “savages,” in their minds it fell upon the American Indians to acquiesce; if they did not, then Americans were justified in fighting for their rights to the territory. The racial implications are clear: white American settlers were superior to American Indians, who did not abide by the laws of civilization. American politics, indeed its underlying settler mentality, did not recognize nonwhite personhood as legitimate.<sup>46</sup> Of course, atrocities were committed by all parties involved, but the Americans believed they had civilization “on their side,” which meant that their atrocities increasingly came to be seen as necessary to exterminate a barbaric foe and guarantee the protection and spread of democracy.<sup>47</sup>

An example is George Washington’s campaign against the Iroquois during the Revolutionary War. In 1779 Washington ordered Brigadier General John

Sullivan to “lay waste all the settlements around, with instructions to do it in the most effectual manner, that the country may not merely be overrun, but destroyed.”<sup>48</sup> This would, of course, be a violation of the European rules of war. Despite Washington’s lofty belief in these civilized ideals, he recognized that the rules were difficult to enforce and surmised that, in a war against “savages,” the rules did not necessarily apply. To return to Vattel: “Those who seem to delight in the ravages of war, who spread it on all sides, without reasons or pretences, and even without any other motive than their own ferocity, are monsters unworthy [of] the name of men. They should be considered as enemies to the human race. . . . [A]ll nations have a right to join in a confederacy for the purpose of punishing and even *exterminating* those savage nations.”<sup>49</sup> Wars of extermination run very much counter to the moderating *jus in bello* rules outlined by Vattel in *Law of Nations*, showing the dark underbelly of the racially infused European attitudes toward non-Europeans.<sup>50</sup> Indeed, Washington’s campaign against the Iroquois is just one among many examples of the wars of extermination that would ensue.

Even though there was order in and reason to American Indian warfare (albeit different from European ways), the perception that it was pure brutality fueled the American campaigns against indigenous foes.<sup>51</sup> And if we accept Vattel as a source of authority, then the Americans would have seen themselves as being justified in acting as such. In just war parlance, the dictates of Vattelian humanity, designed to restrain the destructiveness of war, gave way to the necessities of a just war against a pitiless enemy. But if one takes the perspective of American Indian tribes, then the racial underpinnings of Vattel’s view of just war become apparent. Despite their universalist appeal, there is a clear hierarchy that denies the identity of those placed in the category of “savages,” leaving them to bear the brunt of European judgments. What is more, the rights of war also impinged on their very right to existence, for Vattel imbues the civilized with the right to exterminate the barbarians. Vattel does not specifically single out North American peoples (his examples are the clash between the Germanic tribes and Rome as well as the Turks and Tartars—all of which were groups who threatened European civilization), but when read in the context of the *post bellum* American Revolution, this viewpoint fit into a racialized world order in which whites dominated over “savages.”

Following the war, the Northwest Ordinance of July 1787 sought to reestablish the borders between the United States and the Native tribes. Article III makes the following claim that, upon closer inspection, is the spark that ignited the flames of ensuing wars of extermination: “The utmost good faith shall always be observed towards the Indians; their lands and property shall never



be taken from them without their consent; and, in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress.<sup>52</sup> On the one hand, respect was paid to American Indian sovereignty. Yet this was a notion that had been eclipsed and was receding in the wake of American expansion. On the other hand, this respect was all but doomed to be undermined by the settler mentality and subsequent claims to land that became engrained in the American mindset as well as the racialization of attitudes toward Native tribes. Americans claimed the right to wage just wars against the Natives, but this right was all but denied to the tribes, who struggled with what to do—continue to concede their land to appease the United States, try to adapt to white ways (and give up their own lifestyles), or fight back. While most tribes generally recognized that they were fighting for their survival, Americans were unable to accept or unwilling to take this perspective.<sup>53</sup> And one does not have to go any further than Vattel to find justification for war against resisting tribes: “The right of employing force, or making war, belongs to nations no farther than is necessary for their own defense and for the maintenance of their rights.”<sup>54</sup> Defense of its population, settlers included, and the right to settle vacant lands within the territories it claimed by treaty as part of the *ius post bellum* settlement ending the Revolutionary War clearly fell under this heading.

As long as the American Indian tribes sought to control their own destiny and live according to traditional ways, Vattel’s worldview was a blueprint for legitimized (from the American perspective) wars of extermination. The events that transpired in the Northwest Territory are a case in point. As then-governor of the Northwest Territory, Major General Arthur St. Clair, tried to negotiate with a loose confederacy of tribes led by Joseph Brant to purchase lands that had been ceded in previous treaties, settlers continued to flood the region. The talks eventually splintered after some tribes did not recognize the American right to settlement in the region and prepared to fight for their own existence.<sup>55</sup> In such a context of mutual mistrust, neutrality was no longer a viable option as it once had been. Lost too was the idea that should disagreements come to war, a return to neutrality afterward was a legitimate diplomatic option. Settlers and Native tribes exchanged acts of brutality; the new national government under Washington then felt justified in authorizing the first major Indian war of the postrevolutionary period.<sup>56</sup> After initial setbacks (for example, the defeat of Brigadier General Joseph Harmar’s ill-fated expedition in 1790 and St. Clair’s defeat in 1791), the tide of the campaign turned. Despite attempts to make peace, the war continued with Major General Anthony Wayne’s offensive in 1794, which culminated in the American victory at Fallen Timbers. The Treaty

of Greenville (1795) reconfigured the frontier borders as Native tribes ceded more land and moved ever westward. But the agreement proved to be hollow in the face of increased settler expansion into the Ohio River valley as white populations increased from 5,000 in 1796 to more than 230,000 by 1810.<sup>57</sup> Tensions mounted, and despite more periods of Native resistance—under Tecumseh for example—the pattern repeated itself until the various tribes were either driven out or destroyed.<sup>58</sup> The pattern predicted by the *Camp d’Oeil* thus came to its merciless fruition.

### Conclusion

The *post bellum* era of the American Revolution in a sense resolved the tensions of neutrality seen in Vattel by making neutrality an impossible diplomatic course of action for American Indian tribes. It did so at the expense of the egalitarian core of the fledgling American democracy by solidifying a latent racial hierarchy in North America by which white settlers seized the right to dominate (or exterminate) Native populations. This racial framework may have existed at the margins of Vattel’s just war thinking as he generally sought to provide a moral framework for the honorable adjudications of political disputes among nations and to limit the horrors of war. Yet in a changing world in which the humanity of Vattelian sovereignty was replaced by a racialized view that denied rights to American Indians, war—terrible and total wars of extermination—was the inevitable outcome so long as Natives resisted the expanding, land-greedy United States.

Toqueville’s fatalistic lament is a fitting summary of the *post bellum* context American Indian tribes faced: “Today, it is true, the American government does not take their lands away from them, but it allows them to be invaded. In a few years, doubtless, the same white population that now presses on them will be on their heels in the solitudes of Arkansas . . . and as sooner or later they will run out of land, they will have to resign themselves to dying.”<sup>59</sup> Regardless of whether the American Revolution was just, the *post bellum* phase broke with the diplomatic patterns that had governed colonial North American for more than a century, ringing in a new era of “just”—ultimately racialized—warfare. But it did so in a way that was ironically consistent with the moral contours of *ius post bellum* of the time, what Vattel described as paying retribution for injuries caused. From the American perspective, wars of extermination against Native tribes were a just means to obtain their rights to land acquired by conquest, ceded by treaty, but populated by recalcitrant “savages” who did not respect the terms of the proper peace between Great Britain and the United States.

For American Indians, who were ignored in the *just post bellum* settlement, the possibilities were bleak.<sup>60</sup> Tocqueville's lament echoes the viewpoint expressed by American Indian representatives from the Wyanadots, Seven Nations of Canada, Delawares, Shawnees, Miami, Ottowas, Chippewas, Senecas, Potowatomis, Conoys, Munsees, Nanticokes, Mahicans, Mississaugas, Crecks and Cherokees speaking to American commissioners in 1793. Their poignant words sum up the injustice of the *post bellum* situation, capturing the moment when the notion of sovereignty characterizing the diplomacy of the "middle ground" was eclipsed by a different view of sovereignty motivated by the inexorable spread of the racially infused American democracy:

Brothers, you have talked to us about concessions. It appears strange that you should expect any from us, who have only been defending our just Rights against your invasion; We want Peace; Restore us to our Country and we shall be Enemies no longer. . . . Look back and view the lands from whence we have been driven to this spot, we can retreat no further, because the country behind hardly affords food for its present inhabitants. And we have therefore resolved, to leave our bones in the small space, to which we are now confined.<sup>61</sup>

## NOTES

1. *Coup d'Oeil sur les quatre concours qui ont eu lieu en l'Académie des Science Belles-Lettres et Arts de Lyon pour le prix offert par M. l'abbé Reynal sur la découverte de l'Amérique, in Avantages et désavantages de la découverte de l'Amérique*, ed. Hans Jürgen Lüschink and Alexandre Mussard (Saint Etienne, France: Publications de l'Université de Saint Etienne, 1994), 129. All translations of the *Coup d'Oeil* are my own.
2. Anthony Pagden, *The Fall of Naxtral Man: The American Indian and the Origins of Comparative Ethnology* (Cambridge: Cambridge University Press, 1986); Anthony Pagden, "Dispossessing the Barbarians: The Language of Spanish Thomism and the Debate over Property Rights of the American Indians," in *The Languages of Political Theory in Early Modern Europe*, ed. Anthony Pagden (Cambridge: Cambridge University Press, 1987), 79–98.
3. James Turner Johnson, *Just War Tradition and the Restraint of War: A Moral and Historical Inquiry* (Princeton, N.J.: Princeton University Press, 1981). On the ways in which European norms and ideas about the ethics of war have been transmitted over time, see the contributions in Daniel Brunstetter and Chan O'Driscoll, eds., *Just War Thinkers: From Cicero to the 21st Century* (New York: Routledge, 2017).

4. *Coup d'Oeil*, 142.
5. *Ibid.*, 144.
6. *Ibid.*, 145 (my italics).
7. For example, see chapters 6 and 11 above. Compare also two differing views: Eric Patterson and Nathan Gill, "The Declaration of the United Colonies: America's First Just War Statement," *Journal of Military Ethics* 14, no. 1 (2015): 7–34; and Gregg Frazer, "The American Revolution: Not a Just War," *Journal of Military Ethics* 14, no. 1 (2015): 35–56.
8. Brian Orend, *The Morality of War*, 2nd ed. (Peterborough, Ont.: Broadview, 2013), esp. chap. 6. For alternative conceptions, see Alex J. Bellamy, "The Responsibilities of Victory: *Jus Post Bellum* and the Just War," *Review of International Studies* 34 (2008): 601–25.
9. Dale Miquelon, "Ambiguous Concession: What Diplomatic Archives Reveal about Article 15 of the Treaty of Utrecht and France's North American Policy," *William and Mary Quarterly*, 3rd ser., 67, no. 3 (2010): 459–86.
10. Quoted from Wayne Aquila, *The Iroquois Restoration: Iroquois Diplomacy on the Colonial Frontier, 1701–1754* (Detroit: Wayne State University Press, 1983), 91.
11. Quoted from *ibid.*, 124.
12. Eliga H. Gould, "Zones of Law, Zones of Violence: The Legal Geography of the British Atlantic, circa 1772," *William and Mary Quarterly*, 3rd ser., 60, no. 3 (2003): 471–510.
13. Emer de Vattel, *The Law of Nations* (Indianapolis: Liberty Fund, 2008), 523. On neutrality more broadly speaking, see Stephen C. Neff, *The Rights and Duties of Neutrals: A General History* (Manchester, U.K.: Manchester University Press, 2000).
14. *Ibid.*, 526.
15. Colin G. Calloway, *New Worlds for All: Indians, Europeans, and the Remaking of Early America* (Baltimore: The Johns Hopkins University Press, 1997), 117.
16. Vattel, *Law of Nations*, 527.
17. *Ibid.*, 537.
18. *Ibid.*, 534.
19. *Ibid.*, 536.
20. Quoted from Aquila, *Iroquois Restoration*, 94. For Aquila's general discussion to ascertain the complexities of such a stance, see *ibid.*, 93–100.
21. Vattel, *Law of Nations*, 535.
22. *Ibid.*
23. James H. O'Donnell, *Southern Indians in the American Revolution* (Knoxville: University of Tennessee Press, 1973), 34–53.
24. *Ibid.*, 116–18.
25. Vattel, *Law of Nations*, 537.
26. *Ibid.*, 541.
27. *Ibid.*, 538–39.
28. Armstrong Stankov, *European and Native American Warfare, 1675–1815* (Norman: University of Oklahoma Press, 1998), 113. See also Colin G. Calloway, *The American Revolution in Indian Country* (Cambridge: Cambridge University Press, 1995).

29. For a general study, see Theodore Christov, "Vattel," in Brunstetter and O'Driscoll, *Just War Thinkers*, 156–67. On just war and sovereignty in Vattel, see James Turner Johnson, *Sovereignty: Moral and Historical Perspective* (Washington, D.C.: Georgetown University Press, 2014), 97.
30. Vattel, *Law of Nations*, 654–55.
31. *Ibid.*, 596.
32. Calloway, *New Worlds for All*, 133.
33. Daniel Brunstetter, *Tensions of Modernity: Las Casas and His Legacy in the French Enlightenment* (New York: Routledge, 2012), 43–45.
34. Vattel, *Law of Nations*, 297–98.
35. For a view that offers insight into how some Native tribes understood war and security, see Neia C. Crawford, "A Security Regime among Democracies: Cooperation among Iroquois Nations," *International Organization*, 48, no. 3 (Summer 1994): 345–85.
36. Vattel, *Law of Nations*, 599.
37. Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1600–1815* (Cambridge: Cambridge University Press, 1991).
38. Robert A. Williams Jr., *The American Indians in Western Legal Thought: The Discourses of Conquest* (Oxford: Oxford University Press, 1990).
39. For a discussion, see *ibid.*, 249–51.
40. *Camp d'Oeil*, 143.
41. *Ibid.*, 36–37.
42. Carole Pateman, "The Settler Contract," in *The Contract and Domination*, ed. Carole Pateman and Charles Mills (Cambridge: Polity, 2007), 56.
43. Craig Yrush, *Settlers, Liberty, and Empire: The Roots of Early American Political Theory* (Cambridge: Cambridge University Press, 2011), 270.
44. Thomas Jefferson, *A Summary of the Rights of British America. Set Forth in Some Resolutions Intended for the Inspection of the Present Delegates of the People of Virginia* (Williamsburg, 1774), 21.
45. Quoted from Cynthia A. Kierner, ed., *Revolutionary America: Sources and Interpretation* (Upper Saddle River, N.J.: Prentice Hall, 2003), 137–39.
46. Charles Mills, *The Racial Contract* (Ithaca, N.Y.: Cornell University Press, 1997), 19–30.
47. On this subject, see Wayne E. Lee, *Barbarians and Brothers: Anglo-American Warfare, 1500–1865* (Oxford: Oxford University Press, 2011), 171–231.
48. Quoted from Barbara Alice Mann, *George Washington's War on Native America* (Westport, Conn.: Praeger, 2005), 56.
49. Vattel, *Law of Nations*, 487 (my italics). See also the racialized exception to the *jus in bello* rule of sparing the life of an enemy who surrenders: "When we are at war with a savage nation, who observe no rules, and never give quarter, we may punish them in the persons of any of their people whom we take . . . and endeavor . . . to force them to respect the laws of humanity." *Ibid.*, 544.
50. On Vattel's view of *jus in bello*, see Christov, "Vattel," 163–65.

51. For a discussion of war norms in colonial North America, see John Grenier, *The First Way of War: American War Making on the Frontier, 1607–1814* (Cambridge: Cambridge University Press, 2005).
52. Northwest Ordinance, July 13, 1787, *The Avalon Project*, Lillian Goldman Law Library, Yale School of Law, [http://avalon.law.yale.edu/18th\\_century/nworder.asp](http://avalon.law.yale.edu/18th_century/nworder.asp), accessed Mar. 1, 2016.
53. Colin G. Calloway, *Crown and Calumet* (Norman: University of Oklahoma Press, 1987), 198–99.
54. Vattel, *Law of Nations*, 483.
55. For a discussion, see Wiley Sword, *President George Washington's Indian War: The Struggle for the Old Northwest, 1790–95* (Norman: University of Oklahoma Press, 1985), 59–78.
56. Reginald Horsman, *Expansion and American Indian Policy, 1783–1812* (Lansing: Michigan State University Press, 1967), 84–85.
57. Colin G. Calloway, *The Shawnees and the War for America* (London: Viking Penguin, 2007), 109.
58. Ethan Schmidt's account of the postrevolutionary plight of the Cherokees, Creeks, Chickasaws, Choctaws, Catawbas, Abenakes, Stockbridges, and Iroquois makes for somber reading. See *Native Americans in the American Revolution: How the War Divided, Devastated, and Transformed the Early American Indian World* (Santa Barbara, Calif.: Praeger, 2014), 157–72. See also Sword, *President George Washington's Indian War*, 299–313; and Calloway, *Crown and Calumet*, 240–57.
59. Alexis de Tocqueville, *Democracy in America*, trans. Harvey Mansfield and Delba Winthrop (Chicago: University of Chicago Press, 2002), 322–23.
60. Calloway, *American Revolution in Indian Country*, 292–301.
61. Colin G. Calloway, ed., *The World Turned Upside Down: Indian Voices from Early America* (Boston: Bedford Books, 1994), 183.

---

---

# JUSTIFYING REVOLUTION

Law, Virtue, and Violence in the  
American War of Independence

---

---

*Edited by Glenn A. Moots and Phillip Hamilton*

UNIVERSITY OF OKLAHOMA PRESS : NORMAN

Library of Congress Cataloging-in-Publication Data

Names: Moots, Glenn A., editor. | Hamilton, Phillip, 1961– editor.

Title: Justifying Revolution : Law, Virtue, and Violence in the American War of Independence / edited by Glenn A. Moots and Phillip Hamilton.

Description: Norman : University of Oklahoma Press, 2018. | Series: Political violence in North America ; volume 1 | Includes index.

Identifiers: LCCN 2017052789 | ISBN 978-0-8061-6013-9 (hardback)

Subjects: LCSH: United States—History—Revolution, 1775–1783—Moral and ethical aspects. | Just war doctrine—History—18th century. | War (Philosophy)—History—18th century. | BISAC: HISTORY / United States / Revolutionary Period (1775–1800).

Classification: LCC E209 j87 2018 | DDC 973.3—dc23

LC record available at <https://lcn.loc.gov/2017052789>

*Justifying Revolution: Law, Virtue, and Violence in the American War of Independence* is Volume 1 in the Political Violence in North America series.

The paper in this book meets the guidelines for permanence and durability of the Committee on Production Guidelines for Book Longevity of the Council on Library Resources, Inc. ∞

Copyright © 2018 by the University of Oklahoma Press, Norman, Publishing Division of the University. Manufactured in the U.S.A.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise—except as permitted under Section 107 or 108 of the United States Copyright Act—without the prior written permission of the University of Oklahoma Press. To request permission to reproduce selections from this book, write to Permissions, University of Oklahoma Press, 2800 Venture Drive, Norman OK 73069, or email [rights.oupress@ou.edu](mailto:rights.oupress@ou.edu).

1 2 3 4 5 6 7 8 9 10

## CONTENTS

### Acknowledgments

vii

### Introduction

3

*Glenn A. Moots and Phillip Hamilton*

---

### PART I. *Jus ad Bellum*

1. Just War Theory in the Image of Emer de Vattel  
*Andreas Harald Aune* 21
2. Just Revolution: Protestant Precedents for Resistance and Rebellion  
*Glenn A. Moots and Valerie Orta Morkevicius* 35
3. Emer de Vattel's *Law of Nations* in America's Independence  
*Theodore Christov* 64
4. Justifying Fratricidal War: The American Revolution as a Case Study  
*Jack P. Greene* 83

---

### PART II. *Jus in Bello*

5. "Where the power of law ceases, there war begins": The British Army's Implementation of Martial Law in Boston, 1768–1776  
*John D. Roche* 103
6. "A Contest of Virtue with vice": Henry Knox's Just and Honorable War for Independence  
*Phillip Hamilton* 127
7. Liberty or Death! *Jus in Bello* and Existential Warfare in the American Revolution  
*Mark Edward Lender and James Kirby Martin* 147