



The Principles of Natural and Politic Law Volume 2

Jean Jacques Burlamaqui

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This historic book may have numerous typos and missing text. Purchasers can usually download a free scanned copy of the original book (without typos) from the publisher. Not indexed. Not illustrated. 1807 edition. Excerpt: ... CHAP. IV. Of the power of the sovereign over the lives and fortunes of his subjects in criminal cases. I. A principal end of civil government and society is to secure to mankind all their natural advantages, and especially their lives. This end necessarily requires, that the sovereign should have some right over the lives of his subjects, either in an indirect manner, for the defence of the state, or in a direct manner, for the punishment of crimes. II. The power of the prince over the lives of the subjects, -with respect to the defence of the state, regards the right of war, of which we shall treat hereafter. Here we intend to speak only of the power of inflicting punishments. III. The first question, which presents itself, is to know the origin and foundation of this part of the sovereign power ; a question, which cannot be answered without some difficulty. Punishment, it is said, is an evil, which a person suffers in a compulsive way. A man cannot punish himself; and consequently it seems, that individuals could not transfer to the sovereign a right, which they had not over themselves. IV. Some civilians pretend, that, when a sovereign inflicts punishments on his subjects, he does it by virtue of their own consent ; because, by submitting to his authority, they have promised to acquiesce in every thing, he should do with respect to them ; and in particular a subject, who determines to commit a crime, consents thereby to suffer the punishment, established against the delinquent. V. But it seems difficult to determine the right of the sovereign on a presumption of this nature, especially with respect to capital punishments ; neither is it necessary to have recourse to this pretended consent of criminals, in order to...

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