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is the only law to which insurgents in civil war have a right to appeal or upon which they can rely; as all civil or municipal rights in and under the government they seek to destroy are lost to them by making war, see Titles "Policy of the Government," "Civil Rights," "Civil War," "Belligerents," "Belligerent Rights," "Prize Cases," "Capture," "Confiscation," "Blockade."	
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630 F.2d 876 *Filartiga v. Pena-Irala*, 630 F.2d 876 Dolly M. E. FILARTIGA and Joel Filartiga, Plaintiffs-Appellants, v. Americo Norberto PENA-IRALA, Defendant-Appellee. No. 191, Docket 79-6090. United States Court of Appeals, Second Circuit. Argued Oct. 16, 1979. Decided June 30, 1980. See <http://www.chips-corner.com/Filartiga%20vs%20Pena-Irala.pdf>

THE RULING INCLUDES:

43 Thus, it was hardly a radical initiative for Chief Justice Marshall to state in *The Nereide*, 13 U.S.(9 Cranch) 388, 422, 3 L.Ed. 769 (1815), that in the absence of a congressional enactment, United States courts are "bound by the law of nations, which is a part of the law of the land." These words were echoed in *The Paquete Habana*, supra, 175 U.S. at 700, 20 S. Ct. at 299: "(i) nternational law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination."

KEY WORDS: SCOTUS, SUPREME COURT, LAW, LAW OF NATIONS, FILARTIGA, PEÑA, PENA, IRALA, PEÑA IRALA, PENA IRALA, INTERNATIONAL, INTERNATIONAL LAW, NATIONS

SCOTUS & LAW OF NATIONS

Having shown that the United States being actually engaged in civil war, — in other words, having become a belligerent power, without formal declaration of war, — it is important to ascertain what some of the *rights* of *belligerents* are, according to the law of nations. It will be observed that the law of nations is above the constitution of any government; and no people would be justified by its peculiar constitution in violating the rights of other nations. Thus, if it had been provided in the Articles of Confederation, or in the present constitution, that all citizens should have the inalienable right to practise the profession of *piracy* upon the ships and property of foreign nations, or that they should be lawfully empowered to make incursions into England, France, or other countries, and seize by force and bring

* *Note to Forty-third Edition.* — See *U. S. v. Moreno*, 1 Wallace, 400. Appendix, p. 531

home such men and women as they should select, and, if these privileges should be put in practice, England and France would be justified in treating us as a nest of pirates, or a band of marauders and outlaws. The whole civilized world would turn against us, and we should justly be exterminated. An association or agreement on our part to violate the rights of others, by whatever name it may be designated, whether it be called a constitution, or league, or conspiracy, or a domestic institution, is no justification, under the law of nations, for illegal or immoral acts.

INTERNATIONAL BELLIGERENT RIGHTS ARE DETERMINED BY THE
LAW OF NATIONS.

To determine what are the rights of different nations when making war upon each other, we look only to the law of nations. The peculiar forms or rights of the subjects of one of these war-making parties under their own government give them no rights over their enemy other than those which are sanctioned by international law. In the great tribunal of nations, there is a "higher law" than that which has been framed by either one of them, however sacred to each its own peculiar laws and constitution of government may be.

But while this supreme law is in full force, and is binding on all countries, softening the asperities of war, and guarding the rights of neutrals, it is not conceded that the government of the United States, in a civil war for the suppression of rebellion among its own citizens, is subject to the same limitations as though the rebels were a foreign nation, owing no allegiance to the country.

With this caveat, it will be desirable to state some of the rights of belligerents.

Law of Nations excerpts

The fundamental law which determines the manner in which the public authority is to be exercised is what forms the *constitution of the State*. In it can be seen the organization by means of which the Nation acts as a political body; how and by whom the people are to be governed, and what are the rights and duties of those who govern. This constitution is nothing else at bottom than the establishment of the system, according to which a Nation proposes to work in common to obtain the advantages for which a political society is formed.

§ 27. What the constitution of a state is.

It is therefore the constitution of a State which determines its progress and its aptitude to attain the ends of the society; hence the chief interest of a Nation which forms a political society, and its first and most important duty to itself, is to choose the best possible constitution, and the one most suited to its circumstances. In so choosing it lays the foundations of its self-preservation, its welfare, its advancement, and its happiness. It can not take too great care that these foundations be solid.

§ 28. A nation should choose the best one.

We have discussed these questions sufficiently for the purposes of this work; a more extended treatment of them can be found in several well-known books. We conclude the subject with an important observation. A sovereign may certainly choose ministers to assist him in his difficult functions; but he must never turn over to them his authority. In choosing him as ruler the Nation did not mean to have itself turned over to other hands. Ministers should be mere instruments in the hands of the Prince; he must direct them continually, and watch carefully whether they act according to his instructions. If through the infirmities of age or sickness of any kind the Prince is unable to rule, a regent should be appointed in conformity with the laws of the State. But as soon as the sovereign can hold the reins let him be assisted in his work, but not supplanted. The last of the first line of French Kings turned over their government and their authority to the mayors of the palace. Having become mere figureheads, they were justly deprived of the title and honors of a position the duties of which they had abandoned. A Nation has everything to gain in crowning an all-powerful minister; for he will cultivate as his own possession that soil which he pillaged so long as he only had an uncertain enjoyment of it.

§ 55. Ministers.

are scarcely noted. One would do a great service to nations by showing from history how many States have thus changed their whole nature and lost their original constitution. The attention of peoples would be awakened, and thenceforth in the realization of that excellent maxim, no less essential in politics than in morality, *principiis obsta*, they would not close their eyes to innovations which, though of little account in themselves, serve as so many steps to advance to higher and more disastrous undertakings.

§ 21. Rights

Since the results of a good or a bad constitution are of such importance, and