

RAF COLLEGE CRANWELL

College Journal Extracts



Spring 1939

Spring 1939 - Lead Photo



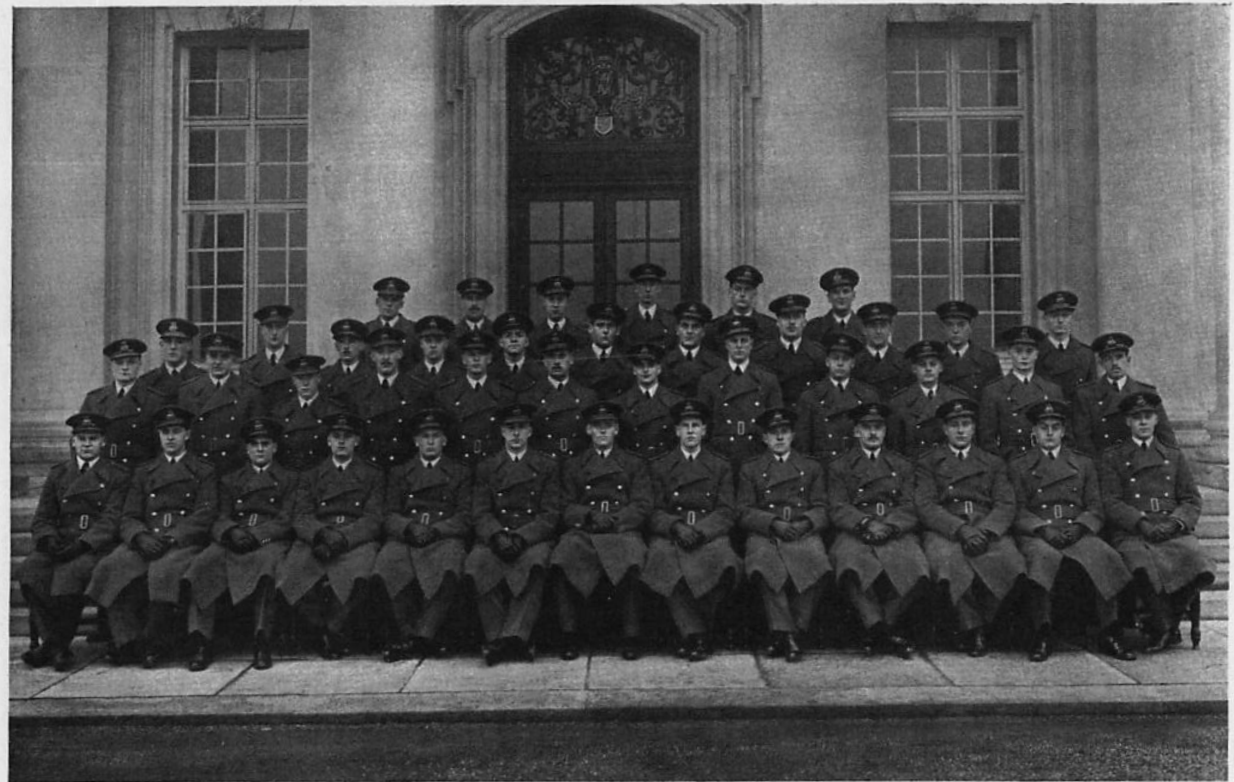
Spring 1939 - Graduation Photos



PRIZE-WINNERS.

F./C. Sergt. J. R. Armitstead. F./C. T. Hurst. F./C. P. A. Major. F./C. H. J. R. Dunn.
(Service Subjects.) (King's Medal and Science.) (Imperial and War Studies.) (Engineering.)
F./C. U.O. H. F. D. Breese. F./C. B. H. Way. (Flying.)
(Sword of Honour.)

[Photo: Gale & Polden, Ltd.]



[Photo: Gale & Polden, Ltd.]

VI TERM, DECEMBER, 1938.

Front Row—F./C. Cpl. E. A. Johnston. F./C. Cpl. S. B. Grant. F./C. Sergt. J. R. Armitstead. F./C. Sergt. N. A. Van Someren. F./C. Sergt. D. Salwey.
F./C. U./O. N. D. Hallifax. F./C. U./O. H. F. D. Breese. F./C. U./O. J. E. R. Hayter. F./C. Sergt. J. A. Holmes. F./C. Sergt. H. A. B. Porteous.
F./C. Sergt. D. H. W. Hanson. F./C. Cpl. L. M. Hodges. F./Cpl. Cpl. A. J. Payn.
Second Row—F./C. H. Parkinson. F./C. Cpl. I. L. B. Aitkens. F./C. Cpl. K. P. Mackenzie. F./C. C. Robertson. F./C. T. S. Murray. F./C. H. J. Winch.
F./C. I. N. M. MacDonald. F./C. B. O. C. Stevens. F./C. M. G. Homer. F./C. I. S. Henderson. F./C. P. A. Major. F./C. C. F. M. Chapman.
Third Row—F./C. M. L. G. Henderson. F./C. M. W. Waddington. F./C. H. D. Clark. F./C. W. D. B. Ruth. F./C. T. Hurst. F./C. A. R. Gullely. F./C. P. W. O. Mould.
F./C. H. J. Cundall. F./C. H. D. Garbett. F./C. H. V. Matthews. F./C. F. A. Plinston.
Back Row—F./C. P. R. S. Fillcul. F./C. H. J. R. Dunn. F./C. Hon. P. G. A. St. Clair Erskine. F./C. B. H. Way. F./C. P. R. W. Wickham. F./C. D. G. Marshall.

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THE LAWS OF AIR WARFARE TO-DAY

By J. M. SPAIGHT, C.B., C.B.E., LL.D.

THE laws of war are assuagements imposed by custom or agreement upon warlike violence or the arbitrary acts of belligerents. They are not laws in the same strict sense as the laws of the realm. The latter are commands enjoined by a supreme authority, the State, which is in a position to enforce them by sanctions or punishments. The laws of war are not enjoined or enforced by any corresponding superior authority. Observance of them depends on the conscience, humanity and honour of the belligerents themselves, on their regard for their reputation in the eyes of neutral nations, and on the fear of retaliation by the enemy if they are infringed. They are in some degree more akin to the rules of a game than to laws in the usual sense. Nevertheless, they are in general recognized and observed, as history shows. The fact that they are sometimes broken does not disprove their existence. National laws are often broken too.

The laws of war, whether they relate to the sea, the land or the air, are derived from two different sources. They rest either on international convention or on the accepted practice of belligerents and neutrals. The laws of naval and land war are to be found mainly in The Hague Conventions of 1907, but they are to be sought also to some degree in usage and practice. For instance, it is a rule of naval warfare that a warship may sail under false colours, but must display her national flag before she fires the first shot in an action. This rule does not appear in any convention, but is one which is generally recognized. The laws of air warfare are made up almost altogether of usages of this kind. There is little as yet of rules deriving their authority from convention or agreement.

When The Hague Conference of 1907 met, human flight was in its infancy. The Wrights had succeeded in making some long hops in the air, but the aeroplane, a flimsy contraption then, was looked upon as a toy or, alternatively, as a dangerous freak. It was not taken very seriously. When, almost two years later, Louis Blériot made his famous Channel crossing, men began for the first time to think that there might be a future for the new invention. It is hardly surprising that the legislation of 1907, which is the main source of the laws of land and naval war, hardly dealt at all with the air.

One of the provisions betrays, indeed, in its title the undeveloped state of aviation at that time. This is the Declaration "prohibiting the discharge of projectiles and explosives from balloons or by other new means of a similar nature." The term "aircraft" had not yet been brought into use in 1907. The Declaration is wide enough in its terms to cover air bombardment of any kind. It was expressed to be operative until the close of the Third Peace Conference, which was to have assembled in 1915, but did not do so, the Great War then being in progress. It is still binding, therefore, upon the States which signed and ratified it, but these are only a

handful and include only two great Powers—Great Britain and the United States. It would be binding on these Powers, moreover, only if no non-contracting Power joined in the war. This proviso and the fact of still greater importance that a war between ourselves and the United States is the most improbable of all wars, deprive the Declaration of all real value to-day.

Another provision of The Hague legislation which concerns the air is that contained in Article 25 of the Rules for Land Warfare, signed on behalf of practically all civilized States in 1907. This Article prohibits "the attack or bombardment by any means whatever of undefended towns, villages, dwellings, or buildings." The words "by any means whatever" were inserted in order that attack or bombardment from the air should be included in the prohibition. A Convention on Naval Bombardment was signed also in 1907 and contains a provision practically identical with that in Article 25, but omits the words "by any means whatever." The reason was, no doubt, that the probability of balloons or other aircraft operating with fleets was considered remote at that time. The omission is, however, of not much practical importance. The naval rule prohibiting the bombardment of undefended towns, etc., must be held to apply to aircraft operating with a naval bombarding force. Otherwise the naval commander could send his aircraft to destroy an undefended place though he could not use his guns for this purpose; and this would clearly make the prohibition valueless.

The existing conventional law of air warfare is thus, it will be seen, distinctly scrappy. An attempt to give it more substance was made in 1922-23. A Commission of Jurists met at The Hague in that winter and drew up a code of rules for air war. The States which were represented were six in number—the United States, Great Britain, France, Italy, Japan and the Netherlands. The code which they drafted covered every branch of the law of the air in war, both as affecting belligerents *inter se* and belligerents *vis-à-vis* neutrals. There was, however, one *lacuna*: there is no article in the draft code relating to air operations against sea-borne commerce. The delegates were unable to agree upon an article for this purpose.

The code which they drew up has never been embodied in an international Convention, that is to say, it has not been given the stamp of official authority by the States which were represented at the meeting. It remains an unofficial set of rules but one, nevertheless, which is entitled to respect as representing the agreed views of a number of distinguished international jurists upon the laws which should govern air warfare. The importance attached to it is shown by a recent incident in the Far East.

On 24th August, 1938, a Chinese air liner was sighted by a Japanese naval squadron when the liner was on its way from Hong Kong to Wuchow. The air liner tried to hide in the clouds and the Japanese aircraft followed it, fired upon it and forced it to come down in the estuary of the Canton River. Of the seventeen occupants of the air liner, fourteen lost their lives. The pilot, who escaped, was an American named Woods, and

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the United States Government protested at Tokyo against the action of the Japanese air squadron. The Foreign Office at Tokyo tried to justify it by referring to the draft rules of 1923. These rules, it stated, had been observed by the Japanese forces since the beginning of hostilities. It is evident that Japan, at least, regards them as having the force of international law in the absence of any Convention.

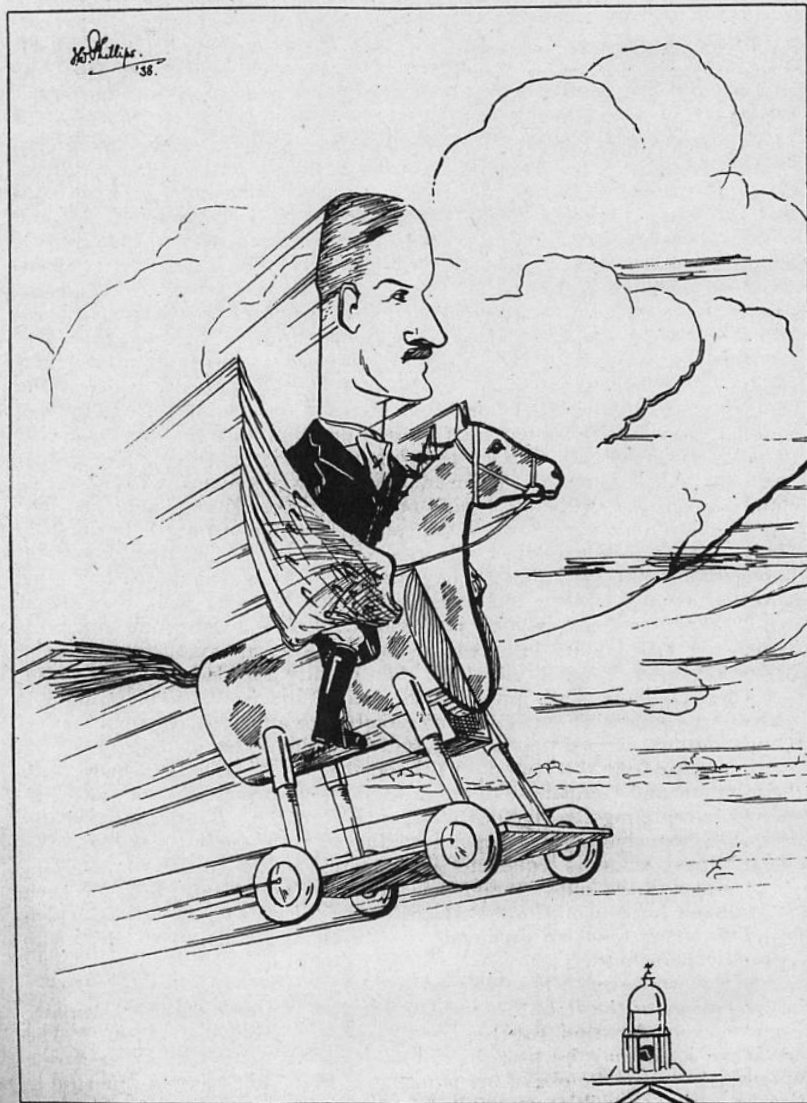
It is true that Japan seems in some respects to have honoured the rules rather in the breach than in the observance. In the air bombardments of Chinese cities the prohibition laid down in 1923 cannot be said to have been scrupulously respected. That, however, has probably been due in some measure to the practical difficulty of applying the rules relating to bombardment. The rules allow bombardment only when it is directed at "a military objective," and then proceed to define a military objective as follows:—

"Military forces; military works; military establishments or depots; factories constituting important and well-known centres engaged in the manufacture of arms, munitions or distinctively military supplies; lines of communication or transportation used for military purposes."

Such objectives, it is laid down, may not be bombarded if they are situated in a city or town not in the immediate neighbourhood of the operations of land forces and if attack upon them would involve the indiscriminate bombardment of the civil population. The effect of this rule is clearly to place upon the officer in command of the bombing force a most unenviable burden of discretionary decision. He has to decide whether it is possible to bomb the objective without causing indiscriminate damage in the town, and this, from a height of perhaps 20,000 feet, will often be exceedingly difficult to judge. Naturally mistakes must occur now and then, and mistakes mean tragedies on the ground below.

Both in China and in Spain the rule of the military objective has at least nominally been observed. In the autumn of the year 1937 the British, French and American Governments addressed to Japan notes protesting against some of the air bombardments then being carried out. The Japanese Government's reply was that its airmen invariably aimed only at military objectives. A similar reply was given by the Nationalist authorities in Spain to British protests addressed to them. In both instances it is obvious that the rule, even if it is assumed to have been intended to be observed, has not availed to prevent terrible calamities to non-combatants and their property. In Spain, especially, there has been something approaching "frightfulness" in the air.

Some of the facts are disputed, it is true. When the little Basque town of Guernica was bombed by German aircraft on 26th April, 1937, and—*post hoc or propter hoc*—almost destroyed by fire, the Nationalists claimed that the destruction was due to incendiarism by the Basques and Asturians. Beyond question there was a very damaging bombardment, but the possibility cannot be excluded that there may have been some incendiarism as well. About Granollers, which was bombed on 31st May, 1938, there can



[F. C. I. W. Phillips.]

SQUADRON LEADER W. W. S.

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be no doubt; the town was visited by a British diplomatic official, Mr. J. H. Leche, a few days after the attack and his report made it clear that the incident was one of the deliberate bombardment of the civilian quarters.

Many of the numerous bombardments of Barcelona, notably those of March, 1938, were clearly indiscriminate. Others were also open to condemnation in so far as, though directed, apparently, at military objectives, the bombing was so carelessly carried out that the sole sufferers were innocent civilians, including women and children. In the summer of 1938 the British Government sent two retired officers, Group Captain R. Smyth-Pigott and Lieutenant-Colonel F. B. Lejeune, to Toulouse, to hold themselves in readiness to proceed to Spain at the request of either belligerent party for the purpose of reporting upon any instance of illegitimate bombardment that might be alleged. This commission (of two) issued its first report on 1st September, 1938; it dealt with forty-six raids on Alicante and six on other towns in Republican Spain. Of the raids on Alicante the commission found that forty-one were directed at the port area or the railway station, which could be regarded as legitimate objectives; the remainder were either deliberately directed at civilian quarters or were tantamount in results to raids so directed. The commission also condemned raids on Sitges and Torrevieja as deliberate attacks on the civil populations, and that, too, was in effect their verdict upon the raid at Tarragona on 7th November. Their severest condemnation was reserved, however, for the attack on Barcelona on 24th December. They investigated the raid on the day after it took place and in their report, issued on 5th January, 1939, they stated that "all the evidence in their possession indicates a deliberate attack on human life with bombs designed for that purpose, at a moment when the streets might be expected to be more than usually crowded, in a part of the city where civilians, since March, 1938, deemed themselves to be immune." About sixty bombs, of small size and suitable for attack on personnel rather than buildings, were dropped, they stated, in the centre of the city.

It is clear from the reports in general that the Nationalist airmen, with their Italian and German auxiliaries, have allowed themselves a wide latitude in interpreting the rule of the military objective. The Nationalists on their side have charged the Republican airmen with bombing civilian areas also, but have made no request for investigation by the British commission.

Another of the rules contained in the draft code of 1923 has also been set aside not infrequently in the Spanish operations. This is the rule which prohibits attack upon an occupant of a disabled aircraft when he tries to escape by parachute.

In an article on "The Role of Aircraft in the Spanish Civil War," in the *Journal of the R.U.S.I.* for August, 1938, Capitaine Didier Poulain, French Army Aviation Reserve, referring to air combats, writes: "The aeroplane itself may be brought down; but even so the pilot—as a rule untouched—can make use of his parachute. In Spain, however, that gives rise to rather horrible possibilities, since on many occasions aviators descending under their silken buoy have been pursued and machine-gunned down to the earth, so that finally only a corpse lands and is blown along by

the wind." Similar instances of attack upon escaping parachutists are recorded by Oloff de Wet in "Cardboard Crucifix."

In one respect the air fighting in Spain has shown an improvement upon the Abyssinian record. There has been no use of gas. In Abyssinia the Italian airmen sprayed mustard gas in great quantities in the rear of the Abyssinian armies; they did not use it in the actual engagements, where it might have endangered their own troops when contaminated ground was captured. The employment of gas was a contravention of the Gas Protocol which was signed at Geneva in 1925 and to which nearly all States, including both Italy and Abyssinia, became parties.

It has already been mentioned that the Commission of Jurists were unable to agree upon a rule to govern aircraft operations against merchant shipping. They stated, however, in their report that there was no difference of opinion among them about the need for rules which would assure the observance of the dictates of humanity as regards the protection of the lives of neutrals and non-combatants at sea. The disagreement related only to the best means of achieving this end. There was a divergence of view as to whether aircraft should be empowered to divert a merchant vessel from her route by order signalled from the air, so that her cargo could be examined in the port to which she was directed to go, or whether the aircraft must first alight near the ship and carry out "visit and search" on the spot. Although no rule upon the subject was included in the draft code of 1923, it cannot be doubted that the commission would have condemned air attack without warning upon a merchant vessel, enemy or neutral, and instances of such unlawful attack have, unfortunately, occurred in the present Spanish war on numerous occasions. The need for a clear rule upon this point, agreed to by all maritime States, is evident from recent occurrences in the Mediterranean.

There have also been air attacks upon merchant vessels in port. Such attacks must be considered illegitimate when deliberately directed against the ships themselves, but the position is different when the damages which a ship suffers are not intentional but the incidental result of an attack upon the harbour or pier where she is lying. There is no Convention dealing with air bombardment in such circumstances, but there is one dealing with naval bombardment. Under this Convention—No. IX of The Hague, 1907—it is permissible to destroy by gun fire certain specified objectives even in an undefended port if, after due notice, the inhabitants have not themselves destroyed the objectives. The objectives include "workshops or plant which could be utilized for the needs of the hostile army or fleet," and the actual harbour works—dock gates, piers, cranes, etc.—would come within these terms if they are used for the unloading of military supplies. By analogy, and in the absence of any specific rule governing air bombardment, the same rule could reasonably be held to apply to air attack upon a port. So, too, the naval rule which absolves the commander of the bombarding force from responsibility for damage inflicted without intention in the vicinity of the objective aimed at could be regarded as applicable also to air bombardment. This view has been accepted, it seems, by our Govern-

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ment. Speaking in the House of Commons on 23rd June, 1938, Mr. Chamberlain said: "The British Government has always made a distinction between attacks on British ships which might be called accidental inasmuch as the ships were close to some objective, and that a hostile aeroplane aiming at that military objective might unwillingly involve a British ship in the attack. We have made a distinction between that kind of attack and an attack which was deliberately aimed at a British vessel." When the attack upon the ship was deliberate, said Mr. R. A. Butler, Under-Secretary for Foreign Affairs, in the House on 3rd June, we protested to the Burgos authorities, but not otherwise.

In one respect the present Spanish war has been a model of what ought *not* to be done in an international conflict. The law of neutrality has been set at defiance. One of the most unquestioned principles of that law has long been that neutral Governments must abstain from lending active support to either side. They are not obliged to prevent their citizens from trading with the belligerents, even in the supply of munitions, but they must not themselves furnish aid either in personnel or *matériel* to the States at war. This rule has been openly violated in Spain. Italian troops have been drafted in whole regiments to Insurgent Spain, German technicians have been sent there with official cognisance, and military equipment has been supplied by both these countries under arrangements which were obviously facilitated by the authorities. The Russian munitions which have reached the Republicans must equally have been dispatched with the Soviet Government's assistance. In regard to the supply of aircraft the disregard for accepted usage has been particularly flagrant. There has been the material for dozens of "*Alabama* claims" in what has been done in the past two and a half years.

The *Alabama* left Laird's shipyard at Birkenhead in July, 1862; she was wholly unarmed and without a fighting crew; she took her crew and armaments on board partly off the Welsh coast, partly in the Azores, and ran up the flag of the Confederate States. For two years she preyed upon Federal commerce until she was brought to action and sunk by the Federal frigate *Kearsarge* off Cherbourg on 19th June, 1864. For allowing her and two other ships to depart from British waters our Government was condemned at the Geneva Arbitration to pay the United States the sum of fifteen and a half million dollars. Bearing that incident in mind, the Commission of Jurists included in their draft code of 1923 a rule obliging a neutral Government to use the means at its disposal to prevent the departure of an aircraft in a condition to make a hostile attack against a belligerent Power, or carrying or accompanied by appliances or materials the mounting of which would enable it to make such an attack.

This (draft) rule has been infringed again and again in the Spanish war. Junker and Heinkel bombers have been sent under their own power from Germany, and Savoia and Caproni bombers from Italy, to the Insurgent forces; Potez and Bloch bombers have occasionally been sent similarly to the Republicans. The Italian bombers really operate in many instances from bases in Italy. They call at Majorca for fresh fuel and for bombs on

their way to raid Spanish coastal towns in the course of a round journey which starts and ends in Italy. Clearly the Republican Government would have ground for claiming heavy compensation from Italy if it were not itself to some extent open to the charge of having received similar assistance.

Some good at least may come out of the grim tragedy of the Spanish Civil War if it brings home to all nations the need for agreed rules upon a number of unsettled questions of international law. One lesson is the urgent necessity for the regulation of air bombardment. It was, no doubt, as the result of the experience gained in Spain that Captain Euan Wallace submitted some proposals upon the subject to a League of Nations committee at Geneva in September last. He proposed that the codification of aerial warfare should be undertaken along the following lines:—

1. Aerial bombardment of civilians should be declared illegal.
2. The objects of air attack should be capable of being identified.
3. It should be laid down that any attack on definite objects must be carried out in such a manner as to avoid the accidental bombardment of the civilian population in the neighbourhood.

Agreement would also be necessary, he suggested, in regard to the nature of military objectives. This, indeed, is essential if the rule is to be of any utility. It should be decided, *inter alia*, whether electricity plants, gasworks, water reservoirs and other public utility installations which serve the needs of cities and are only to a minor extent utilized in connection with armament work, are military objectives. Even then, it is a question whether Captain Wallace's proposals go far enough. Some more drastic settlement of the question may be found to be necessary if the air menace is not to remain as a sword of Damocles suspended over every capital and other great city of Western Europe.

If you are wise, you, too, will fly over here. Did you but know the blessings of Britain, you would clap wings to your feet, and run hither. To take one attraction out of many: there are nymphs here with divine features, so gentle and kind. Besides, there is a fashion which cannot be recommended enough. Wherever you go, you are received on all hands with kisses. . . . When a visit is paid, the first act of hospitality is a kiss, and when guests depart, the same entertainment is repeated. Whenever a meeting takes place there is kissing in abundance; in fact wherever you may turn, you are never without it. Oh, if you had once tasted how sweet and fragrant those kisses are, you would indeed wish to be a traveller, not for ten years but for your whole life in England.—ERASMUS (*from a letter written during his first visit to England in A.D. 1499*).

—Arthur Stanley's "*The Golden Road*."