

Ch. 19 - Of Our Native Country, and Several Things That Relate to It

§ 211. What is our country.

THE whole of the countries possessed by a nation and subject to its laws, forms, as we have already said, its territory, and is the common country of all the individuals of the nation. We have been obliged to anticipate the definition of the term, *native country* (§ 122), because our subject led us to treat of the love of our country — a virtue so excellent and so necessary in a state. Supposing, then, this definition already known, it remains that we should explain several things that have a relation to this subject, and answer the questions that naturally arise from it.

§ 212. Citizens and natives.

The citizens are the members of the civil society; bound to this society by certain duties, and subject to its authority, they equally participate in its

advantages. The natives, or natural-born citizens, are those born in the country, of parents who are citizens. As the society cannot exist and perpetuate itself otherwise than by the children of the citizens, those children naturally follow the condition of their fathers, and succeed to all their rights. The society is supposed to desire this, in consequence of what it owes to its own preservation; and it is presumed, as matter of course, that each citizen, on entering into society, reserves to his children the right of becoming members of it. The country of the fathers is therefore that of the children; and these become true citizens merely by their tacit consent. We shall soon see whether, on their coming to the years of discretion, they may renounce their right, and what they owe to the society in which they were born. I say, that, in order to be of the country, it is necessary that a person be born of a father who is a citizen; for, if he is born there of a foreigner, it will be only the place of his birth, and not his country.

§ 213. Inhabitants.

The inhabitants, as distinguished from citizens, are foreigners, who are permitted to settle and stay in the country. Bound to the society by their residence, they are subject to the laws of the state while they reside in it; and they are obliged to defend it, because it grants them protection, though they do not participate in all the rights of citizens. They enjoy only the advantages which the law or custom gives them. The perpetual inhabitants are those who have received the right of perpetual residence. These are a kind of citizens of an inferior order, and are united to the society without participating in all its advantages. Their children follow the condition of their fathers; and, as the state has given to these the right of perpetual residence, their right passes to their posterity.

§ 214. Naturalization.¹

A nation, or the sovereign who represents it, may grant to a foreigner the quality of citizen, by admitting him into the body of the political society. This

is called naturalization. There are some states in which the sovereign cannot grant to a foreigner all the rights of citizens, — for example, that of holding public offices — and where, consequently, he has the power of granting only an imperfect naturalization. It is here a regulation of the fundamental law, which limits the power of the prince. In other states, as in England and Poland, the prince cannot naturalize a single person, without the concurrence of the nation, represented by its deputies. Finally, there are states, as, for instance, England, where the single circumstance of being born in the country naturalizes the children of a foreigner.

§ 215. Children of citizens born in a foreign country.

It is asked whether the children born of citizens in a foreign country are citizens? The laws have decided this question in several countries, and their regulations must be followed.² By the law of nature alone, children follow the condition of their fathers, and enter into all their rights (§ 212); the place of birth

produces no change in this particular, and cannot, of itself, furnish any reason for taking from a child what nature has given him; I say "of itself," for, civil or political laws may, for particular reasons, ordain otherwise. But I suppose that the father has not entirely quitted his country in order to settle elsewhere. If he has fixed his abode in a foreign country, he is become a member of another society, at least as a perpetual inhabitant; and his children will be members of it also.

§ 216. Children born at sea.

As to children born at sea, if they are born in those parts of it that are possessed by their nation, they are born in the country: if it is on the open sea, there is no reason to make a distinction between them and those who are born in the country; for, naturally, it is our extraction, not the place of our birth, that gives us rights: and if the children are born in a vessel belonging to the nation, they may be reputed born in its territories; for, it is natural to consider the vessels of a nation as parts of its territory, espe-

cially when they sail upon a free sea, since the state retains its jurisdiction over those vessels. And as, according to the commonly received custom, this jurisdiction is preserved over the vessels, even in parts of the sea subject to a foreign dominion, all the children born in the vessels of a nation are considered as born in its territory. For the same reason, those born in a foreign vessel are reputed born in a foreign country, unless their birth took place in a port belonging to their own nation; for, the port is more particularly a part of the territory; and the mother, though at that moment on board a foreign vessel, is not on that account out of the country. I suppose that she and her husband have not quitted their native country to settle elsewhere.

§ 217. Children born in the armies of the state or in the house of its minister at a foreign court. For the same reasons also, children born out of the country, in the armies of the state, or in the house of its minister at a foreign court, are reputed born in the country; for a citizen who is absent with his

family, on the service of the state, but still dependent on it, and subject to its jurisdiction, cannot be considered as having quitted its territory.

§ 218. Settlement.

Settlement is a fixed residence in any place, with an intention of always staying there. A man does not, then, establish his settlement in any place, unless he makes sufficiently known his intention of fixing there, either tacitly or by an express declaration. However, this declaration is no reason why, if he afterwards changes his mind, he may not transfer his settlement elsewhere. In this sense, a person who stops at a place upon business, even though he stay a long time, has only a simple habitation there, but has no settlement. Thus, the envoy of a foreign prince has not his settlement at the court where he resides.

The natural, or *original settlement*, is that which we acquire by birth, in the place where our father has his; and we are considered as retaining it, till we have abandoned it, in order to choose an-

other. The acquired *settlement* (*adscititium*) is that where we settle by our own choice.

§ 219. Vagrants.

Vagrants are people who have no settlement. Consequently, those born of vagrant parents have no country, since a man's country is the place where, at the time of his birth, his parents had their settlement (§ 122), or it is the state of which his father was then a member, which comes to the same point; for, to settle for ever in a nation, is to become a member of it, at least as a perpetual inhabitant, if not with all the privileges of a citizen. We may, however, consider the country of a vagrant to be that of his child, while that vagrant is considered as not having absolutely renounced his natural or original settlement.

§ 220. Whether a person may quit his country.

Many distinctions will be necessary, in order to give a complete solution to the celebrated question, whether a man may quit his *country or the society of*

affairs of conscience;⁷ and if the society suffers and is weakened by their departure, the blame must be imputed to the intolerant party; for it is they who fail in their observance of the social compact — it is they who violate it, and force the others to a separation. We have elsewhere touched upon some other instances of this third case, — that of a popular state wishing to have a sovereign (§ 33), and that of an independent nation taking the resolution to submit to a foreign power (§ 195).

§ 224. Emigrants.

Those who quit their country for any lawful reason, with a design to settle elsewhere, and take their families and property with them, are called *emigrants*.

§ 225. Sources of their right

Their right to emigrate may arise from several sources. 1. In the cases we have just mentioned (§ 223), it is a natural right, which is certainly reserved to each individual in the very compact itself by which civil society was formed.

may, however, change, lessen, or entirely vanish, according as he shall have quitted it lawfully, and with good reason, in order to choose another, or has been banished from it deservedly or unjustly, in due form of law or by violence.

2. As soon as the son of a citizen attains the age of manhood, and acts as a citizen, he tacitly assumes that character; his obligations, like those of others who expressly and formally enter into engagements with society, become stronger and more extensive: but the case is very different with respect to him of whom we have been speaking. When a society has not been formed for a determinate time, it is allowable to quit it, when that separation can take place without detriment to the society. A citizen may therefore quit the state of which he is a member, provided it be not in such a conjuncture when he cannot abandon it without doing it a visible injury. But we must here draw a distinction between what may in strict justice be done, and what is honorable and conformable to every duty

— in a word, between the *internal*, and the external obligation. Every man has a right to quit his country, in order to settle in any other, when by that step he does not endanger the welfare of his country. But a good citizen will never determine on such a step without necessity, or without very strong reasons. It is taking a dishonorable advantage of our liberty, to quit our associates upon slight pretenses, after having derived considerable advantages from them; and this is the case of every citizen, with respect to his country.

3. As to those who have the cowardice to abandon their country in a time of danger, and seek to secure themselves, instead of defending it, they manifestly violate the social compact, by which all the contracting parties engaged to defend themselves in a united body, and in concert; they are infamous deserters, whom the state has a right to punish severely.⁵

§ 221. How a person may absent himself for a time.

a foreigner who is driven from a country where he had no settlement, and to which he is, either for a limited time, or for ever, prohibited to return.

As a man may be deprived of any right whatsoever by way of punishment — exile, which deprives him of the right of dwelling in a certain place, may be inflicted as a punishment: banishment is always one; for, a mark of infamy cannot be set on any one, but with a view of punishing him for a fault, either real or pretended.

When the society has excluded one of its members by a perpetual banishment, he is only banished from the lands of that society, and it cannot hinder him from living wherever else he pleases; for, after having driven him out, it can no longer claim any authority over him. The contrary, however, may take place by particular conventions between two or more states. Thus, every member of the Helvetic confederacy may banish its own subject out of the territories of Switzerland in general; and in this case the banished person will not be allowed to live

resources and incapable of supplying the wants of its inhabitants. In such a country there can only be an imperfect society; for civil society ought to be capable of enabling all its members to procure, by their own labor and industry, all the necessaries of life: unless it effects this, it has no right to require them to devote themselves entirely to it. In some other states, every citizen is left at liberty to travel abroad on business, but not to quit his country altogether, without the express permission of the sovereign. Finally, there are states where the rigor of the government will not permit any one whatsoever to go out of the country without *passports* in form, which are even not granted without great difficulty. In all these cases, it is necessary to conform to the laws, when they are made by a lawful authority. But, in the last-mentioned case, the sovereign abuses his power, and reduces his subjects to an insupportable slavery, if he refuses them permission to travel for their own advantage, when he might grant it to them without inconve-

in any of the cantons, or in the territories of their allies.

Exile is divided into *voluntary* and *involuntary*. It is voluntary, when a man quits his settlement to escape some punishment, or to avoid some calamity — and involuntary, when it is the effect of a superior order.

Sometimes a particular place is appointed, where the exiled person is to remain during his exile; or a certain space is particularized, which he is forbid to enter. These various circumstances and modifications depend on him who has the power of sending into exile.

§ 229. The exile and banished man have a right to live somewhere.

A man, by being exiled or banished, does not forfeit the human character, nor consequently his right to dwell somewhere on earth. He derives this right from nature, or rather from its Author, who has destined the earth for the habitation of mankind; and the introduction of property cannot have im-

2. If the body of the society, or he who represents it, absolutely fail to discharge their obligations towards a citizen, the latter may withdraw himself. For, if one of the contracting parties does not observe his engagements, the other is no longer bound to fulfill his; as the contract is reciprocal between the society and its members. It is on the same principle, also, that the society may expel a member who violates its laws.

3. If the major part of the nation, or the sovereign who represents it, attempt to enact laws relative to matters in which the social compact cannot oblige every citizen to submission, those who are averse to these laws have a right to quit the society, and go settle elsewhere. For instance, if the sovereign, or the greater part of the nation, will allow but one religion in the state, those who believe and profess another religion have a right to withdraw, and take with them their families and effects. For, they cannot be supposed to have subjected themselves to the authority of men, in

affairs of conscience;⁷ and if the society suffers and is weakened by their departure, the blame must be imputed to the intolerant party; for it is they who fail in their observance of the social compact — it is they who violate it, and force the others to a separation. We have elsewhere touched upon some other instances of this third case, — that of a popular state wishing to have a sovereign (§ 33), and that of an independent nation taking the resolution to submit to a foreign power (§ 195).

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2. The liberty of emigration may, in certain cases, be secured to the citizens by a fundamental law of the state. The citizens of Neufchatel and Valangin in Switzerland may quit the country and carry off their effects at their own pleasure, without even paying any duties.

3. It may be voluntarily granted them by the sovereign.

4. This right may be derived from some treaty made with a foreign power, by which a sovereign has promised to leave full liberty to those of his subjects, who, for a certain reason — on account of religion, for instance — desire to transplant themselves into the territories of that power. There are such treaties between the German princes, particularly for cases in which religion is concerned. In Switzerland likewise, a citizen of Bern who wishes to emigrate to Fribourg, and there profess the religion of the place, and, reciprocally, a citizen of Fribourg who, for a similar reason, is desirous

of removing to Bern, has a right to quit his native country, and carry off with him all his property.

It appears from several passages in history, particularly the history of Switzerland and the neighboring countries, that the law of nations, established there by custom some ages back, did not permit a state to receive the subjects of another state into the number of its citizens. This vicious custom had no other foundation than the slavery to which the people were then reduced. A prince, a lord, ranked his subjects under the head of his private property; he calculated their number as he did that of his flocks; and, to the disgrace of human nature, this strange abuse is not yet everywhere eradicated.

§226. If the sovereign infringes their right, he injures them.

If the sovereign attempts to molest those who have a right to emigrate, he does them an injury; and the injured individuals may lawfully implore the protection of the power who is willing to receive them.

Thus we have seen Frederic William, king of Prussia, grant his protection to the emigrant Protestants of Salzburg.

§227. Supplicants.

The name of *supplicants* is given to all fugitives who implore the protection of a sovereign against the nation or prince they have quitted. We cannot solidly establish what the law of nations determines with respect to them, until we have treated of the duties of one nation towards others.

§ 228. Exile and banishment.

Finally, *exile* is another manner of leaving our country. An *exile* is a man driven from the place of his settlement, or constrained to quit it, but without a mark of infamy. Banishment is a similar expulsion, with a mark of infamy annexed.⁸ Both may be for a limited time, or for ever. If an exile, or banished man, had his settlement in his own country, he is exiled or banished from his country. It is, however, proper to observe that common usage applies also the terms exile and banishment to the expulsion of

a foreigner who is driven from a country where he had no settlement, and to which he is, either for a limited time, or for ever, prohibited to return.

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paired the right which every man has to the use of such things as are absolutely necessary — a right which he brings with him into the world at the moment of his birth.

§ 230. Nature of this right.

But though this right is necessary and perfect in the general view of it, we must not forget that it is but imperfect with respect to each particular country. For, on the other hand, every nation has a right to refuse admitting a foreigner into her territory, when he cannot enter it without exposing the nation to evident danger, or doing her a manifest injury, what she owes to herself, the care of her own safety, gives her this right; and, in virtue of her natural liberty, it belongs to the nation to judge, whether her circumstances will or will not justify the admission of that foreigner (Prelim. § 16). He cannot, then, settle by a full right, and as he pleases, in the place he has chosen, but must ask permission of the chief of the place; and, if it is refused, it is his duty to submit.

§ 231. Duty of nations towards them.

However, as property could not be introduced to the prejudice of the right acquired by every human creature, of not being absolutely deprived of such things as are necessary — no nation can, without good reasons, refuse even a perpetual residence to a man driven from his country. But, if particular and substantial reasons prevent her from affording him an asylum, this man has no longer any right to demand it — because, in such a case, the country inhabited by the nation cannot, at the same time, serve for her own use, and that of this foreigner. Now, supposing even that things are still in common, nobody can arrogate to himself the use of a thing which actually serves to supply the wants of another. Thus, a nation, whose lands are scarcely sufficient to supply the wants of the citizens, is not obliged to receive into its territories a company of fugitives or exiles. Thus, it ought even absolutely to reject them, if they are infected with a contagious disease. Thus, also, it has a right to send them

elsewhere, if it has just cause to fear that they will corrupt the manners of the citizens, that they will create religious disturbances, or occasion any other disorder, contrary to the public safety. In a word, it has a right, and is even obliged to follow, in this respect, the suggestions of prudence. But this prudence should be free from unnecessary suspicion and jealousy; it should not be carried so far as to refuse a retreat to the unfortunate, for slight reasons, and on groundless and frivolous fears. The means of tempering it will be, never to lose sight of that charity and commiseration which are due to the unhappy. We must not suppress these feelings even for those who have fallen into misfortune through their own fault. For, we ought to hate the crime, but love the man, since all mankind ought to love each other.

§ 232. A nation cannot punish them for faults committed out of its territories.

If an exiled or banished man has been driven from his country for any crime, it does not belong to the

nation in which he has taken refuge to punish him for that fault committed in a foreign country. For, nature does not give to men or to nations any right to inflict punishment, except for their own defense and safety (§ 169); whence it follows that we cannot punish any but those by whom we have been injured.

§ 233. Except such as affect the common safety of mankind.

But this very reason shows, that, although the justice of each nation ought in general to be confined to the punishment of crimes committed in its own territories, we ought to except from this rule those villains, who, by the nature and habitual frequency of their crimes, violate all public security, and declare themselves the enemies of the human race. Poisoners, assassins, and incendiaries by profession, may be exterminated wherever they are seized; for they attack and injure all nations by trampling under foot the foundations of their common safety. Thus, pirates are sent to the gibbet by

the first into whose hands they fall. If the sovereign of the country where crimes of that nature have been committed, reclaims the perpetrators of them, in order to bring them to punishment, they ought to be surrendered to him, as being the person who is principally interested in punishing them in an exemplary manner. And as it is proper to have criminals regularly convicted by a trial in due form of law, this is a second reason for delivering up malefactors of that class to the states where their crimes have been committed.⁹

ENDNOTES

1. See fully in general, and of naturalization in Great Britain in particular, 1 Chitty's Commercial Law, 123 to 131; 1 Bla. Com. 369; Bac. Ab. Aliens. A naturalization in a foreign country, without license, will not discharge a natural-born subject from his allegiance, 2 Chalmer's Col. Opin. 363. But a natural-born subject of England, naturalized in America, was holden to be entitled to trade as an American subject to the East Indies, 8 Term Rep. 39, 43, 45; and see Reeves, 2d ed. 328, 330, and 37 Geo. 3, c. 97. — C.

{A native citizen of the United States cannot throw off his allegiance to the government, without an Act of Congress authorizing him to do so. *Miller v. The Resolution*, 1 Dall. 10; *Shanks v. Dupont*, 3 Pet. S.C. Rep. 246; *Coxe v. McIlvaine*, 4 Cranch, 209; *The Santissima Trinidad*, 7 Wheat. Rep. 763. *The United States v. Gillies*, Peter's C.C. Rep. 159.)

2. See 1 Chitty's Commercial Law, 114, n. 1.; 115, n. 1.

3. In Great Britain, the established maxim is *nemo potest exuere patriam*, 1 Bla. C. 369, 3 Chit. Com. Law, 129 to 132.

4. This is the foundation of the tax paid on quitting a country, called, in Latin, *census emigrationis*.

5. Charles XII. condemned to death and executed General Patkul, a native of Livonia, whom he had made prisoner in an engagement with the Saxons. But the sentence and execution were a violation of the laws of justice. Patkul, it is true, had been born a subject of the king of Sweden; but he had quitted his native country at the age of twelve years, and having been promoted in the army of Saxony, had, with the permission of his former sovereign sold the property he possessed in Livonia. he had therefore quitted his own country, to choose another (as every free citizen is at liberty to do, except, as we have observed above, at a critical moment, when the circumstances of his country require the aid of all her sons), and the king of Sweden, by permitting him to sell his property, had consented to his emigration.

6. See *post*. Book II. ch. viii. § 108, p. 174. and Chitty's General

Practice, p. 731 to 736, as to writs of *ne exeat regno*.

7. A distinction has usually been taken between capital offences and mere misdemeanors, and for one state to allow the taking and removing an offender of the former class back into the country where the offence was committed, in order to take his trial in the latter, but not so in case of misdemeanors. But sometimes, as upon a charge of perjury, a foreign country will allow the removal of an offender even in case of a misdemeanor. See *Ex parte Scott*, 9 Barn. & Cress. 446. (A foreign government has no right, by the Law of Nations, to demand of the government of the United States a surrender of a citizen or subject of such foreign government, who has committed a crime in his own country. Such a right can only exist by treaty. *Comm. v. Deacon*, 10 Serg. etc. Raw. 125; *Case of Dos Santos*, 2 Brocken. Rep. 493. The *Case of Robins*, Bee's Rep. 266; was under the treaty with Great Britain.)

8. See above, the chapter on Religion.

9. The common acceptance of these two terms is not repugnant to our application of them. The French academy says, "*Banishment* is only applied to condemnations in due course of law. *Exile* is only an absence caused by some disgrace at court." The reason is plain: such a condemnation from the tribunal of justice entails infamy on the emigrant; whereas a disgrace at court does not usually involve the same consequence.
