

**ALLEGIANCE AND CITIZENSHIP: AN
INQUIRY INTO THE CLAIM OF
EUROPEAN GOVERNMENTS TO EXACT
MILITARY SERVICE OF NATURALIZED
SITIZENTS OF THE UNITED STATES**

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to exact military service of naturalized citizens
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THE frequency with which applications are made to the Legations and Consulates of the United States in Europe, by naturalized Citizens of the United States, of European birth, for protection against the claims of the Governments of their native allegiance to exact military service of them when they are found sojourning temporarily there on business, or as transient passengers or visitors, will justify some general observations upon the subject, with the view of discovering, if possible, the true ground upon which the whole matter should be placed. It is a question that affects our relations with all European Governments, with some of them only slightly, but with several of them materially, and, it might easily occur, vitally. We have, in

the main, so far contented ourselves with attempting to dispose, advantageously and peaceably, of each case as it arose. This policy has not always afforded satisfactory results, and it is clearly not commensurate with the importance of the question, nor with the position of the United States in the family of nations. It seems sufficiently certain that no effectual remedy for this continual source of trouble and of crying hardship will proceed from European Governments, but must proceed from our own and be accepted by them.

It is not deemed necessary to swell the proportions of this essay by numerous and lengthy quotations from laws, state papers, proclamations, and the diplomatic discussions of cases that have arisen. The attempt will rather be to make a clear and fair statement of the principles and questions involved, and of the conclusions which it is believed afford a correct solution of the difficulty; and this statement will mainly be submitted without detailed argument. To quote from American writers and statesmen who maintain the liberal view on this subject would be to incur the objection of attempting to sustain our position by our own authorities. To accept as law the opinions of those modern European writers who have maintained the theory of indissoluble allegiance and continuing, unavoidable duty to serve the crown, would be to yield the contest for truth and right, to those who discover a supposed interest in maintaining what we hold for error. It will be far more satisfactory to rely upon general principles, and, so far as authority is invoked, to seek for it in the works of those great European masters of the Laws of Nature and of Nations who built up and illustrated the science of which they are the acknowledged fathers.

While the old world Governments cling to a fiction of the past, past in reality but historically modern, and refuse to meet

us on any ground inconsistent with the unity and completeness of that legal fiction, for the removal of the difficulty, it behoves us to look thoroughly into the merits of the controversy, and consider whether we may not assume a position in relation to this subject that will enable us justly and consistently to leave it with other Governments to choose between the abandonment of a harsh and a practically worthless claim of jurisdiction, on one hand, and on the other giving cause of war to a nation, which, of all others, should be the most jealous of the rights of its citizens, because the nation itself is but the aggregate of free citizenship. Not that we should assume to give law to other nations, or mould the law of nations to suit our own views, or give our own statutes of naturalization an extraterritorial effect. But only that we should be consistent in our position, define that position with scrupulous regard to the rights of other Governments, and then demand, without conditions or compromise, an observance by other nations, not of our statutes, which affect only ourselves, but an observance of what we know to be the law of natural right, and of what we believe, on the highest European authority, to be the law of nations.

A nation or state, in the sense of a government, can exist for but one legitimate object, the protection of its constituent, individual members. All else is a question of form, of agency, of means to an end, and any end other than this one legitimate object, is either perversion or usurpation. These members of an organized civil society are either born into its jurisdiction, or come there voluntarily. Coming by choice, they at once receive its protection and accept its legitimate and necessary burdens, without which organized and regular protection cannot be afforded. The same is true of those born under its allegiance and protection; but it is assumed that though the protection may be abandoned

the allegiance cannot be dissolved, nor its duties and burdens avoided. The reciprocity of allegiance and protection need not be here discussed; it is only referred to as a well understood principle that may be borne in mind as helping to illustrate the discussion of the subject in hand. Neither is it material here to discuss a revolutionary severance of the tie between subject and crown, or between citizen and Government. These cases are a law unto themselves; they belong to those human interests and aspirations where "nothing succeeds but success"; and necessarily, whether justly or unjustly, the event, the ultimate fact, is the only known and the only possible measure of the law of the case.

Is there no other mode of throwing off ones native allegiance, and being absolved of its duties and burdens? There is a mode; it is based on mans nature and the physical organization of the world; and upon this great natural law is based, by the best writers, what we claim to be a rule of the law of nations. A man is not created in order that an Empire or a Republic may exist in perpetuity on a given portion of the earths surface. Rather does the Government exist that the man may till the earth, attend his flocks, weave his cloth and forge his metal in peace and security; and if the government is by its nature necessarily confined within certain geographical limits, and if the man undoubtedly owes obedience to the government while he lives within those limits, the *world* is the theatre of his enterprise, and he goes where it offers the best reward for his labor. Mans right to draw his sustenance from the earth is as old and quite as clear as the necessity of laboring to obtain it. The right is limited only by the condition that the laborer or grazier must appropriate a part of the earth not already held by another, or obtain it without wrong and with

the consent of him who is already in just possession. The earliest history and traditions of the race afford numerous examples, some of them as poetic and touching as they are distinctly in point, of the exercise of the natural right a man has to seek the subsistence and welfare of himself and his family wherever on the earth that subsistence and welfare can in his judgment be found. There is with some a disposition to think lightly of any attempt to ground ourselves on great first principles; but what has been worthy of notice and commemoration in sacred history, and worthy the attention of the greatest jurists of every age, cannot be useless in conducting us to a firm and clear conclusion of this question. This right is stated and richly illustrated by so many writers of the very highest authority, that one is embarrassed, not how to prove by quotations from their works this moral judgment of mankind, this rule of natural law, but rather what to select out of the abundance of proof.

Savages, though clannish, change their tribes and hunting companions when so inclined; shepherds seek more room and fresh pasturage, one going to the left hand and the other to the right; and civilized men, for various reasons and in various pursuits, change their locations. Wherever man goes he carries with him the necessity for a Government, and it is thus that he retires from one Government and adopts another. Whatever forms attend this change are only for convenience, security and certainty, and are not designed to affect, and cannot be held to affect, the natural fundamental right. Positive or enacted law may regulate the exercise of the right to absolve a native allegiance and to adopt a new one, but it does not in strictness give the right. So far as natural law is concerned the right to leave ones native community is even stronger and clearer than the right to become a member of another organized community.

However clear this right to retire beyond the confines of the Government under which he was born, and to appropriate to himself and till the unappropriated desert or wilderness, it might be maintained that he did not have the right to become at his own option, a member of an already organized corporate community without its express or implied consent. That consent being given, no other community, except in special cases to be noted, can object to, or restrict the effect of, the change.

GROTIUS* says: "It is asked if it is allowable to citizens to "depart from the State without permission?" and proceeds to show that unless there is an express prohibition, or a custom to the contrary having the force of a convention, it is a right that may be freely and lawfully exercised. There is in Section XXIV Chap. V Liv. II of the French translation a slight ambiguity, but by comparing it with the approved Latin edition of 1689 it becomes clear that the author's meaning is that among the Romans a citizen might freely transfer his domicile, from one province or municipality to another, but could not thereby relieve himself of the charges of the municipality from which he retired. These charges or obligations might at first be held to refer to those which had accrued, or were subsisting and undischarged when the citizen retired, and not that it was a continuing obligation as to all future charges, else the privilege of change would be a political nullity. It would be a mere privilege of natural locomotion, without imparting or acceding to the change, any legal or political effect. But a reference to the Code and Digest makes it certain that the Roman citizen was liable to assessment both in his native and in his adopted municipality; and this applied only to those who remained within the empire, and not to those who went beyond its limits. "But", he adds in the next sentence,

* "*Droit de la Guerre et de la Paix.*"

"we seek here that which ought naturally to occur when there
 "is no regulation upon the subject, *and we speak here of those*
 "*who go, not from one part to another of the state, but entirely*
 "*out of the state, or quite beyond the dominions of a sovereign.*
 "That men may not go from the state in troops appears
 "sufficiently clear by the end of civil society, which could not
 "exist if such permission were accorded, and in moral affairs
 "that which is necessary to attain an end is held for law. But
 "it seems that we ought to judge quite differently of the migration
 "of a single person; as to exhaust the water of a river is quite
 "a different thing from taking a part of its waters into a canal
 "to form a new stream". He quotes TRYPHONII'S as saying:
 "it is free to every man to choose the state of which he will
 "be a member". * * * "The Romans obliged no person to reside
 "in their state, and CICERO warmly praised this maxim; he said
 "that every man ought to be able to retain or renounce his
 "right, and that this is the firmest foundation of liberty."
 Grotius proceeds to qualify: "that one ought not to leave the
 "state if the interests of civil society demand that he should
 "remain there", which is only another form of saying that he
 may leave if not prohibited; and among other examples of cases
 in which the common public good of society will justify it in
 withholding this right, he puts that of a war in which the
 sovereign has engaged, counting upon the number of the citizens.
 In this case the citizen ought not to leave, and may be prohibited
 from leaving, "unless he has some other person to put in his
 "place equally capable as himself of assisting in the defence of
 "the state. Except in these cases the presumption is that nations
 "leave to each one the liberty of leaving the state" &c. The
 learned Commentator upon the text of his master very pertinently
 adds that, "it can scarcely be that when the government is