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BOOK I.
OF NATIONS CONSIDERED IN THEMSELVI

CHAP. I.
OF NATIONS OR SOVEREIGN STATES.

§ 1. Of the state, and of sovereignty

A NATION or a state is, as has been said at the beginning of this work, a body politic, or a together for the purpose of promoting their mutual safety and advantage by their combir

From the very design that induces a number of men to form a society which has its com which is to act in concert, it is necessary that there should be established a *Public Autho*

what is to be done by each in relation to the end of the association. This political authori
and he or they who are invested with it are the *Sovereign*. (10)

§ 2. Authority of the body politic over the members.

It is evident, that, by the very act of the civil or political association, each citizen subjects himself to the authority of the entire body, in every thing that relates to the common welfare. The authority of all over each member, therefore, essentially belongs to the body politic, or state; but the exercise of that authority may be hands, according as the society may have ordained.

§ 3. Of the several kinds of government.

If the body of the nation keep in ifs *own hands* the empire, or the right to command, it is a *Democracy*; if it intrust it to a *certain number of citizens*, to a senate, it establishes an A finally, if it confide the government to a single *person*, the state becomes a Monarch. (11

necessary for the decision of those disputes that may arise between nations.

§ 4. What are sovereign states.

Every nation that governs itself, under what form soever, without dependence on any fo *Sovereign State*, Its rights are naturally the same as those of any other state. Such are t live together in a natural society, subject to the law of nations. To give a nation a right to figure in this grand society, it is sufficient that it be really sovereign and independent, tha by its own authority and laws.

§ 5. States bound by unequal alliance.

We ought, therefore, to account as sovereign states those which have united themselve powerful, by an unequal alliance, in which, as Aristotle says, to the more powerful is give the weaker, more assistance.

The conditions of those unequal alliances may be infinitely varied, But whatever they are ally reserve to itself the sovereignty, or the right of governing its own body, it ought to be independent state, that keeps up an intercourse with others under the authority of the la

§ 6. Or by treaties of protection.

Consequently a weak state, which, in order to provide for its safety, places itself under tl powerful one, and engages, in return, to perform several offices equivalent to that protec divesting itself of the right of government and sovereignty, — that state, I say, does not, to rank among the sovereigns who acknowledge no other law than that of nations. (12)

§ 7. Of tributary states.

There occurs no greater difficulty with respect to *tributary* states; for though the paymen power does in some degree diminish the dignity of those states, from its being a confess — yet it suffers their sovereignty to subsist entire. The custom of paying tribute was form the weaker by that means purchasing of their more powerful neighbour an exemption fro that price securing his protection, without ceasing to be sovereigns.

§ 8. Of feudatory states.

The Germanic nations introduced another custom — that of requiring homage from a sta or too weak to make resistance. Sometimes even, a prince has given sovereignties in fe voluntarily rendered themselves feudatories to others.

When the homage leaves independency and sovereign authority in the administration of means certain duties to the lord of the fee, or even a mere honorary acknowledgment, it state or the feudatory prince being strictly sovereign. The king of Naples pays homage f pope, and is nevertheless reckoned among the principal sovereigns of Europe,

§ 9. Of two states subject to the same prince.

Two sovereign states may also be subject to the same prince, without any dependence each may retain all its rights as a free and sovereign state. The king of Prussia is sovere Neufchatel in Switzerland, without that principality being in any manner united to his oth the people of Neufchatel, in virtue of their franchises, may serve a foreign power at war Prussia, provided that the war be not on account of that principality.

§ 10. Of states forming a federal republic.

Finally, several sovereign and independent states may unite themselves together by a p without ceasing to be, each individually, a perfect state. They will together constitute a fe joint deliberations will not impair the sovereignty of each member, though they may, in c some restraint on the exercise of it, in virtue of voluntary engagements. A person does r independent, when he is obliged to fulfil engagements which he has voluntarily contracte

Such were formerly the cities of Greece; such are at *present* the Seven United Province (13) and such the members of the Helvetic body.

§ 11. Of a state that has passed under the dominion of another.

But a people that has passed under the dominion of another is no longer a state, and ca directly of the law of nations. Such were the nations and kingdoms which the Romans re empire; the generality even of those whom they honoured with the name of friends and real states. Within themselves they were governed by their own laws and magistrates; b every thing obliged to follow the orders of Rome; they dared not of themselves either to alliances; and could not treat with nations.

The law of nations is the law of sovereigns; free and independent states are moral perso obligations we are to establish in this treatise.

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(10) The student desirous of enlarging his knowledge upon this subject should read Loc Lolme on the Constitution; 1 Bla. Com. 47; Sedgwick's Commentaries thereon; and Chit

of the Crown as regards Sovereignly and different Governments; and see Cours de Droi Externe, Paris, A.D. 1830. — C.

(11) See the advantages and disadvantages of each of those forms of government shor Com. 49, 50. — C.

1. Nor shall we examine which of those different kinds of government is the best. It will b general, that the monarchical form appears preferable to every other, provided the powe limited, and not absolute, — qui [*principatus*] tum demum regius est, si intra modestiæ e contineat, excessu potestatis, quam imprudentes in dies augere satagunt, minuitur, pen Nos stulti, majoris, potentiæ specie decepti, dilabimur in contrarium, non satis considera tutam esse potentiam quæ viribus modum imponit. The maxim has both truth and wisdo author here quotes the saying of Theopompus, king of Sparta, who, returning to his hou acclamations of the people, after the establishment of the Ephori — "You will leave to yo wife) an authority diminished through your fault." "True," replied the king: "I shall leave th of it; but it will rest upon a firmer basis." The Lacedæmonians, during a certain period, h they very improperly gave the title of kings. They were magistrates, who possessed a ve whom it was not unusual to cite before the tribunal of justice, — to arrest, — to condemr acts with less impropriety in continuing to bestow on her chief the title of king, although s his power within very narrow bounds. He shares not his authority with a colleague, — he the state has, from time immemorial, borne the title of a kingdom. — Edit. A.D. 1797.

(12) This and other rules respecting smaller states sometimes form the subject of consid Municipal Courts. In case of a revolted colony, or part of a parent or principal state, no s can legally make a contract with it or assist the same without leave of his own governme independence has been recognised by his own government, *Jones v. Garcia del Rio*, 1 *Thompson v. Powles*, 2 Sim. Rep. 202; *Yrisarri v. Clement*, 2 Car. & P. 223; 11 B. Moor and post. — C. (*The United states v. Palmer*. 3 Wheat. 610. See *Cherriot v. Foussat*, 3 I

(13) Of course, the words "*at present*" refer only to the time when Vattel wrote and it is u otherwise than thus cursorily the notorious recent changes. — C.

CHAP. II.
GENERAL PRINCIPLES OF THE DUTIES OF A NATION TOWAF

§ 12. The objects of this treatise.

IF the rights of a nation spring from its obligations, it is principally from those that relate t appear, that its duties towards others depend very much on its duties towards itself, as t regulated and measured by the latter. As we are then to treat of the obligations and righ attention to order requires that we should begin by establishing what each nation owes t

§ 13. A nation ought to act agreeably to its nature.

The general and fundamental rule of our duties towards ourselves is, that every moral b manner conformable to his nature, *naturae conveni* enter vivere. (14) A nation is a being essential attributes, that has its own nature, and can act in conformity to it. There are the as such, wherein it is concerned in its national character, and which are either suitable c constitutes it a nation; so that it is not a matter of indifference whether it performs some

omits others. In this respect, the Law of Nature prescribes it certain duties. We shall see conduct a nation ought to observe, in order that it may not be wanting to itself. But we sh general idea of this subject.

§ 14. Of the preservation and perfection of a nation.

He who no longer exists can have no duties to perform: and a moral being is charged wi himself, only with a view to his perfection and happiness: for to preserve and to *perfect h* sum of all his duties to himself.

The *preservation* of a nation is found in what renders it capable of obtaining the end of c nation is in a perfect state, when nothing necessary is wanting to arrive at that end. We perfection of a thing consists, generally, in the perfect agreement of all its constituent pa end. A nation being a multitude of men united together in civil society — if in that multitu the end proposed in forming a civil society, the nation is perfect; and it is more or less so approaches more or less to that perfect agreement. In the same manner its external stat perfect, according as it concurs with the interior perfection of the nation,

§ 15. What is the end of civil society.

The end or *object* of civil society is to procure for the citizens whatever they stand in nee necessities, the conveniences, the accommodation of life, and, in general, whatever con with the peaceful possession of property, a method of obtaining justice with security, and defence against all external violence.

It is now easy to form a just idea of the perfection of a state or nation: — every thing in it promote the ends we have pointed out.

§ 16. A nation is under an obligation to preserve itself.

In the act of association, by virtue of which a multitude of men form together a state or n has entered into engagements with all, to promote the general welfare; and all have ente with each individual, to facilitate for him the means of supplying his necessities, and to p It is manifest that these reciprocal engagements can no otherwise be fulfilled than by ma association. The entire nation is then obliged to maintain that association; and as their p on its continuance, it thence follows that every nation is obliged to perform the duty of se

This obligation, so natural to each individual of God's creation, is not derived to nations i nature, but from the agreement by which civil society is formed: it is therefore not absolu that is to say, it supposes a human act, to wit, the social compact. And as compacts may common consent of the parties — if the individuals that compose a nation should unanir the link that binds them, it would be lawful for them to do so, and thus to destroy the stat would doubtless incur a degree of guilt, if they took this step without just and weighty rea are approved by the Law of Nature, which recommends them to mankind, as the true me their wants, and of effectually advancing towards their own perfection. Moreover, civil so so necessary to all citizens, that it may well be considered as morally impossible for ther unanimously to break it without necessity. But what citizens may or ought to do — what may resolve in certain cases of necessity or of pressing exigency — are questions that v elsewhere: they cannot be solidly determined without some principles which we have no

the present, it is sufficient to have proved, that, in general, as long as the political society nation is obliged to endeavour to maintain it.

§ 17. And to preserve its members.

If a nation is obliged to preserve itself, it is no less obliged carefully to preserve all its me owes this to itself, since the loss even of one of its members weakens it, and is injurious owes this also to the members in particular, in consequence of the very act of associatic compose a nation are united for their defence and common advantage; and none can ju union, and of the advantages he expects to derive from it, while he on his side fulfils the

The body of a nation cannot then abandon a province, a town, or even a single individua unless compelled to it by necessity, or indispensably obliged to it by the strongest reaso public safety. (16)

§ 18. A nation has a right to every thing necessary for its preservation.

Since then a nation is obliged to preserve itself, it has a right to every thing necessary fo the Law of Nature gives us a right to every thing without which we cannot fulfil our obliga oblige us to do impossibilities, or rather would contradict itself in prescribing us a duty, a debarring us of the only means of fulfilling it. It will doubtless be here understood, that th to be unjust in themselves, or such as are absolutely forbidden by the Law of Nature.

As it is impossible that it should ever permit the use of such means, — if on a particular present themselves for fulfilling a general obligation, the obligation must, in that particula on as impossible, and consequently void.

§ 19. It ought to avoid every thing that might occasion its destruction.

By an evident consequence from what has been said, a nation ought carefully to avoid, whatever might cause its destruction, or that of the state, which is the same thing.

§ 20. Of its right to every thing that may promote this end.

A nation or state has a right to every thing that can help to ward off imminent danger, an whatever is capable of causing its ruin; and that from the very same reasons that establi necessary to its preservation. (17)

§ 21. A nation ought to perfect itself and the state.

The second general duty of a nation towards itself is to labour at its own perfection and t double perfection that renders a nation capable of attaining the end of civil society: it wo in society, and yet not endeavour to promote the end of that union.

Here the entire body of a nation, and each individual citizen, are bound by a double obli immediately proceeding from nature, and the other resulting from their reciprocal engag obligation upon each man to labour after his own perfection; and in so doing, he labours society, which could not fail to be very flourishing, were it composed of none but good ci individual finding in a well-regulated society the most powerful succours to enable him to

Nature imposes upon him in relation to himself, for becoming better, and consequently r doubtless obliged to contribute all in his power to render that society more perfect.

All the citizens who form a political society reciprocally engage to advance the common possible to promote the advantage of each member. Since then the perfection of the soc to secure equally the happiness of the body and that of the members, the grand object c duties of a citizen is to aim at this perfection, This is more particularly the duty of the boc common deliberations, and in every thing they do as a body. (18)

§ 22. And to avoid every thing contrary to its perfection.

A nation therefore ought to prevent, and carefully to avoid, whatever may hinder its perfe state, or retard the progress either of the one or the other. (19)

§ 23. The rights it derives from these obligations.

We may then conclude, as we have done above in regard to the preservation of a state has a right to every thing without which it cannot attain the perfection of the members ar prevent and repel whatever is contrary to this double perfection.

§ 24. Examples.

On this subject, the English furnish us an example highly worthy of attention. That illustr distinguishes itself in a glorious manner by its application to every thing that can render flourishing. An admirable constitution there places every citizen in a situation that enable this great end, and everywhere diffuses that spirit of genuine patriotism which zealously public welfare. We there see private citizens form considerable enterprises, in order to p welfare of the nation. And while a bad prince would find his hands tied up, a wise and m most powerful aids to give success to his glorious designs. The nobles and the represer form a link of confidence between the monarch and the nation, and, concurring with him tends to promote the public welfare, partly case him of the burden of government, give s and procure him an obedience the more perfect, as it is voluntary. Every good citizen se the state is really the advantage of all, and not that of a single person. (20) Happy const not suddenly obtain: it has cost rivers of blood; but they have not purchased it too dear. so fatal to the manly and patriotic virtues, that minister of corruption so dangerous to libe monument that does so much honour to human nature — a monument capable of teach it is to rule over a free people!

There is another nation illustrious by its bravery and its victories. Its numerous and valia and fertile dominions, might render it respectable throughout all Europe, and in a short ti most flourishing situation, but its constitution opposes this; and such is its attachment to there is no room to expect a proper remedy will ever be applied. In vain might a magnar his virtues above the pursuits of ambition and injustice, from the most salutary designs f happiness of his people; — in vain might those designs be approved by the more sensib of the nation; — a single deputy, obstinate, or corrupted by a foreign power, might put a disconcert the wisest and most necessary measures. From an excessive jealousy of its taken such precautions as must necessarily place it out of the power of the king to make liberties of the public. But is it not evident that those precautions exceed the end propos hands of the most just and wise prince, and deprive him of the means of securing the pu the enterprises of foreign powers, and of rendering the nation rich and happy? Is it not e

has deprived itself of the power of acting, and that its councils are exposed to the capric single member?

§ 25. A nation ought to know itself.

We shall conclude this chapter, with observing that a nation ought to *know itself*. (21) W cannot make any successful endeavours after its own perfection. It ought to have a just enable it to take the most proper measures; it ought to know the progress it has already advances it has still to make, — what advantages it possesses, and what defects it labo preserve the former, and correct the latter. Without this knowledge a nation will act at ra the most improper measures. It will think it acts with great wisdom in imitating the condu reputed wise and skilful, — not perceiving that such or such regulation, such or such pra to one state, is often pernicious to another. Every thing ought to be conducted according cannot be well governed without such regulations as are suitable to their respective cha this, their characters ought to be known.

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(14) If to particularize may be allowed, we may instance Great Britain. Comparatively, w dimensions. it would be but an insignificant state; but with regard to its insular situation a its proximity to Europe, and above all the singularly manly, brave, and adventurous char has been capable of acquiring and has acquired powers far beyond its diminutive extent established. It becomes the duty of such a state, and of those exercising the powers of g and improve these natural advantages; and in that view the ancient exclusive navigation England the carrier of Europe and the world were highly laudable; and it is to be hoped t system, injudiciously abandoned, will ere long lake place. — C.

(15) This principle is in every respect recognized and acted upon by our municipal law. I as a due return for, the *protection* every natural born subject is entitled to, and actually c from the instant of his birth that all the obligations of allegiance attach upon him, and fro any act of his own emancipate himself. This is the principle upon which is founded the ru *exuere patriam*," Calvin's case. 7 Coke 25. Co Lit. 129, a; and see an interesting applica *Macdonald's* case, Forster's Crown Law 59. — C.

(16) In tracing the consequences of this rule, we shall hereafter perceive how important

(17) *Salus populi supreme est lex*. Upon this principle it has been established, that for na it is legal to pull down or injure the property of any private individual. See *Governors, &c* Rep. 796-7. — C.

(18) In a highly intelligent and cultivated society like England, this principle is exemplifie degree; for in the legislative assembly, members of parliament, without any private intere approbation of their countrymen, almost destroy themselves by exertion in discussing th existing regulations; and this indeed even to excess as regards long speeches, sometim their own laudable endeavours. — C.

(19) See Book 1. chap. xxiii. § 283, as to the duty of all nations to prevent the violation o C.

(20) This is indeed a flattering compliment from Vattel, a foreigner; but certainly it is just; commercial nation, it might be supposed that each individual principally labours for his o when we refer to the spirited employment of capital in building national bridges, canals,

yielding even 21 per *cent*., it must be admitted that great public spirit for national good v
— C.

(21) This is one of the soundest and most important principles that can be advanced, wh
individuals or to nations, and is essential even to the attainment of the rudiments of true
and wise man should enlarge on this principle, and among others study that excellent, b
Mason on Self-Knowledge.

CHAP. III.
OF THE CONSTITUTION OF A STATE, AND THE DUTIES AND RIGHT
IN THIS RESPECT

WE were unable to avoid in the first chapter, anticipating something of the subject of this

§ 26. Of public authority.

We have seen already that every political society must necessarily establish a public au
common affairs, — to prescribe to each individual the conduct he ought to observe with
welfare, and to possess the means of procuring obedience. This authority essentially be
society; but it may be exercised in a variety of ways; and every society has a right to cho
suits it best.

§ 27. What is the constitution of a state.

The fundamental regulation that determines the manner in which the public authority is t
forms the *constitution of the state*. In this is seen the form in which the nation acts in qua
how and by whom the people are to be governed, — and what are the rights and duties
constitution is in fact nothing more than the establishment of the order in which a nation
common for obtaining those advantages with a view to which the political society was es

§ 28. The nation ought to choose the best constitution.

The perfection of a state, and its aptitude to attain the ends of society, must then depend
consequently the most important concern of a nation that forms a political society, and it
essential duty towards itself, is to choose the best constitution possible, and that most su
circumstances. When it makes this choice, it lays the foundation of its own preservation,
happiness: — it cannot take too much care in placing these on a solid basis.

§ 29. Of political, fundamental, and civil laws.

The laws are regulations established by public authority, to be observed in society. All th
the welfare of the state and of the citizens. The laws made directly with a view to the *pul
laws*; and in this class, those that concern the body itself and the being of the society, th
the manner in which the public authority is to be exerted, — those, in a word, which toge
constitution of the state, are the fundamental *laws*.

The civil laws are those that regulate the rights and conduct of the citizens among thems

Every nation that would not be wanting to itself, ought to apply its utmost care in establis
principally its fundamental laws, — in establishing them, I say, with wisdom in a manner
of the people, and to all the circumstances in which they may be placed: they ought to d
make them known with plainness and precision, to the end that they may possess stabil
be eluded, and that they may create, if possible, no dissension — that, on the one hand,
the exercise of the sovereign power is committed, and the citizens, on the other, may ec
and their rights. It is not here necessary to consider in detail what that constitution and tl
that discussion belongs to public law and politics. Besides, the laws and constitutions of
necessarily vary according to the disposition of the people and other circumstances. In t
must adhere to generals. We here consider the duty of a nation towards itself, principally
conduct that it ought to observe in that great society which nature has established amon
duties give it rights, that serve as a rule to establish what it may require from other natio
what others may require from it.

§ 30. Of the support of the constitution and obedience to the laws.

The constitution and laws of a state are the basis of the public tranquility, the firmest sup
authority, and a security for the liberty of the citizens. But this constitution is a vain phan
are useless, if they be not religiously observed: the nation ought then to watch very atter
render them equally respected by those who govern, and by the people destined to obey
constitution of the state and to violate its laws, is a capital crime against society; and if th
invested with authority, they add to this crime a perfidious abuse of the power with which
The nation ought constantly to repress them with its utmost vigour and vigilance, as the
requires.

It is very uncommon to see the laws and constitution of a state openly and boldly oppose
and gradual attacks that a nation ought to be particularly on its guard. Sudden revolution
imaginations of men: they are detailed in history; their secret springs are developed. But
changes that insensibly happen by a long train of steps that are but slightly marked. It w
nations an important service to show from history how many states have thus entirely ch
and lost their original constitution. This would awaken the attention of mankind: — impre
with this excellent maxim (no less essential in politics than in morals) *principiis obsta*, —
shut their eyes against innovations, which, though inconsiderable in themselves, may se
to higher and more pernicious enterprises.

§ 31. The rights of a nation with respect to its constitution and government.

The consequences of a good or bad constitution being of such importance, and the natio
to procure, as far as is possible, the best and most convenient one, it has a right to ever
enable it to fulfil this obligation (§ 18). It is then manifest that a nation has an indisputabl
maintain, and perfect its constitution, to regulate at pleasure every thing relating to the g
person can have a just right to hinder it. Government is established only for the sake of t
to its safety and happiness.

§ 32. It may reform the government.

If any nation is dissatisfied with the public administration, it may apply the necessary ren
government. But observe that I say "the nation;" for I am very fat from meaning to autho
or incendiaries to give disturbance to their governors by exciting murmurs and seditions.

a nation have a right to check those at the helm when they abuse their power. When the obeys, the people are considered as approving the conduct of their superiors, or at least and it is not the business of a small number of citizens to put the state in danger, under reforming it.

§ 33. And may change the constitution.

In virtue of the same principles, it is certain that it the nation is uneasy under its constitut change it.

There can be no difficulty in the case, if the whole nation be unanimously inclined to mal asked, what is to be done if the people are divided? In the ordinary management of the s *majority* must pass without dispute for that of the whole nation: otherwise it would be alm society ever to take any resolution. It appears then, by parity of reasoning, that a nation constitution of the state by a majority of voles; and whenever there is nothing in this cha considered as contrary to the act of civil association, or to the intention of those united u bound to conform to the resolution of the majority. (22) But if the question be, to quit a fo which alone it appeared that the people were willing to submit on their entering into the l the greater part of a free people, after the example of the Jews in the time of Samuel, ar resolved to submit to the authority of a monarch, — those citizens who are more jealous invaluable to those who have tasted it, though obliged to suffer the majority to do as they obligation at all to submit to the new government: they may quit a society which seems t in order to unite again under another form: they have a right to retire elsewhere, to sell th with them all their effects.

§ 34. Of the legislative power, and whether it can change the constitution.

Here, again, a very important question presents itself. It essentially belongs to the societ relation to the manner in which it desires to be governed, and to the conduct of the citize *legislative power*. The nation may intrust the exercise of it to the prince, or to an assemb jointly; who have then a right to make new laws and to repeal old ones.(23) It is asked, w extends to the fundamental laws — whether they may change the constitution of a state have laid down lead us to decide with certainty, that the authority of those legislators do and that they ought to consider the *fundamental* laws as sacred, if the nation has not, in given them power to change them. For the constitution of the state ought to possess sta was first established by the nation, which afterwards intrusted certain persons with the le fundamental laws are expected from their commission. It is visible that the society only i provision for having the state constantly furnished with laws suited to *particular conjunct* purpose, gave the legislature the power of abrogating the ancient civil and *political* laws fundamental, and of making new ones; but nothing leads us to think that it meant to sub itself to their will. In short, it is from the constitution that those legislators derive their pov change it without destroying the foundation of their own authority? By the fundamental la houses of parliament, in concert with the king, exercise the legislative power: but, if the t resolve to suppress themselves, and to invest the king with full and absolute authority, c would not suffer it. And who would dare to assert that they would not have a right to opp parliament entered into a debate on making so considerable a change, and the whole na silent upon it, this would be considered as an approbation of the act of its representative

§ 35. The nation ought not to attempt it without great caution.

But in treating here of the change of the constitution, we treat only of the right: the quest belongs to politics. We shall therefore only observe in general, that great changes in a s dangerous operations, and frequent changes being in their own nature prejudicial, a pec circumspect in this point, and never be inclined to make innovations without the most pr absolute necessity. The fickleness of the Athenians was ever inimical to the happiness c length proved fatal to that liberty of which they were so jealous, without knowing, how to

§ 36. It is the judge of all disputes relating to the government.

We may conclude from what has been said (§ 33), that if any disputes arise in a state re *fundamental* laws, the public administration, or the rights of the different powers of whic belongs to the nation alone to judge and determine them conformably to its political con

§ 37. No foreign power has a right to interfere.

In short, all these affairs being solely a national concern, no foreign power has a right to ought to intermeddle with them otherwise than by its good offices unless requested to d particular reasons. If any intrude into the domestic concerns of another nation, and atter on its deliberations, they do it an injury.

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(22) In 1 Bla. Com, 51-2, it is contended, that, unless in cases where the *natural law* or observance of municipal laws, it is optional, in a moral view, to observe the positive law, where detected in the breach: but that doctrine, as regards the moral duty to observe la refuted. See Sedgwick's Commentaries, 61; 2 Box. & Pul. 375; 5 Bar. & Ald. 341; sed vi 316. — C.

(23) Thus, during the last war, English acts of Parliament delegated to the king in counc making temporary orders and laws regulating commerce. So by a bill of 3 Will. 4, power given to eight of the judges to make rules and orders respecting pleading, these not bei unconstitutional delegations of powers of altering the *fundamental* laws, part of the cons then, the rules or orders so made are not absolutely to become law until they have been objected against in parliament during six weeks. — C.

CHAP. IV.
OF THE SOVEREIGN, HIS OBLIGATIONS, AND HIS RIG

§ 38. Of the sovereign.

THE reader cannot expect to find here a long deduction of the rights of sovereignty, and prince. These are to be found in treatises on the public law. In this chapter we only prop consequence of the grand principles of the law of nations, what a sovereign is, and to gi obligations and his rights.

We have said that the *sovereignty* is that public authority which commands in civil societ directs what each citizen is to perform, to obtain the end of its institution. This authority c essentially belonged to the body of the society, to which each member submitted, and c conducting himself in every thing as he pleased, according to the dictates of his own und doing himself justice. But the body of the society does not always retain in its own hands authority: it frequently intrusts it to a senate, or to a single person. That senate, or that p sovereign.

§ 39. It is solely established for thesafety and advantage of society.

It is evident that men form a political society, and submit to laws, solely for their own adv sovereign authority is then established only for the common good of all the citizens; and think that it could change its nature on passing into the hands of a senate or a monarch. cannot, without rendering itself equally ridiculous and odious, deny that the sovereign is safety and advantage of society.

A good prince, a wise conductor of society, ought to have his mind impressed with this g sovereign power is solely intrusted to him for the safety of the state, and the happiness c he is not permitted to consider himself as the principal object in the administration of affa satisfaction, or his private advantage; but that he ought to direct all his views, all his step advantage of the state and people who have submitted to him.[1] What a noble sight it is t England rendering his parliament an account of his principal operations — assuring that representatives of the nation, that he has no other end in view than the glory of the state his people — and affectionately thanking all who concur with him in such salutary views! who makes use of this language, and by his conduct proves the sincerity of his professio the wise, the only great man. But, in most kingdoms, a criminal flattery has long since ca be forgotten. A crowd of servile courtiers easily persuade a proud monarch that the natio and not he for the nation. He soon considers the kingdom as a patrimony that is his own people as a herd of cattle from which he is to derive his wealth, and which he may dispo own views, and gratify his passions. Hence those fatal wars undertaken by ambition, res pride; — hence those oppressive taxes, whose produce is dissipated by ruinous luxury, mistresses and favourites; — hence, in fine, are important posts given by favour, while p neglected, and every thing that does not immediately interest the prince is abandoned to subalterns. Who can, in this unhappy government, discover an authority established for great prince will be on his guard even against his virtues.

Let us not say, with some writers, that private virtues are not the virtues of kings — a ma politicians, or of those who are very inaccurate in their expressions. Goodness, friendsh virtues on the throne; and would to God they were always to be found there! But a wise undiscerning obedience to their impulse. He cherishes them, he cultivates them in his pr affairs he listens only to justice and sound policy. And why? because he knows that the intrusted to him only for the happiness of society, and that, therefore, he ought not to co in the use he makes of his power. He tempers his goodness with wisdom; he gives to fri and private favours; he distributes posts and employments according to merit; public rev to the state. In a word, he uses the public power only with a view to the public welfare. A in that fine saying of Lewis XII.: — "A king of France does not revenge the injuries of a d

§ 40. Of his representative character.

A political society is a moral person (Prelim. § 2) inasmuch as it has an understanding a makes use for the conduct of its affairs, and is capable of obligations and rights. When, confer the sovereignty on any one person, they invest him with their understanding and him their obligations and rights, so far as relates to the administration of the state, and to public authority. The sovereign, or conductor of the state, thus becoming the depositary rights relative to government, in him is found the moral person, who, without absolutely nation, acts thenceforwards only in him and by him. Such is the origin of the representat to the sovereign. He represents the nation in all the affairs in which he may happen to b sovereign. It does not debase the dignity of the greatest monarch to attribute to him this character; on the contrary, nothing sheds a greater lustre on it, since the monarch thus person all the majesty that belongs to the entire body of the nation.

§ 41. He is intrusted with the obligations of the nation, and invested with its rights

The sovereign, thus clothed with the public authority, with every thing that constitutes th the nation, of course becomes bound by the obligations of that nation, and invested with

§ 42 His duty with respect to the preservation and perfection of the nation.

All that has been said in Chap. II. of the general duties of a nation towards itself particul sovereign. He is the depositary of the empire, and the power of commanding whatever welfare; he ought, therefore, as a tender and wise father, and as a faithful administrator, and take care to preserve it, and render it more perfect; to better its state, and to secure against every thing that threatens its safety or its happiness.

§ 43. His rights in this respect.

Hence all the rights which a nation derives from its obligation to preserve and perfect its state, (see §§ 18, 20, and 23, of this book); all these rights, I say, reside in the sovereign indifferently called the conductor of the society, superior, prince, &c.

§ 44. He ought to know the nation.

We have observed above, that every nation ought to know itself. This obligation devolve since it is he who is to watch over the preservation and perfection of the nation. The duty nature here imposes on the conductors of nations is of extreme importance, and of cons ought exactly to know the whole country subject to their authority; its qualities, defects, situation with regard to the neighbouring states; and they ought to acquire a perfect kno and general inclinations of their people, their virtues, vices, talents, &c. All these branch necessary to enable them to govern properly.

§ 45. The extent of his power.

The prince derives his authority from the nation; he possesses just so much of it as they intrust him with. If the nation has plainly and simply invested him with the sovereignty, w

division, he is supposed to be invested with all the prerogatives, without which the sover authority could not be exerted in the manner most conducive to the public welfare. Thes *prerogatives*, or *the prerogatives of majesty*.

§ 46. The prince ought to respect and support the fundamental laws.

But when the sovereign power is limited and regulated by the fundamental laws of the st the prince the extent and bounds of his power, and the manner in which he is to exert it. strictly obliged not only to respect, but also to support them. The constitution and the fur plan on which the nation has resolved to labour for the attainment of happiness; the exe the prince. Let him religiously follow this plan; let him consider the fundamental laws as rules; and remember that the moment he deviates from them, his commands become ur criminal abuse of the power with which he is intrusted. He is, by virtue of that power, the of the laws: and while it is his duty to restrain each daring violator of them, ought he him under foot?[2]

§ 47. He may change the laws not fundamental.

If the prince be invested with the legislative power, he may, according to his wisdom, an advantage requires it, abolish those laws that are not fundamental, and make now ones said on this subject in the preceding chapter, § 34.)

§ 48. He ought to maintain and observe the existing laws.

But while these laws exist, the sovereign ought religiously to maintain and observe them foundation of the public tranquility, and the firmest support of the sovereign authority. Ev violent, and subject to revolutions, in those unhappy states where arbitrary power has pl therefore the true interest of the prince, as well as his duty, to maintain and respect the l submit to them himself. We find this truth established in a piece published by order of Le most absolute princes that ever reigned in Europe. "Let it not be said that the sovereign laws of his state, since the contrary proposition is one of the truths of the law of nations, sometimes attacked, and which good princes have always defended, as a tutelar divinity

§ 49. In what sense he is subject to the laws.

But it is necessary to explain this submission of the prince to the laws. First, he ought, a follow their regulations in all the acts of his administration. In the second place, he is him private affairs, to all the laws that relate to property. I say, "in his private affairs;" for whe sovereign prince, and in the name of the state, he is subject only to the fundamental law nations. In the third place, the prince is subject to certain regulations of general polity, co as inviolable, unless he be excepted in express terms by the law, or tacitly by a necessa dignity. I here speak of the laws that relate to the situation of individuals, and particularly the validity of marriages. These laws are established to ascertain the state of families: n that of all others the most important to be certainly known. But, fourthly, we shall observ respect to this question, that, if the prince is invested with a full, absolute, and unlimited above the laws, which derive from him all their force; and he may dispense with his own whenever natural justice and equity will permit him. Fifthly, as to the laws relative to mor prince ought doubtless to respect them, and to support them by his example. But, sixthly all civil penal laws, The majesty of a sovereign will not admit of his being punished like a

his functions are too exalted to allow of his being molested under pretence of a fault that concern the government of the state.

§ 50. His person is sacred and inviolable.

It is not sufficient that the prince be above the penal laws: even the interest of nations re go something farther. The sovereign is the soul of the society; if he be not held in venera in perfect security, the public peace, and the happiness and safety of the state, are in co safety of the nation then necessarily requires that the person of the prince be sacred an Roman people bestowed this privilege on their tribunes, in order that they might meet wi defending them, and that no apprehension might disturb them in the discharge of their o employments of a sovereign, are of much greater importance than those of the tribunes dangerous, if he be not provided with a powerful defence. It is impossible even for the m monarch not to make malcontents; and ought the state to continue exposed to the dang a prince by the hand of an assassin? The monstrous and absurd doctrine, that a private kill a bad prince, deprived the French, in the beginning of the last century, of a hero who his people.[4] Whatever a prince may be, it is an enormous crime against a nation to depr whom they think proper to obey.[5]

§ 51. But the nation may curb a tyrant, and withdraw itself from his obedience.

But this high attribute of sovereignty is no reason why the nation should not curb an insu pronounce sentence on him (still respecting in his person the majesty of his rank) and w obedience. To this indisputable right a powerful republic owes its birth. The tyranny exer Netherlands excited those provinces to rise: seven of them, closely confederated, brave liberties, under the conduct of the heroes of the House of Orange; and Spain, after seve efforts, acknowledged them sovereign and independent states. If the authority of the pri regulated by the fundamental laws, the prince, on exceeding the bounds prescribed him any right and even without a just title: the nation is not obliged to obey him, but may resi As soon as a prince attacks the constitution of the state, he breaks the contract which b the people become free by the act of the sovereign, and can no longer view him but as a load them with oppression. This truth is acknowledged by every sensible writer, whose p fear, or sold for hire. But some celebrated authors maintain, that if the prince is invested command in a full and absolute manner, nobody has a right to resist him, much less to c naught remains for the nation but to suffer and obey with patience. This is founded upon such a sovereign is not accountable to any person for the manner in which he governs, might control his actions and resist him where it thinks them unjust, his authority would n which would be contrary to this hypothesis. They say that an absolute sovereign comple political authority of the society, which nobody can oppose; that, if he abuses it, he does his conscience; but that his commands are not the less obligatory, as being founded on command; that the nation, by giving him absolute authority, has reserved no share of it t submitted to his discretion, &c. We might be content with answering, that in this light the who is completely and fully absolute. But in order to remove all these vain subtleties, let essential end of civil society. Is it not to labour in concert for the common happiness of a view that every citizen divested himself of his rights, and resigned his liberty? Could the of its authority as irrevocably to surrender itself and all its members to the discretion of a certainly, since it would no longer possess any right itself, if it were disposed to oppress When, therefore, it confers the supreme and absolute government, without an express r with the tacit reserve that the sovereign shall use it for the safety of the people, and not

becomes the scourge of the state, he degrades himself; he is no better than a public ene nation may and ought to defend itself; and if he has carried his tyranny to the utmost hei the life of so cruel and perfidious an enemy be spared? Who shall presume to blame the senate, that declared Nero an enemy to his country?

But it is of the utmost importance to observe, that this judgment can only be passed by t which represents it, and that the nation itself cannot make any attempt on the person of in cases of extreme necessity, and when the prince, by violating the laws, and threateni people, puts himself in a state of war against them. It is the person of the sovereign, not tyrant and a public enemy, that the interest of the nation declares sacred and inviolable. monsters as Nero. In the more common cases, when a prince violates the fundamental the liberties and privileges of his subjects; or (if he be absolute) when his government, w extreme violence, manifestly tends to the ruin of the nation; it may resist him, pass sente withdraw from his obedience; but though this may be done, still his person should be sp welfare of the state.[5] It is above a century since the English took up arms against their k descend from the throne. A set of able, enterprising men, spurred on by ambition, took a ferment caused by fanaticism and party spirit; and Great Britain suffered her sovereign t scaffold. The nation coming to itself discovered its former blindness. If, to this day, it still solemn atonement, it is not only from the opinion that the unfortunate Charles I. did not d but, doubtless, from a conviction that the very safety of the state requires the person of t held sacred and inviolable, and that the whole nation ought to render this maxim venera to it when the care of its own preservation will permit.

One word more on the distinction that is endeavoured to be made here in favour of an a Whoever has well weighed the force of the indisputable principles we have established, when it is necessary to resist a prince who has become a tyrant, the right of the people i whether that prince was made absolute by the laws, or was not; because that right is de object of all political society — the safety of the nation, which is the supreme law.[6] But, i which we are treating is of no moment with respect to the right, it can be of none in prac expediency. As it is very difficult to oppose an absolute prince, and it cannot be done wi disturbances in the state, and the most violent and dangerous commotions, it ought to b cases of extremity, when the public miseries are raised to such a height that the people *miseram pacem vel bello bene niutari*, that it is better to expose themselves to a civil wa But if the prince's authority is limited, if it in some respects depends on a senate, or a pa represents the nation, there are means of resisting and curbing him, without exposing th shocks. When mild and innocent remedies can be applied to the evil, there can be no re becomes extreme.

§ 52. Arbitration between the king and his subjects.

But however limited a prince's authority may be, he is commonly very jealous of it; it sel patiently suffers resistance, and peaceably submits to the judgement of his people. Can he is the distributor of favours? We see too many base and ambitious souls, for whom th decorated slave has more charms than that of a modest and virtuous citizen. It is therefo nation to resist a prince and pronounce sentence on his conduct, without exposing the s troubles, and to shocks capable of overturning it. This has sometimes occasioned a com prince and the subjects, to submit to the decision of a friendly power all the disputes tha them. Thus the kings of Denmark, by solemn treaties, formerly referred to those of Swe might arise between them and their senate; and this the kings of Sweden have also don of Denmark. The princes and states of West Friesland, and the burgesses of Embden, h

manner constituted the republic of the United Provinces the judge of their differences. Th
of Neufchatel established, in 1406, the canton of Berne perpetual judge and arbitrator of
also, according to the spirit of the Helvetic confederacy, the entire body takes cognisanc
that arise in any of the confederated states, though each of them is truly sovereign and i

§ 53. The obedience which subjects owe to a sovereign.

As soon as a nation acknowledges a prince for its lawful sovereign, all the citizens owe h
obedience. He can neither govern the state, nor perform what the nation expects from h
punctually obeyed. Subjects then have no right, in doubtful cases, to examine the wisdo
sovereign's commands; this examination belongs to the prince: his subjects ought to sup
possibility of supposing it) that all his orders are just and salutary: he alone is accountab
result from them.

§ 54. In what cases they may resist him.

Nevertheless this ought not to be entirely a blind obedience. No engagement can oblige
man to violate the law of nature. All authors who have any regard to conscience or dece
ought to obey such commands as are evidently contrary to that sacred law. Those gove
bravely refused to execute the barbarous orders of Charles IX. on the memorable day o
have been universally praised; and the court did not dare to punish them, at least openly
Orte, governor of Bayonne, in his letter, "I have communicated your majesty's commanc
inhabitants and warriors in the garrison; and I have found there only good citizens and b
single executioner: wherefore both they and I most humbly entreat your majesty to be pl
hands and our lives in things that are possible, however hazardous they may be; and we
the last drop of our blood in the execution of them."[7] The Count de Tende, Charny, and
who brought them the orders of the court, "that they had too great a respect for the king,
barbarous orders came from him."

It is more difficult to determine in what cases a subject may not only refuse to obey, but
sovereign, and oppose his violence by force. When a sovereign does injury to any one,
authority; but we ought not thence to conclude hastily that the subject may resist him. Th
sovereignty, and the welfare of the state, will not permit citizens to oppose a prince whe
appear to them unjust or prejudicial. This would be falling back into the state of nature, a
government impossible. A subject ought patiently to suffer from the prince doubtful wron
are supportable; the former, because whoever has submitted to the decision of a judge,
deciding his own pretensions; and as to those that are supportable, they ought to be sac
and safety of the state, on account of the great advantages obtained by living in society.
matter of course, that every citizen has tacitly engaged to observe this moderation; beca
could not exist. But when the injuries are manifest and atrocious, — when a prince, with
reason attempts to deprive us of life, or of those things the loss of which would render lif
dispute our right to resist him? Self-preservation is not only a natural right, but an obliga
and no man can entirely and absolutely renounce it. And though he might give it up, can
having done it by his political engagements since he entered into society only to establis
a more solid basis? The welfare of society does not require such a sacrifice; and, as Ba
in his notes on Grotius, "If the public interest requires that those who obey should suffer
is no less for the public interest that those who command should be afraid of driving thei
utmost extremity."[8] The prince who violates all laws, who no longer observes any measu
his transports of fury take away the life of an innocent person, divests himself of his cha
to be considered in any other light than that of an unjust and outrageous enemy, against

allowed to defend themselves. The person of the sovereign is sacred and inviolable: but lost all the sentiments of a sovereign, divests himself even of the appearances and exte monarch, degrades himself: he no longer retains the sacred character of a sovereign, ar prerogatives attached to that exalted rank. However, if this prince is not a monster, — if against us in particular, and from the effects of a sudden transport or a violent passion, a the rest of the nation, the respect we ought to pay to the tranquility of the state is such, a sovereign majesty so powerful, that we are strictly obliged to seek every other means of than to put his person in danger. Every one knows the example set by David: he fled, — concealed, to secure himself from Saul's fury, and more than once spared the life of his reason of Charles VI. of France was suddenly disordered by a fatal accident, he in his fu those who surrounded him: none of them thought of securing his own life at the expense they only endeavoured to disarm and secure him. They did their duty like men of honou in exposing their lives to save that of this unfortunate monarch: such a sacrifice is due to sovereign majesty: furious from the derangement of his faculties, Charles was not guilty health, and again become a good king.

§ 55. Of ministers.

What has been said is sufficient for the intention of this work: the reader may see these at large in many books that are well known. We shall conclude this subject with an impo sovereign is undoubtedly allowed to employ ministers to ease him in the painful offices o ought never to surrender his authority to them. When a nation chooses a conductor, it is should deliver up his charge into other hands. Ministers ought only to be instruments in t he ought constantly to direct them, and continually endeavour to know whether they act intentions. If the imbecility of age. or any infirmity, render him incapable of governing, a nominated, according to the laws of the state: but when once the sovereign is capable o him insist on being served, but never suffer himself to be superseded. The last kings of surrendered to government and authority to the mayors of the palace: thus becoming m justly lost the title and honours of a dignity of which they had abandoned the functions. T thing to gain in crowning an all-powerful minister, for he will improve that soil as his own plundered whilst he only reaped precarious advantages from it.

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1. The last words of Louis VI. to his son Louis VII. were — "Remember, my son, that roy employment of which you must render a rigorous account to him who is the sole dispose sceptres," Abbe Velley's Hist. of France, Vol. III. p. 65.

Timur-Bec declared (as he often before had done on similar occasions) that "a single ho by a prince to the care of his state, is of more use and consequence than all the homage offer up to God during his whole life." The same sentiment is found in the Koran. Hist. of ch. xli.

2. Neque enim se princeps reipulicae et singulorum dominum arbitrabitur, quamvis asse insusurrantibus, sed rectorem mercede a civibus designata, quam augere, nisi ipsis vole existimabit. Ibid. c. v. — From this principle it follows that the nation is superior to the so est, sit principi persuasum totius reipulicae majorem quam ipsius unius auctoritatem ess hominibus credat diversum affirmantibus gratificandi studio; quae magna pernicies est.

In some countries, formal precautions are taken against the abuse of power. — "Reflect (says Grotius), that princes are often found to make no scruple of violating their promise pretext of the public good, the people of Brabant, in order to obviate that inconvenience,

custom of never admitting their prince to the possession of the government without havi
with him a covenant, that, whenever he may happen to violate the laws of the country, th
from the oath of obedience they had sworn to him, until ample reparation be made for th
The truth of this is confirmed by the example of past generations, who formerly made ef
decrees to reduce within proper bounds such of their sovereigns as had transgressed th
through their own licentiousness or the artifices of their flatterers. Thus it happened to Jo
would they consent to make peace with him or his successors, until those princes had e
engagement to secure the citizens in the enjoyment of their privileges." Annals of the Ne
note, edit A.D. 1797.

3. A treatise on the right of the queen to several states of the Spanish monarchy, 1667,
191.

4. Since the above was written, France has witnessed a renewal of those horrors. She s
having given birth to a monster capable of violating the majesty of kings in the person of
qualities of his heart entitle to the love of his subjects and the veneration of foreigners. [
the attempt made by Damien to assassinate Louis XV.] Note, edit a.d. 1797.

5. In Mariana's work, above quoted, I find (chap. vii. towards the end) a remarkable insta
which we are apt to be led by a subtle sophistry destitute of sound principles. That autho
tyrant, and even a public enemy, provided it be done without obliging him, either by forc
ignorance, to concur in the act that causes his own death, — which would be the case, f
presenting him a poisoned draught. For (says he), in thus leading him to an act of suicid
through ignorance, we make him violate the natural law which forbids each individual to
and the crime of him who thus unknowingly poisons himself redounds on the real author
administered the poison. — No cogatur tantum sciens aut imprudens sibi conscire morte
judicamus, veneno in potu aut cibo, quod hauriat qui perimendus est, aut simili alia reter
truly! Was Mariana disposed to insult the understandings of his readers, or only desirous
varnish over the detestable doctrine contained in that chapter? — Note, edit. A.D. 1797.

5. Dissimulandum censeo quatenus salus publica patiatur, privatimque corruptis moribu
alioquin si rempublicam in periculum vocat, si patriae religionis contemptor existit, neque
recipit, abdicandum judico, alium substituendum; quod in Hispania non semel fuisse fac
irritata, ominium telis peti debet, cum, humanitate abdicata, tyrannum induit. Sic Petro re
dejecto publice, Henricus ejus frater, quamvis ex impari matre, regnum obtinuit. Sic Hen
ignaviam pravosque mores abdicato procerum suffragiis, primum Alfonsus ejus frater, re
disputo, sed tamen in tenera actate rex est proclamatus: deinde defuncto Alfonso, Elisal
Henrico invito, rerum summam ad se traxit, regio tantum nomine abstinens dum ille vixit
Regis Institut. Lib. 1. c. iii.

To this authority, furnished by Spain, join that of Scotland, proved by the letter of the ba
April 6, 1320, requesting him to prevail on the king of England to desist from his enterpri
After having spoken of the evils they had suffered from him. they add — A quibus malis
qui post vulnera medetur et sanat, liberati sumus per serenissimum principem regem et
dominum Robertum, qui pro populo et haereditate suis de manibus inimicorm liberandis
Maccabaeus aut Josue, labores et taedia, inedias et pericula laeto sustinuit animo. Que
dispositio, et (juxta leges et consuetudines nostras, quas usque ad mortem sustinere vo
et debitus nostrorum consensus et assensus nostrum fecerunt principem atque regem:
quem salus in populo facta est, pro nostra libertate tuenda, tam jure quam meritis tenem
omnibus adhaerere. Quem, si ab inceptis desistet, regi Anglorum aut Anglis nos aut reg
subjicere, tanquam inimicum nostrum et sui nostrique juris subversorem, statim expeller

regem nostrum, qui ad defensionem nostram sufficiet, faciemus: quia quamdiu centum v numquam Anglorum dominio aliquatenus volumus subjugari, Non enim propter gloriam, pugnamus, sed propter libertatem solummodo, quam remo, bonus nisi simul eum vita ar

"In the year 1581" (says Grotius, Ann. Book III.) "the confederated provinces of the Neth for nine years continued to wage war against Philip the Second, without ceasing to ackn sovereign — at length solemnly deprived him of the authority he had possessed over the had violated their laws and privileges," The author afterwards observes, that "France, Sp Sweden, Denmark, furnish instances of kings deposed by their people; so that there are sovereigns in Europe whose right to the crown rests on any other foundation than the rig possess of divesting their sovereign of his power when he makes an ill use of it," Pursua United Provinces, in their justificatory letters on that subject, addressed to the princes of king of Denmark — after having enumerated the oppressive acts of the king of Spain, ad mode which has been often enough adopted even by those nations that now live under wrested the sovereignty from him whose actions were all contrary to the duty of a prince A.D. 1797.

6. Populi patroni non pauciora neque mis ora praesidia habent. Certe a republica, unde potestas, rebus exigentibus, regens in jus vocari potest, et, si sanitatem respuat, princip in principem jura potestatis transtuilit, ut non sibi majorem reservârit potestatem. Ibid. ca

Est tamen salutaris cogitatio, ut sit principibus persuasum, si rempublicam oppresserint, intolerandi erunt, ea se conditione vivere, ut non jure tantum, sed cum laude et gloria, pe Note. edit. A.D. 1797.

7. Mezeray's History of France, vol. ii. p. 1107.

8. De Jure Belli & Pacis. lib. i. cap. lv. § 11, n. 2

CHAP. V.
OF STATES ELECTIVE, SUCCESSIVE OR HEREDITARY, AND OF T PATRIMONIAL.

§ 56 Of elective states.

WE have seen in the preceding chapter, that it originally belongs to a nation to confer th and to choose the person by whom it is to be governed. If it confers the sovereignty on h only, reserving to itself the right of choosing a successor after the sovereign's death, the soon as the prince is elected according to the laws, he enters into the possession of all t those laws annex to his dignity.

§ 57. Whether elective kings are real sovereigns.

It has been debated, whether elective kings and princes are real sovereigns. But he who circumstance must have only a very confused idea of sovereignty. The manner in which dignity has nothing to do with determining its nature. We must consider, first, whether th independent society (see chap 1), and secondly, what is the extent of the power it has in Whenever the chief of an independent state really represents his nation, he ought to be sovereign (§ 40), even though his authority should be limited in several respects.

§ 58. Of successive and hereditary states. The origin of the right of succession.

When a nation would avoid the troubles which seldom fail to accompany the election of its choice for a long succession of years, by establishing the *right of succession*, or by re hereditary in a family, according to the order and rules that appear most agreeable to tha an *Hereditary State* or *Kingdom* is given to that where the successor is appointed by the regulates the successions of individuals. The Successive *Kingdom* is that where a perso to a particular fundamental law of the state. Thus the lineal succession, and of males alo France.

§ 59. Other origins of this right.

The right of succession is not always the primitive establishment of a nation; it may have the concession of another sovereign, and even by usurpation. But when it is supported b people are considered as consenting to it; and this tacit consent renders it lawful, though It rests then on the foundation we have already pointed out — a foundation that alone is being shaken, and to which we must ever revert.

§ 60. Other sources which still amount to the same thing.

The same right, according to Grotius and the generality of writers, may be derived from conquest, or the right of a proprietor, who, being master of a country, should invite inhab and give them lands, on condition of their acknowledging him and his heirs for their sove absurd to suppose that a society of man can place themselves in subjection otherwise th own safety and welfare, and still more that they can bind their posterity on any other foo amounts to the same thing; and it must still be said that the succession is established by tacit consent of the nation, for the welfare and safety of the state.

§ 61. A nation may change the order of the succession.

It thus remains an undeniable truth, that in all cases the succession is established or reg to the public welfare and the general safety. If it happened then that the order establishe became destructive to the state, the nation would certainly have a right to change it by a *supreme lex*, the safety of the people is the supreme law; and this law is agreeable to th people having united in society only with a view to their safety and greater advantage.[1]

This pretended proprietary right attributed to princes is a chimera, produced by an abuse would fain make of the laws respecting private *inheritances*. The state neither is nor can the end of patrimony is the advantage of the possessor, whereas the prince is establishe advantage of the state.[2] The consequence is evident: if a nation plainly perceives that th would be a pernicious sovereign, she has a right to exclude him.

The authors, whom we oppose, grant this right to a despotic prince, while they refuse it t because they consider such a prince as a real proprietor of the empire, and will not ackn of their own safety, and the right to govern themselves, still essentially belong to the soc have intrusted them, even without any express reserve, to a monarch and his heirs. In th kingdom is the inheritance of the prince, in the same manner as his field and his flocks –

human nature, and which they would not have dared to advance in an enlightened age, of an authority which too often proves stronger than reason and justice.

§ 62. Of renunciations.

A nation may, for the same reason, oblige one branch who removes to another country, the crown, as a daughter who marries a foreign prince These renunciations, required or are perfectly valid, since they are equivalent to a law that such persons and their posteri from the throne. Thus the laws of England have for ever rejected every Roman Catholic made at the beginning of the reign of Elizabeth, most wisely excludes from the possessi heir possessed of another monarchy; and thus the law of Portugal disqualifies every fore the crown by right of blood."[3]

Some celebrated authors, in other respects very learned and judicious, have then deviat principles in treating of renunciations. They have largely expatiated on the rights of child of the transmission of those rights, &c. But they ought to have considered the successio the reigning family, than as a law of the state. From this clear and incontestable principle whole doctrine of renunciations. Those required or approved by the state are valid and s

they are fundamental laws: those not authorized by the state can only be obligatory on t them. They cannot injure his posterity, and he himself may recede from them in case the of him and gives him an invitation: for he owes his services to a people who had commit care. For the same reason, the prince cannot lawfully resign at an unseasonable junctur the state, and abandon in imminent danger a nation that had put itself under his care.[4]

§ 63. The order of succession ought commonly to be kept.

In ordinary cases, when the state may follow the established rule without being exposed manifest danger, it is certain that every descendant ought to succeed when the order of the throne, however great may appear his incapacity to rule by himself. This is a conseq the law that established the succession: for the people had recourse to it only to prevent would otherwise be almost inevitable at every change. Now little advances would have b obtaining this end, if, at the death of a prince, the people were allowed to examine the ca before they acknowledged him for their sovereign. "What a door would this open for usu was to avoid these inconveniences that the order of succession was established; and no have been done, since by this means no more is required than his being the king's son a alive, which can admit of no dispute: but, on the other hand, there is no rule fixed to judg incapacity to reign."[5] Though the succession was not established for the particular adva and his family, but for that of the state, the heir-apparent has nevertheless a right, to wh regard should be paid. His right is subordinate to that of the nation, and to the safety of t take place when the public welfare does not oppose it. (23)

These reasons have the greater weight, since the law or the state may remedy the incap nominating a *regent*, as is practised in cases of minority. This regent is, during the whole administration, invested with the royal authority; but he exercises it in the king's name. (2

§ 65. Indivisibility of sovereignties.

The principles we have just established respecting the successive or hereditary right, ma prince has no right to divide his state among his children. Every sovereignty, properly so nature, one and indivisible, since those who have united in society cannot be separated Those partitions, so contrary to the nature of sovereignty and the preservation of states, use; but an end has been put to them, wherever the people, and princes themselves, ha their greatest interest, and the foundation of their safety.[6]

But when a prince has united several different nations under his authority, his empire is assemblage of several societies subject to the same head; and there exists no natural o them among his children: he may distribute them, if there be neither law nor compact to each of those nations consents to receive the sovereign he appoints for it. For this reaso under the first two races. But being entirely consolidated under the third, it has since bee single kingdom; it has become indivisible, and a fundamental law has declared it so. Tha for the preservation and splendour of the kingdom, irrevocably unites to the crown all the kings.

§ 66. Who are to decide disputes respecting the succession to a sovereignty.

The same principles will also furnish us with the solution of a celebrated question. Wher becomes uncertain in a successive or hereditary state, and two or three competitors lay asked, "Who shall be the judge of their pretensions?" Some learned men, resting on the sovereigns are subject to no other judge but God, have maintained that the competitors their right remains uncertain, ought cither to come to an amicable compromise, enter int themselves, choose arbitrators, have recourse even to the drawing of lots, or, finally, de arms; and that the subjects cannot in any manner decide the question. One might be as celebrated authors should have maintained such a doctrine. But since, even in speculati nothing so absurd as not to have been advanced by one or other of the philosophers,[7] w from the human mind, when seduced by interest or fear? What! in a question that conce the nation — that relates to a power established only with a view to the happiness of the that is to decide for ever their dearest interests, and their very safety — are they to stan spectators? Are they to allow strangers, or the blind decision of arms, to appoint them a sheep are to wait till it be determined whether they are to be delivered up to the butcher of their shepherd?

But, say they, the nation has divested itself of all jurisdiction, by giving itself up to a sove to the reigning family; it has given to those who are descended from that family a right w from them; it has established them its superiors, and can no longer judge them. Very we belong to that same nation to acknowledge the person to whom its duty binds it, and pre up to another? And since it has established the law of succession, who is more capable identify the individual whom the fundamental law had in view, and has pointed out as the affirm, then, without hesitation, that the decision of this grand controversy belongs to the nation alone. For even if the competitors have agreed among themselves, or have chos nation is not obliged to submit to their regulations, unless it has consented to the transa princes not acknowledged, and whose right is uncertain, not being in any manner able t obedience. The nation acknowledges no superior judge in an affair that relates to its mo most precious rights. Grotius and Puffendorf differ in reality but little from our opinion; bu decision of the people or state called a juridical sentence (*judicium jurisdictionis*). Well! b

dispute about words. However, there is something more in the case than a mere examir competitors' rights, in order to submit to him who has the best. All the disputes that arise judged and decided by the public authority. As soon as the right of succession is found u authority returns for a time to the body of the state, which is to exercise it, cither by itself representatives, till the true sovereign be known. "The contest on this right suspending t person of the sovereign, the authority naturally returns to the subjects, not for them to re which of the competitors it lawfully devolves, and then to commit it to his hands. It would support, by an infinite number of examples, a truth so evident by the light of reason: it is that the states of France, after the death of Charles the Fair, terminated the famous disp Valois and the king of England (Edward III.), and that those states, though subject to hin granted the decision, were nevertheless the judges of the dispute."[8]

Buicciardini, book xii., also shows that it was the states of Arragon that decided the succ in favour of Ferdinand, grandfather of Ferdinand the husband of Isabella, queen of Cast other relations of Martin, king of Arragon, who asserted that the kingdom belonged to th

In the kingdom of Jerusalem also, it was the states that decided the disputes of those wl it; as is proved by several examples in the foreign political history.[10]

The states of the principality of Neufchatel have often, in the form of a juridical sentence succession to the sovereignty. In the year 1707, they decided between a great number c their decision in favour of the king of Prussia was acknowledged by all Europe in the tre

§ 67. That the right to the succession ought not to depend on the judgment of a fo

The better to secure the succession in a certain and invariable order, it is at present an e Christian states (Portugal excepted), that no descendant of the sovereign can succeed t be the issue of a marriage that is conformable to the laws of the country. As the nation h succession, to the nation alone belongs the power of acknowledging those who are capa consequently, on its judgment and laws alone must depend the validity of the marriage c the legitimacy of their birth,

If education had not the power of familiarizing the human mind to the greatest absurditie sense who would not be struck with astonishment to see so many nations suffer the legi princes to depend on a foreign power? The court of Rome has invented an infinite numb cases of invalidity in marriages, and at the same time arrogates to itself the right of judgi of removing the obstructions; so that a prince of its communion cannot in certain cases l master as to contract a marriage necessary to the safety of the state. Jane, the only dau of Castile, found this true by cruel experience. Some rebels published abroad that she o Bertrand de la Cueva, the king's favourite; and notwithstanding the declarations and last explicitly and invariably acknowledged Jane for his daughter, and nominated her his hei crown Isabella, Henry's sister, and wife to Ferdinand, heir of Arragon. The grandees of J provided her a powerful resource, by negotiating a marriage between her and Alphonsus as that prince was Jane's uncle, it was necessary to obtain a dispensation from the pope in the interest of Ferdinand and Isabella, refused to grant the dispensation, though such very common. These difficulties cooled the ardour of the Portuguese monarch, and abat faithful Castilians. Everything succeeded with Isabella, and the unfortunate Jane took th secure, by this heroic sacrifice, the peace of Castile.[11]

If the prince proceeds and marries, notwithstanding the pope's refusal, he exposes his d
fatal troubles. What would have become of England, if the Reformation had not been ha
the pope presumed to declare Queen Elizabeth illegitimate, and incapable of wearing th

A great emperor, Lewis of Bavaria, boldly asserted the rights of his crown in this respect
of the law of nations by Leibnitz, we find[12] two acts, in which that prince condemns, as a
imperial authority, the doctrine that attributes to any other power but his own, the right of
dispensations, and of judging of the validity of marriages, in the places under his jurisdic
well supported in his lifetime, nor imitated by his successors.

§ 68. Of states called patrimonial.

Finally, there are states whose sovereign may choose his successor, and even transfer
during his life: these are commonly called *patrimonial* kingdoms or states: but let us reje
improper an epithet, which can only serve to inspire some sovereigns with ideas very op
ought to entertain. We have shown (§ 61) that a state cannot be a patrimony. But it may
either through unbounded confidence in its prince, or for some other reason, has intruste
appointing his successor, and even consented to receive, if he thinks proper, another so
hands. Thus we see that Peter I., emperor of Russia nominated his wife to succeed him
children.

§ 69. Every true sovereignty is unalienable.

But when a prince chooses his successor, or when he cedes the crown to another, — pr
only nominates, by virtue of the power with which he is, either expressly or by tacit cons
only nominates, I say, the person who is to govern the state after him. This neither is no
properly so called. Every true sovereignty is, in its own nature, unalienable. We shall be
this, if we pay attention to the origin and end of political society, and of the supreme auth
becomes incorporated into a society, to labour for the common welfare as it shall think p
according to its own laws. With this view it establishes a public authority. If it intrusts tha
even with the power of transferring it to other hands, this can never take place without th
unanimous consent of the citizens, with the right of really alienating or subjecting the sta
politic: for the individuals who have formed this society, entered into it in order to live in a
and not under a foreign yoke. Let not any other source of this right be alleged in objectio
conquest, for instance; for we have already shown (§ 60) that these different sources ult
true principles on which all just governments are founded. While the victor does not trea
according to those principles, the state of war still in some measure subsists: but the mo
civil state, his rights are proportioned by the principles of that state.

I know that many authors, and particularly Grotius,[13] give long enumerations of the alien
But the examples often prove only the abuse of power, not the right. And besides, the pe
alienation, either willingly or by force. What could the inhabitants of Pergamus, Bithynia,
their kings gave them, by their last wills, to the Roman people? Nothing remained for the
good grace to so powerful a legatee. To furnish an example capable of serving as an au
have produced an instance of a people resisting a similar bequest of their sovereign, an
been generally condemned as unjust and rebellious. Had Peter I., who nominated his wi
attempted to subject his empire to the grand seignior, or to some other neighbouring pov
that the Russians would have suffered it, or that their resistance would have passed for
find in Europe any great state that is reputed alienable. If some petty principalities have

such, it is because they were not true sovereignties. They were fiefs of the empire, enjo
degree of liberty: their masters made a traffic of the rights they possessed over those te
not withdraw them from a dependence on the empire.

Let us conclude then, that, as the nation alone has a right to subject itself to a foreign pc
alienating the state can never belong to the sovereign, unless it be expressly given him
the people.[14] Neither are we to presume that he possesses a right to nominate his succe
sceptre to other hands, — a right which must be founded on an express consent, on a la
long custom, justified by the tacit consent of the people.

§ 70. Duty of a prince who is empowered to nominate his successor.

If the power of nominating his successor is intrusted to the sovereign, he ought to have
choice but the advantage and safety of the state. He himself was established only for thi
of transferring his power to another could then be granted to him only with the same viev
consider it as a prerogative useful to the prince, and which he may turn to his own privat
Great proposed only the welfare of the empire when he left the crown to his wife. He kne
the most capable person to follow his views, and perfect the great things he had begun,
her to his son, who was still too young. If we often found on the throne such elevated mi
could not adopt a wiser plan, in order to ensure to itself a good government, than to inst
fundamental law, with the power of appointing his successor. This would be a much mo
the order of birth. The Roman emperors, who had no male children, appointed a succes
custom Rome was indebted for a series of sovereigns unequalled in history, — Nerva, T
Antoninus, Marcus Aurelius. What princes! Does the right of birth often place such on th

§ 71. He must have at least a tacit ratification.

We may go still farther, and boldly assert, that, as the safety of the whole nation is deep
important a transaction, the consent and ratification of the people or state is necessary t
effect, — at least their tacit consent and ratification. If an emperor of Russia thought pro
successor a person notoriously unworthy of the crown, it is not at all probable that vast e
submit to so pernicious an appointment. And who shall presume to blame a nation for re
to ruin out of respect to the last orders of its prince? As soon as the people submit to the
to rule over them, they tacitly ratify the choice made by the last prince; and the new mor
rights of his predecessor.

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1. Nimirum, quod publicae salutis causa et communi consensu statatum est, eadem mu
repus exigentibus, immutari quid obstat? MARIANA, ibid, c. iv.

2. When Philip II. resigned the Netherlands to his daughter Isabella Clara Eugenia, it wa
testimony of Grotius) that it was setting a dangerous precedent, for a prince to treat free
property, and barter them away like domestic slaves; that, among barbarians, indeed, th
practice sometimes obtained of transferring governments by will or donation, because th
incapable of discerning the difference between a prince and a master; but that those, wh
knowledge enabled to distinguish between what is lawful and what is not, could plainly p
administration of a state is the property of the people (thence usually denominated *res-p*
every period of the world there have been nations who governed themselves by popular
senate; there have been others who intrusted the general management of their concern
not to be imagined, it was added, that legitimate sovereignties have originated from any

consent of the people, who gave themselves all up to a single person, or, for the sake of and discord of elections, to a whole family; and those to whom they thus committed ther by the prospect of honourable pre-eminence alone, to accept a dignity by which they we the general welfare of their fellow-citizens in preference to their own private advantage. Disturbances in the Netherlands, book ii. — Edit. A.D. 1797.

3. Spirit of Laws, book xxvi. chap. xxiii., where may be seen very good political reasons

4. See further on.

5. Memorial in behalf of Madame de Longueville, concerning the principality of Neufchat

(23) See this doctrine illustrated in 1 Bla. Com. 247-8. — C

(24) Ante, p. 26, n. — C.

6. But it is to be observed that those partitions were not made without the approbation a respective states.

7. Nesico quomodo nihil tam absurde did potest, quod non dicatur ab aliquo philosophor lib. ii.

8. Answer in behalf of Madame de Longueville to a memorial in behalf of Madame de Ne

9. Ibid.

10. See the same memorial, which quotes P. Labbe's Royal Abridgment, page 501, &c.

11. I take this historical passage from M. Du Port de Tertre's Conspiracies. To him I refe original historians by me. However, I do not enter into the question relating to the birth o be of no use, The princess had not been declared a bastard according to the laws; the k for his daughter; and besides, whether she was or was not legitimate, the inconvenience pope's refusal still remained the same with respect to her and the king of Portugal. — Ne

12. P. 154. Forma divortii matrimonialis inter Johannem filium regis Bohemiae et Margar Karinthiae. This divorce is given by the emperor on account of the impotency of the husl says he, nobis rite debitam et concessam.

P. 156. Forma dispensationis super affinitate consanguinitatis inter Ludovicum marchior Margaretham ducissam Karinthiae, nec non legitimatio liberorum procreandorum, faciae Rom. imper.

It is only human law, says the emperor, that hinders these marriages intra gradus affinita praesertim intra fratres et sorores. De cujus legis praeceptis dispensare solummodo per imperatoris seu principis Romanorum. He then opposes and condemns the opinion of th that these dispensations: depend on ecclesiastics. Both this act and the former are date Note, edit A.D. 1797.

13. Grotius De Jure Belli et Pacis lib. i. cap. iii § 12.

14. The pope, opposing the attempt made upon England by Louis, the son of Philip Aug his pretext. that John had rendered himself a vassal of the holy see, received for answer

arguments, "that a sovereign had no right to dispose of his states without the consent of bound to defend them." On which occasion the French nobles unanimously exclaimed, t last breath, maintain this truth, "that no prince can, of his own private will, give away his tributary, and thus enslave the nobility." Velly's Hist. of France, vol. iii. p. 491.

CHAP. VI.
PRINCIPAL OBJECTS OF A GOOD GOVERNMENT; AND FIRST TO P NECESSITIES OF THE NATION.

§ 72. The object of society points out the duties of the sovereign.

AFTER these observations on the constitution of the state, let us now proceed to the prin government. We have seen above (§§ 41 and 42) that the prince, on his being invested authority, is charged with the duties of the nation in relation to government. In treating of a wise administration, we at once show the duties of a nation towards itself, and those o his people.

A wise conductor of the state will find in the objects of civil society the general rule and i The society is established with the view of procuring, to those who are its members, the conveniences, and even pleasures of life, and, in general, every thing necessary to their enabling each individual peaceably to enjoy his own property, and to obtain justice with and, finally, of defending themselves in a body against all external violence (§ 15). The r should first apply to the business of providing for all the wants of the people, and produc all the necessaries of life, with its conveniences and innocent and laudable enjoyments. without luxury contributes to the happiness of men, it likewise enables them to labour wi success after their own perfection, which is their grand and principal duty, and one of the have in view when they unite in society,

§ 73. To take care that there be a sufficient number of workmen.

To succeed in procuring this abundance of every thing, it is necessary to take care that t *number of able workmen* in every useful or necessary profession. (26) An attentive appl government, wise regulations, and assistance properly granted, will produce this effect v which is always fatal to industry.

§ 74. To prevent the emigration of those that are useful.

Those workmen that are useful ought to be retained in the state; to succeed in retaining authority has certainly a right to use constraint, if necessary. (27) Every citizen owes his his country; and a mechanic, in particular, who has been reared, educated, and instructe lawfully leave it, and carry to a foreign land that industry which he acquired at home, unl occasion for him, (27) or he cannot there obtain the just fruit of his labour and abilities. E be procured for him; and, if, while able to obtain a decent livelihood in his own country, h reason abandon it, the state has a right to detain him. (28) But a very moderate use oug right, and only in important or necessary cases. Liberty is the soul of abilities and industi mechanic or an artist, after having long travelled abroad, is attracted home to his native affection, and returns more expert and better qualified to render his country useful servic

extraordinary cases be excepted, it is best in this affair to practise the mild methods of p encouragement, &c., and to leave the rest to that natural love felt by all men for the plac

§ 75. Emissaries who entice them away.

As to those emissaries who come into a country to entice away useful subjects, the sove punish them severely, and has just cause of complaint against the power by whom they

In another place, we shall treat more particularly of the general question, whether a citiz the society of which he is a member. The particular reasons concerning useful workmen

§ 76. Labour and industry must be encouraged.

The state ought to encourage labour, to animate industry, (29) to excite abilities, to prop privileges, and so to order matters that every one may live by his industry. In this particu to be held up as an example. The parliament incessantly attends to these important affa care nor expense is spared. (30) And do we not even see a society of excellent citizens and devoting considerable sums to this use? Premiums are also distributed in Ireland to most distinguish themselves in their profession. Can such a state fail of being powerful a

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(25) See the general doctrine, that the happiness of a people depends on the quantity o employment, and the consequent return of produce and remuneration, discussed at larg Smith, W.N. 200; 2 Paley, Mor. Phil. 345; Sir J. Child on Trade, 1667-8; and Tucker on T 4, 7, 8; 1 Chitty's Commercial Law, 1, &c. — C.

(26) There were in England many enactments enforcing this supposed policy, and prohi from leaving the kingdom. See 5 Geo. I. c. 27; 23 Geo. II. c. 13:14 Geo. III c. 71; 4 Bla. C according to more modern policy, these enactments were repealed by 5 Geo. lV. c. 97. -

(27) See the English acts enforcing this rule, 5 Geo. I. C. 27; 23 Geo. II. c. 13; 14 Geo. I 160; but repealed by 5 Geo. IV. c. 97. — C.

(28) See also the power of preventing a subject, or even a foreigner, going abroad. *Plac* Walk. Rep. 405, and *post*, § 272. and Book II. § 108. — C.

(29) *Ante*, § 72, note (25), — C.

(30) How far the interference of the legislature is advisable, and when — see the author collected, 1 Chitty's Commercial Law, 4 to 7, and *post*, § 98. — C.

CHAP VII.
OF THE CULTIVATION OF THE SOIL.

§ 77. The utility of tillage.

OF all the arts, tillage, or agriculture, is doubtless the most useful and necessary, as bei the nation derives its subsistence. The cultivation of the soil causes it to produce an infir

the surest resource and the most solid fund of riches and commerce, for a nation that er (31)

§ 78. Regulations necessary in this respect

This object then deserves the utmost attention of the government. The sovereign ought rendering the land under his jurisdiction as well cultivated as possible. He ought not to a or private persons to acquire large tracts of land and leave them uncultivated. Those rig deprive the proprietor of the free liberty of disposing of his land — which will not allow hi cultivate it in the most advantageous manner; those rights, I say, are inimical to the welf ought to be suppressed, or reduced to just bounds. Notwithstanding the introduction of p the citizens, the nation has still a right to take the most effectual measures to cause the country to produce the greatest and most advantageous revenue possible. (32)

§ 79. For the protection of husbandmen.

The government ought carefully to avoid every thing capable of discouraging the husbar him from the labours of agriculture. Those taxes — those excessive and ill-proportioned burden of which falls almost entirely on the cultivators — and the oppressions they suffe levy them — deprive the unhappy peasant of the means of cultivating the earth, and dep Spain is the most fertile and the worst cultivated country in Europe. The church there po land; and the contractors for the royal magazines, being authorized to purchase, at a lov find in the possession of a peasant, above what is necessary for the subsistence of hims greatly discourage the husbandman, that he sows no more corn than is barely necessar own household. Hence the frequent scarcity in a country capable of feeding its neighbou

§ 80. Husbandry ought to be placed in an honorable light

Another abuse injurious to agriculture is the contempt cast upon the husbandman. The t even the most servile mechanics — the idle citizens — consider him that cultivates the e eye; they humble and discourage him; they dare to despise a profession that feeds the h natural employment of man. A liltle insignificant haberdasher, a tailor, places far beneath employment of the first consuls and dictators of Rome! China has wisely prevented this there held in honour; and to preserve this happy mode of thinking, the emperor himself, court, annually, on a solemn day, sets his hand to the plough, and sows a small piece of the best cultivated country in the world; it feeds an immense multitude of inhabitants wh the traveller too numerous for the space they occupy.

§ 81. The cultivation of the soil a natural obligation

The cultivation of the soil deserves the attention of the government, not only on account advantages that flow from it, but from its being an obligation imposed by nature on mank destined to feed its inhabitants; but this it would be incapable of doing if it were uncultiva then obliged by the law of nature to cultivate the land that has fallen to its share; and it h its boundaries, or have recourse to the assistance of other nations, but in proportion as t possession is incapable of furnishing it with necessaries. Those nations (such as the an some modern Tartars) who inhabit fertile countries, but disdain to cultivate their lands ar by plunder, are wanting to themselves, are injurious to all their neighbours, and deserve savage and pernicious beasts. There are others, who, to avoid labour, choose to live on

flocks. This might, doubtless, be allowed in the first ages of the world, when the earth, w produced more than was sufficient to feed its small number of inhabitants. But at presen race is so greatly multiplied, it could not subsist if all nations were disposed to live in tha still pursue this idle mode of life, usurp more extensive territories than, with a reasonable would have occasion for, and have, therefore, no reason to complain, if other nations, m closely confined, come to take possession of a part of those lands. Thus, though the cor empires of Peru and Mexico was a notorious usurpation, the establishment of many colo of North America might, on their confining themselves within just bounds, be extremely l those extensive tracts rather ranged through than inhabited them.

§ 82. Of public granaries.

The establishment of public granaries is an excellent regulation for preventing scarcity. E be taken to prevent their being managed with a mercantile spirit, and with views of profit establishing a monopoly, which would not be the less unlawful for its being carried on by granaries should be filled in times of the greatest plenty, and take off the corn that would husbandman's hands, or be carried in too great quantities to foreign countries: they shou corn is dear, and keep it at a reasonable price. If in a time of plenty they prevent that ne from easily falling to a very low price, this inconvenience is more than compensated by t times of dearth: or rather, it is no inconvenience at all; for, when corn is sold extremely c manufacturer, in order to obtain a preference, is tempted to undersell his neighbours, by price which he is afterwards obliged to raise (and this produces great disorders in comm of its course); or he accustoms himself to an easy life, which he cannot support in harde advantage to manufactures and to commerce to have the subsistence of workmen regul and nearly equal price. In short, public granaries keep in the state quantities of corn that at too cheap a rate, and must be purchased again, and brought back at a very great exp harvest, which is a real loss to the nation. These establishments, however, do not hinde country, one year with another, produces more than is sufficient for the support of her in superfluity will still be sent abroad: but it will be sent at a higher and fairer price.

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(31) As to the subject of this chapter, see further authorities, Chitty's Commercial Law, v

(32) In England there are few legislative enactments respecting the cultivation of the soi produce, each individual being left to his own discretion; but to prevent the injurious sale thereby impoverishing the land, there is an express enactment enforcing public policy in Geo. III. c. 50, and its recitals. In France there are express provisions punishing individu weeds to seed on land to the injury of their neighbors, a regulation which would be exce introduced into this country. — C.

CHAP. VIII.
OF COMMERCE(33)

§ 83. Of home and foreign trade.

IT is commerce that enables individuals and whole nations to procure those commoditie need of, but cannot find at home. Commerce is divided into *home and foreign* trade. (34 carried on in the state between the several inhabitants; the latter is carried on with foreig

§ 84. Utility of the home trade.

The *home* trade of a nation is of great use; it furnishes all the citizens with the means of they want, as either necessary, useful, or agreeable; it causes a circulation of money, ex animates labour, and, by affording subsistence to a great number of people, contributes population and power of the state.

§ 85. Utility of foreign trade.

The same reasons show the use of *foreign* trade, which is moreover attended with these By trading with foreigners, a nation procures such things as neither nature nor art can fu occupies. And secondly, if its foreign trade be properly directed, it increases the riches c become the source of wealth and plenty. Of this the example of the Carthaginians amon that of the English and Dutch among the moderns, afford remarkable proofs. Carthage, counterbalanced the fortune, courage, and greatness of Rome. Holland has amassed im marshes; a company of her merchants possesses whole kingdoms in the East, and the exercises command over the monarchs of India. To what a degree of power and glory h Formerly her warlike princes and inhabitants made glorious conquests, which they after reverses of fortune so frequent in war; at present, it is chiefly commerce that places in h Europe.

§ 86. Obligation to cultivate the home trade.

Nations are obliged to cultivate the home trade, — first, because it is clearly demonstrat nature, that mankind ought mutually to assist each other, and, as far as in their power, c perfection and happiness of their fellow-creatures: whence arises, after the introduction obligation to resign to others, at a fair price, those things which they have occasion for, a destine for our own use. Secondly, society being established with a view that each may things are necessary to his own perfection and happiness — and a home trade being th them — the obligations to carry on and improve this trade are derived from the very com society was formed. Finally, being advantageous to the nation, it is a duty the people ow make this commerce flourish.

§ 87. Obligation to carry on foreign trade.

For the same reason, drawn from the welfare of the state, and also to procure for the cit want, a nation is obliged to promote and carry on a foreign trade. Of all the modern state distinguished in this respect. The parliament have their eyes constantly fixed on this imp effectually protect the navigation of the merchants, and, by considerable bounties, favou superfluous commodities and merchandises. In a very sensible product,[1] may be seen t advantages that kingdom has derived from such judicious regulations.

§ 88. Foundation of the laws of commerce: — right of purchasing.

Let us now see what are the laws of nature and the rights of nations in respect to the co with each other. Men are obliged mutually to assist each other as much as possible, and perfection and happiness of their fellow-creatures (Prelim. § 10); (35) whence it follows,

(§ 86), that, after the introduction of private property, it became a duty to sell to each oth
the possessor himself has no occasion for, and what is necessary to others; because, si
private property, no one can, by any other moans, procure the different things that may l
to him, and calculated to render life pleasant and agreeable. Now, since right springs fro
3), the obligation which we have just established gives every man the right of procuring
purchasing them at a reasonable price from those who have themselves no occasion fo

We have also seen (Prelim. § 5) that men could not free themselves from the authority o
uniting in civil society, and that the whole nation remains equally subject to those laws ir
so that the natural and necessary law of nations is no other than the law of nature prope
sovereign states (Prelim. § 6): from all which it follows, that a nation has a right to procu
price, whatever articles it wants, by purchasing them of other nations who have no occa
the foundation of the right of commerce between different nations, and, in particular, of t

§ 89. Right of selling

We cannot apply the same reasoning to the right of *selling* such things as we want to pa
every nation being perfectly at liberty to buy a thing that is to be sold, or not to buy it, an
than of another' the law of nature gives to no person whatsoever any kind of right to sell
another who does not wish to buy it; neither has any nation the right of selling her comm
to a people who are unwilling to have them.

§ 90. Prohibition of foreign merchandise.

Every state has consequently a right to prohibit the entrance of *foreign merchandises*; a
affected by such prohibition have no right to complain of it, as if they had been refused a
(37) Their complaints would be ridiculous, since their only ground of complaint would be
to them by that nation who does not choose they should make it at her expense, It is, ho
nation was very certain that the prohibition of her merchandises was not founded on any
the welfare of the state that prohibited them, site would have cause to consider this cond
shown in this instance, and to complain of it on that fooling. But it would be very difficult
to judge with certainty that the state had no solid or apparent reason for making such a p

§ 91. Nature of the right of buying,

By the manner in which we have shown a nation's right to buy of another what it wants,
this right is not one of those called *perfect*, and that are accompanied with a right to use
distinctly explain the nature of a right which may give room for disputes of a very serious
right to buy of others such things as you want, and of which they themselves have no ne
application to me: I am not obliged to sell them to you, if I myself have any occasion for
natural liberty which belongs to all men, it is I who am to judge whether I have occasion
conveniently sell them to you; and you have no right to determine whether I judge well, o
no authority over me. If I, improperly, and without any good reason, refuse to sell you at
want, I offend against my duty: you may complain of this, but you must submit to it: and
force me, without violating my natural right, and doing me an injury. The right of buy ing
then only an *imperfect* right, like that of a poor man to receive alms of the rich man; if the
bestow it, the poor man may justly complain: but he has no right to take it by force.

If it be asked, what a nation has a right to do in case of extreme necessity, — this questi
its proper place in the following book, Chap. IX.

§ 92. Every nation is to choose how far it will engage in commerce.

Since then a nation cannot have a natural right to sell her merchandises to another that them, since she has only an imperfect right to buy what she wants of others, since it bel to judge whether it be proper for them to sell or not; and finally, since commerce consist and selling all sorts of commodities, it is evident that it depends on the will of any nation with another, or to let it alone. If she be willing to allow this to one, it depends on the nat such conditions as she shall think proper. For in permitting another nation to trade with h other a right; and every one is at liberty to affix what conditions he pleases to a right whi accord.(38)

§ 93. How a nation acquires a perfect right to a foreign trade.

Men and sovereign states may, by their promises, enter into a perfect obligation with res things where nature has imposed only an *imperfect* obligation. A nation, not having natu carry on a commerce with another, may procure it by an agreement or treaty. This right treaties, and relates to that branch of the law of nations termed *conventional* (Prelim. § 2 gives the right of commerce, is the measure and rule of that right.

§ 94. Of the simple permission of commerce.

A simple permission to carry on commerce with a nation gives no perfect right to that co and simply permit you to do any thing, I do not give you any right to do it afterwards in sp make use of my condescension as long as it lasts; but nothing prevents me from changi every nation has a right to choose whether she will or will not trade with another, and on willing to do it (§ 92), if one nation has for a time permitted another to come and trade in liberty, whenever she thinks proper, to prohibit that commerce — to restrain it — to subj regulations; and the people who before carried it on cannot complain of injustice.

Let us only observe, that nations, as well as individuals, are obliged to trade together for the human race, because mankind stand in need of each other's assistance (Prelim. §§ 88): still, however, each nation remains at liberty to consider, *in particular cases*, whethe her to encourage or permit commerce; and as our duty to ourselves is paramount to our nation finds herself in such circumstances that she thinks foreign commerce dangerous renounce and prohibit it. This the Chinese have done for a long time together. But, agair serious and important reasons that her duty to herself should dictate such a reserve; oth refuse to comply with the general duties of humanity.

§ 95. Whether the laws relating to commerce are subject to prescription. (39)

We have seen what are the rights that nations derive from nature with regard to commer acquire others by treaties: let us now examine whether they can found any on long custo question in a solid manner, it is necessary first to observe, that there are rights which co they are called in Latin, *jura meræ facultatis*, rights of mere ability. They are such in thei who possesses them may use them or not, as he thinks proper — being absolutely free respect; so that the actions that relate to the exercise of these rights are acts of mere fre done or not done, according to pleasure. It is manifest that rights of this kind cannot be l account of their not being used, since prescription is only founded on consent legitimate

if I possess a right which is of such a nature that I may or may not use it, as I think prope having a right to prescribe to me on the subject, it cannot be presumed, from my having that I therefore intend to abandon it. This right is then imprescriptible, unless I have beer from making use of it, and have obeyed with sufficient marks of consent. Let us suppose entirely at liberty to grind my corn at any mill I please, and that during a very considerab please, I have made use of the same mill: as I have done in this respect what I thought p presumed, from this long-continued use of the same mill, that I meant to deprive myself at any other; and, consequently, my right cannot be lost by prescription. But now suppos resolving to make use of another mill, the owner of the former opposes it, and announce I obey his prohibition without necessity, and without opposition, though I have it in my po and know my right, this right is lost, because my conduct affords grounds for a legitimate chose to abandon it. — Let us apply these principles. — Since it depends on the will of e commerce with another, or not to carry it on, and to regulate the manner in which it choo 92), the right of commerce is evidently a right of mere ability *(jus merae facultatis)*, a sim consequently is imprescriptible. Thus, although two nations have treated together, witho century, this long usage does not give any right to either of them; nor is the one obliged suffer the other to come and sell its merchandises, or to buy others: — they both preser prohibiting the entrance of foreign merchandise, and of selling their own wherever peopl them. Although the English have from time immemorial been accustomed to get wine fro not on that account obliged to continue the trade, and have not lost the liberty of purcha elsewhere. (40) Although they have, in the same manner, been long accustomed to sell kingdom, they have, nevertheless, a right to transfer that trade to any other country: and their part, are not obliged by this long custom, either to sell their wines to the English, or cloths. If a nation desires any right of commerce which shall no longer depend on the wi acquire it by treaty. (40)

§ 96. Imprescriptibility of rights founded on treaty.

What has been just said may be applied to the rights of commerce acquired by treaties. method procured the liberty of selling certain merchandises to another, she does not los great number of years are suffered to elapse without its being used; because this right is *merae facultatis*, which she is at liberty to use or not, whenever she pleases.

Certain circumstances, however, may render a different decision necessary, because th the nature of the right in question. For instance, if it appears evident, that the nation grar only with a view of procuring a species of merchandise of which she stands in need, and obtained the right of selling neglects to furnish those merchandises, and another offers t on condition of having an exclusive privilege, — it appears certain that the privilege may latter. Thus the nation that had the right of selling would lose it, because she had not fulf

§ 97. Of monopolies, and trading companies, with exclusive privileges. (41)

Commerce is a common benefit to a nation; and all her members have an equal right to in general, is contrary to the rights of the citizens. However, this rule has its exceptions, interest of the nation: and a wise government may, in certain cases, justly establish mor commercial enterprises that cannot be carried on without an energy that requires consid surpass the ability of individuals. There are others that would soon become ruinous, wer with great prudence, with one regular spirit, and according to well-supported maxims an branches of trade cannot be indiscriminately carried on by individuals: companies are th the authority of government; and these companies cannot subsist without an exclusive p

advantageous to the nation to grant them: hence have arisen, in different countries, thos
that carry on commerce with the East. When the subjects of the United Provinces establ
the Indies on the ruin of their enemies the Portuguese, individual merchants would not h
such an arduous enterprise; and the state itself, wholly taken up with the defence of its l
Spaniards, had not the means of attempting it.

It is also certain beyond all doubt, that, whenever any individual offers, on condition of o
privilege, to establish a particular branch of commerce or manufacture which the nation
carrying on, the sovereign may grant him such privilege.

But whenever any branch of commerce may be left open to the whole nation, without pr
inconvenience or being less advantageous to the state, a restriction of that commerce to
individuals is a violation of the rights of all the other citizens. And even when such a com
considerable expenses to maintain forts, men of war, &c., this being a national affair, the
those expenses, and, as an encouragement to industry, leave the profits of the trade to
sometimes done in England.

§ 98. Balance of trade, and attention of government in this respect.

The conductor of a nation ought to take particular care to encourage the commerce that
people, and to suppress or lay restraints upon that which is to their disadvantage.(42) G
become the common standard of the value of all the articles of commerce, the trade tha
greater quantity of these metals than it carries out, is an advantageous trade; and, on th
ruinous one, which causes more gold and silver to be sent abroad, than it brings home.
the balance of trade. The ability of those who have the direction of it, consists in making
favour of the nation.

§ 99. Import duties. (43)

Of all the measures that a wise government may take with this view, we shall only touch
When the conductors of a state, without absolutely forcing trade, are nevertheless desir
other channels, they lay such duties on the merchandises they would discourage as will
consumption. Thus, French wines are charged with very high duties in England, while th
are very moderate, — because England sells few of her productions to France, while sh
to Portugal. There is nothing in this conduct that is not very wise and extremely just; anc
to complain of it — every nation having an undoubted right to make what conditions she
respect to receiving foreign merchandises, and being even at liberty to refuse taking the

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(33) See the authorities and doctrines on the advantage of commerce and commercial r
Commercial Law, 1 to 106. — C.

(34) To these are to be added the *carrying trade*, formerly one of the principal sources o
power. See authorities, 1 Chitty's Commercial Law, 7, 8, &c. — C.

1. Remarks on the Advantages and Disadvantages of France and Great Britain with resp

(35) See also s. 13, and Id. note. ante. — C.

(36) The *moral* obligation of a nation, in time of peace, to permit commercial intercourse to allow other states to buy her surplus produce, or to sell or exchange their own surplus in Mr. Pitt's celebrated speech in concluding the commercial treaty with France in 1786, 226 to 252; Tucker's Pamphlet Cui Bono, and 1 Chitty's Commercial Law, 73 to 79.*1* his considered by the ablest writers on the law of nations, to be a *moral* duty but of *imperfec* truth each state has a right, when so disposed, to decline any commercial intercourse w *et supra*. — C.

(37) When such a prohibition has been established, any violation of it in general subject seizure and confiscation, as in case of smuggling, whether by exporting or importing pro permitted goods without paying imposed duties, *Bird v. Appleton*, 8 Term Rep. 562; *Wig* Rep. 599: *Holman v. Johnson*, Cowp. 344. — C.
(*Church v. Hubbart*, 2 Cranch. 187.)

(38) With respect to commercial intercourse with the *colonies* of a parent state of Europe nations which have formed settlements abroad have so appropriated the trade of those themselves, either in *exclusively* permitting their own subjects to partake of it, or in grant trading companies, that the colonies themselves cannot legally carry on hardly any *direc* powers: consequently the commerce in those possessions is not free to foreign nations; permitted to land in the country, or to enter with their vessels within cannon shot of the s cases of urgent necessity. This has now become generally the understanding and law o colonies; and the ships, &c. violating the rule are liable to seizure. Marten's Law of Natio *Appleton*, 8 Term Rep. 562; 1 Chitty's Commercial Law, 79, 211 to 244, 470, 631. — C.

(39) See further, Grotius, 158; Puffendorf, B. 4. chap. 5, s. 10, p. 168; 1 Chit. Com. Law,

(40) The perpetual obligation to purchase Port wines from Portugal in exchange for Briti established by the celebrated treaty of Methuen, A.D. 1703 (so called because conclude with Portugal: a treaty which has been censured by some as evidently advantageous to disadvantagous to Great Britain. 2 Smith, W.N. 338 to 341; Tucker on Trade, 356; and 1 Law. 619. — C.

(41) See the advantages and disadvantages resulting from *commercial companies* and and upon colonization in general. 1 Chitty's Commercial Law, 631 to 689; and see some on the impolicy of Exclusive Companies, Evans on Statutes, Class III. title Insurance, p. in his Wealth of Nations, book iv. c. 7, p. 379, &c. and Dean Tucker, in his Essay on Tra Id. 40, 41), admit, that, to induce speculating and enterprising individuals to embark thei undertakings, probably generally beneficial in the result, but which could not be pursued may be expedient originally to afford them a monopoly; hut that, after they have acquire trade ought to be thrown open. Again, when a country becomes too densely populated, out of employ and restless, then there may be another reason for encouraging the creat companies. A celebrated diplomatist, and an acute observer of human nature (M. Talley that the *art of putting* men into their proper places is, perhaps, the first science of goverr finding the proper place for the *discontented is* assuredly the *most difficult:* and the pres imagination in a distant country, perspective views, on which their thoughts and desires one of the solutions of this difficulty. In the development of the motives which determine the *ancient colonies* we easily remark, that, at the very time they were indispensable, th they were presented by the governments as an allurement, not as a punishment. Bodies reserve to themselves the means of placing to advantage, at a distance from their imme superabundance of citizens who from time *to time threaten their tranquillity*. Thus, with *r*

the content springing from the full employment of the *aspiring mind* of man, and under th hope, the bad, the idle, and the turbulent may be rendered useful members of society. C present such a field for the promotion of human happiness, such a scope for the noblest philanthropy, that we cannot be led to think their interests will be overlooked by a wise le government. — C.

(42) This is a *questionable* policy. It has been laid down by some of the most eminent w economy, that every active interference or the legislature with its subjects, by prohibiting particular branch of honest labour, or by encouraging any particular branch at the expen whether in agriculture or commerce, has uniformly retarded the advances of public opule sound policy of a legislator is not to impose restrictions or regulations upon domestic inc prevent them from being imposed by the contrivance or folly of others. See 2 Smith, W.N 3 Id. 183; Malthus. 196; 2 Paley, Mor. Phil. 400, 402; 3 Hume, Hist. 403; Sir J. Child on 86, 132, 154 to 164: and Buchanan's Observations on Smith's W. of N. 2d ed. vol. 4, pa 3 Lord Sheffield's Strictures on Navigation System, 3 Adolph. 163, and see *ante*, chap. 6 Commercial Law, 4 to 7.

But as regards the encouragement or discouragement of any particular branch of trade, for interference which powerfully influences, viz, the *increase of revenue*, for whenever t of the people introduces a foreign, or even a domestic article to greater consumption, a the same, though in a degree restrictive upon the consumption, will in general be a prop

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CHAP. IX.
OF THE CARE OF THE PUBLIC WAYS OF COMMUNICATION, AND TOLL.

§ 100. Utility of highways, canals, &c.

THE utility of highways, bridges, canals, and, in a word, of all safe and commodious way cannot be doubted. They facilitate the trade between one place and another, and render merchandise less expensive, as well as more certain and easy. The merchants are enal price, and to obtain the preference; an attraction is held out to foreigners, whose mercha through the country, and diffuse wealth in all the places through which they pass. France happy consequences of this from daily experience. (44)

§ 101. Duty of government in this respect.

One of the principal things that ought to employ the attention of the government with res the public in general, and of trade in particular, must then relate to the highways, canals ought to be neglected to render them safe and commodious. France is one of those stat the public is discharged with the greatest attention and magnificence. Numerous patrole over the safety of travellers: magnificent roads, bridges, and canals, facilitate the commu province and another: — Lewis XIV. joined the two seas by a work worthy of the Roman

§ 102. Its rights in this respect.

The whole nation ought, doubtless, to contribute to such useful undertakings. When the and repairing of highways, bridges, and canals, would be too great a burden on the ordi

state, *the government* may *oblige* the people to labour at them, or to contribute to the ex peasants, in some of the provinces of France, have been heard to murmur at the labour for the construction of roads: but experience had no sooner made them sensible of their blessed the authors of the undertaking.

§ 103. Foundation of the right of toll (46)

The construction and preservation of all these works being attended with great expense justly oblige all those to contribute to them, who receive advantage from their use: this is the right of toll. It is just that a traveller, and especially a merchant, who receives advant canal, or a road, in his own passage, and in the more commodious conveyance of his m help to defray the expense of these useful establishments, by a moderate contribution: a proper to exempt the citizens from paying it, she is under no obligation to gratify strange

§ 104. Abuse of this right.

But a law so just in its origin frequently degenerates into great abuses. There are countr taken of the highways, and where nevertheless considerable tolls are exacted. A lord of to possess a strip of land terminating on a river, there establishes a toll, though he is not expense in keeping up the navigation of the river, and rendering it convenient. This is a an infringement of the natural rights of mankind. For the division of lands, and their becc could never deprive any man of the right of passage, when not the least injury is done to whose territory he passes. Every man inherits this right from nature, and cannot justly be (47)

But the *arbitrary* or *customary* law of nations at present tolerates this abuse, while it is n excess as to destroy commerce, People do not, however, submit without difficulty, excep tolls which are established by ancient usage: and the imposition of new ones is often a s Swiss formerly made war on the Dukes of Milan, on account of some oppressions of this tolls is also further abused, when the passenger is obliged to contribute too much, and v proportion to the expense of preserving these public passages.(48)

At present, to avoid all difficulty and oppression, nations settle these points by treaties.

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(43) This is a very slight allusion to the very important regulation of import and export du drawbacks, which since Vattel wrote, have become extensive branches of law, highly im See an attempt of the editor to arrange them, in 1 Chitty's Commercial Law, Index, titles C,

(44) But although, since Vattel wrote, France greatly advanced in the improvement of he has surpassed all other nations in the facilities of internal intercourse by new canals, rail improvements sanctioned by the legislature. With respect to which, see the enactments Chitty's Commercial Law, 127 to 141. — C.

(45) This position of a government's right to *oblige* the people to labour on the roads as startle an *Englishman*. In England there is no such *direct* power. The 34 Geo. 3, c. 74, s each occupier to send his carts and horses, and labourers, to work on the roads; but the so. he is subject only to a moderate penalty, just sufficient to enable the surveyor to hire elsewhere: and as to *men*, even a pauper is subject to no penalty for refusing to work, e

does so, he will not then be entitled to parochial relief. If he work, he is entitled to pay in proper food in return for his labour. — C.

(46) As to the right to toll, &c., see Grotius, b. ii. chap. 2, § 14, p. 154; Puffendorf, book i 1 Bla. Com. 287; 1 Chitty's Commercial Law, 103 to 106; 2 Id. 139,140. It has been obse taxes with which the inhabitants of this country are burdened, there is perhaps none so duty. On the continent no such interruption in travelling is experienced, and tolls have be northern side of the metropolis, London. Lord Byron, in his eulogy upon English roads, h

"What a delightful thing's a turnpike road,
So smooth, so level, such a mode of shaving
The earth, as scarce the eagle in the broad
Air can accomplish with his wide wings waving
Had such been cut in Phaeton's time, the god
Had told his son to satisfy his craving
With the York mail — but onward as we roll —
Surgit amari aliquid *the toll*.
Cant. x 78. — C.

(47) This position requires explanation and qualification. As respects a public navigable *navigable* stream must ever remain free and open from its communication with the sea t point; but the absolute right to approach it on each side, can only be by public and gene Consequently, if an individual have land adjoining a river, ho may reasonably refuse per to go over it to approach the river, and demand any sum he thinks fit for the permission, public way over it. Nor have the public any right at common law to tow on the banks of a river; *Ball v. Herbert*, 3 Term Rep. 253; though it may exist by custom or prescription. *Pi* Burr. 292. In the absence of such custom or prescription, no right to approach a river ov exists. *Parthericke v. Mason*, 2 Chitty's Rep. 658; *Wyatt v. Thompson*, 1 Esp. Rep. 252. Watts, Rep. 219; *Cooper v. Smith*, 9 Serg. & Rawle, 26.) So, if a private individual make over a river, he may insist upon any person using it paying him a toll, as in the instance bridge. In these cases the demand of an exorbitant toll may be *illiberal*, but is no more *ill* refusing to sell its superfluous produce, or to admit free passage through its country. Th moderate toll is a moral but *imperfect* right, *ante*, § 91. — C.

(48) See n. 47, ante.

CHAP. X.
OF MONEY AND EXCHANGE.

§ 105. Establishment of money. (49)

IN the first ages, after the introduction of private property, people exchanged their superf effects for those they wanted. Afterwards gold and silver became the common standard things: and to prevent the people from being cheated, the mode was introduced of stam silver in the name of the state, with the figure of the prince, or some other impression, as their value. This institution is of great use and infinite convenience: it is easy to see how commerce, — Nations or sovereigns cannot therefore bestow too much attention on an importance.

§ 106. Duty of the nation or prince with respect to the coin.

The impression on the coin becoming the seal of its standard and weight, a moment's re
us that the coinage of money ought not to be left indiscriminately free to every individual
frauds would become too common — the coin would soon lose the public confidence; a
most useful institution. Hence money is coined by the authority and in the name of the s
its surety; they ought, therefore, to have a quantity of it coined sufficient to answer the n
country, and to take care that it be good, that is to say, that its intrinsic value bear a just
extrinsic or numerary value.

It is true, that, in a pressing necessity, the state would have a right to order the citizens t
price superior to its real value; but as foreigners will not receive it at that price, the natio
proceeding; it is only a temporary palliative for the evil, without effecting a radical cure. T
added in an arbitrary manner to the coin, is a real debt which the sovereign contracts wi
strict justice, this crisis of affairs being over, that money ought to be called in at the expe
paid for in other specie, according to the natural standard: otherwise, this kind of burden
necessity, would fall solely on those who received this arbitrary money in payment, whic
Besides, experience has shown that such a resource is destructive to trade, by destroyi
of foreigners and citizens — raising in proportion the price of every thing — and inducin
or send abroad the good old specie; whereby a temporary stop is put to the circulation o
the duty of every nation and of every sovereign to abstain, as much as possible, from sc
experiment, and rather to have recourse to extraordinary taxes and contributions to sup
exigencies of the state.[1]

§ 107. Their rights in this respect

Since the state is surely for the goodness of the money and its currency, the public auth
of coining it. Those who counterfeit it, violate the rights of the sovereign, whether they m
standard and value or not. These are called false-coiners, and their crime is justly consi
most heinous nature. For if they coin base money, they rob both the public and the princ
good, they usurp the prerogative of the sovereign. They will never be inclined to coin go
be a profit on the coinage: and in this case they rob the state of a profit which exclusivel
cases they do an injury to the sovereign; for the public faith being surety for the money,
has a right to have it coined. For this reason the right of coining is placed among the *pre*
and Bodinus relates,[2] That Sigismund Augustus, king of Poland, having granted this priv
Prussia, in the year 1543, the states of the country passed a decree in which it was asse
not grant that privilege, it being inseparable from the crown. The same author observes,
lords and bishops of France had formerly the privilege of coining money, it was still cons
the king's authority: and the kings of France at last withdrew all those privileges, on acc
abused.

§ 108. How one nation may injure another in the article of coin.

From the principles just laid down, it is easy to conclude, that if one nation counterfeits t
or if she allows and protects false-coiners who presume to do it, she does that nation an
criminals of this class find no protection anywhere — *all princes being equally interested*
(50)

§ 109. Of exchange, and the laws of commerce.

There is another custom more modern, and of no less use to commerce than the establi
exchange, or the traffic of bankers, by means of which a merchant remits immense sum
world to the other, at a very trifling expense, and, if he pleases, without risk. For the sam
sovereigns are obliged to protect commerce, they are obliged to support this custom, by
every merchant, whether citizen or foreigner, may find security. In general, it is equally t
of every nation to have wise and equitable commercial laws established in the country.

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(49) The modern law of nations, and the municipal law of England, as to coin, bullion, ar
collected in 1 Bla. Com 276 to 280; 4 Id. 84 to 120; 1 Chitty's Commercial Law, 583; 2 Id
statutes and decisions there collected. — C.

1. In Boizard's Treatise on Coin, we find the following observations: "It is worthy of rema
debased the coin, they kept the circumstance a secret from the people: — witness the o
Valois in 1350, by which he ordered Tournois *Doubles* to be coined 2d 5 1/3 gr. fine, wh
debasement of the coin. In that ordinance, addressing the officers of the mint, he says –
which you are bound to the king, keep this affair as secret as you possibly can, that neit
others may, by your means, acquire any knowledge of it; for if, through you, it comes to
punished for the offence in such manner as shall serve as an example to others." — The
other similar ordinances of the same king, and one issued by the Dauphin, who governe
regent during the captivity of King John, dated June 27, 1360, by virtue of which the min
officers engaged in the coinage to coin white Deniers 1d. 12 gr. fine, at the same time e
them to keep this order secret, and, "if any persons should make inquiry respecting thei
that they were 2d. fine." Chap. xxix.

The kings [of France] had recourse to this strange expedient in cases of urgent necessit
injustice. — The same author, speaking of the debasement of coin, or the various mode
intrinsic value, says — "These expedients are but rarely resorted to, because they give
exportation or melting down of the good specie, and to the introduction and circulation o
the price of every thing — impoverish individuals — diminish the revenue, which is paid
value — and sometimes put a total stop to commerce. This truth has been so well under
those princes who had recourse to one or other of these modes of debasing the coin in
to practise it the moment the necessity ceased to exist." We have, on this subject, an or
Fair, issued in May, 1295, which announces, that, "The king having reduced the coin bo
weight, and expecting to be obliged to make a further reduction in order to retrieve his a
himself to be, in conscience, responsible for the injury caused to the state by such reduc
himself to the people of his kingdom, by solemn charter, that, as soon as his affairs are
restore the coin to its proper standard and value, at his own private cost and expense, a
the loss and waste. And, in addition to this engagement, Dame Joan, Queen of France a
her revenues and dower for the same purpose." Note. edit A.D. 1797.

2. In his Republic, book i, chap. x. (50) This is a sound principle, which ought to be exte
effect to any fraud upon a foreign nation or its subjects. But in England a narrow and imi
not noticing frauds upon the revenue of a foreign state. *Roach v. Edie*, 6 Term Rep. 425
R.T. Hardw. 198; *Holman v. Johnson*, Cowp. 343; *James v, Catherwood*, 3 Dowl. & Ryl.
v. Maffet's Assignees, 2 Wash, C.C. Rep. 99.} And so far has this narrow doctrine been
this country, that, in *Smith v. Marconnay*, 2 Peake's Rep. 81, it was held, that the maker
knowingly made by him for the purpose of forging assignats upon the same, to be expor

to commit *frauds* there on other persons, might recover damages for not accepting such contract. So a master of an English ship was even allowed to recover salvage for bringir vessel, by deceptively inducing the enemy to release the vessel on his giving a ransom he look care to countermand in London. 2 Dodson's R. 74.

CHAP. XI.
SECOND OBJECT OF A GOOD GOVERNMENT, — TO PROCUR HAPPINESS OF THE NATION.

§ 110. A nation ought to labour after its own happiness.

LET us continue to lay open the principal objects of a good government. What we have s preceding chapters relates to the care of providing for the necessities of the people, and state: this is a point of necessity; but it is not sufficient for the happiness of a nation. Exp people may be unhappy in the midst of all earthly enjoyments, and in the possession of Whatever may enable mankind to enjoy a true and solid felicity, is a second object that c serious attention of the government. Happiness is the point where centre all those duties nations owe to themselves; and this is the great end of the law of nature. The desire of h powerful spring that puts man in motion: felicity is the end they all have in view, and it ou object of the public will (Prelim. § 5). It is then the duty of those who form this public will, represent it — the rulers of the nation — to labour for the happiness of the people, to wa and to promote it to the utmost of their power.

§ 111. Instruction.

To succeed in this, it is necessary to instruct the people to seek felicity where it is to be f own perfection, — and to teach them the means of obtaining it. The sovereign cannot, th pains in instructing and enlightening his people, and in forming them to useful knowledg Let us leave a hatred of the sciences to the despotic tyrants of the east: they are afraid c instructed, because they choose to rule over slaves. But though they are obeyed with th submission, they frequently experience the effects of disobedience and revolt. A just and apprehensions from the light of knowledge: he knows that it is ever advantageous to a g men of learning know that liberty is the natural inheritance of mankind; on the other hand sensible than their neighbours, how necessary it is, for their own advantage, that this lib to a lawful authority: — incapable of being slaves, they are faithful subjects.

§ 112. Education of youth.

The first impressions made on the mind are of the utmost importance for the remainder years of infancy and youth, the human mind and heart easily receive the seeds of good education of youth is one of the most important affairs that deserve the attention of the g not to be entirely left to fathers. The most certain way of forming good citizens is to foun for public education, to provide them with able masters — direct them with prudence — and suitable measures, that the citizens will not neglect to take advantage of them. How education of the Romans, in the flourishing ages of their republic, and how admirably wa great men! The young men put themselves under the patronage of some illustrious pers house, accompanied him wherever he went, and equally improved by his instructions ar sports and amusements were exercises proper to form soldiers. The same practice prev

this was one of the wisest institutions of the incomparable Lycurgus. That legislator and into the most minute details respecting the education of youth,[1] being persuaded that or prosperity and glory of his republic.

§ 113. Arts and sciences.

Who can doubt that the sovereign — the whole nation — ought to encourage the arts ar nothing of the many useful inventions that strike the eye of every beholder, — literature enlighten the mind and soften the manners: and if study does not always inspire the love it sometimes, and even too often, unhappily meets with an incorrigibly vicious heart. The conductors ought then to protect men of learning and great artists, and to call forth talen rewards. Let the friends of barbarism declaim against the sciences and polite arts; — let answer their vain reasonings, content ourselves with appealing to experience. Let us co France, Holland, and several towns of Switzerland and Germany, to the many regions th ignorance, and see where we can find the greater number of honest men and good citiz gross error to oppose against us the example of Sparta, and that of ancient Rome. They curious speculations, and those branches of knowledge and art that were purely subser amusement; but the solid and practical sciences — morality, jurisprudence, politics, and by them, especially by the Romans, with a degree of attention superior to what we best

In the present age, the utilily of literature and the polite arts is pretty generally acknowle necessity of encouraging them. The immortal Peter I. thought that without their assistan civilize Russia, and render it flourishing. In England, learning and abilities lead to honou was honoured, protected, and rewarded while living, and after his death, his tomb was p kings. France also, in this respect, deserves particular praise; to the munificence of her for several establishments that are no less useful than glorious. The Royal Academy of every side the light of knowledge and the desire of instruction. Louis XV. furnished the m search, under the equator and the polar circle, for the proof of an important truth; and we was before only believed on the strength of Newton's calculations. Happy will that kingd general taste of the age does not make the people neglect solid knowledge, to give then which is merely amusing, and if those who fear the light do not succeed in extinguishing

§ 114. Freedom of philosophical discussion.

I speak of the freedom of philosophical discussion, which is the soul of the republic of le produce, when trammelled by fear? Can the greatest man that ever lived contribute muc the minds of his fellow-citizens, if he finds himself constantly exposed to the cavils of ca bigots — if he is obliged to be continually on his guard, to avoid being accused by innue indirectly attacking the received opinions? I know that liberty has its proper bounds — th ought to have an eye to the press, and not to allow the publication of scandalous produc morality, government, or the established religion. But yet, great care should be taken no that may afford the state the most valuable advantages. Few men know how to keep a j office of literary censor ought to be intrusted to none but those who are at once both pru Why should they search in a book for what the author does not appear to have intended when a writer's thoughts and discourses are wholly employed on philosophy, ought a ma listened to, who would set him at variance with religion? So far from disturbing a philoso opinions, the magistrate ought to chastise those who publicly charge him with impiety, w shows respect to the religion of the state. The Romans seem to have been formed to giv universe. That wise people carefully supported the worship and religious ceremonies es left the field open to the speculations of philosophers. Cicero — a senator, a consul, an

superstition, attacks it, and demolishes it in his philosophical writings; and, in so doing, h promoting his own happiness and that of his fellow citizens: but he observes that "to des destroying religion; for," says he, "it becomes a wise man to respect the institutions and his ancestors: and it is sufficient to contemplate the beauty of the world, and the admiral bodies, in order to be convinced of the existence of an eternal and all-perfect being, who veneration of the human race."[2] And in his Dialogues on the Nature of the Gods, he intro academic, who was high-priest, attacking with great freedom the opinions of the stoics, a should always be ready to defend the established religion, from which he saw the repub advantages; that neither the learned nor the ignorant should make him abandon it: he th adversary," These are my thoughts, both as pontiff and as Cotta. But do you, as a philos to your opinion by the strength of your arguments: for a philosopher ought to prove to m religion he would have me embrace, whereas I ought in this respect to believe our forefa proof."[3]

Let us add experience to these examples and authorities. Never did a philosopher occas state, or in religion, by his opinions: they would make no noise among the people, nor ev malice or intemperate zeal did not take pains to discover a pretended venom lurking in t endeavours to place the opinions of a great man in opposition to the doctrines and wors that the state is disturbed, and religion brought into danger.

§ 115. Love of virtue, and abhorrence of vice, to be excited.

To instruct the nation is not sufficient: — in order to conduct it to happiness, it is still mor the people with the love of virtue, and the abhorrence of vice. Those who are deeply ver morality are convinced that virtue is the true and only path that leads to happiness; so th the art of living happily; and he must be very ignorant of politics, who does not perceive capable a virtuous nation will be, than any other, of forming a state that shall be at once, flourishing, solid, respected by its neighbours, and formidable to its enemies. The interes then concur with his duty and the dictates of his conscience, in engaging him to watch a of such importance. Let him employ all his authority in order to encourage virtue, and su public establishments be all directed to this end: let his own conduct, his example, and t favours, posts, and dignities, all have the same tendency. Let him extend his attention e the citizens, and banish from the state whatever is only calculated to corrupt the manner belongs to politics to teach him in detail the different means of attaining this desirable er he should prefer, and those he ought to avoid on account of the dangers that might atter the abuses that might be made of them. We shall here only observe, in general, that vic by chastisements, but that mild and gentle methods alone can elevate men to the dignity inspired, but it cannot be commanded.

§ 116. The nation may hence discover the intention of its rulers.

It is an incontestable truth, that the virtues of the citizens constitute the most happy disp desired by a just and wise government. Here then is an infallible criterion, by which the r intentions of those who govern it. If they endeavour to render the great and the common views are pure and upright; and you may rest assured that they solely aim at the great e the happiness and glory of the nation. But if they corrupt the morals of the people, sprea effeminacy, a rage for licentious pleasures — if they stimulate the higher orders to a ruir extravagance — beware, citizens! beware of those corruptors! they only aim at purchasi exercise over them an arbitrary sway.

If a prince has the smallest share of moderation, he will never have recourse to these oc
Satisfied with his superior station and the power given him by the laws, he proposes to r
safety; ho loves his people, and desires to render them happy. But his ministers are in g
resistance, and cannot brook the slightest opposition: if he surrenders to them his autho
haughty and intractable than their master: they feel not for his people the same love that
nation be corrupted (say they) provided it do but obey." They dread the courage and firn
virtue, and know that the distributor of favours rules as he pleases over men whose hea
avarice. Thus a wretch who exercises the most infamous of all professions, perverts the
victim of her odious traffic; she prompts her to luxury and epicurism; she inspires her wit
vanity, in order the more certainly to betray her to a rich seducer. This base and unworth
sometimes chastised by the magistrate; but the minister, who is infinitely more guilty, wa
invested with honour and authority. Posterity, however, will do him justice, and detest th
respectable nation.

§ 117. The state, or the public person, ought to perfect its understanding and will.

If governors endeavoured to fulfil the obligations which the law of nature lays upon them
themselves, and in their character of conductors of the state, they would be incapable of
odious abuse just mentioned. Hitherto we have considered the obligation a nation is unc
knowledge and virtue, or to perfect its understanding and will; — that obligation, I say, w
relation to the individuals that compose a nation; it also belongs in a proper and singular
conductors of the state. A nation, while she acts in common, or in a body, is a moral per
has an understanding and will of her own, and is not less obliged than any individual to c
(Book I. § 5), and to improve her faculties (Book I. § 21). That moral person resides in th
with the public authority, and represent the entire nation. Whether this be the common c
aristocratic body, or a monarch, this conductor and representative of the nation, this sov
kind, is therefore indispensably obliged to procure all the knowledge and information nec
and to acquire the practice and habit of all the virtues suitable to a sovereign.

And as this obligation is imposed with a view to the public welfare, he ought to direct all
his virtues, to the safety of the state, the end of civil society.

§ 118. And to direct the knowledge and virtues of the citizens to the welfare of the

He ought even to direct, as much as possible, all the abilities, the knowledge, and the vi
this great end; so that they may not only be useful to the individuals who possess them,
This is one of the great secrets in the art of reigning. The state will be powerful and happ
of the subject, passing beyond the narrow sphere of private virtues, become civic virtues
disposition raised the Roman republic to the highest pitch of power and glory.

§ 119. Love for their country. (53)

The grand secret of giving to the virtues of individuals a turn so advantageous to the sta
citizens with an ardent love for their country. It will then naturally follow, that each will en
state, and to apply all his powers and abilities to the advantage and glory of the nation. T
country is natural to all men. The good and wise Author of nature has taken care to bind
instinct, to the places where they received their first breath, and they love their own natio
which they are intimately connected. But it often happens that some causes unhappily w
natural impression. The injustice or the severity of the government loo easily effaces it fr

subjects; can self-love attach an individual to the affairs of a country where every thing is single person? — far from it: — we see, on the contrary, that free nations are passionate glory and the happiness of their country. Let us call to mind the citizens of Rome in the h republic, and consider, in modern times, the English and the Swiss.

§ 120. In individuals.

The love and affection a man feels for the state of which he is a member, is a necessary wise and rational love he owes to himself, since his own happiness is connected with tha sensation ought also to flow from the engagements he has entered into with society. He procure its safety and advantage as far as in his power: and how can he serve it with ze if he has not a real love for it?

§ 121. In the nation or state itself, and in the sovereign.

The nation in a body ought doubtless to love itself, and desire its own happiness as a na too natural to admit of any failure in this obligation: but this duty relates more particularly sovereign, who represents the nation, and acts in its name. He ought to love it as what is prefer it to every thing, for it is the only lawful object of his care, and of his actions, in eve virtue of the public authority. The monster who does not love his people is no better than and deserves, no doubt, to be hurled from the throne. There is no kingdom where the st not to be placed before the palace of the sovereign. That magnanimous king of Athens s people.[4] That great prince and Louis XII, are illustrious models of the tender love a sove subjects.

§ 122. Definition of the term country.

The term, *country*, seems to be pretty generally known: but as it is taken in different sen unuseful to give it here an exact definition. It commonly signifies the State *of which one* sense we have used it in the preceding sections; and it is to be thus understood in the la

In a more confined sense, and more agreeably to its etymology, this term signifies the st particularly the town or place where our parents had their fixed residence at the moment sense, it is justly said, that our country cannot be changed, and always remains the sam we may afterwards remove. A man ought to preserve gratitude and affection for the stat indebted for his education, and of which his parents were members when they gave him lawful reasons may oblige him to choose another country, — that is, to become a memb so. when we speak in general of the duty to our country, the term is to be understood as which a man is an actual member; since it is the latter, in preference to every other state serve with his utmost efforts.

§ 123. How shameful and criminal to injure our country.

If every man is obliged to entertain a sincere love for his country, and to promote its welf power, it is a shameful and detestable crime to injure that very country. He who become his most sacred engagements, and sinks into base ingratitude: he dishonours himself by since he abuses the confidence of his fellow-citizens, and treats as enemies those who his assistance and services. We sec traitors to their country only among those men who base interest, who only seek their own immediate advantage, and whose hearts are inca

sentiment of affection for others. They are, therefore, justly detested by mankind in gene infamous of all villains.

§ 124. The glory of good citizens (51) Examples

On the contrary, those generous citizens are loaded with honour and praise, who, not co avoiding a failure in duly to their country, make noble efforts in her favour, and are capal greatest sacrifices. The names of Brutus, Curtius, and the two Decii, will live as long as Swiss will never forget Arnold de Winkelried, that hero, whose exploit would have deser posterity by the pen of a Livy. He truly devoted his life for his country's sake: but he devo an undaunted warrior, not as a superstitious visionary. That nobleman, who was of the c seeing, at the battle of Sempach, that his countrymen could not break through the Austr latter, armed cap-a-pie, had dismounted and forming a close battalion, presented a front and bristling with pikes and lances, — formed the generous design of sacrificing himself friends," said he to the Swiss, who began to be dispirited, " I will this day give my life to p I only recommend to you my family: follow me, and act in consequence of what you see words he ranged them in that form which the Romans called cuneus, and placing himse triangle, marched to the centre of the enemy, when, embracing between his arms as ma pikes as he could compass, he threw himself to the ground, thus opening for his followe penetrate into the midst of this thick battalion. The Austrians, once broken, were conque their armour then became fatal to them, and the Swiss obtained a complete victory.[5]

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1. See Xenophon, *Lacedæmon. Respublica*.

2. Nam, ut vere loquamur, superstitio fusa per gentes oppressit omnium fere animos, at imbecillitatem occupavit.... multum enim et nobismet ipsis et nostris profuturi videbamur, sustulissemus. Nec vero (id enim diligenter intelligi volo) superstitione tollendâ religio tol instituta tueri, sacris cæremonilsque retinendis, sapientis est: et esse præstantem aliqua naturam, et eam suspiciendam, admirandamque hominum generi, pulchritudo mundi, or confiteri. *De Divinatione*, lib. ii.

3. Harum ego religionem nullam unquam contemnendam putavi: mihique ita persuasi, R Numam sacris constitutis, fundamenta jecisse nostræ civitatis, quæ nunquam profecto s Deorum immortalium tanta esse potjisset Habes, Balbe, quid Cotta, quid pontifex sentia intelligam, quid tu sentias: a te enim philosophe rationem accipere debeo religionis; maj etiam nulla ratione reddita, credere. *De Natura Decorum*, lib. iii.

4. His country being attacked by the Heraclidæ, he consulted the oracle of Apollo; and b the people whose chief should be slain should remain victorious, Codrus disguised hims the battle, was killed by one or the enemy's soldiers.

(51) See observations, *post*, § 190, p. 92. — C.

5. This affair happened in the year 1386. The Austrian army consisted of four thousand whom were a great number of princes, counts and nobility of distinguished rank, all arm The Swiss were no more than thirteen hundred men. ill armed. In this battle, the duke of two thousand of his forces, in which number were six hundred and seventy-six nobleme Germany. *History of the Helvetic Confederacy*, by De Wateville, vol. i. p. 183. — Tschuc Schodeler. — Ræbman. — (See the national consequences of this valour, stated post. §

CHAP. XII.
OF PIETY AND RELIGION.

§ 125. Of piety.

PIETY and religion have an essential influence on the happiness of a nation, and, from t
deserve a particular chapter. Nothing is so proper as piety to strengthen virtue, and give
word *Piety*, I mean a disposition of soul that leads us to direct all our actions towards the
endeavour to please him in every thing we do. To the practice of this virtue all mankind a
obliged: it is the purest source of their felicity; and those who unite in civil society are un
obligations to practise it. A nation ought then to be pious. The superiors intrusted with th
constantly endeavour to deserve the approbation of their divine Master; and whatever th
the state, ought to be regulated by this grand view. The care of forming pious dispositior
should be constantly one of the principal objects of their vigilance, and from this the stat
advantages. A serious attention to merit, in all our actions, the approbation of an infinitel
fail of producing excellent citizens. Enlightened piety in the people is the firmest support
and, in the sovereign's heart, it is the pledge of the people's safety, and excites their cor
earth, who acknowledge no superior here below, what security can we have for the purit
we do not conceive you to be deeply impressed with respect for the common Father and
animated with a desire to please him?

§ 126. It ought to be attended with knowledge.

We have already insinuated that piety ought to be attended with knowledge. In vain wou
please God, if we know not the means of doing it. But what a deluge of evils arises, whe
powerful a motive, are prompted to take methods that are equally false and pernicious! A
produces superstitious bigots, fanatics, and persecutors, a thousand times more danger
society than libertines are. There have appeared barbarous tyrants who have talked of r
God, while they crushed the people, and trampled under foot the most sacred laws of na
refinement of piety, that the anabaptists of the sixteenth century refused all obedience to
earth. James Clement and Ravaillac,[1] those execrable parricides, thought themselves a
sublime devotion.

§ 127. Of religion internal and external.

Religion consists in the doctrines concerning the Deity and the things of another life, and
appointed to the honour of the Supreme Being. So far as it is seated in the *heart*, if is an
which every one ought to be directed by his own understanding: but so far as it is *extern
established, it* is *an affair of state*.

§ 128. Rights of individuals.

Every man is obliged to endeavour to obtain just ideas of God, to know his laws, his viev
creatures, and the end for which they were created. Man doubtless owes the most pure
profound respect to his Creator; and to keep alive these dispositions, and act in consequ
should honour God in all his actions, and show, by the most suitable means, the sentime
This short explanation is sufficient to prove that man is essentially and necessarily free t

choice in matters of religion. His belief is not to be commanded; and what kind of worshi produced by force? Worship consists in certain actions performed with an immediate vie God; there can be no worship proper for any man, which he does not believe suitable to obligation of sincerely endeavouring to know God, of serving him, and adoring him from *heart*, being imposed on man by his very nature, — it is impossible that, by his engagem should have exonerated himself from that duty. or deprived himself of the liberty which is for the performance of it. It must then be concluded, that liberty of conscience is a natura is a disgrace to human nature, that a truth of this kind should stand in need of proof.

§ 129. Public establishment of religion

But we should take care not to extend this liberty beyond its just bounds. In religious affa right to be free from compulsion, but can by no means claim that of *openly doing what h* regard to the consequences it may produce on society.(52) The establishment of religion exercise, are matters of state, and are necessarily under the jurisdiction of the political a bound to serve God, the entire nation, in her national capacity is doubtless obliged to se (Prelim. § 5), And as this important duty is to be discharged by the nation in whatever m — to the nation it belongs to determine what religion she will follow, and what public wor to establish.

§ 130. When there was yet no established religion.

If there be as yet no religion established by public authority, the nation ought to use the know and establish the best. That which shall have the approbation of the majority shall publicly established by law; by which means it will become the religion of the state, But i the nation is obstinately bent upon following another, it is asked — What does the law of such a case? Let us first remember that liberty of conscience is a natural right, and that constraint in this respect. There remain then but two methods to take, — either to permit citizens to exercise the religion they choose to profess, or to separate them from the soc property, and their share of the country that belonged to the nation in common, — and th states instead of one. The latter method appears by no means proper: it would weaken t would be inconsistent with that regard which she owes to her own preservation. It is ther advantage to adopt the former method, and thus to establish two religions in the state. E too incompatible; if there be reason to fear that they will produce divisions among the cit public affairs, there is a third method, a wise medium between the two former, of which t furnished examples. The cantons of Glaris and Appenzel were, in the sixteenth century, parts: the one preserved the Romish religion, and the other embraced the Reformation; government of its own for domestic affairs; but on foreign affairs they unite, and form but republic, one and the same canton.

Finally, if the number of citizens who would profess a different religion from that establis inconsiderable; and if, for good and just reasons, it be thought improper to allow the exe religions in the state — those citizens have a right to sell their lands, to retire with their fa their property with them. For their engagements to society, and their submission to the p never oblige them to violate their consciences. If the society will not allow me to do that bound by an indispensable obligation, it is obliged to allow me permission to depart.

§ 131. When there is an established religion.

When the choice of a religion is already made, and there is one established by law, the r
and support that religion, and preserve it as an establishment of the greatest importance
blindly rejecting the changes that may be proposed to render it more pure and useful: fo
things, to aim at perfection (§ 21). But as all innovations, in this case, are full or danger,
produced without disturbances, they ought not to be attempted upon slight grounds, with
important reasons. It solely belongs to the society, the state, the entire nation, to determ
propriety of those changes; and no private individual has a right to tempt them by his ow
consequently to preach to the people a new doctrine. Let him offer his sentiments to the
nation, and submit to the orders he receives from them.

But if a new religion spreads, and becomes fixed in the minds of the people, as it comm
independently of the public authority, and without any deliberation in common, it will be t
adopt the mode of reasoning we followed in the preceding section on the case of choosi
attention to the number of those who follow the new opinions — to remember that no ea
authority over the consciences of men, — and to unite the maxims of sound policy with t
equity.

§ 132. Duties and rights of the sovereign with regard to religion.

We have thus given a brief compendium of the duties and rights of a nation with regard
come to those of the sovereign. These cannot be exactly the same as those of the natio
represents. The nature of the subject opposes it; for in religion nobody can give up his li
and distinct view of those rights and duties of the prince, and to establish them on a soli
here to refer to the distinction we have made in the two preceding sections: if there is qu
religion in a state that has not yet received one, the sovereign may doubtless favour tha
the true or the best religion, — may have it announced to the people, and, by mild and s
endeavour to establish it; — he is even bound to do this, because he is obliged to attend
concerns the happiness of the nation. But in this he has no right to use authority and co
was no religion established in the society when he received his authority, the people gav
respect; the support of the laws relating to religion is no part of his office, and does not b
with which they intrusted him. Numa was the founder of the religion of the ancient Roma
the people to receive it. If he had been able to command in that instance, he would not h
the revelations of the nymph Egeria. Though the sovereign cannot exert any authority in
religion where there is none, he is authorized, and ever obliged, to employ all his power
introduction of one which he judges pernicious to morality and dangerous to the state. F
his people from every thing that may be injurious to them; and so far is a new doctrine fr
to this rule, that it is one of its most important objects. We shall see, in the following sect
duties and rights of the prince in regard to the religion publicly established.

§ 133. Where there is an established religion

The prince, or the conductor, to whom the nation has intrusted the care of the governme
the sovereign power, is obliged to watch over the preservation of the received religion, t
by law, and has a right to restrain those who attempt to destroy or disturb it. But to acqu
a manner equally just and wise, he ought never to lose sight of the character in which he
the reason of his being invested with it. Religion is of extreme importance to the peace a

and the prince is obliged to have an eye to every thing in which the state is interested. T to interfere in religion, or to protect and defend it. It is therefore upon this footing only tha consequently, he ought to exert his authority against those alone whose conduct in relig prejudicial or dangerous to the state; but he must not extend it to pretended crimes agai punishment of which exclusively belongs to the Sovereign Judge, the searcher of hearts religion is no farther an affair of state, than as it is exterior and publicly established: that depend on the conscience. The prince has no right to punish any persons but those that would be very unjust in him to inflict pains and penalties on any person whatsoever for h when that person neither takes pains to divulge them, nor to obtain followers. It is a prin source of evils and of the most notorious injustice, to imagine that nail mortals ought to t God, maintain his glory by acts of violence, and avenge him on his enemies. *Let us only* said a great statesman and an excellent citizen[2] — let us give them, *for the common ad punishing whatever is injurious to charity in society. It appertains not to human justice to of what concerns the cause of* God.[3] Cicero, who was as able and as great in state affai eloquence, thought like the Duke of Sully. In the laws he proposes relating to religion, he of piety and interior religion, "if any one transgresses, God will revenge it:" but he declar that should be committed against the religious ceremonies established for public affairs, state is concerned.[4] The wise Romans were very far from persecuting a man for his cree that people should not disturb the public order.

§ 134. Objects of his care, and the means he ought to employ.

The creeds or opinions of individuals, their sentiments with respect to the Deity, — in a v should, like piety, be the object of the prince's attention: he should neglect no means of discover the truth, and of inspiring them with good sentiments; but he should employ for and paternal methods.[5] Here he cannot command (§ 128). It is in external religion and it his authority may be employed. His task is to preserve it, and to prevent the disorders ar occasion. To preserve religion, he ought to maintain it in the purity of its institution, to tal faithfully observed in all its public acts and ceremonies, and punish those who dare to at can require nothing by force except silence, and ought never to oblige any person to bea ceremonies: — by constraint, he would only produce disturbances or hypocrisy.

A diversity of opinions and worship has often produced disorders and fatal dissensions i reason, many will allow but one and the same religion. A prudent and equitable sovereig conjunctures, see whether it be proper to tolerate or forbid the exercise of several differe

§ 135. Of toleration.

But, in general, we may boldly affirm that the most certain and equitable means of preve may be occasioned by difference of religion, is a universal toleration of all religions whic are dangerous either to morality or to the state. Let interested priests declaim! they woul fool the laws of humanity, and those of God himself, to make their doctrine triumph, if it v on which are erected their opulence, luxury, and power. Do but crush the spirit of persec severely whoever shall dare to disturb others on account of their creed, and you will see peace in their common country, and ambitious of producing good citizens. Holland, and of Prussia, furnish a proof of this: Calvinists, Lutherans, Catholics, Pietists, Socinians, Je peace, because they are equally protected by the sovereign; and none are punished, bu tranquillity of others.

§ 136. What the prince ought to do when the nation is resolved to change its religi

If in spite of the prince's care to preserve the established religion, the entire nation, or th should be disgusted with it, and desire to have it changed, the sovereign cannot do viole constrain them in an affair of this nature. The public religion was established for the safe the nation: and, besides its proving inefficacious when it ceases to influence the heart, tl no other authority than that which results from the trust reposed in him by the people, ar committed to him that of protecting whatever religion they think proper to profess.

§ 137. Difference of religion does not deprive a prince of his crown.

But at the same time it is very just that the prince should have the liberty of continuing in own religion, without losing his crown. Provided that he protect the religion of the state, t required of him. In general, a difference of religion can never make any prince forfeit his sovereignty, unless a fundamental law ordain it otherwise. The pagan Romans did not c Constantine when he embraced Christianity; nor did the Christians revolt from Julian aft

§ 138. Duties and rights of the sovereign reconciled with those of the subject.

We have established liberty of conscience for individuals (§ 128). However, we have als sovereign has a right, and is even under an obligation, to protect and support the religio suffer any person to attempt to corrupt or destroy it, — that he may even, according to c only one kind of public worship throughout the whole country. Let us reconcile those diff between which it maybe thought that there is some contradiction: — let us, if possible, o argument on so important and delicate a subject.

If the sovereign will allow the public exercise of only one and the same religion, let him c thing contrary to his conscience; let no subject be forced to bear a part in a worship whic profess a religion which he believes to be false; but let the subject on his part rest conte guilt of a shameful hypocrisy; let him, according to the light of his own knowledge, serve his own house — persuaded that Providence does not call upon him for public worship, in such circumstances that he cannot perform it without creating disturbances in the stat obey our sovereign, and avoid every thing that may be pernicious to society. These are the law of nature: the precept that enjoins public worship is conditional, and dependent c that worship may produce. Interior worship is necessary in its own nature; and we ought it, in all cases in which it is most convenient. Public worship is appointed for the edificati God: but it counteracts that end, and ceases to be laudable, on those occasions when it disturbances, and gives offence. If any one believes it absolutely necessary, let him quit is not allowed to perform it according to the dictates of his own conscience; let him go a profess the same religion with himself.

§ 139. The sovereign ought to have the inspection of the affairs of religion, and authority it.

The prodigious influence of religion on the peace and welfare of society incontrovertibly conductor of the state ought to have the inspection of what relates to it, and an authority teach it The end of society and of civil government necessarily requires that he who exe power should be invested with all the rights without which he could not exercise it in a m advantageous to the state. These are the prerogatives of majesty (§ 45), of which no so

himself, without the express consent of the nation. The inspection of the affairs of religio over its ministers, constitute, therefore, one of the most important of those prerogatives, power, the sovereign would never be able to prevent the disturbances that religion migh nor to employ that powerful engine in promoting the welfare and safety of the society. It strange that a multitude of men who united themselves in society for their common adva in tranquillity, labour to supply his necessities, promote his own perfection and happines a rational being: it would be very strange, I say, that such a society should not have a rig judgment in an affair of the utmost importance; to determine what they think most suitab religion; and to take care that nothing dangerous or hurtful be mixed with it. Who shall da independent nation, has, in this respect as in all others, a right to proceed according to t and when once she has made choice of a particular religion and worship, may she not c all the power she possesses of regulating and directing that religion and worship, and en observance?

Let us not be told that the management of sacred things belongs not to a profane hand. brought to the bar of reason, are found to be only vain declamations. There is nothing or and sacred than a sovereign; and why should God, who calls him by his providence to w and happiness of a whole nation, deprive him of the direction of the most powerful spring mankind? The law of nature secures to him this right, with all others that are essential to nothing is to be found in Scripture that changes this disposition. Among the Jews, neithe other person could make any innovation in the law of Moses; but the sovereign attended and could chock the high priest when he deviated from his duty. Where is it asserted in t that a Christian prince has nothing to do with religious affairs? Submission and obedienc powers are there clearly and expressly enjoined. It were in vain to object to us the exam who preached the gospel in opposition to the will of sovereigns: — whoever would devia rules, must have a divine mission, and establish his authority by miracles.

No person can dispute that the sovereign has a right to take care that nothing contrary t safety of the state be introduced into religion; and, consequently, he must have a right to and to point out what is to be taught, and what is to be suppressed in silence.

§ 140. He ought to prevent the abuse of the received religion.

The sovereign ought, likewise, to watch attentively, in order to prevent the established re employed to sinister purposes, either by making use of its discipline to gratify hatred, av passions, or presenting its doctrines in a light that may prove prejudicial to the state. Of devotions, and sublime speculations, what would be the consequences to society, if it en individuals whose intellects were weak, and whose hearts were easily governed? — the be a renunciation of the world, a general neglect of business and of honest labour. This saints would become an easy and certain prey to the first ambitious neighbour; or if suff would not survive the first generation; both sexes, consecrating their chastity to God, wo operate in the designs of their Creator, and to comply with the requisitions of nature and for the missionaries, it evidently appears, even from Father Charlevoix' History of New F labours were the principal cause of the ruin of the Hurons. That author expressly says, t those converts would think of nothing but the faith — that they forgot their activity and va arose between them and the rest of the nation, &c. That nation was, therefore, soon des whom they had before been accustomed to conquer.[7]

§ 141. The sovereign's authority over the ministers of religion.

To the prince's inspection of the affairs and concerns of religion we have joined an autho without the latter power, the former would be nugatory and ineffectual; — they are both principle. It is absurd, and contrary to the first foundations of society, that any citizens sh independence of the sovereign authority, in offices of such importance to the repose, the of the state. This is establishing two independent powers in the same society — an unfa disturbance, and ruin. There is but one supreme power in the state; the functions of the vary according to their different objects: — ecclesiastics, magistrates, and commanders officers of the republic, each in his own department; and all are equally accountable to tl

§ 142. Nature of this authority.

A prince cannot, indeed, justly oblige an ecclesiastic to preach a doctrine, or to perform the latter does not think agreeable to the will of God. But if the minister cannot, in this re will of his sovereign, he ought to resign his station, and consider himself as a man who i two things being necessary for the discharge of the duty annexed to it, viz. to teach and according to the dictates of his own conscience, and to conform to the prince's intention state. Who can forbear being filled with indignation, at seeing a bishop audaciously resis sovereign, and the decrees of the supreme tribunals, solemnly declaring that he thinks h God alone for the power with which he is intrusted?

§ 143. Rule to be observed with respect to ecclesiastics.

On the other hand, if the clergy are rendered contemptible, it will be out of their power to which their ministry was appointed. The rule that should be followed with respect to then a few words; — let them enjoy a large portion of esteem; but let them have no authority, to independence. In the first place, let the clergy, as well as every other order of men, be in every thing else, subject to the public power, and accountable to the sovereign for the let the prince take care to render the ministers of religion respectable in the eyes of the p them with the degree of authority necessary to enable them to discharge their duty with case of need, support them with the power he possesses. Every man in office ought to b authority commensurate to his functions; otherwise he will be unable to discharge them see no reason why the clergy should be excepted from this general rule; only the prince particularly watchful that they do not abuse their authority; the affair being altogether the most fruitful in dangers. If he renders the character of churchmen respectable, he should respect be not carried to such a superstitious veneration as shall arm the hand of an am powerful engine with which he may force weak minds into whatever direction he pleases become a separate body, they become formidable. The Romans (we shall often have oc them) — the wise Romans elected from among the senators their pontifex-maximus and of the altar; they knew no distinction between *clergy* and *laity*; nor had they a set of gow separate class from the rest of the citizens.

§ 144. Recapitulation of the reasons which establish the sovereign's rights in mat

If the sovereign be deprived of this power in matters of religion, and this authority over th preserve the religion pure from the admixture of any thing contrary to the welfare of the s cause it to be constantly taught and practised in the manner most conducive to the publi

especially, how can he prevent the disorders it may occasion, either by its doctrines or tl discipline is exerted? These cares and duties can only belong to the sovereign, and notl his discharging them.

Hence we see that the prerogatives of the crown, in ecclesiastical affairs, have been cor defended by the parliaments of France. The wise and learned magistrates, of whom thos composed, are sensible of the maxims which sound reason dictates on this subject. The it is not to suffer an affair of so delicate a nature, so extensive in its connections and infl momentous in its consequences, to be placed beyond the reach of the public authority. ecclesiastics presume to propose to the people, as an article of faith, some obscure and constitutes no essential part of the received religion? — shall they exclude from the chu who do not show a blind obedience? — shall they refuse them the sacraments, and eve and shall not the prince have power to protect his subjects, and preserve the kingdom fr schism?

The kings of England have asserted the prerogatives of their crown: they have caused tl acknowledged heads of the church: and this regulation is equally approved by reason a also conformable to ancient custom. The first Christian emperors exercised all the functi church; they made laws on subjects relating to it,[8] — summoned councils, and presided and deposed bishops, &c. In Switzerland there are wise republics, whose sovereign kno the supreme authority, have rendered the ministers of religion subject to it, without offeri consciences. They have prepared a formulary of the doctrines that are to be preached, a ecclesiastical discipline, such as they would have it exercised in the countries under the order that those who will not conform to these establishments may not devote themselve church. They keep all the ministers of religion in a lawful dependence, and suffer no exe discipline but under their own authority. It is not probable that religion will ever occasion republics.

§ 145. Pernicious consequences of the contrary opinion.

If Constantine and his successors had caused themselves to be formally acknowledged — and if Christian kings and princes had, in this instance, known how to maintain the rig would the world ever have witnessed those horrid disorders produced by the pride and a and ecclesiastics, emboldened by the weakness of princes, and supported by the super rivers of blood shed in the quarrels of monks, about speculative questions that were ofte almost always as useless to the salvation of souls as in themselves indifferent to the we citizens and even brothers armed against each other, — subjects excited to revolt, and l thrones? Tantum religio potuit suadere malorum! The history of the emperors Henry IV., II., and Louis of Bavaria, is well known. Was it not the independence of the ecclesiastics system in which the affairs of religion are submitted to a foreign power, — that plunged l of the league, and had nearly deprived her of the best and greatest of her kings? Had it strange and dangerous system, would a foreigner, Pope Sextus V., have undertaken to law of the kingdom, and declared the lawful heir incapable of wearing the crown? Would at other times and in other places,[9] the succession to the crown rendered uncertain by a want of a dispensation, whose validity was disputed, and which a foreign prelate claimed granting? Would that same foreigner have arrogated to himself the power of pronouncin the issue of a king? Would kings have been assassinated in consequence of a detestab part of France have been afraid to acknowledge the best of their kings,[11] until he had re Rome? And, would many other princes have been unable to give a solid peace to their p

decision could be formed within their own dominions on articles or conditions in which re
[12]

§ 146. The abuses particularized. 1. The power of the popes.

All we have advanced on this subject, so evidently flows from the notions of independen that it will never be disputed by any honest man who endeavours to reason justly. If a st determine every thing relating to religion, the nation is not free, and the prince is but half no medium in this case; either each state must, within its own territories, possess supre respect, as well as in all others, or we must adopt the system of Boniface VIII., and cons Catholic countries as forming only one state, of which the pope shall be the supreme he subordinate administrators of temporal affairs, each in his province, — nearly as the sult under the authority of the caliphs. We know that the above-mentioned pope had the pre Philip the Fair, king of France, *Scire te volumus, quod in spiritualibus et temporalibus no* would have thee know that thou art subject to us as well in temporals as in spirituals." A canon law[14] his famous bull Unam *sanctam*, in which he attributes to the church two swo power, spiritual and temporal, — condemns those who think otherwise, as men, who, af Manicheans, establish two principles, — and finally declares, that it is an *article of faith, to believe that every human creature is subject to the Roman pontiff.*.[15]

We shall consider the enormous power of the popes as the first abuse that sprung from divests sovereigns of their authority in matters of religion. This power in a foreign court o the independence of nations and the sovereignty of princes. It is capable of overturning is acknowledged, the sovereign finds it impossible to exercise his authority in such a ma advantage of the nation. We have already, in the last section, given several remarkable history presents others without number. The senate of Sweden having condemned Troll Upsal, for the crime of rebellion, to be degraded from his see, and to end his days in a m had the audacity to excommunicate the administrator Steno and the whole senate, and s rebuild, at their own expense, a fortress belonging to the archbishop, which they had ca and pay a fine of a hundred thousand ducats to the deposed prelate.[16] The barbarous C Denmark, took advantage of this decree, to lay waste the territories of Sweden, and to s most illustrious of her nobility. Paul V. thundered out an interdict against Venice, on acc laws made with respect to the government of the city, but which displeased that pontiff, republic into an embarrassment, from which all the wisdom and firmness of the senate f extricate it. Pius V., in his bull, in Cænna Domini, of the year 1567, declares, that all prin introduce into their dominions any new taxes, of what nature soever they be, or shall inc without having first obtained the approbation of the holy see, are ipso *facto* excommunic attack on the independence of nations, and a subversion of the authority of sovereigns?

In those unhappy times, those dark ages that preceded the revival of literature and the R attempted to regulate the actions of princes, under the pretence of conscience — to judg treaties — to break their alliances, and declare them null and void. But those attempts m resistance, even in a country which is generally thought to have then possessed valour a portion of knowledge. The pope's nuncio, in order to detach the Swiss from the interests monitory against all those cantons that favoured Charles VIII., declaring them excommu space of fifteen days they did not abandon the cause of that prince, and enter into the c formed against him; but the Swiss opposed this act, by protesting against it as an iniquit their protest to be publicly posted up in all the places under their jurisdiction: thus showi proceeding that was equally absurd and derogatory to the rights of sovereigns.[17] We sha other similar attempts, when we come to treat of the faith of treaties.

§ 147. 2. Important employments conferred by a foreign power.

This power in the popes has given birth to another abuse, that deserves the utmost atte
government. We see several countries in which ecclesiastical dignities, and all the highe
distributed by a foreign power — by the pope — who bestows them on his creatures, an
who are not subjects of the state. This practice is at once a violation of the nation's right
of common policy. A nation ought not to suffer foreigners to dictate laws to her, to interfe
deprive her of her natural advantages; and yet, how does it happen that so many states
foreigner to dispose of posts and employments of the highest importance to their peace
princes who consented to the introduction of so enormous an abuse were equally wantir
their people. In our times, the court of Spain has been obliged to expend immense sums
without danger, the peaceable possession of a right which essentially belonged to the n

§ 148. 3. Powerful subjects dependent on a foreign court.

Even in those states whose sovereigns have preserved so important a prerogative of the
great measure subsists. The sovereign nominates, indeed, to bishoprics and great bene
is not sufficient to enable the persons nominated to enter on the exercise of their functio
have bulls from Rome.[18] By this and a thousand other links of attachment, the whole bo
countries still depend on the court of Rome;

from it they expect dignities; from it that purple, which, according to the proud pretensior
invested with it, renders them equal to sovereigns. From the resentment of that court the
fear; and of course we see them almost invariably disposed to gratify it on every occasic
the court of Rome supports those clergy with all her might, assists them by her politics a
them against their enemies, and against those who would set bounds to their power — r
just indignation of their sovereign; and by this means attaches them to her still more stro
injury to the rights of society, and shocking the first elements of government, thus to suff
subjects, and even subjects in high posts, to be dependent on a foreign prince, and enti
Would a prudent sovereign receive men who preached such doctrines? There needed n
missionaries to be driven from China.

§ 149. 4. The celibacy of the priests.

It was for the purpose of more firmly securing the attachment of churchmen that the celi
invented. A priest, a prelate, already bound to the see of Rome by his functions and his
detached from his country, by the celibacy he is obliged to observe. He is not connectec
family: his grand interests are all centered in the church; and, provided he has the pope'
further concern: in what country soever he was born, Rome is his refuge, the centre of h
Everybody knows that the religious orders are a sort of papal militia, spread over the fac
support and advance the interests of their monarch. This is doubtless a strange abuse –
first laws of society. But this is not all: if the prelates were married, they might enrich the
good citizens; rich benefices affording them the means of giving their legitimate children
But what a multitude of men are there in convents, consecrated to idleness under the cl
useless to society in peace and war, they neither serve it by their labour in necessary pr
courage in arms: yet they enjoy immense revenues; and the people are obliged, by the s
furnish support for these swarms of sluggards. What should we think of a husbandman v
hornets, to devour the honey of his bees?[19] It is not the fault of the fanatic preachers of

all their devotees do not imitate the celibacy of the monks. How happened it that princes publicly to extol, as the most sublime virtue, a practice equally repugnant to nature, and Among the Romans, laws were made to diminish the number of those who lived in celib marriage:[20] but superstition soon attacked such just and wise regulations; and the Chris persuaded by churchmen, thought themselves obliged to abrogate them.[21] Several of th has censured those laws against celibacy — *doubtless*, says a great man,[22] with a *lauda of another life; but with very little knowledge of the affairs of this*. This great man lived in — he did not dare to assert, in direct terms, that voluntary celibacy is to be condemned conscience and the things of another life: — but it is certainly a conduct well becoming g conform ourselves to nature, to fulfil the views of the Creator, and to labour for the welfa person is capable of rearing a family, let him marry, let him be attentive to give his childr — in so doing, he will discharge his duty, and be undoubtedly in the road to salvation.

§ 150. 5. Enormous pretensions of the clergy. Pre-eminence.

The enormous and dangerous pretensions of the clergy are also another consequence places every thing relating to religion beyond the reach of the civil power. In the first plac under pretence of the holiness of their functions, have raised themselves above all othe principal magistrates: and, contrary to the express injunctions of their master, who said t *not the first places at feasts*, they have almost everywhere arrogated to themselves the the Roman church, obliges sovereigns to kiss his feet; emperors have held the bridle of bishops or even simple priests do not at present raise themselves above their prince, it i will not permit it: they have not always been so modest; and one of their writers has had assert, *that a priest is as much above a king as a man is above a beast.*[23] How many au and more esteemed than the one just quoted, have taken a pleasure in praising and ext attributed to the emperor Theodosius the First — *Ambrose has taught me the great diffe the empire* and the *priesthood!*

We have already observed that ecclesiastics ought to be honoured: but modesty, and ev characterize them: and does it become them to forget it in their own conduct while they would not mention a vain ceremonial, were it not attended with very material consequen which it inspires many priests, and the impressions it may make on the minds of the pec necessary to good order, that subjects should behold none in society so respectable as next to him, those on whom he has devolved a part of his authority.

§ 151. 6. Independence immunities.

Ecclesiastics have not stopped in so fair a path. Not contented with rendering themselve respect to their functions, — by the aid of the court of Rome, they have even attempted entirely, and in every respect, from all subjection to the political authority. There have be ecclesiastic could not be brought before a secular tribunal for any crime whatsoever.[24] T expressly, *It is indecent for laymen to judge a churchman.*[25] The popes Paul III., Pius V. excommunicated all lay judges who should presume to undertake the trial of ecclesiastic France have not been afraid to say on several occasions, *that they did not depend on a* and, in 1656, the general assembly of the French clergy had the assurance to use the fo *"The decree of council having been read, was disapproved* by the *assembly, because it over the* bishops, and *seems to subject their immunities to his judges*."[26] There are decr excommunicate whoever imprisons a bishop. According to the principles of the church o not the power of punishing an ecclesiastic with death, though a rebel or a malefactor; —

the ecclesiastical power; and the latter will, if it thinks proper, deliver up the culprit to the having degraded him.[27] History affords us a thousand examples of bishops who remaine but slightly chastised, for crimes for which nobles of the highest rank forfeited their lives. king of Portugal, justly inflicted the penalty of death on those noblemen who had conspir he did not dare to put to death the archbishop of Braga, the author of that detestable plo

For an entire body of men, numerous and powerful, to stand beyond the reach of the pu dependent on a foreign court, is an entire subversion of order in the republic, and a man sovereignty. This is a mortal stab given to society, whose very essence it is, that every c subject to the public authority. Indeed the immunity which the clergy arrogate to themsel so inimical to the natural and necessary rights of a nation, that the king himself has not t But churchmen will tell us they derive this immunity from God himself; but till they have f their pretensions, let us adhere to this certain principle, that God desires the safety of st will only be productive of disorder and destruction to them.

§ 152. 7. Immunity of church possessions.

The same immunity is claimed for the possessions of the church. The state might, no do possessions from every species of lax at a time when they were scarcely sufficient for th ecclesiastics; but, for that favour, these men ought to be indebted to the public authority always a right to revoke it, whenever the welfare of the state makes it necessary. It bein fundamental and essential laws of every society, that, in case of necessity, the wealth of to contribute proportionally to the common necessities — the prince himself cannot, of h a total exemption to a very numerous and rich body, without being guilty of extreme injus subjects, on whom, in consequence of that exemption, the whole weight of the burden w

The possessions of the church are so far from being entitled to an exemption on accoun consecrated to God, that, on the contrary, it is for that very reason they ought to be take and safety of the state. For nothing is more agreeable to the common Father of mankinc from ruin. God himself having no need of anything, the consecration of wealth to him is l such uses as shall be agreeable to him. Besides, a great part of the revenues of the chu of the clergy themselves, is destined for the poor. When the state is in necessity, it is do principal pauper, and the most worthy of assistance. We may extend this principle even cases, and safely assert that to supply a part of the current expenses of the state from tl church, and thus take so much from the weight of the people's burden, is really giving a to the poor, according to their original destination. But it is really contrary to religion and founders to waste in pomp, luxury, and epicurism, those revenues that ought to be cons the poor.[29]

§ 153. 8. Excommunication of men in office.

Not satisfied, however, with rendering themselves independent, the ecclesiastics undert under their dominion; and indeed they had reason to despise the stupid mortals who suf in their plan. Excommunication was a formidable weapon among ignorant and superstiti knew how to keep it within its proper bounds, nor to distinguish between the use and the arose disorders which have prevailed in some protestant countries. Churchmen have pr authority alone, to excommunicate men in high employments, magistrates whose functio society — and have boldly asserted that those officers of the state, being struck with the church, could no longer discharge the duties of their posts. What a perversion of order a not a nation be allowed to intrust its affairs, its happiness, its repose and safety, to the h

deems the most skilful and the most worthy of that trust? Shall the power of a churchma pleases, deprive the state of its wisest conductors, of its firmest supports, and rob the pr servants? So absurd a pretension has been condemned by princes, and even by prelate character and judgment. We read in the 171st letter of Ives de Chartres, to the Archbish royal capitularies (conformably to the thirteenth canon of the twelfth council of Toledo, h enjoined the priests to admit to their conversation all those whom the king's majesty had entertained at his table, though they had been excommunicated by them, or by others, i might not appear to reject or condemn those whom the king was pleased to employ in h

§ 154. 9. And of sovereigns themselves

The excommunications pronounced against the sovereigns themselves, and accompani of their subjects from their oaths of allegiance, put the finishing stroke to this enormous incredible that nations should have suffered such odious procedures. We have slightly t in §§ 145 and 346. The thirteenth century gives striking instances of it. Otho IV. for ende several provinces of Italy to submit to the laws of the empire, was excommunicated and by Innocent III. and his subjects absolved from their oath of allegiance. Finally, this unfo abandoned by the princes, was obliged to resign the crown to Frederic II. John, king of E to maintain the rights of his kingdom in the election of an archbishop of Canterbury, four the audacious enterprises of the same pope. Innocent excommunicated the king — laid under an interdict — had the presumption to declare John unworthy of the throne, and t from their oath of fidelity; he stirred up the clergy against him — excited his subjects to r king of France to take up arms to dethrone him — publishing, at the same time, a crusa would have done against the Saracens. The king of England at first appeared determine with vigour: but soon losing courage, he suffered himself to be brought to such an exces resign his kingdoms into the hands of the pope's legate, to receive them back from him, of the church, on condition of paying tribute.[30]

The popes were not the only persons guilty of such enormities: there have also been co in them. That of Lyons, summoned by Innocent IV., in the year 1245, had the audacity t Frederic II. to appear before them in order to exculpate himself from the charges brough threatening him with the thunders of the church if he failed to do it. That great prince did trouble about so irregular a proceeding. He said — "that the pope aimed at rendering hi a sovereign; but that, from all antiquity, the emperors themselves had called councils, w prelates rendered to them, as to their sovereigns, the respect and obedience that was th emperor, however, thinking it necessary to yield a little to the superstition of the times, c ambassadors to the council, to defend his cause; but this did not prevent the pope from and declaring him deprived of the crown. Frederic, like a man of a superior genius, laugh thunders of the Vatican, and proved himself able to preserve the crown in spite of the el Landgrave of Thuringia, whom the ecclesiastical electors, and many bishops, had presu the Romans — but who obtained little more by that election, than the ridiculous title of *ki*

I should never have done, were I to accumulate examples; but those I have already quo for the honour of humanity. It is an humiliating sight to behold the excess of folly to whic reduced the nations of Europe in those unhappy times.[32]

§ 155. 10. The clergy drawing every thing to themselves, and disturbing the order

By means of the same spiritual arms, the clergy drew everything to themselves, usurpe tribunals, and disturbed the course of justice. They claimed a right to take cognisance o *of sin, of which* (says Innocent III.[33]) *every man of sense must know* that the *cognisance ministry*. In the year 1329, the prelates of France had the assurance to tell King Philip d causes of any kind from being brought before the ecclesiastical courts, was depriving th *omnia ecclesiarum jura tollere*.[34] And accordingly, it was their aim to have to themselves disputes. They boldly opposed the civil authority, and made themselves feared by proce excommunication. It even happened sometimes, that as dioceses were not always confi political territory, a bishop would summon foreigners before his tribunal, for causes pure him to decide them, in manifest violation of the rights of nations. To such a height had th or four centuries ago, that our wise ancestors thought themselves obliged to take seriou stop to it, and stipulated, in their treaties, that *none* of the confederates *should be summ courts, for money debts, since every one ought to be contented with the ordinary modes observed in the country*[35] We find in history, that the Swiss on many occasions represse of the bishops and their judges.

Over every affair of life they extended their authority, under pretence that conscience wa obliged new-married husbands to purchase permission to he with their wives the first thr marriage.[36]

§ 156. 11. Money drawn to Rome.

This burlesque invention leads us to remark another abuse, manifestly contrary to the ru and to the duty a nation owes to herself; I mean the immense sums which bulls, dispens drew to Rome, from all the countries in communion with her. How much might be said o of indulgences! but it at last became ruinous to the court of Rome, which, by endeavouri suffered irreparable losses.

§ 157. 12. Laws and customs contrary to the welfare of states.

Finally, that independent authority intrusted to ecclesiastics, who were often incapable o true maxims of government, or too careless to take the trouble of studying them, and wh occupied by a visionary fanatacism, by empty speculations, and notions of a chimerical — that authority, I say, produced under the pretence of sanctity, laws and customs that state. Some of these we have noticed; but a very remarkable instance is mentioned by C Greek church," says he, "was long observed a canon, by which those who had killed an whatsoever were excommunicated for three years:"[37] a fine reward decreed for the hero country, instead of the crowns and triumphs with which pagan Rome had been accustor Pagan Rome became mistress of the world; she adorned her bravest warriors with crow embraced Christianity, soon became a prey to barbarians; her subjects, by defending he of a degrading excommunication. By devoting themselves to an idle life, they thought th path to heaven, and actually found themselves in the high road to riches and greatness.

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1. The former assassinated Henry III. of France; the latter murdered his successor, Hen

(52) With respect to these in England, and punishments for the violation, see 4 Bla. Com or a libel, stating our Saviour to have been an imposter, and a murderer in principle, and indictable misdemeanor at common law. *Rex v. Waddington*, 1 Barn. & Cress. 26. And a regulation, see 4 Bla. Com. 443. —

2. The Duke de Sully; see his Memoirs digested by M. de l'Ecluse, vol. v. pp. 135, 136.

3. Decorum injuriae diis curae. — *Tacit. Ann*. book i. c. 73.

4. Qui secus faxit, Deus ipse vindex erit. ... Qui non paruerit, capitale esto. — De Legib.

5. Quas (religiones) non metu, sed ea conjunctione quae est homini cum Deo, conserva *Legib*. lib. i. What a fine lesson does this pagan philosopher give to Christians!

(53) See the modern enactments, 4 Bla. Com. 440, 443; Id. 52, 53, in the notes. — C.

6. When the chief part of the people in the principality of Neufchatel and Vallangin embra religion in the sixteenth century Joan of Hochberg, their sovereign, continued to live in th faith, and nevertheless still retained all her rights. The state counsel enacted ecclesiastic constitutions similar to those of the reformed churches in Switzerland, and the princess g sanction.

7. History of New France, books v. vi. vii.

8. See the *Theodosian Code*.

9. In England under Henry VIII.

10. Henry III. and Henry IV. assassinated by fanatics, who thought they were serving Go slabbing their king.

11. Though Henry IV. relumed to the Romish religion, a great number of Catholics did no him until he had received the pope's absolution.

12. Many kings of France in the civil wars on account of religion.

13. *Turretin. Hist. Ecclesiast. Compendium*. p. 182, Where may also be seen the resolut France.

14. *Extravag. Commun*. lib. i. tit *De Majoritate & Obedientia*.

15. Gregory VII. endeavoured to render almost all the states of Europe tributary to him. I Hungary, Dalmatia, Russia, Spain, and Corsica, were absolutely his property, as succes were feudatory dependencies of the holy see. Greg. *Epist. Concil*. vol. vi. Edit, Harduin. emperor Henry IV. to appear before him, and make his defence against the accusations subjects: and, on the emperor's non-compliance, he deposed him. In short, here are the use of in addressing the council assembled at Rome on the occasion: "Agite nunc, quæs sanctissimi, ut omnis mundus intelligat et cognoscat, quia si potestis in cœlo ligare et so imperia, regna, principatus, ducatus, marchias, comitatus, et omnium hominum possess tollere unicique et concedere: Natal, Ales. Dissert. *Hist. Eccl.*, s. xi. and xii. p. 384. The c decides that the regal power is subordinate to the priesthood, "Imperium non præest sac

et ei obedire tenetur." Rubric. ch. vi. *De Major, et Obed*. "Et est multum allegabile," is the of the writer of the article.

16. *History of the Revolutions in Sweden*.

17. Vogel's *Historical and Political Treatise on the Alliances between France and the Th* and 36.

18. We may see, in the letters of Cardinal d'Ossat, what difficulties, what opposition, wh IV. had to encounter, when he wished to confer the archbishopric of Sens on Renauld d Bourges, who had saved France, by receiving that great prince into the Roman Catholic

19. This reflection has no relation to the religious houses in which literature is cultivated. afford to learned men a peaceful retreat, and that leisure and tranquility required in deep are always laudable, and may become very useful to the state.

20. The Papia-Poppæn law.

21. In the Theodosian Code.

22. The president de Montesquieu, in his Spirit of Laws.

23. Tantum sacerdos præstat regi, quantum homo bestiæ. Stanislaus Orichovius. — Vid *ad Baron. Annal Sect 2, et Thomas Nat. ad. Lancell*.

24. The congregation of inmunities has decided that the cognisance of causes against e the crime of high treason, exclusively belongs to the spiritual court: — "Cognitio causæ etiam pro delicto læsæ majestatis, feri debet a judice ecclesiastico." RICCI *Synops. Decr Congreg. Immunit*. p. 105. — A constitution of pope Urban VI. pronounces those sovere guilty of sacrilege, who shall banish an ecclesiastic from their territories, and declares th incurred the sentence of excommunication. *Cap. II. De Fora. Compet in VII*. To this imm indulgence shown by the ecclesiastical tribunals to the clergy, on whom they never inflic punishments, even for the most atrocious crimes. The dreadful disorders that arose from produced their own remedy in France, where the clergy were at length subjected to the all transgressions that are injurious to society. See Papon *Arrets Notables*, book i. tit. v.

25. Indecorum est laicos homines viros ecclesiasticos judicare. Can. in nona actione 22.

26. See *the Statement of Facts on the System of Independence of Bishops*.

27. In the year 1725, a parish priest, of the canton of Lucerne, having refused to appear council, was, for his contumacy, banished from the canton. Hereupon his diocesan, the had the assurance to write to the council that they had infringed the ecclesiastical immu unlawful to subject the ministers of God to the decisions of the temporal power." In these sanctioned by the approbation of the pope's nuncio and the court of Rome. But the cour supported the rights of sovereignty, and, without engaging with the bishop in a controve been derogatory to their dignity, answered him — "Your lordship quotes various passag the fathers, which we, on our side, might also quote in our own favour, if it were necessa question of deciding the contest by dint of quotation. But let your lordship rest assured th summon before us a priest, our natural subject, who encroaches on our prerogatives — error — to exhort him to a reform of his conduct — and, in consequence of his obstinate repeated citations, to banish him from our dominions. We have not the least doubt that t

and we are determined to defend it. And indeed it ought not to be proposed to any sove in a contest with a refractory subject like him — to refer the cause to the decision of a th be — and run the risk of being condemned to tolerate in the state a person of such char soever he might be invested." &c. The bishop of Constance had proceeded so far as to the canton, dated December 18th, 1725, that "churchmen, as soon as they have receive to be natural subjects, and are thus released from the bondage in which they lived befor *Dispute between the Pope and the Canton of Lucerne*, p. 65.

28. Revolutions of Portugal.

29. See *Letters on the Pretensions of the Clergy*.

30. Matthew Paris. — *turretin. Compend. Hist. Eccles. Secul. xiii*.

31. Heiss's *History of the Empire*, book ii., chap. svi.

32. Sovereigns were sometimes found, who, without considering future consequences, encroachments when they were likely to prove advantageous to their own interests. Thu France, wishing to invade the territories of the Count of Toulouse, under pretence of ma Albigenses, requested of the pope, among other things, "that he would Issue a bull decl Raymonds, father and son, together with all their adherents, associates, and allies, had deprived of all their possessions." VELLY'S *Hist. of France*, vol. iv. p. 33. Of a similar natu the following remarkable fact: — Pope Martin IV. excommunicated Peter, king of Arrago forfeited his kingdom, all his lands, and even the regal dignity, and pronounced his subje oath of allegiance. He even excommunicated all who should acknowledge him as king, any of the duties of a subject. He then offered Arragon and Catalonia to the Count de Va Philip the Bold, on condition that he and his successors should acknowledge themselve see, take an oath of fealty to the pope, and pay him a yearly tribute. The king of France and prelates of his kingdom, to deliberate on the pope's offer, and they advised him to a blindness of kings and their counsellors!" exclaims, with good reason, a modern historia perceive, that, by thus accepting kingdoms from the hands of the pope, they strengthen pretensions to the right of deposing themselves." VELLY'S *History of France*, vol. vi. p. 19

33. *In cap*. Novit. *de Judicis*.

34. See Leibnitii Codex, *Juris Gent. Diplomat*. Dipl. LXVII. § 9.

35. *Ibid*. Alliance of Zurich with the cantons of Uri, Schweitz, and Underwald, dated May

36. See *A Regulation of Parliament in an arret of March 19, 1409. Spirit of Laws*. These were the very best nights they could pitch upon; they would have made no great profit o

37. *De Jure Belli et Pacis*. lib. ii. cap. xxiv. He quotes Basil ad Amphiloch, x. 13. Zonarca iii.

CHAP. XIII.
OF JUSTICE AND POLITY.

§ 158. A nation ought to make justice reign.

NEXT to the care of religion, one of the principal duties of a nation relates to justice. The utmost attention in causing it to prevail in the state, and to take proper measures for hav every one in the most certain, the most speedy, and the least burdensome manner. This the object proposed by uniting in civil society, and from the social compact itself. We hav men have bound themselves by the engagements of society, and consented to divest th of a part of their natural liberty, only with a view of peaceably enjoying what belongs to t justice with certainly. The nation would therefore neglect her duty to herself, and deceive did not seriously endeavour to make the strictest justice prevail. This attention she owes repose, and prosperity. Confusion, disorder, and despondency will soon arise in a state, not sure of easily and speedily obtaining justice in all their disputes; without this, the civi extinguished, and the society weakened.

§159. To establish good laws.

There are two methods of making justice flourish — good laws, and the attention of the executed. In treating of the constitution of a state (Chap. III.), we have already shown th establish just and wise laws, and have also pointed out the reasons why we cannot here particulars of those laws. If men were always equally just, equitable, and enlightened, th doubtless be sufficient for society. But ignorance, the illusions of self-love, and the violer often render these sacred laws ineffectual. And we see, in consequence, that all well-go perceived the necessity of enacting positive laws. There is a necessity for general and f each may clearly know his own rights, without being misled by self-deception. Sometime to deviate from natural equity, in order to prevent abuses and frauds, and to accommod circumstances; and, since the sensation of duty has frequently so little influence on the l sanction becomes necessary, to give the laws their full efficacy. Thus is the law of natur law.[1] It would be dangerous to commit the interests of the citizens to the mere discretion dispense justice. The legislator should assist the understanding of the judges, force thei inclinations, and subdue their will, by simple, fixed, and certain rules. These, again are t

§ 160. To enforce them.

The best laws are useless if they be not observed. The nation ought then to take pains t cause them to be respected and punctually executed: with this view she cannot adopt m extensive, or too effectual; for hence, in a great degree, depend her happiness, glory, ar

§ 161. Functions and duties of the prince in this respect.

We have already observed (§ 41) that the sovereign, who represents a nation and is inv is also charged with its duties. An attention to make justice flourish in the state must the principal functions of the prince; and nothing can be more worthy of the sovereign majes Justinian thus begins his book of the Institutes: *Imperitoriam majestatem non solum arm etiam legibus oportet esse armatam, ut utrumque tempus, et bellorum et pacis, recte po*

degree of power intrusted by the nation to the head of the state, is then the rule of his du in the administration of justice. As the nation may either reserve the legislative power to select body, — it has also a right, if it thinks proper, to establish a supreme tribunal to ju independently of the prince. But the conductor of the state must naturally have a conside legislation, and it may even be entirely intrusted to him. In this last case, it is he who mu laws, dictated by wisdom and equity: but in all cases, he should be the guardian of the la over those who are invested with authority, and confine each individual within the bound

§ 162. How he is to dispense justice.

The executive power naturally belongs to the sovereign, — to every conductor of a peop be invested with it, in its fullest extent, when the fundamental laws do not restrict it. Whe established, it is the prince's province to have them put in execution. To support them w a just application of them to all cases that present themselves, is what we call rendering duty of the sovereign, who is naturally the judge of his people. We have seen the chiefs perform these functions themselves: but this custom becomes inconvenient, and even ir kingdom.

§ 163. He ought to appoint enlightened and upright judges.

The best and safest method of distributing justice is by establishing judges, distinguishe knowledge, to take cognisance of all the disputes that may arise between the citizens. It prince to take upon himself this painful task: he cannot spare sufficient time either for the of all causes, or even for the acquisition of the knowledge necessary to decide them. As personally discharge all the functions of government, he should, with a just discernment such as he can successfully perform, and are of most importance, — intrusting the other magistrates who shall execute them under his authority. There is no inconvenience in tru lawsuit to a body of prudent, honest, and enlightened men: — on the contrary it is the be possibly adopt; and he fully acquits himself of the duty he owes to his people in this part them judges adorned with all the qualities suitable to ministers of justice: he has then no watch over their conduct, in order that they may not neglect their duty.

§ 164. The ordinary courts should determine causes relating to the revenue.

The establishment of courts of justice is particularly necessary for the decision of all fisc say, all the disputes that may arise between the subjects on the one hand, and, on the o exert the profitable prerogatives of the prince. It would be very unbecoming, and highly i take upon him to give judgment in his own cause: — he cannot be too much on his guar of interest and self-love; and even though he were capable of resisting their influence, st expose his character to the rash judgments of the multitude. These important reasons o his submitting the decision of causes in which he is concerned, to the ministers and cou attached to his person. In all well-regulated states, in countries that are really states, and a despot, the ordinary tribunals decide all causes in which the sovereign is a party, with those between private persons.

§ 165. There ought to be established supreme courts of justice wherein causes sh determined.

The end of all trials at law is justly to determine the disputes that arise between the citize are prosecuted before an inferior judge, who examines all the circumstances and proofs very proper, that, for the greater safety, the party condemned should be allowed to appe tribunal, where the sentence of the former judge may be examined, and reversed, if it ap But it is necessary that this supreme tribunal should have the authority of pronouncing a without appeal: otherwise the whole proceeding will be vain, and the dispute can never l

The custom of having recourse to the prince himself, by laying a complaint at the foot of cause has been finally determined by a supreme court, appears to be subject to very gre is more easy to deceive the prince by specious reasons, than a number of magistrates v knowledge of the laws; and experience too plainly shows what powerful resources are d intrigue in the courts of kings.

If this practice be authorized by the laws of the state, the prince ought always to fear tha only formed with a view of protracting a suit, and procrastinating a just condemnation. A sovereign will not admit them without great caution; and if he reverses the sentence that ought not to try the cause himself, but submit it to the examination of another tribunal, as France. The ruinous length of these proceedings authorizes us to say that it is more con advantageous to the state, to establish a sovereign tribunal, whose definitive decrees sh a reversal even by the prince himself. It is sufficient for the security of justice that the sov eye over the judges and magistrates, in the same manner as he is bound to watch all th state, — and that he have power to call to an account and to punish such as are guilty o

§ 166. The prince ought to preserve the forms of justice.

When once this sovereign tribunal is established, the prince cannot meddle with its decr is absolutely obliged to preserve and maintain the forms of justice. Every attempt to viola assumption of arbitrary power, to which it cannot be presumed that any nation could eve subject itself.

When those forms are defective, it is the business of the legislator to reform them. This l in a manner agreeable to the fundamental laws, will be one of the most salutary benefits bestow upon his people. To preserve the citizens from the danger of ruining themselves rights, — to repress and destroy that monster, chicanery, — will be an action more glorio wise man, than all the exploits of a conqueror.

§ 167. The prince ought to support the authority of the judges.

Justice is administered in the name of the sovereign; the prince relies on the judgment o good reason, looks upon their decisions as sound law and justice. His part in this branch then to maintain the authority of the judges, and to cause their sentences to be executed would be vain and delusive; for justice would not be rendered to the citizens.

§ 168. Of distributive justice. The distribution of employments and rewards.

There is another kind of justice named *attributive* or *distributive*, which in general consis according to his deserts. This virtue ought to regulate the distribution of public employm rewards in a state. It is, in the first place, a duty the nation owes to herself, to encourage excite every one to virtue by honours and rewards, and to intrust with employments sucl capable of properly discharging them. In the next place, it is a duty the nation owes to in herself duly attentive to reward and honour merit. Although a sovereign has the power o favours and employments to whomsoever he pleases, and nobody has a perfect right to yet a man who by intense application has qualified himself to become useful to his coun rendered some signal service to the state, may justly complain if the prince overlooks th useless men without merit. This is treating them with an ingratitude that is wholly unjusti only to extinguish emulation. There is hardly any fault that in the course of time can bec a state: it introduces into it a general relaxation; and its public affairs, being managed by cannot fail to be attended with ill-success. A powerful state may support itself for some t but at length it falls into decay; and this is perhaps one of the principal causes of the rev great empires. The sovereign is attentive to the choice of those he employs, while he fe watch over his own safety, and to be on his guard: but when once he thinks himself elev greatness and power as leaves him nothing to fear, he follows his own caprice, and all p distributed by favour.

§ 169. Punishment of transgressors.

The punishment of transgressors commonly belongs to distributive justice, of which it is good order requires that malefactors should be made to suffer the punishments they hav would clearly establish this on its true foundations, we must recur to first principles. The which in a state of nature belongs to each individual, is founded on the right of personal a right to preserve himself from injury, and by force to provide for his own security again attack him. For this purpose he may, when injured, inflict a punishment on the aggresso of putting it out of his power to injure him for the future, or of reforming him, as of restrai all those who might be tempted to imitate him. Now, when men unite in society, — as th thenceforward charged with the duty of providing for the safety of its members, the indiv their private right of punishing. To the whole body, therefore, it belongs to avenge privat protects the citizens at large. And as it is a moral person, capable also of being injured, for its own safety, by punishing those who trespass against it; — that is to say, it has a r delinquents. Hence arises the right of the sword, which belongs to a nation, or to its con society use it against another nation, they make war; when they exert it in punishing an exercise vindictive justice. Two things are to be considered in this part of government, – execution.

§ 170. Criminal laws

It would be dangerous to leave the punishment of transgressors entirely to the discretion invested with authority. The passions might interfere in a business which ought to be reg and wisdom. The punishment pre-ordained for an evil action, lays a more effectual restra a vague fear, in which they may deceive themselves. In short, the people, who are comm sight of a suffering wretch, are better convinced of the justice of his punishment, when it themselves. Every well-governed state ought then to have its laws for the punishment of

the legislative power, whatever that be, to establish them with justice and wisdom. But th for giving a general theory of them: we shall therefore only say that each nation ought, in instance, to choose such laws as may best suit her peculiar circumstances.

§ 171. Degree of punishment.

We shall only make one observation, which is connected with the subject in hand, and re punishment. From the foundation even of the right of punishing, and from the lawful end arises the necessity of keeping them within just bounds. Since they are designed to proc state and of the citizens, they ought never to be extended beyond what that safety requi punishment is just since the transgressor knew before-hand the penalty he was about to barbarous language, repugnant to humanity, and to the law of nature, which forbids our unless they lay us under the necessity of inflicting it in our own defence and for our own then a particular crime is not much to be feared in society, as when the opportunities of rare, or when the subjects are not inclined to it, too rigorous punishments ought not to be Attention ought also to be paid to the nature of the crime; and the punishment should be degree of injury done to the public tranquillity and the safety of society, and the wickedn criminal.

These maxims are not only dictated by justice and equity, but also as forcibly recommer the art of government. Experience shows us that the imagination becomes familiarized t frequently presented to it. If, therefore, terrible punishments are multiplied, the people w affected by them, and at length contract, like the Japanese, a savage and ferocious cha spectacles will then no longer produce the effect designed; for they will cease to terrify th these examples as with honours: — a prince who multiplies titles and distinctions to exc them, and makes an injudicious use of one of the most powerful and convenient springs we recollect the practice of the ancient Romans with respect to criminals — when we ref attention to spare the blood of the citizens, — we cannot fail to be struck at seeing with h now-a-days shed in the generality of states. Was then the Roman republic but ill govern and greater security reign among us? — It is not so much the cruelty of the punishments in enforcing the penal code, that keeps mankind within the bounds of duty: and if simple check the hand of the murderer?

§ 172. Execution of the laws.

The execution of the laws belongs to the conductor of the state: he is intrusted with the indispensably obliged to discharge it with wisdom. The prince then is to see that the crim execution; but he is not to attempt in his own person to try the guilty. Besides the reasor alleged in treating of civil causes, and which are of still greater weight in regard to those to appear in the character of a judge pronouncing sentence on a wretched criminal, wou majesty of the sovereign, who ought in every thing to appear as the father of his people. commonly received in France, that the prince ought to reserve to himself all matters of fa the magistrates to execute the rigour of justice. But then justice ought to be exercised in his authority. A good prince will keep a watchful eye over the conduct of the magistrates observe scrupulously the established forms, and will himself take care never to break th sovereign who neglects or violates the forms of justice in the prosecution of criminals, m towards tyranny; and the liberty of the citizens is at an end when once they cease to be be condemned, except in pursuance of the laws, according to the established forms, and judges. The custom of committing the trial of the accused party to commissioners chose court, was the tyrannical invention of some ministers who abused the authority of their m

and odious procedure, a famous minister always succeeded in destroying his enemies.
never give his consent to such a proceeding, if he has sufficient discernment to foresee
ministers may make of it. If the prince ought not to pass sentence himself — for the sam
to aggravate the sentence passed by the judges.

§ 173. Right of pardoning

The very nature of government requires that the executor of the laws should have the po
them when this may be done without injury to any person, and in certain particular cases
the state requires an exception. Hence the right of granting pardons is one of the attribu
in his whole conduct, in his severity as well as his mercy, the sovereign ought to have no
than the greater advantage of society. A wise prince knows how to reconcile justice with
of the public safety with that pity which is due to the unfortunate.

§ 174. Internal police.

The internal police consists in the attention of the prince and magistrates to preserve ev
regulations ought to prescribe whatever will best contribute to the public safety, utility, an
those who are invested with authority cannot be too attentive to enforce them. By a wise
accustoms the people to order and obedience, and preserves peace, tranquillity, and co
citizens. The magistrates of Holland are said to possess extraordinary talents in this resp
prevails in their cities, and even their establishments in the Indies, than in any other plac

§ 175. Duel, or single combat.

Laws and the authority of the magistrates having been substituted in the room of private
a nation ought not to suffer individuals to attempt to do themselves justice, when they ca
magistrates. Duelling — that species of combat, in which the parties engage on account
is a manifest disorder repugnant to the ends of civil society. This frenzy was unknown to
and Romans, who raised to such a height the glory of their arms: we received it from ba
knew no other law but the sword. Louis XIV. deserves the greatest praise for his endeav
savage custom.(54)

§ 176. Means of putting a stop to this disorder.

But why was not that prince made sensible that the most severe punishments were inca
rage for duelling? They did not reach the source of the evil; and since a ridiculous prejud
the nobility and gentlemen of the army, that a man who wears a sword is bound in hono
own hand the least injury he has received; this is the principle on which it is proper to pr
destroy this prejudice, or restrain it by a motive of the same nature. While a nobleman, b
shall be regarded by his equals as a coward and as a man dishonoured — while an offic
shall be forced to quit the service — can you hinder his fighting by threatening him with
he will place a part of his bravery in doubly exposing his life in order to wash away the a
while the prejudice subsists, while a nobleman or an officer cannot act in opposition to it
the rest of his life, I do not know whether we can justly punish him who is forced to subm
whether he be very guilty with respect of morality. That worldly honour, be it as false and
please, is to him a substantial and necessary possession, since without it he can neither
nor exercise a profession that is often his only resource. When, therefore, any insolent fe
ravish from him that chimera so esteemed and so necessary, why may he not defend it

property against a robber? As the state does not permit an individual to pursue with arm usurper of his property, because he may obtain justice from the magistrate — so, if the s him to draw his sword against the man from whom he has received an insult, he ought r measures that the patience and obedience of the citizen who has been insulted shall no him. Society cannot deprive man of his natural right of making war against an aggressor with some other means of securing himself from the evil his enemy would do him. On all where the public authority cannot lend us its assistance, we resume our original and nat defence. Thus a traveller may, without hesitation, kill the robber who attacks him on the would, at that moment, be in vain for him to implore the protection of the laws and of the chaste virgin would be praised for taking away the life of a brutal ravisher who attempted desires.

Till men have got rid of this Gothic idea, that honour obliges them, even in contempt of t their personal injuries with their own hands, the most effectual method of putting a stop t prejudice would perhaps be to make a total distinction between the offended and the ag the former without difficulty, when it appears that his honour has been really attacked — without mercy on the party who has committed the outrage. And as to those who draw tl punctilios, for little piques, or railleries in which honour is not concerned, I would have th By this means a restraint would be put on those peevish and insolent folks who often red moderate men to a necessity of chastising them. Every one would be on his guard, to av as the aggressor; and with a view to gain the ad vantage of engaging in duel (if unavoida the penalties of the law, both parties would curb their passions; by which means the qua and be attended with no consequences. It frequently happens that a bully is at bottom a himself haughty airs, and offers insult, in hopes that the rigour of the law will oblige peop insolence. And what is the consequence? — A man of spirit will run every risk, rather tha insulted: the aggressor dares not recede: and a combat ensues, which would not have t could have once imagined that there was nothing to prevent the other from chastising hi — the offended person being acquitted by the same law that condemns the aggressor.

To this first law, whose efficacy would, I doubt not, be soon proved by experience, it wou following regulations: — 1. Since it is an established custom that the nobility and military armed, even in time of peace, care should be taken to enforce a rigid observance of the privilege of wearing swords to these two orders of men only. 2. It would be proper to est court, to determine, in a summary manner, all affairs of honour between persons of thes marshals' court in France is in possession of this power; and it might be invested with it manner and to a greater extent. The governors of provinces and strong places, with thei colonels and captains of each regiment — might, in this particular, act as deputies to the courts, each in his own department, should alone confer the right of wearing a sword. Ev sixteen or eighteen years of age, and every soldier at his entrance into the regiment, sho appear before the court to receive the sword. 3. On its being there delivered to him, he s it is intrusted to him only for the defence of his country; and care might be taken to inspi of honour. 4. It appears to me of great importance to establish, for different cases, punis nature. Whoever should so far forget himself, as, either by word or deed, to insult a man might be degraded from the rank of nobility, deprived of the privilege of carrying arms, a corporal punishment — even the punishment of death, according to the grossness of the observed, no favour should be shown to the offender in case a duel was the consequen time the other party should stand fully acquitted. Those who fight on slight occasions, I w condemned to death, unless in such cases where the author of the quarrel — he, I mean as to draw his sword, or to give the challenge — has killed his adversary. People hope t when it is too severe; and, besides, a capital punishment in such cases is not considere them be ignominiously degraded from the rank of nobility and the use of arms, and forev

of wearing a sword, without the least hope of pardon: this would be the most proper met spirit, provided that due care was taken to make a distinction between different offender degree of the offence. As to persons below the rank of nobility, and who do not belong t quarrels should be left to the cognisance of the ordinary courts, which in case of bloodsh offenders according to the common laws against violence and murder. It should be the s any quarrel that might arise between a commoner and a man entitled to carry arms: it is ordinary magistrate to preserve older and peace between those two classes of men, wh points of honour to settle the one with the other. To protect the people against the violer the sword, and to punish the former severely if they should dare to insult the latter, shou present, the business of the magistrate,

I am sanguine enough to believe that these regulations, and this method of proceeding, would extirpate that monster, duelling, which the most severe laws have been unable to the source of the evil, by preventing quarrels, and oppose a lively sensation of true and and punctilious honour which occasions the spilling of so much blood. It would be worthy make a trial of it: its success would immortalize his name: and by the bare attempt he w gratitude of his people.

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1. See a dissertation on this subject, in the Loisir *Philosophique*, p. 71.

(54) As to the legal view of the offence of duelling in England, see 6 East Rep. 260; 2 Ea Ald. 462 and Burn's J. 266 ed. tit — "Duelling,"

CHAP. XIV.
THE THIRD OBJECT OF A GOOD GOVERNMENT, — TO FORTIFY I EXTERNAL ATTACKS.

§ 177. A nation ought to fortify itself against external attacks.

WE have treated at large of what relates to the felicity of a nation: the subject is equally complicated. Let us now proceed to a third division of the duties which a nation owes to of good government. One of the ends of political society is to defend itself with its combi external insult or violence (§ 15). If the society is not in a condition to repulse an aggress — it is unequal to the principal object of its destination, and cannot long subsist. The nat such a state as to be able to repel and humble an unjust enemy: this is an import duty, w own perfection, and even of its preservation, imposes both on the state and its conducto

§ 176. National strength.

It is its strength alone that can enable a nation to repulse all aggressors, to secure its rig everywhere respectable. It is called upon by every possible motive to neglect no circums place it in this happy situation. The strength of a state consists in three things, — the nu military virtues, and their riches. Under this last article we may comprehend fortresses, a ammunition, and, in general, all that immense apparatus at present necessary in war, si procured with money.

§ 179. Increase of population.(55)

To increase the number of the citizens as far as it is *possible or convenient*, is then one claim the attentive care of the state or its conductor: and this will be successfully effecte obligation to procure the country *a plenty of the necessaries of life*, —; by enabling the p families with the fruits *of their labour*, —; by giving proper directions that the poorer class husbandmen, be not harassed and oppressed by the levying of taxes, — by governing v manner which, instead of disgusting and dispersing the present subjects of the state, sh ones, — and, finally, by encouraging marriage, after the example of the Romans. That n every thing capable of increasing and supporting their power, made wise laws against c already observed in § 149), and granted privileges and exemptions to married men, part had numerous families: laws that were equally wise and just, since a citizen who rears s has a right to expect more favour from it than the man who chooses to live for himself al

Every thing tending to depopulate a country is a defect in a state not overstocked with ir already spoken of convents and the celibacy of priests. It is strange that establishments to the duties of a man and citizen, as well as to the advantage and safety of society, sho favour, and that princes, instead of opposing them, as it was their duty to do, should hav enriched them. A system of policy, that dextrously took advantage of superstition to exte princes and subjects astray, caused them to mistake their real duties, and blinded sover respect to their own interest. Experience seems at length to have opened the eyes of na conductors; the pope himself (let us mention it to the honour of Benedict XIV.) endeavor so palpable an abuse; by his orders, none of his dominions are any longer permitted to t before they are twenty-five years of age. That wise pontiff gives the sovereigns of his co example; he invites them to attend at length to the safety of their states, — to narrow at entirely close up, the avenues of that sink that drains their dominions. Take a view of Ge countries which are in all other respects upon an equal fooling, you will see the protesta populous as the catholic ones. Compare the desert state of Spain with that of England, t inhabitants: survey many fine provinces, even in France, destitute of hands to till the soi whether the many thousands of both sexes, who are now locked up in convents, would r country infinitely better by peopling those fertile plains with useful cultivators? It is true, i cantons of Switzerland are nevertheless very populous: but this is owing to a profound p the government, which abundantly repair the losses occasioned by convents. Liberty is a greatest evils; it is the soul of a state, and was with great justice called by the Romans *a*

§ 180. Valour.

A cowardly and undisciplined multitude are incapable of repulsing a warlike enemy: the consists less in the number than the military virtues of its citizens. Valour, that heroic virt undauntedly encounter danger in defence of our country, is the firmest support of the sta formidable to its enemies, and often even saves it the trouble of defending itself. A state this respect is once well established, will be seldom attacked, if it does not provoke othe enterprises. For above two centuries the Swiss have enjoyed a profound peace, while th resounded all around them, and the rest of Europe was desolated by the ravages of war foundation of valour; but various causes may animate it, weaken it, and even destroy it, seek after and cultivate a virtue so useful; and a prudent sovereign will take all possible subjects with it: — his wisdom will point out to him the means. It is this generous flame t French nobility: fired with a love of glory and of their country, they fly to battle, and chee the field of honour. To what an extent would they not carry their conquests, if that kingdo

nations less warlike! The Briton, generous and intrepid, resembles a lion in combat; and of Europe surpass in bravery all the other people upon earth.

§ 181. Other military virtues.

But valour alone is not always successful in war: constant success can only be obtained all the military virtues. History shows us the importance of ability in the commanders, of frugality, bodily strength, dexterity, and being inured to fatigue and labour. These are so which a nation ought carefully to cultivate. It was the assemblage of all these that raised Romans, and rendered them the masters of the world. It were a mistake to suppose that those illustrious exploits of the ancient Swiss — the victories of Morgarten, Sempach, La many others. The Swiss not only fought with intrepidity; they studed the art of war, — th its toils, — they accustomed themselves to the practice of all its manœuvres, — and the made them submit to a discipline which could alone secure to them that treasure, and sa troops were no loss celebrated for their discipline than their bravery. Mezeray, after havi the behaviour of the Swiss at the battle of Dreux, adds these remarkable words; "in the officers of both sides who were present, the Swiss, in that battle, under every trial, agair against French and against Germans, gained the palm for military discipline, and acquir being the best infantry in the world."[3]

§ 182. Riches.

Finally, the wealth of a nation constitutes a considerable part of its power, especially in r war requires such immense expenses. It is not simply in the revenues of the sovereign, that the riches of a nation consist: its opulence is also rated from the wealth of individual nation rich, when it contains a great number of citizens in easy and affluent circumstanc private persons really increases the strength of the nation; since they are capable of cor towards supplying the necessities of the state, and that, in a case of extremity, the sover all the riches of his subjects in the defence, and for the safety of the state, in virtue of the with which he is invested, as we shall hereafter show. The nation, then, ought to endeav public and private riches that are of such use to it: and this is a new reason for encourag other nations, which is the source from whence they flow, — and a new motive for the s watchful eye over the different branches of foreign trade carried on by his subjects, in or preserve and protect the profitable branches, and cut off those that occasion the exporta

§ 183. Public revenues and taxes.

It is requisite that the state should possess an income proportionate to its necessary exp may be supplied by various means, — by lands reserved for that purpose, by contributio kinds, &c. — but of this subject we shall treat in another place.

§ 184. The nation ought not to increase its power by illegal means.

We have here summed up the principal ingredients that constitute that strength which a augment and improve. Can it be necessary to add the observation, that this desirable ob pursued by any other methods than such as are just and innocent? A laudable end is no the means; for these ought to be in their own nature lawful. The law of nature cannot cor forbids an action as unjust or dishonest in its own nature, it can never permit it for any pu therefore in those cases where that object, in itself so valuable and so praiseworthy, car

employing unlawful means, it ought to be considered as unattainable, and consequently we shall show, in treating of the just causes of war, that a nation is not allowed to attack aggrandize itself by subduing and giving law to the latter. This is just the same as if a pri attempt to enrich himself by seizing his neighbour's property.

§ 185. Power is but relative.

The power of a nation is relative, and ought to be measured by that of its neighbours, or whom it has any thing to fear. The state is sufficiently powerful when it is capable of cau respected, and of repelling whoever would attack it. It may be placed in this happy situat up its own strength equal or even superior to that of its neighbours, or by preventing the predominant and formidable power. But we can not show here in what cases and by wh justly set bounds to the power of another. It is necessary, first, to explain the duties of a in order to combine them afterwards with its duties towards itself. For the present, we sh nation, while it obeys the dictates of prudence and wise policy in this instance, ought ne maxims of justice.

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(55) This subject, and the necessity for endeavouring to discourage the increase of popu years, occasioned the publication of numerous works. See them commented upon, 1 Ch 1, 2. &c.

1. It is impossible to suppress the emotions of indignation that arise on reading what sor church have written against marriage, and in favour of celibacy. "Videtur esse matrimoni (says Tertulian): sed utrobique est communicatio.[2] Ergo, inquis, et primas nuptios damn quoniam et ipsæ constant ex eo quod est stuprum." EXHORT. CASTIT. And thus Jerome; " differentiam inter uxorem et scortum, quod tolerabiliu, sit uni esse prostitutam quam plur

2. *Contaminatio.* —; EDIT.

3. *History of France*, vol. ii. p. 668.

CHAP. XV.
OF THE GLORY OF A NATION.

§ 186. Advantages of glory.

THE glory of a nation is intimately connected with its power, and indeed forms a conside brilliant advantage that procures it the esteem of other nations, and renders it respectab nation whose reputation is well established — especially one whose glory is illustrious – sovereigns; they desire its friendship, and are afraid of offending it. Its friends, and those so, favour its enterprises; and those who envy its prosperity are afraid to show their ill-w

§ 187. Duty of the nation.

It is, then, of great advantage to a nation to establish its reputation and glory; hence, this most important of the duties it owes to itself. True glory consists in the favourable opinio and discernment; it is acquired by the virtues or good qualities of the head and the heart

which are the fruits of those virtues. A nation may have a two-fold claim to it; — first, by national character, by the conduct of those who have the administration of its affairs, an authority and government; and, secondly, by the merit of the individuals of whom the na

§ 188. Duty of the prince.

A prince, a sovereign of whatever kind, being bound to exert every effort for the good of obliged to extend its glory as far as lies in his power. We have seen that his duty is to la perfection of the state, and of the people who are subject to him; by that means he will r reputation and glory. He ought always to have this object in view, in every thing he unde he makes of his power. Let him, in all his actions, display justice, moderation, and greatı thus acquire for himself and his people a name respected by the universe, and not less The glory of Henry IV, saved France. In the deplorable state in which he found affairs, h animation to the loyal part of his subjects, and encouraged foreign nations to lend him th enter into an alliance with him against the ambitious Spaniards. In his circumstances, a estimation would have been abandoned by all the world; people would have been afraid ruin.

Besides the virtues which constitute the glory of princes as well as of private persons, th decorum that particularly belong to the supreme rank, and which a sovereign ought to ol greatest care. He cannot neglect them without degrading himself, and casting a stain up thing that emanates from the throne ought to bear the character of purity, nobleness, an idea do we conceive of a people, when we see their sovereign display, in his public acts sentiment by which a private person would think himself disgraced! All the majesty of the person of the prince; what, then, must become of it, if he prostitutes it, or suffers it to be who speak and act in his name? The minister who puts into his master's mouth a langua deserves to be turned out of office with every mark of ignominy.

§ 189. Duty of the citizens.

The reputation of individuals is, by a common and natural mode of speaking and thinkin the whole nation. In general, we attribute a virtue or a vice to a people, when that vice o frequently observed among them. We say that a nation is warlike, when it produces a gr warriors; that it is learned, when there are many learned men among the citizens; and th when it produces many able artists. On the other hand, we call it cowardly, lazy, or stupi characters are more numerous there than elsewhere. The citizens, being obliged to labo to promote the welfare and advantage of their country, not only owe to themselves the c good reputation, but they also owe it to the nation, whose glory is so liable to be influenc Newton, Descartes, Leibnitz, and Bernouilli, have each done honour to his native countr benefited it by the glory he acquired. Great ministers, and great generals — an Oxenstie Marlborough, a Ruyter — serve their country in a double capacity, both by their actions the other hand, the fear of reflecting a disgrace on his country will furnish the good citize abstaining from every dishonourable action. And the prince ought not to suffer his subje up to vices capable of bringing infamy on the nation, or even of simply tarnishing the bri has a right to suppress and to punish scandalous enormities, which do a real injury to th

§ 190. Example of the Swiss.

The example of the Swiss is very capable of showing how advantageous glory may prov high reputation they have acquired for their valour, and which they still gloriously suppor in peace for above two centuries, and rendered all the powers of Europe desirous of the while dauphin, was witness of the prodigies of valour they performed at the battle of St. and he immediately formed the design of closely attaching to his interest so intrepid a na hundred gallant heroes, who on this occasion attacked an army of between fifty and sixt troops, first defeated the vanguard of the Armagnacs, which was eighteen thousand stro engaging the main body of the army, they perished almost to a man, without being able victory.[2] But, besides their terrifying the enemy, and preserving Switzerland from a ruino rendered her essential service by the glory they acquired for her arms. A reputation for a no less advantageous to that nation; and they have at all times been jealous of preservi punished with death that unworthy soldier who betrayed the confidence of the duke of M prince to the French, when, to escape them, he had disguised himself in the habit of the himself in their ranks as they were marching out of Novara.[3]

§ 191. Attacking the glory of a nation is doing her an injury.

Since the glory of a nation is a real and substantial advantage, she has a right to defend advantages. He who attacks her glory does her an injury; and she has a right to exact o arms, a just reparation. We cannot, then condemn those measures, sometimes taken by or avenge the dignity of their crown. They are equally just and necessary. If, when they too lofty pretensions, we attribute them to a vain pride, we only betray the grossest igno reigning: and despise one of the firmest supports of the greatness and safety of a state.

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(56) This observation properly refers to *ante*, § 124, p. 54.

1. See the *Memoirs of Comines*.

2. Of this small army, "eleven hundred and fifty-eight were counted dead on the field, an Twelve men only escaped, who were considered by their countrymen as cowards that h shame to the honour of dying for their country." *History of the Helvetic Confederacy*, by p. 250. — Tschudi, p. 425.

3. Vogel's Historical and political Treatise of the Alliances between France and the Thirt

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CHAP. XVI.
OF THE PROTECTION SOUGHT BY A NATION, AND ITS VOLUNTARY A FOREIGN POWER.

§ 192. Protection.

WHEN a nation is not capable of preserving herself from insult and oppression, she may of a more powerful state. If she obtains this by only engaging to perform certain articles, return for the safety obtained, — to furnish her protector with troops, — and to embark i

concern, — but still reserving to herself the right of administering her own government a simple treaty of protection, that does not all derogate from her sovereignty, and differs n treaties of alliance, otherwise than as it creates a difference in the dignity of the contract

§ 193. Voluntary submission of one nation to another.

But this matter is sometimes carried still farther; and, although a nation is under an oblig the utmost care the liberty and independence it inherits from nature, yet when it has not itself, and feels itself unable to resist its enemies, it may lawfully subject itself to a more certain conditions agreed to by both parties: and the compact or treaty of submission wil measure and rule of the rights of each. For, since the people who enter into subjection r naturally belongs to them, and transfer it to the other nation, they are perfectly at liberty conditions they please to this transfer; and the other party, by accepting their submissio engages to observe religiously all the clauses of the treaty.

§ 194. Several kinds of submission.

This submission may be varied to infinity, according to the will of the contracting parties: inferior nation a part of the sovereignty, restraining it only in certain respects, or it may t the superior nation shall become the sovereign of the other, — or, finally, the lesser nati with the greater, in order thenceforward to form with it but one and the same state: and t former will have the same privileges as those with whom they are united. The Roman hi examples of each of these three kinds of submission, — 1. The allies of the Roman peo inhabitants of Latium were for a long time, who, in several respects, depended on Rome were governed according to their own laws, and by their own magistrates; — 2. The cou Roman provinces, as Capua, whose inhabitants submitted absolutely to the Romans; — which Rome granted the freedom of the city. In after times the emperors granted that pri subject to the empire, and thus transformed all their subjects into citizens.

§ 195. Right of the citizens when the nation submits to a foreign power.

In the case of a real subjection to a foreign power, the citizens who do not approve this to submit to it: — they ought to be allowed to sell their effects and retire elsewhere. For, a society does not oblige me to follow its fate, when it dissolves itself in order to submit t submitted to the society as it then was, to live in that society as the member of a soverei another; I am bound to obey it, while it remains a political society: but, when it divests its order to receive its laws from another state, it breaks the bond of union between its mem them from their obligations.

§ 196. These compacts annulled by the failure of protection.

When a nation has placed itself under the protection of another that is more powerful, or subjection to it with a view to receiving its protection, — if the latter does not effectually p case of need, it is manifest, that, by failing in its engagements, it loses all the rights it ha convention, and that the other, being disengaged from the obligation it had

contracted, re-enters into the possession of all its rights, and recovers its independence. observed that this takes place even in cases where the protector does not fail in his eng want of good faith, but merely through inability. For, the weaker nation having submitted

obtaining protection, — if the other proves unable to fulfil that essential condition, the co
the weaker resumes its rights, and may, if it thinks proper, have recourse to a more effe
the dukes of Austria, who had acquired a right of protection, and in some sort a sovereig
Lucerne, being unwilling or unable to protect it effectually, that city concluded an alliance
cantons; and the dukes having carried their complaint to the emperor, the inhabitants of
they had used the natural right common to all men, by which every one is permitted to e
his own safety when he is abandoned by those who are obliged to grant him assistance.

§ 197. Or by the infidelity of the party protected.

The law is the same with respect to both the contracting parties: if the party protected do
engagements with fidelity, the protector is discharged from his; he may afterwards refus
declare the treaty broken, in case the situation of his affairs renders such a step advisab

§ 198. And by the encroachments of the protector.

In virtue of the same principle which discharges one of the contracting parties when the
engagements, if the more powerful nation should assume a greater authority over the w
treaty of protection or submission allows, the latter may consider the treaty as broken, a
according to its own discretion. If it were otherwise, the inferior nation would lose by a co
only formed with a view to its safety; and if it were still bound by its engagements when i
them and openly violates his own, the treaty would, to the weaker party, prove a downrig
However, as some people maintain, that, in this case, the inferior nation has only the rig
imploring foreign aid, — and particularly as the weak cannot take too many precautions
who are skilful in colouring over their enterprises, — the safest way is to insert in this kir
declaring it null and void whenever the superior power shall arrogate to itself any rights n
by the treaty.

§ 199. How the right of the nation protected is lost by its silence.

But if the nation that is protected, or that has placed itself in subjection on certain conditi
encroachments of that power from which it has sought support — if it makes no oppositi
preserves a profound silence, when it might and ought to speak — its patient acquiesce
of time a tacit consent that legitimates the rights of the usurper. There would be no stabi
men, and especially in those of nations, if long possession, accompanied by the silence
concerned, did not produce a degree of right. But it must be observed, that silence, in or
consent, ought to be voluntary. If the inferior nation proves that violence and fear prever
testimonies of its opposition, nothing can be concluded from its silence, which therefore
usurper.

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1. Haque populum Campanum, urbemque Capuam, agros, delubra deum, divina himan
vestram, patres conscripti, populique Romani ditionem dedimus. LIVY, book vii. c. 31.

2. We speak here of a nation that has rendered itself subject to another, and not of one
itself with another state, so as to constitute a part of it. The latter stands in the same pre
other citizens. Of this case we shall treat in the following chapter.

3. See *The History of Switzerland*. The United Provinces, having been obliged to rely wh efforts in defending themselves against Spain, would no longer acknowledge any depen from which they had received no assistance. GROTIUS, *Hist. of the Troubles in the* Low 627.

CHAP. XVII.
HOW A NATION MAY SEPARATE ITSELF FROM THE STATE OF MEMBER, OR RENOUNCE ITS ALLEGIANCE TO ITS SOVEREIGN V PROTECTED.

§ 200. Difference between the present case and those in the preceding chapter.

WE have said that an independent nation, which, without becoming a member of anothe rendered itself dependent on, or subject to it, in order to obtain protection, is released fr soon as that protection fails, even though the failure happen through the inability of the p not to conclude that it is precisely the same case with every nation that cannot obtain sp protection from its natural sovereign or the state of which it is a member. The two cases the former, a free nation becomes subject to another state, — not to partake of all the ot form with it an absolute union of interests (for, if the more powerful state were willing to favour, the weaker one would be incorporated, not subjected), — but to obtain protectio of its liberty, without expecting any other return. When, therefore, the sole and indispens subjection is (from what cause soever) not complied with, it is free from its engagements itself obliges it to take fresh methods to provide for its own security. But the several men state, as they all equally participate in the advantages it procures, are bound uniformly t entered into mutual engagements to continue united with each other, and to have on all common cause. If those who are menaced or attacked might separate themselves from avoid a present danger, every state would soon be dismembered and destroyed. It is, th necessary for the safety of society, and even for the welfare of all its members, that eac might resist a common enemy, rather than separate from the others; and this is consequ necessary conditions of the political association. The natural subjects of a prince are bo other reserve than the observation of the fundamental laws; — it is their duty to remain f his, on the other hand, to take care to govern them well: both parties have but one comr and the prince together constitute but one complete whole, one and the same society. It and necessary condition of the political society, that the subjects remain united to their p power.(57)

§ 201. Duty of the members of a state, or subjects of a prince, who are in danger.

When, therefore, a city or a province is threatened or actually attacked, it must not, for th danger, separate itself from the state of which it is a member, or abandon its natural prir state or the prince is unable to give it immediate and effectual assistance. Its duty, its po oblige it to make the greatest efforts, in order to maintain itself in its present state. If it is necessity, that irresistible law, frees it from its former engagements, and gives it a right t conqueror, in order to obtain the best terms possible. If it must either submit to him or pe but that it may and even ought to prefer the former alternative? Modern usage is conforr — a city submits to the enemy when it cannot expect safety from a vigorous resistance; fidelity to him; and its sovereign lays the blame on fortune alone.

§ 202. Their right when they are abandoned.

The state is obliged to defend and preserve all its members (§ 17); and the prince owes his subjects. If, therefore, the state or the prince refuses or neglects to succour a body o exposed to imminent danger, the latter, being thus abandoned, become perfectly free to safety and preservation in whatever manner they find most convenient, without paying tl who, by abandoning them, have been the first to fail in their duty. The country of Zug, be Swiss in 1352, sent for succour to the duke of Austria, its sovereign; but that prince, beir discourse concerning his hawks, at the time when the deputies appeared before him, wo condescend to hear them. Thus abandoned, the people of Zug entered into the Helvetic of Zurich had been in the same situation the year before. Being attacked by a band of re were supported by the neighbouring nobility, and the house of Austria, it made applicatic empire: but Charles IV., who was then emperor, declared to its deputies that he could nc which Zurich secured its safety by an alliance with the Swiss.[2] The same reason has au general, to separate themselves entirely from the empire, which never protected them ir had not owned its authority for a long time before their independence was acknowledge the whole Germanic body, at the treaty of Westphalia.

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(57) Nemo potest exure patriam. This is part of natural allegiance, which no individual ca part of the country where he resides is absolutely conquered by a foreign power, and the acknowledged the severance. See 1 *Chitty's Commercial Law*. 129.

1. See Etterlin, Simler, and De Watteville.

2. See the same historians, and Bullinger, Stumpf, Tschudi and Stettler.

CHAP. XVIII.
OF THE ESTABLISHMENT OF A NATION IN A COUNT

§ 203. Possession of a country by a nation.

HITHERTO we have considered the nation merely with respect to itself, without any regar possesses. Let us now see it established in a country which becomes its own property a earth belongs to mankind in general; destined by the Creator to be their common habita them with food, they all possess a natural right to inhabit it, and derive from it whatever i subsistence, and suitable to their wants. But when the human race became extremely m no longer capable of furnishing spontaneously, and without culture, sufficient support for could it have received proper cultivation from wandering tribes of men continuing to pos therefore became necessary that those tribes should fix themselves somewhere, and ap themselves portions of land, in order that they might, without being disturbed in their lab the fruits of their industry, apply themselves to render those lands fertile, and thence der Such must have been the origin of the rights of *property* and *dominion*: and it was a suff their establishment. Since their introduction, the right which was common to all mankind restricted to what each lawfully possesses. The country which a nation inhabits, whether emigrated thither in a body, or the different families of which it consists were previously s

country, and, there uniting, formed themselves into a political society, — that country, I s
the nation, and it has a peculiar and exclusive right to it.

§ 204. Its right over the parts in its possession.

This right comprehends two things: 1. The *domain* virtue of which the nation alone may
supply of its necessities, may dispose of it as it thinks proper, and derive from it every ac
of yielding. 2. The *empire*, or the right of sovereign command, by which the nation direct
pleasure every thing that passes in the country.

§ 205. Acquisition of the sovereignty in a vacant country.

When a nation takes possession of a country to which no prior owner can lay claim, it is
acquiring the *empire* or sovereignly of it, at the same time with the *domain*. For, since, th
independent, it can have no intention, in settling in a country, to leave to others the right
those rights that constitute sovereignty. The whole space over which a nation extends its
the seal of its jurisdiction, and is called its *territory*.

§ 206. Another manner of acquiring the empire in a free country.

If a number of free families, scattered over an independent country, come to unite for the
nation or state, they altogether acquire the sovereignty over the whole country they inha
previously in possession of the domain — a proportional share of it belonging to each in
since they are willing to form together a political society, and establish a public authority
of the society shall be bound to obey, it is evidently their intention to attribute to that pub
command over the whole country.

§ 207. How a nation appropriates to itself a desert country.

All mankind have an equal right to things that have not yd fallen into the possession of a
things belong to the person who first takes possession of them. When, therefore, a natio
uninhabited, and without an owner, it may lawfully take possession of it: and, after it has
known its will in this respect, it cannot be deprived of it by another nation. Thus navigato
discovery, furnished with a commission from their sovereign, and meeting with islands o
desert state, have taken possession of them in the name of their nation: and this title ha
respected, provided it was soon after followed by a real possession.

§ 208. A question on this subject.

But it is questioned whether a nation can, by the bare act of taking possession, appropri
which it does not really occupy, and thus engross a much greater extent of territory than
cultivate. It is not difficult to determine that such a pretension would be an absolute infrir
rights of men, and repugnant to the views of nature, which, having destined the whole ea
of mankind in general, gives no nation a right to appropriate to itself a country, except fo
making use of it, and not of hindering others from deriving advantage from it. The law of
not acknowledge the property and sovereignly of a nation over any uninhabited countrie
which it has really taken actual possession, in which it has formed settlements, or of whi
in effect, when navigators have met with desert countries in which those of other nations
visits, erected some monument to show their having taken possession of them, they hav

to that empty ceremony as to the regulation of the popes, who divided a great part of the crowns of Castile and Portugal.[1]

There is another celebrated question, to which the discovery of the New World has princ asked whether a nation may lawfully take possession of some part of a vast country, in v but eratic nations whose scanty population is incapable of occupying the whole? We hav 81), in establishing the obligation to cultivate the earth, that those nations cannot exclus themselves more land than they have occasion for, or more than they are able to settle a unsettled habitation in those immense regions cannot be accounted a true and legal pos people of Europe, too closely pent up at home, finding land of which the savages stood and of which they made no actual and constant use, were lawfully entitled to take posse with colonies. The earth, as we have already observed, belongs to mankind in general, a furnish them with subsistence: if each nation had, from the beginning, resolved to appro country, that the people might live only by hunting, fishing, and wild fruits, our globe wou maintain a tenth part of its present inhabitants. We do not, therefore, deviate from the vi confining the Indians within narrower limits, However, we cannot help praising the mode Puritans who first settled in New England; who, notwithstanding their being furnished wit sovereign, purchased of the Indians the land of which they intended to take possession. example was followed by William Penn, and the colony of Quakers that he conducted to

§ 210. Colonies.

When a nation takes possession of a distant country, and settles a colony there, that co from the principal establishment, or mother-country, naturally becomes a part of the stat ancient possessions. Whenever, therefore, the political laws, or treaties, make no distinc every thing said of the territory of a nation, must also extend to its colonies.

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1. Those decrees being of a very singular nature, and hardly anywhere to be found but i the reader will not be displeased with seeing here an extract of them.

The bull of Alexander VI. by which he gives to Ferdinand and Isabella, king and queen c the New World, discovered by Christopher Columbus.

"Motu proprio" (says the pope), "non ad vestram, vel alterius pro vobis super hoc nobis c instantiam, sed de nostra mera liberalitate, et ex certa scientia, ac de apostolicæ potesta insulas et terras firmas, inventas et inveniendas, detectas et detegendas, versus occide meridiem." (drawing a line from one pole to the other, at a hundred leagues to the west c "auctoritate omnipotentis Dei nobis in beato Petro concessa, ac vicariatis Jesu Christi, q cum omnibus illarum dominiis, civitatibus, &c., vobis, hæredibusque et successoribus ve Legionis regibus, in perpetuum tenore præsentium donamus, concedimus, assignamus, successores, præfatos, illorum dominos, cum plena libera et omni moda potestate, auct facimus, constituimus, et deputamus," The pope excepts only what might be in the poss Christian prince before the year 1493; as if he had a greater right to give what belonged especially what was possessed by the American nations. He adds: "Ac quibuscunque pe dignitatis, etiam imperialis et regalis, status, gradus, ordinis, vel conditionis, sub excomm sententiæ pœna, quam eo ipso, si contra fecerint, incurrant, districtius inhibemus ne ad inventas et inveniendas, detactas et detegendas, versus occidentem et meridiem..... pr vel quavis alia de causa, accedere præsumant absque vestra ac hæredum et successor

præditcorum licentia speciali, &c. Datum Romæ apud S. Petrum anno 1493. IV. nonas M anno primo." *Leibnitti Codex Juris Gent. Diplomat.* 203.

See ibid. (Diplom. 165), the bull by which pope Nicholas V. gave to Alphonso, king of Pc Henry, the sovereignty of Guinea, and the power of subduing the barbarous nations of tl forbidding any other to visit that country without the permission of Portugal. This act is d of January, 1454.

2. History of the English Colonies in North America.

CHAP. XIX.
OF OUR NATIVE COUNTRY, AND SEVERAL THINGS THAT RE

§ 211. What is our country.

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

§ 212. Citizens and natives.

The citizens are the members of the civil society; bound to this society by certain duties, authority, they equally participate in its advantages. The natives, or natural-born citizens country, of parents who are citizens. As the society cannot exist and perpetuate itself otl children of the citizens, those children naturally follow the condition of their fathers, and rights. The society is supposed to desire this, in consequence of what it owes to its own presumed, as matter of course, that each citizen, on entering into society, reserves to hi becoming members of it. The country of the fathers is therefore that of the children; and citizens merely by their tacit consent. We shall soon see whether, on their coming to the they may renounce their right, and what they owe to the society in which they were born be of the country, it is necessary that a person be born of a father who is a citizen; for, if 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 sett country. Bound to the society by their residence, they are subject to the laws of the state and they are obliged to defend it, because it grants them protection, though they do not rights of citizens. They enjoy only the advantages which the law or custom gives them. T inhabitants are those who have received the right of perpetual residence. These are a ki inferior order, and are united to the society without participating in all its advantages. Th condition of their fathers; and, as the state has given to these the right of perpetual resic passes to their posterity.

§ 214. Naturalization.(58)

A nation, or the sovereign who represents it, may grant to a foreigner the quality of citize into the body of the political society. This is called naturalization. There are some states cannot grant to a foreigner all the rights of citizens, — for example, that of holding public consequently, he has the power of granting only an imperfect naturalization. It is here a fundamental law, which limits the power of the prince. In other states, as in England and cannot naturalize a single person, without the concurrence of the nation, represented by there are states, as, for instance, England, where the single circumstance of being born 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 law question in several countries, and their regulations must be followed.(59) By the law of r follow the condition of their fathers, and enter into all their rights (§ 212); the place of birt in this particular, and cannot, of itself, furnish any reason for taking from a child what nat say "of itself," for, civil or political laws may, for particular reasons, ordain otherwise. But father has not entirely quitted his country in order to settle elsewhere. If he has fixed his country, he is become a member of another society, at least as a perpetual inhabitant; a 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 thei in the country: if it is on the open sea, there is no reason to make a distinction between t are born in the country; for, naturally, it is our extraction, not the place of our birth, that g the children are born in a vessel belonging to the nation, they may be reputed born in its natural to consider the vessels of a nation as parts of its territory, especially when they s since the state retains its jurisdiction over those vessels. And as, according to the comm this jurisdiction is preserved over the vessels, even in parts of the sea subject to a foreig children born in the vessels of a nation are considered as born in its territory. For the sa in a foreign vessel are reputed born in a foreign country, unless their birth took place in a own nation; for, the port is more particularly a part of the territory; and the mother, thoug board a foreign vessel, is not on that account out of the country. I suppose that she and quitted their native country to settle elsewhere.

§ 217. Children born in the armies of the state.

For the same reasons also, children born out of the country, in the armies of the state, o minister at a foreign court, are reputed born in the country; for a citizen who is absent wi service of the state, but still dependent on it, and subject to its jurisdiction, cannot be co quitted its territory.

§ 218. Settlement.

Settlement is a fixed residence in any place, with an intention of always staying there. A establish his settlement in any place, unless he makes sufficiently known his intention o

tacitly or by an express declaration. However, this declaration is no reason why, if he aft mind, he may not transfer his settlement elsewhere. In this sense, a person who stops a business, even though he stay a long time, has only a simple habitation there, but has n 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 we are considered as retaining it, till we have abandoned it, in order to choose another. *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 pare since a man's country is the place where, at the time of his birth, his parents had their se is the state of which his father was then a member, which comes to the same point; for, nation, is to become a member of it, at least as a perpetual inhabitant, if not with all the We may, however, consider the country of a vagrant to be that of his child, while that va 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 celebrate man may quit his *country or the society of which he is a* member.(60) — 1. The children ties to the society in which they were born; they are under an obligation to show themse protection it has afforded to their fathers, and are in a great measure indebted to it for th They ought, therefore, to love it, as we have already shown (§ 122), to express a just gra its services as far as possible, by serving it in turn. We have observed above (§ 212), th enter into the society of which their fathers were members. But every man is born free; a when come to the years of discretion, may examine whether it be convenient for him to j which he was destined by his birth. If he does not find it advantageous to remain in it, he on making it a compensation for what it has done in his favour,[1] and preserving, as far a engagements will allow him, the sentiments of love and gratitude he owes it. A man's ob country may, however, change, lessen, or entirely vanish, according as he shall have qu with good reason, in order to choose another, or has been banished from it deservedly of 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 t character; his obligations, like those of others who expressly and formally enter into eng become stronger and more extensive: but the case is very different with respect to him o speaking. When a society has not been formed for a determinate time, it is allowable to separation can take place without detriment to the society. A citizen may therefore quit t a member, provided it be not in such a conjuncture when he cannot abandon it without o But we must here draw a distinction between what may in strict justice be done, and wha conformable to every duty — in a word, between the *internal*, and the external obligation right to quit his country, in order to settle in any other, when by that step he does not end his country. But a good citizen will never determine on such a step without necessity, or reasons. It is taking a dishonourable advantage of our liberty, to quit our associates upo having derived considerable advantages from them; and this is the case of every citizen country.

3. As to those who have the cowardice to abandon their country in a time of danger, and themselves, instead of defending it, they manifestly violate the social compact, by which parties engaged to defend themselves in a united body, and in concert; they are infamou state has a right to punish severely.[2]

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

In a time of peace and tranquillity, when the country has no actual need of all her childre the state, and that of the citizens, requires that every individual be at liberty to travel on l he be always ready to return, whenever the public interest recalls him. It is not presume bound himself to the society of which he is a member, by an engagement never to leave interest of his affairs requires it, and when he can absent himself without injury to his co

§ 222. Variation of the political laws in this respect, (61) These must be obeyed.

The political laws of nations vary greatly in this respect. In some nations, it is at all times actual war, allowed to every citizen to absent himself, and even to quit the country altog thinks proper without alleging any reason for it. This liberty, contrary in its own nature to of society, can nowhere be tolerated but in a country destitute of resources and incapab wants of its inhabitants. In such a country there can only be an imperfect society; for civi capable of enabling all its members to procure, by their own labour and industry, all the unless it effects this, it has no right to require them to devote themselves entirely to it. In every citizen is left at liberty to travel abroad on business, but not to quit his country alto express permission of the sovereign. Finally, there are states where the rigour of the go any one whatsoever to go out of the country without *passports* in form, which are even r great difficulty. In all these cases, it is necessary to conform to the laws, when they are r authority. But, in the last-mentioned case, the sovereign abuses his power, and reduces insupportable slavery, if he refuses them permission to travel for their own advantage, w them without inconvenience, and without danger to the state. Nay, it will presently appea occasions, he cannot, under any pretext, detain persons who wish to quit the country, w abandoning it for ever.

§ 223. Cases in which a citizen has a right to quit his country.

There are cases in which a citizen has an absolute right to renounce his country, and ab right founded on reasons derived from the very nature of the social compact. 1. If the cit subsistence in his own country, it is undoubtedly lawful for him to seek it elsewhere. For being entered into only with a view of facilitating to each of its members the means of su of living in happiness and safety, it would be absurd to pretend that a member, whom it such things as are most necessary, has not a right to leave it.

2. If the body of the society, or he who represents it, absolutely fail to discharge their obl citizen, the latter may withdraw himself. For, if one of the contracting parties does not ob engagements, the other is no longer bound to fulfil his; as the contract is reciprocal betw members. It is on the same principle, also, that me society may expel a member who vio

3. If the major part of the nation, or the sovereign who represents it, attempt to enact law which the social compact cannot oblige every citizen to submission, those who are aver right to quit the society, and go settle elsewhere. For instance, if the sovereign, or the gr

will allow but one religion in the state, those who believe and profess another religion ha and take with mem their families and effects. For, they cannot be supposed to have sub the authority of men, in affairs of conscience;[3] and if the society suffers and is weakened blame must be imputed to the intolerant party; for it is they who fail in their observance c it is they who violate it, and force the others to a separation. We have elsewhere touche instances of this third case, — that of a popular state wishing to have a sovereign (§ 33) 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, an 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 mer natural right, which is certainly reserved to each individual in the very compact itself by v formed.

2. The liberty of emigration may, in certain cases, be secured to the citizens by a fundan The citizens of Neufchatel and Valangin in Switzerland may quit the country and carry o 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 so to leave full liberty to those of his subjects, who, for a certain reason — on account of re desire to transplant themselves into me territories of that power. There are such treaties princes, particularly for cases in which religion is concerned. In Switzerland likewise, a c wishes to emigrate to Fribourg, and there profess the religion of the place, and, reciproc Fribourg who, for a similar reason, is desirous of removing to Bern, has a right to quit his carry off with him all his property.

It appears from several passages in history, particularly the history of Switzerland and th countries, that the law of nations, established there by custom some ages back, did not receive the subjects of another state into the number of its citizens. This vicious custom foundation than the slavery to which the people were then reduced. A prince, a lord, ran the head of his private property; he calculated their number as he did that of his flocks; a 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 individuals may lawfully implore the protection of the power who is willing to receive ther Frederic William, king of Prussia, grant his protection to the emigrant Protestants of Salt

§227. Supplicants.

The name of *supplicants* is given to all fugitives who implore the protection of a sovereig prince they have quitted. We cannot solidly establish what the law of nations determines 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 settlement, or constrained to quit it, but without a mark of infamy. Banishment is a simila mark of infamy annexed.[4] Both may be for a limited time, or for ever. If an exile, or banis settlement in his own country, he is exiled or banished from his country. It is, however, p common usage applies also the terms exile and banishment to the expulsion of a foreig a country where he had no settlement, and to which he is, either for a limited time, or for return.

As a man may be deprived of any right whatsoever by way of punishment — exile, whic right of dwelling in a certain place, may be inflicted as a punishment: banishment is alwa infamy cannot be set on any one, but with a view of punishing him for a fault, either real

When the society has excluded one of its members by a perpetual banishment, he is on lands of that society, and it cannot hinder him from living wherever else he pleases; for, out, it can no longer claim any authority over him. The contrary, however, may take plac conventions between two or more states. Thus, every member of the Helvetic confedera subject out of the territories of Switzerland in general; and in this case the banished pers to live 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 settle punishment, or to avoid some calamity — and involuntary, when it is the effect of a supe

Sometimes a particular place is appointed, where the exiled person is to remain during h space is particularized, which he is forbid to enter. These various circumstances and mo 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 conseque somewhere on earth. He derives this right from nature, or rather from its Author, who ha the habitation of mankind; and the introduction of property cannot have impaired the righ to the use of such things as are absolutely necessary — a right which he brings with him 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 forge with respect to each particular country. For, on the other hand, every nation has a right t foreigner into her territory, when he cannot enter it without exposing the nation to evider a manifest injury, what she owes to herself, the care of her own safety, gives her this rig

natural liberty, it belongs to the nation to judge, whether her circumstances will or will no
of that foreigner (Prelim. § 16). He cannot, then, settle by a full right, and as he pleases,
chosen, but must ask permission of the chief of the place; and, if it is refused, it is his du

§ 231. Duty of nations towards them.

However, as property could not be introduced to the prejudice of the right acquired by ev
not being absolutely deprived of such things as are necessary — no nation can, without
even a perpetual residence to a man driven from his country. But, if particular and subst
her from affording him an asylum, this man has no longer any right to demand it — beca
the country inhabited by the nation cannot, at the same time, serve for her own use, anc
Now, supposing even that things are still in common, nobody can arrogate to himself the
actually serves to supply the wants of another. Thus, a nation, whose lands are scarcely
wants of the citizens, is not obliged to receive into its territories a company of fugitives o
even absolutely to reject them, if they are infected with a contagious disease. Thus, alsc
them elsewhere, if it has just cause to fear that they will corrupt the manners of the citize
religious disturbances, or occasion any other disorder, contrary to the public safety. In a
and is even obliged to follow, in this respect, the suggestions of prudence. But this prud
from unnecessary suspicion and jealousy; it should not be carried so far as to refuse a r
unfortunate, for slight reasons, and on groundless and frivolous fears. The means of ten
to lose sight of that charity and commiseration which are due to the unhappy. We must r
feelings even for those who have fallen into misfortune through their own fault. For, we c
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
which he has taken refuge to punish him for that fault committed in a foreign country. Fo
to men or to nations any right to inflict punishment, except for their own defence and saf
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
punishment of crimes committed in its own territories, we ought to except from this rule t
the nature and habitual frequency of their crimes, violate all public security, and declare
enemies of the human race. Poisoners, assassins, and incendiaries by profession, may
wherever they are seized; for they attack and injure all nations by trampling under foot th
common safety. Thus, pirates are sent to the gibbet by the first into whose hands they fa
the country where crimes of that nature have been committed, reclaims the perpetrators
bring them to punishment, they ought to be surrendered to him, as being the person wh
interested in punishing them in an exemplary manner. And as it is proper to have crimina
by a trial in due form of law, this is a second reason for delivering up malefactors of that
where their crimes have been committed. (62)

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(58) See fully in general, and of naturalization in Great Britain in particular, 1 Chitty's Co
131; 1 Bla. Com. 369; Bac. Ab. Aliens. A naturalization in a foreign country, without licer
natural-born subject from his allegiance, 2 Chalmer's Col. Opin. 363. But a natural-born

naturalized in America, was holden to be entitled to trade as an American subject to the 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, Congress authorizing him to do so. Miller v. The Resolution, 1 Dall. 10; Shanks v. Dupor 246; Coxe v. McIlvaine, 4 Cranch, 209; The Santissinta Trinidada, 7 Wheat. Rep. 763. T Gillies, Peter's C.C. Rep. 159.)

(59) See 1 Chitty's Commercial Law, 114, n. 1.; 115, n. 1.

(60) In Great Britain, the established maxim is *nemo potest exuere patriam*, 1 Bla. C. 36 129 to 132.

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

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

(61) See *post*. Book II. ch. viii. § 108, p. 174. and Chitty's General Practice, p. 731 to 73 *exeat regno*.

(62) A distinction has usually been taken between capital offences and mere misdemea to allow the taking and removing an offender of the former class back into the country w committed, in order to take his trial in the latter, but not so in case of misdemeanors. But charge of perjury, a foreign country will allow the removal of an offender even in case of *Ex parte Scott*, 9 Barn. & Cress. 446. (A foreign government has no right, by the Law of the government of the United States a surrender of a citizen or subject of such foreign g committed a crime in his own country. Such a right can only exist by treaty. *Comm. v. D* Raw. 125; *Case of Dos Santos*, 2 Brocken. Rep. 493. The *Case of Robins*, Bee's Rep. 2 treaty with Great Britain.)

3. See above, the chapter on Religion.

4. The common acceptation of these two terms is not repugnant to our application of the academy says, "*Banishment* is only applied to condemnations indue course of law. *Exile* caused by some disgrace at court." The reason is plain: such a condemnation from the t entails infamy on the emigrant; whereas a disgrace at court does not usually involve the

CHAP. XX.
OF PUBLIC, COMMON, AND PRIVATE PROPERTY.

§ 234. What the Romans called *res communes*.

LET us now see what is the nature of the different things contained in the country posses endeavour to establish the general principles of the law by which they are regulated. Thi civilians under the title *de rerum divisione*. There are things which in their own nature ca there are others, of which nobody claims the property, and which remain common, as in when a nation takes possession of a country: the Roman lawyers called those things *res* common: such were, with them, the air, the running water, the sea, the fish, and wild bea

§ 235. Aggregate wealth of a nation, and its divisions.

Every thing susceptible of property is considered as belonging to the nation that posses forming the aggregate mass of its wealth. But the nation does not possess all those thin Those not divided between particular communities, or among the individuals of a nation, *property*. Some are reserved for the necessities of the state, and form the demesne of th republic: others remain common to all the citizens, who take advantage of them, each ac necessities, or according to the laws which regulate their use; and these are called *comi* are others that belong to somebody or community, termed join *property, res universitatis* respect to this body in particular, what the public property is with respect to the whole na be considered as a great community, we may indifferently give the name of *common pro* that belong to it in common, in such a manner that all the citizens may make use of them possessed in the same manner by a body or community; the same rules hold good with Finally, the property possessed by individuals is termed *private property, res singulorem*

§ 236. Two ways of acquiring public property.

When a nation in a body takes possession of a country, every thing that is not divided an remains common to the whole nation, and is called *public property*. There is a second w and, in general, every community, may acquire possessions, viz. by the will of whosoeve convey to it, under any title whatsoever, the domain or property of what he possesses.

§ 237. The revenues of the public property are naturally at the sovereign's disposa

As soon as the nation commits the reins of government to the hands of a prince, it is con to him, at the same time, the means of governing. Since, therefore, the income of the pu domain of the state, is destined for the expenses of government, it is naturally at the prin ought always to be considered in this light, unless the nation has, in express terms, exce the supreme authority, and has provided in some other manner for its disposal, and for t expenses of the state, and the support of the prince's person and household. Whenever is purely and simply invested with the sovereign authority, it includes a full discretional p public revenues. The duty of the sovereign, indeed, obliges him to apply those revenues of the state; but he alone is to determine the proper application of them, and is not accou person.

§ 238. The nation may grant him the use and property of its common possessions

The nation may invest the superior with the sole use of its common possessions, and th domain of the state. It may even cede the property of them to him. But this cession of th requires an express act of the proprietor, which is the nation. It is difficult to found it on a fear too often hinders the subjects from protesting against the unjust encroachments of t

§ 239. Or allow him the domain, and reserve to itself the use of them.

The people may even allow the superior the domain of the things they possess in comm themselves the use of them in the whole or in the part. Thus, the domain of a river, for ir to the prince, while the people reserve to themselves the use of it for navigation, fishing, &c., in that river. In a word, the people may cede to the superior whatever right they plea possessions of the nation; but all those particular rights do not naturally, and of themselv sovereignty.

§ 240. Taxes.

If the income of the public property, or of the domain, is not sufficient for the public want deficiency by taxes. These ought to be regulated in such a manner, that all the citizens r proportion to their abilities, and the advantages they reap from the society. All the memb being equally obliged to contribute, according to their abilities, to its advantage and safe to furnish the subsidies necessary to its preservation, when they are demanded by lawfu

§ 241. The nation may reserve to itself the right of imposing them.

Many nations have been unwilling to commit to the prince a trust of so delicate a nature, power that he may so easily abuse. In establishing a domain for the support of the sover expenses of the state, they have reserved to themselves the right of providing, by thems representatives, for extraordinary wants, in imposing taxes payable by all the inhabitants lays the necessities of the state before the parliament; that body, composed of the repre nation, deliberates, and, with the concurrence of the king, determines the sum to be rais raising it.(63) And of the use the king makes of the money thus raised, that same body c an account.

§ 242. Of the sovereign who has this power.

In other states, where the sovereign possesses the full and absolute authority, it is he al taxes, regulates the manner of raising them, and makes use of them as he thinks proper account to anybody. The French king at present enjoys this authority,(64) with the simpl his edicts to be registered by the parliament; and that body has a right to make humble r sees any inconveniences attending the imposition ordered by the prince: — a wise estal truth, and the cries of the people, to reach the ears of the sovereign, and for selling som extravagance, or to the avidity of the ministers and persons concerned in the revenue.[1]

§ 243. Duties of the prince with respect to taxes.

The prince who is invested with the power of taxing his people ought by no means to co raised as his own property. He ought never to lose sight of the end for which this power nation was willing to enable him to provide, as it should seem best to his wisdom, for the state. If he diverts this money to other uses, — if he consumes it in idle luxury, to gratify satiate the avarice of his mistresses and favourites, — we hesitate not to declare to thos still capable of listening to the voice of truth, that such a one is not less guilty, nay, that h more so, than a private person who makes use of his neighbours' property to gratify his Injustice, though screened from punishment, is not the less shameful.

§ 244. Eminent *domain* annexed to the sovereignty.

Every thing in the political society ought to tend to the good of the community; and, since the citizens are subject to this rule, their property cannot be excepted. The state could n administer the public affairs in the most advantageous manner, if it had not a power to d all kinds of property subject to its authority. It is even to be presumed, that, when the nat of a country, the property of certain things is given up to the individuals only with this res belongs to the society, or to the sovereign, of disposing, in case of necessity, and for the wealth contained in the state, is called the *eminent domain*. It is evident that this right is, necessary to him who governs, and consequently is a part of the empire, or sovereign p placed in the number of the prerogatives of majesty (§ 45). When, therefore, the people any one, they at the same time invest him with the *eminent domain*, unless it be express prince, who is truly sovereign, is invested with this right when the nation has not excepte his authority may be in other respects,

If the sovereign disposes of the *public* property in virtue of his *eminent domain*, the alien been made with sufficient powers.

When, in case of necessity, he disposes in like manner of the possessions of a commur alienation will, for the same reason, be valid. But justice requires that this community, or indemnified at the public charge: and if the treasury is not able to bear the expense, all t to contribute to it; for, the burdens of the state ought to be supported equally, or in a just rules are applicable to this case as to the loss of merchandise thrown overboard to save

§ 245. Government of

Besides the *eminent domain*, the sovereignty gives a right of another nature over all pub private property, — that is, the empire, or the right of command in all places of the count nation. The supreme power extends to everything that passes in the state, wherever it is consequently, the sovereign commands in all public places, on rivers, on highways, in d that happens there is subject to his authority.

§ 246. The superior may make *laws* with respect to the use of things possessed in

In virtue of the same authority, the sovereign may make laws to regulate the manner in v is to be used, — as well the property of the nation at large, as that of distinct bodies or c indeed, take away their right from those who have a share in that property: but the care

public repose, and of the common advantage of the citizens, gives him doubtless a right tending to this end, and, consequently, to regulate the manner in which things possesse enjoyed. This affair might give room for abuses, and excite disturbances, which it is imp prevent, and against which the prince is obliged to take just measures. Thus, the sovere laws with respect to hunting and fishing, — forbid them in the seasons of propagation, – certain nets, and of every destructive method, &c. But, as it is only in the character of th governor, and guardian of his people, that the sovereign has a right to make those laws, sight of the ends which he is called upon to accomplish by enacting them; and if, upon t makes any regulations with any other view than that of the public welfare, he abuses his

§ 247. Alienation of the property of a corporation.

A corporation, as well as every other proprietor, has a right to alienate and mortgage its present members ought never to lose sight of the destination of that joint property, nor d than for the advantage of the body, or in cases of necessity. If they alienate it with any o their power, and transgress against the duty they own to their own corporation and their prince, in quality of common father, has a right to oppose the measure. Besides, the inte requires that the property of corporations be not squandered away; — which gives the p care of watching over the public safety, a new right to prevent the alienation of such pro proper to ordain in a state, that the alienation of the property of corporations should be i consent of the superior powers. And indeed the civil law, in this respect, gives to corpora minors. But this is strictly no more than a civil law; and the opinion of those who make th sufficient authority to take from a corporation the power of alienating their property witho sovereign, appears to me to be void of foundation, and contrary to the notion of property true, may have received property, either from their predecessors or from any other pers disables them from alienating it: but in this case they have only the perpetual use of it, n property. If any of their property was solely given for the preservation of the body, it is ev corporation has not a right to alienate it, except in a case of extreme necessity: — and w may have received from the sovereign is presumed to be of that nature.

§ 248. Use of common property.

All the members of a corporation have an equal right to the use of its common property. manner of enjoying it, the body of the corporation may make such regulations as they th that those regulations be not inconsistent with that equality which ought to be preserved property. Thus, a corporation may determine the use of a common forest or pasture, eit members according to their wants or allotting to each an equal share; but they have not one of the number, or to make a distinction to his disadvantage, by assigning him a less others.

§ 249. How each member is to enjoy it.

All the members of a body having an equal right to its common property, each individual taking advantage of it, as not in any wise to injure the common use. According to this ru permitted to construct upon any river that is public property, any work capable of renderi for the use of every one else, as, erecting mills, making a trench to turn the water upon l attempts if, he arrogates to himself a private right, derogatory to the common right of the

§ 250. Right of anticipation in the use of it.

The right of *anticipation (jus praeventionis)* ought to be faithfully observed in the use of c
cannot be used by several persons at the same time. This name is given to the right whi
acquires to the use of things of this nature. For instance, if I am actually drawing water fi
public well, another who comes after me cannot drive me away to draw out of it himself:
I have done. For, I make use of my right in drawing that water, and nobody can disturb r
an equal right, cannot assert it to the prejudice of mine; to stop me by his arrival would b
a better right than he allows me, and thereby violating the law of equality.

§ 251. The same right

The same rule ought to be observed in regard to those common things which are consu
They belong to the person who first takes possession of them with the intention of apply
use: and a second, who comes after, has no right to take them from him, I repair to a co
begin to fell a tree: you come in afterwards, and would wish to have the same tree: you
for this would be arrogating to yourself a right superior to mine, whereas our rights are e
case is the same as that which the law of nature prescribes in the use of the productions
introduction of property.

§ 252. Preservation and repairs of common possessions.

The expenses necessary for the preservation or reparation of the things that belong to tl
community, ought to be equally borne by all who have a share in them, whether the nec
from the common coffer, or that each individual contributes his quota. The nation, the co
general, every collective body, may also establish extraordinary taxes, imposts, or annu
defray these expenses, — provided there be no oppressive exaction in the case, and tha
be faithfully applied to the use for which it was raised. To this end, also, as we have befo
toll-duties are lawfully established. Highways, bridges, and causeways are things of a pu
all who pass over them derive advantage: it is therefore just that all those passengers sh
support.

§ 253. Duty and right of the sovereign in this respect.

We shall see presently that the sovereign ought to provide for the preservation of the pu
less obliged, as the conductor of the whole nation, to watch over the preservation of the
corporation. It is the interest of the state at large that a corporation should not fall into in
conduct of its members for the time being. And, as every obligation generates the corres
necessary to discharge it, the sovereign has here a right to oblige the corporation to con
therefore, he perceives, for instance, that they suffer their necessary buildings to fall to r
destroy their forests, he has a right to prescribe what they ought to do, and to put his orc

§ 254. Private property.

We have but a few words to say with respect to private property: every proprietor has a
he pleases of his own substance, and to dispose of it as he pleases, when the rights of a
involved in the business. The sovereign, however, as the father of his people, may and c
a prodigal, and to prevent his running to ruin, especially if this prodigal be the father of a

must take care not to extend this right of inspection so far as to lay a restraint on his sub administration of their affairs — which would be no less injurious to the true welfare of th liberty of the citizens. The particulars of this subject belong to public law and politics.

§ 255. The sovereign may subject it to regulations of police.

It must also be observed, that individuals are not so perfectly free in the economy or gov as not to be subject to the laws and regulations of police made by the sovereign. For ins multiplied to too great an extent in a country which is in want of corn, the sovereign may the vine in fields proper for tillage; for here the public welfare and the safety of the state reason of such importance requires it, the sovereign or the magistrate may oblige an inc provisions in his possession above what are necessary for the subsistence of his family, he shall receive for them.(66) The public authority may and ought to hinder monopolies, practices tending to raise the price of provisions — to which practices the Romans appli *annonam incendere, comprimere, vexare*.

§ 256. Inheritances.

Every man may naturally choose the person to whom he would leave his property after l his right is not limited by some indispensable obligation — as, for instance, that of provic of his children.(67) The children also have naturally a right to inherit their father's proper But this is no reason why particular laws may not be established in a state, with regard t inheritances — a respect being, however, paid to the essential laws of nature. Thus, by many places with a view to support noble families, the eldest son, is of right, his father's perpetually appropriated to the eldest male heir of a family, belong to him by virtue of an its source in the will of the person who, being sole owner of those lands, has bequeathe

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(63) All *money* bills, imposing a tax, must originate in and be passed by the House of Co afterwards submitted to the lords and the king for their sanction, before they can becom

(64) This was, of course, when Vattel wrote, and before the Revolution.

1. Too great attention cannot be used in watching the imposition of taxes, which, once in continue, but are so easily multiplied. — Alphonso VIII. king of Castile, besieging a city b (Concham urbem in Celtiberis), and being in want of money, applied to the states of his to impose, on every free inhabitant, a capitation tax of five golden maravedis. But Peter, vigorously opposed the measure, "contractaque nobilium manu, ex conventu discedit, a partam armis et virtute a majoribus immunitatem, neque passururn affirmans nobilitatis c novis vectigalibus vexandæ ab eo aditu initium fieri; Mauros opprimere non esse tanti, u rempublicam implicari sinant. Rex, periculo peromotus, ab ea cogitatione desistit. Petrur communicato, quotannis convivio excipere decreverunt, ipsum et posteros, — navatæ o gestæ bonæ posteritati monumentum, documentumque ne quavis occasione jus libertat MARIANA.

(65) In Great Britain no such right of interference exists, and a person may lay waste or property, unless he thereby endangers a third person, or defrauds a person who has ins Lit. 254; *Saville's case*, For. 6, 3 Thomas Co. Lit. 243, n. (m). — C.

(66) In Great Britain no such interference now takes place, though formerly it was exerci 287, — C.

(67) In England a parent has an absolute right to devise or bequeath all his property to a of his children.

CHAP. XXI.
OF THE ALIENATION OF THE PUBLIC PROPERTY, OR THE DOMAIN PART OF THE STATE.

§ 257. The nation may alienate its public property.

THE nation, being the sole mistress of the property in her possession, may dispose of it and may lawfully alienate or mortgage it. This right is a necessary consequence of the fu domain: the exercise of it is restrained by the law of nature only with respect to proprietc use of reason necessary for the management of their affairs; which is not the case with think otherwise, cannot allege any solid reason for their opinion; and it would follow from safe contract can be entered into with any nation; — a conclusion which attacks the four treaties.

§ 258. Duties of a nation in this respect.

But it is very just to say, that the nation ought carefully to preserve her public property — it — not to dispose of it without good reasons, nor to alienate or mortgage it but for a ma advantage, or in case of a pressing necessity. This is an evident consequence of the du herself. The public property is extremely useful and even necessary to the nation; and s improperly without injuring herself, and shamefully neglecting the duty of self-preservatic property, strictly so called, or the domain of the state. Alienating its revenues is cutting tl government. As to the property common to all the citizens, the nation does an injury to tl advantage from it, if she alienates it without necessity, or without cogent reasons. She h proprietor of these possessions; but she ought not to dispose of them except in a manne the duties which the body owes its members.

§ 259. Duties of the prince.

The same duties lie on the prince, the director of the nation: he ought to watch over the prudent management of the public property — to slop and prevent all waste of it — and applied to improper uses.

§ 260. He cannot alienate the public property.

The prince, or the superior of the society, whatever he is, being naturally no more than t not the proprietor of the state, his authority, as sovereign or head of the nation, does not right to alienate or mortgage the public property. The general rule then is, that the super the public property, as to its substance — the right to do this being reserved to the propr proprietorship is defined to be the right to dispose of a thing substantially. If the superior

with respect to this property, the alienation he makes of it will be invalid, and may at any successor, or by the nation. This is the law generally received in France; and it was upo duke of Sully[1] advised Henry IV. to resume the possession of all the domains of the crov predecessors.

§ 261. The nation may give him a right to it.

The nation, having the free disposal of all the property belonging to her (§ 257), may cor sovereign, and consequently confer upon him that of alienating and mortgaging the publ right not being necessary to the conductor of the state, to enable him to render the peop government — it is not to be presumed that the nation have given it to him; and, if they h express law for that purpose, we are to conclude that the prince is not invested with it, u full, unlimited, and absolute authority.

§ 262. Rules on this subject with respect to treaties between nation and nation.

The rules we have just established relate to alienations of public property in favour of inc assumes a different aspect when it relates to alienations made by one nation to another principles to decide it in the different cases that may present themselves. Let us endeav theory of them.

1. It is necessary that nations should be able to treat and contract validly with each othe otherwise find it impossible to bring their affairs to an issue, or to obtain the blessings of of certainty. Whence it follows, that, when a nation has ceded any part of its property to ought to be deemed valid and irrevocable, as in fact it is, in virtue of the notion of *proper* cannot be shaken by any fundamental law by which a nation might pretend to deprive th of alienating what belongs to them: for, this would be depriving themselves of all power t other nations, or attempting to deceive them, A nation with such a law ought never to tre property: if it is obliged to it by necessity, or determined to do it for its own advantage, th a treaty on the subject, it renounces its fundamental law. It is seldom disputed that an er alienate what belongs to itself: but it is asked, whether its conductor, its sovereign, has t question may be determined by the fundamental laws. But, if the laws say nothing on thi have recourse to our second principle, viz.

2. If the nation has conferred the full sovereignty on its conductor — if it has intrusted to without reserve, given him the right, of treating and contracting with other states, it is cor invested him with all the powers necessary to make a valid contract. The prince is then t what he does is considered as the act of the nation itself; and, though he is not the owne property, his alienations of it are valid, as being duly authorized.

§ 263. Alienation of a part of the state.

The question becomes more distinct, when it relates, not to the alienation of some parts but to the dismembering of the nation or state itself — the cession of a town or a provinc part of it. This question, however, admits of a sound decision on the same principles. A preserve itself (§ 26) — it ought to preserve all its members — it cannot abandon them; engagement to support them in their rank as members of the nation (§ 17). It has not, th their rank and liberty, on account of any advantages it may expect to derive from such a joined the society for the purpose of being members of it — they submit to the authority

purpose of promoting in concert their common welfare and safety, and not of being at its a herd of cattle. But the nation may lawfully abandon them in a case of extreme necessi to cut them off from the body, if the public safety requires it. When, therefore, in such a a town or a province to a neighbour or to a powerful enemy, the cession ought to remair since she had a right to make it: nor can she any longer lay claim to the town or provinc she has relinquished every right she could have over it.

§ 264. Rights of the dismembered party.

But the province or town thus abandoned and dismembered from the state, is not oblige master whom the state attempts to set over it. Being separated from the society of whic resumes all its original rights; and if it be capable of defending its liberty against the prin to his authority, it may lawfully resist him, Francis I. having engaged, by the treaty of Ma of Burgundy to the emperor Charles V., the state of that province declared, "that, having but to the crown of France, they would die subject to it; and that, if the king abandoned t up arms, and endeavour to set themselves at liberty, rather than pass into a new state o subjects are seldom able to make resistance on such occasions; and, in general, their w submit to their new master, and endeavour to obtain the best terms they can.

§265. Whether the prince has power to dismember the state.

Has the prince, or the superior of whatever kind, a power to dismember the state? We a done with respect to the domain: — if the fundamental laws forbid all dismemberment by cannot do it without the concurrence of the nation or its representatives. But, if the laws prince has received a full and absolute authority, he is then the depositary of the rights o organ by which it declares its will. The nation ought never to abandon its members but in or with a view to the public safety, and to preserve itself from total ruin; and the prince ou up except for the same reasons. But, since he has received an absolute authority, it belo the necessity of the case, and of what the safety of the state requires.

On occasion of the above-mentioned treaty of Madrid, the principal persons in France, a after the king's return, unanimously resolved, "that his authority did not extend so far as crown."[4] The treaty was declared void, as being contrary to the fundamental law of the k had been concluded without sufficient powers: for, as the laws in express terms refused of dismembering the kingdom, the concurrence of the nation was necessary for that pur its consent by the medium of the states-general. Charles V. ought not to have released I those very states had approved the treaty; or rather, making a more generous use of his have imposed less rigorous conditions, such as Francis I. would have been able to com he could not, without dishonour, have refused to perform. But now that there are no long states-general in France, the king remains the sole organ of the state, with respect to oth have a right to take his will for that of all France; and the cessions the king might make t valid, in virtue of the tacit consent by which the nation has vested the king with unlimited them. Were it otherwise, no solid treaty could be entered into with the crown of France. I however, other powers have often required that their treaties should be registered in the but at present even this formality seems to be laid aside.

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1. See his Memoirs.

2. Quod domania regnorum inalienabilia et semper revocabilia dicuntur, id respectu priv contra alias gentes divino privilegio opus foret *Leibnitz, Praefat. ad Cou. Jur. Gent. Diplo*

3. Mezeray's History of France, vol. ii. p. 458.

4. Mezeray's History of France, vol. ii. p. 458.

CHAP. XXII.
OF RIVERS STREAMS, AND LAKES.

§ 266. A river that separates two territories.

WHEN a nation takes possession of a country, with a view to settle there, it takes posses included in it, as lands, lakes, rivers, &c. But it may happen that the country is bounded another by a river; in which case, it is asked, to whom this river belongs. It is manifest, fr established in Chap. XVIII., that it ought to belong to the nation who first took possessio cannot be denied; but the difficulty is, to make the application. It is not easy to determine neighbouring nations was the first to take possession of a river that separates them. For questions, the rules which may be deducted from the principles of the law of nations are

1. When a nation takes possession of a country bounded by a river, she is considered a herself the river also: for, the utility of a river is too great to admit a supposition that the r reserve it to herself. Consequently, the nation that first established her dominion on one river is considered as being the first possessor of all that part of the river which bounds l there is a question of a very broad river, this presumption admits not of a doubt, so far, a part of the river's breadth; and the strength of the presumption increases or diminishes i the breadth of a river; for, the narrower the river is, the more does the safety and conver that it should be subject entirely to the empire and property of that nation. (68)

2. If that nation has made any use of the river, as, for navigating or fishing, it is presume certainty that she has resolved to appropriate the river to her own use.

3. If, of two nations inhabiting the opposite banks of the river, neither party can prove tha those whose rights they inherit, were the first settlers in those tracts, it is to be supposed came there at the same time, since neither of them can give any reason for claiming the case the dominion of each will extend to the middle of the river.(68a)

4. A *long and undisputed* possession establishes the right of nation,(69) otherwise there stability between them; and notorious facts must be admitted to prove the possession. T immemorial a nation has, without contradiction, exercised the sovereignty upon a river w boundary, nobody can dispute with that nation the supreme dominion over the river in qu

5. Finally, if treaties determine any thing on this question, they must be observed. To de express stipulations, is the safest mode; and such is, in fact, the method taken by most

§ 267. Of the bed of a river which is dried up, or takes another course.

If a river leaves its bed, whether it be dried up or takes its course elsewhere, the bed be the river; for, the bed is a part of the river; and he who had appropriated to himself the w appropriated to himself all its parts.

§ 268. The right of alluvion. (70)

If a territory which terminates on a river has no other boundary than that river, it is one o have natural or indeterminate bounds (territoria *arcifinia*), and it enjoys the right of *alluvi gradual* increase of soil, every addition which the current of the river may make to its ba addition to that territory, stands in the same predicament with it, and belongs to the sam possession of a piece of land, declaring that I will have for its boundary the river which w it is given to me upon that footing, — I thus acquire, beforehand, the right of *alluvion*; an alone may appropriate to myself whatever additions the current of the river may insensib I say *"insensibly,"*; because in the very uncommon case called *avulsion*, when the *violer* separates a considerable part from one piece of land and joins it to another, but in such be identified, the property of the soil so removed naturally continues vested in its former have thus provided against and decided this case, when it happens between individual a ought to unite equity with the welfare of the state, and the care of preventing litigations.

In case of doubt, every territory terminating on a river is presumed to have no other bou itself: because nothing is more natural than to take a river for a boundary, when a settle wherever there is a doubt, that is always to be presumed which is most natural and mos

§ 269. Whether alluvion produces any change in the right to a river.

As soon as it is determined that a river constitutes the boundary line between two territo common to the inhabitants on each side of its banks, or whether each shares half of it, c belongs entirely to one of them, their rights with respect to the river are in no wise chang therefore, it happens that, by a natural effect of the current, one of the two territories rec while the river gradually encroaches on the opposite bank, the river still remains the natu two territories, and notwithstanding the progressive changes in its course, each retains c which it possessed before; so that, if, for instance, it be divided in the middle between th opposite banks, that middle, though it changes its place, will continue to be the line of se two neighbours. The one loses, it is true, while the other gains; but nature alone produce destroys the land of the one, while she forms new land for the other. The case cannot be determined, since they have taken the river alone for their limits.

§ 270. What is the case when the river changes its bed.

But if, instead of a gradual and progressive change of its bed, the river, by an accident n entirely out of its course, and runs into one of the two neighbouring states, the bed whic becomes, thenceforward, their boundary, and remains the property of the former owner river itself is, as it were, annihilated in all that part, while it is reproduced in its new bed, to the state in which it flows.

This case is very different from that of a river which changes its course without going ou
The latter, in its new course, continues to belong to its former owner, whether that owne
individual to whom the state has given it; because rivers belong to the public in whateve
they flow. Of the bed which it has abandoned, a moiety accrues to the contiguous lands
are lands that have natural boundaries, with the right of alluvion, That bed (notwithstand
in § 267) is no longer the property of the public, because of the right of alluvion vested ir
banks, and because the public held possession of the bed only on account of its contain
adjacent lands have not natural boundaries, the public still retains the property of the be
which the river takes its course is lost to the proprietor, because all the rivers in the cour
public.

§ 271. Works

It is not allowable to raise any works on the bank of a river, which have a tendency to tu
cast it upon the opposite bank: this would be promoting our own advantage at our neigh
can only secure himself, and hinder the current from undermining and carrying away his

§ 272. or, in general, prejudicial to the rights of others. (73)

In general, no person ought to build on a river, any more than elsewhere, any work that
neighbour's rights. If a river belongs to one nation, and another has an incontestible righ
former cannot erect upon it a dam or a mill which might render it unfit for navigation. The
owners of the river possess in this case is only that of a limited property; and, in the exe
bound to respect the rights of others.

§ 273. Rules in relation to interfering rights.

But, when two different rights to the same thing happen to clash with each other, it is no
determine which ought to yield to the other: the point cannot be satisfactorily decided, w
considering the nature of the rights and their origin. For example, a river belongs to me,
fish in it: and the question is, whether I may erect mills on my river, whereby the fishery
difficult and less advantageous? The nature of our rights seems to determine the questi
as proprietor, have an essential right over the river itself: — you have only a right to mak
which is merely accessory, and dependent on mine; you have but a general right to fish
such as you happen to find it, and in whatever state I may think fit to possess it. I do not
right by erecting my mills: it still exists in the general view of it; and, if it becomes less us
accident, and because it is dependent on the exercise of mine.(74)

The case is different with respect to the right of navigation, of which we have spoken. Th
supposes that the river shall *remain free and navigable*, and therefore excludes every w
interrupt its navigation.

The antiquity and origin of the rights serve, no less than their nature, to determine the qu
ancient right, if it be absolute, is to be exerted in its full extent, and the other only so far
without prejudice to the former; for, it could only be established on this fooling, unless th
right has expressly consented to its being limited.

In the same manner, rights ceded by the proprietor of any thing are considered as cede
the other rights that belong to him, and only so far as they are consistent with these latte

declaration, or the very nature of the right, determine it otherwise. If I have ceded to ano in my river, it is manifest that I have ceded it without prejudice to my other rights, and tha on that river such works as I think proper, even though they should injure the fishery, pro altogether destroy it.(75) A work of this latter kind, such as a dam that would hinder the f could not be built but in case of necessity, and on making, according to circumstances, a compensation to the person who has a right to fish there.

§ 274. Lakes.

What we have said of rivers and streams, may be easily applied to lakes. Every lake, en country, belongs to the nation that is the proprietor of that country; for in taking possessi nation is considered as having appropriated to itself every thing included in it; and, as it the property of a lake of any considerable extent falls to the share of individuals, it remai nation. If this lake is situated between two states, it is presumed to be divided between t while there is no title, no constant and manifest custom, to determine otherwise.

§ 275. Increase of a lake.

What has been said of the right of alluvion, in speaking of rivers, is also to be understoo When a lake which bounds a state belongs entirely to it, every increase in the extent of t same predicament as the lake itself; but it is necessary that the increase should be inse alluvion, and moreover that it be real, constant, and complete. To explain myself more fu insensible increase: this is the reverse of alluvion; the question here relates to the increa other case, to an increase of soil. If this increase be not insensible, — if the lake, overflo inundates a large tract of land, this new portion of the lake, this tract thus covered with w former owner. Upon what principles can we found the acquisition of it in behalf of the ow space is very easily identified, though it has changed its nature: and it is too considerabl presumption that the owner had no intention to preserve it to himself, notwithstanding th happen to it.

But 2. If the lake insensibly undermines a part of the opposite territory, destroys it, and r be known, by fixing itself there, and adding it to its bed, that part of the territory is lost to longer exists; and the whole of the lake thus increased still belongs to the same state as

3. if some of the lands bordering on the lake are only overflowed at high water, this trans produce any change in their dependence. The reason why the soil which the lake invade belongs to the owner of the lake and is lost to its former proprietor, is, because the propr boundary than the lake, nor any other marks than its banks, to ascertain how far his pos water advances insensibly, he loses; if it retires in like manner, he gains; such must hav the nations who have respectively appropriated to themselves the lake and the adjacent scarcely be supposed that they had any other intention. But a territory overflowed for a t with the rest of the lake: it can still be recognised; and the owner may still retain his right it otherwise, a town overflowed by a lake would become subject to a different governme inundation, and return to its former sovereign as soon as the waters were dried up.

4. For the same reasons, if the waters of the lake, penetrating by an opening into the ne there form a bay, or new lake, joined to the first by a canal, this new body of water and t owner of the country in which they are formed, For the boundaries are easily ascertaine presume an intention of relinquishing so considerable a tract of land in case of its happe the waters of an adjoining lake.

It must be observed that we here treat the question as arising between two states: it is t principles when it relates to proprietors who are members of the same state. In the latte the bounds of the soil, but also its nature and use, that determine the possession of it. A possesses a field on the borders of a lake, cannot enjoy it as a field when it is overflowe has, for instance, the right of fishing in the lake, may exert his right in this new extent: if field is restored to the use of its former owner. If the lake penetrates by an opening into neighbourhood, and there forms a permanent inundation, this new lake, belongs to the lakes belong to the public.

§ 276. Land formed on the banks of a lake.

The same principles show, that if the lake insensibly forms an accession of land on its b or in any other manner, this increase of land belongs to the country which it joins, when other boundary than the lake. It is the same thine as alluvion on the banks of the river,

§ 277. Bed of a lake dried up.

But, if the lake happened to be suddenly dried up, either totally or in a great part of it, th the possession of the sovereign of the lake; the nature of the soil, so easily known, suffi limits.

§ 278. Jurisdiction over lakes and rivers.

The empire or jurisdiction over lakes and rivers is subject to the same rules as the prope cases which we have examined. Each state naturally possesses it over the whole or the possesses the domain. We have seen (§ 245) that the nation, or its sovereign, comman possession.

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(68) As regards *private* rights, there is no legal presumption that the soil of a navigable r owners of the adjoining lands, *ex utraque parte*, or otherwise, *Rex v. Smith*, 2 Doug. 41 Johns Rep. 133.}

(68a) (5 Wheat. Rep. 374, 379; 3 Mass, Rep. 147.) [This note was anomalously number

(69) As to what is a sufficiently long and undisturbed possession, by the law of France, general, see *Benest v. Pipon*, Knapp's Rep. 67.

(70) As to the rights of *alluvion*, or *sudden derelict* in general, see *The King v. Yarborou* Series, 178; 4 Dowl. & Ry. 799; 3 Barn. & Cres. 91, S.C.; 5 Bing. 163, 169; 1 Thomas C Scuites on Aquatic Rights; Chitty's General Practice, 199, 200. {2 Johns. Rep. 322; 3 M L. Journ. 307; 5 Hall's L. Journ. 1, 113.)

(71) This principle of the law of nations has been ably discussed *as* part of the municipa England in *Menzies v. Breadalbone*, 3 Wils. & Shaw, 235; and see *The King v. Lord Yar* New Series, 179; and *Wright v. Howard*. 1 Sim. & Stu. 190; *Rex v. Trafford*, 1 Barn. & A General Practice, 610. {4 Dall. Rep. 211; 13 Mass. 420, 507; 3 Har. & McHen. 441; 2 C Rep, 460.)

(72) That is permitted as well as a bank or groove to prevent an *alteration* in the current. Barn. & Cress. 355; *Rex v. Trafford*, 1 Barn. & Adolph. 874; 2 Man. & Ryl, 468; 1 Moore 204. (in error.)

(73) See note 72.

(74) But this doctrine seems questionable. See *Wright v. Howard*, 1 Sim. & Stu. 190; an & Adolph. 304; Chitty's General Prac. 191, 192. Even a right of irrigating at reasonable t absolute and general right to the use of the water for working a mill.

(75) See note 74, *ante*, p. 122,

CHAP. XXIII.
OF THE SEA.

§ 279. The sea, and its use.(76)

IN order to complete the exposition of the principles of the law of nations with respect to possess, it remains to treat of the open sea. The use of the open sea consists in navigat along its coasts it is moreover of use for the procuring of several things found near the s fish, amber, pearls, &c., for the making of salt, and finally, for the establishment of place for vessels.

§ 280. Whether the sea can be possessed, and its dominion appropriated.

The open sea is not of such a nature as to admit the holding possession of it, since no s formed on it, so as to hinder others from passing. But a nation powerful at sea may forbi to navigate it; declaring that she appropriates to herself the dominion over it, and that sh vessels that shall dare to appear in it without her permission. Let us see whether she ha

§ 281. Nobody has a right to appropriate to himself the use of the open sea.

It is manifest that the use of the open sea, which consists in navigation and fishing, is in *inexhaustible*; that is to say — he who navigates or fishes in the open sea does no injury sea, in these two respects, is sufficient for all mankind. Now, nature does not give to ma appropriating to himself things that may be innocently used, and that are inexhaustible, For, since those things, while common to all, are sufficient to supply the wants of each, the exclusion of all other particpants, attempt to render himself sole proprietor of them, v wrest the bounteous gifts of nature from the parties excluded. The earth no longer furnis the things necessary or useful to the human race, who were extremely multiplied, it beca introduce the right of property, in order that each might apply himself with more success what had fallen to his share, and multiply, by his labour, the necessaries and convenien reason the law of nature approves the rights of dominion and property, which put an enc manner of living in common. But this reason cannot apply to things which are in themsel consequently, it cannot furnish any just grounds for seizing the exclusive possession of common use of a thing of this nature was prejudicial or dangerous to a nation, the care would authorize them to reduce that thing under their own dominion, if possible, in order

by such precautions as prudence might dictate to them. But this is not the case with the people may sail and fish without the least prejudice to any person whatsoever, and witho danger. No nation, therefore, has a right to take possession of the open sea, or claim th exclusion of other nations. The kings of Portugal formerly arrogated to themselves the e Guinea and the East Indies;[1] but the other maritime powers gave themselves little troubl pretension.

§ 282. The nation that attempts to exclude another, does it an injury.

The right of navigating and fishing in the open sea being then a right common to all men attempts to exclude another from that advantage does her an injury, and furnishes her w for commencing hostilities, since nature authorizes a nation to repel an injury — that is, against whoever would deprive her of her rights.

§ 283. It even does an injury to all nations.

Nay, more, — a nation, which, without a legitimate claim, would arrogate to itself an exc and support its pretensions by force, does an injury to all nations; it infringes their comm justifiable in forming a general combination against it, in order to repress such an attemp greatest interest in causing the law of nations, which is the basis of their tranquillity, to b respected. If any one openly tramples it under fool, they all may and ought to rise up aga uniting their forces to chastise the common enemy, they will discharge their duty toward towards human society, of which they are members (Prelim. § 22).

§ 284. It may acquire an exclusive right by treaties:

However, as every one is at liberty to renounce his right, a nation may acquire exclusive and fishing, by treaties, in which other nations renounce in its favour the rights they deriv latter are obliged to observe their treaties; and the nation they have favoured has a right the possession of its advantages. Thus, the house of Austria has renounced, in favour o the right of sending vessels from the Netherlands to the East Indies. In Grotius, *de Jure* cap. iii. § 15, may be found many instances of similar treaties.

§ 285. but not by prescription and long use. (77)

As the rights of navigation and of fishing, and other rights which may be exercised on th class of those rights of mere ability *(jura meroe facultatis)*, which are imprescriptible § 9 for want of use. Consequently, although a nation should happen to have been, from time possession of the navigation or fishery in certain seas, it cannot, on this foundation, clai those advantages. For, though others have not made use of their common right to navig those seas, it does not thence follow that they have had any intention to renounce it; an exert it whenever they think proper.(78)

§ 286. unless by virtue of a tacit agreement.

But it may happen that the non-usage of the right may assume the nature of a consent o thus become a title in favour of one nation against another. When a nation that is in pos navigation and fishery in certain tracts of sea claims an exclusive right to them, and forb

the part of other nations, — if the others obey that prohibition with sufficient marks of ac renounce their own right in favour of that nation, and establish for her a new right, which lawfully maintain against them, especially when it is confirmed by long use.(79)

§ 287. The sea near the coasts may become a property.

The various uses of the sea near the coasts render it very susceptible of property. It furr pearls, amber, &c. Now. in all these respects, its use is not inexhaustible; wherefore, the coasts belong, may appropriate to themselves, and convert to their own profit, an advan so placed within their reach as to enable them conveniently to take possession of it, in th they possessed themselves of the dominion of the land they inhabit. Who can doubt tha Bahrem and Ceylon may lawfully become property? And though, where the catching of t the fishery appeals less liable to be exhausted, yet, if a nation have on their coast a part profitable nature, and of which they may become masters, shall they not be permitted to themselves that bounteous gift of nature, as an appendage to the country they possess, themselves the great advantages which their commerce may thence derive in case ther abundance of fish to furnish the neighbouring nations? But if, so far from taking possess once acknowledged the common right of other nations to come and fish there, it can no from it; it has left that fishery in its primitive freedom, at least with respect to those who h to take advantage of it. The English not having originally taken exclusive possession of t their coasts, it is become common to them with other nations.

§ 288. Another reason for appropriating the sea bordering on the coasts.(80)

A nation may appropriate to herself those things of which the free and common use wou dangerous to her. This is a second reason for which governments extend their dominion their coasts as far as they are able to protect their right. It is of considerable importance welfare of the state that a general liberty be not allowed to all comers to approach so ne especially with ships of war, as to hinder the approach of trading nations, and molest the the war between Spain and the United Provinces, James I., king of England, marked ou certain boundaries, within which he declared that he would not suffer any of the powers enemies, nor even allow their armed vessels to stop and observe the ships that should e ports.[2] These parts of the sea, thus subject to a nation, are comprehended in her territor navigate them without her consent. But, to vessels that are not liable to suspicion, she c of duty, refuse permission to approach for harmless purposes, since it is a duty incumbe to allow to strangers a free passage, even by land, when it may be done without damag that the state itself is sole judge of what is proper to be done in every particular case tha judges amiss, it is to blame: but the others are bound to submit. It is otherwise, however — as, for instance, when a vessel is obliged to enter a road which belongs to you in ord from a tempest. In this case, the right of entering wherever we can, provided we cause r repair any damage done, is, as we shall show more at large, a remnant of the primitive f man can be supposed to have divested himself; and the vessel may lawfully enter in spi refuse her permission.

§ 289. How far this possession may extend. (81)

It is not easy to determine to what distance a nation may extend its rights over the sea b surrounded. Bodinus[3] pretends, that according to the common right of all maritime natio dominion extends to the distance of thirty leagues from the coast. But this exact determi

founded on a general consent of nations, which it would be difficult to prove. Each state make what regulation it pleases so far as respects the transactions of the citizens with e concerns with the sovereign: but, between nation and nation, all that can reasonably be the dominion of the state over the neighbouring sea extends as far as her safety renders power is able to assert it; since, on the one hand, she cannot appropriate to herself a thi all mankind, such as the sea, except so far as she has need of it for some lawful end (§ it would be a vain and ridiculous pretension to claim a right which she were wholly unabl of England have given room to her kings to claim the empire of the seas which surround as the opposite coasts.[4] Selden relates a solemn act,[5] by which it appears, that, in the ti empire was acknowledged by the greatest part of the maritime nations of Europe; and th United Provinces acknowledged it, in some measure, by the treaty of Breda, in 1667, at to the honours of the flag. But solidly to establish a right of such extent, it were necessar the express or tacit consent of all the powers concerned. The French have never agreed England; and, in that very treaty of Breda just mentioned, Louis XIV. would not even suf called the English channel, or the British sea. The republic of Venice claims the empire every body knows the ceremony annually performed upon that account. In confirmation referred to the examples of Uladislaus, king of Naples, of the emperor Frederic III., and Hungary, who asked permission of the Venetians for their vessels to pass through that s the Adriatic belongs to the republic to a certain distance from her coasts, in the places o possession, and of which the possession is important to her own safety, appears to me doubt very much whether any power is at present disposed to acknowledge her sovereig Adriatic sea. Such pretensions to empire are respected as long as the nation that makes them by force; but they vanish of course on the decline of her power. At present the who within cannon shot of the coast is considered as making a part of the territory; and, for th taken under the cannon of a neutral fortress is not a lawful prize.(82)

§ 290. Shores and ports. (83)

The shores of the sea incontestably belong to the nation that possesses the country of w and they belong to the class of public things. If civilians have set them down as things co (*res communes*), it is only in regard to their use; and we are not thence to conclude that as independent of the empire: the very contrary appears from a great number of laws. P manifestly an appendage to and even a part of the country, and consequently are the pr Whatever is said of the land itself will equally apply to them, so far as respects the conse domain and of the empire.

§ 291. Bays and straits. (84)

All we have said of the parts of the sea near the coast, may be said more particularly, ar reason, of roads, bays, and straits, as still more capable of being possessed, and of gre safety of the country. But I speak of bays and straits of small extent, and not of those gre which these names are sometimes given, as Hudson's Bay and the Straits of Magellan, cannot extend, and still less a right of property. A bay, whose entrance can be defended and rendered subject to the laws of the sovereign; and it is important that it should be so might be much more easily insulted in such a place, than on the coast that lies exposed impetuosity of the waves.

§ 292. Straits in particular. (65)

It must be remarked, with regard to straits, that, when they serve for a communication b
navigation of which is common to all, or several nations, the nation which possesses the
the others a passage through it, provided that passage be innocent and attended with n
refusing it without just reasons, she would deprive those nations of an advantage grante
indeed, the right to such a passage is a remnant of the primitive liberty enjoyed by all ma
care of his own safety can authorize the owner of the strait to make use of certain preca
certain formalities, commonly established by the custom of nations. He has a right to lev
the vessels that pass, partly on account of the inconvenience they give him, by obliging
— partly as a return for the safety he procures them by protecting them from their enem
at a distance, and by defraying the expense attendant on the support of light-houses, se
things necessary to the safety of mariners. Thus, the king of Denmark requires a custom
Sound. Such right ought to be founded on the same reasons, and subject to the same ru
established on land, or on a river. (See §§ 103 and 104).

§ 293. Right to wrecks. (86)

It is necessary to mention the right to wrecks — a right which was the wretched offsprin
which has almost everywhere fortunately disappeared with its parent. Justice and huma
except in those cases only where the proprietors of the effects saved from a wreck cann
discovered. In such cases, those effects belong to the person who is the first to take pos
the sovereign, if the law reserves them for him.

§ 294. A sea enclosed within the territories of a nation.

If a sea is entirely enclosed by the territories of a nation, and has no other communicatio
by a channel of which that nation may take possession, it appears that such a sea is no
occupied, and becoming property, than the land; and it ought to follow the late of the cou
The Mediterranean, in former times, was absolutely enclosed within the territories of the
people, by rendering themselves masters of the strait which joins it to the ocean, might s
Mediterranean to their empire, and assume the dominion over it. They did not, by such p
rights of other nations; a particular sea being manifestly designed by nature for the use o
nations that surround it. Besides, by barring the entrance of the Mediterranean against a
the Romans, by one single stroke, secured the immense extent of their coasts: and this
to authorize them to take possession of it. And, as it had absolutely no communication b
belonged to them, they were at liberty to permit or prohibit the entrance into it, in the sar
of their towns or provinces.

§ 295. The parts of the sea possessed by power are within its jurisdiction. (87)

When a nation takes possession of certain parts of the sea, it takes possession of the en
well as of the domain, on the same principle which we advanced in treating of the land (
the sea are within the jurisdiction of the nation, and a part of its territory: the sovereign c
makes laws, and may punish those who violate them; in a word, he has the same rights
in general, every right which the laws of the state allow him.

It is, however, true that the *empire* and the *domain*, or *property*, are not inseparable in th
a sovereign state.[7] As a nation may possess the domain or property of a tract of land or
sovereignly of it, so it may likewise happen that she shall possess the sovereignty of a p
property or the domain, with respect to use, belongs to some other nation. But it is alway
when a nation possesses the useful domain of any place whatsoever, who has also the
empire, or the sovereignly (§ 205). We cannot, however, from the possession of the emp
probability, a coexistent possession of the useful domain; for, a nation may have good re
empire over a country, and particularly over a tract of sea, without pretending to have ar
useful domain. The English have never claimed the property of all the seas over which t
empire. (88)

This is all we have to say in this first book. A more minute detail of the duties and rights
in herself, would lead us too far. Such detail must, as we have already observed, be sou
treatises on the public and political law. We are very far from flattering ourselves that we
important article; this is a slight sketch of an immense picture: but an intelligent reader w
supply all our omissions by making a proper application of the general principles: we hav
care solidly to establish those principles, and to develop them with precision and perspic

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(76) As to the dominion of the main seas, and right to limit the passage thereon, and the
the British seas and elsewhere, in general, see the authorities collected in 1 Chitty's Cor
108. With respect to the view taken by the *English law* of rights in and connected with th
the doctrine is, that the sea is the property of the king; and that so is the land beneath, e
land as is capable of being usefully occupied without prejudice to navigation, and of whi
had a grant from the king, or has so *exclusively* used it for so long a time as to confer or
prescription. In the latter case, a presumption is raised that the king has either granted h
it, or has permitted him to have possession of it, and to employ his money and labour up
upon him a title by occupation, the foundation of most of the rights to property inland. Th
England, and also of Jersey, and some other islands belonging to Great Britain. *Benest*
67; *Blundell v. Cotterall*, 5 Bar. & Ald. 268; and *The King v. Lord Yarborough*, 3 Bar. & C
Appeal Cases, New Series, 178. In the first mentioned case, it was decided that the lord
establish a claim to the exclusive right of cutting sea-weed on rocks *below-water marker*
from the king, or by such long and undisturbed enjoyment of it (viz. at least for *twenty ye*
give him a title by prescription must be uninterrupted and peaceable, both according *to t*
civil law, and those of France, Normandy, and Jersey. But, where artificial cuts or recess
the sea-shore, into and over which the sea afterwards flows, then, in the absence of pro
ownership, the soil of these recesses is to be presumed to have belonged to the owner
and not to the crown. *Lowe v. Govett*, 3 Bar. & Adol. 863. — C.

1. See Grotius's Mare Liberum, and Selden's Mare Clausum, lib. i. cap. vii.

(77) See observations and authorities, 1 Chit. Com. L. 287, n. 4, 5.

(78) As to the effect of twenty years' uninterrupted use, and what interruption not succes
prevent a right, see the judgment in *Benest v. Picon*, Knapp's Rep. 67. — C.

(79) See further, 1 Chit. Com. L. 94, n. 1; ib. 98, s. 1. — C.

(80) See further, 1 Chit. Com. L. 92, n. 2; ib. 94.1; ib. 95, n. 1; Puffnd. 3. c. 3, s. 6, p. 69.

2. Selden's Mare Clausum, lib. ii. (81) See further, Puff. b. 4, c. 5, s. 9. pp. 167, 8; 1 Chit
100, n. 1; ib. 101, n, 2; ib. 101, n. 4; ib. 287, n. 7: ib. 441, n. 5.

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