

Excerpt from Emmerich de Vattel

The Law of Nations, or the Principles of the Law of Nature (Originally published 1758)

CHAPTER XVIII

Of the Establishment of a Nation in a Country.

§203. Possession of a country by a nation. Hitherto we have considered the nation merely with respect to itself, without any regard to the country it possesses. Let us now see it established in a country, which becomes its own property and habitation. The earth belongs to mankind in general; destined by the creator to be their common habitation, and to supply them with food, they all possess a natural right to inhabit it, and to derive from it whatever is necessary for their subsistence, and suitable to their wants. But when the human race became extremely multiplied, the earth was no longer capable of furnishing spontaneously, and without culture, sufficient support for its inhabitants; neither could it have received proper cultivation from wandering tribes of men continuing to possess it in common. It therefore became necessary that those tribes should fix themselves somewhere, and appropriate to themselves portions of land, in order that they might, without being disturbed in their labour, or disappointed of the fruits of their industry, apply themselves to render those lands fertile, and thence derive their subsistence. Such must have been the origin of the rights of *property* and *dominion*: and it was a sufficient ground to justify their establishment. Since their introduction, the right which was common to all mankind is individually restricted to what each lawfully possesses. The country which a nation inhabits, whether that nation has emigrated thither in a body, or that the different families of which it consists were previously scattered over the country, and there uniting, formed themselves into a political society,—that country, I say, is the settlement of 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*, by virtue of which the nation alone may use this country for the supply of its necessities, may dispose of it as it thinks proper, and derive from it every advantage it is capable of yielding.—2. The *empire*, or the right of sovereign command, by which the nation directs and regulates at its 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 considered as acquiring the *empire* or sovereignty of it, at the same time with the *domain*. For since the nation is free and independent, it can have no intention, in settling in a country, to leave to others the right of command, or any of those rights that constitute sovereignty. The whole space over which a nation extends its government, becomes the seat 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 purpose of forming a nation or state, they all together acquire the sovereignty over the whole country they inhabit; for they were previously in possession of the domain,—a proportional share of it belonging to each individual family: and since they are willing to form together a political society, and establish a public

authority which every member of the society shall be bound to obey, it is evidently their intention to attribute to that public authority the right of 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 yet fallen into the possession of any one; and those things belong to the person who first takes possession of them. When therefore a nation finds a country uninhabited and without an owner, it may lawfully take possession of it: and after it has sufficiently made known its will in this respect, it cannot be deprived of it by another nation. Thus navigators going on voyages of discovery, furnished with a commission from their sovereign, and meeting with islands or other lands in a desert state, have taken possession of them in the name of their nation: and this title has been usually 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, appropriate to itself countries which it does not really occupy, and thus engross a much greater extent of territory than it is able to people or cultivate. It is not difficult to determine, that such a pretension would be an absolute infringement of the natural rights of men, and repugnant to the views of nature, which, having destined the whole earth to supply the wants of mankind in general, gives no nation a right to appropriate to itself a country, except for the purpose of making use of it, and not of hindering others from deriving advantage from it. The law of nations will therefore not acknowledge the property and sovereignty of a nation over any uninhabited countries, except those of which it has really taken actual possession, in which it has formed settlements, or of which it makes actual use. In effect, when navigators have met with desert countries in which those of other nations had, in their transient visits, erected some monument to shew their having taken possession of them, they have paid as little regard to that empty ceremony, as to the regulation of the popes, who divided a great part of the world between the crowns of Castile and Portugal.¹

¹ Those decrees being of a very singular nature, and hardly any where to be found but in very scarce books, the reader will not be displeas'd with seeing here an extract of them.

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

“Motu proprio,” (says the pope) “non ad vestram, vel alterius pro vobis super hoc nobis oblatae petitionis instantiam, sed de nostra mera liberalitate, & ex certa scientia, ac de apostolicae potestatis plenitudine, omnes insulas & terras firmas, inventas, & inveniendas, detectas & detegendas versus occidentem & meridiem,” (drawing a line from one pole to the other, at an hundred leagues to the west of the Azores) “auctoritate omnipotentis Dei nobis in beato Petro concessa, ac vicariatus Jesu Christi, qua fungimur in terris, cum omnibus illarum dominiis, civitatibus, &c. vobis, haeredibusque & successoribus vestris, Castellae & Legionis regibus, in perpetuum tenore praesentium donamus, concedimus, assignamus, vosque, & haeredes ac successores praefatos, illorum dominos, cum plena libera & omni moda potestate, auctoritate & jurisdictione, facimus, constituimus, & deputamus.” [“We, of our own accord, not at your instance nor the request of anyone else in your regard, but of our own sole largesse and certain knowledge and out of the fullness of our apostolic power, by the authority of Almighty God conferred upon us in blessed Peter and of the vicarship of Jesus Christ, which we hold on earth, do by tenor of these presents, should any of said islands have been found by your envoys and captains, give, grant, and assign to you and your heirs and successors, kings of Castile and Leon, forever, together with all their dominions, cities, camps, places, and villages, and all rights, jurisdictions, and appurtenances, all islands and mainlands found and to be found, discovered and to

§209. Whether it be lawful to possess a part of a country inhabited only by a few wandering tribes. There is another celebrated question, to which the discovery of the new world has principally given rise. It is asked whether a nation may lawfully take possession of some part of a vast country, in which there are none but erratic nations whose scanty population is incapable of occupying the whole? We have already observed (§81), in establishing the obligation to cultivate the earth, that those nations cannot exclusively appropriate to themselves more land than they have occasion for, or more than they are able to settle and cultivate. Their unsettled habitation in those immense regions cannot be accounted a true and legal possession; and the people of Europe, too closely pent up at home, finding land of which the savages stood in no particular need, and of which they made no actual and constant use, were lawfully entitled to take possession of it, and settle it with colonies. The earth, as we have already observed, belongs to mankind in general, and was designed to furnish them with subsistence: if each nation had from the beginning resolved to appropriate to itself a vast country, that the people might live only by hunting, fishing, and wild fruits, our globe would not be sufficient to maintain a tenth part of its present inhabitants. We do not therefore deviate from the views of nature in confining the Indians within narrower limits. However, we cannot help praising the moderation of the English puritans who first settled in New England; who, notwithstanding their being furnished with a charter from their sovereign, purchased of the Indians the land of which they intended to take possession.² This laudable example was followed by William Penn³ and the colony of quakers that he conducted to Pennsylvania.

§210. Colonies. When a nation takes possession of a distant country, and settles a colony there, that country, though separated from the principal establishment, or mother-country, naturally becomes a part of the state, equally with its ancient possessions. Whenever therefore the political laws, or treaties, make no distinction between them, every thing said of the territory of a nation, must also extend to its colonies.

be discovered towards the west and south.” Alexander VI, *In caetera*, May 4, 1493. The pope excepts only what might be in the possession of some other Christian prince before the year 1493,—as if he had a greater right to give what belonged to nobody, and especially what was possessed by the American nations.— He adds: “Ac quibuscunque personis cujuscunque dignitatis, etiam imperialis & regalis, status, gradus, ordinis, vel conditionis, sub excommunicationis latae sententiae poena, quam eo ipso, si contra fecerint, incurrant, districtius inhibemus ne ad insulas & terras firmas inventas & inveniendas, detectas & detegendas, versus occidentem & meridiem ... pro mercibus habendis, vel quavis alia de causa, accedere praesumant absque vestra ac haeredum & successorum vestrorum praedictorum licentia speciali, &c. Datum Romae apud S. Petrum anno 1493. IV. nonas Maji, Pontific. nostri anno primo.” “Furthermore, under penalty of excommunication *late sententiae* to be incurred *ipso facto*, should anyone thus contravene, we strictly forbid all persons of whatsoever rank, even imperial and royal, or of whatsoever estate, degree, order, or condition, to dare, without your special permit or that of your aforesaid heirs and successors, to go for the purpose of trade or any other reason to the islands or mainlands, found and to be found, discovered and to be discovered, towards the west and south.” *Leibnitii Codex Juris Gent. Diplom. Diplom.* 203.

See *ibid.* (*Diplom.* 165.) the bull by which pope Nicholas V. gave to Alphonso, king of Portugal, and to the Infant Henry, the sovereignty of Guinea, and the power of subduing the barbarous nations of those countries, forbidding any other to visit that country, without the permission of Portugal. This act is dated Rome on the 8th of January, 1454.

² History of the English Colonies in North America. [[William Burke, *An Account of the European Settlements in the Americas*.

³ William Penn, 1644–1718.