

AMERICAN CONSTITUTIONALISM  
VOLUME II: RIGHTS AND LIBERTIES  
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Supplementary Material

Chapter 5: The Jacksonian Era – Democratic Rights/Citizenship

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*J.S. Black, Opinion on Right of Expatriation (1856)*<sup>1</sup>

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In 1851, Christian Ernst emigrated from Hanover, German to the United States. He became an American citizen on February 1859. The next month he returned to Hanover to visit relatives. Local authorities immediately arrested Ernst on the ground that he had an obligation to serve in the Hanoverian army. Ernst insisted that he was an American citizen with no further obligations to the country of his birth. Authorities in Hanover insisted that Ernst had no right to renounce allegiance to the country of his birth. President James Buchanan asked his attorney general, Jeremiah S. Black, to determine whether the United States had obligations to protect Ernst.

Attorney General Black concluded that Ernst was an American citizen. As such, Ernst had no legal obligation to serve in the Hanoverian army and he had a right to expect American protection when abroad. On what basis did Black reach this conclusion? Why do you think Jacksonians were more inclined than Federalists to support expatriation rights?

Black as forcefully championed expatriation rights when Americans renounced their citizenship. Two years before considering the case of Christian Ernst, Black supported the right of Julius Amther to resume Bavarian citizenship. "There is no statute, or other law of the United States, which prevents either a native or naturalized citizen from severing his political connection with this Government," he wrote, "if he sees proper to do so, in time of peace, and for a purpose not directly injurious to the interests of the country."<sup>2</sup>

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The natural right of every free person, who owes no debts and is not guilty of any crime, to leave the country of his birth in good faith and for an honest purpose, the privilege of throwing off his natural allegiance and substituting another allegiance in its place – the general right, in one word, of expatriation, is incontestable. I know that the common law of England denies it; that the judicial decisions of that country are opposed to it; and that some of our own courts, misled by British authority, have expressed, though not very decisively, the same opinion. But all this is very far from settling the question. The municipal code of England is not one of the sources from which we derive our knowledge of international law. We take it from natural reason and justice, from writers of known wisdom, and from the practice of civilized nations. All these are opposed to the doctrine of perpetual allegiance. It is too injurious to the general interests of mankind to be tolerated; justice denies that men should either be confined to their native soil or driven away from it against their will. . . . In practice, no nation on the earth walks, or ever did walk, by the rule of the common law. . . . Here, in the United States, the thought of giving it up cannot be entertained for a moment. Upon that principle this country was populated. We owe to it our existence as a nation. Ever since our independence we have upheld and maintained it by every form of words and acts. We have constantly promised full and complete protection to all persons who should come here and seek it by renouncing their natural allegiance and transferring their fealty to us. We stand pledged to it in the face of the whole world. Upon the faith of that pledge millions of persons have staked their most important interests. If we repudiate it now, or spare one atom of the power which may be necessary to redeem it, we shall be guilty of perfidy so gross that no American can witness it without a feeling of intolerable shame.

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<sup>1</sup> 9 U.S. Op. Atty. Gen. 356 (1859).

<sup>2</sup> J.S. Black, "Right of Expatriation," 9 U.S. Op. Atty. Gen. 62 (1857).

Expatriation includes not only emigration out of one's native country, but *naturalization* in the country adopted as a future residence. When we prove the right of a man to expatriate himself, we establish the lawful authority of the country in which he settles to naturalize him if its government pleases. What, then, is naturalization? . . . [I]t signifies the act of adopting a foreigner and clothing him with all the privileges of a native citizen or subject.

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In regard to the protection of our citizens in their rights at home and abroad we have no law which divides them into classes, or makes any difference whatever between them. A native and a naturalized American may, therefore, go forth with equal security over every sea and through every land under heaven, including the country in which the latter was born. Either of them may be taken up for a debt contracted or a crime committed by himself, but both are absolutely free from all political obligations to every country but their own. . . .

There have been and are now persons of very high reputation who hold that a naturalized citizen ought to be protected by the government of his adopted country everywhere except in the country of his birth; but if he goes there, or is caught within the power of his native sovereign, his act of naturalization may be treated as a mere nullity, and he will immediately cease to have the rights of an American citizen. This cannot be true. It has no foundation to rest upon, (and its advocates do not pretend that it has any), except the dogma which denies altogether the right of expatriation without the consent of his native country; and that is untenable, as I think I have already shown.

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