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CITIZENSHIP AS A BILL OF ATTAINDER: THE SUPREME HUMAN RIGHTS VIOLATION

Abstract:

Current practices in municipal law, as orchestrated by UN conventions and doctrine in international law proclaim that nearly every person is born with citizenship. However, instead of serving as an individual claim of right, governments use the label of citizenship to extract labor, wealth, and compel obedience under threat of imprisonment or death. Because States define each natural-born citizen as a debtor at birth, said States declare these persons as subject to punishment for accidents of birth and geography. In effect, States attaint people with the obligations of citizenship and de jure slave status without due process – a supreme human rights violation. This paper will detail the historical roots of the concept of citizenship and demonstrate the evolution of legal thought that supports slavery in the form of citizenship.

Keywords:

citizenship, bill of attainder, human rights, international law

JEL Classification: K33, K19, E61

I. Introduction

This paper offers a critique of the legal concept of so-called natural born or involuntary *citizenship*.[1] Rather than evidence of the peak of human social evolution, the legal *status* (term) is used by governments[2] as a device of mass social control to extract wealth and labor and or to impose punishments against individuals – all the while relieving the authority (abuser) of guilt, shame, or reprehension. Ultimately my analysis finds that, in legal terms, *citizen* and or *citizenship* are applied by governments in order to effect Bills of Attainder. As such, the tag, brand, or mark (of the beast) of *citizen* is part of a complex the imposes the ultimate human rights violation – slavery.

A. Clarifying terms

Throughout the research and sources used for this project, I have come across a most disturbing, but not unexpected, phenomenon. Scholars, jurists, legislators, international bodies, and others mix and match, interchange, if not misapply, words like: citizen, subject, national, political, civilian, citizenship, subjectship, nationality, and civic. Additional oft-confounding terms include country, State, government, nation, *patria*, and even *community*.[3]

Though these words are interchanged, within the context of law, such is problematic for a number of reasons (which I will detail below). Hence for the bulk of this paper, I will limit my discussion to that of *citizen* (and or citizenship) as a narrowly defined, legal concept that presupposes States, and necessarily allows for the existence of governments – though I declare that both the State and its government are little more than reifications. As is relevant and necessary, for matters of clarification, I will detail or review how legal opinion or law posits words like *nationality*, etc., to stand in for *citizen* or *citizenship* – yet are not the same, within this discussion which includes issues of natural law and human rights.

B. What is *citizenship*, as a contract?

1 I recognize that many people petition governments to become *citizens* (or subjects of a so-called king, queen or government). However this analysis does not address those special cases. Still I contend that not even the *naturalized* understand fully the terms and conditions of their *voluntary* agreement with so-called States.

2 I use the term *government* in the colloquial sense. When I speak of government, I mean people, who call themselves government or agents of the State. They often wear clothes with insignia and carry weapons or threaten others with force for non-compliance. They are little more than thugs, sociopaths, and psychopaths.

3 These problems exist, not only in English, but in Turkish too. Even in Turkish law, words like *devlet* (State or government, implying country and hence the people *of a nation* – who are associated by birth), are mixed with *Ülke* (domain, territory, the realm, but invoking the concept of the country – as the land *and its people*; derived from *mülke* meaning land or real property), and *millet* (nation, as in one people of a *millet Türkçe* – but more specifically the word means, what Americans might call, ethnicity. *Millet* references the concept of a people, living sharing a given religious or cultural-legal tradition, which is divorced from the Imperial order – a practice imported to the Ottoman Empire from Roman practice of provincial governance). Other conflated terms are *cumhuriyet* (defined as republic, but usually only discussed within the context of government, e.g., *Türkiye Cumhuriyeti*, where *cumhur* is the notion of public – as the people, *per se – not* the things held or shared in public or the common interest), and *halk* (as *volk* or the public/*cumhur*, people who are part of one political entity, undivided by religious, linguistic or cultural differences or mores).

The modern-day, legal, concept of *citizenship* builds on the writings of political philosophers, jurists, classical and Enlightenment writers (cf. Bodin 1955). It defines *citizenship* as a political status that exists, given an exchange of promises.

> "It is not the rights and privileges which makes a *man* a citizen,[4] but the mutual obligation between subject and sovereign: in return for obedience, the sovereign must do justice, give counsel, assistance, and protection to the subject" (Bodin 1955, 20).

This idea, of citizenship as a contract of reciprocal promises, was articulated by the United States Supreme Court in *United States v. Luria* (1913).

> "Citizenship is membership in a political society, and implies a duty of allegiance on the part of the member and a duty of protection, on the part of the *society*. These are reciprocal obligations, one being a compensation for the other." *Luria v. United States*, 231 U.S. 22 (1913)

Though Luria was a naturalized citizen (until stripped for a supposed lack of commitment to live in the United States) and thus went through a process of application and attestation – undergoing an explicit contractual agreement, with the vast majority, the cases of the so-called natural-born, the contract is implied (cf. Rousseau 1762).[5]

The conventional view holds that the contract is formed when a government (or sovereign) promises to suffer a legal detriment, a duty to protect the other party (i.e. the would-be *citizen*); and the would-be citizen promises to suffer a legal detriment in the form of a duty of loyalty, allegiance, and obedience to said government (Stevens 2009; cf. Graeber 2011; Justinian ca. 535).[6] I posit, for a number of legal reasons, fleshed out below, that we should reject the idea of *citizenship* based on this particular claim, and more.

Legal analyst and political theorist, Marc Stevens, is a critic of the concepts of *citizen* and *citizenship*.[7] On the one hand, while he opposes the State, on ideological grounds that it is violent and this violative of individual liberty, he also has a legal challenge to the labels.

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4 Editor's note: I trust that this English-language translation was literal, where Bodin (1576) used the French, *homme*, rather than a gender neutral term. If women were not allowed to hold public office, they did not possess all the rights of Roman-style citizenship.

5 Critics of the government creation, a legal person *qua* citizen, like Dean Clifford (2013), argue that most people act unwittingly under the legal title or license granted by government. The State assumes that individuals willingly agree to act as the trustee, of the legal person, for the benefit of government (Clifford 2013).

6 See discussions by Spectar (2003) on contractarian citizenship, citing, among others, Aleinikoff (1986). In discussing his book, *Debt: the first 5,000 years*, Graeber (2012) explains that in the age of empire, the social contract between the conquered peoples and the conquerer, was that where the former owed a life-debt – because the victorious king spared them. See: http://www.youtube.com/watch?v=CZIINXhGDcs. According to Graeber (2012) this quasi-citizenship status then was a pledge of loyalty, *qua* slavery, by the conquered, to the new regime. Such an idea is expressed by Justinian (535) Book I of Persons, Article III, the Law of Persons. http://thelatinlibrary.com/law/institutes.html. See more about European era of feudalism (below).

7 Marc Stevens has spoken and written on the question of citizenship, and related questions of law, jurisdiction, and government many places and many times. His written works include: *Adventures in Legal Land*; and *Government Indicted*. For much of this paper, I reference the arguments that Stevens offered at the New Hampshire Liberty Forum of 2009. http://www.youtube.com/watch?v=Nrp5pFMbYx0

Stevens (2009) finds that, as a matter of law, no real person possesses the legal status, within any given polity (*qua* State), of *citizen*. Stevens (2009) presents a fairly simple argument. Assuming the validity of the view of *citizenship*, from Aristotle, Justinian (ca. 535), Jean Bodin (1576), Rousseau (1762), *et alia*,[8] and modern court opinions,[9] Stevens (2009) attacks the validity of the contract.

First, if the contract is between a person (*qua* citizen) and something called government (e.g., a collection of certain persons who presume to act as the supreme authority for, or agent of, something called a *State*), as Stevens (2009) might put it, does a so-called *government* agent have the legal capacity to form said contract? After all, on the government side, who is the real party in interest said to be party to the contract? And what capacity would any such person have to bind others contemporarily or in the future?

When considering the individual person, Stevens (2009) holds that the contract is void due to duress or coercion. Taking a natural law and or common law view, Stevens (2009) builds on the notion of the propriety of the *consent of the governed* – as described by Locke (1689), and Jefferson (1776). Yet repeatedly, Stevens (2009) finds that governments do not allow individuals to make a fully-informed, and knowing, decision to enter into this contract. More often individuals fear government – that we are obedient under duress, coercion, or threat of bodily harm. Thus, this line of reasoning holds that there cannot be a valid contract.

Moving on beyond problematics of capacity to contract and whether such could be entered into voluntarily, Stevens (2009) considers the terms of the contract.[10] If some agent has pledged a duty of protection, Stevens (2009) holds that this putative contract is void because the so-called agents of the *State* have committed an anticipatory breach.

Multiple court judgments, in a number of so-called *States*, have found that the government (*qua* sovereign) owes *no duty* of protection to the putative citizen.[11] Thus, the would-be citizen cannot win a damage award against the sovereign for the tort of negligence (failure to protect) or breach of contract. Stevens (2009) then reasons that as citizenship is dependent upon the existence of a State that is duty-bound to provide protection, because said agents have expressed intent to void the unwritten contact of protection, the governments have eliminated the status of citizen – as based on an exchange of promises.

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8 See the a review of political and legal thought on citizenship from Jem Spectar (2003), To Ban or Not to Ban an American Taliban? Revocation of Citizenship & Statelessness in a State-centric System. *California Western Law Review*, 39 *Cal. W. L. Rev.* 263

9 See *DeShaney, et al. v. Winnebago County, et al*., 489 U.S. 189 (1989); see also *Souza v. City of Antioch*, 54 Cal. App. 4th 1009 (1997).

10 Applying simple rules of construction, there can be no contract between a real person and something called a *State*, given that the agents of the State make no commitment to be legally bound. The agents do not subject themselves to suit for alleged breaches of said bargained for exchange. See Government of Western Australia, Small Business Development Corporation, Four Essential Elements of a Contract (2013). http://www.smallbusiness.wa.gov.au/four-essential-elements-of-a-contract/

11 See a list of American Court cases at: http://www.freerepublic.com/focus/news/1976377/posts; and http://whatreallyhappened.com/WRHARTICLES/courtrulingsonpoliceprotection.php; see details of Court cases from the UK finding no general State duty to protect civilians at: http://ohrh.law.ox.ac.uk/?p=3157.

Ultimately, Stevens (2009) argues that no State exists. It is for the very reason that there is no collection of individuals who are bound to their pledge of loyalty and allegiance to a government – for said government refuses to commit to a duty of protection. Hence there are no citizens. Without a body politic, a collection of individuals who make up the citizenry, there is no State. Thus the contract is void *ab initio*.

> A contract-based citizenship is inherently revocable ... The parties may specify that a failure to perform, in whole or in part, is grounds for termination or revocation of the right (Spectar 2003, 277).

C. Is *citizenship* a human rights violation? Question and method of analysis

Though I agree with Stevens (2009), we know that governments have declared that certain persons are citizens; and many individuals believe that they are legal citizens of a given State. However, because the legal relationship is one-sided, and as we shall see, subject to the whim of the government *qua* the sovereign (cf. UN Declaration of Human Rights Article 15),[12] and the citizens are born owing duties to the State, I am wont to find that the legal status of citizen is little more than that of slave.

The purpose of this paper then is to explore the legal implications of this *non*-contractual notion of citizenship. We will see from UN declarations, court rulings, and academic writings that citizenship is described as some sort of (in)formal contract. Yet as a legal doctrine, modern citizenship is filled with (im)practicalities, limitations, and internal incongruities. It conflicts with ideals of liberal American thinkers like Jefferson (1776) and Hamilton (1788b) – which oddly parallel the critiques of anarchists and voluntarists like Stevens (2009). Instead, I am left to conclude that political organs and bodies, including the United Nations, understand *citizenship* to be a neo-feudal status, under which a person owes obedience to a sovereign, yet the sovereign owes *nothing* in return.[13]

My analysis starts with a review of Western thought on the dominant view of the individual vis-a-vis the State. This view declares that a *citizen* is a person who is embedded within, and hence indebted to, something called a State (taking the form of a government or sovereign – the latter appearing as a simple monarchy or military dictatorship). From there I show that the modern-day position is built upon a number of writings from the classical era of Greece and Rome, post-Medieval theorists, and a host of modern Common law cases.

After demonstrating the evolution and coherence in the legal concept of the *citizen*, I highlight a fundamental human rights problem with the State-imposed legal status of citizen. Namely, through their proclaimed authority – and bolstered by international law – States impose

12 The UN Declaration of Human Rights, Article 15.2 states that, "No one shall be ... denied the right to change his *nationality*." Whereas many might believe that the UN Article entitles every person to elect to possess the *citizenship* of any jurisdiction, as explained in *Elk v. Wilkins*, 112 U.S. 94 (1884), the sovereign must extend the offer of protection or citizenship. The State will not recognize a person as citizen through their unilateral claim.

13 Neither the UN Charter nor the UN Declaration of Human Rights announce commitments of governments to people. However see the UN Declaration of Human Rights, Article 29.1: "*Everyone* has *duties* to *the* community, in which, alone, the free and full development of his *personality* [*sic*], is possible [*sic*].

penalties upon their subjects, *qua* citizens. Governments justify the imposition of these penalties, on the masses, merely due to a combination of accidents of biology, history, and geography. As imposed then, the penalties – in the form of a demand for wealth or labor – are extracted in what amount to Bills of Attainder. Because I agree with Hamilton (1788b), that Bills of Attainder are a most heinous and vicious tool of tyranny, I conclude that the legal concept of *citizenship* is little more than a badge of servitude, a crime against humanity.

II. Academic Reflections on the Term *Citizen*

Modern political theorists offer a range of descriptions and definitions of the terms *citizen* and *citizenship* – nearly always connected to some formal or informal contractual liability between the particular person and others of the community and or State. For example, the communitarian view claims that "a citizen must acknowledge the variety of debts, inheritances, rightful expectations, and obligations he/she *inherits* from the family, city, tribe, and *nation*" (Spectar 2003, 278; MacIntyre 1984, 220). Aleinikoff (1986) insists that

> "the citizen is defined, in part, by her relationships, roles, and *allegiances* with other people; and her relationship *with the State* is based on ... *its* traditions, and *core assumptions* and *purposes*" (at 1494; cf. Spectar 2003, 278).[14]

These passages link *citizenship*, as a legal concept, to modernity, and a life, where a person is under the rule of the State. Despite the notions that citizenship carries duties, American theorists wax on about the *legal* status of citizenship as the highest social ideal to which humans might aspire – because they see it as a means of freedom. Pocock (1992) writes, "citizenship is not just a means to being free; it is the way of being free *itself*."[15]

Yet Pocock (1992) does not define the phrase *being free*. Perhaps his definition drew from French thinker, Jean Bodin (1576). According to Bodin (1955), a citizen is a *free* subject, *dependent* on the authority of another (18-19). Thus the implication is that the freedom is grounded in one's willing and voluntary election to live under a set of rules? Such comports with the *communitarian* view [of citizenship], where the individual is *self-encumbered*, and situated in society (Spectar 2003, 278).

Still, I must protest that Pocock (1992) is some sort of Orwellian propagandist. His ideas function akin to the logic of an Outer Party member – a person content to ignore cognitive dissonance. Given that citizenship requires States, and those States are manifest through governments, made up of people, who impose – under threat of force – restrictions on the behavior of other *citizens* – I am left to conclude that Pocock (1992) might say, "war is not just a means to being at peace, war is the way of *being at peace*."

Other modern writers are not so nearly idealistic nor convoluted as Pocock (1992). Walzer (1996) holds that citizenship creates expectations that citizens have for each *other*. Through a

14 Aleinikoff (1986) ignores the problematics of conceiving that a State has a *purpose*. Neither States nor governments have a purpose. Yet, we can argue that the individual *people* in government act, merely for the purpose to reign over things and persons. See de Saint-Exupéry (1943) at 38.

15 J.G.A. Pocock, 1992. The Ideal of Citizenship Since Classical Times, reprinted in *The Citizenship Debates: a reader* 36 (Gershon Shafir ed., 1998).

series of overlapping, if not redundant, proclamations Walzer (1996) argues that these expectations include:

> (1) some degree of commitment or loyalty, as well as *service*, and civility;
>
> (2) a commitment to defend the homeland, even to risk one's life in defense of the State; and
>
> (3) an expectation to obey the laws [of the State] and maintain a degree of relative civility.[16]

Walzer's (1996) vision, borrowing from ancient Greece, might be called republican citizenship.[17] This ideal sees citizenship as that which prioritizes the interests of the *wider community*, and regards citizenship as a demanding political *obligation* (Lister 2002, 2-3).

Schuck (1997) writes: citizenship denotes a *relationship* between individuals and the polity, in which citizens *owe* allegiance to their polity.[18] He adds, "Citizens [might] have to defend the polity when it is threatened; and *they must not betray*" [the polity] (Schuck 1997).

Oldfield (1998), who understands citizenship within a framework of 18th century American or French liberalism, holds that nothing is required of a citizen *except*: (i) respect for the freedom of others; as well as (ii) the minimal civic duties of keeping the *State* in being. Oldfield (1998) enumerates those civic duties to include: (a) paying taxes; (b) voting; and (c) a willingness to defend the State from external or internal enemies.[19]

Most of these theorists, writing as pro-Statists – and not anarchists, voice support for Rousseau's (1762) *Social Contract* theory.[20] Over and over, they announce that citizenship exists under the condition where the State offers *protection* to said individuals, in exchange for a pledge of allegiance. But it should not be lost on historians and legal theorists, that at the core, this notion of protection, is actually a declaration that the citizen, *qua* serf, must actually protect the *State* (cf. Walzer 1996; Schuck 1997; Oldfield 1998).

A Citizen has a duty to Defend the State?
"A good citizen's duty, towards the *whole* State, is to have nothing dearer than *its* welfare and safety, to offer *his* life, property, and fortunes freely for *its* preservation ..." (von Pufendorf 1673)[21]

16 Walzer (1996) provides no definition of the term civility.

17 See Plato, *The Republic*; and Aristotle, *Politics*

18 See Oldfield, Adrian, Bryan Turner and Peter Hamilton (editors) (1994). *Citizenship: Critical Concepts. United States and Canada*. Routledge

19 See Adrian Oldfield, Citizenship and Community, in *The Citizenship Debates* 76 (Gershon Shafir ed., 1998).

20 See Jean Jacques Rousseau, *Of the Social Contract* (*Du contrat social ou Principes du droit politique*, 1762) (translated by Frankel 1947).

21 von Pufendorf (1673) BOOK 2 CHAPTER 18, On the Duties of Citizens (paragraph 4) http://www.lonang.com/exlibris/pufendorf/puf-218.htm

Instead of being assured of safety *under* the protection of the sovereign, the person, possessing the legal standing of serf (but called *citizen* or *subject*), is expected to protect *himself* – when allowed.[22] Consider, whenever the sovereign declares that there exists a national threat or there is a need for national security, so-called *protection* primarily takes the form of the State commanding the subject/citizen: (i) to take up arms to attack whomever the sovereign defines as enemy or threat (McBain 2011); or (ii) to get killed defending the sovereign (von Pufendorf 1673).

In sum, the *citizen* is always expected to provide the muscle, blood, and sacrifice – not the sovereign – in defense of the *sovereign* and or the ruling order. Such an arrangement, where the sovereign provides no consideration, or has no intent to be bound by the promise to provide the protection, is no *contract*.

Hence, I argue that *citizenship*, in the minds of the overseers (and even some academics) – borrowing from thinkers like Bodin (1576) and von Pufendorf (1673), is *not* a function of a legally binding contract. Rather it is another type of legal arrangement. At best, governments, and the *interested classes* (Bourne 1918), view people as cattle, mere property, of the State. Sadly if we are not deemed to be their property, we are seen as things, owing a debt (i.e., obligations) to the ruling-class. In the words of Rubenstein and Adler (2000):

> "Citizenship is conceptualized in terms of *political institutions*, that are free to act – on the basis of national sovereignty, according to the will and *interests* of the *citizenry*, as well as with political authority *over* such citizenry" (520; cf. Spectar 2003, 271).

In his review of various schools of political thought, Spectar (2003) defines what he calls civic-republican citizenship as having certain components including those rights which are required to carry out one's private ends (275). But then he adds that these *rights* are associated with a corresponding set of *obligations* (Spectar 2003, 275; cf. Miller 1999, 36).

Again this notion of obligation, in which the nominal *citizens* owe to the rulers, is not grounded in contract, but due to an accident of birth, is echoed by Oldfield (1998). He insists that the civic-republican ideal posits two *conditions* for citizenship (Oldfield 1998, 79) – both conditions are nebulous, and invoke the concept of the State. So Oldfield (1998) argues that: (1) the individual becomes a citizen by *fulfilling the obligations* of the practice of citizenship; and (2) individuals cannot be expected to engage in the practice of citizenship *without active support* (79).

The postulates of Oldfield (1998) are troubling. He does not spell out said *obligations* which are endemic to the practice of citizenship. Conceivably if pressed, he would offer a standard list: paying taxes; obedience to the laws – handed down from arbitrary government; and defending the State when called upon. Yet we should not lose sight of the implications of the second condition. The term *active support*, necessarily includes the idea that some persons, acting in the name of the State, must extract wealth (e.g., taxes or property) or labor from *others* (e.g., non-agents of government) who shall be commanded to provide said support.

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22 See the legal issue of the right to defend one's home and property in England and the case of Tony Martin, http://www.bbc.co.uk/news/uk-politics-13865987; http://en.wikipedia.org/wiki/Tony_Martin_(farmer).

III. Citizenship: Historical Overview

From his review of the literature, Spectar (2003) argues that the present-day notion about *citizenship*, and its call for duties owed, by *citizen-serfs* to government, is linked to the writings of Rousseau (1762), Kant (1795), and others, who spoke of the theory of consent (cf. Walzer 1996, 212). Though arguably, more often such consent came in the inconvenient form of an unwritten, and implied, *social contract*, we are left to wonder, where did Rousseau, and the other moderns, get their ideas?

A. Classical Greek and Roman ideas on *citizenship*

Heater (2004) finds that the idea that *citizenship* includes a duty to defend the State is relatively *new*. A review of classic Aristotelean thought on citizenship (and civic virtue) lends support to Heater (2004). The classic Greek republic was to be a form of civic action, dependent on virtues, where virtue was acknowledged through moral and political relationships. As for citizenship in a Greek republic, it was a relationship in which each citizen agreed to rule and *to be ruled* (cf. O'Ferrall 2001).[23]

In his *Politics*, speaking of citizens, Aristotle held:

> "both governors and governed *have duties* to perform; the special functions of a governor to command and to judge";[24] and

> "the citizens must not lead the life of an artisan or tradesmen, for such a life is ignoble, and inimical to virtue. Neither must they be farmers, since leisure is necessary both for the development of virtue, and the performance of political *duties*."[25]

Thus, Aristotle reserved citizenship for the property owners – chiefly those who owned land, slaves, and the silver mines.[26] Yet, in calling for further division, even among the property owners, Aristotle proclaimed that the proper exercise of virtue, for young adult male *citizens*, was seen when they acted as a group of enforcers: all the while obedient to the *wise* elders, and imposing dictates of the ruling-class, ruthlessly over the *demos* and what Marx might call the *lumpenproletariat*.[27]

In Aristotle's vision of society and *citizenship*, in return for accepting their role as temporary *servants*, the current warrior-class could expect to assume positions of political governors ...

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23 From Aristotle, *Politics*, Book III, noted in Christie and Martin (1995, 45-46)

24 See *Politics*, Book VII, Chapter IV. http://www.constitution.org/ari/polit_07.htm

25 Aristotle, *Politics*, Book VII, Chapter IX.

26 See discussion of the mines of Laurium, http://en.wikipedia.org/wiki/Laurium

27 See a discussion of the Marxist concept of the Lumpen Proletariat at: http://en.wikipedia.org/wiki/Lumpenproletariat

eventually. In comparison to the later views of Bodin (1576) or Rousseau (1762), Aristotle did not argue that citizenship was an exchange of loyalty, for the promise of protection. Rather, Aristotle held that the non-ruling *citizens* had a duty to serve *and* protect the ruling class – out of a sense of virtue, reason, and an expectation of their *own* future leisure – when they would ascend and take up the dual roles of political leaders and priest class.[28]

From the earliest Roman writings and subsequent histories, the issue of citizenship status was a preoccupation. Perhaps it is easiest to understand how that Romans conceived of the idea by recognizing its opposite – slavery. According to Justinian (ca. 535):

> "Slaves are denominated *servi*, because [military] generals order their captives to be sold, and thus preserve them, instead of putting them to death. Slaves are also called *mancipia*, if they were taken from the enemy by the strong hand."[29]

Why was it necessary for Romans to know the legal definition of a slave? Because first-generation slaves, as captives, pledged themselves to a person – the law of the master. Slaves were not subject to laws of a land or a community, but *indebted* to their owner *per se*. Slaves were in debt. The legal opposite of a slave was a person who was free – free of any debt or duty to person or government.

Following Gauis' division of the universe into *persons*, *actions*, *things*, and *property* (signified by a person's relationship to those things), Roman citizenship *itself* became linked with jurisprudential notions of personal property. In effect, the term *citizen* came to mean a real person, who was free to act by law, free to ask of assistance of law, and entitled expect the that the law would provide him protection, in regards to any legal claims over a property right (cf. Spectar 2003). As *citizenship* became a legal status, the citizen came to be seen as a member of a *legal community* with a type of legal standing, thus *owning* various rights or immunities. With respect to this conception of citizenship, as a legal concept, the *legalis homo* is "one who can sue, and be sued in certain courts" (Spectar 2003, 273).

Under the laws of the Roman Empire, the legal designation of *citizen* not only granted one a legal status to sue for remedies in her courts, but included the citizen's capitulation to be governed. That is, the person, now citizen, agreed to live in accordance with the Roman laws. As a legal fiction, or through court presumption, all Roman citizens, at least in some areas of their life, had *consented* to be subject to the law (cf. Pocock 1998).

B. From imperial citizens to pre-modern serfs

If we are to believe the writings of the classic period (and their modern translations), we understand that the *citizen*, as distinct from the slave or alien, had practically none of *onera* now foisted upon us by governments – in the name of honor, faith, and duty *to* government. Indeed, according to Aristotle, a male citizen was expected to govern – not be a mere *object* of government (Christie and Martin 1995). It would be from these ideas, and those of Locke

28 "it is beseeming that the worship of the Gods should be duly performed, by those who, due to age, have given up active life (as a warrior), and left to the old men ... assigned the duties of the priesthood." *Politics*, Book VII, Chapter IX. http://www.constitution.org/ari/polit_07.htm

29 Justinian (535) The Institutes of Justinian, Book 1 of Persons; III The Law of Persons. Online at: http://thelatinlibrary.com/law/institutes.html

(1689), that Jefferson (1776) and Hamilton (1788b) would insist that the only legitimate government is that created by free men who *grant* their consent to others, to *serve* the public, as trustees of the commonwealth, not rule as sovereigns. Nevertheless, with the imposition of the mores of the Roman Empire, and its legal ideals largely unchallenged – at least before the Enlightenment – we see that throughout Europe, the dominant legal status of members of the mass, was that of mere *subject*.

The meaning of a legal *subject* is simple enough to understand. Those who fall under the law, or who are expected to obey the dictates of a sovereign, as subjects. It is a status of subjugation, due to force.

Mao Zedong (1938) wrote, "Political power grows out of the barrel of a gun."[30] The idea was hardly original. More than 2,000 years prior, Aristotle said:

> "those who are able to use force or able to resist force will never be willing to remain in a state of subjugation ...; those who carry arms can always determine the fate of the political community."[31]

Jean Bodin (1576) stated that the *citizen enjoys* the common liberty and *protection* of authority (cf. Walzer 1996, 215). To clarify, he wrote, every citizen is a *subject*, because [the citizen's] liberty is limited by the sovereign power to which the citizen owes *obedience* (cf. Bodin 1955, 19). Furthermore Bodin (1955) announced that neither a change of domicile, from one country (i.e. one given jurisdiction) to another, nor does a change in physical location of the citizen, deprives the prince of his sovereign authority over that citizen (cf. 21).

Bodin (1955) also argued that the relationship between the *citizen-subject* and the sovereign was mutual, and one of committed obedience. He wrote, in order to acquire full rights of citizenship, the benefactor must offer, and the beneficiary must duly accept, the gift offered (cf. Bodin 1955, 21). It is therefore the submission and obedience of a *free subject* to his prince … and the jurisdiction exercised over his subject, by the prince, that makes the *citizen* (Bodin 1955, 21).

Similarly von Pufendorf (1673) said:

> To the rulers of the State, a citizen owes respect, loyalty, and obedience. This implies that one acquiesce [to] the present regime, and have no thoughts of revolution; that one refrain from attaching himself to any other [master]; that one have a good and honorable opinion of the rulers and their acts, and express himself accordingly.[32]

Two hundred years later, by 1884, in Blackstone's *Commentaries*, we would find these ideas repackaged and re-explained. There we are told that a person is legally a subject because one is legally bound and owes something to another person, called King or Queen, because the former was *not* ruling by brute force. According to Blackstone (1884), under English

30 See Quotations from Chairman Mao-Zedong 1927-1964, *Little Red Book* (1966), taken from "On Protracted War" (May 1938), *Selected Works*, Volume II, pages 152-153. Online at: http://campbellmgold.com/archive_definitive/red_book_chairman_mao_1966.pdf

31 *Politics*, Book VII, Chapter IX

32 BOOK 2 CHAPTER 18, On the Duties of Citizens (paragraph 3)

Common law, an individual's *obligation* to the sovereign represented a "debt of gratitude ... which cannot be forfeited, canceled or altered by any change of time, place or circumstance."[33]

And why might a person have any debt of gratitude to another – as established at their birth? Invoking the logic of the Institutes of Justinian on the status of the *servi* – as one who was spared death after conquest,[34] Bodin (1955) said that the debt existed as a function of the social order. "The foundation of commonwealths was in force and violence" (Bodin 1955, 18). He argues that due to wars and assaults of armed men, the world became divided into the faithful adherents and the vanquished slaves. Anyone member of the *victorious group*, as well as the new slave-class, who did not wish to abandon part of his liberty, and live under the laws and commands of another, lost his life altogether (cf. Bodin 1955, 18).

English jurist, Edward Coke (1552-1634) posited that *subjectship* was the result of a personal relationship, of allegiance, owed to the King, as justified by principles of natural law – wherein the child was born on the land *owned* by the Crown. At Common law then, the accident of birth meant that the child was born, under the nominal protection of the sovereign, and thus the child *owed* a natural debt that *bound the subject* for life (cf. Neuman 1996, 167).

The position of Coke, and those of the Loyalists (spewing intellectual drivel of claims that slavery was *natural*), was explained by the United States Supreme Court, as late as 1898:

> "The fundamental principle of the common law with regard to English *nationality*, was birth *within the allegiance*, also called ligealty, obedience, faith, or power, *of the King*. The principle embraced all persons born within the King's allegiance *and* subject to his protection. Such allegiance and protection were mutual – as expressed in the maxim *protectio trahit subjectionem, et subjectio protectionem*[35] – and were not restricted to (i) natural-born subjects; and (ii) naturalized subjects; or (iii) those who had taken an oath of allegiance, but ... children, born within the realm, of foreign ambassadors, or the children of alien enemies ... *were not* natural-born subjects because they were not born: (a) within the allegiance, the obedience, to the King; or (b) within the jurisdiction of the King."[36]

What is significant in this passage is that an American Court recognized that some people are neither owing allegiance to the Crown (State), nor within the jurisdiction of the Crown (State). By definition those persons, who could be outside these spheres, are non-citizens and perhaps non-nationals. (I discuss these concepts more below).

In the late 17th century, von Pufendorf insisted that, on a whim, the sovereign, what he deemed the *supreme magistrate*, could declare war, call *subjects* to take up arms, and or compel the subjects to pay taxes *to a mercenary army*.

> "... those, who by mutual agreement have constituted a civil society, may be safe against the insults of strangers, the supreme magistrate has the power to assemble, to

33 See Kim Rubenstein & Daniel Adler (2000) at 519) (citing Blackstone (1884) at 117.

34 Justinian (535) Book 1 of Persons; III The Law of Persons.

35 A better English translation might read: "those who demand protection, must submit to the law; and those who submit, shall receive protection."

36 *United States v. Wong Kim Ark*, 169 U.S. 649 at 655 (1898).

> unite into a body, and to arm, or instead ... to [enlist] as many mercenaries as ... necessary … for the maintaining the public security ....''[37]

Perhaps it is unsurprising that present-day English law maintains these traditions. According to McBain (2011), the Crown holds a number of *absolute* powers over the UK subject. Under English Common law, of today, Crown prerogatives include: (a) to declare war and to declare peace; (b) to command the armed forces; and (c) to regulate the armed forces (McBain 2011).

Built upon this foundation, there are other prerogatives of a subsidiary nature. Among others thus, the Crown has prerogative to:

> 1. impress subjects, forcing them under threat of torture, imprisonment, or death, to serve in the royal navy;
>
> 2. issue letters of marque (and reprisal);[38]
>
> 3. prohibit subjects, again under threat of imprisonment, from leaving the realm; and
>
> 4. order subjects to return to the realm (under the threat of property confiscation, if not death, for failure to comply in a *timely* manner).[39]

The propriety of said orders, by the British Crown, and Crown imposed (meaning non-adjudicated) punishments for those so ordered, even when the subjects complied, was upheld in the 1500s. And such case law is still valid today.[40]

It was in the shadow of these claims and actions, by a Crown that: (i) held that it owned people and owned nearly all the land on earth;[41] and (ii) imposed Bills of Attainders – a most tyrannical and abusive practice (see more below) – committed in the name of *law* and right, that the founders of the United States of America, and later drafters of the Constitution, sought to form a government without a monarch. They stipulated that the government *per se* was to be limited to those powers explicitly delegated to it[42] – from a *sovereign people* (Story 1833; cf. Hamilton 1788b).

C. post Enlightenment – a short break with a tradition of tyranny

According to Spectar (2003), historical ideas around *citizenship* (stemming from the British common law status of *subjectship*) and the notion that regular persons owe obligations to a government changed, or evolved, with the modern view, announced by the American

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37 Von Pufendorf (1691), cited in Blackstone (1979), volume 1, at 249.

38 A Letter of Marque is little more than an order or permission slip, from the Crown, for a mercenary (or non governmental agent) to commit an act of piracy, theft, and murder. See http://en.wikipedia.org/wiki/Letter_of_marque

39 McBain (2011) at 17-18.

40 *Bartue and the Duchess of Suffolk's Case*, 73 ER 388 (1567); and *Knowles v. Luce*, 72 ER 473 (1580)

41 Arguably the chief action that led to the American revolution was a grant, from the Crown, to the British East India Company, of near monopoly power over import and export markets. That, in conjunction with the Currency Act of 1764 which gave the private Bank of England control over the money supply, left the colonial economy in tatters. See http://en.wikipedia.org/wiki/Tea_Act; and http://www.ushistory.org/declaration/related/currencyact.htm

42 "The Constitution was, from its very origin, contemplated to be the frame of a national government, of special and enumerated powers, and not of general and unlimited powers." Story (1833) p 663 § 909.

Declaration of Independence (283-284). By throwing off their allegiance to the Crown, American revolutionaries (ca. 1776) resolved to become "citizens of a new state, constituted solely by the aggregation of their individual consents" (Schuck & Smith 1985, 1).

Writing for other men who elected to reject submission to George III, Jefferson (1776) wrote that governments were "instituted among men, deriving their just powers from the consent of the governed," and that said governments could be altered or abolished if such subverted their proper aims (cf. Spectar 2003, 283-284).

Jefferson's position was shared by Hamilton (1788b).[43] Speaking of the nature of the relationship between individual people, as citizens, and government, Hamilton (1788b) explained that the people had no need to *request* any rights from government.

> Bills of Right … "have no application to constitutions, professedly founded upon *the power of the people*, and executed by *their* immediate representatives and servants. Here [as written in the proposed Constitution for the United States], in strictness, the people surrender nothing, and as they retain every thing."[44]

In *Federalist #84*, Hamilton (1788b) declared both that (i) people were sovereign – retaining their freedom *over* government; and (ii) persons in government office, were public servants – not overseers and masters of the public. According to Hamilton (1788b), the government, constructed through the *Constitution*, did not require individual persons to surrender their personal sovereignty. As well, under the government created by the *Constitution for the United States*, no individual was required to grant privileges or immunities to those *servants* who would act as government agents.

Walzer (1996) would submit that Jefferson (1776), Hamilton (1788b), and others of the late 18th century, were well-familiar with Rousseau (1762). That is, they would argue that free citizens, as sovereigns, could make government and laws. For Walzer (1996), the citizen, within the *Social Contract*, is a free and autonomous individual, who makes, or shares in the making of, the laws that he freely chooses to obey (cf. 211). Or as Rousseau (1762) put it, "obedience to a law, which we prescribe, to ourselves, is *liberty*."[45]

In modern parlance, this type of government through consent, or the *consent perspective*, conceives of citizenship as membership in a State, generated by mutual consent of a person and the *State* (Aleinikoff 1986, 1488). Obviously the ideals of Rousseau (1762), Jefferson (1776), and Hamilton (1788b), built on the writings of Aristotle (cf. *Politics*) and Bodin (1576). Yet it must be observed that within these ideas, there is a tension between individual freedom and tacit or overt obedience to government (or the sovereign).

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43 Alexander Hamilton, a lawyer and later first Secretary of the Treasury was an ardent supporter of federalism. Hamilton, along with James Madison (to be Secretary of State, i.e., the foreign minister under then president Thomas Jefferson, also was president of the United States) and John Jay (who would serve as a Supreme Court Justice), wrote the Constitution for the United States. Under the pen name *Publius*, they also wrote a series of essays, *the Federalist Papers*, which were a defense of the proposed Constitution.

44 Hamilton (1788b).

45 Jean Jacques Rousseau, *Of the Social Contract* (*Du contrat social ou Principes du droit politique*, 1762), book 1, chapter 8 (1947).

Early on, after its foundation in 1776, following the dictates of federal and State Constitutions, Courts had little hesitation to explain that: (i) people were sovereign; and (ii) *those in government* were duty-bound to act as trustees for the people, and were to serve under the direction of the people.

> " ... the word *contract*, in its broadest sense, [includes] the political relations between the government and its citizens, would extend to offices held within a State, for State purposes, and to many of those laws concerning civil institutions, which must change with circumstances and be modified by ordinary legislation, which deeply concern the public; and which, to preserve good government, the *public judgment must control*."

Dartmouth College v. Woodard, 17 U.S. 627 (1819)

From this passage in *Dartmouth College* (1819), I am inclined to believe that at that time, the United States Supreme Court accepted the proposition that public judgment must control law, concerning civil institutions. Such an invocation acknowledged that government is only legitimate when citizens extend an active and knowing *consent to be governed.*

Arguably, the original American conception of *citizenship* – from the founding in 1776, through 1868 – was predicated on at least two factors, one of which was consent. That is to say, mere birth, within the land over which the government claimed jurisdiction, did not necessitate *obligations* to the State *per se*.

Moreover, it was well-known to American Courts, up through 1900, that mere presence in a territory, be it from birth, or anytime afterwards, did not constitute facts that required said person to be obligated to follow the laws of a legislature or Courts. "The territorial power of every legislature is limited to only its own citizens and subjects" *Worcester v. Georgia*, 31 U.S. 515, 542 (1832).

Setting aside the general case of mere presence in the forum, I ask, what of the natural born? Does birth alone suffice to establish citizenship and thus compel a legal obligation to the government of the United States? From the language of the Fourteenth Amendment to the *Constitution for the United States*,[46] the answer is, "No." It reads:

> "All persons born or naturalized in the United States *and* subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."[47]

The use of the conjunction *and* means that citizenship (at least as understood in 1868, when a majority of the Members of the U.S. Congress, and a majority of the members of all then-existing State legislatures, adopted the 14th Amendment), and hence imagined *obligations* of citizenship, befell a person only *after* they were *subject to the jurisdiction* of the United States. Such invites the question, "What would determine whether a person is, or is not, subject to the jurisdiction of the State?"

46 I use the original terminology. The title of the document, as submitted by Hamilton, Madison, Jay, is "The Constitution *for* the United States of America" *not* "The Constitution *of* the United States."

47 U.S. Const. Amend. XIV, clause 1.

According to Spectar (2003), the only persons who might not be subject to the laws of any government are those who are under the *liege* of another sovereign (cf. 283). Thus without saying so, Spectar (2003) disavows the idea of individual sovereignty – the bedrock of the American Declaration of Independence. Instead Spectar (2003) favors citizenship (and subjectship) as a condition, that exists for all persons from birth. He argues that we are born, as slaves, to the State.

But at the time of the passage of the 14th Amendment, citizenship was only denied to those who were admittedly or willing living under the *liege* of a foreign power (or another sovereign). As explained in *Elk v. Wilkins* (1884), there was another fact far more important – an overt petition to submit – by the individual, and agreement by the sovereign.

Echoing the words of Bodin (1576), the Court ruled that an American Indian, who was born in Nebraska, and had no allegiance to a tribe or other nation, was still *not* a citizen of the United States. The Court reasoned that John Elk was not an American citizen, and thus not eligible to vote in State or federal elections, because the legal status of citizenship is found only after the *sovereign extends a grant of citizenship*, and the person agrees. See *Elk v. Wilkins*, 112 U.S. 94, 101 (1884).

Though the decision in *Elk* was patently racist, it did include the idea of consent – otherwise so critical to the notion of freedom, posited by Jefferson (1776) and Hamilton (1788b). As John Locke (1689) argued that every one was entitled to transition from *ascriptive subjectship* to *consensual citizenship*, as a function of a voluntary choice, made by an adult. Locke (1689) insisted that a child did not attain citizenship until they could legitimately give *consent* to submit to a government, upon reaching adulthood (cf. Schuck and Smith 1985, 23-24).

Cases like *Elk v. Wilkins*, or others related to naturalization, aside, we will see, through a review of the case law, that instead of making any factual findings about those conditions that might grant the State sovereignty over a person, e.g., overt declaration of fealty or subservience to the laws – arguably the key element for citizenship (Locke 1690; Jefferson 1776), Courts have avoided the question altogether.

For example, in a case from 1967, involving a Polish-born, naturalized American citizen, the Court implied that birth, *per se*, created citizenship. It wrote:

> "The Fourteenth Amendment … has conferred no authority upon Congress to restrict the effect of birth, declared by the Constitution, to constitute a sufficient and complete right to citizenship."[48]

The new *modus operandi* has become one where courts assume that the laws apply – often on the basis of declaring a person to be a citizen (presuming that a criminal or civil defendant is thus subject to the laws), and said person was or is present in the forum. Through the former, the Courts have reached a conclusion, with no evidence, that the laws actually apply to given persons – on a presumption of citizenship – and thus that said person must, under penalty of property confiscation, imprisonment, or death, submit to the laws of the State.

IV. Back to Serfdom: a review of the case law

48 *Afroyim v. Rusk*, 387 U.S. 253, at 267 (1967)

A. Foundational considerations

> "There was never a commonwealth, real or imagined, where citizens were, in law, equal in all rights and privileges. Some always have more privileges than the rest."

(cf. Bodin 1955, 22)

Spectar (2003) shows much of the modern ideal of the concept of the *citizen* is tied to a particular aspect of Roman law. The term *legalis homo* denotes "one who can sue and be sued in certain courts" (Spectar 2003, 273; cf. Pocock 1998, 37). Thus it was a privilege, of the Roman citizen, to be able to seek and receive redress in Roman courts. But there was, and still is, a caveat – sovereign *immunity*.[49]

49 See *Chisholm v. Georgia*, 2 U.S. 419 (1793) and the history of sovereign immunity jurisprudence in the United States, more at: http://en.wikipedia.org/wiki/Chisholm_v._Georgia; the most recent application was in *Alden v. Maine*, 527 U.S. 706 (1999) (State employees – probation officers, working on a hourly contract, not entitled to sue for unpaid wages). Nearly every Constitution of each European State grants immunity to the ruling monarch or head of State. Every member or former member of the British Commonwealth also holds the head of State immune from their courts. See: http://en.wikipedia.org/wiki/Sovereign_immunity

Sovereign Immunity – clear and unambiguous
"It is inherent, in the nature of sovereignty, not to be [a defendant in a civil or criminal suit, brought by an individual], without ... consent." *Federalist #81*[50]

Whereas the Roman citizen was granted audience in the Courts, the *sovereign* was *above* the Courts and was not subject to a ruling by a magistrate. The political support for sovereign immunity among the political class of American founders in the 1790s was announced in the wake of *Chisholm v. Georgia*, 2 U.S. 419 (1793). There an executor of an estate sued the State of Georgia for monies owes for supplies during the revolutionary war. Though the government of Georgia clearly owed the money, and federal courts had granted an order of relief, by December 1794, 12 of the then 15 American States agreed to amend the federal Constitution as to strip federal courts from having the power to adjudicate such suits – without the consent of the defendant State government.[51]

Given that the sovereign *cannot* be sued (without granting permission or agreeing to submit to a Court's authority), the sovereign uses its Courts in a one-way manner. Routinely government turns to her Courts to exercise control *over* the citizen ... that legal personality otherwise thought to be so imbued with *rights*. Without true legislative control, and without recourse through the courts, so-called citizens are resigned to a status of legal *subjects*.

Before I detail (below) significant rulings and holdings of case law on questions of *citizenship*, I must highlight another level of analysis that conflates and or problematizes the project. Namely courts have uncritically created surplusages, or failed to avoid interpretations of surplusage.[52]

From case law, treaties, and international conventions, we often see words *citizen* and citizenship interchanged liberally with terms *national* and *nationality*. Similarly courts, much like legal and political scholars, substitute terms like *national* or *nationality* for related concepts *citizen* or *subject*. Such imprecision enables Courts to justify banal applications of twisted logic, and in the extreme, gross violations of human rights.

Despite the evidence of the particular case, different meanings in these terms, and the legal maxim to avoid surplusage (Eskridge et al. 2001), at least one prominent case from the International Court of Justice, *Liechtenstein v. Guatemala*, 1955 ICJ 4 (the *Nottebohm* case),

50 Hamilton (1788a).

51 http://en.wikipedia.org/wiki/Eleventh_Amendment_to_the_United_States_Constitution

52 In the American tradition, when interpreting statutes, or treaties, the reader is to presume that each word, term, or phrase is unique and placed purposefully. According to Clark et al. (2006) the rule to avoid surplusage holds that each word or phrase in a statute is meaningful and useful, and thus, an interpretation that would render a word or phrase redundant or meaningless should be rejected (see also Eskridge et al. 2001, 833).

used the terms *national* and *citizen* as synonyms. In declaring that the mere locus of his birth entitled the governments of both Guatemala and the United States to imprison him and confiscate his property (worth over 12,000,000 USD in today's dollars),[53] the ICJ argued that Nottebohm was German national – owing duties to *that* State and thus acquired the status of an enemy. Conversely the UN-created court held that despite his disavowal of any civic duty or legal connection to the German Nazi State, Nottebohm was not a citizen of Liechtenstein, because *the ICJ held* that he did not have a genuine connection to that government.

Yet even when we speak of people who are not seeking change their status vis-à-vis one government or another (as in the case of Nottebohm), at a basic level, it is clear that legally, not all *nationals* are *citizens*. For example, individuals born on the island of Puerto Rico, according to the United States federal government, are American nationals, but they are denied the right to vote in federal elections, due to their legal status as *non-citizens*.[54] Thus in at least one respect, governments distinguish the rights of nationals from those of citizens. And for the purposes of this inquiry, we must contemplate what are, if any, obligations lawfully imposed on citizens as juxtaposed with nationals and non-nationals.

According to Spectar (2003) the concepts of *citizen* and *national* are interchangeable with the word *subject*.[55] Perhaps his claim stems from an uncritical review of an American case law as far back as the 1830s, and especially a Chinese immigrant case, *Wong Kim Ark*, from 1898.

> "The term *citizen*, as understood in our law, is precisely analogous to the term *subject* in the English Common law, and the change of phrase has entirely resulted from the change of government. Through the American revolution, the sovereignty has been transferred from one man (the King) to the collective body of *the people*, and he who before was a *subject of the king*, is now a *citizen of the State*.
>
> *State of North Carolina v. William Manuel*, 20 N.C. 144 (1838)[56]

53 The government of Liechtenstein requested compensation for the losses suffered by Mr. Nottebohm due to the bad acts of the government of Guatemala in excess of 7 million Swiss Francs. http://www.refworld.org/docid/3ae6b7248.html

54 See *Minor v. Happersett*, 88 U.S. 165 (1872) there the U.S. Supreme Court noted that children of citizens were citizens, and that citizens, *while owing an allegiance to the State*, were granted privileges and immunities. However, the Court held that the *right to vote* was not extended to all citizens under Common law or via the U.S. Constitution. Even today, in the United States, and under the auspices of UN dictates, there is no guarantee that any citizen votes are tallied. See *Bush v. Gore*, 531 U.S. 98 (2000). Similar to the American system of presidential election, under the UN International Covenant on Civil and Political Rights, all signatory governments have agreed that only the votes of the *electors* – not the citizens – are to be counted. See Article 25(b) "the vote shall guarantee the free expression of the will of the *electors* …."

55 See Spectar (2003) n147

56 The crux of the matter in *Manuel*, was whether a convicted criminal, Manuel, a freed Black, who was previously held in bondage, became a citizen, of the State of North Carolina, at the instance of manumission. If so, he had the right to plead insolvency and could not be sent to prison for failure to pay a court-imposed fine of 20 dollars, and thus could not be sold, by the County Sheriff, to whomever would pay the bond or fine. The Court, found that because Manuel was born in North Carolina, at the instant of manumission, he was a citizen, equal in rights to all other free-born persons and naturalized citizens.

In 1898, the U.S. Supreme Court explained that a man born on U.S. soil, though the son of two Chinese nationals, had an inherent right to enter the territory of the United States – despite attempts of Congress to strip his right – of birthright citizenship, via legislation.[57] While the outcome of the decision seems fair, at the level of liberty, the reasoning of the Court was atrocious.

The Court found that the right of entry, into the territory (or dominion) of the United States for the plaintiff, Wong Kim Ark, derived from British common law, at least 300 years previous, which held that all persons, born within the King's allegiance, *and* subject to his protection, were English *nationals*.[58] Reasoning by analogy, the Court found that hence Wong Kim Ark was a *national* of the federal government of the United States.[59] But through this line of argument, the Court invoked *jus soli*, and the law of the feudal era.

The central ascriptive principle of *jus soli*, aka birthright citizenship, can be traced to feudal times (Martin 1985). As applied under the Common law *jus soli*, meaning *law of the land*, conveys the idea that one is not merely subject to the whims of the present feudal lord or putative sovereign. Instead, it is a demand, by the serf, that the sovereign recognize certain traditions, i.e., the customary law, of that place. Hence, in the *Magna Carta* there is reference to the *laws of the land*[60] and that King John pledged to adhere to that.

Arguably, *jus soli* is not properly translated from a feudal era, as means to denote nationality – and said rights acquired thereby. Rather *jus soli* signaled a recognition, by the sovereign, of three parallel, yet distinct, systems of laws: those of the land – regarding property, contract, torts, and criminal law; canon law (of the church) and allegiance in *its* spiritual realm; and laws of the Crown (the domestic or municipal side of the *Law of Nations*) – wherein agents of the Crown demanded that all persons show allegiance to the sovereign – through paying taxes and military service, lest they be *disseised* or cast as an outlaw.

What remains today in modern law then are basically two realms. Though the canon law has been largely eliminated or subsumed (laws against usury have been abolished, and freedom to worship is nearly universal, though a few criminal laws against sodomy remain), what we see

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57 See the Chinese Exclusion Act of 1882 http://avalon.law.yale.edu/19th_century/chinese_exclusion_act.asp; see also *Wong Kim Ark* 169 U.S. 649 at 653 (1898)

58 The U.S. Supreme Court did not cite a New York case from 1844, but there too this idea of allegiance to the Crown was detailed.

> "the policy and legislation of the American colonies, from their earliest times ... was ... to bestow upon foreigners, all the rights of natural-born subjects. … This policy continued … in the 13 original states … to extend … the right of citizenship. The Common law, by which all persons born within the king's allegiance, became subjects, whatever [the] situation of their parents, became the law of the colonies … It was thus the law of each and all of the States." *Lynch v. Clarke and Lynch*, 1 Sandf. 583 (1844); 236 *The New York Legal Observer* (1845).

59 See *United States v. Wong Kim Ark*, 169 U.S. 649, 665-660 (1898), citing *Calvin's Case*, 7 Eng. Rep. 1, 4b-6a, 18a, 18b (1608).

60 See the *Magna Carta* of 1215, English translation, paragraphs 39; 42; 45; 55; and see 56 and 57 referencing laws of England, and the laws of Wales.
http://www.bsswebsite.me.uk/History/MagnaCarta/magnacarta-1215.htm

are civil and criminal codes that always demand that citizens – with the legal standing of serfs of yesteryear, pay allegiance to the sovereign, which exists only in the form of the State.

B. Devolution in American case law

> "Being born within the allegiance of a government [means] being born within the protection of its laws, with a consequent obligation to obey *them*, when obedience can be rendered." *Look Tin Sing*, 21 F. 905, 909 n2 (1884).

Numerous American court opinions have addressed the idea of *citizenship* and the legal implications related thereto. Most often suits were brought by individuals to *establish* citizenship, as a means to substantiate a legal claim and win Court orders – where a Court would mandate some government office to grant suffrage, or some privilege or immunity (presumably owed by the State to the citizen).[61] Far fewer, yet significant for the argument here, are those suits where the Courts mention or describe those *duties* that the citizen owes the State. What is sadly apparent is that since the 1880 forward, the Courts view citizenship less like a badge of sovereignty, but more the signal of slavery and serfdom.

In 1844, a New York State Court judge wrote:

> As citizens, we owe a particular allegiance to the sovereignty of our State, and a general allegiance to the confederated sovereignty of the United States.[62]

The notion of allegiance, and why it is owed, was addressed by a Federal court in 1884.

> Allegiance means the duty of obedience to the government of the sovereign, under which the children live, for the protection they receive. … while they are in their infancy they cannot … perform that duty, and its performance must necessarily be respited until they arrive at years of discretion and responsibility. They *then* owe obedience … not only for the protection then enjoyed, but … for that which they have received from their birth.

Look Tin Sing, 21 F. 905, 908-909 n2 (1884), citing 1 *Wilson Works*, 313

In *United States v. Luria* (1913), the United States Supreme Court declared that citizens owe duties to nations of their citizenship, yet these same persons owe *no duties* to any lands in which they lived, if they were not citizens.[63] Such a claim read like a plagiarized passage of Bodin (1576) arguing that the Kings had permanent claims over their subjects, rather than push the more nuanced view of von Pufendorf (1673) (migration is a means to escape the sovereign), or the radical position of Jefferson (1776) and Hamilton (1788b).

Going further, to explain how said duties were one directional – only owed by the citizen to the State – the Court held that citizenship, as a legal status, is conditioned on the actions of said citizen.

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61 See *Prigg v. Pennsylvania*, 41 U.S. 539 (1842); *Scott v. Sandford*, 60 U.S. 393 (1857); *Bradwell v. Illinois*, 83 U.S. 130 (1873); *Elk v. Wilkins*, 112 U.S. 94 (1884); *Shelly v. Kraemer,* 334 U.S. 1 (1948); *Sáenz v. Roe*, 526 U.S. 489 (1999)

62 *Lynch v. Clarke and Lynch*, 1 *Sandford Chancery* 583 (1844); 239 *The New York Legal Observer* (1845).

63 *United States v. Luria*, 231 U.S. 23-24 (1913)

> "The spirit of the naturalization ... has always been that an applicant, if admitted to citizenship, should be a citizen *in fact* ... and bear the obligations and duties of that status."

Luria, 231 U.S. 10 (1913).

By 1919 and the push of the federal government to draft men to get slaughtered in Europe (Zinn and Arnove 2004, 295), duties moved from mere obedience, to restrictions on political thought. In what read like von Pufendorf's (1673) call for every subject to laud the dictates of the sovereign, in *Schenck v. United States* (1919) the Supreme Court let the slaves know what freedoms they would have.

> "We admit that, in many places and in ordinary times, the defendants … would have been within their constitutional rights … When a nation is at war, many things that might be said in time of peace, are such a hindrance to its effort, that their utterance will not be endured ... and that no Court could regard them as protected by any constitutional right."[64]

By 1924, the Court would eschew any notions of individual liberty for citizens. Practically quoting Bodin (1576), the Court held that the no matter where the subject was on earth, he is liable to the master and any property of the citizen is subject to taxation.

> "Government, by its very nature, *benefits* the *citizen and his property* wherever found, and therefore [government] has the power to make the *benefit* complete. ... the basis of the power to tax is not … dependent upon the *situs* of the property ... in or out of the United States, nor [is] dependent upon the domicile of the citizen ... but upon his relation, as *citizen*, to the United States, and the relation of the latter, to him, as *citizen*.

Cook v. Tait, 265 U.S. 47, 56 (1924)

Less than a decade later, the Court went beyond the annoyance of declaring that taxation was inescapable. Though pointing to no evidence to substantiate its stance, the Court posed the government as *king* to the citizen (now *subject*), and thus concluded that the government owned the body of a citizen and could compel audience on a whim, and subject the serf to punishment for disobedience.

In *Blackmer v. United States*,[65] the government declared that an American citizen, living in France, had refused to return to the United States, at federal expense, in response to a court-issued *subpoena* to testify. For failing to attend the hearing, Blackmer was found in contempt, whereupon the trial court issued an arrest warrant. At the Supreme Court, Blackmer sought to quash the *subpoena* and avoid extradition from France. In support of the lower court finding of contempt and order for his arrest, citing the 1924 *tax* case (*Cook v. Tait*), the Supreme Court

64 *Schenck v. United States*, 249 U.S. 47, 52-53 (1919). In line with *Schenck*, the Court upheld a similar charge in *Debs v. United States*, 249 U.S. 211 (1919). There a labor organizer, and head of the Socialist Party, Eugene Debs, spoke at an anti-war rally. Arrested for sedition, at trial "while contending that his speech did not warrant the charges [Debs] said, 'I have been accused of obstructing the war. I admit it. Gentlemen, I abhor war." *Debs* at 214. http://supreme.justia.com/cases/federal/us/249/211/

65 *Blackmer v. United States*, 284 U.S 421 (1932), online at: http://supreme.justia.com/cases/federal/us/284/421/case.html

explained that all American citizens, no matter their locus on earth, are subject to the laws of their national sovereign – and owe duties to that sovereign.

The Court in *Blackmer* reasoned that municipal law establishes the *duties* of the citizen,[66] in relation to his *own* government.[67] Then the Court, without referencing Bodin (1576), von Pufendorf (1673), Blackstone (1884), or even its own case law in *Worcester v. Georgia* (1831), announced:

> What, in England, was the prerogative of the sovereign, [is granted, in] our constitutional system, to the national authority, which may be exercised by the Congress ... to prescribe the *duties* of the citizens.[68]

"One of the duties, which the citizen *owes* to his government, is to support the administration of justice, by attending its courts and giving his testimony whenever he is … summoned."[69]

> ... [Blackmer moved] to France in the year 1924, it is undisputed that he was, and continued to be, a *citizen* of the United States. He continued to *owe* allegiance to the United States. By virtue of the *obligations of citizenship*, the United States retained its authority over him, and he was bound by its laws ... [For example,] though resident abroad, petitioner remained subject to the taxing power of the United States.[70]
>
> [Undoubtedly], "the United States possesses the power, inherent in sovereignty: (i) to require the return, to this country, of a citizen, residing elsewhere, whenever the *public interest* requires it; and (ii) to penalize him in case of refusal."[71]

In 1940, the Supreme Court implied that *children* had a duty to salute, and utter a pledge of allegiance to the *flag* of the United States.[72] Upholding a rule of the local School Board that

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66 See *Blackmer* at 437 fn2:

> The Law of Nations does not prevent a State from exercising jurisdiction over its subjects traveling or residing abroad, as they remain under its personal supremacy. Oppenheim, *International Law* (4th ed.) vol. 1, § 145, p. 281; Story, *Conflict of Laws* (8th ed.) § 540, p. 755; Moore's I*nternational Law Digest*, vol. 2, pp. 255, 256; Hyde, *International Law*, vol. 1, § 240, p. 424; Borchard, *Diplomatic Protection of Citizens Abroad*, § 13, pp. 21, 22.

67 See *Blackmer* at 437 fn3. The Court detailed cases on the rights and obligations of citizens and ships flying under national flags. In *The Nereide*, 13 U.S. 388, 413, 422-423 (1815), by the treaty between Spain and the United States, the property of a Spanish subject, in an enemy's vessel, in this case, a ship of England, is prize of war – and subject to seizure and salvage by American ships. Manuel Pinto, a Spanish subject, contracting with a vessel flying under the flag of England, made his cargo subject to seizure – and could not claim the cargo as an innocent and rightful owner; [compare with] *The Apollon*, 22 U.S. 362, 370 (1824); *Schibsby v. Westenholz*, L.R. 6 Q.R. 155, 161 (1870).

68 *Blackmer* at 437-438 (1932) http://supreme.justia.com/cases/federal/us/284/421/case.html

69 *Blackmer* at 438 (1932).

70 *Blackmer v. United States*, 284 U.S. 421, 436-438 (1932). *In re* the tax question, and thus by analogy the proposition that a permanent tether makes the citizen subject to the sovereign, every place on earth, the Court cited *Cook v. Tait*, 265 U.S. 47, 54-56 (1924), holding that Congress has the authority to tax citizen earnings, in Mexico, though such is otherwise unattached to the United States.

71 cf. *Blackmer* at 437 (1932)

directed the Superintendent to demand that all teachers and students salute the national flag daily and allowed him to expel any student who refused,[73] the Court held:

> "A society which is dedicated to the preservation of these ultimate values of civilization may, in self-protection, utilize the educational process for inculcating those almost unconscious feelings which bind men together in a comprehending loyalty ..."[74]

By 1943, however, soon after the American public had learned that Italian and German children also made such salutes (which were similar to the American custom of the so-called Bellamy hand gesture),[75] writing for a 6-3 majority, Justice Jackson declared that there was *no duty* to salute a flag or make a pledge to it.[76] But just one year later, in 1944, the supposed necessities of war, would move the Court to articulate a new-found duty of citizenship for over 100,000[77] American citizens of Japanese ancestry, in the infamous *Korematsu* case.

In May 1942, the U.S. Army issued an order, mandating all persons of Japanese ancestry, including American citizens report to so-called relocation centers. In addition, the military imposed Civilian Exclusion Zones, under penalty of criminal trespass, in certain areas of the American west – that applied only to people of Japanese ancestry. Fred Korematsu, a resident of San Leandro, California, was arrested and convicted for trespass.

Writing for the majority, Justice Black said:

> "We uphold the exclusion order [and his conviction for violating it]. In doing so, we are not unmindful of the hardships imposed by it upon a large group of American citizens. But hardships are part of war, and war is an aggregation of hardships.

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72 *Minersville* (*Pennsylvania*) *School District, Board of Education et al. v. Gobitis*, 310 U.S. 586 (1940)

73 According to the trial court, the events transpired as follows:

> "On November 6, 1935 … the Board ... adopted: "That the Superintendent … be required to demand that all teachers and pupils … be required to salute the flag of our country as a part of the daily exercises. That refusal to salute the flag shall be regarded as an act of insubordination ...." [Immediately thereafter, Superintendent] Charles E. Roudabush … at the direction of the Board ... publicly announced: "I hereby expel from the Minersville Schools Lillian Gobitis, William Gobitis and Edmund Wasliewski for this act of insubordination, to wit, failure to salute the flag in our school exercises."" *Gobitis v. Minersville School District*, 24 F.Supp 271, 272-273 (1938).

The trial court enjoined the School Board from enforcing the salute, and held:

> "The safety of our nation largely depends upon the extent to which we foster in each individual citizen that sturdy independence of thought and action which is essential in a democracy. … Our country's safety surely does not depend upon the totalitarian idea of forcing all citizens into one common mold of thinking." *Gobitis v. Minersville School District*, 24 F.Supp 271, 274-275 (1938).

74 *Minersville*, 310 U.S. 586, 600 (1940)

75 http://en.wikipedia.org/wiki/Bellamy_salute

76 *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 635 (1943)

77 http://en.wikipedia.org/wiki/Korematsu_v._United_States#Murphy.27s_dissent

> All citizens alike, both in and out of uniform, feel the impact of war in greater or lesser measure. Citizenship has its *responsibilities* ... and in time of war, the burden is always heavier."[78]

Once again, the Court was willing to claim that by definition of the word *citizen*, Fred Korematsu, and thousands of others, had *duties* – to the State. And in this instance, their duty was to go to prison, because the State elected to prosecute a war.

Of course the dissenting opinions were vehement in their disapproval of the overtly racist and tyrannical policy (though their failed to call it a Bill of Attainder *per se*) that justified the practice of corralling men, women, and children for the crime of being alive. In his dissent, Jackson said this:

> "A citizen's presence in the locality, however, was made a crime only if his parents were of Japanese birth …. Now, if any fundamental assumption underlies our system, it is that guilt is personal and not inheritable." 323 U.S. 214, 243 (Jackson, dissenting).

> "Here is an attempt to make an otherwise innocent act a crime merely because this prisoner: (i) is the son of parents, as to whom he had no choice,; (ii) and belongs to a race from which there is no way to resign." 323 U.S. 214, 243 (Jackson, dissenting).

> "the Court, for all time, has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens." 323 U.S. 214, 246 (Jackson, dissenting).

But we should not take solace in the idea that the *Korematsu* ruling was couched in an era of open segregation and State-sanctioned oppression against non-White people. As recently as February 2014, Justice Antonin Scalia, reflected on *Korematsu*. In speaking before a group of law students at the University of Hawaii law school, he said "the Supreme Court's *Korematsu* decision, upholding the internment of Japanese Americans was wrong, but it could happen again, in war time" (Weiss 2014).

And Scalia should know. Since September 2001, he and his colleagues have allowed mass detention, State-sanctioned kidnapping, torture,[79] and extra-judicial executions[80] of citizens, only because the government declared that a particular person (e.g. the serf) was an *unlawful enemy combatant*.[81] Under present American jurisprudence, of the war on terror, when prosecuting, or injuring, or killing a citizen, the American courts have conceded that the State need offer no evidence that the accused (or murdered) committed an *actus reus* or harm (*dolus directus* or *dolus eventualis*).

78 *Korematsu*, 323 U.S. 214, 219.

79 http://www.andyworthington.co.uk/2011/10/04/it-could-be-you-the-sad-story-of-jose-padilla-tortured-and-denied-justice/

80 http://abcnews.go.com/Blotter/holder-speak-targeted-killings-americans/story?id=15851232

81 See language of the Military Commission Act of 2006; and the National Defense Authorization Act of 2011.

Though we have no court cases defining or ruling on evidence that would make a person, born within the territorial jurisdiction of the State, *subject to the laws*, and hence a *citizen*, (as defined by the 14th Amendment; and *Elk v. Wilkins*), based on the review (above) and other government publications, I have pieced together a short list of what the State proclaims to be the *duties* of *citizens*. Remarkably it reads just like the proclamations of Bodin (1576) and von Pufendorf (1673) – even though, the American State was founded on a principle of individual sovereignty that runs counter to the rule of law exercised in Medieval fiefdoms and through the delusions of would-be European royalty.

Selected List of Mandatory *Duties* of the Citizens of the United States	
Government declaration	Agorist translation
1. Support and defend the Constitution	A. Fight against, if not kill, those people deemed to be *enemies*, by other people called *government*
2. Participate in the democratic process	B. Vote – for the candidates of *their* choice
3. Respect and obey federal, state, and local laws	C. Obey the dictates of people claiming to be government
4. Pay income and other taxes honestly, and on time, to federal, state, and local authorities.	D. Give money to people who call themselves government
5. Serve on a jury, or testify in court, when called upon.	E. Reify something called *government*
6. Defend the country, if the need should arise	F. See A
Source: United States Citizenship and Immigration Services: http://www.uscis.gov/citizenship/learners/citizenship-rights-and-responsibilities	

V. The Duty-Bound Citizen and the Human Rights Critique

> "If it were against nature to have power of life and death over another, all kingdoms and lordships in the world would be against nature, seeing that kings and princes have the like power over their subjects, noble and simple, if the latter are proved guilty of a capital crime"
>
> (Jean Bodin 1576)

Lest we believe that the modern United States is unique in its *Orwellian*[82] use of terms like *citizen* – to mean *slave from birth*, the ruling structure of global governance, the United Nations, also sees all persons as slaves of the State. No matter the label, *citizen* or *national*, in the international law, all persons are subjects, ergo slaves, of a government. A brief review will show the depths of the problem, and how, the international rules appear to grant every government the right to impose slavery on those unfortunate enough to be born.

82 See Blair (1949); see discussion of the meaning of Orwellian at: http://en.wikipedia.org/wiki/Orwellian

A. Slavery approved through the Declaration of Human Rights?

The United Nations was founded in 1945. By December 1948, representatives of Member States ratified the United Nations Declaration of Human Rights (UNDHR). A review of this document[83] and the UN Charter itself, makes it clear that governments create labels like national (and citizen) to justify enslavement.

Under Article 4 of the UNDHR, all Member States (i.e., member governments) have a duty to refrain from imposing slavery and to prevent slavery, inside its territory. The text reads: "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."[84] Such a position seems to support the opening declaration of the UNDHR that all people are born free. The first sentence of Article 1 reads:

> "All human beings are born free and equal in dignity and rights."[85]

Furthermore, as a doctrine of international law (and the sub-field of international human rights law), slavery is universally condemned under the heading *jus cogens* (Spitzer 2002 1341-1342). As a legal concept, *jus cogens* (meaning a law that pre-empts otherwise sovereign States) holds that under no circumstances may a State violate the given norm, e.g., a prohibition on slavery. And under the sister doctrine of *erga omnes*, in international law, States are obligated to prevent *other* States from practicing or tolerating slavery … but they all do (Bassiouni 1996, 68).

Despite the words of Articles 1 and 4 of the Declaration of Human Rights, Article 29 declares that people are not free, and implies that each State can enslave its *nationals*. (I write *nationals*, because the word *citizen* is not printed anywhere in the UNDHR. Instead Article 15 explains that people might be born of a given nation, but any State can strip said nationality – through a legal process).[86]

The relevant language of Article 29[87] reads:

> (1) Everyone has *duties* to the community in which, alone, the free and full development of his or her personality is possible.
>
> (2) In the exercise of his rights and freedoms, everyone shall be subject, only, to such limitations, as are determined by law, solely for the purpose of securing … the rights

83 The UNDHR has only 30 articles. Much of it has been elaborated in subsequent international treaties and regional human rights instruments – including the European Covenant on Human Rights, also called the Treaty of Rome in 1950. The so-called International *Bill of Human Rights* consists of the Universal Declaration of Human Rights and the subsequent International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights of 1966. Because of these documents are simply redundant, I will reference them here. See also Paul Williams, *United Nations General Assembly* (1981).

84 http://www.un.org/en/documents/udhr/index.shtml#a4

85 http://www.un.org/en/documents/udhr/index.shtml#a1

86 See UNDHR Article 15, sections (1) and (2). http://www.un.org/en/documents/udhr/index.shtml#a15

87 http://www.un.org/en/documents/udhr/index.shtml#a29

> and freedoms of others and of meeting the just requirements ... public order and the general welfare in a democratic society.
>
> (3) These rights and freedoms, may, in no case, be exercised, contrary to the purposes and principles of the United Nations.

Thus Article 29(1) announces that everyone *owes* something … to a nondescript *community*. Subsection (2) provides a list of excuses for governments to restrict supposed freedoms, in the name of public order or for the sake of the *general welfare*. Lastly, Article 29(3) reminds the serfs that no State need tolerate an individual who would act in a manner that is contrary to the purposes and principles of the UN itself. And what are those?

B. The UN Charter … tolerates State-imposed slavery

The founding document of the United Nations is its Charter. There Article 1 lays out the purposes of the UN, and Article 2 lists the principles. How do those line up with or against the charge that all States may enslave nationals (*citizens*)?

Article 1 of the UN Charter, says (in part) that the *purposes* of the organization are:

> (1) To maintain international peace and security ... [prevent and remove] threats to the peace … and to bring about by peaceful means, and in conformity with the principles of justice and international law ...;
>
> (2) To develop friendly relations among *nations* ...;
>
> (3) [To encourage] respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
>
> (4) To be a centre for harmonizing the actions of *nations* ...

Though Article 1(3) alludes to personal freedom, the section does not refer to individuals. Read consistently with the entire Article, the section applies to *States*. Though the UN might *encourage* Member States to respect individual freedom, such does not mean that the UN or its Member States will or can enforce supposed universal principles of individual freedom. Because Article 2 of the Charter highlights the non-intervention principle (see below). And after all, as provided above, under the UNDHR, all States have agreed that every individual person owes duties to *communities*.

Article 2 of the UN Charter, details the key *principles* by which the organization and the Member States are guided. It reads (in part):

> The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

> (1) The Organization is based on the principle of the sovereign equality of *all its Members*.
>
> (2) All Members ... shall fulfill, in good faith, the obligations assumed by them in *accordance with the present Charter*.
>
> (4) All Members shall refrain ... from the threat or use of force against the territorial integrity or political independence of any state ....
>
> (5) All Members shall give the United Nations every assistance in any action *it takes* ....
>
> (7) Nothing ... in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state ....

So now we see. The fundamental principles of the UN are that *governments* (reified as States) are equal – not individual people. And internal affairs, those matters of domestic jurisdiction, are to be ignored by other governments and the UN itself. Further nothing in the Charter speaks of individual freedom, or citizens, or human rights. Therefore, within the UN structure, no Member States are even expected to offer lip service to the thought that people are free. The non-aggression principle is to be observed among equal States, not between sovereigns (States) and their serfs.[88]

C. In Europe, it is not slavery, when imposed by the State

There is another legal sleight of hand that shows how States openly agree that they can and will enslave their citizens (nationals). The evidence comes from the European Convention on Human Rights (ECHR), which parrots much of the UNDHR, and addresses a prohibition on slavery in *its* Article 4. However, the ECHR adds a few caveats.

Article 4(3) of the ECHR declares that certain acts of forced labor and slavery, when imposed by the State, are neither forced labor nor slavery. These instances include: punishment post criminal conviction; military service; and "any work or service which forms part of normal civic *obligations*."[89]

88 For example, at the time that the UN Charter was adopted, and for years after, the government of Guatemala forced indigenous men and women to work – as slaves – at least 100 days, harvesting coffee on the plantations (f*incas*) of the elites. Instead of using the UN system to liberate people from such serfdom, the U.S. engineered a coup to prevent land reform, justice, and individual equality in Central America. http://www.columbia.edu/~lnp3/mydocs/indian/guatemala.htm

89 http://conventions.coe.int/treaty/en/treaties/html/005.htm

It strains credulity to proclaim that States hold individuals as free yet openly declare that they will impose something called *normal civic obligations*, in the form of forced labor. And it goes without saying that signatories to the ECHR will demand such labor under the threat of or through the sanction of imprisonment, fine, or execution.

Just to cement the point, we must ask, from whom does the State extract *normal civic obligations*? Surely the State does not seek to extract military *service* from those it calls non-nationals. Only citizens are targeted for such punishments, obligations, and threats.

VI. *Citizenship* as a Bill of Attainder

> "An *honorary* citizen is *not* subject to the duties and obligations imposed on natural and naturalized citizens."
>
> (Jean Bodin, 1576)

A. Citizenship as *per se* grounds for punishment

As detailed above, according to would-be overlords, both in American law and the realm of international law, *citizens* and or *nationals*: (1) are creations of the State; and (2) may be enslaved by States. The excuse offered by governments for their right to enslave us is that we, the objects of their oppression (be they case as citizens, nationals, subjects, or serfs), were born in a particular place, at a particular time (sometime after the creation of a given State).

My analysis is strengthened by the fact that these same governments openly admit the corollary to their right to enslave. Following the observation of Bodin (1576) about honorary (i.e., non-citizens), these governments recognize that non-citizens (non-nationals) are not subject to all the laws that treat people as slaves.

Governments make no effort to seize the property of non-nationals, e.g., impose an income tax on the 84%-99.99% of the global population, who earn money *outside* the State's proclaimed territorial boundary. Governments will not declare that non-nationals must undertake a pilgrimage to serve in Her Majesty's army or navy. And in particular, the ECHR does not announce that European governments may extract labor from persons born in places like Brazil or New Zealand, to satisfy *normal civic obligations*.

Thus when we boil down the question, "who is eligible to be a slave of the State?" the only point of distinction, made by governments, is that some of us are *their* citizens, and some of us are not. And it is because of their determination of our *status* that a government – with the approval and assistance of the UN and other Member States – will seek to extract our wealth, property, and labor, under the threat of fine, imprisonment, and death.

The legal practice of punishing a person for their status (which often is defined as an adherence to a religious creed, but also understood to apply to immutable characteristics like parentage and gender), rather than one's actions, is called a Bill of Attainder. As such, this practice was noted in the past (Hamilton 1788b) and should be noted today, as a gross human rights violation.

These laws designate citizens, and citizens only, as guilty of violating some dictate (or of being in debt to the State). And because the citizen has no defense against the claim or charge – but suffers guilt by association, these particular laws are crimes against humanity and human dignity.

B. Bill of Attainder as a violation of human rights

> "An essential and non-derogable right of citizens is their claim to be secure from threatening forces, given the threat that the State and society often pose to individual sovereignty."[90]
>
> (Oldfield 1998)

According to former U.S. Supreme Court Chief Justice William Rehnquist (1987):

> A *bill of attainder* is a precise legal term which had a meaning under English law at the time the United States Constitution was adopted. A bill of attainder was a legislative act that singled out one or more persons and imposed punishment on them, without benefit of a judicial trial. Such actions were regarded as odious by the framers of the Constitution because they understood that the traditional role of a court was to judge an individual case, first to determine guilt, and only thereafter to impose punishment.

Why would men who wrote the Constitution see a need to prohibit bills of attainder? They saw it as a means to prevent tyranny and abusive government. Rebuking a Congressional act that singled out self-described communists, and criminalized their participation in unions, in 1965, the Court wrote:

> "The Bill of Attainder Clause was not intended as a narrow, technical and soon to be outmoded prohibition, but rather … a safeguard against legislative exercise of the judicial function as to prevent trial by legislature."91

A bill of attainder (also called a bill of *pains and penalties*),[92] employed in England, as early as 1459, was an Act of Parliament that sentenced one or more specific persons to death.93 This practice became infamous during the reign of the Tudor monarchs who used the attainder to punish political dissenters, many of whom could not be found guilty of any crime through a trial and judicial finding of guilt.[94]

If we revisit the *Nottebohm* case, we now understand how its ruling was so horrific. Recall, the central issue in the case was whether, in 1943, Friedrich Nottebohm were a citizen of Germany, and thus subject to the laws of Guatemala which declared that all German nationals were enemies of the State and subject to imprisonment and property seizure.[95]

In ruling that Nottebohm was still a German citizen, despite the fact that in 1939, he applied for, and received, citizenship from the government of Liechtenstein, the International Court of Justice held that,

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90 Oldfield (1998), Citizenship and Community, in *The Citizenship Debates* 76 (Gershon Shafir ed., 1998).

91 *United States v. Brown*, 381 U.S. 437, 442 (1965)

92 See *Cummings v. Missouri*, 71 U.S. 316, 323 (1867)

93 Hannis Taylor, Attainder, transcribed by Janet Grayson. The Catholic Encyclopedia, Volume II (1907).

94 Source: http://www.independent.org/tii/news/991100McElroy.html

95 1955 I.C.J. 4.

> "citizenship *or* nationality is a *legal bond*, having [a] genuine connection of existence ... together with the existence of *reciprocal rights and duties*."[96] (emphases added)

The logic of the holding is recognizably flawed, and the result of the case was unjust. Even by the standards of international law at the time – under various articles of the UNDHR[97] and previous international case law involving German nationals and their property claims affected by war[98] – Nottebohm should not have been punished due to his place of birth.

Nevertheless, the ICJ insisted that Nottebohm was a German national, merely as an accident of birth. And though hundreds of thousands of others fled Nazi Germany, as early as 1939 – the year Nottebohm formally disavowed his German citizenship, and Nottebohm had lived most of his life in Guatemala, the ICJ declared that he had a *genuine connection* to the Nazi regime, and that somehow, he and the Nazis, had forged a *legal bond* that included reciprocal *duties*.

But the government of Guatemala made no allegation that Nottebohm was an enemy combatant or agent of ill will against Guatemala, on behalf the Nazi *Reich*. He neither assumed duties from the *Reich* nor acted upon any imagined duties. And what duty did the ICJ imagine that the *Reich* owed Nottebohm? Was it the similar duty that the Nazis visited upon hundreds of thousands of native-born Germans who were sent to the camps, or that extended to nearly 500,000 who fled to escape slow death through slave-labor, starvation, and the ovens?

Thus I must conclude that the ICJ decision in Nottebohm was truly barbaric. Nottebohm's offense, against the State of Guatemala, was that over which he had no control: the place of his birth, and something called a *nationality* which was defined by members of the government of Guatemala, then little more than a vassal of the Dulles brothers and the United Fruit Company (Immerman 2010, 193).[99]

The act of punishing one, like Nottebohm, for mere status, is the quintessential hallmark of a Bill of Attainder. It was the same reasoning used to justify the holdings of *Cook* (1924) (government can seize your property on a whim), *Blackmer* (1932) (government can command your attendance), and *Korematsu* (1944) (government can order you to go to prison at any time): *status*.

Even more appalling, in the former two cases, the Court articulated that said persons, and their property, belonged to the government (the sovereign) – and or were subject to seizure, just because the sovereign said that it had a right to demand such.
In *Blackmer*, relying on the precedent of *Cook* (1924) which held that all property, even that which lies outside the physical United States, yet held by a citizen, actually belonged to the sovereign, the Supreme Court argued that the sovereign (i.e., the federal government), through

96 Nottebohm Case (Liechtenstein v. Guatemala), 1955 I.C.J. 4.

97 See UNDHR Article 2 (no discrimination based on national origin or place of birth); Article 7 (right to equal protection under the law, no discrimination in application of the law); Article 8 (right to an effective legal remedy); and Articles 10 and 11 on due process in criminal trials.

98 *Settlers of German Origin in Poland*, Advisory Opinion, 1923 P.C.I.J. (ser. B) No. 6 (Sept. 10). Online at: http://www.worldcourts.com/pcij/eng/decisions/1923.09.10_german_settlers.htm

99 See Immerman (2010) detailing how the United Fruit Company, headquartered in the port city of New Orleans, dominated the economy and domestic politic of Guatemala for most of the 20th century.

Congress, had the right to exercise control over citizens, even if such persons were outside the territorial jurisdiction of the State, because *other* sections of the federal criminal code said that they too applied *outside* the territorial jurisdiction of the government.

> "Illustrations of acts of the Congress, applicable to citizens abroad, are … found in ... the Criminal Code relating to *Offenses against operations of government* (18 U.S.C. § 4; *United States v. Bowman*, 260 U.S. 94, 98-102), and the provisions relating to criminal correspondence with foreign governments, Act of January 30, 1799, 18 U.S.C. § 5."[100]

Such notions, and legal practices, derives from elitist claims of a divine right of Kings. One famous example of how British Monarchs exercised the practice is conveyed through the relevant facts of *Sir Francis Knole's case* (1581). In 1558, Sir Francis Englefield was given a license [*sic*], by Elizabeth I, to go abroad, on the conditions that: (1) he not fraternize with the Queen's *enemies* (Catholics); and (b) return to England, if she summoned him. In 1563, by letter, Elizabeth commanded him to return. He did not do so, for he was Catholic and feared persecution. His properties, under lease from the Crown, were seized.[101] In 1587, he was *attainted*.

Thus in *Knole's case* (1581) we see claims that the Crown owned someone, was entitled to take their stuff, and the subject was required to be obedient … just because the Queen said. Are present-day laws and government practices any different? Does not the construction of accident of birth, declaration of citizenship, and government imposed duties (for taxes, obedience, and labor) form an iron triangle of State imposed slavery?

C. Has it always been this way?

Aristotle made a distinction between two types of citizens: rulers; and the ruled. In Aristotelean terms, those citizens, who are not rulers, have a duty to obey commands and be subject to the judgments of the governors.[102] Hence, if citizenship – following the Aristotelean ideal – is not a voluntary arrangement, e.g., a contract, between all members of the political community. Rather it is a status, imposed by a person (or persons), who calls themselves government. And through threat, duress, and coercion, said government compels the *citizen* to be compliant or obedient – merely due to an accident of birth, what American jurisprudence calls an *immutable characteristic*.[103] Under such conditions of involuntary servitude, *citizenship*, is a Bill of Attainder.

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100 *Blackmer* at 437, fn3

101 *Sir Francis Knole's Case*, 73 ER 841 (1581).

102 See *Politics*, Book VII, Chapter IV. http://www.constitution.org/ari/polit_07.htm

103 Example, *City of Cleburne v. Cleburne Living Center, Inc*., 473 U.S. 432 (1985), discussing the impropriety of imposing discriminatory rules of people due their place of origin; *Frontiero v. Richardson*, 411 U.S. 677 (1973) (describing gender, as an accident of birth, an immutable characteristic); see also *Watkins v. U.S. Army*, 875 F.2d 699, 726 (CA9 1989), finding that sexual orientation is an immutable characteristic, even if not determined by birth.

The English Common law *rule*, that the Crown has dominion over its subjects, wherever those subjects are – anywhere on the planet, is still argued to the present-day (see McBain 2011). Yet it is clear that such rule or legal doctrine, holding that people were slaves of government, was anathema to the concept of American citizenship as anticipated by those who drafted the Constitution for the United States of America (cf. Hamilton 1788b). So what was the thinking of the Court in *Blackmer*, when it held that a citizen was a mere subject – just as were others in 16th century England?

According to the U.S. Supreme Court in *Blackmer* (1932), it was the *prerogative* of Congress to prescribe the *duties* of a citizen to the government.[104] In support of their claim that the *government* of the United States was a *sovereign* power – relative to the putative citizens (i.e., those who supposedly consented to create said Leviathan), the Court in *Blackmer* cited two English cases, from the 16th century, that upheld Bills of Attainder: *Bartue and the Duchess of Suffolk's Case*, 73 ER 388 (1567) and *Knowles v. Luce*, 72 ER 473 (1580).

Such an idea was and is completely contrary to the writings on freedom of Hamilton (1788b), and even those predating the American Revolution, through Hobbes (1651).[105] Hamilton (1788) and those American founders who elected to separate from the English Crown, insisted that the *people were sovereign*, and even through the creation of a government, people did not sacrifice their natural liberty. But it is evident that governments have little desire to give up their claims over the chattel. Today law and practice show that governments claim that they own their citizens. They claim us as slaves. The law be damned.

104 *Blackmer* at 438

105 Hobbes (1651) posited that, while one *might* be subject to the will of the sovereign, the rule of the Sovereign was not without limits. Jefferson (1776) would express the same sentiment holding that every person had the natural right to throw off a tyranny.

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106 Editor's note: the full title of the reporter is “Law Reports, volume 1, House of Lords, Scottish and Divorce Appeals.”