

# ***SOVEREIGNTY AND FREEDOM POINTS AND AUTHORITIES***



Extracts from federal and state authorities establishing the jurisdictional authority of the federal and state governments with special attention to sovereignty, citizenship, federal taxation, and remedies for the innocent.



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*SEDM Resource Index*, Form #01.008  
<https://sedm.org/Forms/01-General/SEDMResourcesIndex.pdf>

**PREFACE**

Litigation to fight corruption is time consuming and risk prone. Most people do not have time in their busy schedule to devote to disciplined and sustained litigation or lack the discipline to do accurate credible research. The most pressing problem in the freedom community is therefore to equip God's Gideon Army to fight government corruption efficiently, effectively, and to avoid being discredited or undermined in the process. The most frequent method for undermining these activities by corrupt government actors is to attack the authorities relied upon in pleadings and label inaccurate or erroneous authorities as the product of an idiot or deranged mind.

***Points and Authorities***

*Points and authorities in general refer to the important points that are discussed in a case and the authorities that are relied on. A memorandum of points and authorities is often filed along with a motion, and brief in support of the motion. Points and authorities explain why the law authorizes the judge [should desire] to take the requested action. The term points and authorities comes from the fact that the legal discussion makes certain points followed by citations to legal authority (usually a court decision or statute) supporting each point. Basically this memorandum provides an outline of the various points or counts that plaintiff or defendant wishes to raise and the authorities for the same.*

[USLegal.com: *Points and Authorities*; SOURCE: <https://definitions.uslegal.com/p/points-and-authorities/>]

This document is therefore intended to prevent malicious or slanderous accusations, protect the credibility of the freedom community, and to save tremendous amounts of time doing legal research so that more and better litigation can be accomplished and won in the fight against corruption.

This document contains quotes from the very people who are the instigators of the corruption this document fights. The best way to disarm your opponent is with his own statements and tactics. This is a fulfillment of the Sun Tzu proverbs of war:

*"If you know the enemy and know yourself, you need not fear the result of a hundred battles. If you know yourself but not the enemy, for every victory gained you will also suffer a defeat. If you know neither the enemy nor yourself, you will succumb in every battle."*

[Sun Tzu, *The Art of War*; SOURCE: [https://www.goodreads.com/author/quotes/1771.Sun\\_Tzu](https://www.goodreads.com/author/quotes/1771.Sun_Tzu)]

This document is free and not protected by a "pay wall". While it is sorely needed and could potentially produce enormous revenue, we decided to offer it for free so that it will receive the widest possible dissemination and benefit from the widest audience of not our critics, but our members. We welcome your CONSTRUCTIVE feedback on how to improve this document or make it useful in the widest possible range of situations faced by freedom fighters. You may submit that feedback at the following location. You must be a Basic Member and be logged in to submit such feedback:

SEDM Forum 9.4: Errata reports

<https://sedm.org/forums/forum/9-sedm-ministry-members-only/94-errata-reports/>

This document is not intended as a marketing tool and it would not be trustworthy under God's law if the main motivation for producing it was filthy lucre:

*And when Simon saw that through the laying on of the apostles' hands the Holy Spirit was given, he offered them money, saying, "Give me this power also, that anyone on whom I lay hands may receive the Holy Spirit."*

*But Peter said to him, "Your money perish with you, because you thought that the gift of God could be purchased with money! You have neither part nor portion in this matter, for your heart is not right in the sight of God. Repent therefore of this your wickedness, and pray God if perhaps the thought of your heart may be forgiven you. For I see that you are poisoned by bitterness and bound by iniquity."*

*Then Simon answered and said, "Pray to the Lord for me, that none of the things which you have spoken may come upon me."*

[[Acts 8:18-24](#), Bible, NKJV]

The ULTIMATE way of studying and knowing your opponent is to study his own words and tactics. This document is intended as the ultimate codification and organization of such study.

***Sovereignty and Freedom Points and Authorities***

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Litigation Tool 10.018, Rev. 11-21-2018

This book started out several years ago as a simple project to identify and collect a few statements of legal import from the public record that might determine the veracity of the theory that the American governments are to have limited authority over the lives of the American people, and that the states of the Union and the federal government are separate, distinct, and foreign to each other and have separate and distinct sovereignties and jurisdictions. We originally thought we might find as many as thirty or forty citations in support of this understanding. As we reviewed various historical, legal, and otherwise authoritative documents, we were led from one source to another so that we soon had collected many more citations than what we had originally thought existed. As we continued to chase references, our total grew to more than 1700 citations-with no end in sight! Nearly all of these cites support some aspect of the theory that forms the basis of our investigation. And our investigation is not exhaustive by any means.

Early in the collection process we decided to create a computer file that would contain some of the best statements as extracts from these sources. Many of the statements are so strongly and beautifully worded that we became convinced that they should be preserved in a new format for the benefit of those who love the historical understanding of freedom in America and especially for those who may not have ready access to the library resources of a metropolitan area. This document is the result of that effort. We have meticulously copied these authorities exactly as the issues have been stated in this document.

Our investigation shows that American society is drifting away from government by constitutional limitation and toward government by administrative privilege and franchises. Despite the constitutional requirement that all governments in America must be republican in form, and all officials must be democratically elected, in reality our governments are neither republics nor democracies. Except for a few rare instances, the American governments, both state and federal, function as dulocracies. From Black's Law Dictionary, Fourth Edition, a dulocracy is:

*"a government where servants and slaves have so much license and privilege [franchises] that they domineer."*

The Bible describes this inversion of political affairs where PUBLIC servants become rulers instead of servants:

*There is an evil I have seen under the sun,  
As an error proceeding from the ruler:  
Folly is set in great dignity,  
While the rich sit in a lowly place.  
I have seen servants on horses,  
While princes walk on the ground like servants.  
[Eccl. 10:5-7, Bible, NKJV]*

The Bible and the U.S. Supreme Court both describe EXACTLY, from a legal perspective, WHEN AND HOW you personally facilitate this inversion of public servants. It is done with loans or grants of government property that have legal strings attached. This loan or grant is what we call "government franchises" on our website. The word "privilege" in fact is synonymous with loans or grants of property and the legal strings attached to the loan.

*"The rich rules over the poor,  
And the borrower is servant to the lender."  
[Prov. 22:7, Bible, NKJV]*

*"The State in such cases exercises no greater right than an individual may exercise over the use of his own property when leased or loaned to others. The conditions upon which the privilege shall be enjoyed being stated or implied in the legislation authorizing its grant, no right is, of course, impaired by their enforcement. The recipient of the privilege, in effect, stipulates to comply with the conditions. It matters not how limited the privilege conferred, its acceptance implies an assent to the regulation of its use and the compensation for it."  
[Munn v. Illinois, 94 U.S. 113 (1876)]*

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#### Curses of Disobedience [to God's Laws]

*"The alien [Washington, D.C. is legislatively "alien" in relation to states of the Union] who is among you shall rise higher and higher above you, and you shall come down lower and lower [malicious destruction of EQUAL PROTECTION and EQUAL TREATMENT by abusing FRANCHISES]. He shall lend to you [Federal Reserve counterfeiting franchise], but you shall not lend to him; he shall be the head, and you shall be the tail.*



“Moreover all these curses shall come upon you and pursue and overtake you, until you are destroyed, because you did not obey the voice of the LORD your God, to keep His commandments and His statutes which He commanded you. And they shall be upon you for a sign and a wonder, and on your descendants forever.

“Because you did not serve [ONLY] the LORD your God with joy and gladness of heart, for the abundance of everything, therefore you shall serve your [covetous thieving lawyer] enemies, whom the LORD will send against you, in hunger, in thirst, in nakedness, and in need of everything; and He will put a yoke of iron [franchise codes] on your neck until He has destroyed you. The LORD will bring a nation against you from afar [the District of CRIMINALS], from the end of the earth, as swift as the eagle flies [the American Eagle], a nation whose language [LEGALESE] you will not understand, a nation of fierce [coercive and fascist] countenance, which does not respect the elderly [assassinates them by denying them healthcare through bureaucratic delays on an Obamacare waiting list] nor show favor to the young [destroying their ability to learn in the public FOOL system]. And they shall eat the increase of your livestock and the produce of your land [with “trade or business” franchise taxes], until you [and all your property] are destroyed [or STOLEN/CONFISCATED]; they shall not leave you grain or new wine or oil, or the increase of your cattle or the offspring of your flocks, until they have destroyed you. [Deut. 28:43-51, Bible, NKJV]

The problem with all such loans or grants is that they can theoretically attach ANY condition they want to the loan. If the property is something that is life threatening to do without, then they can destroy ALL of your constitutional rights and you will have no remedy.

“But when Congress creates a statutory right [a “privilege” or “public right” in this case, such as a “trade or business”], it clearly has the discretion, in defining that right, to create presumptions, or assign burdens of proof, or prescribe remedies; it may also provide that persons seeking to vindicate that right must do so before particularized tribunals created to perform the specialized adjudicative tasks related to that right. FN35 Such provisions do, in a sense, affect the exercise of judicial power, but they are also incidental to Congress' power to define the right that it has created. No comparable justification exists, however, when the right being adjudicated is not of congressional creation. In such a situation, substantial inroads into functions that have traditionally been performed by the Judiciary cannot be characterized merely as incidental extensions of Congress' power to define rights that it has created. Rather, such inroads suggest unwarranted encroachments upon the judicial power of the United States, which our Constitution reserves for Art. III courts.” [Northern Pipeline Const. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 102 S.Ct. 2858 (1983)]

The Court developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision. They are:

[. . .]

6. The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits. FN7 Great Falls Mfg. Co. v. Attorney General, 124 U.S. 581, 8 S.Ct. 631, 31 L.Ed. 527; Wall v. Parrot Silver & Copper Co., 244 U.S. 407, 411, 412, 37 S.Ct. 609, 61 L.Ed. 1229; St. Louis Malleable Casting Co. v. Prendergast Construction Co., 260 U.S. 469, 43 S.Ct. 178, 67 L.Ed. 351.

FN7 Compare Electric Co. v. Dow, 166 U.S. 489, 17 S.Ct. 645, 41 L.Ed. 1088; Pierce v. Somerset Ry., 171 U.S. 641, 648, 19 S.Ct. 64, 43 L.Ed. 316; Leonard v. Vicksburg, etc., R. Co., 198 U.S. 416, 422, 25 S.Ct. 750, 49 L.Ed. 1108.

[Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 56 S.Ct. 466 (1936)]

“The words “privileges” and “immunities,” like the greater part of the legal phraseology of this country, have been carried over from the law of Great Britain, and recur constantly either as such or in equivalent expressions from the time of Magna Charta. For all practical purposes they are synonymous in meaning, and originally signified a peculiar right or private law conceded to particular persons or places whereby a certain individual or class of individuals was exempted from the rigor of the common law. Privilege or immunity is conferred upon any person when he is invested with a legal claim to the exercise of special or peculiar rights, authorizing him to enjoy some particular advantage or exemption.”

[The Privileges and Immunities of State Citizenship, Roger Howell, PhD, 1918, pp. 9-10;

SOURCE: [http://famguardian.org/Publications/ThePrivAndImmOfStateCit/The\\_privileges\\_and\\_immunities\\_of\\_state\\_c.pdf](http://famguardian.org/Publications/ThePrivAndImmOfStateCit/The_privileges_and_immunities_of_state_c.pdf)]

See Magill v. Browne, Fed.Cas. No. 8952, 16 Fed.Cas. 408; 6 Words and Phrases, 5583, 5584; A J. Lien, “Privileges and Immunities of Citizens of the United States,” in Columbia University Studies in History, Economics, and Public Law, vol. 54, p. 31.

James Madison, whose notes were used to draft the Bill of Rights, predicted this perversion of the Constitutional design, when he said the following:

*“With respect to the words general welfare, I have always regarded them as qualified by the detail of powers connected with them. To take them in a literal and unlimited sense would be a metamorphosis of the Constitution into a character which there is a host of proofs was not contemplated by its creator.”*

**“If Congress can employ money indefinitely to the general welfare, and are the sole and supreme judges of the general welfare, they may take the care of religion into their own hands; they may appoint teachers in every State, county and parish and pay them out of their public treasury; they may take into their own hands the education of children, establishing in like manner schools throughout the Union; they may assume the provision of the poor; they may undertake the regulation of all roads other than post-roads; in short, every thing, from the highest object of state legislation down to the most minute object of police, would be thrown under the power of Congress.... Were the power of Congress to be established in the latitude contended for, it would subvert the very foundations, and transmute the very nature of the limited Government established by the people of America.”**

*“If Congress can do whatever in their discretion can be done by money, and will promote the general welfare, the government is no longer a limited one possessing enumerated powers, but an indefinite one subject to particular exceptions.”*  
[James Madison. House of Representatives, February 7, 1792, On the Cod Fishery Bill, granting Bounties]

The term “general welfare” as used above is, in fact, the basis for the entire modern welfare state that will eventually lead to a massive financial collapse and crisis worldwide.<sup>1</sup> Anyone who therefore supports such a system is ultimately an anarchist intent on destroying our present dysfunctional government and thereby committing the crime of Treason:<sup>2</sup>

[Socialism: The New American Civil Religion](https://sedm.org/Forms/05-MemLaw/SocialismCivilReligion.pdf), Form #05.016  
<https://sedm.org/Forms/05-MemLaw/SocialismCivilReligion.pdf>

The government abuse of franchises to destroy our individual sovereignty and rights are therefore the reason that we put the following warning on the opening page of our website:

*“People of all races, genders, political beliefs, sexual orientations, and nearly all religions are welcome here. All are treated equally under REAL “law”. The only way to remain truly free and equal under the civil law is to avoid seeking government civil services, benefits, property, special or civil status, exemptions, privileges, or special treatment. All such pursuits of government services or property require individual and lawful consent to a franchise and the surrender of inalienable constitutional rights AND EQUALITY in the process, and should therefore be AVOIDED. The rights and equality given up are the “cost” of procuring the “benefit” or property from the government, in fact. Nothing in life is truly “free”. Anyone who claims that such “benefits” or property should be free and cost them nothing is a thief who wants to use the government as a means to STEAL on his or her behalf. All just rights spring from responsibilities/obligations under the laws of a higher power. If that higher power is God, you can be truly and objectively free. If it is government, you are guaranteed to be a slave because they can lawfully set the cost of their property as high as they want as a Merchant under the U.C.C. If you want it really bad from people with a monopoly, then you will pay dearly for the privilege. There are NO constitutional limits on the price government can charge for their monopoly services or property. Those who want no responsibilities can have no real/PRIVATE rights, but only privileges dispensed to wards of the state which are disguised to LOOK like unalienable rights. Obligations and rights are two sides of the same coin, just like self-ownership and personal responsibility. For the biblical version of this paragraph, read 1 Sam. 8:10-22. For the reason God answered Samuel by telling him to allow the people to have a king, read Deut. 28:43-51, which is God’s curse upon those who allow a king above them. Click Here (<https://famguardian.org/Subjects/Taxes/Evidence/HowScCorruptOurRepubGovt.htm>) for a detailed description of the legal, moral, and spiritual consequences of violating this paragraph.”*

<sup>1</sup> For details on the devastating political effects of the modern welfare state, see: Communism, Socialism, Collectivism Page, Section 10: Welfare State, Family Guardian Fellowship, [https://famguardian.org/Subjects/Communism/Communism.htm#Welfare\\_State](https://famguardian.org/Subjects/Communism/Communism.htm#Welfare_State).

<sup>2</sup> In the landmark case of *Steward Machine Co. v. Davis*, 301 U.S. 548 (1937) legalizing social security, the U.S. Supreme Court had the following to say about the treason of inverting the relationship of the states to the federal government:

*“If the time shall ever arrive when, for an object appealing, however strongly, to our sympathies, the dignity of the States shall bow to the dictation of Congress by conforming their legislation thereto, when the power and majesty and honor of those who created shall become subordinate to the thing of their creation, I but feebly utter my apprehensions when **I express my firm conviction that we shall see ‘the beginning of the end.’**”*  
[*Steward Machine Co. v. Davis*, 301 U.S. 548, 606 (1937)]

[SEDM Website Opening Page; <http://sedm.org>]

The Bible also describes how to REVERSE this inversion, how to restore our constitutional rights, and how to put public servants back in their role as servants rather than masters. Note that accepting custody or “benefit” or loans or grants of government property in effect behaves as an act of contracting, because it accomplishes the same effect, which is to create implied “obligations” in a legal sense:

*"For the Lord your God will bless you just as He promised you; **you shall lend to many nations, but you shall not borrow**; you shall reign over many nations, but they shall not reign over you."*  
[Deut. 15:6, Bible, NKJV]

*"The Lord will open to you His good treasure, the heavens, to give the rain to your land in its season, and to bless all the work of your hand. **You shall lend to many nations, but you shall not borrow.**"*  
[Deut. 28:12, Bible, NKJV]

***"You shall make no covenant [contract or franchise] with them [foreigners, pagans], nor with their [pagan government] gods [laws or judges]. They shall not dwell in your land [and you shall not dwell in theirs by becoming a "resident" or domiciliary in the process of contracting with them], lest they make you sin against Me [God]. For if you serve their [government] gods [under contract or agreement or franchise], it will surely be a snare to you."***  
[Exodus 23:32-33, Bible, NKJV]

*"I [God] brought you up from Egypt [slavery] and brought you to the land of which I swore to your fathers; and I said, 'I will never break My covenant with you. And **you shall make no covenant [contract or franchise or agreement of ANY kind] with the inhabitants of this [corrupt pagan] land; you shall tear down their [man/government worshipping socialist] altars.**' But you have not obeyed Me. Why have you done this?"*

*"Therefore I also said, **'I will not drive them out before you; but they will become as thorns [terrorists and persecutors] in your side and their gods will be a snare [slavery!] to you.'**"*

*So it was, when the Angel of the LORD spoke these words to all the children of Israel, that the people lifted up their voices and wept.*  
[Judges 2:1-4, Bible, NKJV]

Following the above commandments requires not signing up for and quitting any and all government benefits and services you may have consensually signed up for or retained eligibility for and replacing them with PRIVATE non-governmental service or product providers with limited and defined contractual scope of authority. All such applications and/or eligibility for government services, property, or “benefits” is called “special law” in the legal field.

***"special law.** One relating to particular persons or things; one made for individual cases or for particular places or districts; one operating upon a selected class, rather than upon the public generally. A private law. A law is "special" when it is different from others of the same general kind or designed for a particular purpose, or limited in range or confined to a prescribed field of action or operation. A "special law" relates to either particular persons, places, or things or to persons, places, or things which, though not particularized, are separated by any method of selection from the whole class to which the law might, but not such legislation, be applied. Utah Farm Bureau Ins. Co. v. Utah Ins. Guaranty Ass'n, Utah, 564 P.2d. 751, 754. A special law applies only to an individual or a number of individuals out of a single class similarly situated and affected, or to a special locality. Board of County Com'rs of Lemhi County v. Swensen, Idaho, 80 Idaho 198, 327 P.2d. 361, 362. See also Private bill; Private law. Compare General law; Public law."*  
[Black's Law Dictionary, Sixth Edition, pp. 1397-1398]

We also prove that all such “special law” is not “law” in a classical sense, but rather an act of contracting, because it does not apply equally to all. It is what the U.S. Supreme Court referred to as “class legislation” in *Pollock v. Farmers' Loan and Trust* in which they declared the first income tax unconstitutional:

***"The income tax law under consideration is marked by discriminating features which affect the whole law. It discriminates between those who receive an income of four thousand dollars and those who do not. It thus vitiates, in my judgment, by this arbitrary discrimination, the whole legislation.** Hamilton says in one of his papers, (the *Continentalist*.) "the genius of liberty reprobates everything arbitrary or discretionary in taxation. It exacts that every man, by a definite and general rule, should know what proportion of his property the State demands; whatever liberty we may boast of in theory, it cannot exist in fact while [arbitrary] assessments continue." I Hamilton's Works, ed. 1885, 270. The legislation, in the discrimination it makes, is class legislation. **Whenever a distinction is made in the burdens a law imposes or in the benefits it confers on any citizens by***

**reason of their birth, or wealth, or religion, it is class legislation, and leads inevitably to oppression and abuses, and to general unrest and disturbance in society [e.g. wars, political conflict, violence, anarchy].** It was hoped and believed that the great amendments to the Constitution which followed the late civil war had rendered such legislation impossible for all future time. But the objectionable legislation reappears in the act under consideration. It is the same in essential character as that of the English income statute of 1691, which taxed Protestants at a certain rate, Catholics, as a class, at double the rate of Protestants, and Jews at another and separate rate. Under wise and constitutional legislation every citizen should contribute his proportion, however small the sum, to the support of the government, and it is no kindness to urge any of our citizens to escape from that obligation. If he contributes the smallest mite of his earnings to that purpose he will have a greater regard for the government and more self-respect 597\*597 for himself feeling that though he is poor in fact, he is not a pauper of his government. And it is to be hoped that, whatever woes and embarrassments may betide our people, they may never lose their manliness and self-respect. Those qualities preserved, they will ultimately triumph over all reverses of fortune.”

[Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429 (Supreme Court 1895)]

To realistically apply the above biblical prohibitions against contracting with any government so as to eliminate the reversal of roles and destroy the dulocracy, see:

Path to Freedom, Form #09.015  
<https://sedm.org/Forms/09-Procs/PathToFreedom.pdf>

Section 5 of the above document in particular deals with how to eliminate the dulocracy. Section 5.6 also discusses the above mechanisms.

The idea of a present day dulocracy is entirely consistent with the theme of our website, which is the abuse of government franchises and privileges to destroy PRIVATE rights, STEAL private property, promote unhappiness, and inject malice and vitriol into the political process, as documented in:

Government Instituted Slavery Using Franchises, Form #05.030  
 FORMS PAGE: <https://sedm.org/Forms/FormIndex.htm>  
 DIRECT LINK: <https://sedm.org/Forms/05-MemLaw/Franchises.pdf>

The U.S. Supreme Court and the Bible both predicted these negative and unintended consequences of the abuse of government franchises, when they said:

*“Here I close my opinion. I could not say less in view of questions of such gravity that they go down to the **very foundations of the government**. If the provisions of the Constitution can be set aside by an act of Congress, where is the course of usurpation to end?”*

*The present **assault upon capital** [THEFT! and WEALTH TRANSFER by unconstitutional CONVERSION of PRIVATE property to PUBLIC property] is but the beginning. **It will be but the stepping stone to others larger and more sweeping**, until our political contest will become war of the poor against the rich; a war of growing intensity and bitterness.”*

[Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 158 U.S. 601 (1895), hearing the case against the first income tax passed by Congress that included people in states of the Union. They declared that first income tax UNCONSTITUTIONAL, by the way]

*“Where do wars and fights come from among you? **Do they not come from your desires for pleasure [unearned money or “benefits”, privileges, or franchises, from the government] that war in your members [and your democratic governments]? You lust [after other people's money] and do not have.** You murder [the unborn to increase your standard of living] and covet [the unearned] and cannot obtain [except by empowering your government to STEAL for you!]. You fight and war [against the rich and the nontaxpayers to subsidize your idleness]. Yet you do not have because you do not ask [the Lord, but instead ask the deceitful government]. You ask and do not receive, because you ask amiss, that you may spend it on your pleasures. **Adulterers and adulteresses! Do you not know that friendship [statutory “citizenship”] with the world [for the governments of the world] is enmity with God?** Whoever therefore wants to be a friend [STATUTORY “citizen”, “resident”, “inhabitant”, “person” franchisee] of the world [or the governments of the world] makes himself an enemy of God.”*

[James 4:4, Bible, NKJV]

The “foundations of the government” spoken of above are PRIVATE property, separation between public and private, and

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equality of treatment and opportunity, which collectively are called “legal justice”, as we point out on our opening page:

*Our ministry accomplishes the above goals by emphasizing:*

12. The pursuit of legal “justice” (Form #05.050), which means absolutely owned private property (Form #10.002), and equality of TREATMENT and OPPORTUNITY (Form #05.033) under REAL LAW (Form #05.048).  
The following would be INJUSTICE, not JUSTICE:

12.1 Outlawing or refusing to recognize or enforce absolutely owned private property (Form #12.025).

12.2 Imposing equality of OUTCOME by law, such as by abusing taxing powers to redistribute wealth. See Form #11.302.

12.3 Any attempt by government to use judicial process or administrative enforcement to enforce any civil obligation derived from any source OTHER than express written consent or to an injury against the equal rights of others demonstrated with court admissible evidence. See Form #09.073 and Form #12.040.

12.4 Offering, implementing, or enforcing any civil franchise (Form #05.030). This enforces superior powers on the part of the government as a form of inequality and results in religious idolatry. This includes making justice into a civil public privilege (Form #05.050, Section 13) or turning CONSTITUTIONAL PRIVATE citizens into STATUTORY PUBLIC citizens engaged in a public office and a franchise (Form #05.006).

Not only would the above be INJUSTICE, it would outlaw HAPPINESS, because the right to absolutely own private property is equated with “the pursuit of happiness” in the Declaration of Independence, according to the U.S. Supreme Court. See Form #05.050 for the definition of “justice”. [Click here](#) to view a video on why all franchises produce selfishness, unhappiness, inequality, and ingratitude.  
[SEDM Website Opening Page; SOURCE: <http://sedm.org>]

Too many public servants have assumed absolute authority over the people they are supposed to serve. This REVERSAL of roles and making the SERVANTS into the MASTERS was never the intent of the Founding Fathers who established the American governments as republics where the rights of the people are to be paramount and the sovereignty of the governments are limited by the rights of the people. Sovereignty in America is not based on the same premise as sovereignty in Europe. Sovereignty in Europe was based on the notion of the Divine Right of Kings where the king’s sovereignty was absolute and the people were his subjects. Sovereignty in America is based on the notion that citizens are endowed by the Creator with unalienable rights and then lend their permission to the governments to carry out certain, limited responsibilities on their behalf. In a republican form of government, the government is never allowed to overstep its authority or trample on the rights of the citizen no matter how egalitarian the political arguments may be.

Jesus Himself also emphasized that public SERVANTS should never become RULERS or have superior authority to the people they are supposed to SERVE when He said the following.

*“You know that the rulers of the Gentiles [unbelievers] lord it over them [govern from ABOVE as pagan idols] , and those who are great exercise authority over them [supernatural powers that are the object of idol worship]. Yet it shall not be so among you; but whoever desires to become great among you, let him be your servant [serve the sovereign people from BELOW rather than rule from above]. And whoever desires to be first among you, let him be your slave—just as the Son of Man did not come to be served, but to serve, and to give His life a ransom for many.”*  
[[Matt. 20:25-28](#), Bible, NKJV]

Notice the word “ransom for many” in the above. This is an admission that Jesus acknowledges that cunning public servant lawyers have KIDNAPPED our legal identity from the protection of God’s law and that legal identity has been transported to a legislatively foreign jurisdiction, the District of Criminals. We exhaustively prove this with evidence in the following memorandum of law:

Government Identity Theft, Form #05.046  
<https://sedm.org/Forms/05-MemLaw/GovernmentIdentityTheft.pdf>

Jesus also states in Matt. 20:25-28 that it is the DUTY and obligation of every Christian to fight this corruption of our political system. The Holy Bible is our Delegation of Authority to do precisely this, in fact, and to restore God to His proper role as the ruler of ALL nations and ALL politicians and the only rightful Lawgiver of all human law. That delegation of authority is described in:

### ***Sovereignty and Freedom Points and Authorities***

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*Delegation of Authority Order from God to Christians*, Form #13.007  
<https://sedm.org/Forms/13-SelfFamilyChurchGovnce/DelOfAuthority.pdf>

This book is a compilation of extracts from many sources dealing with the role of the American governments in American society. The extracts are taken from both federal and state authorities establishing the jurisdictional authority of the federal and state governments with special attention to sovereignty, citizenship, federal taxation, and remedies for the innocent. These quotations span the entire time of the American experience and represent the fundamental understanding that serves as the basis for the American legal system. The majority of the quotations are from the United States Supreme Court, other federal courts, and the state supreme courts and other state courts of record. (We have also relied heavily on California statutes since we both live in California. Those who live in some other state will have to search the statute books in that jurisdiction to find similar statutes.) The quotations do not originate with any particular political party or political movement, but represent the fundamental nature of the American legal system from the beginning of American society to the present. And because we have been careful to quote the exact wording, including the apparent mistakes, none of what is presented in this book represents the opinions of anyone outside of some official capacity or learned legal scholars.

In some instances, bureaucrats have argued against the notion that the individual could rely on these fundamental rights against the government, thus creating the impression that these sources should be classified as frivolous or "top secret". We have facetiously placed those words on the cover of this book. Fortunately, all of the sources quoted herein are part of the public record. And they must be part of the public record because it is the fundamental right of the people of America to both know what their governments are doing and to control their governments for the benefit of the individual as well as society. Honest government cannot operate in secret.

This document is a research tool to assist the reader in learning more about the history and limited authority of the American governments.

*"The only thing new under the sun is the history you do not know."*  
[SEDM]

We submit this material to the reader carefully preserved in the original words with few comments of our own, but with liberal cross-references to other citations, and indexes for researching the original citations, topics of interest, and terms. We do this to ensure that this is a litigation tool rather than merely a political propaganda vehicle like so most other sources of freedom materials on the internet. Hopefully, this will assist in researching issues of interest and allow the reader to arrive at one's own conclusions based upon what the "authorities" have stated from the beginning of the American experience through to the present. We believe this research demonstrates the time-worn notion that there is a seamless web of the law.

However, there are a few cases, certainly less than 100 of those we could find, that seem to be somewhat in conflict with the historical theme that the American governments have limited authority, and that the states of the Union and the federal government are separate and distinct governments and have separate and distinct sovereignties and jurisdictions. The reader should be aware that the cites presented herein are merely the citations that deal with the issues under investigation. Throughout American history the truth about the fundamental nature of American society and the rights and responsibilities of the American people have occasionally been marred and distorted by perverted teachings shrouded in the most egalitarian language. This has been done even by those who claim to know the truth and sometimes even by those whose responsibility it is to interpret the law. This misinformation shows disrespect for and works against the people and against the best and highest ideals of a free society. It is the reader's responsibility to carefully determine whether or not the context for any particular citation applies to one's own circumstance.

We entered this investigation with a high respect for the words of history and the American legal system, and this research confirms that the American legal system, when properly used, has worked in favor of the individual and against the bureaucracies of the governments. This document is our contribution in helping to educate Americans who wish to rely on their unalienable, God given, common-law rights as opposed to some governmentally granted, administrative privilege. In writing this book it is our intention to help make a difference in the lives of those who struggle against a monolithic bureaucracy gone sour on the American dream. We believe that those who serve the people must be required to obey the law, for beyond the line of due process and law lies the domain of usurpation and tyranny. We believe that the greatest need in the world today is that individuals should choose to do what is right simply because it is the right thing to do even though taking a stand for the truth may cost one some suffering and sacrifice. One of the lessons of history is that freedom is costly and that each generation must be prepared to meet the cost of preserving freedom.

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We gratefully acknowledge the work and vision of the following people and organizations in the production of this document:

1. Charles V. Darnell, DhSc., who contributed several of the cites in this book. He is author of the following:  

<i>The Fundamental Nature of the Federal Income Tax</i> , Form #05.035 <a href="https://sedm.org/LibertyU/FundNatureOfFIT.pdf">https://sedm.org/LibertyU/FundNatureOfFIT.pdf</a>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------
2. Gerald Allan Brown, Ed.D. He is author of the following:  

<i>The Legal Basis for the Term "Nonresident Alien"</i> , Form #05.036 <a href="https://sedm.org/Forms/05-MemLaw/LegalBasisForTermNRAlien.pdf">https://sedm.org/Forms/05-MemLaw/LegalBasisForTermNRAlien.pdf</a>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------
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  - 5.2. Provided the entire content of section 11, which originated from the following document:  

<i>Famous Quotes About Rights and Liberty</i> , Form #08.001 <a href="https://sedm.org/Forms/08-PolicyDocs/FamousQuotes.pdf">https://sedm.org/Forms/08-PolicyDocs/FamousQuotes.pdf</a>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------
6. Family Guardian Fellowship, whose citizenship research is found in section 3.1 and derives from the following document on their website:  

<i>Why You are a Political Citizen but Civil Non-Citizen, National, and Nonresident Alien</i> , Family Guardian Fellowship <a href="https://famguardian.org/Publications/WhyANational/WhyANational.pdf">https://famguardian.org/Publications/WhyANational/WhyANational.pdf</a>
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Without their assistance the scope of this book would not be nearly so broad nor as complete.

This document, like everything else on our website, is a work in progress. We would appreciate your generous donations in order that it can be maintained, continually improved, and reach the widest possible audience. You can make your donations at the link below:

<https://sedm.org/product/donation/>

**EXPLANATION OF GENERAL FORMAT**

This document is a reference work intended to be used as a tool for serious study of the issues of sovereignty, citizenship, rights of individuals, construction of law, the role of administrative regulations, federal taxation, and some remedies for the innocent. The reader should be aware of the following considerations:

1. Quotes are presented in chronological order within each chapter. Each quote is preceded by a number, an abbreviated name of the quote, and the decision date or publication date. The quote is followed by the complete or proper citation.
2. Quotes are rendered as true to their original form as humanly possible. Errors in the original quotations were reproduced in this document followed with the notation: [sic]. However, if the reader should find any error, we would be grateful to be informed of any such mistake.
3. Brackets [ ] are used to indicate additions, alterations or comments we have made with respect to any citation. However, in some instances the original reports used brackets in their writing and when this occurs, this use was expressly noted for the sake of clarity.
4. Occasionally the court includes citations to other cases or authorities in its opinion. These have sometimes been omitted for the sake of brevity, which has been so noted by stating [cites omitted].
5. At the time the cases were reviewed and the quotes extracted, these cases were all shepardized to the fullest extent possible and stand as current ruling case law. For those cases that have been overruled, it is so noted at the end of the case with a reference as to which case overruled that case. However, anyone who might rely on any citation from this book is encouraged to shepardize each case to determine whether any particular decision of the court has been subsequently overruled or reversed.
6. Since this document is fraught with "legal terms and meanings" it behooves the reader to not accept the common meaning of any term used herein, even though the court often instructs the reader to do so. As the meaning of a term may change with time and the particular bias of the interpreter (e.g., legislator, administrator, or judge) the wise reader will stop and discover the legal meaning of each term used. This may be accomplished through the use of the word in context, using dictionaries or court cases where judges have "determined" the legal meaning of a word or phrase. Specialized indexing resources are provided in this document to assist the reader in discovering such meanings. Such definitions are listed in the Index at the end of the document under the "DEFINITIONS" section.
7. We have removed copy protection from the document so that you can cut and paste quotes into your own legal pleadings. To facilitate this process, we have also removed the line numbers found in most of our other documents so that they don't contaminate the cut and paste process and create needless extra effort for you as a result in preparing your own legal pleadings using quotes from this document.

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1. Definitions of key terms are listed in the Index under "DEFINITIONS".
2. *Bracketed references* - provides additional references to the reader to supplemental material relevant to the present quotation.

Readers wishing to validate or verify the authorities appearing in this document may use the following free resources:

1. *SEDM Litigation Tools Page*, Section 1.9: Reference  
<https://sedm.org/Litigation/LitIndex.htm>
2. *State Legal Resources*  
<http://famguardian.org/TaxFreedom/LegalRef/StateLegalResources.htm>
3. *State Income Taxes*  
<http://famguardian.org/Subjects/Taxes/Research/StateIncomeTaxes.htm>
4. *State Vehicle Codes*  
<http://famguardian.org/Subjects/Freedom/Rights/Travel/StateVehCodeLaws.htm>
5. *Legal Research Sources*  
<https://famguardian.org/TaxFreedom/LegalRef/LegalResrchSrc.htm>
6. *SEDM Jurisdiction Database*, Litigation Tool #09.003  
<https://sedm.org/Litigation/09-Reference/SEDMJurisdictionsDatabase.pdf>

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7. *SEDM Jurisdiction Database Online*, Litigation Tool #09.004-requires Member Subscription account  
(<https://sedm.org/participate/member-subscriptions/>)  
<https://sedm.org/sedm-jurisdiction-online/>

Those wishing to locate an affordable legal research service can find an itemized list and description of the major services at the bottom of the following page:

*Legal Research Sources*

<https://famguardian.org/TaxFreedom/LegalRef/LegalResrchSrc.htm>

The above page is the most comprehensive and complete list of legal research sources we have found anywhere on the Internet. We recommend bookmarking it and making sure that your browser opens the above page automatically as a fixed tab whenever you start up your browser. That is what we do.

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**1 DEFINITIONS OF KEY TERMS**

This section is a defense against the following fraudulent tactics by those in government:

1. [Foundations of Freedom Course, Form #12.021, Video 4: Willful Government Deception and Propaganda](https://www.youtube.com/watch?v=hPWMfa_oD-w)
2. [Legal Deception, Propaganda, and Fraud, Form #05.014](https://sedm.org/Forms/05-MemLaw/LegalDecPropFraud.pdf)
3. [Presumption: Chief Weapon for Unlawfully Enlarging Federal Jurisdiction, Form #05.018](https://sedm.org/Forms/05-MemLaw/Presumption.pdf)
4. [The Beginning of Wisdom is to Call Things By Their Proper Names](https://lbry.tv/@freedomain:b/the-beginning-of-wisdom-is-to-call), Stefan Molyneux
5. [Mirror Image Rule](http://www.youtube.com/embed/j8pgbZV757w)

The biblical reason for this section is explained in the following videos:

1. [Oreilly Factor, April 8, 2015](https://sedm.org/Media/20150408_1958-The_O'Reilly_Factor-Dealing%20with%20slanderous%20liberals%20biblically-Everett%20Piper.mp4), John Piper of the Oklahoma Wesleyan University
2. [Overcoming the World 2014 Conference: Against the World](https://sedm.org/overcoming-the-world-2014-conference-against-the-world/), Ligonier Ministries. [Click here](#) for original source, minutes 15-24.
3. [Kingdom Bible Studies, Lesson 1: WHO'S WHO?-The Correct Meaning of Names](https://sheldonemrylibrary.famguardian.org/BibleStudyCourses/KBS-1.pdf), Sheldon Emry Memorial Library
4. [Kingdom Bible Studies, Lesson 2: WHO's WHO?-Understanding Word Meanings](https://sheldonemrylibrary.famguardian.org/BibleStudyCourses/KBS-2.pdf), Sheldon Emry Memorial Library
5. [Words are Our Enemies' Weapons, Part 1](http://sheldonemrylibrary.famguardian.org/CassetteTapedMessages/1976/7603a.mp3), Sheldon Emry
6. [Words are Our Enemies' Weapons, Part 2](http://sheldonemrylibrary.famguardian.org/CassetteTapedMessages/1976/7603b.mp3), Sheldon Emry
7. [Roman Catholicism and the Battle Over Words](https://youtu.be/uxmEK1RGJQc), Ligonier Ministries
8. [The Keys to Freedom](https://youtu.be/rYIDRxDU5mw), Bob Hamp

The legal purpose of these definitions is to prevent [GOVERNMENT crime](#) using words:

[Word Crimes](https://youtu.be/8Gv0H-vPoDc), Al Yankovic

The definitions in this section are MANDATORY in any interaction between either the government or any of its agents or officers and any agent or member of this ministry. The reasons why this MUST be the case are described in:

[Path to Freedom, Form #09.015, Sections 5.3 through 5.8](https://sedm.org/Forms/09-Procs/PathToFreedom.pdf)

An itemized list of definitions found in this document is located later in the Section 13: Index under the heading "DEFINITIONS".

For a frequently updated online reference tool that defines all key terms used in this document from in a legal context, see the following:

[Sovereignty Forms and Instructions Online](#), Form #10.004, Cites by Topic

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<https://famguardian.org/TaxFreedom/FormsInstr-Cites.htm>

As far as definitions pertaining to our website, the following definitions of terms appears in our Disclaimer, Section 4<sup>3</sup>:

### 1.1 Human

The word "human" means a man or woman above the age of majority, which we regard as 18 years of age. Anyone below the age of 18 is considered a "child" rather than a "human".

### 1.2 “Should”, “Shall”, “Must”, “We Recommend”

All use of the words "should", "shall", "must", or "we recommend" on this website or in any of the interactions of this ministry with the public shall mean "may at your choice and discretion". This is similar to the government's use of the same words. See [Legal Deception, Propaganda, and Fraud, Form #05.014](#), Sections 15.4.13, 15.4.17, 15.4.19, and 15.4.26 for further details.

### 1.3 Private

The word "[private](#)" when it appears in front of other entity names such as "[person](#)", "[individual](#)", "business", "[employee](#)", "[employer](#)", etc. shall imply that the entity is:

1. In possession of absolute, exclusive ownership and control over their own labor, body, and all their property. In Roman Law this was called "[dominium](#)".
2. On [an EQUAL rather than inferior relationship to government in court](#). This means that they have no obligations to any government OTHER than possibly the duty to serve on jury and vote upon voluntary acceptance of the obligations of the civil status of "citizen" (and the [DOMICILE](#) that creates it). Otherwise, they are entirely free and unregulated unless and until they INJURE the equal rights of another under the common law.
3. A "nonresident" in relation to the state and federal government.
4. Not a PUBLIC entity defined within any state or federal statutory law. This includes but is not limited to statutory "person", "individual", "taxpayer", "driver", "spouse" under any civil statute or franchise.
5. Not engaged in a public office, "trade or business" (per 26 U.S.C. §7701(a)(26)). Such offices include but are not limited to statutory "person", "individual", "taxpayer", "driver", "spouse" under any civil statute or franchise.

*"PRIVATE PERSON. An individual who is not the incumbent of an office."  
[Black's Law Dictionary, Fourth Edition, p. 1359]*

6. [Not consenting](#) to contract with or acquire any public status, public privilege, or public right under any state or federal franchise. For instance, the phrase "private employee" means a common law worker that is NOT the statutory "employee" defined within 26 U.S.C. §3401(c) or 26 C.F.R. §301.3401(c)-1 or any other federal or state law or statute.
7. Not sharing ownership or control of their body or property with anyone, and especially a government. In other words:
  - 7.1. Ownership is not "qualified" but "absolute".
  - 7.2. There are not moieties between them and the government.
  - 7.3. The government has no usufructs over any of their property.
8. Not [subject to civil enforcement or regulation of any kind](#), except AFTER an injury to the equal rights of others has occurred. Preventive rather than corrective regulation is an unlawful taking of property according to the Fifth Amendment takings clause.
9. Not "privileged" or party to a franchise of any kind:

*"PRIVILEGE. "A right, power, franchise, or immunity held by a person or class, against or beyond the course of the law. [ . . . ] That which releases one from the performance of a duty or obligation, or exempts one from a liability which he would otherwise be required to perform, or sustain in common [common law] with all other*

<sup>3</sup> See: *SEDM Disclaimer*, Section 4, <https://sedm.org/disclaimer.htm>.

persons. *State v. Grosnickle*, 189 Wis. 17, 206 N.W. 895, 896. *A peculiar advantage, exemption, or immunity. Sacramento Orphanage & Children's Home v. Chambers*, 25 Cal.App. 536, 144 P. 317, 319. [Black's Law Dictionary, Fourth Edition, pp. 1359-1360]

"Is it a franchise? **A franchise is said to be a right reserved to the people by the constitution, as the elective franchise. Again, it is said to be a privilege conferred by grant from government, and vested in one or more individuals, as a public office.** Corporations, or bodies politic are the most usual franchises known to our laws. In England they are very numerous, and are defined to be royal privileges in the hands of a subject. An information will lie in many cases growing out of these grants, especially where corporations are concerned, as by the statute of 9 Anne, ch. 20, and in which the public have an interest. In *1 Strange R. (The King v. Sir William Louthier)* it was held that an information of this kind did not lie in the case of private rights, where no franchise of the crown has been invaded.

If this is so--if in England a privilege existing in a subject, which the king alone could grant, constitutes it a franchise--in this country, under our institutions, **a privilege or immunity of a public nature, which could not be exercised without a legislative grant, would also be a franchise.**"  
[*People v. Ridgley*, 21 Ill. 65, 1859 WL 6687, 11 Peck 65 (Ill., 1859)]

10. The equivalent to a common law or Constitutional "person" who retains all of their common law and Constitutional protections and waives none.

"The words "privileges" and "immunities," like the greater part of the legal phraseology of this country, have been carried over from the law of Great Britain, and recur constantly either as such or in equivalent expressions from the time of Magna Charta. For all practical purposes they are synonymous in meaning, and originally signified a peculiar right or private law conceded to particular persons or places **whereby a certain individual or class of individuals was exempted from the rigor of the common law.** Privilege or immunity is conferred upon any person when he is invested with a legal claim to the exercise of special or peculiar rights, authorizing him to enjoy some particular advantage or exemption."

[*The Privileges and Immunities of State Citizenship*, Roger Howell, PhD, 1918, pp. 9-10; SOURCE: [http://famguardian.org/Publications/ThePrivAndImmOfStateCit/The\\_privileges\\_and\\_immunities\\_of\\_state\\_c.pdf](http://famguardian.org/Publications/ThePrivAndImmOfStateCit/The_privileges_and_immunities_of_state_c.pdf)]

See *Magill v. Browne*, Fed.Cas. No. 8952, 16 Fed.Cas. 408; 6 Words and Phrases, 5583, 5584; A J. Lien, "Privileges and Immunities of Citizens of the United States," in *Columbia University Studies in History, Economics, and Public Law*, vol. 54, p. 31.

Every attempt by anyone in government to alienate rights that the Declaration of Independence says are UNALIENABLE shall also be treated as "PRIVATE BUSINESS ACTIVITY" that cannot be protected by sovereign, official, or judicial immunity. So called "government" cannot make a [profitable business or franchise](#) out of alienating inalienable rights without ceasing to be a classical/de jure government and instead becoming in effect an [economic terrorist and de facto government in violation of Article 4, Section 4](#).

"No servant [or government or biological person] can serve **two masters**; for either he will hate the one and love the other, or else he will be loyal to the one and despise the other. **You cannot serve God and mammon [government].**"  
[[Luke 16:13](#), Bible, NKJV]

## 1.4 Government

The term "government" is defined to include that group of people dedicated to the protection of purely and exclusively PRIVATE RIGHTS and PRIVATE PROPERTY that are absolutely and exclusively owned by a truly free and sovereign human being who is EQUAL to the government in the eyes of the law per the Declaration of Independence. It excludes the protection of [PUBLIC rights or PUBLIC privileges \(franchises, Form #05.030\)](#) and [collective rights \(Form #12.024\)](#) because of the tendency to subordinate PRIVATE rights to PUBLIC rights due to the CRIMINAL conflict of financial interest on the part of those in the alleged "government" (18 U.S.C. §208, 28 U.S.C. §§144, and 455). See [Separation Between Public and Private Course, Form #12.025](#) for the distinctions between PUBLIC and PRIVATE.

"As expressed otherwise, the powers delegated to a public officer are held in trust for the people and are to be exercised in behalf of the government or of all citizens who may need the intervention of the officer. [1]

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**Furthermore, the view has been expressed that all public officers, within whatever branch and whatever level of government, and whatever be their private vocations, are trustees of the people, and accordingly labor under every disability and prohibition imposed by law upon trustees relative to the making of personal financial gain from a discharge of their trusts. [2] That is, a public officer occupies a fiduciary relationship to the political entity on whose behalf he or she serves. [3] and owes a fiduciary duty to the public. [4] It has been said that the fiduciary responsibilities of a public officer cannot be less than those of a private individual. Furthermore, it has been stated that any enterprise undertaken by the public official which tends to weaken public confidence and undermine the sense of security for individual [PRIVATE] rights is against public policy. [5]"**

[63C American Jurisprudence 2d, Public Officers and Employees, §247 (1999)]

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FOOTNOTES:

[1] *State ex rel. Nagle v. Sullivan*, 98 Mont. 425, 40 P.2d. 995, 99 A.L.R. 321; *Jersey City v. Hague*, 18 N.J. 584, 115 A.2d. 8.

[2] *Georgia Dep't of Human Resources v. Sistrunk*, 249 Ga. 543, 291 S.E.2d. 524. A public official is held in public trust. *Madlener v. Finley (1st Dist)*, 161 Ill.App.3d. 796, 113 Ill.Dec. 712, 515 N.E.2d. 697, app gr 117 Ill.Dec. 226, 520 N.E.2d. 387 and *revid on other grounds* 128 Ill.2d. 147, 131 Ill.Dec. 145, 538 N.E.2d. 520.

[3] *Chicago Park Dist. v. Kenroy, Inc.*, 78 Ill.2d. 555, 37 Ill.Dec. 291, 402 N.E.2d. 181, appeal after remand (1st Dist) 107 Ill.App.3d. 222, 63 Ill.Dec. 134, 437 N.E.2d. 783.

[4] *United States v. Holzer (CA7 Ill)*, 816 F.2d. 304 and vacated, remanded on other grounds 484 U.S. 807, 98 L.Ed. 2d 18, 108 S.Ct. 53, on remand (CA7 Ill) 840 F.2d. 1343, cert den 486 U.S. 1035, 100 L.Ed. 2d 608, 108 S.Ct. 2022 and (criticized on other grounds by *United States v. Osser (CA3 Pa)* 864 F.2d. 1056) and (superseded by statute on other grounds as stated in *United States v. Little (CA5 Miss)* 889 F.2d. 1367) and (among conflicting authorities on other grounds noted in *United States v. Boylan (CA1 Mass)*, 898 F.2d. 230, 29 Fed.Rules.Evid.Serv. 1223).

[5] *Chicago ex rel. Cohen v. Keane*, 64 Ill.2d. 559, 2 Ill.Dec. 285, 357 N.E.2d. 452, later proceeding (1st Dist) 105 Ill.App.3d. 298, 61 Ill.Dec. 172, 434 N.E.2d. 325.

[6] *Indiana State Ethics Comm'n v. Nelson (Ind App)*, 656 N.E.2d. 1172, reh gr (Ind App) 659 N.E.2d. 260, reh den (Jan 24, 1996) and transfer den (May 28, 1996).

Anything done CIVILLY for the benefit of those working IN the government at the [involuntary, enforced, coerced, or compelled \(Form #05.003\)](#) expense of PRIVATE free humans is classified as [DE FACTO \(Form #05.043\)](#), non-governmental, PRIVATE business activity beyond the core purpose of government that cannot and should not be protected by official, judicial, or sovereign immunity. [Click here \(Form #11.401\)](#) for a detailed exposition of ALL of the illegal methods of enforcement (Form #05.032) and [duress \(Form #02.005\)](#). "Duress" as used here INCLUDES:

1. Any type of [LEGAL DECEPTION, Form #05.014](#).
2. Every attempt to insulate government workers from responsibility or accountability for their false or misleading statements ([Form #05.014](#) and [Form #12.021 Video 4](#)), forms, or publications ([Form #05.007](#) and [Form #12.023](#)).
3. Every attempt to offer or enforce civil franchise statutes against anyone OTHER than public officers ALREADY in the government. Civil franchises cannot and should not be used to CREATE new public offices, but to add duties to EXISTING public officers who are ALREADY lawfully elected or appointed.. See [Form #05.030](#).
4. Every attempt to commit identity theft by legally kidnapping [CONSTITUTIONAL state domiciled parties](#) onto federal territory or into the "United States" federal corporation as public officers. [Form #05.046](#).
5. Every attempt to offer or enforce any kind of franchise within a CONSTITUTIONAL state. See [Form #05.030](#).
6. Every attempt to entice people to give up an inalienable CONSTITUTIONAL right in exchange for a franchise privilege. See [Form #05.030](#).
7. Every attempt to use the police to enforce civil franchises or civil penalties. Police power can be lawfully used ONLY to enforce the criminal law. Any other use, and especially for revenue collection, is akin to sticking people up at gunpoint. See [Form #12.022](#).
8. Every attempt at CIVIL asset forfeiture to police in the conduct of CRIMINAL enforcement. This merely creates a criminal conflict of interest in police and makes them into CIVIL revenue collectors who seek primarily their own enrichment. See [Form #12.022](#).

9. Every attempt to compel or penalize anyone to declare a specific civil status on a government form that is signed under penalty of perjury. That is criminal witness tampering and the IRS does it all the time.
10. Every attempt to call something voluntary and yet to refuse to offer forms and procedures to unvolunteer. This is criminal FRAUD. Congressmen call income taxes voluntary all the time but the IRS refuses to even recognize or help anyone who is a "nontaxpayer". See [Exhibit #05.051](#).

All of the above instances of duress place personal interest in direct conflict with obedience to [REAL law, Form #05.048](#). They are the main source of [government corruption \(Form #11.401\)](#) in the present [de facto system \(Form #05.043\)](#). The only type of enforcement by a DE JURE government that can or should be compelled and lawful is CRIMINAL or COMMON LAW enforcement where a SPECIFIC private human has been injured, not [CIVIL statutory enforcement \(a franchise, Form #05.030\)](#). Under the State Action Doctrine of the U.S. Supreme Court, everyone who is the target of CIVIL enforcement is, by definition a public officer or agent in the government and Christians are forbidden by the Bible from becoming such public officers. [Form #13.007](#).

Every type of DE JURE CIVIL governmental service or regulation MUST be voluntary and ALL must be offered the right to NOT participate on every governmental form that administers such a CIVIL program. It shall mandatorily, publicly, and NOTORIOUSLY be enforced and prosecuted as a crime NOT to offer the right to NOT PARTICIPATE in any CIVIL STATUTORY activity of government or to call a service "VOLUNTARY" but actively interfere with and/or persecute those who REFUSE to volunteer or INSIST on unvolunteering. All statements by any government actor or government form or publication relating to the right to volunteer shall be treated as statements under penalty of perjury for which the head of the governmental department shall be help PERSONALLY liable if false. EVERY CIVIL "benefit" or activity offered by any government MUST identify at the beginning of ever law creating the program that the program is VOLUNTARY and HOW specifically to UNVOLUNTEER or quit the program. Any violation of these rules makes the activity NON-GOVERNMENTAL in nature AND makes those offering the program into a [DE FACTO government \(Form #05.043\)](#). The Declaration of Independence says that all "just powers" of government derive from the CONSENT of those governed. Any attempt to [CIVILLY enforce](#) MUST be preceded by an explicit written attempt to procure consent, to not punish those who DO NOT consent, and to not PRESUME consent by virtue of even submitting a government form that does not IDENTIFY that submission of the form is an IMPLIED [act of consent \(Form #05.003\)](#). This ensures "justice" in a constitutional sense, which is [legally defined as "the right to be left alone"](#). For the purposes of this website, those who do not consent to ANYTHING civil are referred to ["non-resident non-persons" \(Form #05.020\)](#). An example of such a human would be a devout Christian who is acting in complete obedience to the word of God in all their interactions with anyone and everyone in government. Any attempt by a PRIVATE human to consent to any [CIVIL STATUTORY offering by any government \(a franchise, Form #05.030\)](#) is a violation of their [delegation of authority order from God \(Form #13.007\)](#) that places them OUTSIDE the protection of God under the Bible.

Under this legal definition of "government" the IDEAL and DE JURE government is one that:

1. The States cannot offer THEIR taxable franchises within federal territory and the FEDERAL government may not establish taxable franchises within the territorial borders of the states.
2. Has the administrative burden of proof IN WRITING to prove to a common law jury of your peers that you CONSENTED in writing to the CIVIL service or offering before they may COMMENCE administrative enforcement of any kind against you. Such administrative enforcement includes, but is not limited to administrative liens, administrative levies, administrative summons, or contacting third parties about you. This ensures that you CANNOT become the unlawful victim of a [USUALLY FALSE PRESUMPTION \(Form #05.017\)](#) about your [CIVIL STATUS \(Form #13.008\)](#) that ultimately leads to [CRIMINAL IDENTITY THEFT \(Form #05.046\)](#). The decision maker on whether you have CONSENTED should NOT be anyone in the AGENCY that administers the service or benefit and should NEVER be ADMINISTRATIVE. It should be JUDICIAL.
3. Judges making decisions about the payment of any CIVIL SERVICE fee may NOT participate in ANY of the programs they are deciding on and may NOT be "taxpayers" under the I.R.C. Subtitle A Income tax. This creates a criminal financial conflict of interest that denies due process to all those who are targeted for enforcement. This sort of corruption was abused to unlawfully expand the income tax and the Social Security program OUTSIDE of their [lawful territorial extent \(Form #05.018\)](#). See [Lucas v. Earl, 281 U.S. 111 \(1930\)](#), [O'Malley v. Woodrough, 307 U.S. 277 \(1939\)](#) and later in [Hatter v. U.S., 532 U.S. 557 \(2001\)](#).
4. EVERY CIVIL service offered by any government MUST be subject to choice and competition, in order to ensure accountability and efficiency in delivering the service. This INCLUDES the minting of substance based currency. The government should NOT have a monopoly on ANY service, including money or even the postal service. All such

monopolies are inevitably abused to institute duress and destroy the autonomy and sovereignty and EQUALTY of everyone else.

5. CANNOT "bundle" any service with any other in order to FORCE you to buy MORE services than you want. Bundling removes choice and autonomy and constitutes biblical "usury". For instance, it CANNOT:
  - 5.1. Use "driver licensing" to FORCE people to sign up for Social Security by forcing them to provide a "franchise license number" called an SSN or TIN in order to procure the PRIVILEGE of "driving", meaning using the commercial roadways FOR HIRE and at a profit.
  - 5.2. Revoke driver licenses as a method of enforcing ANY OTHER franchise or commercial obligation, including but not limited to child support, taxes, etc.
  - 5.3. Use funds from ONE program to "prop up" or support another. For instance, they cannot use Social Security as a way to recruit "taxpayers" of other services or the income tax. This ensures that EVERY PROGRAM stands on its own two feet and ensures that those paying for one program do not have to subsidize failing OTHER programs that are not self-supporting. It also ensures that the government MUST follow the SAME free market rules that every other business must follow for any of the CIVIL services it competes with other businesses to deliver.
  - 5.4. Piggyback STATE income taxes onto FEDERAL income taxes, make the FEDERAL government the tax collector for STATE TAXES, or the STATES into tax collectors for the FEDERAL government.
6. Can lawfully enforce the CRIMINAL laws without your express consent.
7. Can lawfully COMPEL you to pay for BASIC SERVICES of the courts, jails, military, and ROADS and NO OTHERS. EVERYONE pays the same EQUAL amount for these services.
8. Sends you an ITEMIZED annual bill for CIVIL services that you have contracted in writing to procure. That bill should include a signed copy of your consent for EACH individual CIVIL service or "social insurance". Such "social services" include anything that costs the government money to provide BEYOND the BASIC SERVICES, such as health insurance, health care, Social Security, Medicare, etc.
9. If you do not pay the ITEMIZED annual bill for the services you EXPRESSLY consented to, the government should have the right to collect ITS obligations the SAME way as any OTHER PRIVATE human. That means they can administratively lien your real or personal property, but ONLY if YOU can do the same thing to THEM for services or property THEY have procured from you either voluntarily or involuntarily. Otherwise, they must go to court IN EQUITY to collect, and MUST produce evidence of consent to EACH service they seek payment or collection for. In other words, they have to follow the SAME rules as every private human for the collection of CIVIL obligations that are in default. Otherwise, they have superior or supernatural powers and become a pagan deity and you become the compelled WORSHIPPER of that pagan deity. See [Socialism: The New American Civil Religion, Form #05.016](#) for details on all the BAD things that happen by turning government into such a CIVIL RELIGION.

Jesus described the above de jure government as follows. He is implying that Christians cannot consent to any government that rules from above or has superior or supernatural powers in relation to biological humans. In other words, the government Christians adopt or participate in or subsidize CANNOT function as a religion as described in [Socialism: The New American Civil Religion, Form #05.016](#):

*"You know that the rulers of the Gentiles [unbelievers] lord it over them [govern from ABOVE as pagan idols], and those who are great exercise authority over them [supernatural powers that are the object of idol worship]. Yet it shall not be so among you; but whoever desires to become great among you, let him be your servant [serve the sovereign people from BELOW rather than rule from above]. And whoever desires to be first among you, let him be your slave—just as the Son of Man did not come to be served, but to serve, and to give His life a ransom for many."*  
 [Matt. 20:25-28, Bible, NKJV]

For documentation on HOW to implement the above IDEAL or DE JURE government by making MINOR changes to existing foundational documents of the present government such as the Constitution, see:

[Self Government Federation: Articles of Confederation, Form #13.002](http://sedm.org/Forms/13-SelfFamilyChurchGovnce/SGFArtOfConfed.pdf)  
<http://sedm.org/Forms/13-SelfFamilyChurchGovnce/SGFArtOfConfed.pdf>

## 1.5 Civil Status

The term "[civil status](#)" describes the process by which human beings become "persons" under civil statutory law. It is what the courts call a "[res](#)" which gives them civil control over you under one of three different systems of civil law. Civil status is VERY important, because it is the source of civil statutory jurisdiction of courts over you and their right to "personal

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jurisdiction” over you. It also describes how your actions affect “choice of law” and your “status” in any court cases you bring. Human beings who are “sovereign” in fact:

1. Have no “[civil status](#)” under statutory law.
2. Only have a “[civil status](#)” under the constitution and the common law.
3. Are not party to the “social compact”, but “foreigners” among citizens. The Law of Nations, Book 1, Section 213 calls them “inhabitants”.
4. Are not privileged “aliens”.
5. Participate in NO government franchises or privileges, but instead reserve all their PRIVATE, UNALIENABLE rights (Form #12.038) and thereby remain exclusively private. See Form #05.030.
6. Were described as “idiots” under early Greek law. See:
 

*Are You an “Idiot”?*, Sovereignty Education and Defense Ministry (SEDM)  
<https://sedm.org/are-you-an-idiot-we-are/>
7. Understand the distinctions between PUBLIC and PRIVATE and maintain absolute separation between the two in all their interactions with any so-called “government”. They ensure that all of their property remains absolutely owned and exclusively private. Thus, they can control and dictate all uses and everyone who wants to take or control it. See:
 

*Separation Between Public and Private Course*, Form #12.025  
<https://sedm.org/LibertyU/SeparatingPublicPrivate.pdf>
8. Civilly govern themselves without external interference, except possibly of common law and criminal courts.
9. Replace the civil statutory protection franchise with private contracts and franchises of their own for everyone they do business with, thus rendering “civil services” on the part of organized governments irrelevant and unnecessary. For a definition of “civil services”, see the definition in our Disclaimer, Section 4. In that sense they have FIRED the government from a civil perspective and retain all of their God given inalienable rights. All rights reserved, U.C.C. §1-308.
10. Are governed mainly by the “civil laws” found in the Holy Bible. This is a protected First Amendment right to practice their religion.
 

*Laws of the Bible*, Litigation Tool #09.001  
<https://sedm.org/Litigation/09-Reference/LawsOfTheBible.pdf>

You cannot have a “[civil status](#)” under the laws of a place WITHOUT at least one of the following conditions:

1. A physical presence in that place. The status would be under the COMMON law. Common law is based on physical location of people on land rather than their statutory status.
2. CONSENSUALLY doing business in that place. The status would be under the common law. See the Foreign Sovereign Immunities Act, 28 U.S.C. Chapter 97 and International Shoe Co. v. Washington, 326 U.S. 310 (1945).
3. A domicile in that place. This would be a status under the civil statutes of that place. See Federal Rule of Civil Procedure 17(a).
4. CONSENSUALLY representing an artificial entity (a legal fiction) that has a domicile in that place. This would be a status under the civil statutes of that place. See Federal Rule of Civil Procedure 17(b).
5. Consenting to a civil status under the laws of that place. Anything done consensually cannot form the basis for an injury in a court of law. Such consent is usually manifested by filling out a government form identifying yourself with a specific statutory status, such as a W-4, 1040, driver license application, etc. This is covered in:
 

*Avoiding Traps in Government Forms Course*, Form #12.023  
<https://sedm.org/Forms/FormIndex.htm>

If any of the above rules are violated, you are a victim of criminal identity theft:

*Government Identity Theft*, Form #05.046  
<https://sedm.org/Forms/05-MemLaw/GovernmentIdentityTheft.pdf>

"civil status" is further discussed in:

1. *Civil Status (Important!)*-Article under "Litigation->Civil Status (Important!)" on the SEDM menus  
<https://sedm.org/litigation-main/civil-status/>
2. *Your Exclusive Right to Declare or Establish Your Civil Status*, Form #13.008  
<https://sedm.org/Forms/13-SelfFamilyChurchGovnce/RightToDeclStatus.pdf>

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### ***Sovereignty and Freedom Points and Authorities***

3. *Proof That There Is a "Straw Man"*, Form #05.042-SEDM  
<https://sedm.org/Forms/05-MemLaw/StrawMan.pdf>
4. *Legal Fictions*, Form #09.071-SEDM  
<https://sedm.org/Forms/09-Procs/LegalFictions.pdf>

## 1.6 Civil Service

The term "civil service" or "civil service fee" relates to any and all activities of "government" OTHER than:

1. Police.
2. Military.
3. Jails.
4. Criminal court.
5. Common law court.

"civil service" and "civil service fee" includes any attempt or act to:

1. Establish or enforce a [domicile \(Form #05.002\)](#)
2. Procure [consent \(Form #05.003\)](#) of any kind to alienate rights that are supposed to be INALIENABLE per the Declaration of Independence.
3. PRESUME [consent \(Form #05.003\)](#) to surrender INALIENABLE PRIVATE RIGHTS by virtue of submitting, accepting, or receiving any application for a government benefit, license, or franchise. See [Form #12.023](#).
4. Convert PRIVATE property or PRIVATE rights to PUBLIC property, PUBLIC offices, or excise taxable franchises. See [Form #12.025](#). Government's FIRST and most important duty is to at all times maintain TOTAL separation between PRIVATE and PUBLIC and NEVER to allow them to convert one to another. Every attempt to convert one to the other represents a criminal financial conflict of interest that turns the PUBLIC trust into a SHAM trust.
5. Offer or enforce the civil statutory code.
6. Offer or enforce [civil franchises \(see Form #05.030\)](#)

## 1.7 Common Law

The term "common law" means procedures and policies used in constitutional courts in the JUDICIAL branch to provide protection for absolutely owned, constitutionally protected PRIVATE RIGHTS and PRIVATE PROPERTY of a human being who has accepted no franchises or privileges and therefore who is not subject to civil statutes, not domiciled in the forum, and who reserves all rights. These procedures may not be exercised in "legislative franchise courts" in the LEGISLATIVE or EXECUTIVE Branch which manage and adjudicate disputes over federal property, franchises, privileges, and "benefits". In the words of the U.S. Supreme Court, these organic rights are "self-executing" and not government created or owned. They may therefore NOT be limited, restrained, taxed, or regulated by statute:

*The design of the Fourteenth Amendment has proved significant also in maintaining the traditional separation of powers 524\*524 between Congress and the Judiciary. **The first eight Amendments to the Constitution set forth self-executing prohibitions on governmental action, and this Court has had primary authority to interpret those prohibitions.** The Bingham draft, some thought, departed from that tradition by vesting in Congress primary power to interpret and elaborate on the meaning of the new Amendment through legislation. Under it, "Congress, and not the courts, was to judge whether or not any of the privileges or immunities were not secured to citizens in the several States." Flack, *supra*, at 64. While this separation-of-powers aspect did not occasion the widespread resistance which was caused by the proposal's threat to the federal balance, it nonetheless attracted the attention of various Members. See Cong. Globe, 39th Cong., 1st Sess., at 1064 (statement of Rep. Hale) (noting that Bill of Rights, unlike the Bingham proposal, "**provide[s] safeguards to be enforced by the courts, and not to be exercised by the Legislature**"); *id.*, at App. 133 (statement of Rep. Rogers) (prior to Bingham proposal it "was left entirely for the courts . . . to enforce the privileges and immunities of the citizens"). As enacted, the Fourteenth Amendment confers substantive rights against the States which, like the provisions of the Bill of Rights, are self-executing. Cf. [South Carolina v. Katzenbach, 383 U. S., at 325](#) (discussing Fifteenth Amendment). The power to interpret the Constitution in a case or controversy remains in the Judiciary. [City of Boerne v. Flores, 521 U.S. 507 (1997)]*

It is the duty of all CONSTITUTIONAL courts in the JUDICIAL branch to provide remedy for the protection of such rights when violated, even if there is no statute authorizing a remedy. This is a consequence of the oath that all judges IN CONSTITUTIONAL COURTS take to “support and defend the constitution against all enemies, foreign and domestic”, whether state or federal. Franchise judges in the LEGISLATIVE or EXECUTIVE branch don't have to take this oath and often ACTIVELY INTERFERE with any attempt by private litigants to invoke or enforce constitutional rights. That sort of behavior would be TREASON in a CONSTITUTIONAL court. Franchise courts act in essence as binding arbitration boards for people in temporary possession, custody, or control of absolutely owned government property which is dispensed with legal strings attached called "franchises". These courts preside by the CONSENT of those who accept the property or "benefit" that the franchise court is charged with managing, such as "licenses", "permits", or government "benefits". Examples of "legislative franchise courts" include:

1. Traffic court.
2. Family court.
3. Tax Court (see 26 U.S.C. §7441).

For a detailed exposition of exactly how government franchises and franchise courts operate, see:

*Government Instituted Slavery Using Franchises*, Form #05.030

<https://sedm.org/Forms/FormIndex.htm>

Rights are property and protecting and enforcing them is an action to protect PRIVATE property in the case of CONSTITUTIONAL rights recognized but not created by the Bill of Rights. In providing judicial remedy absent statutes, the courts in effect are DEFINING the common law, because statutes CANNOT define or limit such rights:

*"Under basic rules of construction, statutory laws enacted by legislative bodies cannot impair rights given under a constitution. 194 B.R. at 925. "*

*[In re Young, 235 B.R. 666 (Bankr.M.D.Fla., 1999)]*

*"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities [within juries] and officials [and CIVIL STATUTES, Form #05.037] and to establish them as legal principles to be applied by the courts [using the COMMON LAW rather than CIVIL STATUTES, Form #05.037]. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote [of a JURY OR an ELECTOR]; they depend on the outcome of no elections."*

*[West Virginia Bd. of Ed. v. Barnett, 319 U.S. 624, 638 (1943); SOURCE: [https://scholar.google.com/scholar\\_case?case=8030119134463419441](https://scholar.google.com/scholar_case?case=8030119134463419441)]*

Based on the above, anything licensed, taxed, requiring a "permit", denied (the essence of ownership is the right to exclude and control the use of), or regulated by civil statute or which may be voted on by a jury or an elector or which is created or enforced by statute is NOT a CONSTITUTIONAL or a PRIVATE right and is not the proper subject of the common law. Further, anyone who tries to convince you that there IS no such thing as the common law in the context of CONSTITUTIONAL rights, or that common law proceedings can and do involve STATUTORY remedies is engaging in a conspiracy to DESTROY all of your private rights and private property. This is proven in:

*Why Statutory Civil Law is Law for Government and Not Private Persons*, Form #05.037

<https://sedm.org/Forms/FormIndex.htm>

A failure or refusal by a judge in the judicial department to provide CONSTITUTIONAL remedy for absolutely owned PRIVATE property or PRIVATE rights is therefore, in fact and in deed:

1. An attempt to accomplish the OPPOSITE purpose for why government was created, which was to protect PRIVATE property and PRIVATE rights.
2. An attempt to denigrate, demoralize, oppress, and enslave (Thirteenth Amendment) litigants before them who are litigating against any government for a violation of those rights.
3. An attempt to maliciously abuse legal process to institute peonage and slavery in violation of 18 U.S.C. §1589.
4. A selective REPEAL of a portion of the CONSTITUTIONAL common law.
5. A selective REPEAL of the portion of the Bill of Rights that forms the STANDING of the party to sue in court.
6. A violation of the judicial oath to support and defend the Constitution against all enemies, foreign and domestic.

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7. Treason punishable by death under 18 U.S.C. §2381.
8. A violation of the Separation of Powers Doctrine, because by SELECTIVELY REPEALING a portion of the constitution or constitutional common law, they in effect are acting in a “legislative capacity” as a member of the Legislative or Executive Branch, not as judges.<sup>4</sup>
9. Destroying ANY and ALL possibility of freedom or liberty itself, according to the man who DESIGNED the three-branch system of Republic Government and Separation of Powers:

“When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression [sound familiar?].

There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.”

[. . .]

In what a situation must the poor subject be in those republics! The same body of magistrates are possessed, as executors of the laws, of the whole power they have given themselves in quality of legislators. They may plunder the state by their general determinations; and as they have likewise the judiciary power in their hands, every private citizen may be ruined by their particular decisions.”

[The Spirit of Laws, Charles de Montesquieu, Book XI, Section 6, 1758;

SOURCE: [http://famguardian.org/Publications/SpiritOfLaws/sol\\_11.htm](http://famguardian.org/Publications/SpiritOfLaws/sol_11.htm)]

Further, Congress can only regulate or tax PRIVILEGES or PUBLIC rights that it created by statute, not PRIVATE rights recognized but not created by the Constitution.

Although Crowell and Raddatz do not explicitly distinguish between rights created by Congress [PUBLIC RIGHTS] and other [PRIVATE] rights, such a distinction underlies in part Crowell's and Raddatz' recognition of a critical difference between rights created by federal statute and rights recognized by the Constitution. Moreover, such a distinction seems to us to be necessary in light of the delicate accommodations required by the principle of separation of powers reflected in Art. III. The constitutional system of checks and balances is designed to guard against “encroachment or aggrandizement” by Congress at the expense of the other branches of government. Buckley v. Valeo, 424 U.S., at 122, 96 S.Ct., at 683. But when Congress creates a statutory right [a “privilege” or “public right” in this case, such as a “trade or business”], it clearly has the discretion, in defining that right, to create presumptions, or assign burdens of proof, or prescribe remedies; it may also provide that persons seeking to vindicate that right must do so before particularized tribunals created to perform the specialized adjudicative tasks related to that right. FN35 Such provisions do, in a sense, affect the exercise of judicial power, but they are also incidental to Congress' power to define the right that it has created. No comparable justification exists, however, when the right being adjudicated is not of congressional creation. In such a situation, substantial inroads into functions that have traditionally been performed by the Judiciary cannot be characterized merely as incidental extensions of Congress' power to define rights that it has created. Rather, such inroads suggest unwarranted encroachments upon the judicial power of the United States, which our Constitution reserves for Art. III courts.

[Northern Pipeline Const. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 102 S.Ct. 2858 (1983)]

For more details on the CIVIL (not CRIMINAL, but CIVIL) power to tax or regulate only public rights (public property) that Congress created by statute and therefore ABSOLUTELY OWNS and CONTROLS as property, see:

Hierarchy of Sovereignty: The Power to Create is the Power to Tax, Family Guardian Fellowship  
<https://famguardian.org/Subjects/Taxes/Remedies/PowerToCreate.htm>

The basic rules of the common law are documented in the following exemplary books published near the turn of the Twentieth Century and many others, and thus are WRITTEN. These rules have not been REPEALED, but rather fallen out of use

<sup>4</sup> See: Government Conspiracy to Destroy the Separation of Powers, Form #05.023; <https://sedm.org/Forms/FormIndex.htm>.

because of censorship by covetous Pharisee lawyers trying to convert ALL property to government property so they could STEAL it and harvest it for their personal benefit<sup>5</sup>:

1. *Handbook of Common Law Pleading*, Benjamin Shipman (48 MB)-  
[http://famguardian.org/Publications/CommonLawPractice/Hand\\_book\\_of\\_Common\\_law\\_Pleading.pdf](http://famguardian.org/Publications/CommonLawPractice/Hand_book_of_Common_law_Pleading.pdf)
2. *Handbook of Common Law Pleading*, Joseph Koeffler (4.8 MB).  
[http://famguardian.org/Publications/CommonLawPractice/CL\\_Pleading.pdf](http://famguardian.org/Publications/CommonLawPractice/CL_Pleading.pdf)
3. *Principles of Common Law Pleading*, John McKelvey (3.5 MB)  
[http://famguardian.org/Publications/CommonLawPractice/Principles\\_of\\_Common\\_law\\_Pleading.pdf](http://famguardian.org/Publications/CommonLawPractice/Principles_of_Common_law_Pleading.pdf)
4. *Pleadings and Practice in Actions At Common Law*, Martin Burks (90.3 MB)  
[http://famguardian.org/Publications/CommonLawPractice/Pleading\\_and\\_Practice\\_in\\_Actions\\_at\\_Comm.pdf](http://famguardian.org/Publications/CommonLawPractice/Pleading_and_Practice_in_Actions_at_Comm.pdf)

In addition to the above generally accepted rules, those owning the PRIVATE property protected by the common law may ADD to these rules with their own set of rules that form the conditions of the temporary use, benefit, or control of the property so granted and protected to the person SUBJECT to those rules. We call these the Grant Rules.

Grant Rules are CIVIL rules implemented as a contract or agreement between the GRANTOR and the GRANTEE for temporarily using, controlling, or benefitting from that property. In the case of government, these rules regulating government property cannot be and are not implemented with CRIMINAL statutes. They are only implemented by CIVIL statutes. They are enforced against those who consent to those RULES by temporarily accepting or exercising custody, benefit, or control over the property in question. These rules behave, in essence, as a franchise or an excise. The OBLIGATIONS against the GRANTOR associated with the use of the granted property are the “consideration” provided by the GRANTOR and the consideration they receive in return are the temporary “RIGHTS” they exercise over the granted property. All franchises are based on “grants” of property with legal strings or conditions attached and ANYONE can grant or participate in such a franchise or use such a franchise AGAINST a government to defend themselves against GOVERNMENT unlawfully offering or enforcing THEIR franchises:

*“The State in such cases exercises no greater right than an individual may exercise over the use of his own property when leased or loaned to others. The conditions upon which the privilege shall be enjoyed being stated or implied in the legislation authorizing its grant, no right is, of course, impaired by their enforcement. The recipient of the privilege, in effect, stipulates to comply with the conditions. It matters not how limited the privilege conferred, its acceptance implies an assent to the regulation of its use and the compensation for it.”*  
[Munn v. Illinois, 94 U.S. 113 (1876)]

An example of the use of such rules by the government against the private rights and private property is found below:

*“We have repeatedly held that the Federal Government may impose appropriate conditions on the use of federal property or privileges [franchises, Form #05.030] and may require that state instrumentalities comply with conditions [obligations, Form #12.040] that are reasonably related to the federal interest in particular national projects or programs. See, e. g., Ivanhoe Irrigation Dist. v. McCracken, 357 U.S. 275, 294 -296 (1958); Oklahoma v. Civil Service Comm'n, 330 U.S. 127, 142 -144 (1947); United States v. San Francisco, 310 U.S. 16 (1940); cf. National League of Cities v. Usery, 426 U.S. 833, 853 (1976); Fry v. United States, 421 U.S. 542 (1975). A requirement that States, like all other users, pay a portion of the costs of the benefits [Form #05.040] they enjoy from federal programs is surely permissible [meaning CONSTITUTIONAL] since it is closely related to the [435 U.S. 444, 462] federal interest in recovering costs from those who benefit and since it effects no greater interference with state sovereignty than do the restrictions which this Court has approved.”*  
[Massachusetts v. United States, 435 U.S. 444 (1978);  
[https://scholar.google.com/scholar\\_case?case=16842193024599209893](https://scholar.google.com/scholar_case?case=16842193024599209893)]

Under the concept of equal protection and equal treatment, WE TOO have an EQUAL right, recognized above by the U.S. Supreme Court in Munn v. Illinois, to attach conditions to the use or benefit or control of our property by any and all others, INCLUDING governments. To suggest otherwise is to impute or enforce superior or supernatural powers to a government and institute a civil religion in violation of the First Amendment. ALL ARE EQUAL in a free society. You are equal to the government, as President Obama implied in his First Inauguration Speech, as we prove below:

*Foundations of Freedom Course*, Form #12.021, Video 1: Introduction  
<https://www.youtube.com/watch?v=ikf7CcT2I8I>

<sup>5</sup> See: *Who Were the Pharisees and Saducees?*, Form #05.047; <https://sedm.org/Forms/FormIndex.htm>.



If you are not equal to the government and cannot use YOUR absolutely owned PRIVATE property to control THEM, then they can't use THEIR property to control you through civil franchises or statutes either. For more on the abuse of franchises by government to oppress people they are supposed to be helping, and how to use them to DEFEND yourself against such abuses, see:

1. *Government Franchises Course*, Form #12.012  
<https://sedm.org/Forms/FormIndex.htm>
2. *Government Instituted Slavery Using Franchises*, Form #05.030  
<https://sedm.org/Forms/FormIndex.htm>

Anyone who asserts that the GOVERNMENT is the only one who can absolutely own property or that government SHARES ownership or control of ALL property is indirectly advocating all of the following:

1. A violation of the main reason for creating government, which is the protection of PRIVATE rights and PRIVATE property.
2. The establishment of a state sponsored religion in violation of the First Amendment, because the government can use their control over ALL property to control ANYTHING and ANYONE. See:  

<i>Socialism: The New American Civil Religion</i> , Form #05.016 <a href="https://sedm.org/Forms/FormIndex.htm">https://sedm.org/Forms/FormIndex.htm</a>
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3. A violation of the Thirteenth Amendment, because there is no way to avoid the rules associated with buying or using ANY TYPE OF PROPERTY.
4. The establishment of socialism, which is government ownership or at least control over ALL property:

*“Socialism n (1839) 1: any of various economic and political theories advocating collective or governmental ownership and administration of the means of production and distribution of goods 2 a: a system of society or group living in which there is no private property b: a system or condition of society in which the means of production are owned and controlled by the state 3: a stage of society in Marxist theory transitional between capitalism and communism and distinguished by unequal distribution of goods and pay according to work done.”*  
[Webster's Ninth New Collegiate Dictionary, 1983, ISBN 0-87779-510-X, page 1118; SOURCE:  
<https://famguardian.org/TaxFreedom/Forms/Discovery/Deposition/Evidence/Q05.010.pdf>]

For more information about common misconceptions about the common law propagated mainly by MISINFORMED members of the legal profession and the government, see:

<i>Rebutted False Arguments About the Common Law</i> , Form #08.025 <a href="https://sedm.org/Forms/08-PolicyDocs/RebuttedFalseArgumentsAboutCommonLaw.pdf">https://sedm.org/Forms/08-PolicyDocs/RebuttedFalseArgumentsAboutCommonLaw.pdf</a>
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## 1.8 Law

The term "law" as used on this site is constrained by the following requirements:

1. It must apply equally to ALL. It cannot compel INEQUALITY of treatment between any man or class of men. See [Form #05.033](#).
2. It cannot do collectively what people individually cannot NATURALLY do. In other words, in the words of [Frederic Bastiat](#), it aggregates the individual right of self-defense into a collective body so that it can be delegated. A single human CANNOT delegate a right he does not individually ALSO possess, which indirectly implies that no GROUP of men called “government” can have any more COLLECTIVE rights under the collective entity rule than a single human being. See the following for a video on the subject.  

<i>Philosophy of Liberty</i> , SEDM <a href="https://sedm.org/liberty-university/liberty-university-2-2-philosophy-of-liberty/">https://sedm.org/liberty-university/liberty-university-2-2-philosophy-of-liberty/</a>
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3. It cannot punish a citizen for an innocent action that was not a crime or not demonstrated to produce measurable harm. The ability to PROVE such harm with evidence in court is called “standing”.
4. It cannot compel the redistribution of wealth between two private parties. This is ESPECIALLY true if it is called a “tax”.

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5. It cannot interfere with or impair the right of contracts between PRIVATE parties. That means it cannot compel income tax withholding unless one or more of the parties to the withholding are ALREADY public officers in the government.
6. It cannot interfere with the use or enjoyment or CONTROL over private property, so long as the use injures no one. Implicit in this requirement is that it cannot FAIL to recognize the right of private property or force the owner to donate it to a PUBLIC USE or PUBLIC PURPOSE. In the common law, such an interference is called a “trespass”.
7. The rights it conveys must attach to LAND rather than the CIVIL STATUS (e.g. “taxpayer”, “citizen”, “resident”, etc.) of the people ON that land. One can be ON land within a PHYSICAL state WITHOUT being legally “WITHIN” that state (a corporation) as an officer of the government or corporation (Form #05.042) called a “citizen” or “resident”.  
See:
  - 7.1. *Your Exclusive Right to Declare or Establish Your Civil Status, Form #13.008.*  
<https://sedm.org/Forms/13-SelfFamilyChurchGovnce/RightToDeclStatus.pdf>
  - 7.2. *Foundations of Freedom Course, Form #12.021, Video 4* covers how LAND and STATUS are deliberately confused through equivocation in order to KIDNAP people’s identity (Form #05.046) and transport it illegally to federal territory.  
*(“It is locality that is determinative of the application of the Constitution, in such matters as judicial procedure, and not the status of the people who live in it.” [Balzac v. Porto Rico, 258 U.S. 298 (1922)])*  
[https://www.youtube.com/watch?v=hPwMfa\\_oD-w](https://www.youtube.com/watch?v=hPwMfa_oD-w)
8. It must provide a remedy AFTER an injury occurs. It may not PREVENT injuries before they occur. Anything that operates in a PREVENTIVE rather than CORRECTIVE mode is a franchise. There is no standing in a REAL court to sue WITHOUT first demonstrating such an injury to the PRIVATE or NATURAL rights of the Plaintiff or VICTIM.
9. It cannot acquire the “force of law” from the consent of those it is enforced against. In other words, it cannot be an agreement or contract. All franchises and licensing, by the way, are types of contracts.
10. It does not include compacts or contracts between private people and governments. Rights that are INALIENABLE cannot be contracted away, even WITH consent. See Form #05.003.
11. It cannot, at any time, be called “voluntary”. Congress and even the U.S. Supreme Court call the IRC Subtitle a “income tax” voluntary. See Exhibits #05.025 and #05.051.
12. It does not include franchises, licenses, or civil statutory codes, all of which derive ALL of their force of law from your consent in choosing a civil domicile (Form #05.002).

The above criteria derives from What Is "law"?, Form #05.048, Section 16. Any violation of the above rules is what the Bible calls “devises evil by law” in Psalm 94:20-23 as indicated above.

Roman statesman Cicero defined law as follows:

*“True Law is right reason in agreement with Nature, it is of universal application, unchanging and everlasting; it summons to duty by its commands and averts from wrong-doing by its prohibitions. And it does not lay its commands or prohibitions upon good men in vain, although neither have any effect upon the wicked. It is a sin to try to alter this law, nor is it allowable to try to repeal a part of it, and it is impossible to abolish it entirely. We cannot be freed from its obligations by Senate or People, and we need not look outside ourselves for an expounder or interpreter of it. And there will not be different laws at Rome or at Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all times and all nations, and there will be one master and one rule, that is God, for He is the author of this law, its promulgator, and its enforcing judge.”*  
[Marcus Tullius Cicero, 106-43 B.C.]

*“Power and law are not synonymous. In truth, they are frequently in opposition and irreconcilable. There is God’s Law from which all equitable laws of man emerge and by which men must live if they are not to die in oppression, chaos and despair. Divorced from God’s eternal and immutable Law, established before the founding of the suns, man’s power is evil no matter the noble words with which it is employed or the motives urged when enforcing it. Men of good will, mindful therefore of the Law laid down by God, will oppose governments whose rule is by men, and if they wish to survive as a nation they will destroy the [de facto] government which attempts to adjudicate by the whim of venal judges.”*  
[Marcus Tullius Cicero, 106-43 B.C.]

“Law” is defined to EXCLUDE any and all civil statutory codes, franchises, or privileges in relation to any and all governments and to include ONLY the COMMON law, the CONSTITUTION (if trespassing government actors ONLY are involved), and the CRIMINAL law.

*The Court developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision. They are:*

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### ***Sovereignty and Freedom Points and Authorities***

[ . . ]

6. **The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits.** [FN7 Great Falls Mfg. Co. v. Attorney General, 124 U.S. 581, 8 S.Ct. 631, 31 L.Ed. 527; Wall v. Parrot Silver & Copper Co., 244 U.S. 407, 411, 412, 37 S.Ct. 609, 61 L.Ed. 1229; St. Louis Malleable Casting Co. v. Prendergast Construction Co., 260 U.S. 469, 43 S.Ct. 178, 67 L.Ed. 351.](#)

FOOTNOTES:

[FN7 Compare Electric Co. v. Dow, 166 U.S. 489, 17 S.Ct. 645, 41 L.Ed. 1088; Pierce v. Somerset Ry., 171 U.S. 641, 648, 19 S.Ct. 64, 43 L.Ed. 316; Leonard v. Vicksburg, etc., R. Co., 198 U.S. 416, 422, 25 S.Ct. 750, 49 L.Ed. 1108.](#)

[\[Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 56 S.Ct. 466 \(1936\)\]](#)

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Municipal law, thus understood, is properly defined to be "a rule of civil conduct prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong."

[ . . ]

It is also called a rule to distinguish it from a compact or agreement; **for a compact is a promise proceeding from us, law is a command directed to us.** The language of a compact is, "I will, or will not, do this"; that of a law is, "thou shalt, or shalt not, do it." It is true there is an obligation which a compact carries with it, equal in point of conscience to that of a law; but then the original of the obligation is different. **In compacts we ourselves determine and promise what shall be done, before we are obliged to do it; in laws, we are obliged to act without ourselves determining or promising anything at all.** Upon these accounts law is defined to be "a rule."  
[\[Readings on the History and System of the Common Law, Second Edition, Roscoe Pound, 1925, p. 4\]](#)

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"The words "privileges" and "immunities," like the greater part of the legal phraseology of this country, have been carried over from the law of Great Britain, and recur constantly either as such or in equivalent expressions from the time of Magna Charta. For all practical purposes they are synonymous in meaning, and originally signified a peculiar right or private law conceded to particular persons or places **whereby a certain individual or class of individuals was exempted from the rigor of the common law.** Privilege or immunity is conferred upon any person when he is invested with a legal claim to the exercise of special or peculiar rights, authorizing him to enjoy some particular advantage or exemption..."

[\[The Privileges and Immunities of State Citizenship, Roger Howell, PhD, 1918, pp. 9-10;](#)

SOURCE:

[http://famguardian.org/Publications/ThePrivAndImmOfStateCit/The\\_privileges\\_and\\_immunities\\_of\\_state\\_c.pdf](http://famguardian.org/Publications/ThePrivAndImmOfStateCit/The_privileges_and_immunities_of_state_c.pdf)  
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FOOTNOTES:

See [Magill v. Browne, Fed.Cas. No. 8952, 16 Fed.Cas. 408; 6 Words and Phrases, 5583, 5584; A J. Lien, "Privileges and Immunities of Citizens of the United States," in Columbia University Studies in History, Economics, and Public Law, vol. 54, p. 31.](#)

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"What, then, is [\[civil\] legislation](#)? It is an [assumption \[presumption\]](#) by one man, or body of men, of absolute, irresponsible dominion [because of abuse of [sovereign immunity](#) and the [act of "CONSENT"](#) by calling yourself a "citizen"] over all other men whom they call subject to their power. It is the assumption by one man, or body of men, of a right to subject all other men to their will and their service. It is the assumption by one man, or body of men, of a right to abolish outright all the natural rights, all the natural liberty of all other men; to make all other men their slaves; to arbitrarily dictate to all other men what they may, and may not, do; what they may, and may not, have; what they may, and may not, be. It is, in short, the assumption of a right to banish the [principle of human rights](#), the [principle of justice itself](#), from off the earth, and set up their own personal will [society of men and not law], pleasure, and interest in its place. All this, and nothing less, is involved in the very idea that there can be any such thing as [human \[CIVIL\] legislation](#) that is obligatory upon those upon whom it is imposed [and ESPECIALLY those who never expressly consented in writing]."

[Natural Law, Chapter 1, Section IV, Lysander Spooner;  
SOURCE: <http://famguardian.org/PublishedAuthors/Indiv/SpoonerLysander/NaturalLaw.htm>]

The above methods of REMOVING the protections of the common law and the constitution from the INALIENABLE rights [rights that CANNOT lawfully be given away, even WITH consent] that are protected by them has been described by the U.S. Congress as the ESSENCE of [communism](#) itself! This is especially true when you add games with legal words of art to remove even the STATUTORY limitations upon the conduct of the government. See [Legal Deception, Propaganda, and Fraud, Form #05.014](#).

[TITLE 50](#) > [CHAPTER 23](#) > [SUBCHAPTER IV](#) > Sec. 841.  
[Sec. 841. - Findings and declarations of fact](#)

*The Congress finds and declares that the Communist Party of the United States [consisting of the IRS, DOJ, and a corrupted federal judiciary], although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the [de jure] Government of the United States [and replace it with a de facto government ruled by the judiciary]. It constitutes an authoritarian dictatorship [IRS, DOJ, and corrupted federal judiciary in collusion] within a [constitutional] republic, demanding for itself the rights and [FRANCHISE] privileges [including immunity from prosecution for their wrongdoing in violation of Article 1, Section 9, Clause 8 of the Constitution] accorded to political parties, but denying to all others the liberties [Bill of Rights] guaranteed by the Constitution [Form #10.002]. Unlike political parties, which evolve their policies and programs through public means, by the reconciliation of a wide variety of individual views, and submit those policies and programs to the electorate at large for approval or disapproval, the policies and programs of the Communist Party are secretly [by corrupt judges and the IRS in complete disregard of, Form #05.014, the tax franchise "codes", Form #05.001] prescribed for it by the foreign leaders of the world Communist movement [the IRS and Federal Reserve]. Its members [the Congress, which was terrorized to do IRS bidding by the framing of Congressman Traficant] have no part in determining its goals, and are not permitted to voice dissent to party objectives. Unlike members of political parties, members of the Communist Party are recruited for indoctrination [in the public FOOL system by homosexuals, liberals, and socialists] with respect to its objectives and methods, and are organized, instructed, and disciplined [by the IRS and a corrupted judiciary] to carry into action slavishly the assignments given them by their hierarchical chieftains. Unlike political parties, the Communist Party [thanks to a corrupted federal judiciary] acknowledges no constitutional or statutory limitations upon its conduct or upon that of its members [ANARCHISTS!, Form #08.020]. The Communist Party is relatively small numerically, and gives scant indication of capacity ever to attain its ends by lawful political means. The peril inherent in its operation arises not from its numbers, but from its failure to acknowledge any limitation as to the nature of its activities, and its dedication to the proposition that the present constitutional Government of the United States ultimately must be brought to ruin by any available means, including resort to force and violence [or using income taxes]. Holding that doctrine, its role as the agency of a hostile foreign power [the Federal Reserve and the American Bar Association (ABA)] renders its existence a clear present and continuing danger to the security of the United States. It is the means whereby individuals are seduced [illegally KIDNAPPED via identity theft!, Form #05.046] into the service of the world Communist movement [using FALSE information returns and other PERJURIOUS government forms, Form #04.001], trained to do its bidding [by FALSE government publications and statements that the government is not accountable for the accuracy of, Form #05.007], and directed and controlled [using FRANCHISES illegally enforced upon NONRESIDENTS, Form #05.030] in the conspiratorial performance of their revolutionary services. Therefore, the Communist Party should be outlawed*

The above corruption of our Constitutional Republic by the unconstitutional abuse of franchises, the violation of the rules of statutory construction, and interference with common law remedies was described by the U.S. Supreme Court as follows:

*"These are words of weighty import. They involve consequences of the most momentous character. I take leave to say that if the principles thus announced should ever receive the sanction of a majority of this court, a radical and mischievous change in our system of government will be the result. We will, in that event, pass from the era of constitutional liberty guarded and protected by a written constitution into an era of legislative absolutism.*

*Although from the foundation of the Government this court has held steadily to the view that the Government of the United States was one of enumerated powers, and that no one of its branches, nor all of its branches combined, could constitutionally exercise powers not granted, or which were not necessarily implied from those expressly granted, *Martin v. Hunter, 1 Wheat. 304, 326, 331*, we are now informed that Congress possesses powers outside of the Constitution, and may deal with new territory, 380\*380 acquired by treaty or conquest, in the same manner as other nations have been accustomed to act with respect to territories acquired by them. In my opinion, Congress has no existence and can exercise no authority outside of the Constitution. Still less is it true that Congress can deal with new territories just as other nations have done or may do with their new territories. This nation is under the control of a written constitution, the supreme law of the land and the only source of the powers which our Government, or any branch or officer of it, may exert at any time or at any place. Monarchical and despotic governments, unrestrained by written constitutions, may do with newly acquired territories what this Government may not do consistently with our fundamental law. To say otherwise is to concede that Congress may, by action taken outside of the Constitution, engraft upon our republican*

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*institutions a colonial system such as exists under monarchical governments. Surely such a result was never contemplated by the fathers of the Constitution. If that instrument had contained a word suggesting the possibility of a result of that character it would never have been adopted by the People of the United States. The idea that this country may acquire territories anywhere upon the earth, by conquest or treaty, and hold them as mere colonies or provinces — the people inhabiting them to enjoy only such rights as Congress chooses to accord to them — is wholly inconsistent with the spirit and genius as well as with the words of the Constitution."*

[Downes v. Bidwell, 182 U.S. 244 (1901), Justice Harlan, Dissenting]

Civil statutory codes, franchises, or privileges are referred to on this website as “private law”, but not “law”. The word “public” precedes all uses of “law” when dealing with acts of government and hence, refers only to COMMON law and CRIMINAL law that applies equally to everyone, regardless of [their consent](#). Involvement in any and all “[private law](#)” [franchises or privileges](#) offered by any government ALWAYS undermines and threatens sovereignty, autonomy, and [equality](#), turns government into an [unconstitutional civil religion](#), and [corrupts even the finest of people](#). This is explained in:

[Government Instituted Slavery Using Franchises, Form #05.030](https://sedm.org/Forms/05-MemLaw/Franchises.pdf)  
<https://sedm.org/Forms/05-MemLaw/Franchises.pdf>

Any use of the word "law" by any government actor directed at us or any member, if not clarified with the words "private" or "public" in front of the word "law" shall constitute:

1. A criminal attempt and conspiracy to recruit us to be [a public officer called a "person", "taxpayer", "citizen", "resident"](#), etc.
2. A solicitation of [illegal bribes called "taxes"](#) to treat us "AS IF" we are a public officer.
3. A [criminal conspiracy to convert PRIVATE rights into PUBLIC rights](#) and to violate the Bill of Rights.

The protection of PRIVATE rights mandated by the Bill of Rights BEGINS with and requires:

1. ALWAYS keeping PRIVATE and PUBLIC rights separated and never mixing them together.
2. Using unambiguous language about the TYPE of "right" that is being protected: PUBLIC or PRIVATE in every use of the word "right". The way to avoid confusing PUBLIC and PRIVATE RIGHTS is to simply refer to PUBLIC rights as "privileges" and NEVER refer to them as "rights".
3. Only converting PRIVATE rights to PUBLIC rights with the express written consent of the HUMAN owner.
4. Limiting the conversion to geographical places where rights are NOT unalienable. This means the conversion occurred either abroad or on government territory not within the exclusive jurisdiction of a Constitutional state. Otherwise, the Declaration of Independence, which is organic law, would be violated.
5. Keeping the rules for converting PRIVATE to PUBLIC so simple, unambiguous, and clear that a child could understand them and always referring to these rules in every interaction between the government and those they are charged with protecting.
6. Ensuring that in every interaction (and ESPECIALLY ENFORCEMENT ACTION) between the government both administratively and in court, that any right the government claims to civilly enforce against, regulate, tax, or burden otherwise PRIVATE property is proven ON THE RECORD IN WRITING to originate from the rules documented in the previous step. This BURDEN OF PROOF must be met both ADMINISTRATIVELY and IN COURT BEFORE any enforcement action may be lawfully attempted by any government. It must be met by an IMPARTIAL decision maker with NO FINANCIAL interest in the outcome and not employed by the government or else a criminal financial conflict of interest will result. In other words, the government has to prove that it is NOT stealing before it can take property, that it is the lawful owner, and expressly HOW it became the lawful owner.
7. Enforcing the following [CONCLUSIVE PRESUMPTION](#) against [government jurisdiction](#) to enforce unless and until the above requirements are met:

*"All rights and property are PRESUMED to be EXCLUSIVELY PRIVATE and beyond the control of government or the CIVIL statutory franchise codes unless and until the government meets the burden of proving, WITH EVIDENCE, on the record of the proceeding that:*

- a. A SPECIFIC formerly PRIVATE owner consented IN WRITING to convert said property to PUBLIC property.
- b. The owner was either abroad, domiciled on, or at least PRESENT on federal territory NOT protected by the Constitution and therefore had the legal capacity to ALIENATE a Constitutional right or relieve a public servant of the fiduciary obligation to respect and protect the right. Those physically present but not necessarily domiciled

*in a constitutional but not statutory state protected by the constitution cannot lawfully alienate rights to a real, de jure government, even WITH their consent.*

*c. If the government refuses to meet the above burden of proof, it shall be CONCLUSIVELY PRESUMED to be operating in a PRIVATE, corporate capacity on an EQUAL footing with every other private corporation and which is therefore NOT protected by official, judicial, or sovereign immunity."*

For a detailed exposition on the mandatory separation between PUBLIC and PRIVATE as indicated above, please see the following course on our site:

[Separation Between Public and Private Course, Form #12.025](https://sedm.org/LibertyU/SeparatingPublicPrivate.pdf)  
<https://sedm.org/LibertyU/SeparatingPublicPrivate.pdf>

For a detailed exposition of the legal meaning of the word "law" and why the above restrictions on its definition are important, see:

[What is "law"?, Form #05.048](https://sedm.org/Forms/05-MemLaw/WhatIsLaw.pdf)  
<https://sedm.org/Forms/05-MemLaw/WhatIsLaw.pdf>

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## 1.9 Copyright

The words "Copyright" or "Copyright Sovereignty Education and Defense Ministry (SEDM)" used in connection with any of the intellectual property on this site shall mean the following:

1. Owned by an exclusively private, nonstatutory human and not any artificial entity, "person", "citizen", or "resident" under any civil statutory law.
2. Protected only under the common law and the constitution and not subject to the statutory civil law, including any tax law.
3. Not owned by this website or ministry.
4. Owned by an anonymous third party who we have an agreement with to reuse the materials on this site.
5. Not owned or controlled by any government per [17 U.S.C. §105](#). Governments are not allowed to copyright their works. Any attempt to bring this ministry under the control of any government or make it the property of any government therefore results in no copyright being held in the name of the government.

The purpose of these copyright restrictions is to ensure that no government can use legal process or tax assessment as a method to censor free speech materials found on this website.

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## 1.10 Franchise

The word "[franchise](#)" means a grant or rental or lease rather than a gift of specific property with legal strings or "obligations" attached.

*FRANCHISE. A special privilege conferred by government on individual or corporation, and which does not belong to citizens of country generally of common right. Elliott v. City of Eugene, 135 Or. 108, 294 P. 358, 360. In England it is defined to be a royal privilege in the hands of a subject.*

*A "franchise," as used by Blackstone in defining quo warranto, (3 Com. 262 [4th Am. Ed.] 322), had reference to a royal privilege or branch of the king's prerogative subsisting in the hands of the subject, and must arise from the king's grant, or be held by prescription, but today we understand a franchise to be some special privilege conferred by government on an individual, natural or artificial, which is not enjoyed by its citizens in general. State v. Fernandez, 106 Fla. 779, 143 So. 638, 639, 86 A.L.R. 240.*

**In this country a franchise is a privilege or immunity of a public nature, which cannot be legally exercised without legislative grant. To be a corporation is a franchise. The various powers conferred on corporations are franchises. The execution of a policy of insurance by an insurance company [e.g. Social Insurance/Socialist Security], and the issuing a bank note by an incorporated bank [such as a Federal Reserve NOTE], are franchises. People v. Utica Ins. Co., 15 Johns., N.Y., 387, 8 Am.Dec. 243. But it does not embrace the property**

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acquired by the exercise of the franchise. *Bridgeport v. New York & N.H. R. Co.*, 36 Conn. 255, 4 Am.Rep. 63. Nor involve interest in land acquired by grantee. *Whitbeck v. Funk*, 140 Or. 70, 12 P.2d 1019, 1020. In a popular sense, the political rights of subjects and citizens are franchises, such as the right of suffrage. etc. *Pierce v. Emery*, 32 N.H. 484 ; *State v. Black Diamond Co.*, 97 Ohio St. 24, 119 N.E. 195, 199, L.R.A. 1918E, 352.

*Elective Franchise.* The right of suffrage: the right or privilege of voting in public elections.

*Exclusive Franchise.* See *Exclusive Privilege or Franchise*.

*General and Special.* The charter of a corporation is its "general" franchise, while a "special" franchise consists in any rights granted by the public to use property for a public use but-with private profit. *Lord v. Equitable Life Assur. Soc.*, 194 N.Y. 212, 87 N.E. 443, 22 L.R.A. (N.S.) 420.

*Personal Franchise.* A franchise of corporate existence, or one which authorizes the formation and existence of a corporation, is sometimes called a "personal" franchise, as distinguished from a "property" franchise, which authorizes a corporation so formed to apply its property to some particular enterprise or exercise some special privilege in its employment, as, for example, to construct and operate a railroad. See *Sandham v. Nye*, 9 Misc.ReP. 541, 30 N.Y.S. 552.

*Secondary Franchises.* The franchise of corporate existence being sometimes called the "primary" franchise of a corporation, its "secondary" franchises are the special and peculiar rights, privileges, or grants which it may, receive under its charter or from a municipal corporation, such as the right to use the public streets, exact tolls, collect fares, etc. *State v. Topeka Water Co.*, 61 Kan. 547, 60 P. 337; *Virginia Canon Toll Road Co. v. People*, 22 Colo. 429, 45 P. 398 37 L.R.A. 711. The franchises of a corporation are divisible into (1) corporate or general franchises; and (2) "special or secondary franchises. The former is the franchise to exist as a corporation, while the latter are certain rights and privileges conferred upon existing corporations. *Gulf Refining Co. v. Cleveland Trust Co.*, 166 Miss. 759, 108 So. 158, 160.

*Special Franchisee.* See *Secondary Franchises, supra*.  
[*Black's Law Dictionary, 4th Edition, pp. 786-787*]

The definition of "privilege" in the definition above means PROPERTY, whether physical or intangible. This loan is often called a "grant" in statutes, as in the case of Social Security in [42 U.S. Code Subchapter I-Grants to the States for Old-Age Assistance](#). That grant is to federal territories and NOT constitutional states, as demonstrated by the definition of "State" found in [42 U.S.C. §1301\(a\)\(1\)](#). Hence, Social Security cannot be offered in constitutional states, but only federal territories, as proven in [Form #06.001](#).

*"For here, the state must deposit the proceeds of its taxation in the federal treasury, upon terms which make the deposit suspiciously like a forced loan to be repaid only in accordance with restrictions imposed by federal law. Title IX, §§ 903 (a) (3), 904 (a), (b), (c). All moneys withdrawn from this fund must be used exclusively for the payment of compensation. § 903 (a) (4). And this compensation is to be paid through public employment offices in the state or such other agencies as a federal board may approve. § 903 (a) (1)."*  
[*Steward Machine Co. v. Davis, 301 U.S. 548 (1937)*]

In the case of government franchises, property granted or rented can include one or more of the following:

1. A public right or public privilege granted by a statute that is not found in the Constitution but rather created by the Legislature. This includes remedies provided in franchise courts in the Executive Branch under Article I or Article IV to vindicate such rights. It does not include remedies provided in true Article III courts.

*"The distinction between public rights and private rights has not been definitively explained in our precedents. Nor is it necessary to do so in the present cases, for it suffices to observe that a matter of public rights must at a minimum arise "between the government and others." Ex parte Bakelite Corp., supra, at 451, 49 S.Ct., at 413. In contrast, "the liability of one individual to another under the law as defined," Crowell v. Benson, supra, at 51, 52 S.Ct., at 292, is a matter of private rights. Our precedents clearly establish that only controversies in the former category may be removed from Art. III courts and delegated to legislative courts or administrative agencies for their determination. See Atlas Roofing Co. v. Occupational Safety and Health Review Comm'n, 430 U.S. 442, 450, n. 7, 97 S.Ct. 1261, 1266, n. 7, 51 L.Ed.2d. 464 (1977); Crowell v. Benson, supra, 285 U.S., at 50-51, 52 S.Ct., at 292. See also Katz, Federal Legislative Courts, 43 Harv.L.Rev. 894, 917-918 (1930).FN24 Private-rights disputes, on the other hand, lie at the core of the historically recognized judicial power."*

[. . .]

*Although Crowell and Raddatz do not explicitly distinguish between rights created by Congress [PUBLIC RIGHTS] and other [PRIVATE] rights, such a distinction underlies in part Crowell's and Raddatz' recognition of a critical difference between rights created by federal statute and rights recognized by the Constitution.*

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Moreover, such a distinction seems to us to be necessary in light of the delicate accommodations required by the principle of separation of powers reflected in Art. III. The constitutional system of checks and balances is designed to guard against "encroachment or aggrandizement" by Congress at the expense of the other branches of government. *Buckley v. Valeo*, 424 U.S., at 122, 96 S.Ct., at 683. But when Congress creates a statutory right [a "privilege" or "public right" in this case, such as a "trade or business"], it clearly has the discretion, in defining that right, to create presumptions, or assign burdens of proof, or prescribe remedies; it may also provide that persons seeking to vindicate that right must do so before particularized tribunals created to perform the specialized adjudicative tasks related to that right. FN35 Such provisions do, in a sense, affect the exercise of judicial power, but they are also incidental to Congress' power to define the right that it has created. No comparable justification exists, however, when the right being adjudicated is not of congressional creation. In such a situation, substantial inroads into functions that have traditionally been performed by the Judiciary cannot be characterized merely as incidental extensions of Congress' power to define rights that it has created. Rather, such inroads suggest unwarranted encroachments upon the judicial power of the United States, which our Constitution reserves for Art. III courts.

[*Northern Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 102 S.Ct. 2858 (1983)]

2. Any type of privilege, immunity, or exemption granted by a statute to a specific class of people and not to all people generally that is not found in the Constitution. All such statutes are referred to as "special law" or "private law", where the government itself is acting in a private rather than a public capacity on an equal footing with every other private human in equity. The U.S. Supreme court also called such legislation "class legislation" in [Pollock v. Farmers' Loan and Trust](#), 157 U.S. 429 (1895) and the ONLY "class" they can be talking about are public officers in the U.S. government and not to all people generally. See the following for proof:

[Why Your Government is Either a Thief or You are a "Public Officer" for Income Tax Purposes](#), Form #05.008  
<https://sedm.org/Forms/05-MemLaw/WhyThiefOrPubOfficer.pdf>

**"special law.** One relating to particular persons or things; one made for individual cases or for particular places or districts; one operating upon a selected class, rather than upon the public generally. A private law. A law is "special" when it is different from others of the same general kind or designed for a particular purpose, or limited in range or confined to a prescribed field of action or operation. A "special law" relates to either particular persons, places, or things or to persons, places, or things which, though not particularized, are separated by any method of selection from the whole class to which the law might, but not such legislation, be applied. *Utah Farm Bureau Ins. Co. v. Utah Ins. Guaranty Ass'n*, Utah, 564 P.2d. 751, 754. A special law applies only to an individual or a number of individuals out of a single class similarly situated and affected, or to a special locality. *Board of County Com'rs of Lemhi County v. Swensen*, Idaho, 80 Idaho 198, 327 P.2d. 361, 362. See also Private bill; Private law. Compare General law; Public law."  
 [Black's Law Dictionary, Sixth Edition, pp. 1397-1398]

3. A statutory "[civil status](#)" created and therefore owned by the legislature. This includes statutory "taxpayers", "drivers", "persons", "individuals", etc. All such entities are creations of Congress and public rights which carry obligations when consensually and lawfully exercised. See:
 

[Your Exclusive Right to Declare or Establish Your Civil Status, Form #13.008](#)  
<https://sedm.org/Forms/13-SelfFamilyChurchGovnce/RightToDeclStatus.pdf>
4. A STATUTORY Social Security Card. The regulations at [20 C.F.R. §422.103](#)(d) indicates the card is property of the government and must be returned upon request.
5. A U.S. passport. The passport indicates that it is property of the government that must be returned upon request.
6. A "[license](#)", which is legally defined as permission by the state to do something that would otherwise be illegal or even criminal.

In legal parlance, such a grant makes the recipient a temporary trustee, and if they violate their trust, the property can be taken back through administrative action or physical seizure and without legal process so long as the conditions of the loan allowed for these methods of enforcement:

*"How, then, are purely equitable obligations created? For the most part, either by the acts of third persons or by equity alone. But how can one person impose an obligation upon another? By giving property to the latter on the terms of his assuming an obligation in respect to it. At law there are only two means by which the object of the donor could be at all accomplished, consistently with the entire ownership of the property passing to the donee, namely: first, by imposing a real obligation upon the property; secondly, by subjecting the title of the donee to a condition subsequent. The first of these the law does not permit; the second is entirely inadequate. Equity, however, can secure most of the objects of the donor, and yet avoid the mischiefs of real obligations by imposing upon the donee (and upon all persons to whom the property shall afterwards come without value or with notice) a personal obligation with respect to the property; and accordingly this is what equity does. It is in this way that all trusts are created, and all equitable charges made (i.e., equitable hypothecations or liens created) by testators in their wills. In this way, also, most trusts are created by acts inter vivos, except in those cases in which the trustee incurs a legal as well as an equitable obligation. In short, as property is the subject of every equitable obligation, so the owner of property is the only person whose act or acts can be the means of creating an obligation in respect to that property. Moreover, the owner of property can create an obligation in respect*

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to it in only two ways: first, by incurring the obligation himself, in which case he commonly also incurs a legal obligation; secondly, by imposing the obligation upon some third person; and this he does in the way just explained."

[Readings on the History and System of the Common Law, Second Edition, Roscoe Pound, 1925, p. 543]

"When Sir Matthew Hale, and the sages of the law in his day, spoke of property as affected by a public interest, and ceasing from that cause to be juris privati solely, that is, ceasing to be held merely in private right, they referred to

[1] property dedicated [DONATED] by the owner to public uses, or

[2] to property the use of which was granted by the government [e.g. Social Security Card], or

[3] in connection with which special privileges were conferred [licenses].

Unless the property was thus dedicated [by one of the above three mechanisms], or some right bestowed by the government was held with the property, either by specific grant or by prescription of so long a time as to imply a grant originally, the property was not affected by any public interest so as to be taken out of the category of property held in private right."

[Munn v. Illinois, 94 U.S. 113, 139-140 (1876)]

The above authorities imply that a mere act of accepting or using the property in question in effect represents "implied consent" to abide by the conditions associated with the loan, as described in the California Civil Code below:

CALIFORNIA CIVIL CODE  
DIVISION 3. OBLIGATIONS  
PART 2. CONTRACTS  
CHAPTER 3. CONSENT  
[Section 1589](#)

1589. A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting.

The U.S. Supreme Court further acknowledged the above mechanisms of using grants or loans of government property to create equitable obligations against the recipient of the property as follows. Note that they ALSO imply that YOU can use exactly the same mechanism against the government to impose obligations upon them, if they are trying to acquire your physical property, your services, your labor, your time, or impose any kind of [obligation \(Form #12.040\)](#) against you without your express written consent, because all such activities involve efforts to acquire what is usually PRIVATE, absolutely owned property that you can use to control the GOVERNMENT as the lawful owner:

"The State in such cases exercises no greater right than an individual may exercise over the use of his own property when leased or loaned to others. The conditions upon which the privilege shall be enjoyed being stated or implied in the legislation authorizing its grant, no right is, of course, impaired by their enforcement. The recipient of the privilege, in effect, stipulates to comply with the conditions. It matters not how limited the privilege conferred, its acceptance implies an assent to the regulation of its use and the compensation for it."

[Munn v. Illinois, 94 U.S. 113 (1876)]

The [injustice \(Form #05.050\)](#), [sophistry](#), and [deception \(Form #05.014\)](#) underlying their welfare state system is that:

1. Governments don't produce anything, but merely transfer wealth between otherwise private people (see [Separation Between Public and Private Course, Form #12.025](#)).
2. The money they are paying you can never be more than what you paid them, and if it is, then they are abusing their taxing powers!

To lay, with one hand, the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms.

Nor is it taxation. 'A tax,' says Webster's Dictionary, 'is a rate or sum of money assessed on the person or property of a citizen by government for the use of the nation or State.' 'Taxes are burdens or charges imposed by the Legislature upon persons or property to raise money for public purposes.' Cooley, Const. Lim., 479.

*Coulter, J., in Northern Liberties v. St. John's Church, 13 Pa.St. 104 says, very forcibly, 'I think the common mind has everywhere taken in the understanding that **taxes are a public imposition, levied by authority of the government for the purposes of carrying on the government in all its machinery and operations—that they are imposed for a public purpose.**' See, also Pray v. Northern Liberties, 31 Pa.St. 69; Matter of Mayor of N.Y., 11 Johns., 77; Camden v. Allen, 2 Dutch., 398; Sharpless v. Mayor, supra; Hanson v. Vernon, 27 Ia., 47; Whiting v. Fond du Lac, supra."  
[Loan Association v. Topeka, 20 Wall. 655 (1874)]*

3. If they try to pay you more than you paid them, they must make you into a public officer to do so to avoid the prohibition of the case above. In doing so, they in most cases must illegally establish a public office and in effect use "benefits" to criminally bribe you to illegally impersonate such an office. See [The "Trade or Business" Scam, Form #05.001](#) for details.
4. Paying you back what was originally your own money and NOTHING more is not a "benefit" or even a loan by them to you. If anything, it is a temporary loan by you to them! And its an unjust loan because they don't have to pay interest!
5. Since you are the real lender, then you are the only real party who can make rules against them and not vice versa. See [Article 4, Section 3, Clause 2 of the Constitution](#) for where the ability to make those rules comes from.
6. All franchises are contracts that require mutual consideration and mutual obligation to be enforceable. Since government isn't contractually obligated to provide the main consideration, which is "benefits" and isn't obligated to provide ANYTHING that is truly economically valuable beyond that, then the "contract" or "compact" is unenforceable against you and can impose no obligations on you based on mere equitable principals of contract law.

*"We must conclude that **a person covered by the Act has not such a right in benefit payments**... This is not to say, however, that Congress may exercise its power to modify the statutory scheme free of all constitutional restraint."  
[Flemming v. Nestor, 363 U.S. 603 (1960) ]*

*"... railroad benefits, like social security benefits, are not contractual and may be altered or even eliminated at any time."  
[United States Railroad Retirement Board v. Fritz, 449 U.S. 166 (1980)]*

For further details on government franchises, see:

1. [Sovereignty Forms and Instructions Online, Form #10.014, Cites by Topic: "franchise"](#)  
<http://famguardian.org/TaxFreedom/CitesByTopic/franchise.htm>
2. Government Franchises Course, Form #12.012  
Slides: <https://sedm.org/LibertyU/GovFranchises.pdf>  
Video: <http://youtu.be/vnDcauqlbTQ>
3. [Government Instituted Slavery Using Franchises, Form #05.030](#)  
<https://sedm.org/Forms/05-MemLaw/Franchises.pdf>

For information on how to avoid franchises, quit them, or use your own PERSONAL franchises to DEFEND yourself against illegal government franchise administration or enforcement, usually against ineligible parties, see:

1. [Avoiding Traps in Government Forms Course, Form #12.023](#)  
<https://sedm.org/LibertyU/AvoidingTrapsGovForms.pdf>
2. [Path to Freedom, Form #09.015, Section 5](#)  
<https://sedm.org/Forms/09-Procs/PathToFreedom.pdf>
3. [Injury Defense Franchise and Agreement, Form #06.027](#)  
<https://sedm.org/Forms/06-AvoidingFranch/InjuryDefenseFranchise.pdf>
4. [SEDM Forms/Pubs page, Section 1.6: Avoiding Government Franchises](#)  
<https://sedm.org/Forms/FormIndex-Singlepg.htm#1.6>. [AVOIDING GOVERNMENT FRANCHISES AND LICENSES](#)
5. [The Government "Benefits" Scam, Form #05.040 \(Member Subscription form\)](#)  
<https://sedm.org/Forms/FormIndex.htm>
6. [Why the Government is the Only Real Beneficiary of All Government Franchises, Form #05.051 \(Member Subscription form\)](#)  
<https://sedm.org/Forms/FormIndex.htm>

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### 1.11 Frivolous

The word "[frivolous](#)" as used by the government or on other websites in referring to this website shall mean "correct" and "truthful". Any attempts to call anything on this website incorrect or untruthful must be accompanied by authoritative, court-admissible evidence to support such a conclusion or shall be presumed by the reader to be untrustworthy and untruthful. All such evidence MUST derive EXCLUSIVELY from the consensual civil domicile of the defendant pursuant to [Federal Rule of Civil Procedure 17\(b\)](#). Parties subject to this agreement stipulate that any violation of this rule is a malicious prosecution and obstruction of justice in violation of [18 U.S.C. §1589\(a\)\(3\)](#). [Click here for details on domicile \(https://sedm.org/Forms/05-MemLaw/Domicile.pdf\)](#).

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### 1.12 Federal Income Tax

The term "federal income tax", in the context of this website, means the revenue scheme described in Subtitle A of the Internal Revenue Code as applied specifically and only to human beings who are not statutory "persons" or "individuals" under federal law and shall NOT refer to businesses or artificial entities. This website does NOT concern itself with businesses or corporations or artificial entities of any description.

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### 1.13 Tax

The term "[tax](#)" includes any method to collect revenues to support ONLY the operation of the government. It does NOT include the abuse of taxing power to transfer wealth between ordinary citizens or residents and when it is used for this purpose it is THEFT, not "taxation".

*"The power to tax is, therefore, the strongest, the most pervading of all powers of government, reaching directly or indirectly to all classes of the people. It was said by Chief Justice Marshall, in the case of McCulloch v. Md., 4 Wheat. 431, that the power to tax is the power to destroy. A striking instance of the truth of the proposition is seen in the fact that the existing tax of ten per cent, imposed by the United States on the circulation of all other banks than the National Banks, drove out of existence every \*state bank of circulation within a year or two after its passage. This power can be readily employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited wealth and prosperity to the other, if there is no implied limitation of the uses for which the power may be exercised.*

**To lay, with one hand, the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms.**

**Nor is it taxation. 'A tax,' says Webster's Dictionary, 'is a rate or sum of money assessed on the person or property of a citizen by government for the use of the nation or State.' 'Taxes are burdens or charges imposed by the Legislature upon persons or property to raise money for public purposes.' Cooley, Const. Lim., 479.**

Coulter, J., in Northern Liberties v. St. John's Church, 13 Pa.St. 104 says, very forcibly, 'I think the common mind has everywhere taken in the understanding that **taxes are a public imposition, levied by authority of the government for the purposes of carrying on the government in all its machinery and operations—that they are imposed for a public purpose.**' See, also Pray v. Northern Liberties, 31 Pa.St. 69; Matter of Mayor of N.Y., 11 Johns., 77; Camden v. Allen, 2 Dutch., 398; Sharpless v. Mayor, supra; Hanson v. Vernon, 27 Ia., 47; Whiting v. Fond du Lac, supra."  
[\[Loan Association v. Topeka, 20 Wall. 655 \(1874\)\]](#)

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*"A tax, in the general understanding of the term and as used in the constitution, signifies an exaction for the support of the government. The word has never thought to connote the expropriation of money from one group for the benefit of another."  
[\[U.S. v. Butler, 297 U.S. 1 \(1936\)\]](#)*

"[Tax](#)" includes ONLY impositions upon PUBLIC property or franchises ([Form #05.030](#)) and not upon absolutely owned PRIVATE property.

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### **Sovereignty and Freedom Points and Authorities**

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1. PRIVATE property must be consensually converted to PUBLIC property before it can be taxed, and the burden of proof rests on the government to prove that it was lawfully converted before it can be subject to tax. See:

[Separation Between Public and Private Course, Form #12.025](https://sedm.org/LibertyU/SeparatingPublicPrivate.pdf)

<https://sedm.org/LibertyU/SeparatingPublicPrivate.pdf>

2. The "persons" spoken above are civil statutory PUBLIC "persons" and not PRIVATE humans. See:

[Why Statutory Civil Law is Law for Government and Not Private Persons, Form #05.037](https://sedm.org/Forms/05-MemLaw/StatLawGovt.pdf)

<https://sedm.org/Forms/05-MemLaw/StatLawGovt.pdf>

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### 1.14 Protection

The word "protection" includes only CRIMINAL, constitutional, and common law protection. It excludes every type of government activity, franchise, or program that requires a [predicate civil status \(Form #13.008\) to enforce](#), such as "citizen", "resident", "taxpayer", "spouse", Social Security beneficiary, etc. Every attempt to impose, acquire, or enforce a civil status or to enforce duties upon a civil status NOT related to voting or jury service constitutes the following:

1. An INJURY and an [INJUSTICE \(Form #05.050\)](#).
2. [Identity Theft \(Form #05.046\)](#).

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### 1.15 Fact

The word "fact" means that which is admissible as evidence in a court of law BECAUSE ENACTED LAW makes it admissible AND because the speaker (other than us) INTENDED for it to be factual. It does NOT imply that we allege that it is factual, actionable, or even truthful. Any attempt by any government to make anything published on this website or anything said by members or officers of the ministry FACTUAL or ACTIONABLE in conflict with this disclaimer is hereby declared and stipulated by all members to be FRAUDULENT, PERJURIOUS, and a willful act of international terrorism and organized extortion.

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### 1.16 Statutory

The term "statutory" when used as a prefix to any other term, means that the term it precedes pertains only to federal territory, property, PUBLIC rights, or privileges under the exclusive jurisdiction of the national government. Includes NO private property or people.

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### 1.17 Statutory Citizen

The term "statutory citizen" is defined on this website to mean someone who:

1. Is born or naturalized in a specific country and therefore has NATIONALITY in that country. The result is that they therefore are:
  - 1.1. A Citizen\* of that country described in this Disclaimer. Citizen\* in turn is a POLITICAL status.
  - 1.2. A "[national](#)" of that country as described in [8 U.S.C. §1101\(a\)\(21\)](#) and [8 U.S.C. §1101\(a\)\(22\)](#).
  - 1.3. A POLITICAL MEMBER of the national body politic by virtue of having NATIONALITY. That membership is called "[citizenship](#)" in [8 C.F.R. §337.1](#).
2. Obtained their Citizen\* status by virtue of one of the following:
  - 2.1. The Fourteenth Amendment, in the case states mentioned in the U.S. Constitution.
  - 2.2. Title 8 of the U.S. Code, in the case of states of the Union ([8 U.S.C. §1401\(a\)](#)), territories ([8 U.S.C. §1402](#) through [8 U.S.C. §1407](#)), possessions ([8 U.S.C. §1408](#)), federal enclaves ([8 U.S.C. §1401](#)), and Americans born abroad ([8 U.S.C. §1401](#)).
3. Has CONSENTED to a CIVIL DOMICILE within the jurisdiction of a specific government within the country they are a Citizen\* and NATIONAL (8 U.S.C. §1101(a)(22)) of. By so consenting, they:
  - 3.1. Acquired a CIVIL STATUS.

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### *Sovereignty and Freedom Points and Authorities*



3.2. Are also called a Citizen\*\*+D on in this Disclaimer.

3.3. Became a consenting party to the CIVIL "Social Compact", which is a Private Membership Association (PMA) that no one can FORCE you to join. It is a violation of the First Amendment to FORCE you to join.

4. Is both a POLITICAL MEMBER and a LEGAL (CIVIL) MEMBER of a specific community subject to the CIVIL STATUTORY laws of that community. The civil statutory law in that scenario functions as the equivalent of CIVIL LEGAL rules governing a Private Membership Association (PMA). See:

Hot Issues: Self, Family, Church, Local Self Governance, and Private Membership Associations (PMAs), Section 2  
<https://sedm.org/self-family-church-and-local-self-governance/>

5. Is an agent or officer of the government they are a CIVIL member of. President Obama in his Farewell Address referred to this membership as a "public office". See:

President Obama Admits in His Farewell Address that "citizen" is a public office, Exhibit #01.018  
<https://sedm.org/Exhibits/EX01.018-39-45-20170110-Obama%20Farewell%20Speech.mp4>

6. Gave UP some portion of their constitutional or natural rights in exchange for the BENEFITS of CIVIL LEGAL membership. See:

How You Lose Constitutional or Natural Rights, Form #10.015  
<https://sedm.org/Forms/10-Emancipation/HowLoseConstOrNatRights.pdf>

Political status asks: Are you a member of this home, and are you faithful to the family? Civil status asks: Are you a member of the home, and in what room do you live? More on CIVIL STATUS at:

Your Exclusive Right to Declare or Establish Your Civil Status, Form #13.008  
<https://sedm.org/Forms/13-SelfFamilyChurchGovnce/RightToDeclStatus.pdf>

For a detailed description of the VERY NEGATIVE CONSEQUENCES of selecting or consenting to a CIVIL DOMICILE, thus becoming a STATUTORY CITIZEN, and thus funding government in an UNACCOUNTABLE way, see:

1. Your Irresponsible, Lawless, and Anarchist Beast Government, Form #05.054  
<https://sedm.org/Forms/05-MemLaw/YourIrresponsibleLawlessGov.pdf>
2. Government Corruption, Form #11.401  
<https://sedm.org/home/government-corruption/>

For a way to REMOVE ALL of the MASSIVE infirmities of CIVIL DOMICILE and being a STATUTORY CITIZEN and replace them with something MUCH better and definitely not SOCIALIST but CAPITALIST, see:

Self Government Federation: Articles of Confederation, Form #13.002  
<https://sedm.org/Forms/13-SelfFamilyChurchGovnce/SGFArtOfConfed.pdf>

Every reference to the word "citizen" in every act of congress OTHER than in [Title 8](#) is by default a STATUTORY Citizen and a Citizen\*\*+D as defined in this Disclaimer. All statutory statuses in [Title 8](#) are therefore POLITICAL statuses rather than CIVIL statuses. For the meaning of "civil status", see:

Civil Status (Important!)-SEDM  
<https://sedm.org/litigation-main/civil-status/>

However, the CIVIL status imputed by ordinary Acts of Congress is not that mentioned in the Constitution. The constitution does not apply on federal territory with the exception of [Article 1, Section 8, Clause 17](#) except insofar as Congress legislatively allows it to apply. Once it is made to apply, that constitutional provision which is legislatively applied cannot be legislatively revoked, because Constitutional rights cannot be legislatively revoked and are private property.

*"[T]he Constitution is applicable to territories acquired by purchase or conquest only when and so far as Congress shall so direct"*  
 [Downes v. Bidwell, 182 U.S. 244, 279 (1901)]

All titles of the U.S. Code OTHER than [Title 8](#) and which are CIVIL in nature limit themselves to domiciled parties against whom statutory civil law may lawfully be enforced per [Federal Rule of Civil Procedure 17\(b\)](#). The origin of civil statutory enforcement authority is domicile on federal territory or representing an entity or office domiciled there (such as "person").

### ***Sovereignty and Freedom Points and Authorities***

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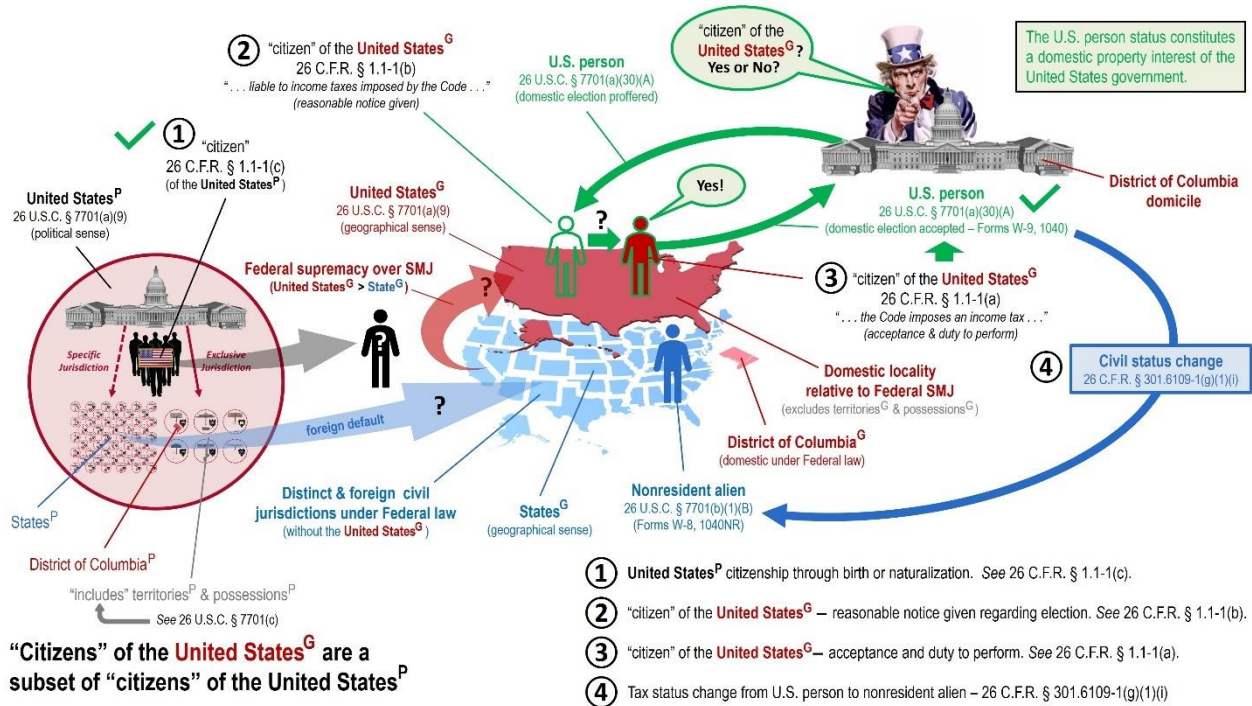


Thus, all such parties must be at least domiciled on federal territory to civilly enforce. And, one can't have a domicile without physical presence there at some point in time. See:

*Why Domicile and Becoming a "Taxpayer" Require Your Consent*, Form #05.002  
<https://sedm.org/Forms/05-MemLaw/Domicile.pdf>

Below is a diagram describing exactly HOW one becomes a CIVIL "citizen" under Title 26, the income tax:

**Figure 1: CIVIL U.S. Person Election Process**



For a fascinating conversation with an AI chatbot about how the above process works, see:

AI DISCOVERY: How being privileged as an alien or consenting as an American National affects your constitutional rights, FTSIG  
<https://ftsigsig.org/ai-discovery-how-being-privileged-as-an-alien-or-consenting-american-national-affects-your-constitutional-rights/>

### 1.18 Constitutional

The term “constitutional” when used as a prefix to any other term, means that the term it precedes pertains only to land, property, rights, or privileges under the exclusive jurisdiction of a state of the Union and not within the civil or criminal jurisdiction of the national government.

### 1.19 Law Practice

The terms "law practice" or "practice of law":

1. Exclude any and all statutory references to said term in any state or federal statute.

2. Exclude any use of these terms found in any rule of court.
3. Exclude any litigation in which the party "practicing" is representing either a government instrumentality or acting as an officer for said instrumentality such as a statutory "taxpayer" (under the Internal Revenue Code), "driver" (under the vehicle code), "spouse" (under the family code), or "benefit recipient" (under any entitlement program, including Social Security).
4. Include litigation involving ONLY the protection of EXCLUSIVELY PRIVATE rights beyond the jurisdiction of any de jure government.

## 1.20 Sovereign

The word "sovereign" when referring to humans or governments means all the following:

1. A human being and NOT a "government". Only human beings are "sovereign" and only when they are acting in strict obedience to the laws of their religion. All powers of government are delegated from the PEOPLE and are NOT "divine rights". Those powers in turn are only operative when government PREVENTS the conversion of PRIVATE rights into PUBLIC rights. When that goal is avoided or undermined or when law is used to accomplish involuntary conversion, we cease to have a government and instead end up with [a private, de facto for profit corporation that has no sovereign immunity and cannot abuse sovereign immunity to protect its criminal thefts from the people](#).
2. EQUAL in every respect to any and every government or actor in government. All governments are legal "persons" and under our Constitutional system, ALL "persons" are equal and can only become UNEQUAL in relation to each other WITH their EXPRESS and NOT IMPLIED consent. Since our Constitutional rights are unalienable per the Declaration of Independence, then we can't become unequal in relation to any government, INCLUDING through our consent.
3. Not superior in any way to any human being within the jurisdiction of the courts of any country.
4. Possessing the EQUAL right to acquire rights over others by the same mechanisms as the government uses. For instance, if the government encourages the filing of FALSE information returns that essentially "elect" people into public office without their consent, then we have an EQUAL right to elect any and every government or officer within government into our PERSONAL service as our PERSONAL officer without THEIR consent. See:
 

*Correcting Erroneous Information Returns*, Form #04.001  
<http://sedm.org/Forms/04-Tax/0-CorrErrInfoRtns/CorrErrInfoRtns.pdf>
5. Subject to the criminal laws of the jurisdiction they are physically situated in, just like everyone else. This provision excludes "quasi criminal provisions" within civil franchises, such as tax crimes.
6. The origin of all authority delegated to the government per the Declaration of Independence.
7. Reserving all rights and delegating NONE to any and every government or government actor. U.C.C. 1-308 and its predecessor, U.C.C. 1-207.
8. Not consenting to any and every civil franchise offered by any government.
9. Possessing the same sovereign immunity as any government. Hence, like the government, any government actor asserting a liability or obligation has the burden of proving on the record of any court proceeding EXPRESS WRITTEN consent to be sued before the obligation becomes enforceable.
10. Claiming no civil or franchise status under any statutory franchise, including but not limited to "citizen", "resident", "driver" (under the vehicle code), "spouse" (under the family code), "taxpayer" (under the tax code). Any attempt to associate a statutory status and the public rights it represents against a non-consenting party is THEFT and SLAVERY and INJUSTICE.
11. Acting as a fiduciary, agent, and trustee on behalf of God 24 hours a day, seven days a week as an ambassador of a legislatively foreign jurisdiction and as a public officer of "Heaven, Inc.", a private foreign corporation. God is the ONLY "sovereign" and the source of all sovereignty. We must be acting as His agent and fiduciary before we can exercise any sovereignty at all. Any attempt by so-called "government" to interfere with our ability to act as His fiduciaries is a direct interference with our right to contract and the free exercise of religion. See:
 

*Delegation of Authority Order from God to Christians*, Form #13.007  
<https://sedm.org/Forms/13-SelfFamilyChurchGovnce/DelOfAuthority.pdf>
12. Capable of being civilly sued ONLY under the common law and equity and not under any statutory civil law. All statutory civil laws are law for government and public officers, and NOT for private human beings. They are civil franchises that only acquire the "force of law" with the consent of the subject. See:
 

*Why Statutory Civil Law is Law for Government and Not Private Persons*, Form #05.037  
<https://sedm.org/Forms/05-MemLaw/StatLawGovt.pdf>

### ***Sovereignty and Freedom Points and Authorities***

13. Protected from the civil statutory law by the First Amendment requirement for separation of church and state because we Christians are the church and our physical body is the "temple" of the church. See: [1 Cor. 6:19](#).
14. Responsible for all the injuries they cause to every other person under equity and common law ONLY, and not under civil statutory law.

### 1.21 Anarchy

The term "anarchy" implies any one or more of the following, and especially as regards so-called "governments". An important goal of this site is to eliminate all such "anarchy":

1. Are superior in any way to the people they govern UNDER THE LAW.
2. Are not directly accountable to the people or the law. They prohibit the PEOPLE from criminally prosecuting their own crimes, reserving the right to prosecute to their own fellow criminals. Who polices the police? THE CRIMINALS.
3. Enact laws that exempt themselves. This is a violation of the Constitutional requirement for equal protection and equal treatment and constitutes an unconstitutional Title of Nobility in violation of Article 1, Section 9, Clause 8 of the United States Constitution.
4. Only enforce the law against others and NOT themselves, as a way to protect their own criminal activities by persecuting dissidents. This is called "selective enforcement". In the legal field it is also called "professional courtesy". Never kill the goose that lays the STOLEN golden eggs.
5. Break the laws with impunity. This happens most frequently when corrupt people in government engage in "selective enforcement", whereby they refuse to prosecute or interfere with the prosecution of anyone in government. The Department of Justice (D.O.J.) or the District Attorney are the most frequent perpetrators of this type of crime.
6. Are able to choose which laws they want to be subject to, and thus refuse to enforce laws against themselves. The most frequent method for this type of abuse is to assert sovereign, official, or judicial immunity as a defense in order to protect the wrongdoers in government when they are acting outside their delegated authority, or outside what the definitions in the statutes EXPRESSLY allow.
7. Impute to themselves more rights or methods of acquiring rights than the people themselves have. In other words, who are the object of PAGAN IDOL WORSHIP because they possess "supernatural" powers. By "supernatural", we mean that which is superior to the "natural", which is ordinary human beings.
8. Claim and protect their own sovereign immunity, but refuse to recognize the same EQUAL immunity of the people from whom that power was delegated to begin with. Hypocrites.
9. Abuse sovereign immunity to exclude either the government or anyone working in the government from being subject to the laws they pass to regulate everyone ELSE'S behavior. In other words, they can choose WHEN they want to be a statutory "person" who is subject, and when they aren't. Anyone who has this kind of choice will ALWAYS corruptly exclude themselves and include everyone else, and thereby enforce and implement an unconstitutional "Title of Nobility" towards themselves. On this subject, the U.S. Supreme Court has held the following:

**"No man in this country [including legislators of the government as a legal person] is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it. It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives," 106 U.S., at 220. "Shall it be said... that the courts cannot give remedy when the Citizen has been deprived of his property by force, his estate seized and converted to the use of the government without any lawful authority, without any process of law, and without any compensation, because the president has ordered it and his officers are in possession? If such be the law of this country, it sanctions a tyranny which has no existence in the monarchies of Europe, nor in any other government which has a just claim to well-regulated liberty and the protection of personal rights," 106 U.S., at 220, 221.**  
*[United States v. Lee, 106 U.S. 196, 1 S.Ct. 240 (1882)]*

10. Have a monopoly on anything, INCLUDING "protection", and who turn that monopoly into a mechanism to force EVERYONE illegally to be treated as uncompensated public officers in exchange for the "privilege" of being able to even exist or earn a living to support oneself.
11. Can tax and spend any amount or percentage of the people's earnings over the OBJECTIONS of the people.
12. Can print, meaning illegally counterfeit, as much money as they want to fund their criminal enterprise, and thus to be completely free from accountability to the people.

### ***Sovereignty and Freedom Points and Authorities***

13. Deceive and/or lie to the public with impunity by telling you that you can't trust anything they say, but force YOU to sign everything under penalty of perjury when you want to talk to them. 26 U.S.C. §6065.

In support of the above definition of "anarchy", here is how the U.S. Supreme Court defined it:

*“Decency, security, and liberty alike demand that **government officials shall be subjected to the same rules of conduct that are commands to the citizen.** In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. **Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.** To declare that in the administration of the criminal law the end justifies the means—to declare that the government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face.”*  
*[Olmstead v. United States, 277 U.S. 438 (1928)]*

The above requirements are a consequence of the fact that the foundation of the United States Constitution is [EQUAL protection and EQUAL treatment](#). Any attempt to undermine equal rights and equal protection described above constitutes:

1. The establishment of a state sponsored religion in violation of the First Amendment and the Religious Freedom Restoration Act, 42 U.S.C. Chapter 21B. That religion is described in: [Socialism: The New American Civil Religion, Form #05.016](#). The object of worship of such a religion is imputing "supernatural powers" to civil rulers and forcing everyone to worship and serve said rulers as "superior beings".
2. The establishment of an unconstitutional Title of Nobility in violation of [Article 1, Section 9, Clause 8 of the United States Constitution](#).

For court admissible proof that your CIVIL government is the MAIN and most damaging type of anarchist in modern society, both from a legal perspective and a theological perspective, see:

[Your Irresponsible, Lawless, and Anarchist Beast Government, Form #05.054](https://sedm.org/Forms/05-MemLaw/YourIrresponsibleLawlessGov.pdf)  
<https://sedm.org/Forms/05-MemLaw/YourIrresponsibleLawlessGov.pdf>

## 1.22 Political

The term "political" as used throughout our website in reference to us or our activities:

1. Excludes the endorsement of specific candidates for political office.
2. Excludes any motivation that might result in a revocation of 26 U.S.C. §501(c)(4) status.
3. Excludes activities of public officers or agents of the government.
4. Excludes those who are "persons", "individuals", "taxpayers" under any revenue law.
5. Excludes those with a domicile or residence "in this State", meaning the government.
6. Includes efforts to educate the public about the law and the legal limits upon the jurisdiction of those in the government.
7. Includes ONLY EXCLUSIVELY PRIVATE people beyond the [civil legislative control](#) of the specific government affected by the policy.
8. Involves the protection of purely private property and private rights exclusively owned by human beings and not businesses or artificial entities of any description.
9. Includes activities undertaken ONLY in the fulfillment of [purely religious goals as a full time fiduciary of God under the Bible trust indenture](#).

## 1.23 Non-citizen national

The term "non-citizen national" MEANS a human being born in a constitutional state and domiciled or at least physically present there. These people are described in [8 U.S.C. §1101\(a\)\(21\)](#). They are STATUTORY "non-resident non-persons" as described in [Non-Resident Non-Person Position, Form #05.020](#). It DOES NOT mean or include those who are:

1. [Domiciled](#) either abroad or on federal territory.

### ***Sovereignty and Freedom Points and Authorities***

2. POLITICAL "nationals and citizens of the United States[\*\*] at birth" per [8 U.S.C. §1402](#) through [8 U.S.C. §1407](#). These people are born in federal territories exclusively.
3. POLITICAL "national but not citizen of the United States[\*\*] at birth" per [8 U.S.C. §1408](#). These people are born in federal possessions such as Puerto Rico.
4. POLITICAL "citizens of the United States[\*\*]" per [8 U.S.C. §1101\(a\)\(22\)\(A\)](#).

#### 1.24 State national

The term "state national" means those who are:

1. Born in a Constitutional but not Statutory "State" as described in the Fourteenth Amendment or the original constitution.
2. Standing on land protected by the Constitution and/or the organic law and therefore possessing natural and Constitutional and PRIVATE rights as documented in:  

<p><i>Enumeration of Inalienable Rights</i>, Form #10.002  <a href="https://sedm.org/Forms/10-Emancipation/EnumRights.pdf">https://sedm.org/Forms/10-Emancipation/EnumRights.pdf</a></p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------
3. Not claiming any government statutory privilege, immunity, exemption, "benefit", domicile, or civil statutory protection in the context of a specific interaction and reserving all rights per U.C.C. §1-308.
4. Invoking ONLY the common law, the criminal law, God's laws, and the national and state Bill of Rights or constitutional rights for their protection in a court of law. They are therefore NOT "anarchists" who reject ALL law. Instead, they only reject that subset of law (the CIVIL STATUTORY law) that acquires the "force of law" from their consent in some form, whether express or implied.
5. Reject the statutory terms "citizen", "resident", or "person" and the use of the word "citizenship" in ANY context in describing themselves. Instead, they insist on the consistent use of "nationality" and "domicile" to describe their degree of POLITICAL and CIVIL/LEGAL membership in the communities they live in respectively. Domicile, in turn, is VOLUNTARY and cannot be compelled, except possibly in a probate proceeding involving a DEAD person with no rights. POLITICAL membership conveys NO civil enforcement authority. Only CIVIL/LEGAL membership can, and it must be voluntary.
6. Owing allegiance to THE PEOPLE as individuals and sovereigns occupying the land within the state, and not to the government that serves them under the constitution as the delegation of authority order. "State" in a political sense always refers to PEOPLE occupying land and never to GOVERNMENTS or government corporations. In biblical terms, that allegiance is called "love" and it is commanded by God in Matt. 22:34-40. God NEVER commands Christians to love governments or civil rulers and often tells people to DISOBEY them when they violate the Bible as their delegation of authority order (Form #13.007).

Equivalent to a "non-citizen national **of the United States OF AMERICA**" or a "free inhabitant" under the Articles of Confederation. EXCLUDES any of the following:

1. CIVIL "person" under [26 U.S.C. §6671\(b\)](#) and [§7343](#) or any OTHER act of Congress.
2. POLITICAL "national and citizen of the United States\*\* at birth" as defined in [8 U.S.C. §1401](#). This is a territorial citizen rather than a state citizen.
3. CIVIL "citizen of the United States\*\*\*\*" under [26 U.S.C. §911](#), 26 U.S.C. §3121(e), or [26 C.F.R. §1.1-1\(a\)](#) or (b).
4. POLITICAL "National but not citizen of the United States\*\* at birth" under [8 U.S.C. §1408](#). This is a person born in a federal possession RATHER than a state of the Union.
5. POLITICAL "U.S.[\*\*] non-citizen national" under [8 U.S.C. §1452](#). This is a person born in a federal possession RATHER than a state of the Union.
6. CIVIL "U.S. person" as defined in [26 U.S.C. §7701\(a\)\(30\)](#), which is an American national who makes an election to procure a privileged government agency or office in pursuit of government property or "benefits"..

The term is a SUBSET of the term "American national" as used by the Department of State in [8 U.S.C. §1502](#) because it:

1. Excludes citizens or nationals within territories or possessions or those born abroad.
2. Includes ONLY those born or naturalized within a constitutional state of the Union.

We make this distinction because we don't want to be in a position of "purposefully availing oneself" of commerce within the exclusive jurisdiction of the national government and thereby make ourselves a target of "selective or UNJUST enforcement". This is also consistent with the SEDM opening page, which says:

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*"Our goal is to inspire, empower, motivate, and educate mainly those born or naturalized in the [USA \(and NOT "U.S."\)](#) and who are Members in how to love, honor, obey, glorify, and lift up our Sovereign Lord above every man, king, ruler, government, and [Earthy law](#) at a personal and very practical level and in every area of our lives. This is the essence of our religious worship and the essence, according to the Bible, of how we love our God."*

*[SEDM Opening Page; <http://sedm.org>]*

"state" for a foreign national = the country of which that person is a national. "state" for an American National is the United States of America, or just America. "state" is not defined in 8 U.S.C. although "State" is defined in [8 U.S.C. §1101\(a\)\(36\)](#) and they are NOT equivalent. See [8 U.S.C. §1101\(a\)\(21\)](#) for another reference to a "state national". Remember the context of [8 U.S.C. §1101](#) is immigration and nationality. So when we speak of a state in this context, we are talking about international states. In that context, American nationality (or U.S. nationality) is what we are---nationality of California is meaningless in this context. So to say you are a national of California is to say you are a national of the United States[\*\*\*] OF AMERICA or an American national.

For the purposes of "State", the following definition applies:

*State*

*As a noun, a people permanently occupying a fixed territory bound together by common habits and custom into one body politic exercising, through the medium of an organized government, independent sovereignty and control over all persons and things within its boundaries, capable of making war and peace and of entering into international relations with other states. The section of territory occupied by one of the United States. The people of a state, in their collective capacity, considered as the party wronged by a criminal deed; the public; as in the title of a case, "The State v. A. B." The circumstances or condition of a being or thing at a given time.*

*[The Free Dictionary, Farlex; SOURCE: <https://legal-dictionary.thefreedictionary.com/state>]*

"State national" is NOT a statutory term and is not commonly used by courts of law. Therefore, if you invoke it in government correspondence or in litigation, you should take great care to define it BEFORE invoking it so that you do not invite charges of being "frivolous".

## 1.25 "Non-Person" or "Non-Resident Non-Person"

The term "[non-person](#)" or "[non-resident non-person](#)" ([Form #05.020](#)) as used on this site we define to be a human who is all of the following:

1. Not domiciled on federal territory and not representing a corporate or governmental office that is so domiciled under [Federal Rule of Civil Procedure 17](#). See [Form #05.002](#) for details.
2. Not engaged in a public office within any government. This includes the civil office of "person", "individual", "citizen", or "resident". See [Form #05.037](#) and [Form #05.042](#) for court-admissible proof that statutory "persons", "individuals", "citizens", and "residents" are public offices.
3. Not "purposefully or consensually availing themselves" of commerce with any government. Therefore, they do not waive sovereign immunity under the [Foreign Sovereign Immunities Act \(FSIA\), 28 U.S.C. Chapter 97](#).
4. Obligations and Rights in relation to Governments:
  - 4.1. Waives any and all privileges and immunities of any civil status and all rights or "entitlements" to receive "benefits" or "civil services" from any government. It is a maxim of law that [REAL de jure governments \(Form #05.043\)](#) MUST give you the right to not receive or be eligible to receive "benefits" of any kind. See [Form #05.040](#) for a description of the SCAM of abusing "benefits" to destroy sovereignty. The reason is because they MUST guarantee your right to be self-governing and self-supporting:

*Invito beneficium non datur.*

*No one is obliged to accept a benefit against his consent. Dig. 50, 17, 69. But if he does not dissent he will be considered as assenting. Vide Assent.*

*Potest quis renunciare pro se, et suis, juri quod pro se introductum est.*

*A man may relinquish, for himself and his heirs, a right which was introduced for his own benefit. See 1 Bouv. Inst. n. 83.*

*Quilibet potest renunciare juri pro se inducto.*

*Any one may renounce a law introduced for his own benefit. To this rule there are some exceptions. See 1 Bouv.*

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*Inst. n. 83.*

[*Bouvier's Maxims of Law, 1856;*

SOURCE: <http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviereMaxims.htm/>

- 4.2. Because they are not in receipt of or eligible to receive property or benefits from the government, they owe no CIVIL STATUTORY obligations to that government or any STATUTORY "citizen" or STATUTORY "resident", as "obligations" are described in [California Civil Code Section 1428](#). This means they are not party to any contracts or compacts and have injured NO ONE as injury is defined NOT by statute, but by the common law. See [Form #12.040](#) for further details on the definition of "obligations".
- 4.3. Because they owe no statutory civil obligations, the definition of "justice" REQUIRES that they MUST be left alone by the government. See [Form #05.050](#) for a description of "justice".
5. For the purposes of citizenship on government forms:
  - 5.1. CIVIL "[citizen](#)" and "[resident](#)" are PUBLIC OFFICES and fictions of law within the national government and not human beings. Whenever [CIVIL STATUTORY obligations \(Form #12.040\)](#) attach to a [civil status \(Form #13.008\)](#) such as "citizen", "resident", or "person", then the civil or legal status has to be voluntary or else unconstitutional involuntary servitude is the result in violation of the Thirteenth Amendment. President Obama even admitted that "citizen" is a public office in his Farewell Address. See [SEDM Exhibit #01.018](#) for proof. You have a RIGHT to not be an officer of the government WITHOUT even PAY! They even make you PAY for the privilege with income taxation, because the tax is imposed upon CIVIL "[citizen](#)" and "[resident](#)" in [26 C.F.R. §1.1-1\(a\)](#). Who else can institute SLAVERY like that and why can't you do that to THEM if we are all REALLY equal ([Form #05.033](#)) as the Constitution requires?
  - 5.2. Does NOT identify as a CIVIL "citizen" ([26 C.F.R. §1.1-1\(a\)](#) and (b)), "resident" (alien under [26 U.S.C. §7701\(b\)\(1\)\(A\)](#)), "U.S. citizen" (not defined in any statute), "U.S. resident" (not defined in any statute), or "U.S. person" ([26 U.S.C. §7701\(a\)\(30\)](#)).
  - 5.3. Identifies themselves as a "national" per [8 U.S.C. §1101\(a\)\(21\)](#), [8 U.S.C. §1101\(a\)\(22\)](#), and per common law by virtue of birth or naturalization within the CONSTITUTIONAL "United States\*\*\*".
  - 5.4. Is NOT an "alien individual" in [26 C.F.R. §1.1441-1\(c\)\(3\)\(i\)](#) because a "[national](#)" under [8 U.S.C. §1101\(a\)\(21\)](#) or "U.S. national" under [22 C.F.R. §51.1](#) owing allegiance to a state of the Union and not the national or federal government. Thus, they are not subject to the presence test under [26 U.S.C. §7701\(b\)](#) and may not lawfully be kidnapped into exclusive national government jurisdiction as a privileged alien "resident" or have a privileged "residence" ([26 C.F.R. §1.871-2\(b\)](#)) within the EITHER the statutory geographical "United States" in [26 U.S.C. §7701\(a\)\(9\)](#) and (a)(10) or "United States\*" the COUNTRY in [26 C.F.R. §301.7701\(b\)-1\(c\)\(2\)](#).
  - 5.5. Is legislatively but not constitutionally "[foreign](#)" and "[alien](#)" to the national government by virtue of not having a [domicile](#) (for nationals under [8 U.S.C. §1101\(a\)\(22\)](#)) or "[residence](#)" (for "alien individuals" under [26 C.F.R. §1.871-2\(b\)](#)) within the exclusive legislative jurisdiction of the national government. The words "[foreign](#)" and "[alien](#)" by themselves are NOT defined within the Internal Revenue Code. This is MALICIOUSLY deliberate so as to DECEIVE the American public in states of the Union into FALSELY declaring a [domicile](#) or [residence](#) within the exclusive jurisdiction of the national government. By creating a VOLUNTEER CIVIL office and position of "citizen" in [26 C.F.R. §1.1-1\(a\) and \(b\)](#), the average American in states of the Union is deceived using equivocation into VOLUNTEERING for a civil STATUTORY office under the Secretary of the Treasury called "citizen" and "resident" subject to exclusive national government jurisdiction. The "citizen" in this regulation is NOT the POLITICAL citizen, but a CIVIL citizen legislatively created and owned by Congress and thus a PRIVILEGE. Those in states of the Union who have neither a [domicile](#) nor [residence](#) within the exclusive jurisdiction of the national government and are not "subject to ITS jurisdiction" and who [FALSELY CLAIM on a government form \(Form #12.023\)](#) such as a W-9 that they are STATUTORY "[U.S. persons](#)" have in practical effect VOLUNTEERED to become privileged STATUTORY "[taxpayers](#)" and uncompensated officers of the national government EVERYWHERE IN THE WORLD who are on duty 24 hours a day, 7 days a week per [26 C.F.R. §1.1-1\(a\)](#)! The corrupt, covetous government WANTS this process of volunteering to be invisible in order to VICTIMIZE the Americans into becoming surety to pay off an endless mountain of public debt that there is NO LIMIT on. That's criminal peonage in violation of [18 U.S.C. §1581](#) if you knew you could unvolunteer and aren't allowed to. It's also criminal human trafficking. You can't UNVOLUNTEER and leave the system until you know HOW you volunteered in the first place. See "[Hot Issues: Invisible Consent](#)" for details on how your consent was procured INVISIBLY. That process of volunteering to pay income tax that state nationals don't owe is exhaustively described in:

[How American Nationals Volunteer to Pay Income Tax, Form #08.024](#)  
<https://sedm.org/Forms/08-PolicyDocs/HowYouVolForIncomeTax.pdf>

6. Earnings originate from outside:

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- 6.1. The STATUTORY "United States\*\*" as defined in 26 U.S.C. §7701(a)(9) and (a)(10) (federal zone) and
- 6.2. The U.S. government federal corporation as a privileged legal fiction.  
Thus, their earnings are expressly EXCLUDED rather than EXEMPTED from "gross income" under 26 U.S.C. §871 and are a "foreign estate" under 26 U.S.C. §7701(a)(31). See 26 U.S.C. §872 and 26 C.F.R. §1.872-2(f) and 26 C.F.R. §1.871-7(a)(4) and 26 U.S.C. §861(a)(3)(C)(i) for proof.
7. Earnings are expressly EXCLUDED rather than EXEMPTED from STATUTORY "wages" as defined in 26 U.S.C. §3401(a) because all services performed outside the STATUTORY "United States\*\*" as defined in 26 U.S.C. §7701(a)(9) and (a)(10) (federal zone) and the CORPORATION "United States" as a legal fiction. Therefore, not subject to "wage" withholding of any kind for such services per:
  - 7.1. 26 C.F.R. §31.3401(a)(6)-1(b) in the case of income tax.
  - 7.2. 26 C.F.R. §31.3121(b)-3(c)(1) in the case of Social Security.
8. Expressly EXCLUDED rather than EXEMPTED from income tax reporting under:
  - 8.1. 26 C.F.R. §1.1441-1(b)(5)(i).
  - 8.2. 26 C.F.R. §1.1441-1(e)(1)(ii)(A)(1).
  - 8.3. 26 C.F.R. §1.6041-4(a)(1).
9. Expressly EXCLUDED rather than EXEMPTED from backup withholding because earnings are not reportable by 26 U.S.C. §3406 and 26 C.F.R. §31.3406(g)-1(e). Only "reportable payments" are subject to such withholding.
10. Because they are EXCLUDED rather than EXEMPTED from income tax reporting and therefore withholding, they have no "taxable income".
  - 10.1. Only reportable income is taxable.
  - 10.2. There is NO WAY provided within the Internal Revenue Code to make earnings not connected to a statutory "trade or business"/public office (Form #05.001) under 26 U.S.C. §6041 reportable.
  - 10.3. The only way to make earnings of a nonresident alien not engaged in the "trade or business" franchise taxable under 26 U.S.C. §871(a) is therefore only when the PAYOR is lawfully engaged in a "trade or business" but the PAYEE is not. This situation would have to involve the U.S. government ONLY and not private parties in the states of the Union. The information returns would have to be a Form 1042s. It is a crime under 18 U.S.C. §912 for a private party to occupy a public office or to impersonate a public office.
11. Continue to be a "national of the United States\*" (Form #05.006) and not lose their CONSTITUTIONAL citizenship while filing form 1040NR. See 26 U.S.C. §873(b)(3). They do NOT need to "expatriate" their nationality to file as a "nonresident alien" and will not satisfy the conditions in 26 U.S.C. §877 (expatriation to avoid tax). Expatriation is loss of NATIONALITY, and NOT loss of STATUTORY "citizen" status under 8 U.S.C. §1401.
12. If they submit the SEDM Form W-8SUB, Form #04.231 to control withholding and revoke their Form W-4, then they:
  - 12.1. Can submit SSA Form 7008 to correct your SSA earnings to zero them out. See SEDM Form #06.042.
  - 12.2. Can use IRS Form 843 to request a full refund or abatement of all FICA and Medicare taxes withheld if the employer or business associate continues to file W-2 forms or withhold against your wishes. See SEDM Form #06.044.
13. Are eligible to replace the SSN with a TEMPORARY Individual Taxpayer Identification Number (ITIN) that expires AUTOMATICALLY every year and is therefore NOT permanent and changes. If you previously applied for an SSN and were ineligible to participate, you can terminate the SSN and replace it with the ITIN. If you can't prove you were ineligible for Social Security, then they will not allow you to replace the SSN with an ITIN. See:
  - 13.1. Form W-7 for the application.  
<https://www.irs.gov/forms-pubs/about-form-w-7>
  - 13.2. Understanding Your IRS Individual Taxpayer Identification Number, Publication 1915  
<https://www.irs.gov/pub/irs-pdf/p1915.pdf>
  - 13.3. Why You Aren't Eligible for Social Security, Form #06.001 for proof that no one within the exclusive jurisdiction of a constitutional state of the Union is eligible for Social Security.  
<https://sedm.org/Forms/06-AvoidingFranch/SSNotEligible.pdf>
14. Must file the paper version of IRS Form 1040NR, because there are no electronic online providers that automate the preparation of the form or allow you to attach the forms necessary to submit a complete and accurate return that correctly reflects your status. This is in part because the IRS doesn't want to make it easy or convenient to leave their slave plantation.
15. Is a SUBSET of "nonresident aliens" who are not required to have or to use Social Security Numbers (SSNs) or Taxpayer Identification Numbers (TINs) in connection with tax withholding or reporting. They are expressly excluded from this requirement by:
  - 15.1. 31 C.F.R. §1020.410(b)(3)(x).  
<https://www.law.cornell.edu/cfr/text/31/1020.410>
  - 15.2. 26 C.F.R. §301.6109-1(b)(2).

- <https://www.law.cornell.edu/cfr/text/26/301.6109-11>
- 15.3. [W-8BEN Inst. p. 1,2,4,5 \(Cat 25576H\)](#).  
<https://www.irs.gov/pub/irs-pdf/iw8ben.pdf>
- 15.4. [Instructions for the Requesters of Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY, p. 1,2,6 \(Cat 26698G\)](#).  
<https://www.irs.gov/pub/irs-pdf/iw8.pdf>
- 15.5. [Pub 515 Inst. p. 7 \(Cat. No 16029L\)](#).  
<https://www.irs.gov/pub/irs-pdf/p515.pdf>
- More on SSNs and TINs at:  
[About SSNs and TINs on Government Forms and Correspondence, Form #05.012](#)  
<https://sedm.org/Forms/05-MemLaw/AboutSSNsAndTINs.pdf>  
[About SSNs and TINs on Government Forms and Correspondence, Form #04.104](#)  
<https://sedm.org/Forms/04-Tax/1-Procedure/AboutSSNs/AboutSSNs.htm>

They are "non-persons" BY VIRTUE of not benefitting from any civil statutory privilege and therefore being "PRIVATE". By "privilege", we mean ANY of the things described in [5 U.S.C. 553\(a\)\(2\)](#):

[5 U.S. Code § 553 - Rule making](#)

*(a) This section applies, according to the provisions thereof, except to the extent that there is involved—*

*[ . . . ]*

*(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.*

The above items all have in common that they are PROPERTY coming under [Article 4, Section 3, Clause 2](#) of the Constitution that is loaned or possessed or granted temporarily to a human being with legal strings attached. Thus, Congress has direct legislative jurisdiction not only over the property itself, but over all those who USE, BENEFIT FROM, or HAVE such property physically in their custody or within their temporary control. We remind the reader that Congress enjoys control over their own property NO MATTER WHERE it physically is, including states of the Union, and that it is the MAIN source of their legislative jurisdiction within the exclusive jurisdiction of Constitutional states of the Union!:

[United States Constitution](#)  
[Article 4, Section 3, Clause 2](#)

*The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.*

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**“The Constitution permits Congress to dispose of and to make all needful rules and regulations respecting the territory or other property belonging to the United States. This power applies as well to territory belonging to the United States within the States, as beyond them. It comprehends all the public domain, wherever it may be. The argument is, that the power to make ‘ALL needful rules and regulations’ ‘is a power of legislation,’ ‘a full legislative power;’ ‘that it includes all subjects of legislation in the territory,’ and is without any limitations, except the positive prohibitions which affect all the powers of Congress. Congress may then regulate or prohibit slavery upon the public domain within the new States, and such a prohibition would permanently affect the capacity of a slave, whose master might carry him to it. And why not? Because no power has been conferred on Congress. This is a conclusion universally admitted. But the power to ‘make rules and regulations respecting the territory’ is not restrained by State lines, nor are there any constitutional prohibitions upon its exercise in the domain of the United States within the States; and whatever rules and regulations respecting territory Congress may constitutionally make are supreme, and are not dependent on the situs of ‘the territory.’”**  
*[Dred Scott v. Sandford, 60 U.S. 393, 509-510 (1856)]*

By property, we mean all the things listed in [5 U.S.C. §553\(a\)\(2\)](#) such as SSNs (property of the government per [20 C.F.R. §422.103\(d\)](#)), contracts (which are property), physical property, chattel property, "benefits", "offices", [civil statuses](#), privileges, civil statutory remedies, etc. A "[public office](#)" is, after all, legally defined as someone in charge of the PROPERTY of the "public",

**“Public office.** *The right, authority, and duty created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of government for the benefit of the public. Walker v. Rich, 79 Cal.App. 139, 249 P. 56, 58. An agency for the state, the duties of which involve in their performance the exercise of some portion of the sovereign power, either great or small. Yaselli v. Goff, C.C.A., 12 F.2d. 396, 403, 56 A.L.R. 1239; Lacey v. State, 13 Ala.App. 212, 68 So. 706, 710; Curtin v. State, 61 Cal.App. 377, 214 P. 1030, 1035; Shelmadine v. City of Elkhart, 75 Ind.App. 493, 129 N.E. 878. State ex rel. Colorado River Commission v. Frohmiller, 46 Ariz. 413, 52 P.2d. 483, 486. Where, by virtue of law, a person is clothed, not as an incidental or transient authority, but for such time as de- notes duration and continuance, with Independent power to control the property of the public, or with public functions to be exercised in the supposed interest of the people, the service to be compensated by a stated yearly salary, and the occupant having a designation or title, the position so created is a public office. State v. Brennan, 49 Ohio.St. 33, 29 N.E. 593.*  
[Black’s Law Dictionary, Fourth Edition, p. 1235]

Even the public office ITSELF is property of the national government, so those claiming any civil statutory status are claiming a civil office within the government. It is otherwise unconstitutional to regulate private property or private rights. The only way you can surrender your private status is to voluntarily adopt an office or civil status or the "benefits", "rights", or privileges attaching to said office or status, as we prove in:

1. Civil Status (Important!)-SEDM  
<https://sedm.org/litigation-main/civil-status/>
2. Your Exclusive Right to Declare or Establish Your Civil Status, Form #13.008  
<https://sedm.org/Forms/13-SelfFamilyChurchGovnce/RightToDeclStatus.pdf>
3. Why Statutory Civil Law is Law for Government and Not Private Persons, Form #05.037  
<https://sedm.org/Forms/05-MemLaw/StatLawGovt.pdf>

It is custody or "benefit" or control of government/public property that grants government control over those handling or using such property:

**“The State in such cases exercises no greater right than an individual may exercise over the use of his own property when leased or loaned to others. The conditions upon which the privilege shall be enjoyed being stated or implied in the legislation authorizing its grant, no right is, of course, impaired by their enforcement. The recipient of the privilege, in effect, stipulates to comply with the conditions. It matters not how limited the privilege conferred, its acceptance implies an assent to the regulation of its use and the compensation for it.”**  
[Munn v. Illinois, 94 U.S. 113 (1876)]

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**“The rich rules over the poor,  
And the borrower is servant to the lender.”**  
[Prov. 22:7, Bible, NKJV]

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#### **Curses of Disobedience [to God’s Laws]**

**“The alien [Washington, D.C. is legislatively “alien” in relation to states of the Union] who is among you shall rise higher and higher above you, and you shall come down lower and lower [malicious destruction of EQUAL PROTECTION and EQUAL TREATMENT by abusing FRANCHISES]. He shall lend to you [Federal Reserve counterfeiting franchise], but you shall not lend to him; he shall be the head, and you shall be the tail.**

**“Moreover all these curses shall come upon you and pursue and overtake you, until you are destroyed, because you did not obey the voice of the Lord your God, to keep His commandments and His statutes which He commanded you. And they shall be upon you for a sign and a wonder, and on your descendants forever.**

**“Because you did not serve [ONLY] the Lord your God with joy and gladness of heart, for the abundance of everything, therefore you shall serve your [covetous thieving lawyer] enemies, whom the Lord will send against you, in hunger, in thirst, in nakedness, and in need of everything; and He will put a yoke of iron [franchise codes] on your neck until He has destroyed you. The Lord will bring a nation against you from afar [the District of CRIMINALS], from the end of the earth, as swift as the eagle flies [the American Eagle], a nation whose language [LEGALESE] you will not understand, a nation of fierce [coercive and fascist] countenance, which does not respect the elderly [assassinates them by denying them healthcare through bureaucratic delays on an Obamacare waiting list] nor show favor to the young [destroying their ability to learn in the public FOOL system]. And they shall eat the increase of your livestock and the produce of your land [with “trade or business” franchise taxes], until you [and all your property] are destroyed [or STOLEN/CONFISCATED]; they shall not leave you grain or**

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#### **Sovereignty and Freedom Points and Authorities**

*new wine or oil, or the increase of your cattle or the offspring of your flocks, until they have destroyed you.*  
[Deut. 28:43-51, Bible, NKJV]

You cannot MIX or comingle PRIVATE property with PUBLIC property without converting the PRIVATE property ownership from absolute to qualified. You must keep them SEPARATE at all times and it is the MAIN and MOST IMPORTANT role of government to maintain that separation. Governments, after all, are created ONLY to protect private property and the FIRST step in that protection is to protect PRIVATE property from being converted to PUBLIC property. For proof, see:

*Separation Between Public and Private Course*, Form #12.025  
<https://sedm.org/LibertyU/SeparatingPublicPrivate.pdf>

What Congress is doing is abusing its own property to in effect create "de facto public offices" within the government, in violation of [4 U.S.C. §72](#), as is proven in:

*Challenge to Income Tax Enforcement Authority Within Constitutional States of the Union*, Form #05.052  
<https://sedm.org/Forms/05-Memlaw/ChallengeToIRSEnforcementAuth.pdf>

This is how we describe the reason why people should avoid privileges and thereby avoid possession, custody, use, or "benefit" of government/public property on the opening page of our site:

*"People of all races, genders, political beliefs, sexual orientations, and nearly all religions are welcome here. All are treated equally under REAL "law". The only way to remain truly free and equal under the civil law is to avoid seeking government civil services, benefits, property, special or civil status, exemptions, privileges, or special treatment. All such pursuits of government services or property require individual and lawful consent to a franchise and the surrender of inalienable constitutional rights AND EQUALITY in the process, and should therefore be AVOIDED. The rights and equality given up are the "cost" of procuring the "benefit" or property from the government, in fact. Nothing in life is truly "free". Anyone who claims that such "benefits" or property should be free and cost them nothing is a thief who wants to use the government as a means to STEAL on his or her behalf. All just rights spring from responsibilities/obligations under the laws of a higher power. If that higher power is God, you can be truly and objectively free. If it is government, you are guaranteed to be a slave because they can lawfully set the cost of their property as high as they want as a Merchant under the U.C.C. If you want it really bad from people with a monopoly, then you will pay dearly for the privilege. There are NO constitutional limits on the price government can charge for their monopoly services or property. Those who want no responsibilities can have no real/PRIVATE rights, but only privileges dispensed to wards of the state which are disguised to LOOK like unalienable rights. Obligations and rights are two sides of the same coin, just like self-ownership and personal responsibility. For the biblical version of this paragraph, read [1 Sam. 8:10-22](#). For the reason God answered Samuel by telling him to allow the people to have a king, read [Deut. 28:43-51](#), which is God's curse upon those who allow a king above them. [Click Here](#) (<https://famguardian.org/Subjects/Taxes/Evidence/HowScCorruptOurRepubGovt.htm>) for a detailed description of the legal, moral, and spiritual consequences of violating this paragraph."*  
[SEDM Opening Page; <http://sedm.org>]

"Non-resident Non-Person" or "non-person" are synonymous with "transient foreigner", "in transitu", and "stateless" (in relation to the national government). We invented this term. The term does not appear in federal statutes because statutes cannot even define things or people who are not subject to them and therefore foreign and sovereign. The term "non-individual" used on this site is equivalent to and a synonym for "non-person" on this site, even though STATUTORY "individuals" are a SUBSET of "persons" within the Internal Revenue Code. Likewise, the term "private human" is also synonymous with "non-person". Hence, a "non-person":

1. Retains their sovereign immunity. They do not waive it under the Foreign Sovereign Immunities Act, 28 U.S.C. Chapter 97 or the longarm statutes of the state they occupy.
2. Is protected by the United States Constitution and not federal statutory civil law.
3. May not have federal statutory civil law cited against them. If they were, a violation of Federal Rule of Civil Procedure 17 and a constitutional tort would result if they were physically present on land protected by the United States Constitution within the exterior limits of states of the Union.
4. Is on an equal footing with the United States government in court. "Persons" would be on an UNEQUAL, INFERIOR, and subservient level if they were subject to federal territorial law.

Don't expect vain public servants to willingly admit that there is such a thing as a human "non-person" who satisfies the above criteria because it would undermine their systematic and treasonous plunder and enslavement of people they are supposed to be protecting. However, the U.S. Supreme Court has held that the "right to be left alone" is the purpose of the constitution.

### ***Sovereignty and Freedom Points and Authorities***

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Olmstead v. United States, 277 U.S. 438. A so-called "government" that refuses to leave you alone or respect or protect your sovereignty and equality in relation to them is no government at all and has violated the purpose of its creation described in the Declaration of Independence. Furthermore, anyone from the national or state government who refuses to enforce this status, or who imputes or enforces any status OTHER than this status under any law system other than the common law is:

1. "purposefully availing themselves" of commerce within OUR jurisdiction.
2. STEALING, where the thing being STOLEN are the public rights associated with the statutory civil "status" they are presuming we have but never expressly consented to have.
3. Engaging in criminal identity theft, because the civil status is associated with a domicile in a place we are not physically in and do not consent to a civil domicile in.
4. Consenting to our Member Agreement.
5. Waiving official, judicial, and sovereign immunity.
6. Acting in a private and personal capacity beyond the statutory jurisdiction of their government employer.
7. Compelling us to contract with the state under the civil statutory "social compact".
8. Interfering with our First Amendment right to freely and civilly DISASSOCIATE with the state.
9. Engaged in a constitutional tort.

If freedom and self-ownership or "ownership" in general means anything at all, it means the right to deny any and all others, including governments, the ability to use or benefit in any way from our body, our exclusively owned private property, and our labor.

*"We have repeatedly held that, as to property reserved by its owner for private use, 'the right to exclude [others is]`one of the most essential sticks in the bundle of rights that are commonly characterized as property.'" [Loretto v. Teleprompter Manhattan CATV Corp.](#), 458 U.S. 419, 433 (1982), quoting [Kaiser Aetna v. United States](#), 444 U.S. 164, 176 (1979). "*  
*[Nollan v. California Coastal Comm'n, 483 U.S. 825 (1987)]*

*"In this case, we hold that the "right to exclude," so universally held to be a fundamental element of the property right,[11] falls within this category of interests that the Government cannot take without compensation."*  
*[Kaiser Aetna v. United States, 444 U.S. 164 (1979)]*

FOOTNOTES:

[11] See, e. g., [United States v. Pueblo of San Ildefonso](#), 206 Ct.Cl. 649, 669-670, 513 F.2d. 1383, 1394 (1975); [United States v. Lutz](#), 295 F.2d. 736, 740 (CA5 1961). As stated by Mr. Justice Brandeis, "[a]n essential element of individual property is the legal right to exclude others from enjoying it." [International News Service v. Associated Press](#), 248 U.S. 215, 250 (1918) (dissenting opinion).

If you would like a W-8 form that ACCURATELY describes the withholding and reporting status of a "non-resident non-person", see:

[W-8SUB](#), Form #04.231

<https://sedm.org/Forms/04-Tax/2-Withholding/W-8SUB.pdf>

## 1.26 "Advice" or "legal advice"

The term "advice" or "legal advice" means education about tools, facts, remedies, and options for making your own informed choice. It does not include any method of: 1. Transferring liability or responsibility from the person asking to the person responding; 2. Anything that could be classified as "legal advice" or "law practice" as used in any statute or enacted law; 3. Anything that could be classified as factual or a basis for belief or reliance upon the person asked in connection with commercial speech subject to government protection or regulation.

## 1.27 Socialism

The term "socialism" means any attempt by any government to use civil legislation to abolish private property or to convert private property ownership to public property, public rights, or privileges, whether by consent or by theft. "Ownership" and "control" are synonymous for the purpose of this definition. Such property includes land, labor, physical objects, chattel property, or constitutional rights.

Examples of the implementation of socialism include the following activities by government:

1. Government Franchises and licensing. See:

*Government instituted Slavery Using Franchises*, Form #05.030  
<https://sedm.org/Forms/05-MemLaw/Franchises.pdf>

2. Civil statutes when enforced against those not consensually serving WITHIN the government. See:

*Why Statutory Civil Law is Law for Government and Not Private Persons*, Form #05.037  
<https://sedm.org/Forms/05-MemLaw/StatLawGovt.pdf>

3. Domicile, which is a civil statutory protection franchise. See:

*Why Domicile and Becoming a "Taxpayer" Require Your Consent*, Form #05.002  
<https://sedm.org/Forms/05-MemLaw/Domicile.pdf>

4. Income and excise taxation. See:

*The "Trade or Business" Scam*, Form #05.001  
<https://sedm.org/Forms/05-MemLaw/TradeOrBusScam.pdf>

5. Extraterritorial civil enforcement under the COLOR, but without the actual AUTHORITY of law. against parties not domiciled within the jurisdiction or venue doing the enforcement. See:

*Challenge to Income Tax Enforcement Authority Within Constitutional States of the Union*, Form #05.052  
<https://sedm.org/Forms/05-Memlaw/ChallengeToIRSEnforcementAuth.pdf>

6. Any attempt to change the [civil status \(Form #13.008\)](#) of parties situated extraterritorially without the exclusive jurisdiction of the lawmaker with or without their express or implied [consent \(Form #05.003\)](#). The result is that they are made to APPEAR as parties domiciled within the civil jurisdiction or venue of the lawmaker. See:

*Government Identity Theft*, Form #05.046  
<https://sedm.org/Forms/05-MemLaw/GovernmentIdentityTheft.pdf>

7. Any attempt to offer a "benefit" or franchise without recognizing or enforcing the right to NOT participate or to quit on any and every form administering the program. Thus, the program is TREATED as mandatory by fiat but in fact is voluntary. This violates the common law maxim that you have a right to refuse a "benefit". See:

*Avoiding Traps in Government Forms Course*, Form #12.023  
<https://sedm.org/LibertyU/AvoidingTrapsGovForms.pdf>

The result of implementing socialism through civil legislation is ultimately to abolish constitutional or common law protections for property, and to replace them with legislatively granted civil privileges that come with obligations and a corresponding surrender of said rights. Below is how we describe this process on the opening page of our website:

*"People of all races, genders, political beliefs, sexual orientations, and nearly all religions are welcome here. All are treated equally under REAL "law". The only way to remain truly free and equal under the civil law is to avoid seeking government civil services, benefits, property, special or civil status, exemptions, privileges, or special treatment. All such pursuits of government services or property require individual and lawful consent to a franchise and the surrender of inalienable constitutional rights AND EQUALITY in the process, and should therefore be AVOIDED. The rights and equality given up are the "cost" of procuring the "benefit" or property from the government, in fact. Nothing in life is truly "free". Anyone who claims that such "benefits" or property should be free and cost them nothing is a thief who wants to use the government as a means to STEAL on his or her behalf. All just rights spring from responsibilities/obligations under the laws of a higher power. If that higher power is God, you can be truly and objectively free. If it is government, you are guaranteed to be a slave because they can lawfully set the cost of their property as high as they want as a Merchant under the U.C.C. If you want it really bad from people with a monopoly, then you will pay dearly for the privilege. There are NO constitutional limits on the price government can charge for their monopoly services or property. Those who want no responsibilities can have no real/PRIVATE rights, but only privileges dispensed to wards of the state which are disguised to LOOK like unalienable rights. Obligations and rights are two sides of the same coin, just like self-ownership and personal responsibility. For the biblical version of this paragraph, read 1 Sam. 8:10-22. For the reason God answered Samuel by telling him to allow the people to have a king, read Deut. 28:43-51, which is God's curse upon those who allow a king above them. [Click Here](#)*

*(<https://famguardian.org/Subjects/Taxes/Evidence/HowScCorruptOurRepubGovt.htm>) for a detailed description of the legal, moral, and spiritual consequences of violating this paragraph.”*  
*[SEDM Website Opening Page; <http://sedm.org/>]*

For the purpose of this definition "socialism" does NOT include "social control over the means of production" as most contemporary reference sources FALSELY identify it. Early dictionaries defined it consistent with our definition but over the years, the word has fairly recently been redefined to REMOVE the mention of abolition of private property from the definition. This was done so that statists would conveniently stop having to APOLOGIZE for government theft through the legislative process. For examples of this phenomenon, see:

[Sovereignty Forms and Instructions Online, Form #10.004, Cites by Topic: "socialism"](https://famguardian.org/TaxFreedom/CitesByTopic/Socialism.htm)  
<https://famguardian.org/TaxFreedom/CitesByTopic/Socialism.htm>

It is important to emphasize here that when you want to stop public opposition to a government activity such as theft or conversion of private property, the easiest way is to redefine terms so that there is no word that accurately refers to the activity that is being opposed. The result is that you have eliminated vocabulary that could describe the thing being opposed, and thus to eliminate the political opposition entirely. This approach, in fact, is the heart of the modern phenomenon of "[Identity politics](#)": Control public opinion and public opposition by controlling language.

An important goal of this website is to ELIMINATE all forms of socialism as defined here, and thus to restore the supremacy of individual rights over governmental rights to our political and democratic processes and institutions. For details on the evils of socialism, see:

1. *Socialism: The New American Civil Religion*, Form #05.016  
<https://sedm.org/Forms/05-MemLaw/SocialismCivilReligion.pdf>
2. *Social Security: Mark of the Beast*, Form #11.407  
<http://famguardian.org/Publications/SocialSecurity/TOC.htm>

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## 1.28 **“Grant” or “loan”**

The term "grant" or "loan", in the context of this website and especially in relation to any type of property or right or to "franchises" generally, means a temporary conveyance or transfer of physical custody or possession of absolutely owned property with legal strings or conditions attached by the grantor in which there are no moities or usufructs over the property held or reserved by the party to whom the property is loaned or temporarily conveyed.

1. The grantor or lender is the "Merchant" under [U.C.C. §2-104](#)(1).
2. The recipient or borrower of the property conveyed is the "Buyer" under [U.C.C. §2-103](#)(1)(a).
3. The property loaned can include land, physical/chattel property, rights, or privileges.
4. The legal relation or "privity" created between the grantor and the borrower or recipient is referred to as a "franchise". All franchises are contracts or agreements of one kind or another. Franchises are defined as "a privilege [meaning "property"] in the HANDS of a subject". Receipt of the property by the Buyer, in fact is what MAKES them the "subject"
5. The regulation of the property is done through the civil statutory code, which assigns both rights and obligations to the Merchant (grantor) and the Buyer.
6. Upon voluntary acceptance of the property by the Buyer, a civil status is assigned to both the BUYER and the MERCHANT fixing the relations between them under the privity. Such civil statuses might include "citizen", "resident", "person" (under the civil statutory franchise code), "taxpayer" (under the income tax code), "driver" (under the vehicle code), etc.
7. The CIVIL STATUTORY STATUS assigned to the MERCHANT and the BUYER after the property is accepted constitutes a type of "membership". A "citizen", for instance, is a BUYER of government civil statutory protection franchise services, and also a "MEMBER" of a club called "GOVERNMENT" (a corporation) that delivers said services.
8. Both CIVIL STATUTORY RIGHTS (PRIVILEGES) and OBLIGATIONS attach to the civil status assigned to the parties and these RIGHTS and OBLIGATIONS are the method of controlling and managing the property until it is "RETURNED" or SURRENDERED by the Buyer to the GRANTOR. The civil statutory OBLIGATIONS assigned to

the civil status of the BUYER become corresponding RIGHTS on the part of the MERCHANT/GRANTOR and vice versa.

9. If the property, benefit, or privilege was never voluntarily accepted, then the OBLIGATIONS that attach to it cannot be enforced against the BUYER by the MERCHANT in court. Under the common law, you have a RIGHT to refuse to accept property, "benefits", etc. in every scenario, even after you applied for them.
10. In pursuing and accepting the property of the Merchant, the Buyer surrenders ABSOLUTE ownership of a part of his or her otherwise private property and is therefore subject to regulation of him or her self by the Merchant. If the Merchant is a government, then they or their activities in which the granted property are used become and "infected with a public interest" and are subject to civil statutory regulation.

The above process, in fact, has been admitted by the U.S. Supreme Court and the California Supreme Court as the "very essence" of CIVIL government:

*"When one becomes a member of society, he necessarily parts with some rights or privileges which, as an individual not affected by his relations to others, he might retain. HN4 "A body politic," as aptly defined in the preamble of the Constitution of Massachusetts, "is a social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good." This does not confer power upon the whole people to control rights which are purely and exclusively private, Thorpe v. R. & B. Railroad Co., 27 Vt. 143; but it does authorize the establishment of laws requiring each citizen to so conduct himself, and so use his own property, as not unnecessarily to injure another. This is the very essence of government, and has found expression in the maxim sic utere tuo ut alienum non loedas. From this source come the HN5 police powers, which, as was said by Mr. Chief Justice Taney in the License Cases, 5 How. 583, "are nothing more or less than the powers of government inherent in every sovereignty, . . . that is to say, . . . the power to govern men and things." Under these powers the government regulates the conduct of its citizens one towards another, and the manner in which each shall use his own property, when such regulation becomes necessary for the public good. In their exercise it has been customary in England from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, &c., and in so doing to fix a maximum of charge to be made for services rendered, accommodations furnished, and articles sold. To this day, statutes are to be found in many of the States upon some or all these subjects; and we think it has never yet been successfully contended that such legislation came within any of the constitutional prohibitions against interference with private property. With the Fifth Amendment in force, Congress, in 1820, conferred power upon the city of Washington "to regulate . . . the rates of wharfage at private wharves, . . . the sweeping of chimneys, and to fix the rates of fees therefor, . . . and the weight and quality of bread," 3 Stat. 587, sect. 7; and, in 1848, "to make all necessary regulations respecting hackney carriages and the rates of fare of the same, and the rates of hauling by cartmen, wagoners, carmen, and draymen, and the rates of commission of auctioneers," 9 id. 224, sect. 2."*

*"From this it is apparent that, down to the time of the adoption of the Fourteenth Amendment, it was not supposed that statutes regulating the use, or even the price of the use, of private property necessarily deprived an owner of his property without due process of law. Under some circumstances they may, but not under all. The amendment does not change the law in this particular: it simply prevents the States from doing that which will operate as such a deprivation."*

*"This brings us to inquire as to the principles upon which this power of regulation rests, in order that we may determine what is within and what without its operative effect. Looking, then, to the common law, from whence came the right which the Constitution protects, we find that when private property is "affected with a public interest, it ceases to be juris privati only." This was said by Lord Chief Justice Hale more than two hundred years ago, in his treatise De Portibus Maris, 1 Harg. Law Tracts, 78, and has been accepted without objection as an essential element in the law of property ever since. Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control."*

*[Munn v. Illinois, 94 U.S. 113 (1876)]*

*"It will be found that from the earliest periods of our history the State laws regulated the privilege of the elective franchise within their respective limits, and that these laws were exactly such as local interests, peculiar conditions, or supposed policy dictated, and that it was never asserted that the exclusion of any class of inhabitants from the privilege of voting amounted to an interference with the privileges of the excluded class as citizens. As was well said by Judge Mills, of the Court of Appeals of Kentucky: "The mistake on the subject arises from not attending to a sensible distinction between political and civil rights. The latter constitute the citizen, while the former are not necessary ingredients. A State may deny all her political rights to an individual, and yet he may be a citizen. The rights of office and suffrage are political purely, and are denied by some or all the States to part of their population, who are still citizens. A citizen, then, is one who owes the Government*

allegiance, service, and money by way of taxation, and to whom the Government, in turn, grants and guarantees liberty of person and of conscience, the right of acquiring and possessing [PUBLIC, not PRIVATE] property [WHY?, because the CONSTITUTION protects PRIVATE property ONLY, and CIVIL STATUTES protect PUBLIC PROPERTY. You have to SURRENDER some portion of the protections of the CONSTITUTION in order to acquire, use, or "benefit" from PUBLIC property], of marriage and the social relations, of suit and defense, and security of person, estate, and reputation. These, with some others which might be enumerated, being guaranteed and secured by Government, constitute a citizen. To aliens we extend these privileges by courtesy; to others we secure them--to male as well as female--to the infant as well as the person of hoary hairs." (1 Litt. R. 342.)"  
 [Van Valkenburg v. Brown, 43 Cal. 43 (1872)]

In the context of GOVERNMENT grants of property:

1. This conveyance of property is the foundation of ALL governmental civil statutory privileges and most civil statutory law, as explained in [Why Civil Statutory Law is Law for Government and Not Private Persons, Form #05.037](#).
2. The constitutional authority for such grants is [Article 4, Section 3, Clause 2](#) of the U.S. Constitution, which allows Congress to "dispose of and make all needful rules and Regulations respecting the Territory or other property belonging to the United States".
3. Those receiving the granted property and the associated privileges essentially waive their constitutional rights under the Constitutional Avoidance Doctrine of Rules of the U.S. Supreme Court, [Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 56 S.Ct. 466 \(1936\)](#).
4. Individual agencies of the government are created to manage the SPECIFIC property and franchises and privileges loaned or granted, and such agencies DO NOT have jurisdiction over PRIVATE parties NOT in receipt or eligible to receive said property. These agencies are referred to as "the administrative state". [Click here](#) for details on the "Administrative State".
5. Types of property that may be loaned must fit within [5 U.S.C. §553\(a\)\(2\)](#).
6. In the context of GOVERNMENT property so granted or loaned to the public, the party in temporary custody of the property is legally defined as a "public officer" subject to DIRECT legislative control of Congress WITHOUT the need for implementing regulations pursuant to [5 U.S.C. §553\(a\)](#), and [44 U.S.C. §1505\(a\)\(1\)](#).

*"Public office. The right, authority, and duty created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of government for the benefit of the public. Walker v. Rich, 79 Cal.App. 139, 249 P. 56, 58. An agency for the state, the duties of which involve in their performance the exercise of some portion of the sovereign power, either great or small. Yaselli v. Goff, C.C.A., 12 F.2d. 396, 403, 56 A.L.R. 1239; Lacey v. State, 13 Ala.App. 212, 68 So. 706, 710; Curtin v. State, 61 Cal.App. 377, 214 P. 1030, 1035; Shelmadine v. City of Elkhart, 75 Ind.App. 493, 129 N.E. 878. State ex rel. Colorado River Commission v. Frohmiller, 46 Ariz. 413, 52 P.2d. 483, 486. **Where, by virtue of law, a person is clothed, not as an incidental or transient authority, but for such time as de- notes duration and continuance, with Independent power to control the property of the public, or with public functions to be exercised in the supposed interest of the people, the service to be compensated by a stated yearly salary, and the occupant having a designation or title, the position so created is a public office. State v. Brennan, 49 Ohio.St. 33, 29 N.E. 593.***  
 [Black's Law Dictionary, Fourth Edition, p. 1235]

7. Jurisdiction over government property extends EXTRATERRITORIALLY and INTERNATIONALLY, and thus grants can occur anywhere in the world and may cross state borders and reach into a Constitutional state of the Union.
8. There is NO CONSTITUTIONAL AUTHORITY EXPRESSLY GRANTED that allows government to abuse government property to CREATE new public offices. This is a usurpation and an invasion of the states in violation of [Article 4, Section 4](#) of the Constitution.
9. This source of jurisdiction is the MAIN source of jurisdiction in the case of the income tax, which is an excise tax and a franchise tax upon federal offices legislatively created by Congress but usually implemented ILLEGALLY and UNCONSTITUTIONALLY within states of the Union, as described in [Challenge to Income Tax Enforcement Authority Within Constitutional States of the Union, Form #05.052](#).

God vehemently forbids Christians from participating in any grants or loans of government property and warns Christians that they will be CURSED if they participate. This curse is the STRONGEST and SCARRIEST curse in all the bible:

#### *Curses of Disobedience [to God's Laws]*

*"The alien [Washington, D.C. is legislatively "alien" in relation to states of the Union] who is among you shall rise higher and higher above you, and you shall come down lower and lower [malicious destruction of EQUAL PROTECTION and EQUAL TREATMENT by abusing FRANCHISES]. He shall lend to you [Federal Reserve counterfeiting franchise], but you shall not lend to him; he shall be the head, and you shall be the tail.*

*"Moreover all these curses shall come upon you and pursue and overtake you, until you are destroyed, because you did not obey the voice of the Lord your God, to keep His commandments and His statutes which He commanded you. And they shall be upon you for a sign and a wonder, and on your descendants forever.*

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"Because you did not serve [ONLY] the Lord your God with joy and gladness of heart, for the abundance of everything, therefore you shall serve your [covetous thieving lawyer] enemies, whom the Lord will send against you, in hunger, in thirst, in nakedness, and in need of everything; and He will put a yoke of iron [[franchise codes](#)] on your neck until He has destroyed you. The Lord will bring a nation against you from afar [the District of CRIMINALS], from the end of the earth, as swift as the eagle flies [the American Eagle], a nation [whose language \[LEGALESE\] you will not understand](#), a nation of fierce [coercive and fascist] countenance, which does not respect the elderly [assassinates them by denying them healthcare through bureaucratic delays on an Obamacare waiting list] nor show favor to the young [destroying their ability to learn in the public FOOL system]. And they shall eat the increase of your livestock and the produce of your land [with "trade or business" franchise taxes], until you [and all your property] are destroyed [[or STOLEN/CONFISCATED](#)]; they shall not leave you grain or new wine or oil, or the increase of your cattle or the offspring of your flocks, until they have destroyed you. [[Deut. 28:43-51](#), Bible, NKJV]

The reason God forbids becoming and borrower of government property is that the legal relation created by the transaction, being a franchise or contract or agreement, causes conflicts of interest and allegiance and sin.

"The rich rules over the poor,  
And **the borrower is servant to the lender.**"  
[Prov. 22:7, Bible, NKJV]

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"**You shall make no covenant [contract or franchise] with them [foreigners, pagans], nor with their [pagan government] gods [laws or judges].** They shall not dwell in your land [and you shall not dwell in theirs [by becoming a "resident" or domiciliary in the process of contracting with them](#)], lest they make you sin against Me [God]. For if you serve their [government] gods [under [contract or agreement or franchise](#)], it will surely be a snare to you."  
[[Exodus 23:32-33](#), Bible, NKJV]

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"I [God] brought you up from Egypt [slavery] and brought you to the land of which I swore to your fathers; and I said, 'I will never break My covenant with you. And **you shall make no covenant [contract or franchise or agreement of ANY kind] with the inhabitants of this [corrupt pagan] land; you shall tear down their [man/government worshipping socialist] altars.**' But you have not obeyed Me. Why have you done this?"

"Therefore I also said, **'I will not drive them out before you; but they will become as thorns [terrorists and persecutors] in your side and their gods will be a snare [slavery!] to you.'**"

So it was, when the Angel of the LORD spoke these words to all the children of Israel, that the people lifted up their voices and wept.  
[Judges 2:1-4, Bible, NKJV]

God also says that the only thing that Christians are allowed to be in relation to any and all governments is Merchants.

"For the Lord your God will bless you just as He promised you; **you shall lend to many nations, but you shall not borrow;** you shall reign over many nations, but they shall not reign over you."  
[Deut. 15:6, Bible, NKJV]

"The Lord will open to you His good treasure, the heavens, to give the rain to your land in its season, and to bless all the work of your hand. **You shall lend to many nations, but you shall not borrow.**"  
[Deut. 28:12, Bible, NKJV]

"**You shall not charge interest to your brother**--interest on money or food or anything that is lent out at interest."  
[Deut. 23:19, Bible, NKJV]

"To a foreigner you may charge interest, but to your brother you shall not charge interest, that the Lord your God may bless you in all to which you set your hand in the land which you are entering to possess."  
[Deut. 23:20, Bible, NKJV]

For more information on the subject of franchises and their perils and pitfalls, see:

1. [Government Franchises Course](#), Form #12.012  
<https://sedm.org/Forms/FormIndex.htm>

2. *Government Instituted Slavery Using Franchises*, Form #05.030  
<https://sedm.org/Forms/FormIndex.htm>
3. *How Scoundrels Corrupted Our Republican Form of Government*, Family Guardian Fellowship (OFFSITE LINK)  
<https://famguardian.org/Subjects/Taxes/Evidence/HowScCorruptOurRepubGovt.htm>

For tools and tactics to FIGHT the EXTRATERRITORIAL abuse of franchises and the UNCONSTITUTIONAL grants of government property that implement them, see:

1. *Hot Issues: Laws of Property*, SEDM  
<https://sedm.org/laws-of-property/>
2. *Authorities on Rights as Property*, SEDM  
<https://sedm.org/authorities-on-rights-as-property/>
3. *Path to Freedom*, Form #09.015, Sections 5.5 through 5.8  
<https://sedm.org/Forms/FormIndex.htm>
4. *Separation Between Public and Private Course*, Form #12.025  
<https://sedm.org/Forms/FormIndex.htm>
5. *Private Right or Public Right? Course*, Form #12.044  
<https://sedm.org/Forms/FormIndex.htm>
6. *Lawfully Avoiding Government Obligations Course*, Form #12.040  
<https://sedm.org/Forms/FormIndex.htm>
7. *Proof of Claim: Your Main Defense Against Government Greed and Corruption*, Form #09.073  
<https://sedm.org/Forms/FormIndex.htm>
8. *Federal Enforcement Authority Within States of the Union*, Form #05.032  
<https://sedm.org/Forms/FormIndex.htm>
9. *Challenge to Income Tax Enforcement Authority Within Constitutional States of the Union*, Form #05.052  
<https://sedm.org/Forms/FormIndex.htm>
10. *Administrative State: Tactics and Defenses Course*, Form #12.041  
<https://sedm.org/Forms/FormIndex.htm>

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## 1.29 **Benefit**

The term "Benefit" means advantage; profit; fruit; gain; interest, and real consideration associated with a specific transaction which conveys a right or property interest to a specific status, class, or group lawfully requesting said "benefit" which:

1. Is not dispensed by an administrative agency of any state or federal government, but by a private individual.
2. Does not require the recipient to be an officer, agent, employee, or "personnel" within any government.
3. Is not called a "tax" or collected by the Internal Revenue Service, but is clearly identified as "private business activity beyond the core purposes of government".
4. Does not confer upon the grantor any form of sovereign, official, or judicial immunity.
5. Is legally enforceable in OTHER than a franchise court or administrative agency. That is, may be heard in equity within a true, Article III constitutional court and NOT a legislative franchise court.
6. True constitutional courts are provided in which to litigate disputes arising under the benefit and those with said disputes are not required to exhaust administrative remedies with an executive branch agency BEFORE they may litigate. These constitutional courts are required to produce evidence that they are constitutional courts with OTHER than strictly legislative franchise powers when challenged by the recipients of said benefits.
7. The specific value of the consideration can be quantified at any time.
8. Monies paid in by the recipient to subsidize the program are entirely refundable if the benefits they pay for have not been received or employed either partially or in full.
9. Has all contributions paid in refunded if they die and never collect any benefits.
10. Participation in the program is not also attached to any other government program. For instance, being a recipient of "social insurance" does not also make the recipient liable for unrelated or other federal taxes.
11. The term "benefit" must be defined in the franchise agreement that dispenses it, and its definition may not be left to the subjective whims of any judge or jury.
12. If the "benefit" is financial, then it is paid in lawful money rather than Federal Reserve Notes, which are non-interest bearing promissory notes that are not lawful money and are backed by nothing.

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## ***Sovereignty and Freedom Points and Authorities***

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13. The franchise must expressly state that participation is voluntary and that no one can be prosecuted or punished for failure to participate.
14. The identifying numbers, if any, that administer the program may not be used for identification and may not be shared with or used by any nongovernmental entity other than the recipient him or her self.
15. May not be heard by any judge, jurist, or prosecutor who is a recipient or beneficiary of the same benefit, because this would cause a conflict of interest in violation of 18 U.S.C. §208, 28 U.S.C. §144, and 28 U.S.C. §455, 18 U.S.C. §597, and 18 U.S.C. §201.
16. During any litigation involving the “benefit”, both the grantor and the grantee share equal obligation to prove that equally valuable consideration was provided to the other party. Note that Federal Reserve Notes do not constitute lawful money or therefore consideration.
17. Does NOT include a return of monies UNLAWFULLY withheld against a non-taxpayer. It is not a commercial “benefit” or “purposeful availment” to have property STOLEN by a corrupted government returned to me.

Anything offered by the government that does not meet ALL of the above criteria is herein defined as an INJURY and a TORT. Compelled participation is stipulated by both parties as being slavery in criminal violation of 18 U.S.C. §1583, 42 U.S.C. §1994, and the Thirteenth Amendment.

Receipt and/or acceptance of any government form by any government constitutes consent by the recipient of the application to use the above definition of “benefit” in any disputes that might arise over such acceptance. Government recipient and its agents, employees, and assignees forfeit their right as private individuals acting in any government office to define the term “benefit” and agree to use ONLY the above definition.

Because the Submitter is ineligible for and does not seek any kind of “benefit” by submitting any of the attached forms, the Submitter and Recipient both stipulate that the perjury statement has no “materiality” or legal actionability because it cannot produce any kind of injury to the Recipient.

Parties stipulate that this definition applies to any and all past, present, or future forms they receive by any parties concerned with this disclaimer.

More on the subject of "benefit" can be found at:

1. [Sovereignty Forms and Instructions Online, Form #10.004, Cites by Topic: "benefit" -legal authorities on "benefit"](https://famguardian.org/TaxFreedom/CitesByTopic/Benefit.htm)
2. [Sovereignty and Freedom Points and Authorities, Litigation Tool #10.018, Section 4.10: "Benefits": ALLEGED but not ACTUAL public rights/property that CANNOT form lawful "consideration" in forming a lawful contract or civil statutory obligation](https://sedm.org/Litigation/10-PracticeGuides/PointsAuth.pdf)
3. [5 U.S.C. §553\(a\)\(2\)](https://www.law.cornell.edu/uscode/text/5/553)-Subjects those in receipt of "benefits" to DIRECT LEGISLATIVE CONTROL of congress. Watch out!
4. [Government Instituted Slavery Using Franchises, Form #05.030](https://sedm.org/Forms/05-MemLaw/Franchises.pdf)-Government "benefits" are illegally abused to establish unconstitutional franchises in the constitutional states of the Union
5. [The Government “Benefits” Scam, Form #05.040](https://sedm.org/product/the-government-benefits-scam-form-05-040/) (Member Subscriptions)
6. [Why the Government is the Only Real Beneficiary of All Government Franchises, Form #05.051](https://sedm.org/product/why-the-government-is-the-only-real-beneficiary-of-all-government-franchises-form-05-051/) (Member Subscriptions)
7. [Proof: How to Prove in Court that a So-Called Tax is REALLY an Illegal Extortion](https://sedm.org/proof-how-to-prove-in-court-that-a-so-called-tax-is-really-an-illegal-extortion)\*\* (Member Subscriptions)
8. [U.S. Constitution, Article 4, Section 3, Clause 2](https://law.justia.com/constitution/us/article-4/) - Gives Congress the authority to DIRECTLY and legislatively control all those in receipt of "benefits", which are government property on loan to the recipient with legal strings attached.
9. [Why the Federal Income Tax is a Privilege Tax Upon Government Property, Form #04.404](#) (Member Subscriptions)-income taxation is administered as a "benefit". The OFFICE of "taxpayer", "person", "individual", "citizen", and "resident" are legislatively created and granted property and all those who use or invoke these statuses are in receipt of

a "benefit". If you doubt this, visit ID.ME and try to sign up for an account with the IRS. They are identified as a "benefit",

<https://sedm.org/product/why-the-federal-income-tax-is-a-privilege-tax-on-government-property-form-04-404/>

### 1.30 Weaponization of Government

The process by which a classically governmental function is abused as a method to destroy or war against private rights, private property, common law remedies, constitutional remedies, or even personal choice and autonomy. The PERPETRATOR we call the RECRUITER and the VICTIM we call the PEON, VASSAL, and SLAVE. We describe the HAZARDS of participating in, NOT opposing, or benefiting from the "weaponization of government" on the opening page of our site as follows:

*People of all races, genders, political beliefs, sexual orientations, and nearly all religions are welcome here. All are treated equally under REAL "law". The only way to remain truly free and equal under the civil law is to avoid seeking government civil services, benefits, property, special or civil status, exemptions, privileges, or special treatment. All such pursuits of government services or property require individual and lawful consent to a franchise and the surrender of inalienable constitutional rights AND EQUALITY in the process, and should therefore be AVOIDED. The rights and equality given up are the "cost" of procuring the "benefit" or property from the government, in fact. Nothing in life is truly "free". Anyone who claims that such "benefits" or property should be free and cost them nothing is a thief who wants to use the government as a means to STEAL on his or her behalf. All just rights spring from responsibilities/obligations under the laws of a higher power. If that higher power is God, you can be truly and objectively free. If it is government, you are guaranteed to be a slave because they can lawfully set the cost of their property as high as they want as a Merchant under the U.C.C. If you want it really bad from people with a monopoly, then you will pay dearly for the privilege. There are NO constitutional limits on the price government can charge for their monopoly services or property. Those who want no responsibilities can have no real/PRIVATE rights, but only privileges dispensed to wards of the state which are disguised to LOOK like unalienable rights. Obligations and rights are two sides of the same coin, just like self-ownership and personal responsibility. For the biblical version of this paragraph, read 1 Sam. 8:10-22. For the reason God answered Samuel by telling him to allow the people to have a king, read Deut. 28:43-51, which is God's curse upon those who allow a king above them. Click Here for a detailed description of the legal, moral, and spiritual consequences of violating this paragraph.*

[Sovereignty Education and Defense Ministry (SEDM) Website Opening Page; <http://sedm.org/>]

Below are the elements describing exactly what we mean by this term:

#### 1. The result is:

- 1.1. An INVOLUNTARY conversion of PRIVATE property, PRIVATE rights, and PRIVATE civil status into PUBLIC property, PUBLIC rights, and PUBLIC civil statutory status respectively.
- 1.2. A destruction of the legal separation between PUBLIC and PRIVATE. See:

*Separation Between Public and Private Course*, Form #12.025  
<https://sedm.org/LibertyU/SeparatingPublicPrivate.pdf>

- 1.3. A government that has superior or supernatural powers in relation to the people it was created to SERVE from below rather than RULE from above.
- 1.4. The creation of a ALLEGED but not ACTUAL consensual connection between a fictional office (the "franchisee") in the government and an otherwise PRIVATE human OUTSIDE the government.
- 1.5. A destruction of equality of treatment and protection between the GOVERNORS and the GOVERNED. See:

*Requirement for Equal Protection and Equal Treatment*, Form #05.033  
<https://sedm.org/Forms/05-MemLaw/EqualProtection.pdf>

- 1.6. The establishment of a civil or governmental religion in violation of the First Amendment. See:

*Socialism: The New American Civil Religion*, Form #05.016  
<https://sedm.org/Forms/05-MemLaw/SocialismCivilReligion.pdf>

#### 2. Such activities:

- 2.1. Work a purpose OPPOSITE of that of establishing government in the first place, which is EXCLUSIVELY the protection of PRIVATE property and PRIVATE rights.
- 2.2. Violate the Bill of Rights of the constitution of the government doing so.
- 2.3. Violate the oath of office of those working in the government who conspire to engage in such activities.
- 2.4. Result in a conversion of the government engaging in them from DE JURE to DE FACTO. See:

*De Facto Government Scam*, Form #05.043  
<https://sedm.org/Forms/05-MemLaw/CorpGovt.pdf>

3. The method of instituting this weaponization of government usually consists of illegal "bundling" of a WANTED service with an UNWANTED service, privilege or franchise. This makes it IMPOSSIBLE to avoid the UNWANTED service, privilege, or franchise, because:
  - 3.1. The government has a monopoly on the WANTED aspect of the product or service.
  - 3.2. Private industry is usually legally prohibited from offering the WANTED service. In some cases, the offering of the service is a criminal offense, in order to ENSURE and protect this criminal mafia racketeering.
4. The techniques described herein fit in the following CRIMINAL categories:
  - 4.1. Extortion. [18 U.S.C. §872](#). They are coercing you into a public office and franchise so you become a usually ONGOING sponsor of their criminal activities.
  - 4.2. Offer to procure appointive public office. [18 U.S.C. §210](#). Offering you the UNWANTED portion of the service, which is usually a public office, constitutes a criminal offer to procure the public office with the bribe of "benefits" that you technically aren't eligible for.
  - 4.3. Bribery of public officials and witnesses. [18 U.S.C. §201](#). The monies paid to the government under the coerced public office or fiction occupied by the victim of this extortion constitute bribes to a public official to treat you AS IF you are a real de jure public officer and to pay you "benefits" that only public officers can collect.
  - 4.4. Conflict of interest. [18 U.S.C. §208](#). A criminal financial conflict of interest is created in the people offering the WANTED service to market and compel the UNWANTED service to increase their revenues.
  - 4.5. Peonage and slavery. [18 U.S.C. §1581](#) and Thirteenth Amendment. The civil statutory obligations that attach to the compelled office that the VICTIM involuntarily occupies constitute PEONAGE.
  - 4.6. Impersonating a public officer. [18 U.S.C. §912](#). Government can only regulate its own officers. Those officers must, in turn, be lawfully elected, appointed, or hired and they NEVER are. Following proper appointment, election, or hiring protocol would, after all, inform you that you are a volunteer, and they can NEVER admit that they need your consent to regulate you.
5. Those in government engaging in such activities protect themselves from criminal consequences by:
  - 5.1. Abusing "equivocation" of key terms to make PUBLIC and PRIVATE indistinguishable.
  - 5.2. Playing stupid.
  - 5.3. Ensuring that people administering the program are NOT legally responsible or accountable for anything they say, write, or publish. See:
 

*Legal Deception, Propaganda, and Fraud*, Form #05.014  
<https://sedm.org/Forms/05-MemLaw/LegalDecPropFraud.pdf>
  - 5.4. Compartmentalizing service personnel at the bottom by telling them to learn PROCEDURES and NEVER actual LAW. Thus, they can claim plausible deniability and never be prosecuted personally for their criminal activities. .
6. To ensure the continuation and protection of the weaponization of government, the corrupt government agents and employees engaging in it will:
  - 6.1. Hide forms for quitting the programs.
  - 6.2. Describe the program as "voluntary" but provide no regulations, forms, or internal procedures to QUIT.
  - 6.3. Not offer options on the application for the WANTED service any method of UNBUNDLING or REMOVING the UNWANTED service from the transaction.
  - 6.4. Define no statutory or regulatory terms which recognize ANYONE who has not volunteered for the UNWANTED service so that their PRIVATE rights can be legally recognized and even ADMINISTRATIVELY enforced.  
The above tactics, in a PRIVATE business context, would be referred to as "marketing".
7. To ensure that the government is never victimized by the above tactics by PRIVATE people using it against THEM, the corrupted and covetous government must implement SOVEREIGN IMMUNITY in its own case but DENY it to the sovereign people they serve:
  - 7.1. Government must claim to have sovereign immunity which requires EXPRESS WRITTEN CONSENT to surrender that sovereign immunity. By the way, the CONSTITUTION DOES NOT AUTHORIZE sovereign immunity and there is therefore NO SUCH THING! See: [Najim v. CACI Premier Tech., Inc., 368 F.Supp.3d. 935 \(2019\)](#).
  - 7.2. The Sovereign People from whom that sovereign immunity was delegated DO NOT have sovereign immunity. Thus, sovereign immunity is a "supernatural power" the people as the "natural" cannot and do not possess.
  - 7.3. All people signing up for the SCAM UNWANTED service do so through usually IMPLIED rather than EXPRESS consent. Thus, they are UNAWARE that they are "electing" themselves ILLEGALLY into a public office and joining the government by doing so. This constitutes fraud, because they are NOT ALLOWED to know that is what they are doing, and if they knew that was what they were doing, they would DEMAND the ability to NOT CONSENT to the UNWANTED service connected to the office and receive only the WANTED service or product. See:



*Proof That There Is a "Straw Man",* Form #05.042  
<https://sedm.org/Forms/05-MemLaw/StrawMan.pdf>

8. Synonyms for this process include: adhesion contract, unconscionable contract, compelled franchise, compelled privilege, SLAVERY, PEONAGE, HUMAN TRAFFICKING.

Examples of government programs which usually implement "weaponization of government" as described above:

1. Passports. Most people use this document mainly for INTERSTATE travel and ID to conduct commerce, neither of which can be or should be "privileged" or regulated. Foreign travel use requests the PRIVILEGE of protection abroad is only secondary and should be optional. The Department of State should offer TWO passports, one for INTRASTATE use and one for FOREIGN use, so that you have a "NONPRIVILEGED" version of the document that you can obtain WITHOUT the need to collect an SSN or TIN. Forcing applicants to provide an SSN or TIN to receive ANY kind of passport essentially bundles a DE FACTO public office with otherwise PRIVATE travel. That office is called "STATUTORY citizen" under [8 U.S.C. §1401](#), 26 C.F.R. §1.1-1(c), etc. See:

*Getting a USA Passport as a "State National",* Form #10.013

<https://sedm.org/product/getting-a-usa-passport-as-a-state-national-form-10-013/>

2. State "resident" ID. This id is intended primarily for use in commerce, and most people, if they had a choice, would AVOID the STATUTORY "resident" civil status and public office bundled with it.
3. Driver licensing. This id is intended primarily for use in commerce, and most people, if they had a choice, would AVOID the STATUTORY "driver" civil status and public office bundled with it.
4. Marriage licensing. Licensed marriage is a civil statutory privilege and a three party contract. A licensed marriage is polygamy with the state, and the state is the only one of the three parties who can rewrite the contract at will any time they wan. Thus, the state literally becomes god as the only party with superior or supernatural powers in violation of the First Amendment.
5. Professional licensing. Government uses licenses to institute in effect ECONOMIC EMBARGOES on all those who don't follow their rules. If you don't follow their rules and regulations, they take away the license. In the absence of a license, you lose business and could literally starve in some cases. The result is GENOCIDE.
6. Building permits. It's not your property if you need permission from the government to do anything to it that doesn't demonstrably injure others.
7. Property taxes. Through the Torrens Act and the building code, the state claims a shared ownership in the property and acquires absolute ownership. If you don't pay the property tax, they literally STEAL your property and all your equity. The absolute owner is the only party who can deprive other parties of the use of the property so they are the absolute owner.
8. The Federal Reserve counterfeiting franchise. We presently have "currency", and not "money". Currency in turn is a debt instrument, and the effective lender is the PRIVATE, for profit, Federal Reserve. Every attempt to regulate the use of this fiat currency through money laundering statutes presupposes that those handling it are engaged in a public office in the national government. See:
- 8.1. *The Money Scam*, Form #05.041  
<https://sedm.org/Forms/05-MemLaw/MoneyScam.pdf>
- 8.2. *The Money Laundering Enforcement Scam*, Form #05.044  
<https://sedm.org/Forms/05-MemLaw/MoneyLaunderingScam.pdf>
9. Criminal courts, who will insist that you must be "REPRESENTED" essentially by a public officer and officer of the court with a criminal financial conflict of interest, or they won't allow litigation to proceed. See:

*Unlicensed Practice of Law*, Form #05.029

<https://sedm.org/product/unlicensed-practice-of-law-form-05-029/>

In the private commercial marketplace, such tactics by large corporations include the following:

1. The Google Android operating system:
- 1.1. If phone manufacturers what to implement on their phone, must agree to use Google Search as their default search engine.
  - 1.2. Developers who want to sell their apps in the Google Play store must run all payments through the Google Play payment system and pay a commission to Google. They are NOT allowed to have their OWN private app store or payment platform.

2. The Apple IOS operating system. Vendors who want to offer their apps in the Apple Store must use the Apple payment platform and pay an exorbitant 30% of all revenues their app collects, even if it isn't the sale of their app initially. This is extortion.
3. The Microsoft Windows operating system. For years, Microsoft mandated that the Internet Explorer browser had to be installed as the default browser on all new PC's sold, or the manufacturer could not buy Windows to install on their computer.
4. Amazon marketplace. Third party vendors who sell on Amazon must agree in writing when they sign up to NEVER offer the products they sell on Amazon at a LOWER price than the Amazon price.
5. Banks. Most banks COMPEL you ILLEGALLY into a public office called a STATUTORY "U.S. Person" in order to open a bank account, even though it is ILLEGAL to occupy or elect yourself into such an office. They do this by refusing to accept the W-8 form and mandating the use of the W-9 form to open an account, even though the W-9 doesn't apply to most Americans. See:

*"U.S. Person" Position*, Form #05.052

<https://sedm.org/Forms/05-MemLaw/USPersonPosition.pdf>

6. Money Service Businesses (MSBs) such as Western Union. They require you to provide an SSN in order to obtain a reloadable gift card and claim that "the law" mandates this.

- 6.1. Their basis for doing so is usually "anti-money laundering" statutes (not "laws", but "statutes") that DO NOT apply to the average American. See:

*The Money Laundering Enforcement Scam*, Form #05.044

<https://sedm.org/Forms/05-MemLaw/MoneyLaunderingScam.pdf>

- 6.2. No law mandates that a state national and nonresident alien not engaged in the "trade or business" franchise must have or use an SSN or TIN, but they ILLEGALLY refuse to allow prospective cardholders to claim this status or avoid the SSN/TIN requirement. See:

*About IRS Form W-8BEN*, Form #04.202

<https://sedm.org/Forms/04-Tax/2-Withholding/W-8BEN/AboutIRSFormW-8BEN.htm>

7. Private employers accepting job applicants. They say you MUST fill out a W-4 and will not accept a W-8 in order to obtain a job, NOT as an "employee", but simply as a "worker" who is NOT a statutory government "employee". See

*Federal and State Withholding Options for Private Employers*, Form #09.001

<https://sedm.org/Forms/09-Procs/FedStateWHOptions.pdf>

The European Union has previously SANCTIONED large corporations to the tune of billions of dollars of penalties connected with the above tactics, which they label in court as "anti-competitive behavior". Why aren't they applying the SAME tactics to THEMSELVES, as far as the MONEY system? For instance, why aren't PRIVATE companies allowed to have private money systems and not connect those who use them into a public office illegally? Every time someone tries to do this, they get RAIDED illegally under the guise of "know your customer rules" that don't apply to private people. This has happened with eGold, Bitclub, Liberty Dollar, National Commodity and Barter Association (NCBA), and MANY others. Litigating against these entities can only have one purpose: Protect a de facto monopoly on money that the Constitution does NOT EXPRESSLY authorize and which is therefore FORBIDDEN. See:

1. *The Money Scam*, Form #05.041  
<https://sedm.org/Forms/05-MemLaw/MoneyScam.pdf>
2. *Why It Is Illegal for You to Enforce Money Laundering Statutes In My Specific Case*, Form #06.046  
<https://sedm.org/Forms/06-AvoidingFranch/MonLaundEnfIllegal.pdf>
3. *Money Laundering Enforcement Scam*, Form #05.044  
<https://sedm.org/Forms/05-MemLaw/MoneyLaunderingScam.pdf>

The main purpose of ELIMINATING all "weaponization of government" as described above is to:

1. Pursue "justice", which is legally defined as the "right to be left alone" by everyone, INCLUDING and ESPECIALLY government. See:

*What is "Justice"?*, Form #05.050

<https://sedm.org/Forms/05-MemLaw/WhatIsJustice.pdf>

2. Restore the constitutional separation between PUBLIC and PRIVATE. The Constitution is a TRUST indenture, and the main "benefit" it delivers, in fact, is PRIVATE PROPERTY! See:

*Separation Between Public and Private Course*, Form #12.025

<https://sedm.org/LibertyU/SeparatingPublicPrivate.pdf>

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3. Restore government to its DE JURE functions and eliminate all DE FACTO practices. See:

*De Facto Government Scam*, Form #05.043  
<https://sedm.org/Forms/05-MemLaw/DeFactoGov.pdf>

4. Eliminate the "Administrative State" that depends for its entire existence upon the ILLEGAL creation of the public offices that animate and implement the above FRAUD upon the people. See:

*Administrative State: Tactics and Defenses Course*, Form #12.041  
<https://sedm.org/LibertyU/AdminState.pdf>

5. Eliminate the criminal activities and criminal financial conflicts of interest in both the judiciary and the legal profession created by the above which are extensively documented in:

*Government Corruption*, Form #11.401  
<https://sedm.org/home/government-corruption/>

### 1.31 Natural law

For the purposes of this website and ministry, the term "natural law" is synonymous with the following behavior by civil government:

1. ALL property is absolutely owned.
2. The protection of private property is not regarded by anyone in government as "making law" (Litigation Tool #01.009), but rather a fulfillment of the main purpose of establishing government and the oath that all public officers take when accepting office. The CIVIL statutes DO NOT protect PRIVATE property, but PUBLIC property that became public by donating PRIVATE property to a public use, a public purpose, and/or a public office. In that sense, the current civil government ONLY PROTECTS ITSELF and its own PUBLIC property, and NEVER YOU or ANY HUMAN BEING at least from a CIVIL perspective! See:

*Why The Government is the Only Real Beneficiary of All Government Franchises*, Form #05.051\*\*  
<https://sedm.org/product/why-the-government-is-the-only-real-beneficiary-of-all-government-franchises-form-05-051/>

3. Civil statutes (Form #05.037) are not called "law", but civil service franchise contracts.
  4. Only voting and jury service are privileges that can be CIVILLY regulated by default. Any other thing that is a voluntary privilege must be expressly signed up for and PAID for in writing on the annual tax return filed at the beginning of each year and only lasts for one year.
  5. Government ID's are NOT used to change your civil status to a "resident" or "domiciliary". You remain PRIVATE when using government ID. See:
- Hot Issues: Identification and Identity Theft\**, SEDM  
<https://sedm.org/identification/>
6. No other franchise or privilege (Form #05.030) is or can be bundled with voting or jury service, such as civil DOMICILE (Form #05.002).
  7. All government "civil services" must be requested IN WRITING at the beginning of each year and you only pay for what you ask for. The purpose of filing tax returns is to CONSENT to specific civil services you want and to pay for them in advance. Those who didn't pay for them may not receive them. See SEDM Disclaimer, Section 4.6 for a definition of "civil service".
  8. Everyone is subject to the criminal and common law, whether they consent or not.
  9. Civil courts may not enforce civil statutory law upon any party UNLESS they expressly consented in writing to receive its benefits as public property. If they didn't, only the common law and criminal law applies. That consent shall appear on the tax return filed annually.
  10. Administrative tax enforcement is NOT permitted and not necessary, since all civil services consumed are prepaid annually in advance. If you don't prepay, you don't get the service.
  11. Every government agent is personally accountable for the accuracy and truthfulness of EVERYTHING he or she communicates to the public that might have an adverse affect on PRIVATE property or PRIVATE rights. Thus, they are PRESUMED to be communicating under penalty of perjury at all times. If they lie, they are civilly penalized. ANONYMOUS communication or collection letters are FORBIDDEN. All must be signed by a human being.
  12. All government "benefits" are regarded as "civil services" that must be 100% paid annually for by those who consume them AS THEY ARE USED. Use of public funds for charity is FORBIDDEN.

13. The filing of [information returns \(Form #04.001\)](#) such as the W-2 and 1099 are forbidden and a criminal offense of impersonating a public office. They are unnecessary if civil services are consented to and paid for annually and you don't need to BE a public officer to consume civil services. Being a sponsor is sufficient to consume said services.
14. Consent must always be OVERT and in writing, and NEVER COVERT or implied through actions of any kind. See:

*Hot Issues: Invisible Consent\**, SEDM  
<https://sedm.org/invisible-consent/>

For a system of government that implements the above and builds upon existing organic and statutory law, and which requires the least possible changes to the current system to implement, see:

*Self Government Federation: Articles of Confederation*, Form #13.002  
<https://sedm.org/Forms/13-SelfFamilyChurchGovnce/SGFArtOfConfed.pdf>

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## 1.32 United States

One of the most important and most abused phrases in government documents may be surprising to you. It's the "United States." The United States actually has four primary separate contexts and misinformed readers of government documentation may miss the entire point of any specific government document if they can't correctly interpret which CONTEXT of the phrase "United States" is actually being referenced in the text. In the real estate field, the three most important things are LOCATION, LOCATION, and LOCATION. In the LEGAL field, the most important thing is CONTEXT of the terms used. Generally, only judges and lawyers understand all the available contexts and are able to discern context by deciphering the nuance in a statute. For the legally uninformed, all the contexts are considered equivalent and YOU as the reader are considered the target of every context in order to illegally expand the jurisdiction and power of the court and the government.

As a result of purposeful confusion by the government we use narrow and well defined TERMS to distinguish between the various CONTEXTS of the United States (and other words of art as well). As you'll see below there are four primary separate contexts for the meaning of the "United States". In this Form/Document when we write material describing the United States we use separate terms to describe each one of the potential meanings. However; when we are quoting legal opinions that aren't our original creation we leave the term "United States" in the quotation, but we use a convention of \*, \*\*, \*\*\*, \*\*\*\* usually in brackets ("[\*\*]") when the words "United States" appear to help readers decipher which context was implied by the context.

By the end of this document, you should have a thorough understanding of how the National Government and the enclaves, territories and possessions, which is the same Congress, have colluded with States to unlawfully usurp power and constitutional rights from average Americans and they do it through the use of purposefully convoluted law and intentionally disguised words of art. The ultimate result is an immense financial crime against the American people. You should be able to recognize DECEPTIVE WORDS OF ART so that when you're reading government documentation you have a legal understanding of the nuance of government documents and potential contractual traps or legal manipulation resulting from them.

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### 1.32.1 The two separate geographical jurisdictions create 3 geographically based interpretations for the term the United States

*"The term 'United States' may be used in any one of several senses. It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in the family of nations. It may designate the territory over which the sovereignty of the United States extends, or it may be the collective name of the states which are united by and under the Constitution."*  
[\[Hooven & Allison Co. v. Evatt, 324 U.S. 652 \(1945\)\]](#)

Based on the above Supreme Court Decision there are three separate contexts of the word United States. This is where we apply the convention of \*, \*\*, and \*\*\* consistently used throughout not only this document, but all the materials found on our website.

1. United States\*: "It may be merely the name of a sovereign occupying the position analogous to that of other

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### ***Sovereignty and Freedom Points and Authorities***

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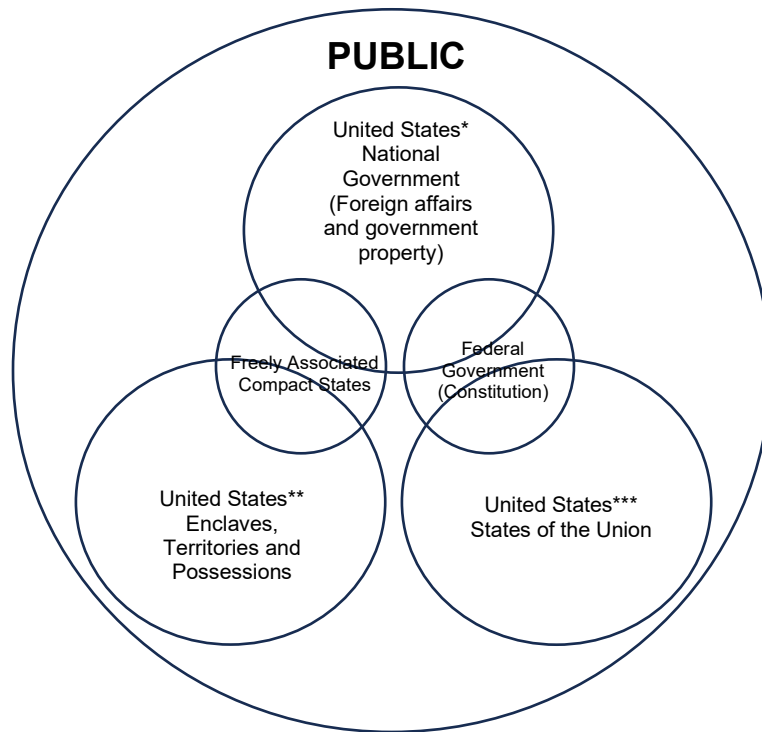
sovereigns in the family of nations”.

2. United States<sup>\*\*</sup>: “It may designate the territory over which the sovereignty of the United States extends”.
3. United States<sup>\*\*\*</sup>: “or it may be the collective name of the states which are united by and under the Constitution”.

Those definitions are lengthy, complicated, and annoying to quote. For simplicity we reference the geographical contexts as the following

1. United States<sup>\*</sup> - The Nation
2. United States<sup>\*\*</sup> - Enclaves, Territories, and Possessions
3. United States<sup>\*\*\*</sup> - States of the Union // the 50 states

If it’s not clear there’s a mathematical relationship between the three above GEOGRAPHICAL definitions. The math formula is  $1 = 2 + 3$ . In other words, the National Government is composed of both the land mass of the DC, Territories and Possessions and the land mass belonging to the 50 States. All three of the above are what we call the “Dr. Jekyll” de jure government:



**Figure 2: Geographical versions of "United States"**

The United States as described in Hooven sets up distinct geographical boundaries for the United States. Those different geographical boundaries are subject to different groups of people that operate those different United States.

1. United States<sup>\*</sup>- The Nation, is operated by the National Government.
2. United States<sup>\*\*</sup> - The Enclaves, Territories, and Possessions is operated by the same National Congress over what they call the Enclaves, Territories, and Possessions in a capacity the Supreme Court calls the “Federal Zone”.<sup>6</sup>
3. United States<sup>\*\*\*</sup> - The States of the Union are operated by the various State Governments.

<sup>6</sup> See: United States v. Lopez, 514 U.S. 549 (1995), Justice Kennedy concurring opinion.



**1.32.2 The first two of four definitions of United States**

Via the Bible it's established that God's jurisdiction is created by his ownership over a physical geography.

*"The heavens are Yours, the earth also is Yours; The world and all its fullness, You have founded them."  
[Psalm 89:11, Bible, NKJV]*

Only by absolute ownership can God then become the Lawgiver. He is the LORD because He owns the LAND. Hence, the phrase "Landlord". The "laws" in this scenario are merely a CIVIL STATUTORY regulation of the use of His property, not unlike how a Landlord can make rules for his or her tenants. In fact, in the following video, Satan himself recognizes God as "an absentee Land Lord".

*Devil's Advocate: Lawyers, SEDM*  
<http://sedm.org/what-we-are-up-against/>

Congress has jurisdiction over the territories and possessions. The Constitution in Article 4, Section 3, Clause 2 imputes to Congress the authority to "make needful rules" respecting its land and physical property:

*United States Constitution*

*Article 4, Section 3*

*The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.*

All CIVIL STATUTES, including all franchises, are a legitimate exercise of the above power. That power can, in fact, have no other legitimate source. Mere force, fraud, or deception cannot be the origin of that authority. Might does NOT make right as they say.

The Constitution is a trust indenture. It creates a corporation called the "United States\*\*\*\*". The "Corpus" of this trust is the community property owned by the United States\*\*\*\* corporation. Those serving as public officers are then trustees under that trust serving within that corporation. Trusts can be written down and intentionally created. They can also be generated as legal fictions as part of contracts or court matters. Article I, Section 8 of the U.S. Constitution enumerates, describes, and limits the exercise of the power of the "United States\*\*\*\*" to 17 specific subject matters:

*United States Constitution*  
*Article I: Legislative Department*  
*Section 8: Powers of Congress*  
*Clause 1. Power to Tax and Spend*

*The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.*

[. . .]

[*United States Constitution, SOURCE: <https://law.justia.com/constitution/us/article-1/>*]

The National Government derives its powers from the delegated powers of the union States. Each state separately delegated powers to the Nation. Additionally, the first continental congress, which was a group of states working together, collectively but not individually, had the power to levy taxes, wage war, etc. When the nation was brought together the right of the collective to wage war, levy taxes, etc. moved from the continental congress to the new National government. Further, the constitution splits those delegated powers into different branches- legislature, executive branch, and the judicial branch. Each branch has separate delegated powers to enable the 50 states to act as one larger nation, especially in regards to foreign nations and duties, customs, and impost, but without putting too much power in any single branch. Additionally, the Federal

jurisdiction also controls interstate arrangements between two or more separate states, particularly through the judicial branch, but the Federal jurisdiction does not extend within the intrastate policy of any single union state.

The second jurisdiction of the United States\*\* consists of DC and the territories and possessions. DC is a physical, geographical PLACE that's 10 square miles. Washington, DC is a federal enclave that was originally carved out of Maryland and Virginia. The Virginia side was taken back by the state, leaving only the Maryland side. The constitution enables the **exact same Congress as the National Government** to serve in the role of the municipal government of Washington DC as well as the possessions, territories, and what the State Department calls the "Freely Associated Compact States." These "States" (another deceptive Word of Art) aren't union States and as such **the Federal Constitution does not apply to them.** This land area and its government is collectively called the Federal Zone by the Supreme Court. This is a big problem, a giant oversight in the Federal Constitution, and a major contributing source of the criminal heist against Americans by the government.

To be clear, the Constitution requires Congress to operate in **two** roles simultaneously. They operate a Constitutional National Government of delegated powers derived from the Several States and the same legislature operates the Federal Zone Government, absent Constitutional restrictions, which is essentially a municipal function regarding DC, possessions, territories, and "Freely Associated Compact States."

*"It is clear that Congress, as a legislative body, exercise two species of legislative power: the one, limited as to its objects, but extending all over the Union: the other, an absolute, exclusive legislative power over the District of Columbia. The preliminary inquiry in the case now before the Court, is, by virtue of which of these authorities was the law in question passed?"*

[[Cohens v. Virginia, 19 U.S. 264, 6 Wheat. 265; 5 L.Ed. 257 \(1821\)](#)]

Congress in a Federal capacity is limited to a Constitutional Republic as outlined in the Constitution.

*United States Constitution  
Article 4: States Relations  
Section 4. Obligations of United States to States*

*The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.*

[SOURCE: <https://law.justia.com/constitution/us/article-4/>]

But that Constitution **does not** require the Federal Zone Government (United States\*\*) to operate in the same Constitutional capacity.

*"Indeed, the practical interpretation put by Congress upon the Constitution has been long continued and uniform to the effect [182 U.S. 244, 279] that **the Constitution is applicable to territories acquired by purchase or conquest, only when and so far as Congress shall so direct.** Notwithstanding its duty to 'guarantee to every state in this Union a republican form of government' (art. 4, 4), by which we understand, according to the definition of Webster, 'a government in which the supreme power resides in the whole body of the people, and is exercised by representatives elected by them,' Congress did not hesitate, in the original organization of the territories of Louisiana, Florida, the Northwest Territory, and its subdivisions of Ohio, Indiana, Michigan, Illinois, and Wisconsin and still more recently in the case of Alaska, to establish a form of government bearing a much greater analogy to a British Crown colony than a republican state of America, and to vest the legislative power either in a governor and council, or a governor and judges, to be appointed by the President. It was not until they had attained a certain population that power was given them to organize a legislature by vote of the people. In all these cases, as well as in territories subsequently organized west of the Mississippi, Congress thought it necessary either to extend to Constitution and laws of the United States over them, or to declare that the inhabitants should be entitled to enjoy the right of trial by jury, of bail, and of the privilege of the writ of habeas corpus, as well as other privileges of the bill of rights."*

[*Downes v. Bidwell, 182 U.S. 244 (1901)*]

The territories and possessions do not operate as a constitutional republic and instead it operates as a socialist democracy. The lack of constitutional constraints in the Federal Zone creates one of the central pillars on which the great heist is orchestrated. That heist is only possible because when there are no constitutional limitations on politicians, the result is COMPLETE ANARCHY and lawlessness because there is no mechanism to constrain what politicians can do. That state of anarchy is exhaustively proven in the following document:

[Your Irresponsible, Lawless, and Anarchist Beast Government](https://sedm.org/Forms/05-MemLaw/YourIrresponsibleLawlessGov.pdf), Form #05.054  
<https://sedm.org/Forms/05-MemLaw/YourIrresponsibleLawlessGov.pdf>

### 1.32.3 A fourth United States\*\*\*\* Definition - Contract has no geography

The fourth United States\*\*\*\* is a federal corporation.

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE  
 PART VI - PARTICULAR PROCEEDINGS  
 CHAPTER 176 - FEDERAL DEBT COLLECTION PROCEDURE  
 SUBCHAPTER A - DEFINITIONS AND GENERAL PROVISIONS  
 Sec. 3002. Definitions

(15) "United States" means -

(A) a Federal corporation;

(B) an agency, department, commission, board, or other entity of the United States; or

(C) an instrumentality of the United States.

"Corporations are also of all grades, and made for varied objects; all governments are corporations, created by usage and common consent, or grants and charters which create a body politic for prescribed purposes; but whether they are private, local or general, in their objects, for the enjoyment of property, or the exercise of power, they are all governed by the same rules of law, as to the construction and the obligation of the instrument by which the incorporation is made. One universal rule of law protects persons and property. It is a fundamental principle of the common law of England, that the term freemen of the kingdom, includes 'all persons,' ecclesiastical and temporal, incorporate, politique or natural; it is a part of their magna charta (2 Inst. 4), and is incorporated into our institutions. The persons of the members of corporations are on the same footing of protection as other persons, and their corporate property secured by the same laws which protect that of individuals. 2 Inst. 46-7. 'No man shall be taken,' 'no man shall be disseised,' without due process of law, is a principle taken from magna charta, infused into all our state constitutions, and is made inviolable by the federal government, by the amendments to the constitution."  
 [Proprietors of Charles River Bridge v. Proprietors of Warren Bridge, 36 U.S. 420 (1837)]

In the fourth capacity the United States\*\*\*\* corporation competes in the private marketplace for goods, commerce, and contracts to carry into operation the constitutional functions that it has been delegated. The corporation functions as a sovereign entity that cannot be sued in its own courts without its consent. This context of capacity as a "The Federal Zone" of the United States\*\* is described below as part of the Clearfield Doctrine:

See also Clearfield Trust Co. v. United States, 318 U.S. 363, 369 (1943) ("The United States does business on business terms") (quoting United States v. National Exchange Bank of Baltimore, 270 U.S. 527, 534 (1926)); Perry v. United States, supra at 352 (1935) ("When the United States, with constitutional authority, makes contracts, it has rights and incurs responsibilities similar to those of individuals who are parties to such instruments. There is no difference . . . except that the United States cannot be sued without its consent") (citation omitted); United States v. Bostwick, 94 U.S. 53, 66 (1877) ("The United States, when they contract with their citizens, are controlled by the same laws that govern the citizen in that behalf"); Cooke v. United States, 91 U.S. 389, 398 (1875) (explaining that when the United States "comes down from its position of sovereignty, and enters the domain of commerce, it submits itself to the same laws that govern individuals there").

See Jones, 1 Cl.Ct. at 85 ("Wherever the public and private acts of the government seem to commingle, a citizen or corporate body must by supposition be substituted in its place, and then the question be determined whether the action will lie against the supposed defendant"); O'Neill v. United States, 231 Ct.Cl. 823, 826 (1982) (sovereign acts doctrine applies where, "[w]ere [the] contracts exclusively between private parties, the party hurt by such governing action could not claim compensation from the other party for the governing action"). The dissent ignores these statements (including the statement from Jones, from which case Horowitz drew its reasoning literally verbatim), when it says, post at 931, that the sovereign acts cases do not emphasize the need to treat the government-as-contractor the same as a private party.  
 [United States v. Winstar Corp., 518 U.S. 839 (1996)]

The above case does NOT, however, mention the scenario where the Federal Zone Government of the United States\*\* is acting COMPLETELY outside of the constitution as a landlord over its own property under Article 4, Section 3, Clause 2. In that capacity, it implicitly surrenders its sovereign immunity and must operate entirely under equity (contract law) as an equal of every other private enterprise and entities that it is competing with in the commercial marketplace. When that corporation is acting OUTSIDE the constitution as the Federal Zone (over the United States\*\*), it is acting on an equal footing with every OTHER federal corporation under what is called the Clearfield Doctrine: The Government is not acting in a

### Sovereignty and Freedom Points and Authorities

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sovereign governmental capacity but in the corporate capacity as a mere private corporation like any other corporation engaged in commerce and contract law.

What you may not know is that the National government collectively functions as a corporation. As a corporation it has the right to contract like any other corporation. When it contracts it is no longer treated as a special class of corporation called a government, and instead of special treatment the United States\*\*\*\* is treated like every other corporation doing business. It's important to note that the law of contract has no geography.

*"Debt and contract [franchise agreement, in this case] are of no particular place."  
[Bouvier's Maxims of Law, 1856;  
SOURCE: <http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviersMaxims.htm>]*

So, the fourth description of the United States\*\*\*\* is anti-geographic or virtual. That is, the legal contracts formed with the United States\*\*\*\* have no geographic boundaries.

So in total there are four versions of the United States and they all have their basis in a GEOGRAPHICAL context.

1. United States\* National Government - The totality of the nation
2. United States\*\* Federal Zone consisting of enclaves, Territories and Possessions, meaning the District of Criminals, possessions and territories.
3. United States\*\*\* States of the Union (the combined geography of all 50 states).
4. United States\*\*\*\* As a legal entity contracting with individuals (individuals is another word of art, but we'll get there later), corporations, trusts, and government officers with no geographical limitations.

The corrupt "Mr. Hyde" version of the BEAST government is United States\*\*\*\*. The worst behavior of the government is experienced when the United States\*\*\*\* ABUSES contract law to do the OPPOSITE of what governments are created to do, which is protect PRIVATE property and PRIVATE rights ONLY. In this capacity, the corporation United States\*\*\*\*:

1. Colors private property into public property via franchise agreements and then targets the newly colored public property for confiscation, exploitation, and theft.
2. Operates in a "for profit" capacity instead of an eleemosynary non-profit capacity. Once the government has a profit or revenue motive, it DEFEATS the oaths of office that its officers are appointed under:

*"As expressed otherwise, the powers delegated to a public officer are held in trust for the people and are to be exercised in behalf of the government or of all citizens who may need the intervention of the officer."<sup>7</sup> **Furthermore, the view has been expressed that all public officers, within whatever branch and whatever level of government, and whatever be their private vocations, are trustees of the people, and accordingly labor under every disability and prohibition imposed by law upon trustees relative to the making of personal financial gain from a discharge of their trusts.<sup>8</sup> That is, a public officer occupies a fiduciary relationship to the political entity on whose behalf he or she serves.<sup>9</sup> and owes a fiduciary duty to the public.<sup>10</sup> It has been said that the fiduciary responsibilities of a public officer cannot be less than those of a private individual.<sup>11</sup> Furthermore, it has been stated that any enterprise undertaken by the public official which tends to weaken public confidence and undermine the sense of security for individual rights is against public policy.<sup>12</sup>***

<sup>7</sup> State ex rel. Nagle v. Sullivan, 98 Mont. 425, 40 P.2d. 995, 99 A.L.R. 321; Jersey City v. Hague, 18 N.J. 584, 115 A.2d. 8.

<sup>8</sup> Georgia Dep't of Human Resources v. Sistrunk, 249 Ga. 543, 291 S.E.2d. 524. A public official is held in public trust. Madlener v. Finley (1st Dist), 161 Ill.App.3d. 796, 113 Ill.Dec. 712, 515 N.E.2d. 697, app gr 117 Ill.Dec. 226, 520 N.E.2d. 387 and revd on other grounds 128 Ill.2d. 147, 131 Ill.Dec. 145, 538 N.E.2d. 520.

<sup>9</sup> Chicago Park Dist. v. Kenroy, Inc., 78 Ill.2d. 555, 37 Ill.Dec. 291, 402 N.E.2d. 181, appeal after remand (1st Dist) 107 Ill.App.3d. 222, 63 Ill.Dec. 134, 437 N.E.2d. 783.

<sup>10</sup> United States v. Holzer (CA7 Ill), 816 F.2d. 304 and vacated, remanded on other grounds 484 U.S. 807, 98 L.Ed.2d. 18, 108 S.Ct. 53, on remand (CA7 Ill) 840 F.2d. 1343, cert den 486 U.S. 1035, 100 L.Ed.2d. 608, 108 S.Ct. 2022 and (criticized on other grounds by United States v. Osser (CA3 Pa) 864 F.2d. 1056) and (superseded by statute on other grounds as stated in United States v. Little (CA5 Miss) 889 F.2d. 1367) and (among conflicting authorities on other grounds noted in United States v. Boylan (CA1 Mass), 898 F.2d. 230, 29 Fed.Rules.Evid.Serv. 1223).

<sup>11</sup> Chicago ex rel. Cohen v. Keane, 64 Ill.2d. 559, 2 Ill.Dec. 285, 357 N.E.2d. 452, later proceeding (1st Dist) 105 Ill.App.3d. 298, 61 Ill.Dec. 172, 434 N.E.2d. 325.

<sup>12</sup> Indiana State Ethics Comm'n v. Nelson (Ind App), 656 N.E.2d. 1172, reh gr (Ind App) 659 N.E.2d. 260, reh den (Jan 24, 1996) and transfer den (May 28, 1996).

[63C American Jurisprudence 2d, Public Officers and Employees, §247 (1999)]

3. Has the sole purpose of raising revenue (love of money) and expanding the authority and sovereignty and importance of politicians at the expense of the equality and dignity of the people they work for. This motive originates mainly from the MASSIVE deficit spending it engages in that COMPELS politicians to continually hunt down NEW revenue sources.
4. Grants itself a monopoly on the service offered and destroys all its competitors. Thus, it is able to stifle all competition.
5. Exempts itself from the limitations of the Sherman Antitrust Act, and thus cannot be sued for monopolistic or anti-competitive behavior.
6. Functions in an ENTIRELY PRIVATE capacity without sovereign immunity. Thus, the consent of the DE FACTO United States\*\*\* is not required to be sued.
7. Has no more authority than a single human being. The government is a government of delegated authority alone, and can have no more authority than the PRIVATE humans from whom that authority was delegated.
8. When it competes in the private commercial marketplace for people, property, services, and revenue:
  - 8.1. Does so as a “Merchant” under U.C.C. §2-104(1) offering you “civil services” and/or “benefits”.
  - 8.2. Treats you as a “Buyer” under U.C.C. §2-103(1)(a).
  - 8.3. Is the only one who can define the terms of the offer and the obligations associated with your acceptance because they are the CREATOR and OWNER of the thing they are offering you. Civil legislation in the form of a franchise or privilege was the thing used to CREATE the property they are offering you. That act of creation occurs in the DEFINITION section of the civil statutes where “civil statuses” and “legal statuses” are defined and then association with PUBLIC RIGHTS that are PUBLIC property you want to procure.
  - 8.4. You ACCEPT their offer by applying on a government “benefit” or franchise form asking either for government physical property such as a Social Security Card on an SS-5 Form, or for a CIVIL STATUTORY PUBLIC IDENTITY they create and own, such as “driver” (driver license), “spouse” (marriage license), “taxpayer” (tax code), etc.
9. Enforces the PRIVILEGES associated with the civil statuses they created and granted as public property within franchise courts in the EXECUTIVE Branch, instead of constitutional courts in the JUDICIAL branch. These fake or de facto “courts” operate under Article I or Article IV of the Constitution rather than Article III.
10. Can lawfully be sued without its consent in EQUITY under the constitution and the common law.
11. Because it has a monopoly, can attach ANY condition or obligation it wants to those seeking benefits with its franchises. This is called “weaponization of government”, which we describe as follows:

SEDM Disclaimer, Section 4.30: Weaponization of Government

<https://sedm.org/disclaimer.htm>

12. Is what we call a “de facto government” or “anti-government” as described in:

*De Facto Government Scam*, Form #05.043

<https://sedm.org/Forms/05-MemLaw/DeFactoGov.pdf>

The opening page of our website warns about the hazards of contracting, associating with, or consenting to anything offered by the United States\*\*\* Beast government as follows:

*"People of all races, genders, political beliefs, sexual orientations, and nearly all religions are welcome here. All are treated equally under REAL "law". The only way to remain truly free and equal under the civil law is to avoid seeking government civil services, benefits, property, special or civil status, exemptions, privileges, or special treatment. All such pursuits of government services or property require individual and lawful consent to a franchise and the surrender of inalienable constitutional rights AND EQUALITY in the process, and should therefore be AVOIDED. The rights and equality given up are the "cost" of procuring the "benefit" or property from the government, in fact. Nothing in life is truly "free". Anyone who claims that such "benefits" or property should be free and cost them nothing is a thief who wants to use the government as a means to STEAL on his or her behalf. All just rights spring from responsibilities/obligations under the laws of a higher power. If that higher power is God, you can be truly and objectively free. If it is government, you are guaranteed to be a slave because they can lawfully set the cost of their property as high as they want as a Merchant under the U.C.C. If you want it really bad from people with a monopoly, then you will pay dearly for the privilege. There are NO constitutional limits on the price government can charge for their monopoly services or property. Those who want no responsibilities can have no real/PRIVATE rights, but only privileges dispensed to wards of the state which are disguised to LOOK like unalienable rights. Obligations and rights are two sides of the same coin, just like self-ownership and personal responsibility. For the biblical version of this paragraph, read 1 Sam. 8:10-22. For the reason God answered Samuel by telling him to allow the people to have a king, read Deut. 28:43-51, which is God's curse upon those who allow a king above them. Click Here (<https://famguardian.org/Subjects/Taxes/Evidence/HowScCorruptOurRepubGovt.htm>) for a detailed description of the legal, moral, and spiritual consequences of violating this paragraph."*

[SEDM Opening Page; <http://sedm.org>]

### **Sovereignty and Freedom Points and Authorities**

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**1.32.4 Restating for context and one more nickname-**

1. **US\* National Government** - Congress interacting with foreign nations, declaring wars, setting customs amounts, establishing Federal law. Also, this includes\* (another word of art) judges managing interstate matters in Federal District Courts. The US Federal Government has no say in the internal (intrastate) affairs of each separate union State so long as the union State breaks no Federal laws.
2. **US\*\* Federal Zone: Enclaves, Territories and Possessions, also called “The Freely Associated Compact States”** - Congress operating municipal government without the restrictions of a constitutional republic over the landmass of DC, territories, possessions aka the “Freely Associated States”.
3. **US\*\*\* States of the Union-** The total geography covered by the 50 union States each having complete control of intrastate matters
4. **US\*\*\*\* The Corporate Beast** - Deals with contracts (especially franchises described below), and does not have a specific geography since contract law is not bound by geography.

*Government Instituted Slavery Using Franchises*, Form #05.030  
<https://sedm.org/Forms/05-MemLaw/Franchises.pdf>

The first three items in the list are the friendly “Dr. Jekyll” government of the “United States”. The last one, the “United States\*\*\*\*”, is the corrupt “Mr. Hyde” corporate beast version of the United States that the Bible book of Revelation refers to as “The Beast”. We also call this the “de facto” government in the following document on our site:

*De Facto Government Scam*, Form #05.043  
<https://sedm.org/Forms/05-MemLaw/DeFactoGov.pdf>

**1.32.5 Drilling down into each of the four further**

Using statutes, and supreme court cases, we can further break down each of the four “United States” into their component parts, listing the authorities that are the basis for each.

**Table 1: Breakdown of each of the four "United States"**

#	Name	Political	Authority	S.C. Case	Who	Geographical
1	United States*	National Government	Law of Nations	Hooven & Allison Co. v. Evatt, 324 U.S. 652 (1945) U.S. v. Curtiss Wright Export, 299 U.S. 304 (1936)	Congress	Interstate but not intrastate, and with regards to Foreign Affairs
1.1	United States <sup>USA</sup>	United States of America	Articles of Confederation	U.S. v. Curtiss Wright Export, 299 U.S. 304 (1936)	Executive	Foreign Affairs
1.2	United States <sup>P</sup>	National government in its political sense	Constitution of 1789	U.S. v. Curtiss Wright Export, 299 U.S. 304 (1936)	Congress	Interstate but not intrastate
1.3	United States <sup>FG</sup>	Federal Government in its relation to states of the Union	Constitution of 1789	U.S. v. Curtiss Wright Export, 299 U.S. 304 (1936)	Congress	Interstate but not intrastate
2	United States**	<b>Enclaves, Territories, and Possessions</b>				
2.1	United States <sup>DCE</sup>	District and Federal Enclaves	Const. 1:8:17 (Enclave Clause)	Hooven & Allison Co. v. Evatt, 324 U.S. 652 (1945) U.S. v. Curtiss Wright Export, 299 U.S. 304 (1936)	Congress	DC and Federal Enclaves within 50 States
2.2	United States <sup>T</sup>	Territories and Possessions Local Government	Const. 4:3:2 Title 4 U.S.C. (Buck Act) Title 48 U.S.C.		Local	Territories and Possessions
3	United States***	<b>Constitutional and Corporate union States</b>				

#	Name	Political	Authority	S.C. Case	Who	Geographical
3.1	United States <sup>S</sup>	State Government	State Constitution Fed. Constit. Article IV	Hooven & Allison Co. v. Evatt, 324 U.S. 652 (1945) U.S. v. Curtiss Wright Export, 299 U.S. 304 (1936)	State	Within the Boundaries of the 50 States
3.2	United States <sup>CS</sup>	<b>STATE OF STATE // Federal States // Corporate // Beast</b>	Federalist Papers		State	Federal Enclave within union States
3.3	United States <sup>50</sup>	50 bodies politic		Texas v. White, 74 U.S. 700 (1869)	State	Nongeographical
3.4	United States <sup>G</sup>	50 states + DC in their geographical sense		Texas v. White, 74 U.S. 700 (1869)	State	50 states and District of Columbia
<b>4</b>	<b>United States****</b>	<b>Corporate/Contract, "Beast"</b>	28 U.S.C. §3002(15)(A)	Clearfield Trust Co. v. United States, 318 U.S. 363 (1943) Proprietors of Charles River Bridge v. Proprietors of Warren Bridge, 36 U.S. 420 (1837) U.S. v. Babcock, 240 U.S. 328, 39 S.Ct. 464 (1919) U.S. v Winstar, Corp., 518 U.S. 839 (1996)	Corporate	Non-geographical, Contract has no Place
4.1	United States <sup>SMJ</sup>	All federal property, offices, agents, contracts, etc. Federal supremacy applies.	28 U.S.C. §3002(15)(A) 5 U.S.C. §553(a)(2)	Clearfield Trust Co. v. United States, 318 U.S. 363 (1943) Proprietors of Charles River Bridge v. Proprietors of Warren Bridge, 36 U.S. 420 (1837) U.S. v. Babcock, 240 U.S. 328, 39 S.Ct. 464 (1919) U.S. v Winstar, Corp., 518 U.S. 839 (1996)	Corporate	Non-geographical, contract has no place
4.2	United States <sup>E</sup>	Federal officers, agents, employees	44 U.S.C. §1505(a)(1)		Corporate	Non-geographical, contract has no place
4.3	United States <sup>A</sup>	Government agency management or personnel or public property, loans, grants, benefits, or contracts	5 U.S.C. §301 5 U.S.C. §553(a)(2)		Corporate	Non-geographical, contract has no place
4.4	United States <sup>MFA</sup>	Military or foreign affairs	5 U.S.C. §553(a)(1)		Corporate	Non-geographical, contract has no place

**NOTES:**

- Items in red, being 3.2 and 4 are examples of Corporate Beast behavior in both the national and the state governments.
- For details on 3.2 and 4 acting in a private, corporate Beast capacity, see:

*Corporatization and Privatization of the Government*, Form #05.024  
<https://sedm.org/Forms/05-MemLaw/CorpGovt.pdf>

The National Government has two distinct functions. One function is when it is engaged in foreign affairs. In this capacity the National Government is referenced as the United States of America.

*Articles of Confederation*

**Sovereignty and Freedom Points and Authorities**

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 Litigation Tool 10.018, Rev. 11-21-2018

*Preamble*

*To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting. Whereas the Delegates of **the United States of America in Congress assembled** did on the fifteenth day of November in the Year of our Lord One Thousand Seven Hundred and Seventy Seven, and in the Second Year of the Independence of America agree to certain articles of Confederation and perpetual Union between the States of New Hampshire, Massachusetts bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia in the Words following, viz. "Articles of Confederation and perpetual Union between the States of New Hampshire, Massachusetts bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.*

This is also confirmed by the Supreme Court in *US v. Curtiss Wright Export*

*As a result of the separation from Great Britain by the colonies acting as a unit, the powers of external sovereignty passed from the Crown not to the colonies severally, but to the colonies in their collective and corporate capacity as the United States of America. Even before the Declaration, the colonies were a unit in foreign affairs, acting through a common agency — namely the Continental Congress, composed of delegates from the thirteen colonies. That agency exercised the powers of war and peace, raised an army, created a navy, and finally adopted the Declaration of Independence. Rulers come and go; governments end and forms of government change; but sovereignty survives. A political society cannot endure 317\*317 without a supreme will somewhere. Sovereignty is never held in suspense. When, therefore, the external sovereignty of Great Britain in respect of the colonies ceased, it immediately passed to the Union. See *Penhallow v. Doane*, 3 Dall. 54, 80-81. That fact was given practical application almost at once. The treaty of peace, made on September 23, 1783, was concluded between his Britannic Majesty and the "United States of America." 8 Stat. — *European Treaties* — 80.*

[*U.S. v. Curtiss Wright Export*, 299 U.S. 304, 317 (1936)]

The national Government has a second function when engaged in interstate affairs of the union States. Here it is called the Federal Government.

*"The two classes of powers are different, both in respect of their origin and their nature. The broad statement that the federal government can exercise no powers except those specifically enumerated in the Constitution, and such implied powers as are necessary and proper to carry into effect the enumerated powers, is categorically true only in respect of our internal affairs. In that field, the primary purpose of the Constitution was to carve from the general mass of legislative powers then possessed by the states such portions as it was thought desirable to vest in the federal government, leaving those not included in the enumeration still in the states. *Carter v. Carter Coal Co.*, 298 U.S. 238, 294. That this doctrine applies only to powers which the states had, is self evident. And since the states severally never possessed international powers, such powers could not have been carved from the mass of state powers but obviously were transmitted to the United States from some other source. During the colonial period, those powers were possessed exclusively by and were entirely under the control of the Crown. By the Declaration of Independence, "the Representatives of the United States of America" declared the United [not the several] Colonies to be free and independent states, and as such to have "full Power to levy War, conclude Peace, contract Alliances, establish Commerce and to do all other Acts and Things which Independent States may of right do."*

[*U.S. v. Curtiss Wright Export*, 299 U.S. 304, 316 (1936)]

The United States also has distinctions in the specific context of its municipal function for the Enclaves, Territories, and Possessions.

*The statute now before us forecloses the States from experimenting and exercising their own judgment in an area to which States lay claim by right of history and expertise, and it does so by regulating an activity beyond the realm of commerce in the ordinary and usual sense of that term. The tendency of this statute to displace state regulation in areas of traditional state concern is evident from its territorial operation. There are over 100,000 elementary and secondary schools in the United States. See U. S. Dept. of Education, National Center for Education Statistics, Digest of Education Statistics 73, 104 (NCES 94-115, 1994) (Tables 63, 94). Each of these now has an invisible federal zone extending 1,000 feet beyond the (often irregular) boundaries of the school property. In some communities no doubt it would be difficult to navigate without infringing on those zones. Yet throughout these areas, school officials would find their own programs for the prohibition of guns in danger of displacement by the federal authority unless the State chooses to enact a parallel rule.*

[*United States v. Lopez*, 514 U.S. 549, 583 (1995)]

The first function it serves is the District of Columbia and the Federal Enclaves within the states. The power comes from Constitution Article 1, Section 8, Clause 17:

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### ***Sovereignty and Freedom Points and Authorities***

U.S. Constitution  
Clause 17. District of Columbia; Federal Property

*Congress shall have power \* \* \* To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.*

The second function of the municipality over the Territories and Possessions comes from the Constitution in 4:3:2 and is codified in 4 USC (sometimes called the Buck Act) and 48 USC.

[United States Constitution](#)  
[Article 4, Section 3, Clause 2](#)

*The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.*

This is confirmed by Title 4 USC:

[4 U.S. Code § 110 - Same: definitions](#)

*As used in sections [105–109](#) of this title—*

- (a) The term “[person](#)” shall have the meaning assigned to it in [section 3797 of title 26](#).*
- (b) The term “[sales or use tax](#)” means any tax levied on, with respect to, or measured by, sales, receipts from sales, purchases, storage, or use of tangible personal property, except a tax with respect to which the provisions of [section 104 of this title](#) are applicable.*
- (c) The term “[income tax](#)” means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts.*
- (d) The term “[State](#)” includes any Territory or possession of the United [States](#).*
- (e) The term “[Federal area](#)” means any lands or premises held or acquired by or for the use of the United [States](#) or any department, establishment, or agency, of the United [States](#); and any [Federal area](#), or any part thereof, which is located within the exterior boundaries of any [State](#), shall be deemed to be a [Federal area](#) located within such [State](#).*

*(July 30, 1947, ch. 389, [61 Stat. 645](#).)*

This is also confirmed by Title 48 USC:

# U.S. Code: Title 48

U.S. Code

[prev](#) | [next](#)

[CHAPTER 1—BUREAU OF INSULAR AFFAIRS \(§§ 1 – 4\)](#)  
[CHAPTER 2—ALASKA \(§§ – 488\)](#)  
[CHAPTER 3—HAWAII \(§§ – 724\)](#)  
[CHAPTER 4—PUERTO RICO \(§§ 731 – 916\)](#)  
[CHAPTER 5—PHILIPPINE ISLANDS \(§§ 1001 – 1276\)](#)  
[CHAPTER 6—CANAL ZONE \(§§ 1301 – 1384\)](#)  
[CHAPTER 7—VIRGIN ISLANDS \(§§ 1391 – 1409m\)](#)  
[CHAPTER 8—GUANO ISLANDS \(§§ 1411 – 1419\)](#)  
[CHAPTER 8A—GUAM \(§§ 1421 – 1428e\)](#)  
[CHAPTER 9—SAMOA, TUTUILA, MANUA, SWAINS ISLAND, AND TRUST TERRITORY OF THE PACIFIC ISLANDS \(§ 1431\)](#)  
[CHAPTER 10—TERRITORIAL PROVISIONS OF A GENERAL NATURE \(§§ 1451 – 1494c\)](#)  
[CHAPTER 11—ALIEN OWNERS OF LAND \(§§ 1501 – 1509\)](#)  
[CHAPTER 12—VIRGIN ISLANDS \[1954\] \(§§ – 1645\)](#)  
[CHAPTER 13—EASTERN SAMOA \(§§ 1661 – 1670\)](#)  
[CHAPTER 14—TRUST TERRITORY OF THE PACIFIC ISLANDS \(§§ 1681 – 1695\)](#)  
[CHAPTER 15—CONVEYANCE OF SUBMERGED LANDS TO TERRITORIES \(§§ 1701 – 1708\)](#)  
[CHAPTER 16—DELEGATES TO CONGRESS \(§§ 1711 – 1757\)](#)  
[CHAPTER 17—NORTHERN MARIANA ISLANDS \(§§ 1801 – 1846\)](#)  
[CHAPTER 18—MICRONESIA, MARSHALL ISLANDS, AND PALAU \(§§ 1901 – 1973\)](#)  
[CHAPTER 19—PACIFIC POLICY REPORTS \(§§ 2001 – 2004\)](#)  
[CHAPTER 20—PUERTO RICO OVERSIGHT, MANAGEMENT, AND ECONOMIC STABILITY \(§§ 2101 – 2241\)](#)

The United States also has distinctions in the specific context of the union States.

## **CALIFORNIA CONSTITUTION - CONS**

**ARTICLE III STATE OF CALIFORNIA [SEC. 1 - SEC. 9]** (*Article 3 added Nov. 7, 1972, by Prop. 6. Res.Ch. 120, 1972.*)

*SEC. 1. The State of California is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land.*

*(Sec. 1 added Nov. 7, 1972, by Prop. 6. Res.Ch. 120, 1972.)*

*SEC. 2. The boundaries of the State are those stated in the Constitution of 1849 as modified pursuant to statute. Sacramento is the capital of California.*

*(Sec. 2 added Nov. 7, 1972, by Prop. 6. Res.Ch. 120, 1972.)*

[SOURCE:

[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=CONS&division=&title=&part=&chapter=&article=III](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CONS&division=&title=&part=&chapter=&article=III)]

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*United States Constitution  
 Article 4, Section 3. Admission of New States; Property of United States  
 Clause 1. Admission of New States to Union*



*New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.*

The second context is as a STATE OF STATE. The geography of the STATE OF STATE are the sum of federal enclaves within individual union States. The STATE OF STATE is operated by the same State Congress of the union State. In this capacity the STATE OF STATE acts in a corporate context.

### 1.33 **“Citizen\*” and “Citizen\*\*+D” and “Citizenship”**

In the context of this entire website:

1. The term Citizen\* means someone who:
  - 1.1. Is born or naturalized to become the POLITICAL citizen mentioned in [8 U.S.C. §1401-1407](#), the Fourteenth Amendment, or [26 C.F.R. §1.1-1\(c\)](#).
  - 1.2. Has a POLITICAL status but not CIVIL status within the context being discussed.
  - 1.3. Is called a "POLITICAL citizen" on this website
  - 1.4. Has an EXCLUSIVELY PRIVATE status rather than a PUBLIC status and thus, is protected ONLY by the Constitution and the common law and never the CIVIL law.
  - 1.5. Has not surrendered NO PRIVATE rights under the Bill of Rights in exchange for PRIVILEGES created or granted by any civil legislation and thus remains EXCLUSIVELY private.
  - 1.6. Is also called a "CONSTITUTIONAL citizen" on this website in the case of American national born or naturalized within the exclusive jurisdiction of a state of the Union.
  - 1.7. Has NATIONALITY and is therefore a "NATIONAL" under [8 U.S.C. §1101\(a\)\(21\)](#).
  - 1.8. Is a "national of the United States" under [8 U.S.C. §1101\(a\)\(22\)](#).
  - 1.9. Is a "U.S. national" under [22 C.F.R. §51.1](#) and [22 C.F.R. §51.2](#).
2. The term Citizen\*\*+D means someone who:
  - 2.1. Has made a “domestic election” to join the state as its agent through consent to a privilege of some kind.
  - 2.2. The RESULT of the domestic election is to connect the human volunteer to a “trade or business within the **United StatesGOV**” in [26 U.S.C. §864\(b\)](#) and to “personal services” within the civil position of “person” in [26 U.S.C. §6671\(b\)](#) and [26 U.S.C. §7343](#) working in connection with **United StatesGOV** as its voluntary agent in exchange for privileged deductions under [26 U.S.C. §162](#).
  - 2.3. Is animated by the Citizen\* above and therefore a SUBSET of it. This is because the Citizen\* is the OFFICER and the Citizen\*\*+D is the OFFICE and they are separate legal "persons".
  - 2.4. Represents a CIVIL OFFICE or status as an agent of the state. This office is technically NOT a “public office” in a classical sense, but rather a FRANCHISE office.
  - 2.5. Is mentioned in [26 C.F.R. §1.1-1\(a\)](#) and (b) and most civil statutes.
  - 2.6. Has a PUBLIC status rather than a PRIVATE status and thus, is acting as an agent or officer of the government through a CIVIL act of Congress.
  - 2.7. Is someone born or naturalized in the COUNTRY and POLITICAL citizenship but who ALSO has either a domicile in a specific geographical place within the NATION United States\* or who has consented or elected to become surety for a status or office that has said domicile such as that of "person", "taxpayer", "citizen of the United States" in [26 C.F.R. §1.1-1\(a\)](#) and (b), etc.
  - 2.8. Is referred to on this site as a STATUTORY citizen or a CIVIL citizen or a DOMICILED citizen.

You can only be ONE or the OTHER of the above and NEVER BOTH in the context of any specific interaction with any government. This is because there must at all times be an absolute separation of PRIVATE and PUBLIC for the protection of BOTH types of property. The reason for this is explained in:

*REBUTTAL: Confusion created by Citizen\* and Citizen\*\*+D nomenclature*, SEDM  
<https://sedm.org/rebuttal-confusion-created-by-citizen-nomenclature/>

Within civil statutory law, the term "citizen" involves the complex interplay between NATIONALITY and DOMICILE, as pointed out by the U.S. Supreme Court below:

*In Udney v. Udney, (1869) L.R. 1 H.L. Sc. 441, the point decided was one of inheritance, depending upon the question whether the domicile of the father was in England or in Scotland, he being in either alternative a British subject. Lord Chancellor Hatherley said: "The question of naturalization and of allegiance is distinct from that of domicil." p. 452. Lord Westbury, in the passage relied on by the counsel for the United States, began by saying: "The law of England, and of almost all civilized countries, ascribes to each individual at his birth two distinct legal states or conditions: one, by virtue of which he becomes the subject of some particular country, binding him by the tie of natural allegiance, and which may be called his political status; another, by virtue of which he has ascribed to him the character of a citizen of some particular country, and as such is possessed of certain municipal rights, and subject to certain obligations, which latter character is the civil status or condition of the individual, and may be quite different from his political status." And then, while maintaining that the civil status is universally governed by the single principle of domicil, domicilium, the criterion established by international law for the purpose of determining civil status, and the basis on which "the personal rights of the party, that is to say, the law which determines his majority or minority, his marriage, succession, testacy or intestacy, 657\*657 must depend;" he yet distinctly recognized that a man's political status, his country, patria, and his "nationality, that is, natural allegiance," "may depend on different laws in different countries." pp. 457, 460. He evidently used the word "citizen," not as equivalent to "subject," but rather to "inhabitant;" and had no thought of impeaching the established rule that all persons born under British dominion are natural-born subjects.*

[U.S. v. Wong Kim Ark, 169 U.S. 649 (1898);

SOURCE: [https://scholar.google.com/scholar\\_case?case=3381955771263111765/](https://scholar.google.com/scholar_case?case=3381955771263111765/)

"Political status" above is synonymous with NATIONALITY. Nationality (political status) = citizenship + allegiance . Citizenship relates to the body politic per [8 C.F.R. §337.1](#).

### 1.33.1 Nationality v. Domicile

Below is a summary of the interplay between "nationality" and "domicile":

#### 1. Nationality:

- 1.1. Is a political status.
- 1.2. Is NONGEOGRAPHICAL. You can have ALLEGIANCE ANYWHERE you physically are.
- 1.3. Is not necessarily consensual or discretionary. For instance, acquiring nationality by birth in a specific place was not a matter of choice whereas acquiring it by naturalization is.
- 1.4. Is defined by the Constitution, which is a political document.
- 1.5. Is synonymous with being a "national" within statutory law.
- 1.6. Is associated with a specific COUNTRY.
- 1.7. Is called a "political citizen" or a "citizen of the United States in a political sense" by the courts to distinguish it from a STATUTORY citizen. See *Powe v. United States*, 109 F.2d. 147 (1940).

#### 2. Domicile:

- 2.1. Is a civil status.
- 2.2. Is ALWAYS GEOGRAPHICAL. You can't have a domicile that is NOT tied to a specific physical geographical place.
- 2.3. Is ALWAYS tied to definitions relating to the GEOGRAPHICAL context for the word used. For instance "U.S. person" in [26 U.S.C. §7701\(a\)\(30\)](#).
- 2.4. Always requires your consent and therefore is discretionary. See:
 

*Why Domicile and Becoming a "Taxpayer" Require Your Consent*, Form #05.002  
<http://sedm.org/Forms/FormIndex.htm>
- 2.5. Is not even addressed in the constitution.
- 2.6. Is defined by civil statutory law RATHER than the constitution.
- 2.7. Is in NO WAY connected with one's nationality.
- 2.8. Is usually connected with the word "person", "citizen", "resident", or "inhabitant" in statutory law.
- 2.9. Is associated with a specific COUNTY and a STATE rather than a COUNTRY.
- 2.10. Implies one is a "SUBJECT" of a SPECIFIC MUNICIPAL but not NATIONAL government.

Nationality and domicile, TOGETHER determine the political/CONSTITUTIONAL AND civil/STATUTORY status of a human being respectively. These important distinctions are recognized in Black's Law Dictionary:

### ***Sovereignty and Freedom Points and Authorities***

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*“nationality – That quality or character which arises from the fact of a person's belonging to a nation or state. **Nationality determines the political status of the individual, especially with reference to allegiance; while domicile determines his civil [statutory] status.** Nationality arises either by birth or by naturalization.”*  
 [Black's Law Dictionary (6th ed. 1990), p. 1025]

The U.S. Supreme Court also confirmed the above when they held the following. Note the key phrase “political jurisdiction”, which is NOT the same as legislative/statutory jurisdiction. One can have a political status of “citizen” under the constitution while NOT being a “citizen” under federal statutory law because not domiciled on federal territory. To have the status of “citizen” under federal statutory law, one must have a domicile on federal territory:

*“This section [of the Fourteenth Amendment] contemplates two sources of citizenship, and two sources only, - birth and naturalization. The persons declared to be citizens are 'all persons born or naturalized in the United States, and **subject to the jurisdiction thereof.**' The evident meaning of these last words is, not merely subject in some respect or degree to the jurisdiction of the United States, **but completely subject to their [plural, not singular, meaning states of the Union] political jurisdiction, and owing them [the state of the Union] direct and immediate allegiance.** And the words relate to the time of birth in the one case, as they do [169 U.S. 649, 725] to the time of naturalization in the other. Persons not thus subject to the jurisdiction of the United States at the time of birth cannot become so afterwards, except by being naturalized, either individually, as by proceedings under the naturalization acts, or collectively, as by the force of a treaty by which foreign territory is acquired.”*  
 [U.S. v. Wong Kim Ark, [169 U.S. 649](#), 18 S.Ct. 456; 42 L.Ed. 890 (1898)]

*“This right to protect persons having a domicile, though not native-born or naturalized citizens, rests on the firm foundation of justice, and the **claim to be protected** is earned by considerations which the protecting power is not at liberty to disregard. Such domiciled citizen pays the same price for his protection as native-born or naturalized citizens pay for theirs. **He is under the bonds of allegiance to the country of his residence, and, if he breaks them, incurs the same penalties. He owes the same obedience to the civil laws.** His property is, in the same way and to the same extent as theirs, liable to contribute to the support of the Government. In nearly all respects, his and their condition as to the duties and burdens of Government are undistinguishable.”*  
 [Fong Yue Ting v. United States, [149 U.S. 698](#) (1893)]

Notice in the last quote above that they referred to a foreign national born in another country as a “citizen”. THIS is the REAL “citizen” (a domiciled foreign national) that judges and even tax withholding documents are really talking about, rather than the “national” described in the constitution.

According to the U.S. Supreme Court, POLITICAL citizen and therefore NATIONAL is the PRINCIPAL type of citizen used in everyday speech and in the political departments of the government:

*In the Constitution the term state most frequently expresses the combined idea just noticed, of people, territory, and government. **A state, in the ordinary [PRINCIPAL] sense of the Constitution, is a political community of free citizens, occupying a territory of defined boundaries, and organized under a government sanctioned and limited by a written constitution, and established by the consent of the governed. It is the union of such states, under a common constitution, which forms the distinct and greater political unit, which that Constitution designates as the United States, and makes of the people and states which compose it one people and one country.***

*The use of the word in this sense hardly requires further remark. In the clauses which impose prohibitions upon the States in respect to the making of treaties, emitting of bills of credit, and laying duties of tonnage, and which guarantee to the States representation in the House of Representatives and in the Senate, are found some instances of this use in the Constitution. Others will occur to every mind.*

*But it is also used in its geographical sense, as in the clauses which require that a representative in Congress shall be an inhabitant of the State in which he shall be chosen, and that the trial of crimes shall be held within the State where committed.*

***And there are instances in which the principal sense of the word seems to be that primary one to which we have adverted, of a people or political community, as distinguished from a government.***

*In this latter sense the word seems to be used in the clause which provides that the United States shall guarantee to every State in the Union a republican form of government, and shall protect each of them against invasion.*

*In this clause a plain distinction is made between a State and the government of a State.*  
 [Texas v. White, 74 U.S. 700 (1869);  
 SOURCE:[https://scholar.google.com/scholar\\_case?case=1134912565671891096](https://scholar.google.com/scholar_case?case=1134912565671891096) ]

**1.33.2 Citizen\*\*+D: Domiciled citizen\***

However, within civil statutory law and especially in the context of taxation, the term "citizen" is also often used in connection with DOMICILE as well. Thus, it adds the GEOGRAPHICAL context to the POLITICAL context. This is true, for instance, in [26 U.S.C. §7701\(a\)\(30\)](#):

*Sec. 7701. – Definitions*

(a)(30) *United States person*

*The term "United States person" means –*

(A) a *citizen* or *resident* of the United States,

(B) a domestic partnership,

(C) a domestic *corporation*,

(D) any estate (other than a foreign estate, within the meaning of paragraph (31)), and

(E) any trust if –

(i) a court within the United States is able to exercise primary supervision over the administration of the trust, and

(ii) one or more United States persons have the authority to control all substantial decisions of the trust.

In the above context which ADDS domicile, to the principal POLITICAL sense, we refer to this sense as "Citizen\*\*+D". The above "citizen of the United States" is used mainly in its GEOGRAPHICAL and not POLITICAL sense. Although the POLITICAL sense is the principal sense according to the U.S. Supreme Court in [Texas v. White, 74 U.S. 700 \(1869\)](#), this statutory context instead is the GEOGRAPHICAL sense tied to domicile rather than nationality or political status because:

1. [26 C.F.R. §1.1-1\(c\)](#) relates to POLITICAL status only, because it references birth or naturalization rather than domicile. Thus, the "citizen" referenced is a political member but not a domiciled party.
2. Those born within the exclusive jurisdiction of a constitutional state are political citizens as conferred by the Fourteenth Amendment. As such, they are also "U.S. nationals" per [22 C.F.R. §51.2](#).
3. Puerto Ricans are citizens of the United States in its political sense (Cf. [26 C.F.R. §1.1-1\(c\)](#)) but they are not statutory "United States persons". Instead, they are called "nonresidents, not a citizen of the United States" for the purposes of title 26. See [26 U.S.C. §2209](#).
4. Additionally, a foreign national cannot be a resident of a body politic. They can only be resident within a geographical jurisdiction.
5. Territories and possessions are foreign countries under [26 C.F.R. §301.7701\(b\)-2](#).
6. [26 U.S.C. §7701\(a\)\(39\)](#) says if any citizen or resident is not in a United States judicial district, they will be treated AS IF they are domiciled in D.C.
7. [26 U.S.C. §7408\(d\)](#) says if any citizen or resident is not in a United States judicial district, they will be treated AS IF they are domiciled in D.C.
8. [26 U.S.C. §§931-937](#) place territories and possessions WITHOUT the United States. Clearly they are talking about geographical jurisdiction because:
  - 8.1. They are not part of the federal system.
  - 8.2. They are WITHIN the national body politic.
  - 8.3. Puerto Rico is without the domestic federal jurisdiction...just like the jurisdiction of the 50 states are!
9. [26 U.S.C. §873](#) recognizes "nationals of the United States" as "nonresident alien individuals". All POLITICAL citizens are "nationals of the United States".
10. [22 C.F.R. §51.2](#) recognizes all recipients of US passports as "U.S. nationals". If you have a U.S. Passport of have ever gotten one, you are a "U.S. national", meaning that you have NATIONALITY as a Citizen\* but not necessarily DOMICILE as a Citizen\*\*+D.

11. "U.S. nationals" have repeatedly been recognized as nonresident aliens on the 1040NR tax return.
12. Income tax is based ENTIRELY upon domicile according to the U.S. Supreme Court, which is geographical and NOT political.

[Lawrence v. State Tax Commission, 286 U.S. 276 \(1932\)](#)

SOURCE: [https://scholar.google.com/scholar\\_case?case=10241277000101996613](https://scholar.google.com/scholar_case?case=10241277000101996613)

13. I am neither domiciled in the statutory geographical "United States" nor representing an entity or office that is so domiciled under [Federal Rule of Civil Procedure 17\(b\)](#).
14. More like the above at:

*Tax Return History: Citizenship*, Family Guardian Fellowship

<https://famguardian.org/Subjects/Taxes/Citizenship/TaxReturnHistory-Citizenship/TaxReturnHistory-Citizenship.htm>

Therefore, the conclusion is inevitable that:

1. "United States" as used in [26 C.F.R. §1.1-1\(c\)](#) is its political sense. This is because the word "citizen" is connected with "born or naturalized" instead of mere DOMICILE or RESIDENCE.
2. "United States" in [26 U.S.C. §7701](#) is the GEOGRAPHICAL sense. This is confirmed by [26 C.F.R. §301.7701\(b\)-2\(b\)](#) and [26 C.F.R. §301.7701-7\(c\)\(3\)\(ii\)](#).
3. The political sense is NON-GEOGRAPHICAL.
4. Domicile is always geographical.

If you go to a bank and the bank wants you to explain why you are a nonresident alien or why you are the "citizen" mentioned in [26 C.F.R. §1.1-1\(c\)](#) but not THE "citizen" mentioned in [26 U.S.C. §7701\(a\)\(30\)](#), you can use the above to prove it.

This proves, for instance, that NOT ALL instances of "citizen of the United States", should be interpreted ONLY in their geographical context or even NATIONAL context as most people erroneously do because of their legal ignorance. If you think about it, the world thinks the geographical sense is the principal and ONLY sense for the term "citizen of the United States", because that is all they have ever known or seen. And when lawyers or judges or legislators use the term "citizen of the United States", they don't tell you what the principal sense is they PRESUME, or whether the term also includes domicile. They just say, "...when used in a geographical sense..." then everyone acts presumptuously and waives their rights--rights protected by the foreign status most American nationals have by virtue of the separation of powers between the states and the national government as described by:

[Government Conspiracy to Destroy the Separation of Powers, Form #05.023](#)

<https://sedm.org/Forms/05-MemLaw/SeparationOfPowers.pdf>

### 1.33.3 Why this information is important

An understanding of these concepts and distinctions is therefore CRUCIAL to avoid being:

1. Labeled as FRIVOLOUS by a judge or the IRS.
2. Sanctioned in a court of law by a judge.
3. Penalized administratively as frivolous by the IRS.
4. Labeled a "sovereign citizen".
5. Unknowingly DESTROYING the separation of legislative powers that is the MAIN protection for our constitutional rights!

For instance, it is considered a frivolous position by the IRS for someone born within the exclusive jurisdiction of a constitutional state to claim that they are not "THE citizen" mentioned in [26 C.F.R. §1.1-1\(c\)](#).

[The Truth About Frivolous Tax Arguments, IRS, Sections C.1 and C.2](#)

<https://www.irs.gov/privacy-disclosure/the-truth-about-frivolous-arguments-section-i-a-to-c#contentionc1>

Notice that in C1, they put "citizen" in quotes, which is what is defined at [26 C.F.R. §1.1-1\(c\)](#). Denying as a state national or

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American national that you don't have that status is frivolous. Demonstrating oneself to NOT be in the [26 U.S.C. §7701\(a\)\(30\)\(A\)](#) STATUTORY "U.S. person" subclass is both simple and easy and involves nothing remotely close to any frivolous position. In C2, they forthrightly say that asserting DC, territories, and enclaves is what is meant by the "United States" is also frivolous. Embracing the jurisdictions of the 50 States as together forming an integral, domestic jurisdiction can in no way ever be construed as frivolous. Likewise, asserting that the civil jurisdiction of each State is distinct and therefore foreign from the civil jurisdiction of the "United States" cannot in any possible distortion be regarded as frivolous.

Thus, you can see that there is MUCH government equivocation surrounding the use of the word "citizen". It seems OBVIOUS to us that they INTEND for EVERYONE to be uninformed about how to AVOID this equivocation because it protects their MAIN source of CIVIL jurisdiction and unconstitutionally ENLARGES what is actually the VERY limited civil legislative power of the national government everywhere in the country. For instance, if the ONLY type of jurisdiction most federal judges have within the exclusive jurisdiction of a state is POLITICAL jurisdiction that confers NO CIVIL ENFORCEMENT power whatsoever within the exclusive jurisdiction of a constitutional state, then they have to use equivocation to DECEIVE you into believing that POLITICAL jurisdiction and CIVIL jurisdiction are synonymous in order to unlawfully enlarge their jurisdiction, importance, and revenue. See:

Political Jurisdiction, Form #05.004

<https://sedm.org/Forms/05-MemLaw/PoliticalJurisdiction.pdf>

We must REMEMBER, however, that judges may not lawfully entertain "POLITICAL QUESTIONS". Therefore, any dispute before them which involves POLITICAL jurisdiction must be DISMISSED and can never be the origin of CIVIL ENFORCEMENT AUTHORITY!

Equivocation, in turn, is a logical fallacy that is ENGINEERED to deceive and enslave you. Equivocation of this kind ALWAYS involves:

1. Abuse of a word that has multiple contexts.
2. A failure to define all the possible contexts used in the statute.
3. A REFUSAL to disclose which specific context is implied in every specific use.
4. Doing all the above in order to fool you into PRESUMING that ALL contexts are equivalent.
5. Deceiving you into believing that all contexts are equivalent. Thus, they are deceiving you into believing that the government has far more jurisdiction and power than it actually HAS by law.

This underscores the ABSOLUTE importance of understanding the context in each use of the word "citizen" in any and every statutory use. In our experience, you can quickly end all dispute, deception, penalties, and frivolous accusations over the relating to your use of the term "citizen" by simply labelling and describing the context described here in every use of the word when communicating with the government on a government form. Similar arguments apply to the use of "United States" mentioned in the previous section.

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#### 1.33.4 Citizenship

A closely related word is "citizenship":

***citizenship.** The status of being a citizen. There are four ways to acquire citizenship: by birth in the United States, by Birth in U.S. territories, by birth outside the U.S. to U.S. parents, and by naturalization. See Corporate citizenship; Diversity of citizenship; Dual citizenship; Federal citizenship; Naturalization; Jus sanguinis; Jus soli.*  
*[Black's Law Dictionary, Sixth Edition, p. 244]*

"Citizenship" is component of "political status" along with allegiance. It is synonymous with MEMBERSHIP in a political community. It is NOT, however, in any way related to DOMICILE or "civil status". Citizenship is conferred AFTER taking an oath of naturalization consistent with [8 C.F.R. §337.1](#). When citizenship has been conferred after the oath of allegiance is taken, you end up with NATIONALITY.

Upon close inspection of Wong Kim Ark above, you will see that political citizenship is the common link between political status and civil status.

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1. Political status=citizen\* + allegiance. See [8 C.F.R. §337.1](#).
2. Civil status=citizen\* + domicile=citizen\*\*+D.

Political status asks: Are you a member of this home, and are you faithful to the family?

Civil status asks: Are you a member of the home, and in what room do you live?

Two very different issues, which when considered TOGETHER, paint the complete picture.

### **1.33.5 Political Status v. Civil Status**

Some other very important points need to be made about the distinctions between POLITICAL STATUS and CIVIL STATUS:

1. POLITICAL STATUS
  - 1.1. Citizen\*=political status=nationality.
  - 1.2. There is no infirmity whatsoever involved with having a POLITICAL STATUS or NATIONALITY since it is not and cannot be the origin of any enforceable obligation in any court that we have ever found.
  - 1.3. POLITICAL STATUS is NEVER called "LEGAL STATUS".
2. CIVIL STATUS
  - 2.1. Citizen\*\*+D is the DEFAULT status in all civil statutory law.
  - 2.2. All legally enforceable CIVIL STATUTORY obligations, including TAX obligations, attach to one's CIVIL STATUS and NEVER to POLITICAL STATUS.
  - 2.3. CIVIL STATUS is also called LEGAL STATUS.
  - 2.4. DOMICILE is a PREREQUISITE to having a CIVIL STATUS.
  - 2.5. DOMICILE and NOT POLITICAL STATUS is the origin of ALL civil statutory enforcement authority within any court. See [Federal Rule of Civil Procedure 17\(b\)](#).
  - 2.6. ALL of your troubles with government CIVIL enforcement ALWAYS start with voluntarily selecting a DOMICILE, and thus becoming obligated to obey obligations within the CIVIL STATUTORY law.
3. You will look like a complete, frivolous, insane idiot if you argue about NOT having a POLITICAL STATUS, since it can carry no court enforceable CIVIL legal obligations for a NATIONAL of the Country United States\*. POLITICAL STATUS comes with MORAL obligations, but never CIVIL LEGAL obligations for NATIONALS having NATIONALITY.
4. If you are an ALIEN (foreign national), you have a FOREIGN political status and are in a PRIVILEGED state. Thus:
  - 4.1. You are subject to government CIVIL STATUTORY control and regulation anywhere in the COUNTRY "United States\*". This is confirmed by the Presence Test in [26 U.S.C. §7701\(b\)](#), which is applicable ONLY to "alien individuals".
  - 4.2. ONLY in the case of aliens in a foreign country do DOMICILE and NATIONALITY (foreign nationality) coincide. For nationals, they NEVER coincide or go together.

### **1.33.6 Using this information to be LEFT ALONE and maximize your liberty**

If you have NATIONALITY in the country "United States\*" and simply want to be LEFT alone, which is what [legal "justice"](#) is defined as, and never targeted with CIVIL enforcement, the simple way out is to:

1. NEVER select a domicile and thus to AVOID all CIVIL STATUSES.
2. Write "NO domicile or residence" on every government form that asks for your "permanent address" or domicile.
3. By doing the above, thus becoming a "nonresident", "transient foreigner", and "idiot". See:
  - 3.1. [Are You an "Idiot"?](#), SEDM  
<https://sedm.org/are-you-an-idiot-we-are/>
  - 3.2. [My Preferred Pronouns](#), SEDM  
<https://sedm.org/my-preferred-pronouns/>

A person who does all the above has MAXIMUM [civil liberty \(Form #10.002\)](#) and forfeits NO rights by joining the civil social

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compact as a LEGAL member and a Citizen\*\*+D, because:

1. They have no DOMICILE.
2. They have NO "[civil status](#)". See:

Your Exclusive Right to Declare or Establish Your Civil Status, Form #13.008  
<https://sedm.org/Forms/13-SelfFamilyChurchGovnce/RightToDeclStatus.pdf>

3. They are "civilly dead".
4. They are protected ONLY by the criminal law and the common law and NEVER the CIVIL STATUTORY law.
5. They are NOT "anarchists" because they are STILL subject to the COMMON law an CRIMINAL law just like everyone else. See:

Problems with Atheistic Anarchism Course, Form #08.020  
SLIDES: <https://sedm.org/Forms/08-PolicyDocs/ProbsWithAtheistAnarchism.pdf>  
VIDEO: <http://youtu.be/n883Ce11ML0>

6. They are referred to on this website as Citizen\*.
7. They can only litigate as an EQUAL in EQUITY against the government, rather than an INFERIOR who is PRIVILEGED. See:

Hot Issues: Common law and Equity Litigation\*\*, SEDM  
<https://sedm.org/common-law-litigation/>

8. The choice of law within every CIVIL dispute must be governed by the following:

Choice of Law, Litigation Tool #01.010  
<https://sedm.org/Litigation/01-General/ChoiceOfLaw.pdf>

9. In every civil dispute with the government, they approach the government as a MERCHANT under [U.C.C. §2-104\(1\)](#) and NEVER a BUYER under [U.C.C. §2-103\(1\)\(a\)](#). They are offering NOTHING BUT PRIVATE, CONSTITUTIONALLY protected property and make ALL the rules governing the use or consumption or "benefit" of that property by the government. This is the SAME thing the government tries to do with you using the ENTIRE CIVIL STATUTORY code, which is a protection franchise that completely destroys your private property and private property in most cases.

The civil statutory law, in fact, implements a PRIVATE MEMBERSHIP ASSOCIATION (PMA) that you have to consensually join. Civil statutes are the "club rules". More on this subject at:

*Hot issues: Self, Family, Church, Local Self Governance, and Private Membership Associations (PMAs)*, Section 2:  
Private Membership Associations (PMAs), SEDM  
<https://sedm.org/self-family-church-and-local-self-governance/>

Every possible type of membership in a CIVIL and LEGAL context which results in the Citizen\*\*+D moniker always has a negative affect on your constitutional and natural rights and therefore must be avoided. Those who avoid all such membership are referred to in civil statutory law as "foreign". See the following both for the consequences of having no domicile (1) and the VERY negative consequences of having one (1 and 2):

1. "Sovereign"="Foreign", Family Guardian Fellowship  
<https://famguardian.org/Subjects/Freedom/Sovereignty/Sovereign=Foreign.htm>
2. Collectivism and How to Avoid It Course, Form #12.024  
<https://sedm.org/LibertyU/Collectivism.pdf>
3. Your Irresponsible, Lawless, and Anarchist Beast Government, Form #05.054  
<https://sedm.org/Forms/05-MemLaw/YourIrresponsibleLawlessGov.pdf>

More on the subject of DOMICILE rather than NATIONALITY as the origin of all your enforcement tangles with the government below:

*Why Domicile and Becoming a "Taxpayer" Require Your Consent*, Form #05.002  
<https://sedm.org/Forms/05-MemLaw/Domicile.pdf>

Once you understand these nuances about NATIONALITY, DOMICILE, CITIZENSHIP, and how they relate to each other, you will also thoroughly understand why as an American national born within the exclusive jurisdiction of a Constitutional state,

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it is PERFECTLY lawful to opt out of most income taxes by filing as a nonresident alien FOREIGN person, instead of a CIVIL STATUTORY "U.S person" defined in 26 U.S.C. §7701(a)(30). The process of doing that is described in:

1. Nonresident Alien Position Course, Form #12.045  
<https://sedm.org/LibertyU/NRA.pdf>
2. Proof that American Nationals are Nonresident Aliens, Form #09.081  
<https://sedm.org/Forms/09-Procs/ProofAnNRA.pdf>
3. 1040NR Attachment, Form #09.077  
<https://sedm.org/Forms/09-Procs/1040NR-Attachment.pdf>
4. How to File Returns, Form #09.074\*\* (Member Subscriptions)  
<https://sedm.org/product/filing-returns-form-09-074/>
5. Procedure to File Returns, Form #09.075\*\* (Member Subscriptions)  
<https://sedm.org/product/procedure-to-file-tax-returns-form-09-075/>
6. Non-Resident Non-Person Position, Form #05.020  
<https://sedm.org/Forms/05-MemLaw/NonresidentNonPersonPosition.pdf>

### 1.33.7 This is all a Third Rail Issue

Lastly, clearly understanding the differences between Citizen\* and Citizen\*\*+D is a Third Rail Issue that government is LOATHE to even talk about. This is using equivocation to conflate this issue in order to UNLAWFULLY enlarge their CIVIL jurisdiction is the origin of MOST of their UNJUST tyranny and usurpation from a civil perspective. If you have this understanding, it will be like garlic to vampires or Kryptonite to Superman. Your government opponents will RUN from you and thus REALLY leave you alone. And, if you start every debate about it with this definition, they can NEVER accuse you of being a "sovereign citizen". This site does not promote any aspect of being a "sovereign citizen". More on Third Rail Government Issues at:

Third Rail Government Issues, Form #08.032  
<https://sedm.org/Forms/08-PolicyDocs/ThirdRailIssues.pdf>

### 1.33.8 Summary

In summary:

1. Citizenship is one's association to a body politic. That's the status of being a "citizen\*".
2. Citizenship + allegiance = nationality (political status).
3. Citizenship + domicile = civil status (i.e., "U.S. person").
4. The "citizen" that pledges allegiance (independent of his domicile) is an American national. They are a "citizen\*".
5. The "citizen\*" of 26 C.F.R. §1.1-1(c) is a citizen\* of the country (call it nation if you want) of the United States. Under this status, neither allegiance nor domicile come into play.
6. The "United States" in its political sense is baked into the term "citizen\*" through the language and context of 26 C.F.R. §1.1-1(c).
7. The "citizen" of the "United States" (geographical sense) is a "U.S. person" under 26 U.S.C. §7701(a)(30). This "citizen\*\*+D" has a tax abode in the jurisdiction of the "United States" (geographical sense within the meaning of 26 U.S.C. §7701(a)(9) and (a)(10)).
8. The "citizen" in 26 C.F.R. §1.1-1 then enters into a subclass through the addition of the qualifying "United States\*\*" geographical meaning being tacked onto the end of the term "citizen" at 26 U.S.C. 7701(a)(30)(A). This is where the hocus pocus takes place. Nobody realizes that in addition to affirming their national citizenship, they are electing a tax abode (domicile) for the purposes of taking on the office/property of "U.S. person," which is domiciled in the "state" of 26 U.S.C. §7701(a)(10).
9. The reason this is all confusing is because there is a "United States\*\*" within a "United States\*" for tax purposes.
10. This needless confusion and complexity is ENGINEERED to deceive people born within the constitutional states into believing they are "U.S persons" liable for income tax on their WORLDWIDE earnings, rather than correctly believing they are "nonresident aliens" who only own tax on VOLUNTARILY donated "effectively connected" earnings and payments only from the government or its instrumentalities, such as federal corporations.

The ruse is this: They want people to think they are simply affirming their national citizenship, when in legal reality, elites in the District of Criminals have constructed a scheme to get people to elect a tax abode (domicile) in the domestic federal jurisdiction defined as the "United States\*\*" in its geographical sense pursuant to [26 U.S.C. §7701\(a\)\(9\)](#).

For a detailed exposition of the above list, see:

[Tax Status Presentation, Form #12.043](#)  
[https://sedm.org/LibertyU/Tax\\_Status\\_Presentation.pptx](https://sedm.org/LibertyU/Tax_Status_Presentation.pptx)

### 1.34 **Beneficial owner**

The absolute owner of PRIVATE property:

1. The ownership of all of whose property is not shared or qualified or a usufruct in relation to any government.
2. Who retains and invokes the “right to exclude” of absolute ownership of himself/herself and their property by expressly prohibiting any and all enforcement activity directed at such property.
3. Who is protected only by the constitution and not civil statutory law and which is NOT described in any civil statute.
4. Who is the Merchant under U.C.C. §2-104(1) and never the Buyer under U.C.C. §2-103(1)(a) in relation to any and every government who is offering their private property to the government for sale under the conditions of the following:

[Injury Defense Franchise and Agreement, Form #06.027](#)  
<https://sedm.org/Forms/06-AvoidingFranch/InjuryDefenseFranchise.pdf>

5. Who is legislatively foreign to any and EVERY government.
6. Who is not consenting to be party to any privilege, franchise, or “benefit” offered by any and every government either expressly or impliedly.
7. Who is in possession, use, or “benefit” of NO civil statutory status offered by any government, including but not limited to “person”, “taxpayer”, “citizen”, “resident”, etc.
8. Whose consent to anything must be procured ONLY in writing signed by both parties and never by implied consent or action.
9. Who makes no “elections” under the Internal Revenue Code and consents to NOTHING that any government offers using the civil statutory law.
10. Who is not engaged in a “trade or business” excise taxable franchise as defined in 26 U.S.C. §7701(a)(26).
11. Whose property and earnings are a “foreign estate” as described in 26 U.S.C. §7701(a)(31) because not engaged in the “trade or business” excise taxable franchise.
12. Who if a human being, trust, or estate, is NOT mentioned as a party “liable to” under 26 C.F.R. §1.1-1(a), which in the case of foreign persons, excludes nonresident aliens NOT engaged in a “trade or business” under 26 U.S.C. §871(a). Therefore, they are PURPOSEFULLY excluded and here defined as “non-persons” as a result.
13. Who is not a statutory “alien” for foreign affairs purposes. Thus, not the “alien individual” defined in 26 C.F.R. §1.1441-1(c)(3)(i) as “neither a citizen nor a national of the United States”.

Specifically EXCLUDES the following references to the statutory term “beneficial owner” in:

1. [31 U.S.C. §5336: Beneficial ownership information reporting requirements.](#)  
<https://www.law.cornell.edu/uscode/text/31/5336>
2. [26 C.F.R. §1.1441-1: Requirement for the deduction and withholding of tax on payments to foreign persons,](#)  
including but not limited to 26 C.F.R. §1.1441-1(c)(6).  
<https://www.law.cornell.edu/cfr/text/26/1.1441-1>
3. [31 C.F.R. Subpart C - Subpart C—Reports Required To Be Made, Part 1010](#)  
<https://www.law.cornell.edu/cfr/text/31/part-1010/subpart-C>
4. “Beneficial owner” mentioned anywhere on the IRS Website, including but not limited to:  
<https://www.irs.gov/individuals/international-taxpayers/beneficial-owners>
5. “Beneficial owner” mentioned anywhere on the U.S. Department of Treasury FINCEN Website, including but not limited to:  
<https://www.fincen.gov/boi>



**1.35 Rules for interpreting words or terms that are not expressly defined**

*Other than the words defined above, all words used on this website and in the materials on it shall:*

1. Have only the common meaning ascribed to them.
2. Be associated with the EXCLUSIVELY PRIVATE status beyond the reach of civil statutory law.
3. NOT be construed in any way to have the statutory meaning found in any federal or state law.
4. NOT be associated with a "public office", "publici juris", or "public interest", or anything within the CIVIL jurisdiction of any state or federal court.
5. Be subject to enforcement only in the context of the common law where perfect equity and equality is enforced between the government and any and every human being.

The only exception to this rule is that when a word is surrounded in quotation marks and preceded or succeeded by an indication of the legal definition upon which it is based, then and only then will it assume the legal definition.

The legal or statutory definitions for words used by this ministry in turn:

1. Shall be based FIRST upon statutory definitions provided.
2. Shall conclusively be presumed to EXCLUDE the ordinary or EXCLUSIVELY PRIVATE civil context for the meaning of words. This is because the ability to regulate EXCLUSIVELY PRIVATE conduct is REPUGNANT TO THE CONSTITUTION as held by the U.S. Supreme Court.
3. Shall rely FIRST on the [Sovereignty Forms and Instructions Online, Form #10.004, Cites By Topic](#) for the statutory definitions.  
<http://famguardian.org/TaxFreedom/FormsInstr-Cites.htm>
4. May not ADD anything not EXPRESSLY appearing in any statute in which they are defined, if a statutory definition is provided. Any attempt to do so shall be interpreted as TREASON by the judge or government prosecutor who attempts it.

*"When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning. Meese v. Keene, 481 U.S. 465, 484-485 (1987) ("It is axiomatic that the statutory definition of the term excludes unstated meanings of that term"); Colautti v. Franklin, 439 U.S. at 392-393, n. 10 ("As a rule, 'a definition which declares what a term "means" . . . excludes any meaning that is not stated"); Western Union Telegraph Co. v. Lenroot, 323 U.S. 490, 502 (1945); Fox v. Standard Oil Co. of N.J., 294 U.S. 87, 95-96 (1935) (Cardozo, J.); see also 2A N. Singer, Sutherland on Statutes and Statutory Construction, §47.07, p. 152, and n. 10 (5th ed. 1992) (collecting cases). That is to say, the statute, read "as a whole," post at 998 [530 U.S. 943] (THOMAS, J., dissenting), leads the reader to a definition. That definition does not include the Attorney General's restriction -- "the child up to the head." Its words, "substantial portion," indicate the contrary." [Stenberg v. Carhart, 530 U.S. 914 (2000)]*

The purpose of this requirement is to [eliminate ALL presumptions](#) from any legal proceeding about what we might write or say so that such false and unauthorized presumptions *cannot* be used to discredit or slander us or prejudice our rights or sovereignty. For instance, here are two examples:

Statement from this website	Meaning
Wages are not taxable	Earnings from labor of a human being that <i>do not</i> fit the description of "wages" defined in <a href="#">26 U.S.C. §3401(a)</a> and <a href="#">26 C.F.R. §31.3401(a)-3</a> are not taxable without the consent of the subject.
" <a href="#">Wages</a> " are taxable	Wages as defined in <a href="#">26 U.S.C. §3401(a)</a> and <a href="#">26 C.F.R. §31.3401(a)-3</a> ARE taxable because they fit the legal description of " <a href="#">wages</a> ".

**Key to Capitalization Conventions within Laws.** Whenever you are reading a particular law, including the [U.S. Constitution](#), or a statute, the [Sovereign](#) referenced in that law, who is usually the author of the law, is referenced in the law with the first letter of its name capitalized. For instance, in the U.S. Constitution the phrase "We the People", "State", and "Citizen" are all capitalized, because these were the sovereign entities who were writing the document residing in the States. This document formed the federal government and gave it its authority. Subsequently, the federal government wrote statutes to implement the intent of the Constitution, and it became the Sovereign, but only in the context of those territories and lands ceded to it by the union states. When that federal government then refers in statutes to federal "States", for instance in [26](#)

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[U.S.C. §7701](#)(a)(10) or [4 U.S.C. §110](#)(d), then these federal “States” are Sovereigns because they are part of the *territory* controlled by the Sovereign who wrote the statute, so they are capitalized. Foreign states referenced in the federal statutes then must be in lower case. The sovereign 50 union states, for example, must be in lower case in federal statutes because of this convention because they are foreign states. *Capitalization is therefore always relative to who is writing the document, which is usually the Sovereign and is therefore capitalized.* The exact same convention is used in the Bible, where all appellations of God are capitalized because they are sovereigns: “**J**esus”, “**G**od”, “**H**im”, “**H**is”, “**F**ather”. These words aren’t capitalized because they are proper names, but because the entity described is a sovereign or an agent or part of the sovereign. The only exception to this capitalization rule is in state revenue laws, where the state legislators use the same capitalization as the Internal Revenue Code for “State” in referring to federal enclaves within their territory because they want to scam money out of you. In state revenue laws, for instance in the California Revenue and Taxation Code (R&TC) sections 17018 and 6017, “State” means a federal State within the boundaries of California and described as part of the Buck Act of 1940 found in [4 U.S.C. §§105](#)-113.

**Terms in Quotation Marks:** Whenever a term appears in quotation marks, we are using the statutory or regulatory definition of the term *instead* of the layman’s or dictionary definition. We do this to clarify which definition we mean and to avoid creating the kind of confusion with definitions that our government and the unethical lawyers who work in it are famous for. For instance, when we use say “employee”, we mean the statutory definition of that term found in [26 U.S.C. §3401](#)(c) and [26 C.F.R. §31.3401](#)(c)-1 rather than the common definition everyone uses, which means anyone who receives compensation for their labor. “Employees” are much more narrowly defined in the Internal Revenue Code to mean elected or appointed officers of the U.S. government only. We also put terms in quotation marks if they are new or we just introduced the term, to emphasize that we are trying to explain what the word means.

**Meaning of Geographical and political terms**

This section describes the meaning of various geographical and political terms used throughout this proceeding.

**Table 2: Summary of meaning of various terms and the contexts in which they are used**

Law	Federal constitution	Federal statutes	Federal regulations	State constitutions	State statutes	State regulations
Author	Union States/ ”We The People”	Federal Government		“We The People”	State Government	
“state”	Foreign country	Union state or foreign country	Union state or foreign country	Other Union state or federal government	Other Union state or federal government	Other Union state or federal government
“State”	Union state	Federal state	Federal state	Union state	Union state	Union state
“in this State” or “in the State” <sup>13</sup>	NA	NA	NA	NA	Federal enclave within state	Federal enclave within state
“State” <sup>14</sup> (State Revenue and taxation code only)	NA	NA	NA	NA	Federal enclave within state	Federal enclave within state
“several States”	Union states collectively <sup>15</sup>	Federal “States” collectively	Federal “States” collectively	Federal “States” collectively	Federal “States” collectively	Federal “States” collectively

<sup>13</sup> See California Revenue and Taxation Code, Section 6017

<sup>14</sup> See California Revenue and Taxation Code, Section 17018

<sup>15</sup> See, for instance, U.S. Constitution Article IV, Section 2.

Law	Federal constitution	Federal statutes	Federal regulations	State constitutions	State statutes	State regulations
Author	Union States/ "We The People"	Federal Government		"We The People"	State Government	
"United States"	states of the Union collectively	Federal United States**	Federal United States**	United States* the country	Federal United States**	Federal United States**

What the above table clearly shows is that the word "State" in the context of federal statutes and regulations means (not includes!) federal States only under [Title 48 of the U.S. Code](#)<sup>16</sup>, and these areas do not include any of the 50 Union States. This is true in *most cases and especially in the Internal Revenue Code*. In the context of the above, a "Union State" means one of the 50 Union states of the United States\* (the country, not the federal United States\*\*), which are sovereign and foreign with respect to federal legislative jurisdiction.

I will interpret each and every use of any one of the words of art or geographical terms defined above and used in any pleading filed in this matter as having the default meanings provided if no specific statutory definition is provided by the government opponent or the court.

All geographical terms appearing in Table 1 describe *six* different and unique *contexts* in which legal "terms" can be used, and each implies a DIFFERENT meaning. Government opponent and the court are demanded to describe which context they intend for each use of a geographical term in order to prevent any ambiguity. For instance, if they use the term "United States", they MUST follow the term with a parenthesis and the context such as "United States (Federal constitution)". The contexts are:

1. Federal constitution
2. Federal statutes
3. Federal regulations
4. State constitution
5. State statutes
6. State regulations

If the context is "Federal statutes", the specific statutory definition from the I.R.C. MUST be specified after that phrase to prevent any ambiguity. For instance:

*"United States (Federal statutes, 26 U.S.C. §7701(a)(9) and (a)(10))."*

If the context is "Federal regulations", the specific regulation to which is referred to or assume must be provided if there is one. For instance:

*"United States (Federal regulations, 26 C.F.R. §31.3121(e)-1)."*

Every unique use of a geographical term may ONLY have ONE context. If multiple contexts are implicated, then a new sentence and a new statement relevant to that context only must be made. For instance:

1. "Defendant is a citizen of the United States (Federal constitution)."
2. "Defendant is NOT a citizen of the United States (Federal statutes or 8 U.S.C. §1401)."

If a geographical term is used and the context is not specified by the speaker and the speaker is talking about jurisdiction, it shall imply the statutory context only.

I welcome a rebuttal on the record of anything appearing in this document within 30 days. If no rebuttal is provided, government opponent admits it all pursuant to Federal Rule of Civil Procedure 8(b)(6). Silence is an admission, because

<sup>16</sup> See <https://www.law.cornell.edu/uscode/text/48>

injustice and prejudicial presumptions about the status of the litigants will result if the government opponent does not speak on the record about this MOST PIVOTAL subject. Government opponent is using this proceeding to enforce “club dues” called taxes, and Defendant simply seeks to establish that he/she chooses not to join the club and cannot be compelled to join without violating the First Amendment prohibition against compelled association.

**“The Supreme Court, though rarely called upon to examine this aspect of the right to freedom of association, has nevertheless established certain basic rules which will cover many situations involving forced or prohibited associations. Thus, where a sufficiently compelling state interest, outside the political spectrum, can be accomplished only by requiring individuals to associate together for the common good, then such forced association is constitutional. <sup>17</sup> But the Supreme Court has made it clear that compelling an individual to become a member of an organization with political aspects [such as a “citizen”], or compelling an individual to become a member of an organization which financially supports [through payment of club membership dues called “taxes”], in more than an insignificant way, political personages or goals which the individual does not wish to support, is an infringement of the individual's constitutional right to freedom of association.**

<sup>18</sup> The First Amendment prevents the government, except in the most compelling circumstances, from wielding its power to interfere with its employees' freedom to believe and associate, or to not believe and not associate; it is not merely a tenure provision that protects public employees from actual or constructive discharge. <sup>19</sup> Thus, First Amendment principles prohibit a state from compelling any individual to associate with a political party, as a condition of retaining public employment. <sup>20</sup> The First Amendment protects nonpolicymaking public employees from discrimination based on their political beliefs or affiliation. <sup>21</sup> But the First Amendment protects the right of political party members to advocate that a specific person be elected or appointed to a particular office and that a specific person be hired to perform a governmental function. <sup>22</sup> In the First Amendment context, the political patronage exception to the First Amendment protection for public employees is to be construed broadly, so as presumptively to encompass positions placed by legislature outside of “merit” civil service. Positions specifically named in relevant federal, state, county, or municipal laws to which discretionary authority with respect to enforcement of that law or carrying out of some other policy of political concern is granted, such as a secretary of state given statutory authority over various state corporation law practices, fall within the political patronage exception to First Amendment protection of public employees. <sup>23</sup> However, a supposed

<sup>17</sup> Lathrop v. Donohue, 367 U.S. 820, 81 S.Ct. 1826, 6 L.Ed.2d. 1191 (1961), reh'g denied, 368 U.S. 871, 82 S.Ct. 23, 7 L.Ed.2d. 72 (1961) (a state supreme court may order integration of the state bar); Railway Emp. Dept. v. Hanson, 351 U.S. 225, 76 S.Ct. 714, 100 L.Ed. 1112 (1956), motion denied, 351 U.S. 979, 76 S.Ct. 1044, 100 L.Ed. 1494 (1956) and reh'g denied, 352 U.S. 859, 77 S.Ct. 22, 1 L.Ed.2d. 69 (1956) (upholding the validity of the union shop provision of the Railway Labor Act).

The First Amendment right to freedom of association of teachers was not violated by enforcement of a rule that white teachers whose children did not attend public schools would not be rehired. Cook v. Hudson, 511 F.2d. 744, 9 Empl. Prac. Dec. (CCH) ¶ 10134 (5th Cir. 1975), reh'g denied, 515 F.2d. 762 (5th Cir. 1975) and cert. granted, 424 U.S. 941, 96 S.Ct. 1408, 47 L.Ed.2d. 347 (1976) and cert. dismissed, 429 U.S. 165, 97 S.Ct. 543, 50 L.Ed.2d. 373, 12 Empl. Prac. Dec. (CCH) ¶ 11246 (1976).

Annotation: Supreme Court's views regarding Federal Constitution's First Amendment right of association as applied to elections and other political activities, 116 L.Ed.2d. 997, § 10.

<sup>18</sup> Rutan v. Republican Party of Illinois, 497 U.S. 62, 110 S.Ct. 2729, 111 L.Ed.2d. 52, 5 I.E.R. Cas. (BNA) 673 (1990), reh'g denied, 497 U.S. 1050, 111 S.Ct. 13, 111 L.Ed.2d. 828 (1990) and reh'g denied, 497 U.S. 1050, 111 S.Ct. 13, 111 L.Ed.2d. 828 (1990) (conditioning public employment hiring decisions on political belief and association violates the First Amendment rights of applicants in the absence of some vital governmental interest).

<sup>19</sup> Rutan v. Republican Party of Illinois, 497 U.S. 62, 110 S.Ct. 2729, 111 L.Ed.2d. 52, 5 I.E.R. Cas. (BNA) 673 (1990), reh'g denied, 497 U.S. 1050, 111 S.Ct. 13, 111 L.Ed.2d. 828 (1990) and reh'g denied, 497 U.S. 1050, 111 S.Ct. 13, 111 L.Ed.2d. 828 (1990).

Annotation: Public employee's right of free speech under Federal Constitution's First Amendment—Supreme Court cases, 97 L.Ed.2d. 903.

First Amendment protection for law enforcement employees subjected to discharge, transfer, or discipline because of speech, 109 A.L.R. Fed. 9.

First Amendment protection for judges or government attorneys subjected to discharge, transfer, or discipline because of speech, 108 A.L.R. Fed. 117.

First Amendment protection for public hospital or health employees subjected to discharge, transfer, or discipline because of speech, 107 A.L.R. Fed. 21.

First Amendment protection for publicly employed firefighters subjected to discharge, transfer, or discipline because of speech, 106 A.L.R. Fed. 396.

<sup>20</sup> Abood v. Detroit Bd. of Ed., 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d. 261, 95 L.R.R.M. (BNA) 2411, 81 Lab. Cas. (CCH) ¶ 55041 (1977), reh'g denied, 433 U.S. 915, 97 S.Ct. 2989, 53 L.Ed.2d. 1102 (1977); Parrish v. Nikolits, 86 F.3d. 1088 (11th Cir. 1996), cert. denied, 117 S.Ct. 1818, 137 L.Ed.2d. 1027 (U.S. 1997).

<sup>21</sup> LaRou v. Ridlon, 98 F.3d. 659 (1st Cir. 1996); Parrish v. Nikolits, 86 F.3d. 1088 (11th Cir. 1996), cert. denied, 117 S.Ct. 1818, 137 L.Ed.2d. 1027 (U.S. 1997).

<sup>22</sup> Vickery v. Jones, 100 F.3d. 1334 (7th Cir. 1996), cert. denied, 117 S.Ct. 1553, 137 L.Ed.2d. 701 (U.S. 1997).

Responsibilities of the position of director of a municipality's office of federal programs resembled those of a policymaker, privy to confidential information, a communicator, or some other office holder whose function was such that party affiliation was an equally important requirement for continued tenure. Ortiz-Pinero v. Rivera-Arroyo, 84 F.3d. 7 (1st Cir. 1996).

<sup>23</sup> McCloud v. Testa, 97 F.3d. 1536, 12 I.E.R. Cas. (BNA) 1833, 1996 FED App. 335P (6th Cir. 1996), reh'g and suggestion for reh'g en banc denied, (Feb. 13, 1997).

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interest in ensuring effective government and efficient government employees, political affiliation or loyalty, or high salaries paid to the employees in question should not be counted as indicative of positions that require a particular party affiliation. <sup>24</sup>"

[American Jurisprudence 2d, Constitutional law, §546: Forced and Prohibited Associations (1999)]

If the “Federal constitution” and the “Federal statutes” meanings of a geographical term are said by the speaker to be equivalent, some authority MUST be provided. The reason is that this is VERY seldom the case. For instance:

1. The term “United States” in the context of the Federal constitution implies ONLY the states of the Union and excludes federal territory... . WHEREAS
2. The term “United States” in the statutory sense includes only federal territory and excludes states of the Union.

Example proofs for the above consists of the following:

"The earliest case is that of *Hepburn v. Ellzey*, 2 Cranch, 445, 2 L.Ed. 332, in which this court held that, under that clause of the Constitution limiting the jurisdiction of the courts of the United States to controversies between citizens of different states, a citizen of the District of Columbia could not maintain an action in the circuit court of the United States. It was argued that the word 'state.' in that connection, was used simply to denote a distinct political society. 'But,' said the Chief Justice, 'as the act of Congress obviously used the word 'state' in reference to that term as used in the Constitution, it becomes necessary to inquire whether Columbia is a state in the sense of that instrument. **The result of that examination is a conviction that the members of the American confederacy only are the states contemplated in the Constitution , . . . and excludes from the term the signification attached to it by writers on the law of nations.**' This case was followed in *Barney v. Baltimore*, 6 Wall. 280, 18 L.Ed. 825, and quite recently in *Hooe v. Jamieson*, 166 U.S. 395, 41 L.Ed. 1049, 17 Sup.Ct.Rep. 596. **The same rule was applied to citizens of territories in *New Orleans v. Winter*, 1 Wheat. 91, 4 L.Ed. 44, in which an attempt was made to distinguish a territory from the District of Columbia. But it was said that 'neither of them is a state in the sense in which that term is used in the Constitution.'** In *Scott v. Jones*, 5 How. 343, 12 L.Ed. 181, and in *Miners' Bank v. Iowa ex rel. District Prosecuting Attorney*, 12 How. 1, 13 L.Ed. 867, it was held that under the judiciary act, permitting writs of error to the supreme court of a state in cases where the validity of a state statute is drawn in question, **an act of a territorial legislature was not within the contemplation of Congress.**"

[*Downes v. Bidwell*, 182 U.S. 244 (1901) ]

"As the only judicial power vested in Congress is to create courts whose judges shall hold their offices during good behavior, it necessarily follows that, **if Congress authorizes the creation of courts and the appointment of judges for limited time, it must act independently of the Constitution upon territory which is not part of the United States within the meaning of the Constitution.**"

[*O'Donoghue v. United States*, 289 U.S. 516, 53 S.Ct. 740 (1933)]

Notice that last quote “not part of the United States within THE meaning of the Constitution”, which implies that there is ONLY ONE meaning and that meaning does not include the “territory” of the United States, which is the community property of the states mentioned in ONLY ONE place in the constitution, which is Article 1, Section 8, Clause 17 and nowhere else.

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Law Reviews: Stokes, When Freedoms Conflict: Party Discipline and the First Amendment. 11 JL & Pol 751, Fall, 1995.

Pave, Public Employees and the First Amendment Petition Clause: Protecting the Rights of Citizen-Employees Who File Legitimate Grievances and Lawsuits Against Their Government Employers. 90 N.W. U LR 304, Fall, 1995.

Singer, Conduct and Belief: Public Employees' First Amendment Rights to Free Expression and Political Affiliation. 59 U Chi LR 897, Spring, 1992.

As to political patronage jobs, see § 472.

<sup>24</sup> Parrish v. Nikolits, 86 F.3d. 1088 (11th Cir. 1996), cert. denied, 117 S.Ct. 1818, 137 L.Ed.2d. 1027 (U.S. 1997).

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The most likely words to be subjected to “deliberate and malicious and self-serving verbicide” and deceit by the government opponent and the Court are “United States”, “State”, and “trade or business”. The rules of statutory construction indicated shall be VERY STRICTLY applied to these terms:

1. Since the terms are statutorily defined, the statutory definition shall SUPERSEDE the common meaning or the constitutional meaning of the term.
2. Only that which is expressly specified SOMEWHERE within the statutes cited as authority may be “included” within the meaning.
3. That which is NOT expressly specified shall be presumed to be purposefully excluded by implication:

*“Expressio unius est exclusio alterius. A maxim of statutory interpretation meaning that the expression of one thing is the exclusion of another. Burgin v. Forbes, 293 Ky. 456, 169 S.W.2d. 321, 325; Newblock v. Bowles, 170 Okl. 487, 40 P.2d. 1097, 1100. Mention of one thing implies exclusion of another. When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred. Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded.”*  
*[Black’s Law Dictionary, Sixth Edition, p. 581]*

***“When a statute includes an explicit definition, we must follow that definition, even if it varies from that term’s ordinary meaning.”** Meese v. Keene, 481 U.S. 465, 484-485 (1987) (“It is axiomatic that the statutory definition of the term excludes unstated meanings of that term”); Colautti v. Franklin, 439 U.S. at 392-393, n. 10 (“As a rule, ‘a definition which declares what a term “means” . . . excludes any meaning that is not stated”); Western Union Telegraph Co. v. Lenroot, 323 U.S. 490, 502 (1945); Fox v. Standard Oil Co. of N.J., 294 U.S. 87, 95-96 (1935) (Cardozo, J.); see also 2A N. Singer, Sutherland on Statutes and Statutory Construction § 47.07, p. 152, and n. 10 (5th ed. 1992) (collecting cases). That is to say, the statute, read “as a whole,” post at 998 [530 U.S. 943] (THOMAS, J., dissenting), leads the reader to a definition. That definition does not include the Attorney General’s restriction -- “the child up to the head.” Its words, “substantial portion,” indicate the contrary.”*  
*[Stenberg v. Carhart, 530 U.S. 914 (2000)]*

*“It is axiomatic that the statutory definition of the term excludes unstated meanings of that term. Colautti v. Franklin, 439 U.S. 379, 392, and n. 10 (1979). Congress’ use of the term “propaganda” in this statute, as indeed in other legislation, has no pejorative connotation.{19} As judges, it is our duty to [481 U.S. 485] construe legislation as it is written, not as it might be read by a layman, or as it might be understood by someone who has not even read it.”*  
*[Meese v. Keene, 481 U.S. 465, 484 (1987)]*

## 2 SOVEREIGNTY IN AMERICA

For further information on the subject of this section, see:

1. Sovereignty Education and Defense Ministry (SEDM) Website  
<https://sedm.org>
2. *Sovereignty and Freedom Page*, Family Guardian Fellowship  
<https://famguardian.org/Subjects/Freedom/Freedom.htm>

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### 2.1 The Fundamental Nature of the American Governments

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#### Declaration of Independence (July 4, 1776)

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish [sic] it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness."

"We, therefore, the representatives of the United States of America, in General Congress, assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name, and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be **free and independent states**; that they are absolved from allegiance to the British Crown, and that all political connection between them and the **state of Great Britain**, is and ought to be totally dissolved; and that as **free and independent states**, they have full power to levy war, conclude peace, contract alliance, establish commerce, and to do all other acts and things which independent states may of right do." [Bold added.]

[Declaration of Independence, July 4, 1776]

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#### Black's Law Dictionary: Freedom

"FREEDOM. The state of being free; liberty; self-determination; absence of restraint; the opposite of slavery.

"The power of acting, in the character of a moral personality, according to the dictates of the will, without other check, hindrance, or prohibition than such as may be imposed by just and necessary laws and the duties of social life.

"The prevalence, in the government and constitution of a country, of such a system of laws and institutions as secure civil liberty to the individual citizen"

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 792.]

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#### Black's Law Dictionary: Liberty

"**LIBERTY**. Freedom; exemption from extraneous control.

"Freedom from all restraints except such as are justly imposed by law. [Cite omitted.] Freedom from restraint, under conditions essential to the equal enjoyment of the same right by others; freedom regulated by law. [Cite omitted.] The absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community. [Cites omitted.]

"The power of the will to follow the dictates of the unrestricted choice, and to direct the external acts of the individual without restraint, coercion, or control from other persons. [Cites omitted.]

"The word 'liberty' includes and comprehends all personal rights and their enjoyment. [Cite omitted.] It embraces freedom from duress, [cite omitted]; freedom from governmental interference in exercise of intellect, in formation of opinions, in the expression of them, and in action or inaction dictated by judgment, *Zavilla v. Masse*, 112 Colo. 183, 147 P.2d. 823, 827; freedom from servitude, imprisonment or restraint, [cites omitted]; freedom in enjoyment and use of all of one's powers, faculties and property, [cites omitted]; freedom of assembly, [cite omitted]; freedom of citizen from banishment, [cite omitted]; freedom of conscience, [cite omitted]; freedom of contract, [cites omitted]; freedom of locomotion or movement, *Commonwealth v. Doe*, 109 Pa.Super. 187, 167 A. 241, 242; *Committee for Industrial Organization v. Hague*, D.C.N.J., 25 F.Supp. 127, 131, 141; freedom of occupation, [cite omitted]; freedom of press, [cites

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omitted]; freedom of religion, [cites omitted]; freedom of speech, [cites omitted]. It also embraces right of self-defense against unlawful violence, *Rohrer v. Milk Control Board*, 121 Pa.Super. 281, 184 A. 133, 136; right to acquire and enjoy property, *Rohrer v. Milk Control Board*, 121 Pa.Super. 281, 184 A. 133, 136; right to acquire useful knowledge, [cite omitted]; right to carry on business, [cite omitted]; right to earn livelihood in any lawful calling. [Cite omitted]; right to emigrate, and if a citizen, to return, (cite omitted); right to engage in a lawful business, to determine the price of one's labor, and to fix the hours when one's place of business shall be kept open, [cite omitted]; the right to enjoy to the fullest extent the privileges and immunities" given or assured by law to people living within the country, [cite omitted]; right to forswear allegiance and expatriate oneself, [cite omitted]; right to freely buy and sell as others may, [cite omitted]; right to labor, [cite omitted]; right to live and work where one will, [cite omitted]; right to marry and have a family, [cites omitted]; right to pursue chosen calling, [cites omitted]; right to use property according owner's will, *State Bank & Trust Co. v. Village of Wilmette*, 358 Ill. 311, 193 N.E. 131, 133, 96 A.L.R. 1327.

"Liberty, on its positive side, denotes the fullness of individual existence; on its negative side it denotes the necessary restraint on all, which is needed to promote the greatest possible amount of liberty for each. Amos, *Science of Law*, p. 90."

"The "personal liberty" guaranteed by Const. U.S. Amend. 13 consists in the power of locomotion without imprisonment or restraint unless by due course of law, except those restraints imposed to prevent commission of threatened crime or in punishment of crime committed, those in punishment of contempts of courts or legislative bodies or to render their jurisdiction effectual, and those necessary to enforce the duty citizens owe in defense of the state to protect community against acts of those who by reason of mental infirmity are incapable of self-control. [Cite omitted.]

#### **"Civil Liberty**

"The liberty of a member of society, being a man's natural liberty, so far restrained by human laws (and no further) as is necessary and expedient for the general advantage of the public. [Cite omitted.]

"The power of doing whatever the laws permit. [Cites omitted.] The greatest amount of absolute liberty which can, in the nature of things, be equally possessed by every citizen in a state. Guaranteed protection against interference with the interests and rights held dear and important by large classes of civilized men, or by all the members of a state, together with an effectual share in the making and administration of the laws, as the best apparatus to secure that protection. [Cite omitted]

#### **"Natural Liberty**

"The power of acting as one thinks fit, without any restraint or control, unless by the law of nature. [Cite omitted.]

"The right which nature gives to all mankind of disposing of their persons and property after the manner they judge most consistent with their happiness, on condition of their acting within the limits of the law of nature, and so as not to interfere with an equal exercise of the same rights by other men. [Cites omitted.] It is called by Lieber *social* liberty, and is defined as the protection or unrestrained action in as high a degree as the same claim of protection of each individual admits of.

#### **"Personal Liberty**

"The right or power of locomotion; of changing situation, or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint, unless by due course of law. [Cites omitted.]

#### **"Political Liberty**

"Liberty of the citizen to participate in the operations of government, and particularly in the making and administration of the laws."

[Black's Law Dictionary, Revised Fourth Edition, 1968, pp. 1064-1066]

### **Articles of Confederation-1778, Article I**

"The style of this Confederacy shall be "The United States of America.""

[Articles of Confederation--1778, Article I]

### **Black's Law Dictionary: Style**

"STYLE. As a verb, to call, name, or entitle one; as a noun, the title or appellation of a person."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1592]

### **Articles of Confederation-1778, Article II**

"Each state retains its sovereignty, freedom and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled."

[Articles of Confederation--1778, Article II]

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**Articles of Confederation--1778, Article IX, paragraph 2**

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.. no state shall be deprived of territory for the benefit of the United States."  
 [Articles of Confederation--1778, Article IX, paragraph 2]

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**77 Am.Jur.2d., United States, §1**

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**"Origin.**

"The United States is a union of several states, each equal in power, dignity, and authority, which was brought into being by the Federal Constitution, emanating from and adopted by the people, in whom the sovereignty resides. It was established, as the preamble to the Constitution declares, by "the people of the United States in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for common defense, promote the general welfare, and secure the blessings of liberty," to them and their posterity. The avowed intention was to supersede the old confederation, and substitute in its place a new form of government whereby a more perfect union might be achieved than there had been under the Articles of Confederation."

[77 Am.Jur.2d., United States, §1]

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**77 Am.Jur.2d., United States, §2**

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**"Nature and composition.**

"The term "United States" may be used in any one of several senses, either as the name of a sovereign occupying the position analogous to that of other sovereigns in the family of nations, or as designating the territory over which the sovereignty of the United States extends, or as the collective name of the states which are united by and under the United States. It is not, however, a "corporation." While, strictly speaking, the boundaries of the United States conform to the external boundaries of the several states, in dealing with foreign sovereignties the term "United States" has a broader meaning than when used in the Constitution, and includes all territories subject to the jurisdiction of the Federal Government wherever located.

"The fundamental concept of the government of the United States as created by the Constitution is that it is a government of laws and not of men. Governmental powers are divided among the three departments of government: the legislative department, which is to pass the laws; the executive department, which is to approve and execute laws, passed by the legislative department; and the judicial department, which is to expound and enforce those laws.

"The composition of the flag of the United States, the composition, custody, and use of the seal of the United States, and designation of the District of Columbia as the permanent seat of government, are provided for by statute."

[77 Am.Jur.2d., United States, §2]

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**77 Am.Jur.2d., United States, §4**

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**"Extent of powers.**

"The Federal Government derives all its powers from the people, and is a government of enumerated powers which are delegated to it by the people as expressed in the Constitution. It can claim none which are not granted to it by the Constitution, either expressly or by necessary implication. All powers not granted to the United States expressly or by necessary implication are reserved to and generally rest in the several states in their sovereign capacity."

"While the Federal Government is a government of limited and delegated powers, it is supreme within its sphere of action, having within the limits of its enumerated powers full attributes of sovereignty."

[77 Am.Jur.2d., United States, §4]

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**Black's Law Dictionary: State**

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"STATE, n. A people permanently occupying a fixed territory bound together by common-law habits and customs into one body politic exercising, through the medium of an organized government, independent sovereignty and control over all persons and things within its boundaries, capable of making war and peace and of entering into international relations with other communities of the globe.

"One of the component commonwealths or state of the United States of America. The term is sometimes applied also to governmental agencies authorized by state, such as municipal corporations.

"The section of territory occupied by one of the United States.

"A foreign country or nation. The several United States are considered "foreign" to each other except as regards their

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relations as common members of the Union

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1578]

### **Words and Phrases: United States**

#### **"United States**

"The classical designation to clearly indicate the states as individual governmental entities making up the United Nation, dating from the Constitution and coming down through various acts of Congress and pronouncements of the courts, is the word "states". *Twin Falls County v. Hulbert*, 156 P.2d. 319, 324, 325, 66 Idaho 128.

"Generally the word "state" when used by court or Legislature denotes one of the members of the federal Union. *Twin Falls County v. Hulbert*, 156 P.2d. 319, 324, 325, 66 Idaho 128."

"The word "state" is generally used in connection with constitutional law in United States as meaning individual states making up the Union in contradistinction to United States as a nation, but United States is a "state" as such word is frequently used in international law, or to carry out legislative intent expressed in statute. *McLaughlin v. Poucher*, 17 A.2d. 767, 770, 127 Conn. 441."

[Words and Phrases: United States, Vol. 40, p. 20]

### **Articles of Peace (Nov. 30, 1782)**

"Articles agreed upon, by and between Richard Oswald Esquire, the Commissioner of his Britannic Majesty, for treating of Peace with the Commissioners of the United States of America, in behalf of his said Majesty, on the one part; and John Adams, Benjamin Franklin, John Jay, and Henry Laurens, four of the Commissioners of the said States, for treating of Peace with the Commissioner of his said Majesty, on their Behalf, on the other part. To be inserted in, and to constitute the Treaty of Peace proposed to be concluded, between the Crown of Great Britain, and the said United States; but which Treaty is not to be concluded, untill [sic] Terms of a Peace shall be agreed upon, between Great Britain and France; and his Britannic Majesty shall be ready to conclude such Treaty accordingly."

#### "ARTICLE 1"

"His Britannic Majesty acknowledges the said United States, Viz' New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, to be free Sovereign and independent States; That he treats with them as such; And for himself, his Heirs and Successors, relinquishes all Claims to the Government, Propriety, and territorial Rights of the same, and every part thereof; and that all Disputes which might arise in future, on the Subject of the Boundaries of the said United States, may prevented, It is hereby agreed and declared that the following are, and shall be their Boundaries Viz'..."

#### "ARTICLE 3rd

"It is agreed, that the **People of the United States** shall continue to enjoy unmolested the Right to take Fish of every kind on the Grand Bank, and on all the other Banks of Newfoundland; Also in the Gulph of St Laurence, and at all other Places in the Sea where the **Inhabitants of both Countries** used at any time heretofore to fish. And also that the **Inhabitants of the united States** shall have Liberty to take Fish of every kind on such part of the Coast of Newfoundland, as British Fishermen shall use, (but not to dry or cure the same on that Island,) and also on the Coasts, Bays, and Creeks of all other of his Britannic Majesty's Dominions in America, and that the American Fishermen shall have Liberty to dry and cure Fish in any of the unsettled Bays, Harbours, and Creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for the said Fishermen to dry or cure Fish at such Settlement, without previous Agreement for that purpose with the Inhabitants Proprietors or Possessors of the Ground."

#### "ARTICLE 7th

"There shall be a firm and perpetual Peace, between his Britannic Majesty and the said States, and between the **Subjects of the one and the Citizens of the other**, Wherefore all Hostilities both by Sea and Land shall then immediately cease: All Prisoners on both sides shall be set at Liberty, & his Britannic Majesty shall, with all convenient speed, & without causing any Destruction or carrying away any Negroes, or other Property of the American Inhabitants withdraw all his Armies, Garrisons and Fleets from the said United States, and from every Port, Place, and Harbour within the same;..."

#### "ARTICLE 8th

"The Navigation of the River Mississippi from its Source to the Ocean, shall for ever remain free and open to the Subjects of Great Britain and the Citizens of the United States." [Bold added.]

[Articles of Peace, Paris, November 30, 1782]

### **Constitution for the United States of America, Article IV, Section 1 (Sept. 17, 1787)**

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"Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

[Constitution for the United States of America, Article IV, Section 1]

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**The Federalist Papers, No. 32 (Jan. 3, 1788)**

"An entire consolidation of the States into one complete national sovereignty would imply an entire subordination of the parts; and whatever powers might remain in them, would be altogether dependent on the general will. But as the plan of the convention aims only at a partial union or consolidation, the State governments would clearly retain all the rights of sovereignty which they before had, and which were not, by that act, EXCLUSIVELY delegated to the United States. This exclusive delegation, or rather this alienation, of State sovereignty, would only exist in three cases: where the Constitution in express terms granted an exclusive authority to the Union; where it granted in one instance an authority to the Union, and in another prohibited the States from exercising the like authority; and where it granted an authority to the Union, to which a similar authority in the States would be absolutely and totally CONTRADICTORY and REPUGNANT."

[The Federalist Papers, No. 32, Daily Advertiser, Thursday, January 3, 1788, by Alexander Hamilton]

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**The Federalist Papers, No. 45 (Jan. 1788)**

"It is true, that the Confederacy is to possess, and may exercise, the power of collecting internal as well as external taxes throughout the States; but it is probable that this power will not be resorted to, except for supplemental purposes of revenue; that an option will then be given to the States to supply their quotas by previous collections of their own; and that the eventual collection, under the immediate authority of the Union, will generally be made by the officers, and according to the rules, appointed by the several States. Indeed it is extremely probable, that in other instances, particularly in the organization of the judicial power, the officers of the States will be clothed with the correspondent authority of the Union. Should it happen, however, that separate collectors of internal revenue should be appointed under the federal government, the influence of the whole number would not bear a comparison with that of the multitude of State officers in the opposite scale. Within every district to which a federal collector would be allotted, there would not be less than thirty or forty, or even more, officers of different descriptions, and many of them persons of character and weight, whose influence would lie on the side of the State. The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State. The operations of the federal government will be most extensive and important in times of war and danger; those of the State governments, in times of peace and security. As the former periods will probably bear a small proportion to the latter, the State governments will here enjoy another advantage over the federal government. The more adequate, indeed, the federal powers may be rendered to the national defense, the less frequent will be those scenes of danger which might favor their ascendancy over the governments of the particular States. If the new Constitution be examined with accuracy and candor, it will be found that the change which it proposes consists much less in the addition of NEW POWERS to the Union, than in the invigoration of its ORIGINAL POWERS. The regulation of commerce, it is true, is a new power; but that seems to be an addition which few oppose, and from which no apprehensions are entertained. The powers relating to war and peace, armies and fleets, treaties and finance, with the other more considerable powers, are all vested in the existing Congress by the articles of Confederation. The proposed change does not enlarge these powers; it only substitutes a more effectual mode of administering them. The change relating to taxation may be regarded as the most important; and yet the present Congress have as complete authority to REQUIRE of the States indefinite supplies of money for the common defense and general welfare, as the future Congress will have to require them of individual citizens; and the latter will be no more bound than the States themselves have been, to pay the quotas respectively taxed on them. Had the States complied punctually with the articles of Confederation, or could their compliance have been enforced by as peaceable means as may be used with success towards single persons, our past experience is very far from countenancing an opinion, that the State governments would have lost their constitutional powers, and have gradually undergone an entire consolidation. To maintain that such an event would have ensued, would be to say at once, that the existence of the State governments is incompatible with any system whatever that accomplishes the essential purposes of the Union."

[The Federalist Papers, No. 45, *Independent Journal*, by James Madison]

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**Constitution for the United States of America, Tenth Amendment (Dec. 15, 1791)**

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"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."  
 [Constitution for the United States of America, Tenth Amendment]

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### **Chisholm, Ex'r. v. Georgia (Feb. 1794)**

"Every State in the *Union* in every instance where its sovereignty has not been delegated to the *United States*, I consider to be as completely sovereign, as the *United States* are in respect to the powers surrendered. The *United States* are sovereign as to all the powers of Government actually surrendered: Each State in the *Union* is sovereign as to all the powers reserved. It must necessarily be so, because the *United States* have no claim to any authority but such as the *States* have surrendered to them: Of course the part not surrendered must remain as it did before." p. 435.

"A State does not owe its origin to the Government of the *United States*, in the highest or in any of its branches. It was in existence before it. It derives its authority from the same pure and sacred source as itself: *The voluntary and deliberate choice of the people...* A State is altogether exempt from the jurisdiction of the Courts of the *United States*, or from any other exterior authority," unless in the special instances where the general Government has power derived from the Constitution itself." p. 448.

"The question to be determined is, whether this State, so respectable, and whose claim soars so high, is amenable to the jurisdiction of the Supreme Court of the *United States*? This question, important in itself, will depend on others, more important still; and may, perhaps, be ultimately resolved into one, no less *radical* than this--"do the people of the *United States* form a NATION?"

"By that law the several States and Governments spread over our globe, are considered as forming a society, not a NATION,67, 90, 133, 194, 218, & 275"p. 453. [Italics & capitals original; bold added.]  
 [Chisholm, Ex'r. v. Georgia, 2 Dall. 419, 1 L.Ed. 440 (1794)]

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### **Glass v. Betsey (1794)**

"The District Court has no jurisdiction by the Constitution and laws of the United States (which form the only possible source of Federal jurisdiction) for, although it is admitted, that by the 1st and 2d sections of the 3d article of the Constitution, and the Judicial act, the jurisdiction of the District Court extends to all *civil causes* of admiralty and maritime jurisdiction;...."

"In Europe, the *Executive* is almost synonymous with the *Sovereign* power of a State; and, generally, includes legislative and judicial authority. When, therefore, writers speak of the sovereign, it is not necessarily in exclusion of the judiciary; and it will often be found, that when the Executive affords a remedy for any wrong, it is nothing more than by an exercise of its judicial authority. Such is the condition of power in that quarter of the world, where it is too commonly acquired by *force*, or *fraud*, or both, and seldom by *compact*. In *America*, however, the case is widely different. Our government is founded upon compact. Sovereignty was, and is, in the people, [sic] It was entrusted by them, as far as was necessary for the purpose of forming a good government, to the Federal Convention; and the Convention executed their trust, by effectually separating the Legislative, Judicial, and Executive powers; which, in the contemplation of our Constitution, are each a branch of the sovereignty. The well-being of the whole depends upon keeping each department within its limits."

[Glass v. Betsey, 3 U.S. 6; 3 Dall. 6; 1 L.Ed. 485 (1794)]

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### **Penhallow v. Doane's (1795)**

"It never was considered that before the actual signature of the articles of confederation a citizen of one State was to any one purpose a citizen of another. He was to all substantial purposes as a Foreigner to their forensic jurisprudence. If rigorous law had been enforced, perhaps he might have been deemed an *alien*, without an express provision of the State to save him. And as an unjust decision upon the law of nations, in the case of a Foreigner to all the States, might, if redress had not been given, have ultimately led to a foreign war, an unjust decision on the same law in one State, to the prejudice of a citizen of another State, might have ultimately led, if redress had not been given, to a civil war, an evil much the more dreadful of the two."

"If Congress, previous to the articles of confederation, possessed any authority, it was an authority, as I have shewn, derived from the people of each Province in the first instance. When the obnoxious acts of Parliament passed, if the people in each Province had chosen to resist separately, they undoubtedly had equal right to do so, as to join in general measures of resistance with the people of the other Provinces, however unwise and destructive such a policy might, and undoubtedly would have been. If they had pursued this separate system, and afterwards the people of each Province had resolved that such Province should be a free and independent State, the State from that moment would have become possessed of all the

powers of sovereignty internal and external, (viz. the exclusive right of providing for their own government, and regulating their intercourse with foreign nations) as completely as any one of the ancient Kingdoms or Republics of the world, which never yet had formed or thought of forming, any sort of Federal union whatever. [ \* \* \* ] The great distinction between Monarchies and Republics (at least our Republics) in general is, that in the former the monarch is considered as the sovereign, and each individual of his nation a subject to him, though in some countries with many important special limitations: This, I say, is generally the case, for it has not been so universally. But in a Republic, all the citizens, as such, are equal, and no citizen can rightfully exercise any authority over another, but in virtue of a power constitutionally given by the whole community, and such authority when exercised, is in effect an act of the whole community which forms such body politic. In such governments, therefore, the sovereignty resides in the great body of the people, but it resides in them not as so many distinct individuals, but in their politic capacity only."

[Penhallow v. Doane's, 3 U.S. 54, 3 Dall. 54, 1 L.Ed. 507 (1795)]

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### **Respublica v. Cobbet (Dec. 1798)**

"Our system of government seems to me to differ, in form and spirit, from all other governments, that have heretofore existed in the world. It is as to some particulars national, in others federal, and in all the residue territorial, or in districts called states.

"The divisions of power between the national, federal, and state government, (all derived from the same source, the authority of the people) must be collected from the constitution of the United States. Before it was adopted, the several states had absolute and unlimited sovereignty within their respective boundaries; all the powers, legislative, executive, and judicial, excepting those granted to Congress under the old constitution; They now enjoy them all, excepting such as are granted to the government of the United States by the present instrument and the adopted amendments, which are for particular purposes only. The government of the United States forms a part of the government of each state; its jurisdiction extends to the providing for the common defense against exterior injuries and violence, the regulation of commerce, and other matters specially enumerated in the constitution; all other powers remain in the individual states, comprehending the interior and other concerns; these combined, form one complete government. Should there be any defect in this form of government, or any collision occur, it cannot be remedied by the sole act of the Congress, or of a state; the people must be resorted to, for enlargement or modification. If a state should differ with the United States about the construction of them, there is no common umpire but the people, who should adjust the affair by making amendments in the constitutional way, or suffer from the defect. In such a case the constitution of the United States is federal, it is a league or treaty made by the individual states, as one party, and all the states, as another party. When two nations differ about the meaning of any clause, sentence, or word in a treaty, neither has an exclusive rights [sic] to decide it; they endeavor to adjust the matter by negotiation, but if it cannot be thus accomplished, each has a right to retain its own interpretation, until a reference be had to the mediation of other nations, an arbitration, or the fate of war. There is no provision in the constitution, that in such a case the judges of the supreme court of the United States shall control and be conclusive: neither can the congress by a law confer that power. There appears to be a defect in this matter, it is a *casus omissus*, which ought in some way to be remedied."

"The words of the declaration are: "The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States, by citizens of another state, or by citizens or subjects of any foreign state." When the judicial law was passed, the opinion prevailed that states might be sued, which by this amendment [11th Amendment] is settled otherwise."

[Respublica v. Cobbet, 3 U.S. 467; 1 L.Ed. 683 (1798)]

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### **16 American Jurisprudence 2d, Sovereignty of states**

"The original thirteen states existed prior to the adoption of the Federal Constitution and before that time possessed all the attributes of sovereignty. All these attributes except those surrendered by the formation of the Constitution and the amendments thereto have been retained. But the sovereign power of the states is necessarily diminished to the extent of the grants of power to the federal government in the Constitution, and it is subject to the restraints and limitations of the Constitution.

"New states, upon their admission into the Union, become invested with equal rights and are subject only to such restrictions as are imposed upon the states already admitted. There can be no state of the Union whose sovereignty or freedom of action is in any respect different from that of any other state. There can be no restriction upon any state other than one prescribed upon all the states by the Federal Constitution. Congress, in admitting a state, cannot restrict such state by bargain. The state, by so contracting with Congress, is in no way bound by such a contract, however irrevocable it is stated to be. It is said that subject to the restraint and limitations of the Federal Constitution, the states have all the sovereign powers of independent nations over all persons and things within their respective territorial limits."

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[16 American Jurisprudence 2d, Sovereignty of states §281]

### **M'Ilvaine v. Coxe's Lessee (1804)**

"From the time they took possession of the city in 1777, he has never resided in any place within the jurisdiction of the United States, but has resided in places under the actual jurisdiction and government of the King of Great Britain...." p. 280.

- .. and stated that, "he then was and from his birth ever had been, a subject of the King of Great Britain, and under the allegiance of the said king," p. 280.

- the right of expatriation ... is denied by the constitution of no state, nor of the United States."

"It is positively affirmed by the constitutions of some of the states, viz., Pennsylvania, Kentucky and Vermont, and by an act of assembly of Virginia." p. 281.

"The independence of **America** was a national act. The avowed object was to throw off the power of a distant country; to destroy the political subjection; to elevate ourselves from a provincial to **an equal state in the great community of nations**.

"It was, therefore, a political revolution, involving in the change all the inhabitants of **America**; rendering them all members of the new society, **citizens of the new states**.

"The declaration of independence was not a unanimous act. It was the act of a majority. But the general sentiment of the day was, that it bound the minority. They were all equally considered as **citizens of the United States**."

"The political connection between the **people of America** and the state of Great Britain was dissolved;..." p. 283.

"The first of the two oaths, required by that act, is in these words: "I, A. B., do sincerely profess and swear, that I do not hold myself bound to bear allegiance to the King of Great Britain. So help me God." The second oath is, "I, A. B., do sincerely profess and swear that I do and will bear true faith and allegiance to the government established in this state, under the authority of the people. So help me God." p. 284.

"Birth is but evidence of allegiance." p. 285.

"Our opponents have piled together a confused and shapeless mass of evidence on which this court cannot act." p. 286.

"Of the **17 United States**, one only (Virginia) has recognized or provided for it by law." p. 286.

.. it is a recognized principle that a man may owe allegiance to **two countries** at the same time, and therefore, may lawfully have the intention of owing allegiance to both **Great Britain and New Jersey**." p. 286.

"**All the American constitutions** which have been referred to, speak only of emigration. Virginia alone has provided by law for the case of expatriation; but that law cannot affect lands in New Jersey." p. 287.

"That the place of birth should determine the condition of the subject, is both reasonable and natural." p. 288.

"We are not a confederated republic. Our general government is composed of a **number of distinct and independent states**, uniting under one head by mutual consent for common benefit." p. 289.

"Taking the word emigration, then in its most extensive sense, is the right of expatriation, as has been represented, the mere whim of modern, fanciful, theoretical writers? I say it is as ancient as the society of man.

"It is only by establishing the converse of the proposition, the common law idea that the natural born subject of one prince cannot, by swearing allegiance to another, or by any other act, discharge himself from his allegiance to the former, that the principle of emigration can be made a matter of doubt. *1 Tuck. Bl. part 2, App. p. 90*. I deny that this common law principle is founded in, or consonant to, the divine law, the law of nature, the law of nations, or the constitution of the state of New Jersey. The Bible is the most venerable book of antiquity; there we find expatriation practiced, approved, and never restrained. The family of Jacob became subjects to the Egyptian monarch. Moses abandoned Egypt, his native land, and David left Saul, his prince.

"The law of nature, abstractedly considered, knows neither prince nor subject. From this source, therefore, the common law principle cannot be derived.

"Particular nations have prohibited their people from migrating to another country, but the prohibition did not arise from the practice of nations towards each other. At Athens, after a man examined the laws of the republic, if he did not approve of them, he was at liberty to quit the country with his effects. By the constitution of the Roman commonwealth, no citizen could be forced to leave it, or not to leave it, when made a member of another which he preferred. Even under the emperors, as long as any remains of liberty continued, it was a rule that each one might choose the state of which he wished to be a subject or citizen. Where did the Romans get their laws? From the Grecians. Where did the Grecians get their laws? From the Eastern nations--the aborigines of the earth. The right of expatriation, therefore, as far as we can trace it, has been recognized in the most remote antiquity. Among modern nations the practice is various; the Muscovites forbid it; in Switzerland it is permitted; some princes consider their subjects as riches, as flocks and herds, and their edicts correspond to these false notions. *Vattel, b. 1, d, 19, s. 225*. Consult jurists, Grotius, Puffendorf, Burlamaqui, Vattel; they are of opinion, that every man has a natural right to migrate, unless restrained by laws, and that these cannot restrain the right but under special circumstances, and to a limited degree."

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"Lastly, the Constitution of New Jersey is founded on sentiments which repel the idea of perpetual allegiance, and imply and include the right of expatriation."

"Whatever diversity there may have been in the sentiments of writers, and in the laws and practices of states on the subject of emigration in general, there never has been a doubt in this country, but that when a civil war takes place each member of the society has a right to choose his side." pp. 293-294.

.. cannot be naturalized without the consent of the legislature of the state in which such persons were proscribed. All the courts of the United States, therefore, could not naturalize Daniel Coxe, without the consent of the states of New Jersey and Pennsylvania, in both of which he has been proscribed." p. 295.

"Let it be recollected that Congress, on the 27th of November, 1777, earnestly recommended it to the several states to confiscate and make sale of all the real and personal estate of such of their inhabitants, and other persons, as had forfeited the same." p. 296.

"... considered as **citizens of the United States,....**" p. 296. [Bold added.]  
[*M'Ilvaine v. Coxe's Lessee*, 8 U.S. 279 (1804)]

### **Jefferson to the Osages (July 12, 1804)**

"My Children. White hairs, Chiefs & Warriors of the Osage Nation.

"I receive [sic] you with great pleasure at **the seat of the govm. of the 17. United nations**, and tender you a sincere welcome. I thank the Great Spirit who has inspired you with a desire to visit your new friends, & who has conducted you in safety to take us this day by the hand. The journey you have come is long, the weather has been warm & wet, & I fear you have suffered on the road, notwithstanding our endeavors for your accomodation [sic]. But you have come through a land of friends, all of whom I hope have looked on you kindly, & been ready to give. you every aid and comfort by the way.

"You are as yet fatigued with your journey. But you are under the roof of your fathers and best friends, who will spare nothing for your refreshment and comfort. Repose yourselves therefore, and recruit your health and strength, and when you are rested we will open the bottoms of our hearts more fully to one another. In the mean time we will be considering how we may best secure everlasting peace, friendship & commerce between the Osage nation, and the 17. **United nations** in whose name I speak to you, and take you by the hand." [Bold added.]

"Th: Jefferson  
July 12, 1804"

[*Letters of the Lewis and Clark Expedition, WITH RELATED DOCUMENTS*, 1783-1854, Donald Jackson, Ed, University of Illinois Press, Urbana, 1962, p. 199]

### **Letters of the Lewis and Clark Expedition (Aug. 4, 1804)**

To the Petit Voleur, or Wear-ruge-nor, the great Chief of the Ottoes, to the Chiefs and Warriors of the Ottoes, and the Chiefs and Warriors of the Missouri nation residing with the Ottoes-- [ \* \* \* ]

"*Children*. Commissioned and sent by the great Chief of the Seventeen great nations of America, we have come to inform you, as we go also to inform all the nations of red men who inhabit the borders of the Missouri, that a great council was lately held between this great chief of the Seventeen great nations of America, and your old fathers the french [sic] and Spaniards; and that in this great council it was agreed that all the white men of Louisiana, inhabiting the waters of the Missouri and Mississippi should obey the commands of this great chief; he has accordingly adopted them as his children and they now form one common family with us: your old traders are of this description; they are no longer the subjects of France or Spain, but have become the Citizens of the Seventeen great nations of america [sic], and are bound to obey the commands of their great Chief the President who is now your only great father.

"*Children*. This council being concluded between your old fathers the french [sic] and Spaniards, and your great father **the Chief of the Seventeen great nations of America, [ \* \* \* ] the great Chief of the Seventeen great nations of America, [ \* \* \* ] the great Chief of the Seventeen great nations of America, [ \* \* \* ]**." [Bold added.]

"Signed and sealed this 4th day of August 1804 at the council Bluff, by us, the friends of all the red-men, and the war chiefs of the great chief of the Seventeen great nations of America." [NOTE: The expression "Seventeen great nations of America" occurs 14 times in this document.]

[*Letters of the Lewis and Clark Expedition, WITH RELATED DOCUMENTS*, 1783-1854, Donald Jackson, Ed, University of Illinois Press, Urbana, 1962, pp. 203-208]

### **The Story of America, Beginnings to 1914**

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"Lewis and Clark prepared for their journey carefully. They consulted with leading scientists. They gathered the necessary equipment, such as guns, warm clothing, gifts for Indians, and medicines. They even secured navigational instruments so that they could map the country accurately.

"They chose with equal care the members of what they called their **Corps of Discovery**. They employed a half-French, half-Indian interpreter who was skilled in the sign language used by Indians of different tribes to communicate with one another. One member was an expert at repairing guns, another a carpenter. Twenty-one members of the Corps were army men. The secretary of war had authorized Lewis to "detach" from their military duties any volunteers he wanted. Only strong men used to living in the woods were chosen, for as Lewis said, hard work was "a very essential part of the services required of the party." The group finally chosen consisted of 45 people. One of these, an enormously strong man named York, became the first person of African descent to cross the continent. He was a slave owned by William Clark.

"Westward to the Pacific

"On May 14, 1804, the explorers set out from their base at the junction of the Mississippi and Missouri Rivers. Up the Missouri they went. They traveled in three boats, the largest a 55-foot (about 17-meter) keelboat manned by 22 oarsmen. Their first objective was the "mountains of rock that rise up in the West."

"By August they had reached what is now Council Bluffs, Iowa. There they had their first meeting with Indians belonging to the tribes of the Great Plains. Lewis and Clark put up the United States flag, which at the time had 17 stars. Through an interpreter Lewis told the Plains Indians that "**the great Chief of the seventeen nations of America**" wanted to live in peace and was eager to trade with them for their furs. He then gave out gifts and left them an American flag, but Jefferson's hopes for peace were doomed to disappointment." [Bold added.]

"By October the explorers were deep in the northern plains. Cold weather was fast approaching. They built Fort Mandan, and in this snug, easily defended post they passed a long, bitterly cold winter.

"When spring came, Lewis and Clark shipped the many boxes of plants, Indian craft objects, and animal bones and skins that they had collected back to St. Louis in the keelboat. Everything was carefully labeled. Then they pushed on. A Canadian, Toussaint Charbonneau, accompanied them as an interpreter, as did Sacagawea (Bird Woman), a Shoshone Indian married to Charbonneau.

"Sacagawea became a very important member of the party. High in the Rockies, near the present-day border of Montana and Idaho, the expedition met up with the Shoshone. Lewis had pushed ahead with Charbonneau and the guide who knew Indian sign language. Most Indians of the region were very wary and difficult to find, but the explorers came upon three Shoshone women. After giving them gifts, they persuaded these Shoshone to lead them to their camp. There they found 60 warriors on horseback. The Shoshone people greeted the explorers in friendly fashion, giving them food and smoking a ceremonial pipe of peace. When Sacagawea and the rest of the party reached the Shoshone camp, she discovered to everyone's delight that the chief was her brother!" [This book was adopted by the California Department of Education as the Social Studies textbook for eighth grade students in California public schools through the year 1999.]

[The Story of America, Beginnings to 1914, John A. Garraty, Ed., Holt, Rinehart and Winston, Inc., Orlando, Florida, 1991, pages 280-281]

### **M'Ilvaine v. Coxe's Lessee (Feb. 23, 1808)**

"Daniel Coxe, under whom the lessor of the plaintiff claims, was born in the province of New Jersey, long before the declaration of independence, and resided there until some time in the year 1777, when he joined the British forces."

.. because he remained in the state of New Jersey, not only after she had declared herself a sovereign state, but after she had passed laws by which she pronounced him to be a member of, and in allegiance to, the new government."

"From hence it results, that the laws of the several state governments were the laws of sovereign states, and as such were obligatory upon the people of such state, from the time they were enacted. ... for although the constitution of New Jersey was formed previous to the general declaration of independence, the laws passed upon the subject now under consideration were posterior to it."

"The law speaks of them as fugitives not as aliens, and they are invited, not to become subjects, but to return to their duty, which the legislature clearly considered as still subsisting and obligatory upon them."

"If he was an alien, he must have been so by the laws of New Jersey; but those laws had uniformly asserted, that he was an offender against the form of his allegiance to the state. How, then, can this court, acting upon the laws of New Jersey, declare him an alien? The conclusion is inevitable, that, prior to the treaty of peace, Daniel Coxe was entitled to hold and had a capacity to take lands, in New Jersey by descent."

"It contains an acknowledgment of the independence and sovereignty of the United States, in their political capacities, and a relinquishment on the part of His Britannic Majesty, of all claim to the government, propriety and territorial rights of the same. These concessions amounted, no doubt, to a formal renunciation of all claim to the allegiance of the citizens of the United States. But the question who were at that period citizens of the United States is not decided, or in the slightest degree alluded to, in this instrument; it was left necessarily to depend upon the laws of the respective states, who in their

sovereign capacities had acted authoritatively upon the subject." [Bold added.]  
 [M'Ilvaine v. Coxe's Lessee, 8 U.S. 598 (1808)]

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**Livingston v. Van Ingen (1812)**

"Prior to the adoption of the Constitution of the United States, the respective states possessed an absolute sovereignty; but the exercise of some of their powers of sovereignty was devolved upon Congress, by the Legislature of the particular states. The *residuum* remained unimpaired with the several states. The Congress was undeniably a representation of federative states; and represented their sovereignty collectively, in their foreign relations and the domestic objects appropriately within those powers.

"None of the restrictions imposed by the confederation could have been applied to the present case, but the fourth article, which in less comprehensive general terms, but more in detail than the new Constitution, secured to the citizens of the United States common privileges and immunities.

"The Constitution, in the eighth section of the first article, confers on Congress the power "to regulate commerce with foreign nations, and among the several states. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries."

"The second section of the fourth article declares "that the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several states."

"We are not called upon to say affirmatively what powers have been granted to the general government, or to what extent. Those powers, whether express or implied, may be plenary and sovereign, in reference to the specified objects of them. They may even be liberally construed in furtherance of the great and essential ends of the government. To this doctrine I willingly accede. But the question here is, not what powers are granted to that government, but what powers are retained by this, and, particularly, whether the States have absolutely parted with their original power of granting such an exclusive privilege as the one now before us. It does not follow, that because a given power is granted to Congress, the states cannot exercise a similar power. We ought to bear in mind certain great rules or principles of construction peculiar to the case of a confederated government, and by attending to them in the examination of the subject, all our seeming difficulties will vanish.

"When the People create a single, entire government, they grant at once all the rights of sovereignty. The powers granted are indefinite and incapable of enumeration. Everything is granted that is not expressly reserved in the constitutional charter, or necessarily retained as inherent in the people. But when a Federal Government is erected with only a portion of sovereign power, the rule of construction is directly the reverse, and every power is reserved to the member that is not, either in express terms or by necessary implication, taken away from them, and vested exclusively in the federal head. This rule has not only been acknowledged by the most intelligent of friends of the Constitution, but is plainly declared in the instrument itself. Congress have [sic] power to lay and collect taxes, duties and excises, but as these powers are not given exclusively, the states have a concurrent jurisdiction, and retain the same absolute powers of taxation which they possessed before the adoption of the Constitution, except the power of laying an impost, which is expressly taken away. This very exception proves that, without it, the states would have retained the power of laying an impost; and it further implies, that in cases not excepted, the authority of the states remains unimpaired.

"This principle might be illustrated by other instances of grants of power to Congress with a prohibition to the states from exercising the like powers; but it becomes unnecessary to enlarge upon so plain a proposition, as it is removed beyond all doubt by the tenth article of the amendment to the Constitution. That article declares that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.""

"Our safe rule of construction and of action is this, that if any given power was originally vested in this State, if it has not been exclusively ceded to Congress, or if the exercise of it has not been prohibited to the states, we may then go on in the exercise of the power until it comes practically in collision with the actual exercise of some congressional power. When that happens to be the case, the state authority will so far be controlled, but it will still be good in all those respects in which it does not absolutely contravene the provision of the paramount law.

"This construction of the powers of the federal compact has the authority of Mr. Hamilton. In the thirty-second number of the Federalist, he admits that all the authorities of which the states are not explicitly divested, remain with them in full vigor, and that in all cases in which it was deemed improper that a like authority, with that granted to the Union should reside in the states, there was a most pointed care in the Constitution to insert negative clauses. He further states that there are only three cases of the alienation of the state sovereignty: 1. Where the grant to the general government is, in express terms, exclusive; 2. Where a like power is expressly prohibited to the states; and, 3. Where an authority in the states would be absolutely and totally contradictory and repugnant to one granted to the Union; and it must be, he says, an immediate constitutional repugnancy that can, by implication, alienate and extinguish a pre-existing right of sovereignty."

[Livingston v. Van Ingen, 9 (Johns) 507; 4 N.Y. 861 (1812)]

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**Black's Law Dictionary: Cede**

"CEDE. To yield up; to assign; to grant. Generally used to designate the transfer of territory from one government to another. *Goetze v. United States*, C.C.N.Y., 103 Fed. 72; *Baltimore v. Turnpike Road*, 80 Md. 535, 31 A. 420." [Black's Law Dictionary, Revised Fourth Edition, 1968, p. 282]

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**Black's Law Dictionary: Delegation**

"DELEGATION. A sending away; a putting into commission; the assignment of a debt to another; the intrusting another with a general power to act for the good of those who depute him; a body of delegates." [Black's Law Dictionary, Revised Fourth Edition, 1968, p. 513]

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**Black's Law Dictionary: Justice**

"JUSTICE, n. In jurisprudence. The constant and perpetual disposition to render every man his due. [Cites omitted.] The conformity of our actions and our will to the law. [Cite omitted.]"

""Equity and "Justice" are substantially equivalent terms. If not synonymous. [Cite omitted.]

"Under constitutional provision guaranteeing right to obtain justice, the "justice" to be administered by courts is not an abstract justice as conceived of by the judge but justice according to law or, as it is phrased in the constitution, "conformably to the laws"." [Cite omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1002]

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**Black's Law Dictionary: Privilege**

"PRIVILEGE. A particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens. An exceptional or extraordinary power or exemption. A right, power, franchise, or immunity held by a person or class, against or beyond the course of the law. [Cites omitted.]

"An exemption from some burden or attendance, with which certain persons are indulged, from a supposition of law that the stations they fill, or the offices they are engaged in, are such as require all their time and care, and that, therefore, without this indulgence, it would be impracticable to execute such offices to that advantage which the public good requires. [Cites omitted.] That which releases one from the performance of a duty or obligation, or exempts one from a liability which he would otherwise be required to perform, or sustain in common with all other persons. [Cite omitted.] A peculiar advantage, exemption, or immunity." [Cite omitted.]

"Privileges and immunities. Within the meaning of the 14th amendment of the United States constitution, such privileges as are fundamental, which belong to the citizens of all free governments and which have at all times been enjoyed by citizens of the United States. [Cite omitted.] They are only those which owe their existence to the federal government, its national character, its Constitution, or its laws." [Cites omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1359]

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**Black's Law Dictionary: Immunity**

"IMMUNITY. Exemption, as from serving in an office, or performing duties which the law generally requires other citizens to perform. [Cite omitted.] freedom from duty or penalty. [Cite omitted.] The term aptly describes an exemption from taxation. [Cite omitted.] A particular privilege." [Cites omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 885]

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**Black's Law Dictionary: Devolve**

"DEVOLVE. To pass or be transferred from one person to another; to fall on, or accrue to, one person as the successor of another; as a title, right, office, liability. The term is said to be peculiarly appropriate to the passing of an estate from a person dying to a person living." [Cites omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 540]

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**Sturges v. Crowninshield (1819)**

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***Sovereignty and Freedom Points and Authorities***

"That the power is both unlimited and supreme is not questioned. That it is exclusive, is denied by the counsel for the defendant.

"In considering this question, it must be recollected that, previous to the formation of the new constitution, we were divided into independent states, united for some purposes, but in most respects, sovereign. These states could exercise almost every legislative power, and, among others, that of passing bankrupt laws. When the American people created a national legislature, with certain enumerated" powers, it was neither necessary nor proper to define the powers retained by the states. These powers proceed, not from the people of America, but from the people of the several states; and remain, after the adoption of the constitution, what they were before, except so far as they may be abridged by that instrument. In some instances, as in making treaties, we find an express prohibition; and this shows the sense of the convention to have been, that the mere grant of a power to Congress did not imply a prohibition on the states to exercise the same power. But it has never been supposed that this concurrent power of legislation extended to every possible case in which its exercise by the states has not been expressly prohibited. The confusion resulting from such a practice would be endless. The principle laid down by the counsel for the plaintiff, in this respect, is undoubtedly correct. Whenever the terms in which a power is granted to Congress, or the nature of the power, required that it should be exercised exclusively by Congress, the subject is as completely taken from the state legislatures as if they had been expressly forbidden to act on it."

"Is the power to establish uniform laws on the subject of bankruptcies, throughout the United States, of this description?" [*Sturges v. Crowninshield*, 17 U.S. 122; 4 L.Ed. 529 (1819)]

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### **M'Culloch v. The State of Maryland et al (1819)**

"The people of the United States have seen fit to divide sovereignty, and to establish a complex system. They have conferred certain powers on the state governments, and certain other powers on the national government. p. 326; 581-582.

"No political dreamer was ever wild enough to think of breaking down the lines which separate the states, and of compounding the American people into one common mass." p. 403; 600.

"The original power of giving the law on any subject whatever, is a sovereign power..." p. 409; 602.

"In America, the powers of sovereignty are divided between the government of the Union, and those of the States. They are each sovereign, with respect to the objects committed to it, and neither sovereign with respect to the objects committed to the other." p. 410; 602.

"The good sense of the public has pronounced, without hesitation, that the power of punishment appertains to sovereignty, and may be exercised whenever the sovereign has a right to act, as incidental to his constitutional powers." p. 418; 604.

"All subjects over which the sovereign power of a state extends are objects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self-evident.

"The sovereignty of a state extends to everything which exists by its own authority, or is introduced by its permission..." p. 429; 607.

"We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended." p. 421; 605.

[*M'Culloch v. The State of Maryland et al*, 17 U.S. (4 Wheat.) 316; 4 L.Ed. 579 (1819)]

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### **38 C.J.S.: Government: Government**

"'government' has been defined as a body politic, a state; a corporate entity through which the people act; a fictitious entity created by the people..."

[38 Corpus Juris Secundum: Government]

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### **Black's Law Dictionary: Law of the Land**

"**LAW OF THE LAND.** Due process of law (q.v.). By the law of the land is most clearly intended the general law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial. [Cite omitted.] The meaning is that every citizen shall hold his life, liberty, property, and immunities under the protection of general rules which govern society. [Cites omitted.]

"**Everything which may pass under the form of an enactment is not the law of the land.** Sedg. St. & Const. Law, (2d Ed.) 475. When first used in *Magna Charta*, the phrase probably meant the established law of the kingdom, in opposition to the civil or Roman law. It is now generally regarded as meaning general public laws binding on all members of the community. [Cites omitted.] It means due process of law warranted by the constitution, by the common law adopted by the constitution, or by statutes passed in pursuance of the constitution." [Cite omitted; bold added.]

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### **Sovereignty and Freedom Points and Authorities**

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[Black's Law Dictionary, Revised Fourth Edition, 1968, pp. 1031-1032]

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**Black's Law Dictionary: National Government**

"NATIONAL GOVERNMENT. The government of a whole nation, as distinguished from that of a local or territorial division of the nation, and also as distinguished from that of a league or confederation.

"A *national* government is a government of the people of a single state or nation, united as a community by what is termed the social compact, and possessing complete and perfect supremacy over persons and things, so far as they can be made the lawful objects of civil government. A *federal* government is distinguished from a national government, by its being the government of a community of independent and sovereign states, united by compact." *Piqua Branch Bank v. Knoup*, 6 Ohio.St. 393." [Bold added.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1176]

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**Gibbons v. Ogden (Feb. 1824)**

"The subject to be regulated is commerce; and our constitution being, as was aptly said at the bar, one of enumeration, and not of definition, to ascertain the extent of the power it becomes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, to buying and selling, or the interchange of commodities, and do not admit that it comprehends navigation. This would restrict a general term, applicable to many objects, to one of its significations. Commerce, undoubtedly, is traffic, but it is something more; it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. The mind can scarcely conceive a system for regulating commerce between nations, which shall exclude all laws concerning navigation, which shall be silent on the admission of the vessels of the one nation into the ports of the other, and be confined to prescribing rules for the conduct of individuals, in the actual employment of buying and selling, or of barter."

"The genius and character of the whole government seem to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the states generally; but not to those which are completely within a particular state, which do not affect other states, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government. The completely internal commerce of a state, then, may be considered as reserved for the state itself."

"If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations, and among the several States, is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the constitution of the United States. The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess at elections, are, in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied, to secure them from its abuse. They are the restraints on which the people must often rely solely, in all representative governments.

"The power of Congress, then, comprehends navigation within the limits of every state in the Union;" so far as that navigation may be, in any manner, connected with "commerce with foreign nations, or among the several states, or with the Indian tribes." It may, of consequence, pass the jurisdictional line of New York, and act upon the very waters to which the prohibition now under consideration applies."

"The grant of the power to lay and collect taxes is, like the power to regulate commerce, made in general terms, and has never been understood to interfere with the exercise of the same power by the states; and hence has been drawn an argument which has been applied to the question under consideration. But the two grants are not, it is conceived, similar in their terms or their nature. Although many of the powers formerly exercised by the states, are transferred to the government of the Union, yet the state governments remain, and constitute a most important part of our system. The power of taxation is indispensable to their existence, and is a power which, in its own nature, is capable of residing in, and being exercised by, different authorities at the same time. We are accustomed to see it placed, for different purposes, in different hands. Taxation is the simple operation of taking small portions from a perpetually accumulating mass, susceptible of almost infinite division; and a power in one to take what is necessary for certain purposes, is not, in its nature, incompatible with a power in another to take what is necessary for other purposes. "Congress is authorized to lay and collect taxes &c., to pay the debts, and provide for the common defense and general welfare of the United States. This does not interfere with the power of the states to tax for the support of their own governments; nor is the exercise of that power by the states an exercise of any portion of the power that is granted to the United States. In imposing taxes for state purposes, they are not doing what Congress is empowered to do. Congress is not empowered to tax for those purposes which are within the exclusive province of the states. When, then, each government exercises the power of taxation, neither is exercising the power of the other. But, when a state proceeds to regulate commerce with foreign nations, or among the several states, it is exercising the very power that is



granted to Congress, and is doing the very thing which Congress is authorized to do. There is no analogy, then, between the power of taxation and the power of regulating commerce."

.. and it may be admitted that Congress cannot give a right to a state, in virtue of its own powers."

"Although Congress cannot enable a state to legislate, Congress may adopt the provisions of a state on any subject. When the government of the Union was brought into existence, it found a system for the regulation of its pilots in full force in every state. The act which has been mentioned, adopts this system, and gives it the same validity as if its provisions had been specially made by Congress. But the act, it may be said, is prospective also, and the adoption of laws to be made in future, presupposes the right in the maker to legislate on the subject."

"But this section is confined to pilots within the "bays, inlets, rivers, harbors, and ports of the United States," which are, of course, in whole or in part, also within the limits of some particular state."

"It has been contended by the counsel for the appellant, that, as the word "to regulate" implies in its nature, full power over the thing to be regulated, it excludes, necessarily, the action of all others that would perform the same operation on the same thing. That regulation is designed for the entire result, applying to those parts which remain as they were, as well as to those which are altered. It produces a uniform whole, which is as much disturbed and deranged by changing what the regulating power designs to leave untouched, as that on which it has operated."

"There is great force in this argument, and the court is not satisfied that it has been refuted."

"The word "license" means permission, or authority; and a license to do any particular thing is a permission or authority to do that thing; and if granted by a person having power to grant it, transfers to the grantee the right to do whatever it purports to authorize. It certainly transfers to him all the right which the grantor can transfer, to do what is within the terms of the license."

"One-half the doubts in life arise from the defects of language, and if this instrument had been called an exemption instead of a license, it would have given a better idea of its character. Licensing acts, in fact in legislation, are universally restraining acts; as, for example, acts licensing gaming houses, retailers of spiritous [sic] liquors, &c. The act, in this instance, is distinctly of that character, and forms part of an extensive system, the object of which is to encourage American shipping, and place them on an equal footing with the shipping of other nations. Almost every commercial nation reserves to its own subjects a monopoly of its coasting trade; and a countervailing privilege in favor of American shipping is contemplated, in the whole legislation of the United States on this subject. It is not to give the vessel an American character, that the license is granted; that effect has been correctly attributed to the act of her enrollment. But it is to confer on her American privileges, as contradistinguished from foreign; and to preserve the government from fraud by foreigners, in surreptitiously intruding themselves into the American commercial marine, as well as frauds upon the revenue in the trade coastwise, that this whole system is projected. Many duties and formalities are necessarily imposed upon the American foreign commerce, which would be burdensome in the active coasting trade of the states, and can be dispensed with."

[Gibbons v. Ogden, 22 U.S. 1, 9 Wheat 1; 6 L.Ed. 23 (1824)]

### **Bank of the U.S., The v. The Planters' Bank of Georgia (1824)**

"It is, we think, a sound principle, that when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level with those with whom it associates itself, and takes the character which belongs to its associates, and to the business which is to be transacted. Thus, many states of this Union" who have an interest in banks are not suable even in their own courts; yet they never exempt the corporation from being sued."

[Bank of the U.S., The v. The Planters' Bank of Georgia, 22 U.S. 904, 9 Wheat 904; 6 L.Ed. 244 (1824)]

### **Harcourt et al. v. Gaillard (1827)**

"The treaty of peace of 1783, between the United States and Great Britain, was a mere recognition of pre-existing rights as to territory, and no territory was thereby acquired by way of cession from Great Britain."

[Harcourt et al. v. Gaillard, 12 U.S. 523; 12 Wheat. 523, 6 L.Ed. 716; 6 Cond. Rep. 628 (1827)]

### **The Cherokee Nation v. The State of Georgia (Jan. 1831)**

"The Cherokee Nation is not a foreign state, in the sense in which the term "foreign state" is used in the Constitution of the United States."

"The Cherokees are a State."

### ***Sovereignty and Freedom Points and Authorities***

"The acts of our government plainly recognize the Cherokee Nation as a State, and the courts are bound by those acts."  
[The Cherokee Nation v. The State of Georgia, 30 U.S. 1, 8 L.Ed. 25 (1831)]

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**Worcester v. The State of Georgia (1832)**

"Before the adoption of the Constitution, the mode of treating [sic] with the Indians was various. After the formation of the confederacy, this subject was placed under the special superintendence of the United Colonies, though, subsequent to that time, treaties may have been occasionally entered into between a State and the Indians in its neighborhood."

"It is said that these treaties are nothing more than compacts, which cannot be considered as obligatory on the United States, from a want of power in the Indians to enter into them."

"What is a treaty? The answer is, it is a compact formed between two nations or communities, having the right of self-government."

"Is it essential that each party shall possess the same attributes of sovereignty to give force to the treaty? This will not be pretended; for, on this ground, very few valid treaties could be formed. The only requisite is, that each of the contracting parties shall possess the right of self-government, and the power to perform the stipulations of the treaty."

"Under the Constitution, no State can enter into any treaty; and it is believed that, since its adoption, no State, under its own authority, has held a treaty with the Indians."

[Worcester v. The State of Georgia, 31 U.S. 515, 8 L.Ed. 483 (1832)]

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**Barron v. Mayor and City Council of City of Baltimore (1833)**

"The provision in the fifth amendment to the Constitution of the United States, declaring that private property shall not be taken for public use without just compensation, is intended solely as a limitation on the exercise of power by the government of the United States, and is not applicable to the legislation of the States."

"The Constitution was ordained and established by the people of the United States, for themselves, for their own government, and not for the government of individual States. Each State established a constitution for itself, and in that constitution provided such limitations and restrictions on the powers of its particular government as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation, and best calculated to promote their interests. The powers they conferred on this government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally and necessarily applicable to the government created by the instrument. They are limitations of power granted in the instrument itself, not of distinct governments framed by different persons and for different purposes."

[Barron v. Mayor and City Council of City of Baltimore, 32 U.S. 243, 7 Peters 243, 8 L.Ed. 672 (1833)]

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**The Mayor, &c., of New Orleans v. United States (1836)**

"The laws, edicts and ordinances of the realm, and the custom of Paris, were extended to Louisiana. This charter was afterwards surrendered by Crozat to the king; and a new one was granted on the 6th of September, 1717, to a corporation styled the Western Company. The land, coasts, harbors and islands in Louisiana, were granted to this company, as they had been to Crozat, "it doing faith and homage to the king and furnishing a crown of gold, of the weight of thirty marks, at each mutation of the sovereignty." p. 593.

"The power is given to this company to grant land allodially." p. 593.

"The title to Penn and his heirs was allodial, and we have seen that the Western Company was authorized to make such titles. Like the heirs of Penn, the Western Company was proprietor of a great extent of territory, and the dedications were made under circumstances somewhat similar; but the proof of dedication of the common or quay at New Orleans, is incomparably stronger than was found in the *Pittsburgh* case." p. 594.

"It appears that the city, from time immemorial, has been compelled to construct at great expense, and keep in repair, levees, which resist the waters of the river and preserve the city from inundation. If it were not for these levees or embankments, it appears from the facts proved that not only the city of New Orleans but the country, to a great extent, bordering on the lower Mississippi, would be uninhabitable. These works resist the current of the river, eddies are formed and the deposits rapidly accumulate. In this way has the vacant space been greatly enlarged within twenty or thirty years past."

"This enlargement of the quay cannot defeat or impair the rights of the city, and the question only remains to be answered, whether the facts in this case, by the principles of the common law, show a dedication of this vacant space to public use."

"No one can doubt that the answer must be in the affirmative." pp. 594-595.

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***Sovereignty and Freedom Points and Authorities***

"It is admitted that **the power of the sovereign over the streets of a city is limited**. He cannot alien them, nor deprive the inhabitants of their use, because such use is essential to the enjoyment of urban property. And a distinction is drawn, in this respect, between the streets of a city and the other grounds dedicated to public use. The latter, it is contended, is not only under the supervision of the king as to its use, but he may sell and convey it.

"Now, it would seem, in reason, that the principle is the same in both cases. The inhabitants of a town cannot be deprived of their streets, as the streets are essential to the enjoyment of their property. In other words, by closing the streets, the value of the buildings of the town would be greatly reduced, if not entirely destroyed. And if ground dedicated to public use, which adds to the beauty, the health, the convenience and the value of town property, be arbitrarily appropriated by the sovereign to other purposes, is not the value of the property which has been bought and sold in reference to it, greatly impaired? The value may not be reduced to the same ruinous extent as it would be to close the streets, but the difference is only in the degree of the injury, and not in the principle involved.

"Domat (liv. 1, title 8, sec. 1, art. 1) says there are two kinds of things destined to the common use of men, and of which everyone has the enjoyment. The first are those which are so by nature; as rivers, the sea and its shores. The second, which derive their character from the destination given them by man; such as streets, highways, churches, market-houses, court-houses, and other public places; and it belongs to those in whom the power of making laws and regulations in such matters is vested, to select and mark out the places which are to serve the public for these different purposes." pp. 595-596.

"Domat says, **"rivers, their banks, highways, are public places which are for the use of all, according to the laws of the country. They belong to no individual, and are out of commerce;** the king only regulates the use of them." And again, (in vol. 2, lib. 1, tit. 8, sec. 2, 3 and 16): **"we class public places, as out of commerce,** those which are for the use of the inhabitants of a city, or other place, and in which no individual can have any right of property, as the walls, ditches or gates of a city, and public squares." p. 598.

"The power of appropriating private property to public purposes is an incident of sovereignty. And it may be, that by the exercise of this power, under extraordinary emergencies, property which had been dedicated to public use, but the enjoyment of which was principally limited to a local community, might be taken for higher and national purposes, and disposed of on the same principles which subject private property to be taken.

"In a government of limited and specified powers like ours, such a power can be exercised only in the mode provided by law; but in an arbitrary government, the will of the sovereign supersedes all rule on the subject." p. 597.

**"The fundamental laws of the Spanish nation, and which are understood to be alike binding on the king and the people,** are found in the Partidas and the Recopilacion."

"The 9th law, tit. 20, of Partida 3, contains the following: "The things which belong separately or (severally) to the commons of cities or towns are fountains of water, the places where the fairs or markets are held, or where the city council meet, the alluvions or sand deposits on the banks of rivers, and all the other uncultivated lands immediately contiguous to the said cities, and the race grounds, and the forests and pastures, and all such other places which are established for the common use.""

"The 23d law, tit. 32, of Partida 3, is as follows: "No one ought to erect a house or other building or works in the squares nor on the commons (*exidos*), nor in the roads which belong to the commons of cities, towns or other places; for as these things are left for the advantage or convenience and the common use of all, no one ought to take possession of them, or do, or erect any works there for his own particular benefit; and if anyone contravenes this law, that which he does there must be pulled down and destroyed; and if the corporation of the place where the works are constructed choose to retain them for their own use, and not pull them down, they may do so, and they make use of the revenue they derive therefrom in the same manner as any other revenues they possess; and we moreover say that no man who has erected works in any of the above-mentioned places can or shall acquire a right thereto by prescription." p. 597.

"A faithful observance of these laws would have preserved the rights of the city, as to the common, free from invasion. No law was cited in the argument which showed the power of the King of Spain to alienate land which had been dedicated to the public use; and it is clear that **the exercise of such a power would have violated the public law, which is understood to have limited the exercise of the sovereign power in this respect.**" p. 598.

"As **power was given to the King of Spain by law** to grant permission to build on **public places**, it would seem to follow that such places were **not only withdrawn from commerce, but that the king could not alien them**. For if he had the power to do this, in as unlimited a manner as over the crown lands, it would include the exercise of every minor authority over them. If he could sell and convey the lands dedicated to public use, surely he might, without any authority of law, grant permission to build on such lands." p. 598.

"**"That public places, such as roads and streets, cannot be appropriated to private uses, is one of those principles of public law which required not the support of much argument.** Nor is there any doubt that if, by a stretch of arbitrary power, the preceding government had given away such places to individuals, such grants might be declared void." p. 599.

"There can be no difference in principle between ground dedicated as a quay to public use, and the streets and alleys of a town; and as to the streets, it may be asked whether the king could rightfully have granted them. And it is believed that **the public right to a common is equally beyond the power of the sovereign to grant**, unless he dispose of it under the

power to appropriate property to the national use, and then compensation must be paid." p. 599.

**"The land, having been dedicated to public use, was withdrawn from commerce,** and so long as it continued to be thus used, could not become the property of any individual. So careful was the King of Spain to guard against the alienation of property which had been dedicated to public use, that in a law cited, all such conveyances are declared to be void." p. 600.

That both the kings of France and Spain could exercise a certain jurisdiction over this common, and other places similarly situated, has been stated; but this was a police regulation, and was rightfully exercised in such a manner as not to encroach upon the public use." p. 600.

"We come now to examine, under the third head, the interest of the United States in the property claimed by the city, and their jurisdiction over it." p. 600.

"It is a principle sanctioned as well by law as by the immutable principles of justice that where an individual acts in ignorance of his rights, he shall not be prejudiced by such acts. And this rule applies at least with as much force to the acts of corporate bodies as to those of individuals. We will, therefore, inquire, as we are bound to do, whether, under the circumstances of this case, the acts of the city can justly be considered as prejudicing the claim which they assert." p. 601.

**The government of the United States, as was well observed in the argument, is one of limited powers. It can exercise authority over no subjects except those which have been delegated to it. Congress cannot, by legislation, enlarge the federal jurisdiction, nor can it be enlarged under the treaty-making power.**

"If the common in contest, under the Spanish crown, formed a part of the public domain or the crown lands, and the king had power to alien it as other lands, there can be no doubt that it passed under the treaty to the United States, and they have a right to dispose of it the same as other public lands. But if the King of Spain held the land in trust for the city, or only possessed a limited jurisdiction over it, principally, if not exclusively, for police purposes, was this right passed to the United States under the treaty.

**"That this common, having been dedicated to public use, was withdrawn from commerce, and from the power of the king rightfully to alien it, has already been shown;** and also, that he had a limited power over it for certain purposes. Can the federal government exercise this power? If it can, this court has the power to interpose an injunction or interdict to the sale of any part of the common by the city, if they shall think that the facts authorize such an interposition.

"It is insisted that the federal government may exercise this authority under the power to regulate commerce.

"It is very clear that as the treaty cannot give this power to the federal government, we must look for it in the Constitution, and that the same power must authorize similar exercise of jurisdiction over every other quay in the United States. A statement of the case is a sufficient refutation of the argument.

**"Special provision is made in the constitution for the cession of jurisdiction from the states over places where the federal government shall establish forts or other military works. And it is only in these places, or in the territories of the United States, where it can exercise a general jurisdiction."**

The State of Louisiana was admitted into the Union on the same footing as the original States. Her rights of sovereignty are the same, and by consequence no jurisdiction of the federal government, either for purposes of police or otherwise, can be exercised over this public ground, which is not common to the United States. It belongs to the local authority to enforce the trust, and prevent what they shall deem a violation of it by the city authorities.

**"All powers which properly appertain to sovereignty, which have not been delegated to the federal government, belong to the States and the people.**

"It is enough for this court, in deciding the matter before them, to say that in their opinion, neither the fee of the land in controversy nor the right to regulate the use, is vested in the federal government, and consequently, that the decree of the District Court must be reversed, and the cause remanded with directions to dismiss the bill." p. 602. [Bold added.]

[The Mayor, of New Orleans v. United States, 35 U.S. 662, 10 Pet. 662, 9 L.Ed. 573 (1836)]

### **Ashwander v. T.V.A. (Feb. 17, 1936)**

"Congress may not, under pretext of executing its powers, pass laws for accomplishment of objects not intrusted to it by the Constitution."

"Power to regulate interstate commerce embraces power to keep navigable rivers of United States free from, and to remove, obstructions to navigation, since "commerce" includes navigation (Const. art. 1, §8, cl. 3).

"Express power of Congress under Constitution to dispose of property belonging to United States is not abridged or withdrawn by Ninth or Tenth Amendment" (Const. art. 4, §3;" Amends. 9, 10)." p. 288.

[Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 56 S.Ct. 466 (1936)]

### **Mayor, etc. of the City of New York v. Miln (Jan. 1837)**

"The state governments, in their separate powers and independent sovereignties, in their reserved powers, are just as much beyond the jurisdiction and control of the National Government as the National Government in its sovereignty is beyond the control and jurisdiction of the state governments.

.. a State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits, as any foreign nation...."

[Mayor, etc. of the City of New York v. Miln, 36 U.S. 102, 11 Pet. 102, 9 L.Ed. 648 (1837)]

### **Bank of Augusta v. Earle (1839)**

"The States between each other are sovereign and independent. They are distinct and separate sovereignties, except so far as they have parted with some of the attributes of sovereignty by the Constitution. They continue to be nations, with all their rights, and under all their national obligations, and with all the rights of nations in every particular; except in the surrender by each to the common purposes and objects of the Union, under the Constitution. The rights of each State, when not so yielded up, remain absolute."

"It is very true that a corporation can have no legal existence out of the boundaries of the sovereignty by which it is created. It exists only in contemplation of law, and by force of the law; and where that law ceases to operate, and is no longer obligatory, the corporation can have no existence. It must dwell in the place of its creation, and cannot migrate to another sovereignty."

[Bank of Augusta v. Earle, 38 U.S. (13 Pet.) 519, 10 L.Ed. 274 (1839)]

### **Fox v. The State of Ohio (1847)**

"The prohibitions contained in the amendments to the Constitution were intended to be restrictions upon the federal government, and not upon the authority of the States."

"The mere grant of power in the Constitution has never been held to divest the States of the power so granted. There must be something more; either a prohibition, a grant in exclusive terms, or a manifest incompatibility."

"The prohibition alluded to as contained in the amendments to the Constitution, as well as others with which it is associated in those articles, were not designed as limits upon the State governments in reference to their own citizens." They are exclusively restrictions upon federal power, intended to prevent interference with the rights of the States, and of their citizens. Such has been the interpretation given to those amendments by this court, in the case of *Barron v. The Mayor and City Council of Baltimore* (7 Peters, 243); and such, indeed, is the only rational and intelligible interpretation which those amendments can bear, since it is neither probable nor credible that the States should have anxiously insisted to ingraft upon the federal Constitution restrictions upon their own authority--restrictions which some of the States regarded as the *sine qua non* of its adoption by them. It is almost certain, that, in the benignant spirit in which the institutions ministered, an offender who should have suffered the penalties denounced by the one would not be subjected a second time to punishment by the other for acts essentially the same, unless, indeed, this might occur in instances of peculiar enormity, or where the public safety demanded extraordinary rigor."

"Mr. *Justice* McLean:

"I dissent from the opinion of the court.... This power is not inhabited to the States in terms, but this may be inferred from the nature of the power. Two governments acting independently of each other cannot exercise the same power for the same object."

"Offenses are made punishable in that act committed on the high seas, in navy yards, and other places where the United States have exclusive jurisdiction, and also for counterfeiting the coin of the United States. Now, it must be admitted that Congress cannot cede any portion of that jurisdiction which the Constitution has vested in the federal government. And it is equally obvious, that a State cannot punish offenses committed on the high seas, or in any place beyond its limits."

"Formerly Congress provided that the State courts should have jurisdiction of certain offenses under their laws, and in several States indictments were prosecuted, and to a limited extent the laws of the Union were enforced by the States. But some States very properly refused to exercise the jurisdiction in such cases, and it was too clear for argument that Congress could not impose such duties on State courts. And this doctrine is now universally established. Consequently no State court will undertake to enforce the criminal law of the Union, except as regards the arrest of persons charged under such law. It is therefore clear, that the same power cannot be exercised by a State court as is exercised by the courts of the United States, in giving effect to their criminal laws."

"The point is not whether a State may not punish an offense under an act of Congress, but whether the State may inflict, by virtue of its own sovereignty, punishment for the same act, as an offense against the State, which the federal government may constitutionally punish."

"But it is not pretended that the conviction of Malinda Fox under the State law, is a bar to a prosecution under the law



of Congress. Each government, in prescribing the punishment, was governed by the nature of the offense, and must be supposed to have acted in reference to its own sovereignty.

"There is no principle better established by the common law, none more fully recognized in the federal and State constitutions, than that an individual shall not be put in jeopardy twice for the same offense. This, it is true, applies to the respective governments; but its spirit applies with equal force against a double punishment, for the same act, by a State and the federal government.

"Mr. Hamilton, in the thirty-second number of *The Federalist*, says there is an exclusive delegation of power by the States to the federal government in three cases: 1. Where in express terms an exclusive authority is granted; 2. Where the power granted is inhibited to the States; and 3. Where the exercise of an authority granted to the Union by a State would be "contradictory and repugnant.-

"There can be no greater mistake than to suppose that the federal government, in carrying out any of its supreme functions, is made dependent on the State government. The federal is a limited government, exercising enumerated powers; but the powers given are supreme and independent. If this were not the case, it could not be called a general government. Nothing can be more repugnant or contradictory than two punishments for the same act. It would be a mockery of justice and a reproach to civilization. It would bring our system of government into merited contempt."

[*Fox v. The State of Ohio*, 46 U.S. 410, 5 Howard 410, 12 L.Ed. 213 (1847)]

### **91 C.J.S., United States §4**

**"Powers in General The governmental powers of the United States to the extent that they are conferred or not withheld by the Constitution, are supreme and paramount. The United States has no inherent sovereign powers, and no legislative powers other than those conferred by the Constitution."**

"The Constitution does not, however, make any general grant of power...."

• .. this is a government of enumerated' or delegated' powers, and that it has only such powers as have been conferred on it, expressly or by necessary implication."

"The United States has no inherent sovereign powers and no inherent common-law prerogatives, and it has no power to interfere in the personal or social relations of citizens by virtue of authority deducible from the general nature of sovereignty....

.. • when the United States enters into commercial business it abandons its sovereign capacity and is to be treated like any other corporation...."

[91 *Corpus Juris Secundum*, United States, §4]

### **Moore v. Smaw (Jan. 1861)**

"In this country, this authority is vested in the people, and is exercised through the joint action of their Federal and State Governments. To the Federal Government is delegated the exercise of certain rights or powers of sovereignty; and the exercise of all other rights of sovereignty, except as expressly prohibited, is reserved to the people of the respective States, or vested by them in their local governments."

"To say that a State of the Union is sovereign, only means that she possesses supreme political authority, except as to those matters over which such **authority is delegated to the Federal Government**, or prohibited to the States--in other words, that she possesses all the rights and powers essential to the existence of an **independent political organization**, except as they are withdrawn by the provisions of the Constitution of the United States."

[*Moore v. Smaw*, 17 Cal. 199 (1861)]

### **Texas v. White (Apr. 12, 1869)**

"When Texas became one of the United States, it entered into an indissoluble relation."

"By the Ordinance of Secession, adopted by the Convention and ratified by a majority of the citizens of Texas, and the Acts of its Legislature intended to give effect to that ordinance, the State did not cease to be a State, nor its citizens to be citizens of the Union."

Some not unimportant aid, however, in ascertaining the true sense of the Constitution, may be derived from considering what is the correct idea of a State, apart from any union or confederation with other States. The poverty of language often compels the employment of terms in quite different significations; and of this hardly any example more signal is to be found than in the use of the word we are now considering. It would serve no useful purpose to attempt an enumeration of all the various senses in which it is used. A few only need be noticed.

"It describes sometimes a people or community of individuals united more or less closely in political relations, inhabiting

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temporarily or permanently the same country; often it denotes only the country or territorial region, inhabited by such a community; not infrequently it is applied to the government under which the people live; at other times it represents the combined idea of people, territory, and government.

"It is not difficult to see that in all these senses the primary conception is that of a people or community. The people, in whatever territory dwelling, either temporarily or permanently, and whether organized under a regular government, or united by looser or less definite relations, constitute the State.

"This is undoubtedly the fundamental idea upon which the republican institutions of our own country are established. It was stated very clearly by an eminent judge, Mr. Justice Paterson, in *Penhallow v. Doane*, 3 Dall. 93, in one of the earliest cases adjudicated by this court, and we are not aware of anything, in any subsequent decision, of a different tenor.

"In the Constitution the term "state" most frequently expresses the combined idea just noticed of people, territory and government. A State, in the ordinary sense of the Constitution, is a political community of free citizens occupying a territory of defined boundaries, and organized under a government sanctioned and limited by a written constitution, and established by the consent of the governed. It is the union of such States, under a common constitution, which forms the distinct and greater political unit, which that Constitution designates as the United States, and makes of the people and States which compose it one people and one country."

"From the date of admission, until 1861, the State was represented in the Congress of the United States by her Senators and Representatives, and her relations as a member of the Union remained unimpaired."

"Did Texas, in consequence of these Acts, cease to be a State? Or, if not, did the State cease to be a member of the Union?"

"It is needless to discuss, at length, the question whether the right of a State to withdraw from the Union for any cause, regarded by herself as sufficient, is consistent with the Constitution of the United States.

"The Union of the States never was a purely artificial and arbitrary relation. It began among the Colonies, and grew out of common origin, mutual sympathies, kindred principles, similar interests and geographical relations. It was confirmed and strengthened by the necessities of war, and received definite form, and character, and sanction from the Articles of Confederation. By these the Union was solemnly declared to "be perpetual." And when these articles were found to be inadequate the exigencies of the country, the Constitution was ordained "to form a more perfect Union." It is difficult to convey the idea of indissoluble unity more clearly than by these words. What can be indissoluble if a perpetual Union, made more perfect, is not?"

"But the perpetuity and indissolubility of the Union by no means implies the loss of distinct and individual existence, or of the right of self government by the States. Under the Articles of Confederation each State retained its sovereignty, freedom and independence, and every power, jurisdiction and right not expressly delegated to the United States. Under the Constitution, though the powers of the States were much restricted, still all powers not delegated to the United States, nor prohibited to the States, are reserved to the States respectively, or to the people. And we have already had occasion to remark at this term, that "the people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence," and that "without the States in union, there could be no such political body as the United States." *Lane Co. v. Oregon*, *infra*, 101. Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and maintenance of the National government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.

"When, therefore, Texas became one of the United States, she entered into an indissoluble relation. All the obligations of perpetual union, and all the guaranties of republican government in the Union, attached at once to the State. The Act which consummated her admission into the Union was something more than a compact; it was the incorporation of a new member into the political body. And it was final. The union between Texas and the other States was as complete as perpetual, and as indissoluble as the Union between the original States. There was no place for reconsideration, or revocation, except through revolution, or through consent of the States."

[*Texas v. White*, 7 Wall. 700, 19 L.Ed. 227 (1869) [Reversed by *Morgan v. United States*, 113 U.S. 476, 5 S.Ct. 588, 28 L.Ed. 1044 (1885)]]

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### **17 Cal.Jur. 3d (Rev) Part 1, Criminal Law, §16 "Definitions**

"The Penal Code sets forth the definitions of a number of terms used throughout the code."

"The word "state," when applied to the different parts of the United States, includes the District of Columbia and the territories, and the words "United States" may include the district and territories."

[17 Cal.Jur. 3d (Rev) Part 1, Criminal Law, §16]

**81A C.J.S., States, §2****"Definitions and Nature**

"The term "state" as used in connection with matters of government in the United States usually designates a member of the Union of states of the United States."

[81A Corpus Juris Secundum, States, §2]

**California Government Code, §420**

"The Bear Flag is the State Flag of California. As viewed with the hoist end of the flag to the left of the observer there appears in the upper left-hand corner of a white field a five-pointed red star with one point vertically upward and in the middle of the white field a brown grizzly bear walking toward the left with all four paws on a green grass plot, with head and eye turned slightly toward the observer; a red stripe forms the length of the flag at the bottom, and between the grass plot and the red stripe appear the words CALIFORNIA REPUBLIC."

[California Government Code, §420]

**Words and Phrases****"REPUBLIC**

"A republic, acknowledged as such by our own government, is an independent sovereign power--in other words, a state--just as certainly and in the same sense as a monarchy, limited or absolute; and every state is a person, an artificial person, in a more extensive and far higher sense than an ordinary corporation." Republic of Mexico v. De Arangoiz, 12 N.Y.Super. (5 Duer) 634, 636.

"A republic is a government for the protection of the citizen against the exercise of all unjust power. It is a government administered by a few, as the representatives of the people and for their benefit. With this as the cardinal object of the state government, it has no privileges, except such as are conferred on it by the Constitution, by act of the Legislature, or such as are necessary for the due administration of the government. State v. Harris, S.C., 2 Bailey, 598, 599."

[Words and Phrases: Republic, Vol. 37, p. 84]

**Buffington (Collector) v. Day (Apr. 3, 1871)**

"In the case of *Dobbins v. Erie Co.*, 16 Pet., 435, it was decided that it was not competent for the Legislature of a State to levy a tax upon the salary or emoluments of an officer of the United States. The decision was placed mainly upon the ground that the officer was a means or instrumentality employed for carrying into effect some of the legitimate powers of the Government, which could not be interfered with by taxation or otherwise by the States, and that the salary or compensation for the service of the officer was inseparably connected with the office; that if the officer, as such, was exempt, the salary assigned for his support or maintenance while holding the office, was also, for like reasons, equally exempt."

"It is conceded in the case of *McCulloch v. Md.* [sic] that the power of taxation by the States was not abridged by the grant of a similar power to the Government of the Union; that it was retained by the States, and that the power is to be concurrently exercised by the two governments; and also that there is no express constitutional prohibition upon the States against taxing the means or instrumentalities of the General Government. But, it was held, and we agree properly held, to be prohibited by necessary implication; otherwise, the States might impose taxation to an extent that would impair, if not wholly defeat, the operations of the federal authorities when acting in their appropriate sphere.

"These views, we think, abundantly establish the soundness of the decision of the case of *Dobbins v. Erie Co.* [supra], which determined that the States were prohibited, upon a proper construction of the Constitution, from taxing the salary or emoluments of an officer of the Government of the United States. And we shall now proceed to show that, upon the same construction of that instrument, and for like reasons, that government is prohibited from taxing the salary of the judicial officer of a State.

"It is a familiar rule of construction of the Constitution of the Union, that the sovereign powers vested in the state governments by their respective constitutions, remained unaltered and unimpaired except so far as they were granted to the Government of the United States. That the intention of the framers of the Constitution in this respect might not be misunderstood, this rule of interpretation is expressly declared in the 10th article of the amendments, namely: "The powers not delegated to the United States are reserved to the States respectively, or to the people." **The Government of the United States, therefore, can claim no powers which are not granted to it by the Constitution, and the powers actually granted must be such as are expressly given, or given by necessary implication.**"

"The General Government, and the States, although both exist within the same territorial limits, are separate and distinct

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sovereignties, acting separately and independently of each other, within their respective spheres. The former, in its appropriate sphere, is supreme; but the States within the limits of their powers not granted, or, in the language of the 10th Amendment, "reserved," are as independent of the General Government as that government within its sphere is independent of the States."

"Two of the great departments of the government, the Executive and Legislative, depend upon the exercise of the powers, or upon the people of the States. The Constitution guaranties to the States a republican form of government, and protects each against invasion or domestic violence. Such being the separate and independent condition of the States in our complex system, as recognized by the Constitution, and the existence of which is so indispensable, that, without them, the General Government itself would disappear from the family of nations, it would seem to follow, as a reasonable, if not a necessary consequence, that the means and instrumentalities employed for carrying on the operations of their governments for preserving their existence, and fulfilling the high and responsible duties assigned to them in the Constitution, should be left free and unimpaired; should not be liable to be crippled, much less defeated by the taxing power of another government, which power acknowledges no limits but the will of the legislative body imposing the tax."

"The supremacy of the General Government, therefore, so much relied on in the argument of the counsel for the plaintiff in error, in respect to the question before us, cannot be maintained." [Bold added.]  
[Buffington v. Day, 11 Wall. 113, 78 U.S. 122 (1871)]

### **California Constitution (1879) Article III, §1**

"The State of California is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land."  
[California Constitution (1879) Article III, §1]

### **California Constitution (1879) Article III, §1, History Notes**

"**Prior Law:** Based on former §3 of Art I, which provided prior to repeal: "The State of California is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land."  
"Treaties are supreme law of land, binding on courts of every state."  
[California Constitution (1879) Article III, §1, History Notes]

### **Julliard v. Greenman (Mar. 3, 1884)**

"There is no such thing as a power of inherent sovereignty in the government of the United States.... In this country sovereignty resides in the people, and Congress can exercise no power which they have not, by their Constitution entrusted to it: All else is withheld."  
[Julliard v. Greenman, 110 U.S. 421 (1884)]

### **Morgan v. United States (Mar. 2, 1885)**

"The position taken in Texas v. White, XIX., 227, that the Legislature of Texas, while the State was owner of the bonds involved in that case, could limit their negotiability by an Act of legislation, of which all subsequent purchasers were charged with notice, although the bonds on their face were payable to bearer, must be regarded as overruled."  
[Morgan v. United States, 113 U.S. 476, 5 S.Ct. 588, 28 L.Ed. 1044 (1885)]

### **Fort Leavenworth R. R. Co. v. Lowe (May 4, 1885)**

"This power of exclusive legislation is to be exercised, as thus seen, over places purchased, by consent of the Legislatures of the states in which they are situated, for the specific purposes enumerated. It would seem to have been the opinion of the framers of the Constitution that, without the consent of the states, **the new government** would not be able to acquire lands within them; and therefore it was provided that when it might require such lands for the erection of forts and other buildings for the defense of the country, or the discharge of other duties devolving upon it, and the consent of the states in which they were situated was obtained for their **acquisition, such consent should carry with it political dominion and legislative authority over them.** Purchase with such consent was the only mode then thought of for the acquisition by the general government of title to lands in the states. Since the adoption of the Constitution this view has not generally prevailed. Such consent has not always been obtained, nor supposed necessary, for the purchase by the general government of lands within the states. If any doubt has ever existed as to its power thus to acquire lands within the states, it has not had

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sufficient strength to create any effective dissent from the general opinion. *The consent of the states to the purchase of lands within them for the special purposes named is, however, essential, under the Constitution, to the transfer to the general government, with the title, of political jurisdiction and dominion.* Where lands are acquired without such consent, the possession of the United States, unless political jurisdiction be ceded to them in some other way, is simply that of an ordinary proprietor."

.. it is undoubtedly true that the State, whether represented by her Legislature, or through a convention specially called for that purpose, is incompetent to cede her political jurisdiction and legislative authority over any part of her territory to a foreign country, without the concurrence of the General Government. The jurisdiction of the United States extends over all the territory within the States, and, therefore, their authority must be obtained, as well as that of the State within which the territory is situated, before any cession of sovereignty or political jurisdiction can be made to a foreign country." [Bold added.]

[Fort Leavenworth R. R. Co. L. Lowe, 114 U.S. 525, 5 S.Ct. 995; 29 L.Ed. 264 (1885)]

### **Yick Wo v. Hopkins (May 10, 1886)**

"Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated' to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts."

[Yick Wo v. Hopkins, 118 U.S. 356, 6 S.Ct. 1064 (1886)]

### **Myers v. Murray, Nelson & Co. (Sept. 1890)**

"In *Insurance Co. v. Francis*, 11 Wall. 210, it is said:

"A corporation can have no legal existence outside the sovereignty by which it was created. Its place of residence is there, and can be nowhere else. Unlike a natural person, it cannot change its domicile at will; and, although it may be permitted to transact business where its charter does not operate, it cannot, on that account, acquire a residence there.""

"In *Ex parte Schollenberger*, 96 U.S. 377, it is declared that--

"A corporation cannot change its residence or its citizenship. It can have its legal home only at the place where it is located by or under the authority" of its charter.""

"In *Railroad Co. v. Koontz*, 104, U.S. 5, it is again affirmed that--

"By doing business away from their legal residence, they do not change their citizenship, but simply extend the field of their operations. They reside at home, but do business abroad.""

" "In *Pennsylvania R. Co. v. St. Louis, A. & T. H. R. Co.*, 118 U.S. 290, 6 Sup.Ct.Rep. 1094, it is said:

"It does not seem to admit of question that a corporation of one state, owning property and doing business in another state by permission of the latter, does not thereby become a citizen of this state also.""

"In the latter case [*Muller v. Dows*, 94 U.S. 444] it is said:

"A corporation itself can be a citizen of no state, in the sense in which the word is used in the constitution of the United States. A suit may be brought in the federal courts by or against a corporation, but in such case it is regarded as a suit brought by or against the stockholders of the corporation; and for the purposes of jurisdiction it is conclusively presumed that all the stockholders are citizens of the state, which by its laws created the corporation.""

"Much of the doubt and uncertainty thrown around this class of questions arises, it seems to me, from not keeping in mind the distinction between national and state citizenship. This it is said that citizenship and residence are not synonymous terms. As applied to national citizenship, this is true. An alien cannot become a citizen of the United States by mere residence in this country. Therefore, when the question of national citizenship is under consideration, proof that a person resides in the United States does not necessarily prove that he is a citizen of the United States. Notwithstanding such residence, he may be an alien, and therefore, when the issue is as to national citizenship, the proof must be upon the point whether the person is native born, or, if born an alien, whether he has since been naturalized according to the requirements of the statute. When the issue is as to the state citizenship of one who is admitted or proven to be a citizen of the United States, then the point of inquiry is, of what state is the person a legal resident? A citizen of the United States, native born or naturalized, is a citizen of that state in which he has his legal residence. He may to-day [sic] be a resident in, and therefore a citizen of, the state of Illinois, but if to-morrow [sic] he should remove to Iowa, with the intent to take up his permanent abode in the latter state, he would then become a citizen of Iowa. If he does not reside in Iowa, he cannot be said to be a citizen of Iowa. If he does in fact reside in Iowa, he is a citizen of Iowa, and cannot, so long as he is a citizen of Iowa, become a citizen of any other state. An individual cannot, within the meaning of the removal statutes, be a citizen of two or more states at one and the same time. He must be deemed to be a citizen of the state in which he has his fixed, permanent, or legal residence, and he cannot be a citizen of any state other than the one in which he resides."

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[*Myers v. Murray, Nelson & Co.*, 43 F. 695, 11 L.R.A. 216 (1890)]

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**Huntington v. Attrill (Dec. 12, 1892)**

"The question whether due faith and credit were thereby denied to the judgment rendered in another state is a federal question, of which this court has jurisdiction on this writ of error."

"In order to determine this question, it will be necessary, in the first place, to consider the true scope and meaning of the fundamental maxim of international law stated by Chief Justice Marshall in the fewest possible words: "The courts of no country execute the penal laws of another." *The Antelope*, 10 Wheat. 66, 123. In interpreting this maxim, there is danger of being misled by the different shades of meaning allowed to the word "penal" in our language."

"Penal laws, strictly and properly, are those imposing punishment for an offense committed against the state, and which, by the English and American constitution, the executive of the state has the power to pardon."

"The test whether a law is penal, in the strict and primary sense, is whether the wrong sought to be redressed is a wrong to the public or a wrong to the individual, according to the familiar classification of Blackstone: "Wrongs are divisible into two sorts or species: private wrongs and public wrongs. The former are an infringement or privation of the private or civil rights belonging to individuals, considered as individuals, and are thereupon frequently termed "civil injuries", the latter are a breach and violation of public rights and duties, which affect the whole community, considered as a community, and are distinguished by the harsher appellation of "crimes and misdemeanors. 3 Bl. Comm. 2."

"Laws have no force of themselves beyond the jurisdiction of the state which enacts them, and can have extraterritorial effect only by the comity of other states. The general rules of international comity upon this subject were well summed up, before the American Revolution, by Chief Justice De Grey, as reported by Sir William Blackstone: "Crimes are in their nature local, and the jurisdiction of crimes is local. And so as to the rights of real property, the subject being fixed and immovable. But personal injuries are of a transitory nature, and sequuntur forum rei." *Rafael v. Verelst*, 2 W.Bl. 1055, 1058."

"Crimes and offenses against the laws of any state can only be defined, prosecuted, and pardoned by the sovereign authority of that state; and the authorities, legislative, executive, or judicial, of other states take no action with regard to them, except by way of extradition, to surrender offenders to the state whose laws they have violated, and whose peace they have broken."

"The only ground ever suggested for maintaining such suits in a state court is that the laws of the United States are, in effect, laws of each state. *Clafin v. Houseman*, 93 U.S. 130, 137; *Platt, J.*, in *U.S. v. Lathrop*, 17 Johns, 22; *Ordway v. Bank* 47 Md. 217. But in *Clafin v. Houseman* the point adjudged was that an assignee under the bankrupt law of the United States could assert in a state court the title vested in him by the assignment in bankruptcy; and Mr. Justice Bradley, who delivered the opinion in that case, said the year before, when sitting in the circuit court, and speaking of a prosecution in a court of the state of Georgia for perjury committed in that state in testifying before a commissioner of the circuit court of the United States: "It would be a manifest incongruity for one sovereignty to punish a person for an offense committed against the laws of another sovereignty."

[*Huntington v. Attrill*, 146 U.S. 657, 13 S.Ct. 224 (1892)]

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**United States v. Coe (Oct. 29, 1894)**

"Under section 6 it was made lawful "for any person or persons or corporation, or their legal representatives, claiming lands within the limits of the territory derived by the United States from the republic of Mexico and now embraced within the territories of New Mexico, Arizona, or Utah or within the states of Nevada, Colorado, or Wyoming by virtue of any such Spanish or Mexican grant, concession, warrant, or survey as the United States are bound to recognize and confirm by virtue of the treaties of cession of said country by Mexico to the United States which at the date of the passage of this act have not been confirmed by act of congress, or otherwise finally decided upon by lawful authority, and which are not already complete and perfect, in every such case to present a petition, in writing, to the said court in the state or territory where said land is situated and where the said court holds its sessions, but cases arising in the states and territories in which the court does not hold regular sessions may be instituted at such place as may be designated by the rules of the court.""

"Causes in the court of private land claims are in effect equity causes, and brought to this court by appeal, and, as observed by Chief Justice Ellsworth, in *Wiscart v. Dauchy*, 3 Dail. 321: "An appeal is a process of civil-law origin and removes a cause entirely, subjecting the fact, as well as the law, to a review and retrial; but a writ of error is a process of common law, and it removes nothing for examination but the law.' "

"It must be regarded as settled that section 1 of article 3 does not exhaust the power of congress to establish courts. The leading case upon the subject is *American Insurance Co. v. 356 Bales of Cotton*, 1 Pet. 511, 546, in which it was held in

respect of territorial courts (Chief Justice Marshall delivering the opinion) that while those courts are not courts in which the judicial power conferred by article 3 can be deposited, yet that they are legislative courts, created in virtue of the **general right of sovereignty which exists in the government over the territories**, or of the clause which enables congress to make all needful rules and regulations respecting the territory belonging to the United States. The authorities are referred to and commented on by Mr. Justice Harlan in *McAllister v. U.S.*, 141 U.S. 174, 11 Sup.Ct. 949." [Bold and double underline added.]

"And as whenever the United States exercise the power of government, whether under specific grant or through the dominion and sovereignty of plenary authority, as over the territories (*Shively v. Bowlby*, 152 U.S. 1, 48 14 Sup.Ct. 548), that power includes the ultimate executive, legislative, and judicial power, it follows that the judicial action of all inferior courts established by congress may, in accordance with the constitution, be subjected to the appellate jurisdiction of the supreme judicial tribunal of the government. There has never been any question in regard to this as applied to territorial courts, and no reason can be perceived for applying a different rule to the adjudications of the court of private land claims over property in the territories."

[*United States v. Coe*, 155 U.S. 76, 15 S.Ct. 16 (1894)]

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### **1 D.C. Code, History (1898)**

"In June, 1866, an act was passed authorizing the President to appoint 3 commissioners to revise and bring together all the statutes and parts of statutes which ought to be brought together, omitting redundant or obsolete enactments, and making such alterations as may be necessary to reconcile contradictions, supply the omissions, and mend the imperfections of the original text.

"The act does not seem, in terms, to allude to the District of Columbia, or even embrace it.

"Such commissioners were appointed and proceeded with their work, which was not completed for 7 years. Without having any express authority to do so, they made a separate revision and collection of the acts of Congress relating to the District, besides the collection of general statutes relating to whole [sic] United States. Each collection was reported to Congress, to be approved and enacted into law. The concluding paragraphs of each virtually repeal every part of any act of Congress passed before December 1873, which is not included in this collection, and the whole is enacted into law, as the body of the statute law of the United States, under the title of "Revised Statutes," as of the date June 22, 1874.

"The laws relating to the District begin with the one establishing the Territorial government, of February 21, 1871, and the whole collection occupies only 149 pages in the authorized publication. This is the first collection of statute law that ever received congressional approbation. Every law previously passed was an individual act, called for by some emergency, or supposed so to be, without the least consideration of its consistency with other existing laws or its fitness to be part of a system.

"But this collection of Revised Statutes in no sense deserves the name of a code. In the first place it does not even purport to give or contain all the statutory law in force in the District. The old British statutes which were in force in Maryland at the time of the cession of the District and the Maryland statutes of over a century, also in force in the territory ceded, and which were expressly continued in force, in general terms, by the Act of Congress assuming jurisdiction over the District of February 27, 1801, are not included in this collection or even alluded to. **The general collection might perhaps be considered, in a limited sense, as a code for the United States, as it embraced all the laws affecting the whole United States, within the constitutional legislative jurisdiction of Congress, but there could be no complete code for the entire United States, because the subjects which would be proper to be regulated by a code in the states are entirely outside the legislative authority of Congress.** But the collection of the statutes in force in the District did not profess or pretend to provide for such subjects here, even by reenacting laws already in force. And in addition to this there was a total failure to introduce any new features in the way of reform or improvement, and those changes in the law which were embraced in the proposed codes that I have already referred to were entirely wanting." [Bold added.]

[Statement made on December 5, 1898 by Mr. Justice Walter S. Cox of the Supreme Court of the District of Columbia, *District of Columbia Code*, 1981 Edition, Vol. 1, History, pp. 9-10.]

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### **People v. Nolan (July 7, 1904)**

".. section 3 of article 1 of our State Constitution provides that "the state of California is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land," and it is claimed that by reason of this provision the various provisions of the Constitution of the United States are made parts of our own Constitution.

We are satisfied that no such effect can be given to this section of our Constitution."

[*People v. Nolan*, 144 Cal. 75, 77 P. 774 (1904)]

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**Clyatt v. United States (Mar. 13, 1905)**

"It is not open to doubt that Congress may enforce the 13th Amendment by direct legislation, punishing the holding of a person in slavery or in involuntary servitude except as a punishment for crime. In the exercise of that power Congress has enacted these sections denouncing peonage, and punishing one who holds another in that condition of involuntary servitude. This legislation is not limited to the territories or other parts of the strictly national domain, but is operative in the states and wherever the sovereignty of the United States extends. We entertain no doubt of the validity of the legislation, or its applicability to the case of any person holding another in a state of peonage, and this whether there be a municipal ordinance or state law sanctioning such holding. It operates directly on every citizen of the Republic, wherever his residence may be."

[Clyatt v. United States, 197 U.S. 207; 25 S.Ct. 429; 49 L.Ed. 726 (1905)]

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**United States v. Cella (Nov. 6, 1911)**

"We have said in the prior case that there can be no crimes against the District of Columbia, the District not being a sovereignty; that crimes committed here are crimes against the United States."

[United States L. Cella, 37 App.D.C. 433 (1911)]

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**11 California Law Review, State Sovereignty and the Treaty-Making Power, p. 242 (May 1923)**

.. the Supreme Court of the United States has observed the spirit of the Tenth Amendment" and has protected the states in the reserved rights which are recognized by that amendment." p. 244.

"And in Ward v. Race Horse [163 U.S. 504, 16 S.Ct. 1076, 41 L.Ed. 244 (1895)] it was said that the admittance of Wyoming into the Union on an equal footing with the original states operated to repeal a treaty theretofore made with an Indian tribe providing for the killing of game for the reason that without the power to regulate the taking of game within its boundaries Wyoming would have been admitted into the Union "not as an equal member, but as one shorn of the legislative power vested in all the other states of the Union, a power resulting from the fact of statehood, and incident to its plenary existence."

"These decisions sufficiently establish the principle that the regulation of the taking of wild game is one of those matters which is clearly within the scope of the Tenth Amendment," and not within the powers of the Congress of the United States, either express or implied."

"In practice it must be admitted that the states did not efficiently function in so far as the protection of game was concerned, and accordingly the idea was conceived that the movement of migratory birds over state and national boundaries constituted interstate commerce. In 1913 a statute was passed by Congress which attempted to regulate the taking of migratory birds. This statute was held unconstitutional by two lower Federal tribunals in United States v. Shauver and United States v. McCollough. Apparently recognizing the soundness of the conclusion in those cases, the Government made no further attempt to enforce the statute, or to have the question passed upon by the Supreme Court of the United States. In 1916, however, a treaty was entered into between Great Britain and the United States for the protection of migratory birds in the United States and Canada. This extraordinary document, although couched in its formal parts in the language of diplomats, was in reality a complete and comprehensive game code regulating the taking of migratory birds in the United States and Canada. Article 8 of the treaty provided that "the high contracting parties agree themselves to take, or propose to their respective appropriate law-making bodies, the necessary measures for insuring the execution of the present convention." Pursuant to this undertaking, the Act of July 3, 1918, commonly known as the "Migratory Bird Treaty Act," was passed." pp. 245-246.

"Notwithstanding the reservation made in the opinion, it must be conceded that for all practical purposes, at least, the decision establishes the principle that the sovereign police power of the state may be abrogated by Congress if the President and some foreign nation can first obtain the consent of the Senate to this abrogation through the simple device of enacting a law to enforce the treaty. To state the conclusion in another way, an unconstitutional law, if enacted by Congress in the original instance, becomes constitutional if passed pursuant to a treaty contract, entered into between the President and some foreign nation, which has been acquiesced in by the Senate." p. 247.

"This treaty appears to be the first attempt by Congress, by the use of the treaty-making power, to impose its will upon the states in a manner which would otherwise plainly come within the police power of the states and which in no way referred to or affected the rights or disabilities of aliens residing in this country or possible international relations." p. 247.

""A treaty, therefore, cannot take away essential liberties secured by the Constitution to the people. A treaty cannot bind the United States to do what their Constitution forbids them to do. We may suggest a further limitation. A treaty cannot compel any department of the Government to do what the Constitution submits to its exclusive and

absolute will.""

"In *Downes v. Bidwell* [182 U.S. 244, 45 L.Ed. 1088, 21 S.Ct. 770 (1900)] the court had occasion to consider the question of whether Porto Rico [sic] might be made a territory of the United States by a treaty and without further Congressional action. While different conclusions were reached with respect to the issue then before the court, six members of the court apparently were of the opinion that a new territory could not be formed by treaty without the consent of the entire Congress." p. 248.

"Indeed, a treaty which undertook to take away what the Constitution secured or to enlarge the Federal jurisdiction would be simply void."

"It need hardly be said that a treaty cannot change the Constitution or be held valid if it be in violation of that instrument. This results from the nature and fundamental principles of our Government. The *Cherokee Tobacco*, 11 Wall. 616, 620."

"In his dissenting opinion in the license cases Mr. Justice Daniel declared:

"Treaties, to be valid, must be made within the scope of the same powers; for there can be no 'authority of the United States' save what is derived mediately or immediately, and regularly and legitimately, from the Constitution. A treaty no more than an ordinary statute can arbitrarily cede away any right of a state or of any citizen of a state."

"The word 'treaty' appears but twice in the Constitution. Section 2 of Article 2 authorizes the President, by and with the advice and consent of the senate, to negotiate treaties, and Article 6 provides that treaties made under the authority of the United States shall be the supreme law of the land. To hold that these two clauses import unlimited power would lead to the absurd result that the President and the Senate may destroy the very government which the Constitution creates."

"Mr. Willoughby, in his work on constitutional law, suggests the true test to be..."that the treaty-making power may not be used to secure a regulation or control of a matter not properly and fairly a matter of international concern."" [Brackets original with the author.]

[L.L. Thompson, Attorney-General, State of Washington, State Sovereignty and the Treaty-Making Power, 11 California Law Review, (May 1923), pp. 242-258]

### **81A C.J.S., States, §3**

#### **"Existence and Establishment**

"States have come into existence by admission into the Union or by annexation."

"The states of the Union have been in existence since their admission into the Union. When an existing state adopts a new constitution, discarding its old, the change does not result in the abolition of the old state and the substitution of a new one, but the state remains unaffected in identity; it is the same state after the adoption as it was before."

[81A Corpus Juris Secundum, States, §3]

### **Black's Law Dictionary: Annexation**

"ANNEXATION. The act of attaching, adding, joining, or uniting one thing to another; generally spoken of the connection of a smaller or subordinate thing with a larger or principal thing.

"The attaching an illustrative or auxiliary document to a deposition, pleading, deed, etc., is called "annexing" it. So the incorporation of newly-acquired territory into the national domain, as an integral part thereof, is called "annexation," as in the case of the addition of Texas to the United States."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 115]

### **Pothier v. Rodman (June 21, 1923)**

"While the United States may purchase or acquire lands within a state without its consent, under Const. art. 1, §8, cl. 17, it cannot exercise exclusive political jurisdiction over any lands within a state without the consent of the state, either by consent of its Legislature to the purchase or acquisition of the lands or by a direct cession of its own jurisdiction over the same."

"The court also recognized in its opinion that the right of sovereignty of a state over land purchased by the United States within its boundaries were not to be taken away by implication; that the essence of the provision of the Constitution here under consideration was that the state shall freely cede the particular place to the United States for one of the specific and enumerated objects. This jurisdiction cannot be acquired tortiously or by disseizin of the state; much less can it be acquired by mere occupancy, with the implied or tacit consent of the state, when such occupancy is for the purpose of protection" (*People v. Godfrey*, 17 Johns. [N.Y.] 225;...."

[Pothier v. Rodman, 291 F. 311 (1923)]

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**Macallen Co. v. Commonwealth of Massachusetts (May 27, 1929)**

"A state tax, however small, on securities of the national government or on interest derived therefrom, is invalid, as interfering or tending to interfere with power of general government to borrow money on credit of the United States." The words of a state tax act and opinion of state court as to nature of the tax are not conclusive nor binding on federal Supreme Court, which must for itself determine nature of tax and whether it is within inhibitions of United States Constitution."

"Constitutional provisions, whether operating by way of grant or limitation, are to be enforced according to their letter and spirit, and cannot be evaded by any legislation which seeks to accomplish indirectly that which cannot be done directly."

"A statute for Massachusetts, G. L. c. 63, §32, as amended by St. 1932, c. 424, §1, provides:

""Except as otherwise provided in sections thirty-four and thirty-four A, every domestic business corporation shall pay annually, with respect to the carrying on or doing of business by it, an excise equal to the sum of the following, provided that every such corporation shall pay annually a total excise, not less in amount than one twentieth of one per cent. of the fair cash value of all the shares constituting its capital stock on the first day of April when the return called for by section thirty-five is due:

""(1) An amount equal to five dollars per thousand upon the value of its corporate excess.

""(2) An amount equal to two and one half per cent. of that part of its net income, as defined in this chapter, which is derived from business carried on within the commonwealth.""

"Thus under the original definition of net income, there was expressly excluded from the net income taxable at 2½ per cent. all interest received upon bonds, notes, and certificates of indebtedness of the United States. And the definition had the effect of excluding, in the same respect, interest on state, county, and municipal bonds.

"Appellant, a business corporation organized under the laws of Massachusetts, owned a large number of United States Liberty' bonds and Federal Farm Loan bonds. The Liberty' bonds by statute of the United States are expressly made exempt from all taxation imposed by any state, except estate or inheritance taxes. Chapter 56, 40 Stat. 288, 291, §7 (31 U.S.C.A. §747). Federal Farm Loan bonds are issued under authority of chapter 245, 39 Stat. 360 (12 U.S.C.A. §931), declared to be instrumentalities of the United States and both as to principal and income exempt from all state taxation. The corporation also owned a large number of bonds of Massachusetts counties and municipalities which, when issued and acquired by corporation, were exempt from taxation by the terms of a state statute."

.. Flint v. Stone Tracy Co., 220 U.S. 107, 163-165, 31 S.Ct. 342, 55 L.Ed. 389, Ann.Cas. 1912B, 1312, is the extreme example, holding that a tax lawfully imposed upon the exercise of corporate privileges within the taxing power may be measured by income from the property of the corporation although a part of such income is derived from nontaxable property. [Cites omitted.] The distinction pointed out in these cases is between an attempt to tax the property or income as such and to measure a legitimate tax upon the privileges involved in the use thereof. It is implicit in all that the thing taxed in form was in fact and reality the subject aimed at, and that any burden put upon the nontaxable subject by its use as a measure of value was fortuitous and incidental."

"The aphorism of Chief Justice Marshall in *McCulloch v. Maryland*, 4 Wheat. 316, 431, 4 L.Ed. 579, that "the power to tax involves the power to destroy," has frequently been reiterated by this court. The principle, of course, is important only where the tax is sought to be imposed upon a nontaxable subject; or, as said in *Knowlton v. Moore*, 178 U.S. 41, 60, 20 S.Ct. 747, 755 (44 L.Ed. 969), "\* \* \* the power to destroy which may be the consequence of taxation is a reason why the right to tax should be confined to subjects which may be lawfully embraced therein, even although it happens that in some particular instance no great harm may be caused by the exercise of the taxing authority as to a subject which is beyond its scope." Not only may the power to tax be exercised oppressively, but for one government--state or national--to lay a tax upon the instrumentalities or securities of the other is derogatory to the latter's dignity, subversive of its powers, and repugnant to its paramount authority." See *California v. Central P. R. Co.*, 127 U.S. 1, 41, 8 S.Ct. 1073 (32 L.Ed. 150). These constitute special and compelling reasons why courts, in scrutinizing taxing acts like that here involved, should be acute to distinguish between an exaction which in substance' and reality is what it pretends to be, and a scheme to lay a tax upon a nontaxable subject by a deceptive use of words. The fact that a tax ostensibly laid upon a taxable subject is to be measured by the value of a nontaxable subject at once suggests the probability that it was the latter rather than the former that the law-maker sought to reach. If inquiry discloses persuasive grounds for the conclusion that such is the real purpose and effect of the legislation, the tax cannot be upheld without subverting the well-established rule that "\* \* \* what cannot be done directly because of constitutional restriction cannot be accomplished indirectly by legislation which accomplishes the same result. \* \* \* Constitutional provisions, whether operating by way of grant or limitation, are to be enforced according to their letter and spirit, and cannot be evaded by any legislation which, though not in terms trespassing on the letter, yet in substance and effect destroy the grant or limitation." *Fairbank v. United States*, 181 U.S. 283, 294, 300, 21 S.Ct. 648, 653 (45 L.Ed. 862).

"In the consideration of such legislation, the controlling principle, constantly 'to be borne in mind, is that the state

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cannot tax the instrumentalities or bonds of the United States, or, what is the same thing, the income derived therefrom, directly or indirectly--that is to say, it cannot tax *them* in any form."

"On the one hand, the state is at liberty to tax a corporation with respect to the doing of its business. On the other hand, the state cannot tax the income of the corporation derived from nontaxable securities. It necessarily follows that the Legislature may not, by an artful use of words, deprive this court of its authority" to look beyond the words to the real legislative purpose. And the power and the duty of the court to do so is of great practical importance. For when the aim of the Legislature is simply to tax the former, it is less likely to impose an injurious burden upon the latter than when the aim is directed primarily against the latter. See *Galveston, Harrisburg, etc., Ry. Co. v. Texas*, supra, page 227 of 210 U.S. (28 S.Ct. 638)."

[*Macallen Co. v. Commonwealth of Massachusetts*, 279 U.S. 620, 49 S.Ct. 432 (1929)]

### **United States v. State of California (Feb. 3, 1936)**

"Sovereign power of state is diminished to extent of grants of power to federal government in Federal Constitution."

"Immunity of state instrumentalities from federal taxation must be construed to allow government reasonable scope for taxing power, and court in fixing limits of immunity looks to activities in which states have traditionally engaged as marking boundary of restrictions on federal taxing power."

"Intention of Congress to make regulatory act applicable to states, if fairly inferred from act, cannot be disregarded because not explicitly stated, notwithstanding rule of construction that sovereign is presumptively not intended to be bound by its own statute unless named therein."

[*United States v. State of California*, 297 U.S. 175, 56 S.Ct. 421 (1936)]

### **Carter v. Carter Coal Co. (May 18, 1936)**

"While lawmaker is entirely free to ignore ordinary meanings of words and make definitions of his own, that device may not be employed so as to change nature of acts or things to which words are applied."

"Powers which general government may exercise are only those specifically enumerated in Constitution and such implied powers as are necessary and proper to carry into effect enumerated powers and whether end sought to be attained by act of Congress is legitimate is wholly a matter of constitutional power and not of legislative "discretion" which begins with choice of means and ends with adoption of methods and details to carry delegated powers into effect."

"As respects validity of Congressional act, distinction exists between "Power" and "discretion" for while powers are rigidly limited to enumerations of Constitution, means which may be employed within discretion to carry powers into effect are not restricted except that they must be appropriate, plainly adapted to the end, and not prohibited by, but consistent with, letter and spirit of Constitution."

"Congress has no power to legislate substantively for general welfare except as general welfare may be promoted by exercise of powers which are granted."

"While states are not sovereign in true sense of term but only quasi sovereign, yet in respect of all powers reserved to them they are supreme and independent of federal government as that government within its sphere is independent of the states."

"Federal government possesses no inherent power in respect of internal affairs of state, especially with regard to legislation."

[*Carter v. Carter Coal Co.*, 298 U.S. 238, 56 S.Ct. 855 (1936)]

### **Ashton v. Cameron County Water Improvement Dist. No. 1 (May 25, 1936)**

"Like any sovereignty, a state may voluntarily consent to be sued; may permit actions against her political subdivision to enforce their obligations. Such proceedings against these subdivisions have often been entertained in federal courts. But nothing in this tends to support the view that the federal government, acting under the bankruptcy clause, may impose its will and impair state powers--pass laws inconsistent with the idea of sovereignty."

"The power to regulate commerce is necessarily exclusive in certain fields and, to be successful, must prevail over obstructive regulations by the state. But, as pointed out in *Houston, etc., Ry. Co. v. United States*, 234 U.S. 342, 353, 34 S.Ct. 833, 837, 58 L.Ed. 1341, "this is not to say that Congress possesses the authority to regulate the internal commerce of a state, as such, but that it does possess the power to foster and protect interstate commerce." No similar situation is before us."

"The difficulties arising out of our dual form of government and the opportunities for differing opinions concerning the relative rights of state and national governments are many; but for a very long time this court has steadfastly adhered to the

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doctrine that the taxing power of Congress does not extend to the states or their political subdivisions. The same basic reasoning which leads to that conclusion, we think, requires like limitation upon the power which springs from the bankruptcy clause. *United States v. Butler*, supra."

[*Ashton v. Cameron County Water Improvement Dist. No. 1*, 298 U.S. 513, 56 S.Ct. 892 (1936)]

### **Winkler v. Daniels (Jan. 16, 1942)**

"The delegation to Congress of power to legislate for the District of Columbia is sweeping and conclusive to the end that Congress may legislate within the District for every proper purpose of government."

"Subject only to constitutional prohibitions acting directly or by implication on Federal Government, Congress has full and unlimited jurisdiction to provide for general welfare of citizens in the District of Columbia by any legislation which it may deem conducive to that end."

"When legislating for the District of Columbia, Congress acts as a legislature of national character, exercising complete legislative control as contrasted with limited power of a state legislature or with limited sovereignty which Congress exercises within boundaries of the states."

"The court has duty to resolve reasonable doubt in favor of validity of an act of Congress."

"The Federal District Court for Eastern District of Virginia had jurisdiction of action brought by plaintiff who was citizen of District of Columbia against defendants who were citizens of Virginia...."

"With respect to the validity of the proposed Act and the desirability of such legislation, the report (H.R. 1756) says: ""The Federal district and circuit courts are created by Congress under the constitutional authority granted in article III. These courts receive and exercise the judicial power granted by the Constitution. This judicial power cannot be increased or limited simply by an act of Congress.

""This article, however, must be construed in connection with other provisions of the Constitution. For example, in article 1, section 8, it is provided:

""The Congress shall have Power \* \* \* To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States.'"

""That the Congress under this provision has complete authority to govern the District of Columbia and the affairs of its citizens is well settled. This right is, of course, subject to constitutional restraints so far as applicable. \* \* \*."

""The purpose of article III was to create an independent judiciary with powers conferred directly by the Constitution. These powers cannot be taken' away from Congress. The Constitution guarantees to certain persons the right to demand the exercise of these powers under certain circumstances. For example, a citizen of a State may do so when involved in a case or controversy with a citizen of another State. The mere fact that the Constitution guarantees this right to the citizens of a State in no way prohibits the Congress from extending that same privilege to others who are not technically citizens of a State. This does not mean that Congress may indiscriminately add to the jurisdiction or authority of the courts. Its powers to so add must in any case be found in the Constitution.""

[*Winkler v. Daniels*, 43 F.Supp. 265 (1942)]

### **California Government Code, §100(a)**

"The sovereignty of the state resides in the people thereof, and all writs and processes shall issue in their name."

[California Government Code, §100(a)]

### **California Government Code, §110**

"The sovereignty and jurisdiction of this State extends to all places within its boundaries as established by the constitution. The extent of such jurisdiction over places that have been or may be ceded to, purchased, or condemned by the United States is qualified by the terms of the cession or the laws under which the purchase or condemnation is made."

[California Government Code, §110]

### **California Government Code, §126**

"Notwithstanding any other provision of law, general or special, the Legislature of California hereby cedes concurrent criminal jurisdiction to the United States within land held by the United States upon and subject to each and all of the following express limitations, conditions, and reservations, in addition to any other limitations, conditions, or reservations prescribed by law:

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"(a) The lands must be held by the United States for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, or other public purpose within the purview of clause 17 of Section 8 of Article I of the Constitution of the United States, or for the establishment, consolidation and extension of national forests under the provisions of the act of Congress approved March 1, 1911, (36 Stat. 961) known as the "Weeks Act," or for any other federal purposes.

"(b) The cession must be pursuant to and in compliance with the laws of the United States.

"(c) The United States must in writing have requested the state to cede concurrent criminal jurisdiction within such land and subject to each and all of the conditions and reservations in this section and in Section 4 of Article XIV of the Constitution prescribed.

"(d) The State Lands Commission is authorized for the state to cede concurrent criminal jurisdiction to the United States, upon having found and declared that the conditions and reservations prescribed in subdivisions (a), (b), (c), and (g) of this section have occurred and exist and that such cession is in the interest of the state. Certified copies of its orders or resolutions making such findings and declarations shall be filed in the office of the Secretary of State and recorded in the office of the county recorder of each county in which any part of the land is situated. The purposes for which such concurrent criminal jurisdiction is ceded shall be specified in and made a part of such orders or resolutions.

"(e) Jurisdiction ceded pursuant to this section continues only so long as the land continues to belong to the United States and is held by it for the purpose for which jurisdiction is ceded in accordance and in compliance with each and all of the limitations, conditions, and reservations in this section prescribed, or for five years, whichever period is less.

"(f) "Land held by the United States", as used in this section means: (1) lands acquired in fee by purchase or condemnation, (2) lands owned by the United States that are included in the military reservation by presidential proclamation or act of Congress, (3) leaseholds acquired by the United States over private lands or state-owned lands, and (4) any other lands owned by the United States including, but not limited to, public domain lands which are held for a public purpose.

"(g) In ceding such concurrent criminal jurisdiction, the Legislature and the state reserve jurisdiction over the land, water and use of water with full power to control and regulate the acquisition, use, control and distribution of water with respect to the land affected by such cession.

"(h) In ceding concurrent criminal jurisdiction, the Legislature and the state except and reserve to the state all deposits of minerals, including oil and gas, in the land, and to the state, or persons authorized by the state, the right to prospect for, mine, and remove such deposits from the land.

"(i) Concurrent criminal jurisdiction shall vest when certified copies of the State Lands Commission's orders or resolutions, making such finding or declaration, have been filed in the office of the Secretary of State and recorded in the office of the county recorder of each county in which any part of the lands is situated.

"The finding and declaration of the State Lands Commission provided for in subdivision (d) of this section shall be made only after a public hearing. Notice of such hearing shall be published pursuant to Section 6061 in each county in which the land or any part thereof is situated and a copy of such notice shall be personally served upon the clerk of the board of supervisors of each such county. The State Lands Commission shall make rules and regulations governing the conditions and procedure of such hearings, which shall provide that the cost of publication and service of notice and all other expenses incurred by the commission shall be borne by the United States.

"The provisions of this section do not apply to any land or water areas heretofore or hereafter acquired by the United States for migratory bird reservations in accordance with the provision of Sections 10680 to 10685, inclusive, of the Fish and Game Code."

[California Government Code, §126]

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### **California Government Code, §127**

"In addition to other records maintained by the State Lands Commission, the commission shall prepare and maintain an adequate index of record of documents with description of the lands over which the United States acquired jurisdiction pursuant to section 126 of this code or pursuant to any prior state law. Said index shall record the degree of jurisdiction obtained by the United States for each acquisition."

[California Government Code, §127]

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### **New Jersey statutes, 52:30-1**

"The consent of this state is hereby given, pursuant to the provisions of article one, section eight, paragraph seventeen, of the constitution of the United States, to the acquisition by the United States, by purchase, condemnation or otherwise, of any land within this state, for the erection of dockyards, custom houses, courthouses, post offices or other needful buildings."

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[New Jersey statutes, 52:30-1]

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**New Jersey statutes, 52:30-2**

"Exclusive jurisdiction in and over any land so acquired by the United States is hereby ceded to the United States for all purposes except the service of process issued out of any of the courts of this state in any civil or criminal proceeding.

"Such jurisdiction shall not vest until the United States shall have actually acquired ownership of said lands, and shall continue only so long as the United States shall retain ownership of said lands."

[New Jersey statutes, 52:30-2]

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**Delany v. Moraitis (May 27, 1943)**

"It is true, of course, that the term "country" as used in the statute must be construed, ordinarily, to refer to the territory from which the alien came. *Mensevich v. Tod*, 264 U.S. 134, 136, 44 S.Ct. 282, 68 L.Ed. 591. But a man's "country" is more than the territory in which its people live. The term is used generally to indicate the state, the organization of social life which exercises sovereign power in behalf of the people. *United States v. The Recorder*, 27 Fed.Cas. page 718, 721, No. 16,129."

"In that case, which dealt with a credit for a tax paid to the **State of New South Wales** ....

[Delany v. Moraitis, 136 F.2d. 129 (1943)]

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**People v. Superior Court (Pierpont) (Mar. 3, 1947)**

"The theory of sovereign immunity originated in the fiction that the king can do no wrong."

"The general expression of the doctrine of sovereign immunity is that the state may not be sued without its consent."

[People v. Superior Court (Pierpont), 29 Cal.2d. 754, 178 P.2d. 1 (1947)]

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**Redding v. City of Los Angeles (Oct. 17, 1947)**

"While courts may annul a statute which violates fundamental law, they cannot declare as law that which they might conceive would be a wholesome statute."

"The United States of America and the state of California are two separate sovereignties, each dominant within its own sphere. While this state gives its full support to the national government in the conduct of a war, it does not by virtue of that fact automatically adopt the public policy of the nation as its own."

[Redding v. City of Los Angeles, 81 Cal.App.2d. 888, 185 P.2d. 430 (1947)]

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**Salonen v. Farley (Jan. 18, 1949)**

"The government of the United States is foreign as to the states of the union within rule of private international law that penal statutes of one sovereignty will not be enforced by another."

"The defendants have correctly stated the well established principle of law that the Government of the United States is foreign as to the States of the Union within the rule of private international law that the penal statutes on one sovereignty will not be enforced by another. *Robinson v. Norato*, 71 R.I. 256, 43 A.2d. 467, 162 A.L.R. 362; *State of Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265, 8 S.Ct. 1370, 32 L.Ed. 239. It is universally recognized that foreign jurisdictions will not enforce penal statutes of another state. *Galveston, H. & S. A. R. Co. v. Wallace*, 223 U.S. 481, 32 S.Ct. 205, 56 L.Ed. 516; *The Antelope*, 10 Wheat 66, 23 U.S. 66, 6 L.Ed. 268, wherein Chief Justice Marshall made the short statement that, "The Courts of no country execute the penal laws of another."

[Salonen v. Farley, 82 F.Supp. 25 (1949)]

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**Petersen v. United States (Aug. 2, 1951)**

"Use of quoted words in California statute providing that exclusive jurisdiction shall be ceded to the United States over and within all of the "territory" which is now or may hereafter be "included" in several tracts of land in the state of California set aside and dedicated for park purposes by the United States was construed to mean the state lands confined, shut up or enclosed, or embraced within the surrounding already dedicated areas."

"A **State** may lawfully cede jurisdiction over lands lying within the **state** to the United States." [Bold added.]

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***Sovereignty and Freedom Points and Authorities***

"The cession of jurisdiction by California to the United States over privately owned land lying wholly within and surrounded by a national park is not unconstitutional as depriving owners of due process."

"Where California ceded to United States exclusive jurisdiction over privately owned lands within national park, the United States had exclusive jurisdiction to regulate sale of liquor in park by private individuals owning land therein." [Petersen v. United States, 191 F.2d. 154 (1951)]

### **California Government Code, §54950**

"In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

"The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

[California Government Code, §54950]

### **Alaska Omnibus Act (June 25, 1959)**

"Sec. 22. (a) Section 2202 of the Internal Revenue Code of 1954 (relating to missionaries in foreign service), and sections 3121(e)(1), 3306(j), 4221(d) (4), and 4233(b) of such Code (each relating to **a special definition of "State"**) are amended by striking out "Alaska,." [Bold added.]

[Alaska Omnibus Act, P.L. 86-70, 73 Stat. 141]

### **Hawaii Omnibus Act (July 12, 1959)**

"(c) Section 3121(e) (1) of the Internal Revenue Code of 1954 (relating to **a special definition of "State"**) is amended by striking out "Hawaii,."

"(d) Sections 3306(j) and 4233(b) of the Internal Revenue Code of 1954 (each relating to **a special definition of "State"**) are amended by striking out "Hawaii, and"." [Bold added.]

[Hawaii Omnibus Act, P.L. 86-624, 74 Stat. 411]

### **United States v. Rodriguez (Mar. 29, 1960)**

"In order to maintain its essential sovereignty, government must be only power capable of effecting maintenance of peace and order within its own boundaries, and therefore, under the "territorial theory" of jurisdiction, no other nation can enact extraterritorial legislation which would interfere with operation of such laws."

"Under the "nationality theory" of jurisdiction, nationals abroad are subject to laws of their government wherever they may be."

"Act committed outside of territorial limits of state but intended to produce, or producing, effects within boundaries of state are subject to penal sanctions."

"Under the "protective theory" of jurisdiction, state has jurisdiction with respect to any crime committed outside of its territory by an alien against security, territorial integrity or political independence of state, provided that act or omission which constitutes crime was not committed in exercise of a liberty' guaranteed alien by law of place where it was committed."

"Powers of government and Congress in regard to sovereignty are broader than powers possessed in relation to internal matters."

"The territorial principle has often found expression in our case law. One of the first broad statements of this theory was made in *The Apollon*, 1824, 9 Wheat. 362, 6 L.Ed. 111, where the court set forth the doctrine in these sweeping terms:

"The laws of no nation can justly extend beyond its own territories, except so far as it regards its own citizens." *Id.*, 9 Wheat. at page 370. This "general rule" is followed by a limitation, necessary to a proper interpretation of the territorial concept: "[The laws of a nation] can have no force to control the sovereignty or rights of any other nation, within its own jurisdiction." *Ibid.* The basic philosophy behind the territorial theory is that a government, in order to maintain its essential sovereignty, must be the only power capable of effecting the maintenance of peace and order within its own boundaries. Therefore, no other nation can enact extraterritorial legislation which would interfere with the operation of such laws."

[Insertion original with the court.]

### ***Sovereignty and Freedom Points and Authorities***



"Nationals abroad are held to be subject to the laws of their government wherever they may be [cite omitted]. But this is an application of the nationality theory, not an exception to territorial jurisdiction."

"Acts committed outside the territorial limits of the State but intended to produce, or producing, effects within the boundaries of the State are subject to penal sanctions; *Strassheim v. Daily*, 1910, 221 U.S. 280, 285, 31 S.Ct. 558, 55 L.Ed. 735; [other cites omitted]. Where the effect is felt by private persons within the State, penal sanctions rest on the "objective," or "subjective," territorial principle used in the *Strassheim* case, *supra*. See 29 Am.J.Int'l L.Supp., at 484 et seq. Where the effect of the acts committed outside the United States is felt by the government, the protective theory affords the basis by which the state is empowered to punish all those offenses which impinge upon its sovereignty, wherever these actions take place and by whomever they may be committed."

[Footnote # 8.] "The essence of the protective theory of jurisdiction was recognized as early as *Church v. Hubbard*, 1804, 2 Cranch 187, at pages 234-235, 2 L.Ed. 249, where the court stated:

"\* \* \* The authority of a nation, within its own territory, is absolute and exclusive. \* \* \* but its power to secure itself from injury may certainly be exercised beyond the limits of its territory. \* \* \* Any attempt to violate the laws made to protect this right, is an injury to itself, which it may prevent, and it has a right to use the means necessary for its prevention. These means do not appear to be limited within any certain marked boundaries, which remain the same, at all times and in all situations. If they are such as unnecessarily to vex and harass foreign lawful commerce, foreign nations will resist their exercise. If they are such as are reasonable and necessary to secure their laws from violation, they will be submitted to." [End of footnote # 8, page 488.]

"Any act which would affect the sovereignty of a nation must, of necessity, have some effect within the territorial limits of that state or there would be no adverse effect upon the government justifying a penal sanction."

"The S. S. *Lotus*, P.C.I.J., Set. A, No. 10, II Hudson, World Court Reports 20:

"\* \* \* the first and foremost restriction imposed by international law upon a state is that--failing the existence of a permissive rule to the contrary--it *may not exercise its power in any form in the territory of another state*. In this sense jurisdiction is certainly territorial; it cannot be exercised by a state outside its territory except by virtue of a permissive rule derived from international custom or from a convention?

"It does not, however, follow that international law prohibits a state from exercising jurisdiction in its own territory, in respects any case which relates to acts which have taken place abroad, and in which it cannot rely on some permissive rule of international law \* \* \*."

"The powers of the government and the Congress in regard to *sovereignty* are broader than the powers possessed in relation to internal matters, *United States v. Curtiss-Wright Export Corp.*, 1936, 299 U.S. 304, 57 S.Ct. 216, 81 L.Ed. 255.

"\* \* \* The broad statement that the federal government can exercise no powers except those specifically enumerated in the Constitution, and such implied powers as are necessary and proper to carry into effect the enumerated powers, is categorically true only in respect to our internal affairs." *Id.*, 299 U.S. at page 315, 57 S.Ct. at page 219.

"It results that the investment of the federal government with the powers of external sovereignty did not depend upon the affirmative grants of the Constitution." *Id.*, 299 U.S. at page 318, 57 S.Ct. at page 220."

"Even the prohibitions in the First Amendment must yield to this inherent power. In *American Communications Association, C.I.O. v. Douds*, 1949, 339 U.S. 382, at page 394, 70 S.Ct. 674, at page 682, 94 L.Ed. 925, Chief Justice Vinson said:

"Although the First Amendment provides that Congress shall make no law abridging the freedom of speech, press or assembly, it has long been established that *those freedoms themselves are dependent upon the power of constitutional government to survive. If it is to survive it must have power to protect itself* against unlawful conduct and, under some circumstances, against incitements to commit unlawful acts. Freedom of speech thus does not comprehend the right to speak on any subject at any time." [Emphasis original.]

"In *Carlson v. Landon*, 9 Cir., 1951, 187 F.2d. 991, at page 997, affirmed 342 U.S. 524, 72 S.Ct. 525, 96 L.Ed. 547, Stephens, Circuit Judge said:

"The basic principles of our government that the individual shall be free to speak, free to publish, free to worship, free to be personally unrestrained, are not absolute. *It would be an anomalistic use of the term 'government' to apply it to a state organization which is without the power to resist its own violent destruction.*" [Emphasis original.]

"Possessing this power of protection, Congress is entitled to utilize it to the full extent. From the body of international law, the Congress may pick and choose whatever recognized principle of international jurisdiction is necessary to accomplish the purpose sought by the legislation. The mere fact that, in the past, Congress may not have seen fit to embody in legislation the full scope of its authorized powers is not a basis for now finding that those powers are lacking. Disuse, or even misuse of power inherent in the federal government, or given to it by the Constitution, is not a valid basis for us to hold that this power 'may not later be employed in a proper fashion. Thus, having found that the protective principle exists

as a recognized doctrine of international law, or the "Law of Nations," it becomes a principle that Congress can rightfully incorporate into its legislation without waiting for action to be taken by foreign governments which would grant the United States the right to exercise jurisdiction. Without the right to act in the same fashion, and to the same extent, as other sovereigns, the United States government becomes something less than whole." [Cite omitted.]  
[United States v. Rodriguez, 182 F.Supp. 479 (1960)]

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### **Sovereignty and Labor Relations (1967)**

"We derive our notions of sovereignty from the English common law which reposed sovereign authority in the king as the fountainhead of law, justice, and government. "The king can do no wrong," wrote Blackstone in his *Commentaries*. This maxim assumed concrete meaning in the context of lawsuits by citizens against the Crown. If the king can indeed do no wrong, the Crown is necessarily immune from suit. Applied to government employment, the Blackstone maxim means that, when the sovereign has fixed the terms of public employment, these are inescapably fair and just, and hence any employee effort to alter them is wrong and runs counter to law.

"One difficulty with this is that, insofar as sovereign immunity from suit is concerned, the Blackstone maxim has been misunderstood, and the English kings did not enjoy absolute immunity commonly thought to be conveyed by the notion that they could "do no wrong." Professor Louis Jaffe writes:

*"It is the prevailing view among students of this period that the requirement of consent [to be sued] was not based on a view that the King was above the law "[T]he king, as the fountain of justice and equity, could not refuse to redress wrongs when petitioned to do so by his subjects." Indeed, it is argued by scholars on what seems adequate evidence that the expression "the King can do no wrong" originally meant precisely the contrary to what it later came to mean. "[lit meant that the king must not, was not allowed, not entitled to do wrong. \* \* \*] It was on this basis that the King, though not suable in his court \* \* \*, nevertheless endorsed on petitions "let justice be done," thus empowering his courts to proceed."*

"The petitions referred to were "petitions of right." They were granted when other remedies against the government were unavailable. Thus legal procedure combined with political theory to delimit sovereign immunity even at its source--the kings of England. By what Professor Jaffe calls a "magnificent irony," these limitations upon sovereign immunity were substantially destroyed in North America when the Colonies, by revoking their allegiance to the Crown, eliminated the king who could "let justice be done."

"So it seems that the king was not always absolutely right, and he has, of course, for a long time not been absolute. Absence of absolute power has, in any case, been a dominant characteristic of American government from the start. Yet the doctrine of sovereign immunity has had a sturdy history in American law which perhaps, helps to explain the reluctance with which American governments have moved in the direction of accepting collective bargaining with their employees"

[K. Hanslowe, *The Emerging Law of Labor Relations in Public Employment* 11-20 (1967). Quoted by Kern Alexander in *School Law*. St. Paul, Minn., West Publishing Co., pp. 647-648, 1980]

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### **91 C.J.S., United States §1**

"The term "United States of America" is variously used to designate a sovereign power, the territory over which the sovereignty of the United States extends, or the states which are united by and under the Constitution. For some purposes it included, and for others excludes, particular territorial possessions."

"In a territorial or geographical sense, the term "United States," as used in the Constitution **with respect to the provision that duties shall be uniform throughout the United States**, includes the states whose people united to form the Constitution, and such as have since been added to the union on an equality with them, as well as the District of Columbia, but not unorganized territorial possessions. On the other hand, in dealing with a foreign sovereignty the term has a broader meaning than when used in the Constitution, and includes all territories subject to the jurisdiction of the federal government wherever located." [Bold added.]

[91 Corpus Juris Secundum, United States, §1]

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### **Black's Law Dictionary: Fiction**

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"FICTION. An assumption or supposition of law that something which is or may be false is true, or that a state of facts exists which has never really taken place." [Cites omitted.]  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 751]

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**Black's Law Dictionary: Sovereign**

"SOVEREIGN. A person, body, or state in which independent and supreme authority is vested; a chief ruler with supreme power; a king or other ruler with limited power."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1568]

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**Black's Law Dictionary: Sovereign Immunity of State from Liability**

"**SOVEREIGN IMMUNITY OF STATE FROM LIABILITY.**" Exists when the state is engaged in a governmental function. *Manion v. State*, 303 Mich. 1, 5 N.W.2d. 527, 528."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1568]

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**Black's Law Dictionary: Sovereign People**

"**SOVEREIGN PEOPLE.** The political body, consisting of the entire number of citizens and qualified electors, who, in their collective capacity, possess the powers of sovereignty and exercise them through their chosen representatives. See *Scott v. Sandford*, 19 How. 404, 15 L.Ed. 691."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1568]

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**Black's Law Dictionary: Sovereign Power or Sovereign Prerogative**

"**SOVEREIGN POWER or SOVEREIGN PREROGATIVE.** That power in a state to which none other is superior or equal, and which includes all the specific powers necessary to accomplish the legitimate ends and purposes of government."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1568]

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**Black's Law Dictionary: Sovereign Right**

"**SOVEREIGN RIGHT.** A right which the state alone, or some of its governmental agencies, can possess, and which it possesses in the character of a sovereign, for the common benefit, and to enable it to carry out its proper functions; distinguished from such "proprietary" rights as a state, like any private person, may have in property or demands which it owns."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1568]

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**Black's Law Dictionary: Sovereign States**

"**SOVEREIGN STATES.** States whose subjects or citizens are in the habit of obedience to them, and which are not themselves subject to any other (or paramount) state in any respect. The state is said to be semi-sovereign only, and not sovereign, when in any respect or respects it is liable to be controlled (like certain of the states in India) by a paramount government, (e. g., by the British empire.) *Brown*. In the intercourse of nations, certain states have a position of entire independence of others, and can perform all those acts which it is possible for any state to perform in this particular sphere. These same states have also entire power of self-government; that is, of independence upon all other states as far as their own territory and citizens not living abroad are concerned. No foreign power or law can have control except by convention. This power of independent action in external and internal relations constitutes complete sovereignty."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1568]

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**Black's Law Dictionary: Sovereignty**

"**SOVEREIGNTY.** The supreme, absolute, and uncontrollable power by which any independent state is governed; supreme political authority, paramount control of the constitution and frame of government and its administration; the self-sufficient source of political power, from which all specific political powers are derived; the international independence of

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a state, combined with the right and power of regulating its internal affairs without foreign dictation; also a political society, or state, which is sovereign and independent. [Cites omitted.]

"The power to do everything in a state without accountability,--to make laws, to execute and to apply them, to impose and collect taxes and levy contributions, to make war or peace, to form treaties of alliance or of commerce with foreign nations, and the like. Story, Const. §207.

""Sovereignty" in government is that public authority which directs or orders what is to be done by each member associated in relation to the end of the association. It is the supreme power by which any citizen is governed and is the person or body of persons in the state to whom there is politically no superior. The necessary existence of the state and that right and power which necessarily follow is "sovereignty." By "sovereignty" in its largest sense is meant supreme, absolute, uncontrollable power, the absolute right to govern. The word which by itself comes nearest to being the definition of "sovereignty" is will or volition as applied to political affairs."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1568]

### **58 Cal.Jur.3d.. State of California, §130 "Sovereign immunity"**

"The doctrine has had widespread acceptance as a part of the American common law, and has been deemed to prevail except where it had been departed from by constitutional and statutory law, as interpreted and applied by the courts.

[58 Cal.Jur.3d., State of California, §130]

### **Hancock v. Terry Elkhorn Mining Company, Inc. (Sept. 28, 1973)**

"Anciently, the Attorney General was the chief legal adviser of the king charged with the duty of representing him in all legal matter, civil and criminal, in which the king was involved. The king was the state and all functions and powers were vested in him. Therefore, the Attorney General in representing the king was in effect representing the state.... When this country promulgated its Declaration of Independence, the writers of that instrument in discussing the inalienable rights of man stated "That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. \* \* \*." Thus, the source of authority of the Attorney General is the people who establish the government, and his primary obligation is to the people."

[Hancock v. Terry Elkhorn Mining Company, Inc., 503 S.W.2d. 710 (1973)]

### **Cook v. United States (1994)**

"Silence as to taxation, in treaties between United States and Indian tribes, creates neither a right to impose taxes nor a prohibition against them."

.. defeated status of Nation at time it entered into treaty precluded conclusion that Nation believed it was a separate nation which could not be subjected to excise tax. 26 U.S.C.A. §§4041(a, d), 4611; Treaty of Fort Stanwix of 1784, Art. III, 7 Stat. 15; Treaty of Fort Harmar of 1789, Art. I, 7 Stat. 33; Treaty of Canandaigua of 1794, Art. II, 7 Stat. 44."

[Cook v. United States, 32 Fed.Cl. 170 (1994)]

## **2.2 What is "law"?**

Further information on the subject of this section can be found at:

*What is "law"?*, Form #05.048  
<https://sedm.org/Forms/FormIndex.htm>

### **Black's Law Dictionary: Law**

**Law.** That which is laid down, ordained, or established. A rule or method according to which phenomenon or actions co-exist or follow each other. Law, in its generic sense, is a body of rules of action or conduct prescribed by controlling authority[the "sovereign"], and having binding legal force. *United States Fidelity and Guaranty Co. v. Guenther*, 281 U.S. 34, 50 S.Ct. 165, 74 L.Ed. 683. That which must be obeyed and followed by citizens subject to sanctions or legal consequences is a law. **Law is a solemn expression of the will of the supreme [sovereign] power of the State.** Calif.Civil Code, §22.

The "law" of a state is to be found in its statutory and constitutional enactments, as interpreted by its courts, and, in absence

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of statute law, in rulings of its courts. *Dauer's Estate v. Zabel*, 9 Mich.App. 176, 156 N.W.2d. 34, 37. [Black's Law Dictionary, Sixth Edition, p. 884]

### **Downes v. Bidwell (1901)**

“When we consider the nature and theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. **And the law is the definition and limitation of power.**” [Emphasis added]  
[Downes v. Bidwell, 182 U.S. 244 (1901) ]

### **Yick Wo v. Hopkins (1886)**

“Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but **in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts.**” [Emphasis added]  
[Yick Wo v. Hopkins, [118 U.S. 356](#); 6 S.Ct. 1064 (1886)]

### **Black's Law Dictionary: Compact**

“**Compact**, n. An agreement or contract between persons, nations, or states. Commonly applied to working agreements between and among states concerning matters of mutual concern. A contract between parties, which creates obligations and rights capable of being enforced and contemplated as such between the parties, in their distinct and independent characters. A mutual consent of parties concerned respecting some property or right that is the object of the stipulation, or something that is to be done or forborne. See also Compact clause; Confederacy; Interstate compact; Treaty.”  
[Black's Law Dictionary, Sixth Edition, p. 281]

### **Romans 13:9, Bible, New King James Version**

For the commandments, “You shall not commit adultery,” “You shall not murder,” “You shall not steal,” “You shall not bear false witness,” “You shall not covet,” and if there is any other commandment, are all summed up in this saying, namely, “You shall love your neighbor as yourself.”

**Love does no harm to a neighbor; therefore love is the fulfillment of the law.** [Emphasis added]  
[Romans 13:9-10, Bible, NKJV]

### **The Law, Frederic Bastiat**

“We must remember that law is force, and that, consequently, the proper functions of the law cannot lawfully extend beyond the proper functions of force. When law and force keep a person within the bounds of justice, they impose nothing but a mere negation. **They oblige him only to abstain from harming others. They violate neither his personality, his liberty nor his property. They safeguard all of these. They are defensive; they defend equally the rights of all.**” [Emphasis added]  
[[The Law, Frederic Bastiat, 1850](#); SOURCE: <http://famguardian.org/TaxFreedom/CitesByTopic/law.htm>]

### **The Law, Frederic Bastiat**

#### **The Law and Charity**

“You say: “There are persons who have no money,” and you turn to the law, but the law is not a breast that fills itself with milk. Nor are the lacteal veins of the law supplied with milk from a source outside the society. Nothing can enter the public treasury for the benefit of one citizen or one class unless other citizens and other classes have been forced to send it in. **If every person draws from the treasury the amount that he has put in it, it is true that the law then plunders nobody. But this procedure does nothing for the persons who have no money. It does not promote equality of income. The**

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**law can be an instrument of equalization only as it takes from some persons and gives to other persons. When the law does this, it is an instrument of plunder.** [Emphasis added]

[The Law, Frederic Bastiat, 1850; SOURCE: <https://famguardian.org/Publications/TheLaw/TheLaw.htm>]

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### **The Law, Frederic Bastiat**

#### **Law Is a Negative Concept**

The harmlessness of the mission performed by law and lawful defense is self-evident; the usefulness is obvious; and the legitimacy cannot be disputed.

As a friend of mine once remarked, this negative concept of law is so true that the statement, the purpose of the law is to cause justice to reign, is not a rigorously accurate statement. It ought to be stated that **the purpose of the law is to prevent injustice from reigning**. In fact, it is injustice, instead of justice, that has an existence of its own. Justice is achieved only when injustice is absent.

**But when the law, by means of its necessary agent, force, imposes upon men a regulation of labor, a method or a subject of education, a religious faith or creed - then the law is no longer negative; it acts positively upon people. It substitutes the will of the legislator for their own initiatives. When this happens, the people no longer need to discuss, to compare, to plan ahead; the law does all this for them. Intelligence becomes a useless prop for the people; they cease to be men; they lose their personality, their liberty, their property.**

Try to imagine a regulation of labor imposed by force that is not a violation of liberty; a transfer of wealth imposed by force that is not a violation of property. If you cannot reconcile these contradictions, then you must conclude that the law cannot organize labor and industry without organizing injustice. [Emphasis added]

[The Law, Frederic Bastiat, 1850; SOURCE: <https://famguardian.org/Publications/TheLaw/TheLaw.htm>]

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### **The Law, Frederic Bastiat**

#### **What Is Law?**

**What, then, is law? It is the collective organization of the individual right to lawful defense.**

Each of us has a natural right – from God – to defend his person, his liberty, and his property. These are the three basic requirements of life, and the preservation of any one of them is completely dependent upon the preservation of the other two. **For what are our faculties but the extension of our individuality? And what is property but an extension of our faculties?**

**If every person has the right to defend – even by force – his person, his liberty, and his property, then it follows that a group of men have the right to organize and support a common force to protect these rights constantly.** Thus the principle of collective right – its reason for existing, its lawfulness – is based on individual right. And the common force that protects this collective right cannot logically have any other purpose or any other mission than that for which it acts as a substitute. Thus, since an individual cannot lawfully use force against the person, liberty, or property of another individual, then the common force – for the same reason – cannot lawfully be used to destroy the person, liberty, or property of individuals or groups.

**Such a perversion of force would be, in both cases, contrary to our premise. Force has been given to us to defend our own individual rights. Who will dare to say that force has been given to us to destroy the equal rights of our brothers? Since no individual acting separately can lawfully use force to destroy the rights of others, does it not logically follow that the same principle also applies to the common force that is nothing more than the organized combination of the individual forces?**

If this is true, then nothing can be more evident than this: The law is the organization of the natural right of lawful defense. It is the substitution of a common force for individual forces. And this common force is to do only what the individual forces have a natural and lawful right to do: to protect persons, liberties, and properties; to maintain the right of each, and to cause justice to reign over us all.

#### **The Complete Perversion of the Law**

**But, unfortunately, law by no means confines itself to its proper functions. And when it has exceeded its proper functions, it**

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has not done so merely in some inconsequential and debatable matters. The law has gone further than this; it has acted in direct opposition to its own purpose. The law has been used to destroy its own objective: It has been applied to annihilating the justice that it was supposed to maintain; to limiting and destroying rights which its real purpose was to respect. The law has placed the collective force at the disposal of the unscrupulous who wish, without risk, to exploit the person, liberty, and property of others. It has converted plunder into a right, defense into a crime, in order to punish lawful defense.

How has this perversion of the law been accomplished? And what have been the results?

The law has been perverted by the influence of two entirely different causes: stupid greed and false philanthropy. Let us speak of the first.

### **A Fatal Tendency of Mankind**

Self-preservation and self-development are common aspirations among all people. And if everyone enjoyed the unrestricted use of his faculties and the free disposition of the fruits of his labor, social progress would be ceaseless, uninterrupted, and unending.

But there is also another tendency that is common among people. When they can, they wish to live and prosper at the expense of others. This is no rash accusation. Nor does it come from a gloomy and uncharitable spirit. The annals of history bear witness to the truth of it: the incessant wars, mass migrations, religious persecutions, universal slavery, dishonesty in commerce, and monopolies. This fatal desire has its origin in the very nature of man – in that primitive, universal, and insuppressible instinct that impels him to satisfy his desires with the least possible pain.

### **Property and Plunder**

Man can live and satisfy his wants only by ceaseless labor, by the ceaseless application of his faculties to natural resources. This process is the origin of property.

But it is also true that a man may live and satisfy his wants by seizing and consuming the products of the labor of others. This process is the origin of plunder.

Now since man is naturally inclined to avoid pain – and since labor is pain in itself – it follows that men will resort to plunder whenever plunder is easier than work. History shows this quite clearly. And under these conditions, neither religion nor morality can stop it.

When, then, does plunder stop? It stops when it becomes more painful and more dangerous than labor.

It is evident, then, that the proper purpose of law is to use the power of its collective force to stop this fatal tendency to plunder instead of to work. All the measures of the law should protect property and punish plunder.

But, generally, the law is made by one man or one class of men. And since law cannot operate without the sanction and support of a dominating force, this force must be entrusted to those who make the laws.

This fact, combined with the fatal tendency that exists in the heart of man to satisfy his wants with the least possible effort, explains the almost universal perversion of the law. Thus it is easy to understand how law, instead of checking injustice, becomes the invincible weapon of injustice. It is easy to understand why the law is used by the legislator to destroy in varying degrees among the rest of the people, their personal independence by slavery, their liberty by oppression, and their property by plunder. This is done for the benefit of the person who makes the law, and in proportion to the power that he holds. [Emphasis added]

[The Law, Frederic Bastiat, 1850; SOURCE: <http://famguardian.org/Publications/TheLaw/TheLaw.htm>]

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### **United States v. Lee (1882)**

**“No man in this country is so high that he is above the law.** No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it. It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives,” 106 U.S., at 220. “Shall it be said... that the courts cannot give remedy when the Citizen has been deprived of his property by force, his estate seized and converted to the use of the government **without any lawful authority, without any process of law, and without any compensation,** because the president has ordered it and his officers are in possession? **If such be the law of this country, it sanctions a tyranny which has no**

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**existence in the monarchies of Europe, nor in any other government which has a just claim to well-regulated liberty and the protection of personal rights.**” 106 U.S., at 220, 221. [Emphasis added]  
 [United States v. Lee, 106 U.S. 196, 1 S.Ct. 240 (1882); SOURCE: <http://famguardian.org/TaxFreedom/CitesByTopic/law.htm>]

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**Marcus Tullius Cicero, 106-43 B.C.**

“**True Law** is right reason **in agreement with Nature**, it is of universal application, unchanging and everlasting; it summons to duty by its commands and averts from wrong-doing by its prohibitions. And it does not lay its commands or prohibitions upon good men in vain, although neither have any effect upon the wicked. It is a sin to try to alter this law, nor is it allowable to try to repeal a part of it, and it is impossible to abolish it entirely. We cannot be freed from its obligations by Senate or People, and we need not look outside ourselves for an expounder or interpreter of it. And there will not be different laws at Rome or at Athens, or different laws now and in the future, but one **eternal and unchangeable law** will be valid for all times and all nations, and there will be one master and one rule, that is God, for He is the author of **this law**, its promulgator, and its enforcing judge.”  
 [Marcus Tullius Cicero, 106-43 B.C.; SOURCE: <http://sedm.org/disclaimer.htm>]

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**Marcus Tullius Cicero, 106-43 B.C.**

“Power and law are not synonymous. In truth, they are frequently in opposition and irreconcilable. There is **God’s Law** from which **all equitable laws of man** emerge and by which men must live if they are not to die in oppression, chaos and despair. Divorced from **God’s eternal and immutable Law**, established before the founding of the suns, man’s power is evil no matter the noble words with which it is employed or the motives urged when enforcing it. Men of good will, mindful therefore of the **Law laid down by God**, will oppose governments whose rule is by men, and if they wish to survive as a nation they will destroy the **de facto government** which attempts to adjudicate by the whim of venal judges.”  
 [Marcus Tullius Cicero, 106-43 B.C.; SOURCE: <http://sedm.org/disclaimer.htm>]

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**Thomas Jefferson**

“Of liberty I would say that, in the whole plenitude of its extent, it is unobstructed action according to our will. But rightful liberty is unobstructed action according to our will within limits drawn around us by the **equal rights of others [Form #05.033]**. I do not add ‘within the limits of the law, because law is often but the tyrant’s will, and always so when it violates the **[PRIVATE] right** of an individual.”  
 [Thomas Jefferson to Isaac H. Tiffany, 1819, From: Thomas Jefferson on Politics and Government, Section 1.2; SOURCE: <http://famguardian.org/Subjects/Politics/ThomasJefferson/jeff0100.htm>]

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**Calder v. Bull, 1798**

“I cannot subscribe to the omnipotence of a State Legislature, or that it is absolute and without control; although its authority should not be expressly restrained by the Constitution, or fundamental law, of the State. The people of the United States erected their Constitutions, or forms of government, to establish justice, to promote the general welfare, to secure the blessings of liberty; and to protect their persons and property from violence. The purposes for which men enter into society will determine the nature and terms of the social compact; and as they are the foundation of the legislative power, they will decide what are the proper objects of it: The nature, and ends of legislative power will limit the exercise of it. This fundamental principle flows from the very nature of our free Republican governments, that no man should be compelled to do what the laws do not require; nor to refrain from acts which the laws permit. **There are acts which the Federal, or State, Legislature cannot do, without exceeding their authority. There are certain vital principles in our free Republican governments, which will determine and over-rule an apparent and flagrant abuse of legislative power; as to authorize manifest injustice by positive law; or to take away that security for personal liberty, or private property, for the protection whereof of the government was established. An ACT of the Legislature (for I cannot call it a law) contrary to the great first principles of the social compact, cannot be considered a rightful exercise of legislative authority. The obligation of a law in governments established on express compact, and on republican principles, must be determined by the nature of the power, on which it is founded. A few instances will suffice to explain what I mean. A law that punished a citizen for an innocent action, or, in other words, for an act, which, when done, was in violation of no existing law; a law that destroys, or impairs, the lawful private contracts of citizens; a law that makes a man a Judge in his own cause; or a law that takes property from A. and gives it to B: It**

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**is against all reason and justice, for a people to entrust a Legislature with SUCH powers; and, therefore, it cannot be presumed that they have done it.** The genius, the nature, and the spirit, of our State Governments, amount to a prohibition of such acts of legislation; and the general principles of law and reason forbid them. The Legislature may enjoin, permit, forbid, and punish; they may declare new crimes; and establish rules of conduct for all its citizens in future cases; they may command what is right, and prohibit what is wrong; but they cannot change innocence into guilt; or punish innocence as a crime; or violate the right of an antecedent lawful private contract; or the right of private property. **To maintain that our Federal, or State, Legislature possesses such powers, if they had not been expressly restrained; would, in my opinion, be a political heresy, altogether inadmissible in our free republican governments.** [Emphasis added]  
[\[Calder v. Bull, 3 U.S. 386 \(1798\)\]](#)

**“To lay, with one hand, the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms.**

**Nor is it taxation. ‘A tax, says Webster’s Dictionary, ‘is a rate or sum of money assessed on the person or property of a citizen by government for the use of the nation or State.’ ‘Taxes are burdens or charges imposed by the Legislature upon persons or property to raise money for public purposes.’ Cooley, Const. Lim., 479.** Coulter, J., in Northern Liberties v. St. John’s Church, 13 Pa.St. 104 says, very forcibly, ‘I think the common mind has everywhere taken in the understanding that **taxes are a public imposition, levied by authority of the government for the purposes of carrying on the government in all its machinery and operations—that they are imposed for a public purpose.**’ See, also Pray v. Northern Liberties, 31 Pa.St. 69; Matter of Mayor of N.Y., 11 Johns., 77; Camden v. Allen, 2 Dutch., 398; Sharpless v. Mayor, supra; Hanson v. Vernon, 27 Ia., 47; Whiting v. Fond du Lac, supra.” [Emphasis added] [Loan Association v. Topeka, 20 Wall. 655 (1874)]

### 2.3 What is “justice”?

Further information on the subject of this section can be found at:

*What is “Justice”?*, Form #05.050  
<https://sedm.org/Forms/FormIndex.htm>

### Prov. 3:30, Bible, New King James Version

“Do not strive with [or try to regulate or control or enslave] a man without cause, **if he has done you no harm.**”  
 [Prov. 3:30, Bible, NKJV]

### Blackstone’s Commentaries, William Blackston (1765)

"For the principal aim of society is to protect individuals in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature; but which could not be preserved in peace without the mutual assistance and intercourse, which is gained by the institution of friendly and social communities. Hence it follows, that the first and primary end of human laws is to maintain and regulate these absolute rights of individuals."

"By the absolute rights of individuals we mean those which are so in their primary and strictest sense; such as would belong to their persons merely in a state of nature, and which every man is entitled to enjoy whether out of society or in it." - Ibid.  
 [William Blackstone, Commentaries (1765)]

### James Madison, The Federalist No. 51 (1788)

"**Justice is the end of government. It is the end of civil society.** It ever has been, and ever will be pursued, until it be obtained, or until liberty be lost in the pursuit."  
 [James Madison, The Federalist No. 51 (1788)]

### Thomas Jefferson, First Inaugural Address, 1801

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"With all [our] blessings, what more is necessary to make us a happy and a prosperous people? Still one thing more, fellow citizens--**a wise and frugal Government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government, and this is necessary to close the circle of our felicities.**" [Emphasis added]

[Thomas Jefferson: 1st Inaugural, 1801. ME 3:320]

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### **The Law, Frederic Bastiat**

"Life, faculties, production— in other words individuality, liberty, property— that is man. And in spite of the cunning of artful political leaders, these three gifts from God precede all human legislation, and are superior to it."

[Frederic Bastiat (b. 1801 - d. 1850), *The Law*; <http://famguardian.org/Publications/TheLaw/TheLaw.htm>]

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### **Readings on the History and System of the Common Law, Second Edition, Roscoe Pound, 1925**

PAULSEN, ETHICS (Thilly's translation), chap. 9.

**"Justice, as a moral habit, is that tendency of the will and mode of conduct which refrains from disturbing the lives and interests of others, and, as far as possible, hinders such interference on the part of others.** This virtue springs from the individual's respect for his fellows as ends in themselves and as his co equals. The different spheres of interests may be roughly classified as follows: body and life; the family, or the extended individual life; property, or the totality of the instruments of action; honor, or the ideal existence; and finally freedom, or the possibility of fashioning one's life as an end in itself. The law defends these different spheres, thus giving rise to a corresponding number of spheres of rights, each being protected by a prohibition. . . . To violate the rights, to interfere with the interests of others, is injustice. All injustice is ultimately directed against the life of the neighbor; it is an open avowal that the latter is not an end in itself, having the same value as the individual's own life. The general formula of the duty of justice may therefore be stated as follows: Do no wrong yourself, and permit no wrong to be done, so far as lies in your power; or, expressed positively: Respect and protect the right." [Emphasis added]

[Readings on the History and System of the Common Law, Second Edition, Roscoe Pound, 1925, p. 2]

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### **Olmstead v. United States (1928)**

"The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. **They conferred, as against the Government, the right to be let alone - the most comprehensive of rights and the right most valued by civilized men.**" [Emphasis added]

[Olmstead v. United States, [277 U.S. 438, 478](#) (1928) (Brandeis, J., dissenting); see also Washington v. Harper, [494 U.S. 210](#) (1990)]

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### **On Liberty, John Stewart Mill**

"The sole end, for which mankind are warranted, individually or collectively... in interfering with the liberty of action of any of their number, is self-protection."

[John Stewart Mill, *On Liberty*, p. 223]

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### **In Re Young (1999)**

"Under basic rules of construction, statutory laws enacted by legislative bodies cannot impair rights given under a constitution. 194 B.R. at 925. "

[In re Young, 235 B.R. 666 (Bankr.M.D.Fla., 1999) ]

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### **City of Dallas v. Mitchell**

"The rights [CONSTITUTIONAL or COMMON LAW] of the individuals are restricted only to the extent that they have been voluntarily surrendered by the citizenship to the agencies of government."

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[City of Dallas v. Mitchell, 245 S.W. 944]

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## 2.4 Determining Jurisdiction Between Governments

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### Constitution for the United States of America, Article IV, Section 3 (Sept. 17, 1787)

"New States may be admitted by the Congress into this Union, but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress." cl. 1

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state." cl. 2.

[Constitution for the United States of America, Article IV, Section 3]

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### 53 American Jurisprudence 2d, Military and Civil Defense, §8

**"Generally; federal and state powers.** The Federal Constitution grants to Congress the power to raise and support armies; to provide and maintain a navy; to make rules for the government of the land and naval forces; to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasion; to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; and to make all laws necessary and proper for carrying into execution the foregoing powers."

"The execution by Congress of these powers falls within the line of its duties, and its control over the whole subject of the formation, organization, and government of the national armies is plenary and exclusive."

"On the other hand, the states have reserved to themselves, under the Federal Constitution, certain military policies. These, and related matters, insofar as they concern both the organized and unorganized militia of the states, are considered in later sections, as are also questions relating to the concurrent control of the nation and the states over the militia, questions as to the relation of the military and civil authorities insofar as they involve constitutional provisions, and the authority of the President."

[53 American Jurisprudence 2d, Military and Civil Defense, §8]

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### 53 American Jurisprudence 2d, Military and Civil Defense, §28

**"Purposes for which forces may be employed.** It has been noted in a prior section that the Federal Constitution grants to Congress the power to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions. The right to employ the military forces in the enforcement of martial law generally is discussed in a subsequent subdivision. The use of military forces for particular purposes is in some instances restricted by express statutory provision." [Footnotes omitted.]

[53 American Jurisprudence 2d, Military and Civil Defense, §28]

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### 53 American Jurisprudence 2d, Military and Civil Defense, §29

**"--Protection of mail and interstate commerce.** Since, under the Constitution, power over interstate commerce and the transportation of the mails is vested in the National Government, and Congress by virtue of such grant has assumed actual and direct control, it follows that the National Government may prevent any unlawful and forcible interference therewith. Also, if the emergency arises, the Army of the nation, and all its militia, are at the service of the nation to compel obedience to its laws, and there is no doubt that in the event of a great national strike on the interstate railroads of the country which seriously interfered with or prevented interstate transportation or the transportation of the mails, the President, under his constitutional duty to see that the laws are enforced, has the power to use the Army and the militia if necessary, to prevent such interference and to operate the railroads." [Footnotes omitted.]

[53 American Jurisprudence 2d, Military and Civil Defense, §29]

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### 53 American Jurisprudence 2d, Military and Civil Defense, §30

**"Generally.** The militia and the National Guard are creatures of the Constitution and statutes of the United States and of

the constitutions and statutes of the several states."

"The Bill of Rights of the United States Constitution provides that the right to a well-regulated militia shall not be infringed. This provision in the Second Amendment is a limitation only upon the powers of Congress and the national government, and not upon the states."

[53 American Jurisprudence 2d, Military and Civil Defense, §30]

### **53 American Jurisprudence 2d, Military and Civil Defense, §34**

**"Power of state legislatures.** The power of state governments to legislate concerning the militia existed and was exercised before the adoption of the Constitution of the United States, and as its exercise was not prohibited by that instrument, it remains with the states, subject only to the paramount authority of acts of Congress enacted in pursuance of the Constitution of the United States. The power given to Congress to provide for organizing, arming, and disciplining the militia is defined to be merely an affirmative power, and not incompatible with the existence of a like power in the states; and hence the conclusion is that the power of concurrent legislation over the militia exists in the several states with the national government"

[53 American Jurisprudence 2d, Military and Civil Defense, §34]

### **Black's Law Dictionary: Posse Comitatus**

"POSSE COMITATUS. Lat. The power or force of the country. The entire population of a county above the age of fifteen, which a sheriff may summon to his assistance in certain cases; as to aid him in keeping the peace, in pursuing and arresting felons, etc. 1 Bl.Comm. 343; Corn. v. Martin, 7 Pa.Dist.R. 224."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1324]

### **Loughborough v. Blake (1820)**

.. [Counsel] has contended, that **Congress must be considered in two distinct characters. In one character as legislating for the states; in the other, as a local legislature for the district [of Columbia].** In the latter character, it is admitted, the power of levying direct taxes may be exercised; but, it is contended, for district purposes only, in like manner as the legislature of a state may tax the people of a state for state purposes. Without inquiring at present into the soundness of this distinction, its possible influence on the application in this district of the first article of the constitution, and of several of the amendments, may not be altogether unworthy of consideration." [Word in brackets added for clarity; bold added.]

[Loughborough v. Blake, 15 U.S. (5 Wheat.) 317, 5 L.Ed. 98 (1820)]

### **91 C.J.S., United States §3**

"Under general principles of international law, the territory subject to the jurisdiction of the United States includes the land areas under its dominion and control, the ports, harbors, bays, and other inclosed arms of the sea along the coast, and a marginal belt of the sea extending from the coast line outward a marine league, or three geographical miles, but not the high seas, which are the common **property** of all nations. Even where the United States lacks dominion and control, as on the high seas or in a foreign country, it is not debarred from governing the conduct of its own citizens when the rights of other nations or their nationals are not infringed."

[91 Corpus Juris Secundum, United States, §3]

### **Words and Phrases: State**

#### **"STATE**

"The territory of Hawaii is not a "state" within constitutional provision giving Congress exclusive legislative power over places purchased by consent of legislature of state in which located for erection of forts, magazines, arsenals, etc., though Organic Act constituted separate federal court in Hawaii and gave governor thereof somewhat broader powers than usual. Territory v. Carter, 19 Haw. 198."

"The "state" being an independent sovereignty within its sphere makes its own constitution and laws, creates its own courts and fixes their jurisdiction, while a "territory" being a political dependency under the absolute control and dominion of Congress, its organic law is made by Congress and its courts and their jurisdiction and procedure are defined by the same power. Makainai v. Goo Wan Hoy, 14 Haw. 607."

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"The 1940 amendment to the Judicial Code giving District Courts original jurisdiction over controversies between citizens of different "states" by adding the words "or citizens of the District of Columbia" is unconstitutional as in violation of the constitutional provision that the judicial power of the United States shall extend to controversies between citizens of different "states", since the District is not a "state" within the meaning of the Constitution. *Willis v. Dennis*, D.C.Va., 72 F.Supp. 853."

"A territory is not a state, nor are the words "territory" and "state" used as synonymous or convertible terms in the acts of Congress.. For instance, in 1853, Congress passed "An act regulating the fees and costs in the several states." By act of 1855 Congress extended the provisions of the act of 1853 to the territories "as fully in all particulars as they would be had the word `territories' been inserted after the word `states, and the act had read in the several states and territories of the United States. *Smith v. U.S.*, 1 Wash.T. 262, 268. See *Bright Dig.* pp. 273, 279."

"The "state" is only a corporate name for all the citizens within certain territorial limits. *Regents of University System of Georgia v. Blanton*, 176 S.E. 673, 49 Ga.App. 602."

""State" means a body of people occupying a definite territory and politically organized under one government. *City of Norwalk v. Daniele*, 119 A.2d. 732, 735, 143 Conn. 85."

""State" means a sovereignty, not subsidiary division of civil government. *In re Stillman's Estate*, 53 N.Y.S.2d. 718, 732." "The word "state" comprehends a body of people having sovereignty. *Kuniyuki v. Acheson*, D.C.Wash., 94 F.Supp. 358, 361."

""State" is the organization of social life which exercises sovereign power in behalf of the people. *Delany v. Moraitis*, C.C.A.Md., 136 F.2d. 129, 130."

[40 Words and Phrases, p. 12-20]

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### **American Insurance Co. et al., The v. Canter (356 Bales of Cotton) (1828)**

"The Constitution and laws of the United States give jurisdiction to the District Courts, over all cases in admiralty; but jurisdiction over the cases, does not constitute the case itself.

"The Constitution declares that "the judicial power shall extend to all cases in law and equity arising under it--the laws of the United States, and treaties made, or which shall be made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction." The Constitution certainly contemplates these as three distinct classes of cases; and if they are distinct, the grant of jurisdiction over one of them does not confer jurisdiction over either of the other two. The discrimination made between them is conclusive against their identity."

"Although admiralty jurisdiction can be exercised in the States, in those courts only which are established in pursuance of the third article of the Constitution, the same limitation does not extend to the territories."

"Nor do I doubt that the admiralty jurisdiction over revenue cases, as exercised by the Kentucky court, is rightfully vested (and that beyond the control of the Florida Legislature) in the Superior Court of this district.

"But here, it appears to me, the grant of jurisdiction terminates. The admiralty jurisdiction, beyond this limit, is left to be administered under the laws of the territory, for this simple reason, that other causes occurring in the admiralty, cannot be brought within this description of causes, arising under the laws of the United States...." [Footnote pp. 244-247, at 246.]

"The 5th section of the act of 1823 creates a territorial Legislature, which shall have legislative powers over all rightful objects of legislation; but no law shall be valid which is inconsistent with the laws and Constitution of the United States."

"The Constitution and laws of the United States give jurisdiction to the District Courts over all cases in admiralty; but jurisdiction over the case does not constitute the case itself. We are therefore to inquire, whether cases in admiralty, and cases arising under the laws and Constitution of the United States, are identical.

"If we have recourse to that pure fountain from which all the jurisdiction of the federal courts is derived, we find language employed which cannot well be misunderstood. The Constitution declares, that "the judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made under their authority; to all cases affecting ambassadors, or other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction.

"The Constitution certainly contemplates these as three distinct classes of cases, and if they are distinct, the grant of jurisdiction over one of them does not confer jurisdiction over either of the other two. The discrimination made between them, in the Constitution, is, we think, conclusive against their identity. If it were not so--if this were a point open to inquiry--it would be difficult to maintain the proposition that they are the same. A case in admiralty does not, in fact, arise under the Constitution or laws of the United States. These cases are as old as navigation itself; and the law, admiralty and maritime, as it has existed for ages, is applied by our courts to the cases as they arise. It is not, then, to the 8th section of the territorial law that we are to look for the grant of admiralty and maritime jurisdiction to the territorial courts. Consequently, if that jurisdiction is exclusive, it is not made so by the reference to the District Court of Kentucky.

"It has been contended, that by the Constitution the judicial power of the United States extends to all cases of admiralty and maritime jurisdiction, and that the whole of this judicial power must be vested "in one Supreme Court, and in such

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inferior courts as Congress shall from time to time ordain and establish." Hence it- has been argued, that Congress cannot vest admiralty jurisdiction in courts created by the territorial Legislature.

"We have only to pursue this subject one step further, to perceive that this provision of the Constitution does not apply to it. The next sentence declares that "the judges both of the supreme and inferior courts, shall hold their offices during good behavior." The judges of the Superior Courts of Florida hold their offices for four years. These courts, then, are not Constitutional courts, in which the judicial power conferred by the Constitution on the general government can be deposited. They are incapable of receiving it. They are legislative courts, created in virtue of the general right of sovereignty which exists in the government, or in virtue of that clause which enables Congress to make all needful rules and regulations, respecting the territory belonging to the United States. The jurisdiction with which they are invested, is not a part of that judicial power which is defined in the 3d article of the Constitution, but is conferred by Congress, in the execution of those general powers which that body possesses over the territories of the United States. Although admiralty jurisdiction can be exercised in the States in those courts only which are established in pursuance of the 3d article of the Constitution, the same limitation does not extend to the territories. In legislating for them, Congress exercises the combined powers of the general and of a State government."

[American Insurance Company et al , The v. Canter 5356 Bales of Cotton, 1 Pet. 511, 7 L.Ed. 242 (1828)]

### Mills v. St. Clair County et. al. (1850)

"The framers of the Constitution never intended that the legislative and judicial powers of the general government should extend to municipal regulations necessary to the well-being and existence of the States. Were this court to assume jurisdiction, and re-examine and revise State court decisions, on a doubtful construction, that an interest in land held by patent was a contract, and the owner entitled to constitutional protection by our decision in case of abuse and trespass by an oppressive exercise of State authority, it would follow, that all State laws, special and general, under whose sanction roads, ferries, and bridges are established, would be subject to our supervision. A new source of jurisdiction would be opened, of endless variety and extent, as, on this assumption, all such cases could be brought here for final adjudication and settlement; of necessity, we would be called on to adjudge of fairness and abuse to ascertain whether jurisdiction existed, and thus to decide the law and facts; in short, to do that which State courts are constantly doing, in an exercise of jurisdiction over peculiarly local matters; by which means a vast mass of municipal powers, heretofore supposed to belong exclusively to State cognizance, would be taken from the States, and exercised by the general government, through the instrumentality of this court. That such a doctrine cannot be maintained here has in effect been decided in previous cases; and especially in that of *Charles River Bridge v. Warren Bridge* (11 Peters, 539, 540), where other cases are cited and reviewed."

[Mills v. St. Clair County et. al., 49 U.S. 569; 8 Howard 569; 12 L.Ed. 1201 (1850)]

### The People v. Naglee (Dec. 1850)

"In determining the boundaries of apparently conflicting powers between the states and the general government, the proper question is, not so much what has been, in terms, *reserved* to the states, as what has been, expressly or by necessary implication, *granted* by the people to the national government; for **each state possesses all the powers of an independent and sovereign nation**, except so far as they have been ceded away by the constitution. **The federal government is but the creature of the people of the states, and, like an agent appointed for definite and specific purposes, must show an express or necessarily implied authority in the charter of its appointment, to give validity to its acts.**" [Italics original; bold added.]

"The power of taxation, in independent nations, is unrestricted as to things, and, with the exception of foreign ambassadors and agents, and their retinue, is unlimited as to persons; and is deemed a power indispensable to their welfare and even their existence. The several states may, therefore, subject to the above restrictions, tax everything within their territorial limits, and every person, whether citizen or foreigner, who resides under the protection of their respective governments."

[People ex rel. Atty. Gen. v. Naglee, 1 Cal. 234 (1850)]

### Lowe v. Alexander (Apr. 1860)

"The reasonable conclusion is that he was a resident of the township in which he was served, but independent of this, we think it was incumbent upon the parties seeking to avail themselves of the judgment, to show affirmatively, from the record itself, that the Justice had jurisdiction. It is well settled that no intendments can be indulged in favor of the jurisdiction of inferior courts, but that their jurisdiction must affirmatively appear, or their judgments will be absolutely void. "The general

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distinction seems to be fully agreed, that power and authority shall be intended as to courts of general jurisdiction, but as to inferior or limited courts, those who claim any right or exemption under their proceedings, are bound to show affirmatively that they had jurisdiction." (1 Phil. Ev. Cow. & Hill's notes, 206)."  
[Lowe v. Alexander, 15 Cal. 296 (1860)]

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### **United States v. Stahl (May 1868)**

"The United States, when it admitted Kansas into the Union, although retaining the title to the land which it then owned within the state, parted with the jurisdiction over it, so far as the general purpose of government are concerned, with certain reservations and exceptions."

"These reservations and exceptions were (1) Lands of Indian tribes having treaties with the United States, which exempt them from state jurisdiction, (2) **The right to tax lands of the United States**, and of Indians." [Bold added.]

"Forts of the United States might have been, but were not excepted."

"In respect of jurisdiction within forts, Kansas is on the same footing as the original states. Her consent is necessary to the exercise by the United States of jurisdiction within them."

"In order to withdraw from a state a jurisdiction which it has once exercised, and confer it on the general government, the consent of the former is a pre-requisite. This is the material point aimed at in the constitution."

"The government of United States, when it admitted Kansas into the Union upon the same footing as the original states, retained the legal title to all the lands which it then owned in the state of Kansas. So far as general purposes of government were concerned, however, with certain reservations and exceptions, it parted with jurisdiction over it."

"This jurisdiction having been vested in the state of Kansas by the act admitting her into the Union, and never divested, it cannot now belong to the United States."

[United States v. Stahl, 27 Fed.Cas. page 1288, (Case No. 16,373) (1868)]

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### **Smith v. United States (1869)**

"In a qualified sense, territorial courts are United States courts. They exercise the combined jurisdiction of Circuit and District Courts of the United States."

"A Territory is not a *State*, nor is the word *State* used as synonymous with *Territory* in the act of 1825."

"Speaking of 'an arm of the sea,' Story, J., says: 'An arm of the sea may include various subordinate descriptions of waters where the tide ebbs and flows. It may be a river, harbor, creek, basin, or bay; and it is sometimes used to designate very extensive reaches of waters within the projecting capes or points of a country.' (*United States v. Crush*, 5 Mason, 290.)"

"But under section 4, act of 1825, the locality of the offense must also be 'out of the jurisdiction of any particular State.' Is the bay of Port Blankely out of the jurisdiction of any particular *State*? Of this there would seem no room for doubt. A *Territory* is not a *State*. Nor are the words 'Territory' and 'State' used as synonymous or convertible terms in the acts of Congress. For instance, in 1853, Congress passed 'an act regulating fees and costs in *the several States*.' By act of 1855, Congress extended the provision of the act of 1853 to the Territories, 'as fully in all particulars as they would be had the word *Territories* been inserted after the word *States*,' and the act had read 'in the several *States* and *Territories* of the *United States*.' (See *Brightly's Digest*, pp. 273, 279.) Again, in 1789, Congress passed an act adopting the pilot laws 'of *the States* respectively,' and in 1866 an act declaring that no regulations shall be adopted by '*any State*,' making discriminations in the rates of pilotage, etc. Can it be claimed that the word 'State' in these acts embraces Territories? Besides, a Territory sustains no such relations to the government of the United States as does a State. The several States of the Union possess all the powers and attributes of independent nations, except such as they have **delegated by the Constitution to the United States**. Not so with a Territory. But even the decision in the *Bevan's Case* proceeds upon the ground that Congress has the power, and may at any time by legislation give to the federal courts jurisdiction over offenses committed in Boston harbor, but has abstained from doing so out of regard to the claims of sovereignty long exercised by the State of Massachusetts over these water. Again, in construing a statute, words are to have their ordinary meaning. (16 How. 257; 4 McLean, 473.) 'Acts of Congress are to be construed by interpreting the words in their plain and actual meaning.' (Dev. Ct. Cl. 157, 158.) But the words of the statute under consideration have received a judicial construction. 'The words 'out of the jurisdiction of any particular *State*, mean any particular State in the Union.' (*United States v. Furlong*, 5 Wheat. 134.) So, in the case of the *United States v. Pirates*, 5 Wheat. 184-200, the court said: 'The words 'out of the jurisdiction of any particular State, in section 8 of the Crimes Act of 1780, must be construed' to mean out of any one of the United States.' So, also, 'a 'State' must be a member of the Union. It is not enough to be an organized political body within the limits of the Union."

"Every citizen of the United States is also a citizen of a State or Territory." [Italics supplied, bold added.]

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[Smith v. United States, 1 Wash.T. 262 (1869)]

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**The State of California v. S. S. Constitution (Jan. 1872)**

"A State has the power, by proper police and sanitary regulations, to exclude from its limits paupers, vagabonds, and criminals, or sick, diseased, infirm, and disabled persons, who are liable to become a public charge, or to admit them only on such terms as will prevent the State from being burdened with their support."

"The exercise of such a power is a police or sanitary regulation for preserving the health and morals of the people."  
[State of California v. S. S. Constitution, 42 Cal. 578 (1872)]

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**14 Opn. My. Gen. (Apr. 2, 1875)**

**JURISDICTION OVER NATIONAL CEMETERIES.**

"SIR: In your communication to me of the 6th ultimo, after adverting to the recent failure of a bill before the legislature of Missouri which provided for a cession to the United States of jurisdiction over certain lands in that State acquired and used by the former for the purpose of national cemeteries, you refer to an opinion given by Mr. Attorney-General Hoar, (13 Opn., 131,) in which he held that Congress cannot by its own act alone, and without the consent of the State, assert or exercise exclusive jurisdiction over lands acquired for the aforesaid purpose within the territorial limits of a state; and you remark that exactly what jurisdiction the United States possesses in cases where such consent is withheld is not stated by him. You then submit for my consideration the following question: "What jurisdiction over lands held for national cemeteries have the United States where the purchases have been made or the lands appropriated without the consent of the State legislatures?"

"The answer I make to the above question is, that the United States have over lands thus held only such jurisdiction as they have over other parts of the State wherein they possess no proprietary interests; and that jurisdiction may, in general terms, be described as limited to those subjects which the Constitution has withdrawn from the jurisdiction of the State, or at least placed under the control of the National Government, and to which the legislative power of the latter extends.

"The mere ownership of the land, under the circumstances mentioned, does not put the United States in a different position, as regards the matter of jurisdiction over it, than they occupied previous to its acquisition; nor is the situation of the State, with respect to the same matter, in any degree altered thereby. Hence, so long as the State retains its jurisdiction over the premises, Congress cannot pass laws for the punishment of crimes committed thereon, such as murder, manslaughter, larceny, maiming, assault, &c., since in that case these subjects do not fall within the legislative power granted by the Constitution to the General Government, but appertain exclusively to that reserved to the States. It is only after the State has parted with its jurisdiction, which may be either by a formal cession thereof to the United States, or simply by assenting to the acquisition of the land by the latter, that Congress becomes invested with authority thus to legislate. Accordingly, where that body has heretofore enacted laws punishing those crimes, their operation (excepting such as relate to crimes committed on the high seas) has been expressly limited to places or districts of country under the jurisdiction of the United States, (see Revised Statutes, sections 5339, 5341, 5348, 5356, 5385;) the power to enact such laws, so far as they apply to places or districts within the territorial limits of a State, being derived from that provision of the Constitution which vests in Congress authority to exercise "exclusive legislation, in all cases whatsoever," over "all places purchased by the consent of the legislatures of the States in which the same shall be situated," &c.

"Strictly speaking, where the United States own lands situated within the limits of a State, but over which they have not acquired jurisdiction from the State, they cannot be said to have any *local* jurisdiction over the land whatever."

[14 Opinions of the Attorney General 557 (1875)]

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**Pennoyer v. Neff (Jan. 21, 1878)**

"Process from the tribunals of one State cannot run into another State, and summon parties there domiciled to leave its territory and respond to proceedings against them; and publication of process or notice within the State in which the tribunal sits cannot create any greater obligation upon the non-resident to appear. Process sent to him out of the State, and process published within it, are equally unavailing in proceedings to establish his personal liability."

"Whilst the courts of the United States are not foreign tribunals in their relations to the State Courts, they are tribunals of a different sovereignty exercising a distinct and independent jurisdiction, and are bound to give to the judgments of the State Courts only the same faith and credit which the courts of another State are bound to give to them."

"The defendant in that judgment was not served with process; and the suit was commenced by the attachment of a bedstead belonging to the defendant, accompanied with a summons to appear, served on his wife after she had left her place in Massachusetts. The court held that the attachment bound only the property attached as a proceeding *in rem*, and that it

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could not bind the defendant, observing that, to bind a defendant personally, when he was never personally summoned, or had notice of the proceeding, would be contrary to the first principles of justice, repeating the language, in that respect, of *Chief Justice De. Grey*, used in the case of *Fisher v. Lane*, 3 Wils., 297, in 1772. See, also, *Borden v. Fitch*, 15 Johns., 121, and the cases there cited, and *Harris v. Hardeman*, 14 How., 334. To the same purport decisions are found in all the State Courts. In several of the cases, the decision has been accompanied with the observation that a personal judgment thus recovered has no binding force without the State in which it is rendered, implying that in such State it may be valid and binding. But if the court has no jurisdiction over the person of the defendant, by reason of his non-residence, and, consequently, no authority to pass upon his personal rights and obligations; if the whole proceeding, without service upon his personal rights and obligations; if the whole proceeding, without service upon him or his appearance, is *coram no judice* and void; if to hold a defendant bound by such a judgment is contrary to the first principles of justice, it is difficult to see how the judgment can legitimately have any force within the State. The language used can be justified only on the ground that there was no mode of directly reviewing such judgment or impeaching its validity within the State where rendered; and that, therefore, it could be called in question only when its enforcement was elsewhere attempted. In later cases, this language is repeated with less frequency than formerly, it beginning to be considered, as it always ought to have been, that a judgment which can be treated in any State of this Union as contrary to the first principles of justice, and as an absolute nullity, because rendered without any jurisdiction of the tribunal over the party, is not entitled to any respect in the State where rendered. *Smith v. McCutchen*, 38 Mo., 415; *Darrance v. Preston*, 18 Iowa, 396; *Hakes v. Shupe*, 27 Iowa, 465; *Mitchell v. Grey*, 18 Ind., 123.

"Be that as it may, the courts of the United States are not required to give effect to judgments of this character when any right is claimed under them. Whilst they are not foreign tribunals in their relations to the State Courts, they are tribunals of a different sovereignty, exercising a distinct and independent jurisdiction, and are bound to give to the judgments of the State Courts only the same faith and credit which the court of another State are bound to give to them.

"Since the adoption of the 14th Amendment to the Federal Constitution, the validity of such judgments may be directly questioned, and their enforcement in the State resisted, on the ground that proceedings in a court of justice to determine the personal rights and obligations of parties over whom that court has no jurisdiction, do not constitute due process of law. Whatever difficulty may be experienced in giving to those terms a definition which will embrace every permissible exertion of power affecting private rights, and exclude such as is forbidden, there can be no doubt of their meaning when applied to judicial proceedings. They then mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. **To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the State, or his voluntary appearance.**" [Bold added.]

"It follows from the views expressed that the personal judgment recovered in the State Court of Oregon against the plaintiff herein, then a non-resident of the State, was without any validity, and did not authorize a sale of the property in controversy."

[*Pennoyer v. Neff*, 95 U.S. 714 (1877)]

### **California Constitution (1879) Article III, §2**

"The boundaries of the state are those stated in the Constitution of 1849 as modified pursuant to statute. Sacramento is the . capital of California."

[California Constitution (1879) Article III, §2]

### **11 Cal.Jur.2d., Constitutional Law, §4 "Permanence and Generality."**

"Although the present constitution is not the one under which the state was first formed, it is a substitute for that adopted in 1849, as amended in 1862, and the present government is a continuance of that established when the constitution of 1849 was adopted. The legislative bodies of the new constitution are the successors of the old, with the same powers, except so far as their powers have been further limited by additional restrictions."

[11 Cal.Jur.2d., Constitutional Law, §4]

### **First National Bank of Brunswick v. County of Yankton (May 10, 1880)**

"It is certainly now too late to doubt the power of Congress to govern the Territories. There have been some differences of opinion as to the particular clause of the Constitution from which the power comes, but that it exists has

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always been conceded. The Act to adapt the ordinance to provide for the government of the Territory northwest of the River Ohio to the requirements of the Constitution, 1 Stat. at L., 50, is chapter 8 of the first session of the first Congress, and the Ordinance itself was in force under the Confederation when the Constitution went into effect. All territory within the jurisdiction of the United States not included in any State must, necessarily, be governed by or under the authority of Congress. The Territories are but political subdivisions of the outlying dominion of the United States. They bear much the same relation to the General Government that counties do to the States, and Congress may legislate for them; as States do for their respective municipal organizations. The organic law of a Territory takes the place of a constitution, as the fundamental law of the local government. It is obligatory on and binds the territorial authorities; but Congress is supreme and, for the purposes of this department of its governmental authority, has all the powers of the People of the United States, except such as have been expressly or by implication reserved in the prohibitions of the Constitution.

"In the organic Act of Dakota there was no express reservation of power in Congress to amend the Acts of the territorial Legislature, but none was necessary. Such power is an incident of sovereignty, and continues until granted away. Congress may not only abrogate laws of the territorial Legislatures, but it may itself legislate directly for the local government. It may make a void Act of the territorial Legislature valid, and a valid Act void. In other words, it has full and complete legislative authority over the People of the Territories and all the departments of the territorial governments. It may do for the Territories what the People, under the Constitution of the United States, may do for the States." [First National Bank of Brunswick L County of Yankton, 101 U.S. 129, 25 L.Ed. 1046 (1880)]

### **State of Wisconsin v. Pelican Ins. Co. (May 14, 1888)**

"As to "controversies between two or more states." The most numerous class of which this court has entertained jurisdiction is that of controversies between two states as to the boundaries of their territory, such as were determined before the Revolution by the king in council, and under the articles of confederation (while there was no national judiciary) by committees or commissioners appointed by congress."

"This court has declined to take jurisdiction of suits between states to compel the performance of obligations which, if the states had been independent nations, could not have been enforced judicially, but only through the political departments of their governments."

"By the law of England and of the United States the penal laws of a country do not reach beyond its own territory except when extended by express treaty or statute to offenses committed abroad by its own citizens; and they must be administered in its own courts only, and cannot be enforced by the courts of another country. [Cite omitted.] Chief Justice MARSHALL stated the rule in the most condensed form, as an incontrovertible maxim, "the courts of no country execute the penal laws of another." . . . The rule that the courts of no country execute the penal laws of another applies, not only to prosecutions and sentences for crimes and misdemeanors, but to all suits in favor of the state for the recovery of pecuniary penalties for any violation of statutes for the protection of its revenue, or other municipal laws, and to all judgments for such penalties. If this were not so, all that would be necessary to give ubiquitous effect to a penal law would be to put the claim for a penalty into the shape of a judgment. . . . It is true that if the prosecution in the courts of one country for a violation of its municipal law is *in rem*, to obtain a forfeiture of specific property within its jurisdiction, a judgment of forfeiture rendered after due notice, and vesting the title of the property in the state, will be recognized and upheld in the courts of any other country in which the title to the property is brought in issue.... Judgments recovered in one state of the Union, when proved in the courts of another government, whether state or national, within the United States, differ from judgments recovered in a foreign country in no other respect than in not being re-examinable on their merits, nor impeachable for fraud in obtaining them, if rendered by a court having jurisdiction of the cause and of the parties. [Cite omitted.] In the words of Mr. Justice STORY, cited and approved by Mr. Justice BRADLEY speaking for this court: "The constitution did not mean to confer any new power upon the states, but simply to regulate the effect of their acknowledged jurisdiction over persons and things within their territory. It did not make the judgments of other states domestic judgments to all intents and purposes, but only gave a general validity, faith, and credit to them as evidence. No execution can issue upon such judgments without a new suit in the tribunals of other states. And they enjoy not the right of priority or lien which they have in the state where they are pronounced, but that only which the *lex fori* gives to them by its own laws in their character of foreign judgments." [Cite omitted.] A judgment recovered in one state, as was said by Mr. Justice WAYNE, delivering an earlier judgment of this court, "does not carry with it, into another state, the efficacy of a judgment upon property or persons, to be enforced by execution. To give it the force of a judgment in another state, it must be made a judgment there; and can only be executed in the latter as its laws may permit.""

[State of Wisconsin v. Pelican Ins. Co., 127 U.S. 265; 8 S.Ct. 1370, 32 L.Ed. 239 (1888)]

### **Ross v. McIntyre (May 25, 1891)**

#### ***Sovereignty and Freedom Points and Authorities***

"The deck of a private American vessel, it is true, is considered, for many purposes, constructively as territory of the United States; yet persons on board of such vessels, whether officers, sailors, or passengers, cannot invoke the protection of the provisions referred to until brought within the actual territorial boundaries of the United States."

"The term "high seas" includes waters on the sea-coast without the boundaries of low-water mark; \* \* \*."

"It is a canon of interpretation to so construe a law or a treaty as to give effect to the object designed, and for that purpose all of its provisions must be examined in the light of attendant and surrounding circumstances. To some terms and expressions a literal meaning will be given, and to others a larger and more extended one. The reports of adjudged cases and approved legal treatises are full of illustrations of the application of this rule. The inquiry in all such cases is as to what was intended in the law by the legislature, and in the treaty by the contracting parties. In *De Grofroy v. Riggs*, 133 U.S. 258, 10 Sup.Ct.Rep. 295, which was before this court at the last term, it was held that the District of Columbia, as a political community, is one of "the states of the Union," within the meaning of that term as used in the consular convention of 1853 with France; such construction being necessary to give consistency to the provisions of the convention, and not defeat the consideration given to France for her concession of certain rights to citizens of the United States."

""The expression 'British seamen' may mean one who, whatever his nationality, is serving on board a British ship;" and also that it had been decided "that a ship which bears a nation's flag is to be treated as a part of the territory of that nation. A ship is a kind of floating island.""

We have not overlooked the objection repeatedly made and earnestly pressed by counsel, that the consular tribunal is a court of limited jurisdiction. It is undoubtedly a court of that character, limited by the treaty and the statutes passed to carry it into effect, and its jurisdiction cannot be extended beyond their legitimate meaning; but their construction is not, therefore, to be so restricted as to practically defeat the purposes to be accomplished by the treaty, but rather so as to give it full operation, in order that it may not be a vain and nugatory act."

[*Ross v. McIntyre*, 140 U.S. 453, 11 S.Ct. 897 (1891)]

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### **Armstrong v. Best (Mar. 14, 1893)**

"If the contract which is the subject of this action was made in this state, it is well settled that it would be void, by reason of the common-law disability of the feme defendant to make any contract whatever, upon which a personal judgment can be rendered against her, except in the cases provided by statute."

"The plaintiffs, however, insist that the contract was made in the city of Baltimore, Md., their place of business, where they accepted the proposal of the defendant by shipping the goods according to her order. In this they are correct; for, if a contract is completed in another state, "it makes no difference, in principle, whether the citizen of this state goes in person, or sends an agent, or writes a letter, across the boundary line between the two states." *Milliken v. Pratt*, 125 Mass. 374."

"It is well settled that the law of one state has, *proprio vigore*, no force or authority beyond the jurisdiction of its own courts, and that whatever effect is given to it by the courts of foreign countries or other states is the result of that international comity (more properly called "private international law") which is the product of modern civilization. *Hornthal v. Burwell*, 109 N.C. 10, 13 S.E.Rep. 721. It is left to each state or nation to say how far it will recognize this comity, and to what extent it will be permitted to control its own laws. It has, however, been very generally settled that all matters bearing upon the execution, the interpretation, and the validity of a contract are to be determined by the law of the place where the contract is made, and, if valid there, it is valid everywhere. *Taylor v. Sharp*, 108 N.C. 377, 13 S.E.Rep. 138. An exception is maintained by some of the continental jurists as to the capacity of a contracting party, and they generally hold that the incapacity of the domicile attaches to and follows the person, wherever he may go. We remarked in *Taylor v. Sharp*, *supra*, that this was not considered by Mr. Justice Story (*Conti. Law*, 103, 104) as the doctrine of the common law; and we also stated the conclusion of Gray, C. J., in *Milliken v. Pratt*, *supra*, that the general current of the English and American authorities is in favor of holding that a contract which, by the law of the place, is recognized as lawfully made by a capable person, is valid everywhere, although the person would not, under the law of the domicile, be deemed capable of making it. The proposition, though denied by Dr. Wharton as to infants and *femes covert*, (*Conti. Laws*, 112, 118,) seems to be generally accepted in this country, in so far as it relates to the enforcement of contracts in courts other than those of the domicile. If, for example, the plaintiffs were suing upon the present contract in the courts of Maryland, the defendant could not, it is thought, avail herself of the incapacity of her domicile, but the *lex loci contractus* would prevail. But quite a different question is presented when the action is brought in the forum of the domicile. In such a case a very important qualification of private international law is to be considered; and this is, that no state or nation will enforce a foreign law which is contrary to its fixed and settled policy. In *Bank v. Earle*, 13 Pet. 519, Chief Justice Taney, speaking for the court, said: "The comity thus extended to other nations is no impeachment of sovereignty. It is the voluntary act of the nation by which it is offered, and is inadmissible when contrary to its policy, or prejudicial to its interests." To the same effect is the language of Story,--that no state will enforce a foreign law if it be "repugnant to its policy, or prejudicial to its interests." *Conti. Law*, 37. That this qualifying principle is applicable to cases like the present is manifest, not only by reason and necessity, but also by the decisions of other courts. Even in *Milliken v. Pratt*, *supra*, in

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### ***Sovereignty and Freedom Points and Authorities***

which the *lex loci contractus* is pushed to the extreme limit, it is suggested that where the incapacity of a married woman is the settled policy of the state, "for the protection of its own citizens, it could not be held by the courts of that state to yield to the law of another state, in which she might undertake to contract."

"The courts of our state have perfect jurisdiction over all personal and real property within its limits, belonging to the wife; and, if our laws in respect to the manner in which it may be charged conflict with those of another state, it cannot be made a question in our courts as to which shall prevail. It is certainly competent for any state to adopt laws to protect its own property, as well as to regulate it; and "no nation," says Story, "will suffer the laws of another to interfere with her own, to the injury of her citizens. That whether they do or not must depend on the condition of the country in which the foreign law is sought to be enforced, the particular nature of her legislation, her policy, and the character of her institutions. \* \* \* That whenever a doubt does exist the court which decides will prefer the laws of its own country to that of the stranger." *Confl. Law*, 28."

"For the reasons given, we cannot recognize the present contract as an enforceable one in our courts."  
[*Armstrong v. Best*, 17 S.E. 14 (1893)]

### **Caha v. United States (Mar. 5, 1894)**

"Rev.St. §5392, defining the crime of perjury, is not confined in its operation to places within the exclusive jurisdiction of the United States, but is of universal application within the territorial limits thereof; and the crime is punishable in the district court of the district in which it is committed."

"This statute is one of universal application within the territorial limits of the United States, and is not limited to those portions which are within the exclusive jurisdiction of the national government, such as the District of Columbia.

Generally speaking, within any state of this Union the preservation of the peace and the protection of person and property" are the functions of the state government, and are no part of the primary duty, at least, of the nation. **The laws of congress in respect to those matters do not extend into the territorial limits of the states, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government.**"

[Bold added.]

"It was held by this court that the regulation prescribed by the commissioner of internal revenue, under that general grant of authority, was not sufficient to subject one violating it to punishment under section 18. It was said by Mr. Justice Blatchford, speaking for the court in *U.S. v. Eaton*, 144 U.S. 677, 12 Sup.Ct. 7641:

"It is necessary that a sufficient statutory authority should exist for declaring any act or omission a criminal offense; and we do not think that the statutory authority in the present case is sufficient. If congress intended to make it an offense for wholesale dealers in oleomargarine to omit to keep books and render returns as required by regulations to be made by the commissioner of internal revenue, it would have done so distinctly, in connection with an enactment such as that above recited, made in section 41 of the act of October 1, 1890.

"Regulations prescribed by the president and by the heads of departments, under authority granted by congress, may be regulations prescribed by law, so as lawfully to support acts done under them and in accordance with them, and may thus have, in a proper sense, the force of law; but it does not follow that a thing required by them is a thing so required by law as to make the neglect to do the thing a criminal offense in a citizen, where a statute does not distinctly make the neglect in question a criminal offense."

"Questions of a kindred nature have been frequently presented, and it may be laid down as a general rule, deducible from the cases, that wherever, by the express language of any act of congress, power is intrusted to either of the principal departments of government to prescribe rules and regulations for the transaction of business in which the public is interested, and in respect to which they have a right to participate, and by which they are to be controlled, the rules and regulations prescribed in pursuance of such authority become a mass of that body of public records of which the courts take judicial notice."

[*Caha v. United States*, 152 U.S. 211 (1894)]

### **In re Merriam's Estate (Mar. 6, 1894)**

.. the United States is to be regarded as a body politic and corporate. In *U.S. v. Maurice*, 2 Brock. 96, Fed.Cas. No. 15,747, Chief Justice Marshall says, at page 109: "The United States is a government, and consequently a body politic and corporate, capable of attaining the objects for which it was created by the means which are necessary for their attainment."  
[In *re Merriam's Estate*, 141 N.Y. 479; 36 N.E. 505 (1894)]

### **Downes v. Bidwell (May 27, 1901)**

## ***Sovereignty and Freedom Points and Authorities***



"The idea prevails with some--indeed, it found expression in arguments at the bar--that we have in this country substantially or practically two national governments one to be maintained under the Constitution, with all its restrictions; the other to be maintained by Congress outside and independently of that instrument, by exercising such powers as other nations of the earth are accustomed to exercise. It is one thing to give such a latitudinarian construction to the Constitution as will bring the exercise of power by Congress, upon a particular occasion or upon a particular subject, within its provisions. It is quite a different thing to say that Congress may, if it so elects, proceed outside of the Constitution. The **glory of our American system of government is that it was created by a written constitution which protects the people against the exercise of arbitrary, unlimited power, and the limits of which instrument may not be passed by the government it created, or by any branch of it, or even by the people who ordained it, except by amendment or change of its provisions.**" [Bold added.]

[Downes v. Bidwell, 182 U.S. 244, 21 S.Ct. 770 (1901)]

### **Makainai v. Goo Wan Hoy (Feb. 19, 1903)**

"His theory entirely overlooks the difference in the relation that the states and their courts and the territories and their courts sustain to the Federal government. The state, being an independent sovereignty within its sphere, makes its own constitution and laws, creates its own courts and fixes their jurisdiction; while a territory, being a political dependency under the absolute control and dominion of Congress, its organic law is made by Congress and its courts and their jurisdiction and procedure is defined by the same power.

*First National Bank v. Yankton*, 101 U.S. 129; *Patterson v. Gile*, 1 Colo. 200.

"In this last case the Supreme Court of Colorado, in passing on this question, said: "As a territory, we derive our political existence and every political right and privilege that we enjoy from the general government, and therefore we cannot deny the power of that government to legislate upon this subject in this way as did the Supreme Courts of Illinois and Massachusetts." \* \* \* "We recognize the power of Congress to enact this law, and, according to the one hundred and sixty-third section of the act, we will require every instrument to be stamped according to the provisions of the act before it is used as evidence."" id. p. 204."

[Makainai L. Goo Wan Hoy, 14 Haw. 607 (1903)]

### **Territory v. Alexander (Mar. 22, 1907)**

"The question, therefore, is squarely presented, whether the federal statute supersedes the territorial statute. This question has been answered in the negative by the Supreme Courts of Wyoming, Montana, and Utah. [ \* \* \* ] It seems to us that the Wyoming, Montana, and Utah courts, in the cases referred to, holding that this rule applies in a territory as in a state, overlook the distinction between a territory and a state in their relation to the United States. A territory is not a sovereignty. Such legislative powers as it may possess are delegated powers which may be granted or withheld at the will of Congress. *National Bank v. Yankton*, 101 U.S. 129, 25 L.Ed. 1046. An offense against a federal law and an offense created by the territorial statute are both in effect offenses against the sovereignty of the United States."

"The cases in which the legislation of Congress will supersede the legislation of a state or territory, without specific provisions to that effect, are those in which the same matter is the subject of legislation by both."

[Territory v. Alexander, 11 Ariz. 172; 89 P. 514 (1907)]

### **Ellis v. United States (May 13, 1907)**

If one engages in the kind of work which the morals or the health of society requires control of, and therefore is under its general supervision, as a part of the police laws, he may be subjected to reasonable restrictions by his state; but unless he falls within that class he is not subjected to such restrictions; and to attempt to prevent him from working more than eight hours a day is to deprive him of his liberty, even under the state laws."

"When a state enters into business relations, and makes contracts with private persons, it waives its sovereignty, and is to be treated as a private person, and subjected to the principles of law applicable as between individuals, save only in respect to its immunity from suit."

"Men engaged in dredging a channel in Boston harbor cannot be said to be employed upon any of the public works of the United States or of the District of Columbia."

"The tug, the dredge, and the scow were clearly vessels within the admiralty jurisdiction of the United States."

"If the tug, the dredge, and the scows were vessels, then the men employed to operate them were seamen."

### ***Sovereignty and Freedom Points and Authorities***

"The law is equally clear as to the engineer and fireman on the tug."

"The others--namely, the master, fireman, craneman, and deck hands on the dredge, and the scow man--are seamen...."

"Being seamen, they cannot be regarded as mechanics or laborers within the act."

"It is incredible that, if Congress proposed to legislate in regard to seamen,--a subject which has been so constantly and so specifically dealt with in congressional enactments,--it would not have mentioned seamen in the proposed statute. It is still more incredible that Congress should have passed another act interfering so completely with the well-known characteristics and necessities of the seaman's vocation as the eight-hour law does, without ever using the word "seaman."

"Congress possesses no power to legislate except such as is affirmatively conferred upon it through the Constitution, or is fairly to be inferred therefrom."

**"An act which may be constitutional upon its face, or as applied to certain conditions, may yet be found to be unconstitutional when sought to be applied in a particular case."** [Bold added.]

"The work of dredging in Chelsea creek, in Boston harbor, as shown in the record, is not part of the "public works of the United States" within the meaning of the statute in question."

**"It is unnecessary to lay special stress on the title to the soil in which the channels were dug, but it may be noticed that it was not in the United States. The language of the acts is "public works of the United States." As the works are things upon which the labor is expended, the most natural meaning of "of the United States" is "belonging to the United States.""** [Bold added.]

[Ellis v. United States, 206 U.S. 246; 27 S.Ct. 600 (1907)]

### **Kansas v. Colorado (May 13, 1907)**

"Sitting, as it were, as an international as well as a domestic tribunal, we apply Federal law, state law, and international law, as the exigencies of the particular case may demand...."

- .. if no such power has been granted, none can be exercised."

"It is enough for the purposes of this case that each state has full jurisdiction over the lands within its borders, including the beds of streams and other waters." [Cites omitted.]

- .. Kansas and Colorado are states sovereign and independent in local matters, the relations between them depend in any respect upon principles of international law. International law is no alien in this tribunal."

[Kansas v. Colorado, 206 U.S. 46; 27 S.Ct. 655 (1907)]

### **Territory v. Carter (Oct. 12, 1908)**

"It is practically admitted, and it is in fact will settled, that this provision does not apply to territories as a general rule, but it is argued that the Territory of Hawaii is practically a state within the meaning of that portion of the constitution by reason of our Organic Act having constituted a separate federal court here different from the other territories and because of its having given somewhat broader powers than usual to our governor. But whatever differences there may be between this and the other territories in those respects, it is so clear that this Territory is not a state within the meaning of the constitutional provision in question that no further reference need be made to that phase of the argument."

[Territory v. Carter, 19 Haw. 198 (1908)]

### **Louisville & Nashville Railroad Co. v. Mottley (Nov. 16, 1908)**

"Neither party has questioned that jurisdiction, but it is the duty of this court to see to it that the jurisdiction of the circuit court, which is defined and limited by statute, is not exceeded. This duty we have frequently performed of our own motion."

"There was no diversity of citizenship, and it is not and cannot be suggested that there was any ground of jurisdiction, except that the case was a "suit . . . arising under the Constitution or laws of the United States."

"The plaintiff alleged that the defendant claimed an immunity from the taxation by virtue of its charter, and that therefore the tax was void, because in violation of the provision of the Constitution of the United States, which forbids any state from passing a law impairing the obligation of contracts. The cause was held to be beyond the jurisdiction of the circuit court, the court saying, by Mr. Justice Gray (p. 464): "A suggestion of one party, that the other will or may set up a claim under the Constitution or laws of the United States, does not make the suit one arising under that Constitution or those laws."

[Louisville & Nashville Railroad Co. v. Mottley, 211 U.S. 149, 29 S.Ct. 42 (1908)]

### **18 U.S.C. §7**

#### ***Sovereignty and Freedom Points and Authorities***

"The term "special maritime and territorial jurisdiction of the United States", as used in this title, includes:

"(1) The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

"(2) Any vessel registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, or any of the waters connecting them, or upon the Saint Lawrence River where the same constitutes the International Boundary Line.

"(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

"(4) Any island, rock, or key containing deposits of guano, which may, at the discretion of the President, be considered as appertaining to the United States.

"(5) Any aircraft belonging in whole or in part to the United States, or any citizen thereof, or to any corporation created by or under the laws of the United States, or any State, Territory, district, or possession thereof, while such aircraft is in flight over the high seas, or over any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

"(6) Any vehicle used or designed for flight or navigation in space and on the registry of the United States pursuant to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies and the Convention on Registration of Objects Launched into Outer Space, while that vehicle is in flight, which if from the moment when all external doors are closed on Earth for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the vehicle and for persons and property aboard.

"(7) Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States."

18 U.S.C. §7.

### **18 U.S.C. §7, n 16**

#### **"District of Columbia**

"Provisions for verdict of guilty of murder "without capital punishment", which predecessor to 18 U.S.C.S. §7 made crime against United States when committed on any lands reserved or acquired for exclusive use of United States and under exclusive jurisdiction thereof, had no application to District of Columbia. *Johnson v. United States* (1912), 225 U.S. 405, 56 L.Ed. 1142, 32 S.Ct.748.

"Under District of Columbia Code, prosecutions in District of Columbia for violations of general penal statutes should be in name of United States, and not in name of District of Columbia, even though territorial scope of such statutes may be restricted to District of Columbia; prosecution for violation of statute prohibiting business of bucketing in District of Columbia should be in name of United States, and not of District of Columbia, whether prosecution is for first or second offense; there can be no crimes against District of Columbia, the District not being a sovereignty, but crimes committed in the District of Columbia are crimes against United States. *United States v. Cella* (1911) 37 App DC 433, cert den (1912) 233 U.S. 728, 56 L.Ed. 633, 32 S.Ct. 526."

[18 U.S.C. §7, n 15]

### **18 U.S.C. §7, n 35**

"Term "belonging" within meaning of 18 U.S.C.S. §7 denotes ownership; ownership is mixed question of law and fact to be determined by court. *United States v. Keller* (1978, DC Puerto Rico) 451 F.Supp. 631."

[18 U.S.C. §7, n 35]

### **28 U.S.C. §1332**

"(a)...(1) **Citizens of different States;**

"(2) **citizens of a State and citizens or subjects of a foreign state;**

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"(d) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico." [Bold added.]  
[28 U.S.C. §1332]

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### **28 U.S.C.S. §1332, History**

"The revised section conforms with the views of the United States Attorney for Puerto Rico, who observed that the Act of April 20, 1940 permitted action between a citizen of Hawaii and of Puerto Rico, but not between a citizen of New York and Puerto Rico, in the district court. This changes the law to insure uniformity. The 1940 amendment applied only to the provision as to controversies between "citizens of different States." The new definition in subsec. (b) [redesignated (d); see the 1985 Amendments note] extends the 1940 amendment to apply to controversies between citizens of the Territories or the District of Columbia, and foreign states or citizens or subjects thereof." [Brackets are in the original.]  
[28 U.S.C.S. §1332, History: Ancillary Laws and Directives, p. 2]

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### **Johnson v. United States (June 7, 1912)**

"The provision for a verdict of guilty of murder "without capital punishment," contained in the Federal Criminal Code of March 4, 1909 (35 Stat. at L. 1088, chap. 321, U.S. Comp. Stat. Supp. 1911, p. 1588), §330, which Code, in §272, makes murder a crime against the United States when committed on "any lands reserved or acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof," has no application to the District of Columbia, which, in this respect, is governed by the District Code, which contains no provision for such a qualified verdict."

"That some provisions of the Criminal Code are applicable to the District is conceded. It is conceded by the government that the first ten chapters are applicable just as they are to the states, territories, and other districts, and that the same is true of chapter 12. The concession is put upon the ground that those chapters deal with offenses Federal in their nature. Chapter 13, it is said, relates to territorial jurisdiction and deals with certain offenses "when committed within any territory or district, or within or upon any place within the exclusive jurisdiction of the United States." So far as the District Code deals with the offenses described in chapter 13, it is superseded by the Criminal Code."

"A change of language is some evidence of a change of purpose, and certainly it could not have been supposed that the words "any lands reserved or acquired for the exclusive use of the United States," used in §272, would be regarded as the equivalent in meaning of the words "district or country under the exclusive jurisdiction of the United States," used in §5339. And yet it is mainly on those words in §272 that appellant relies. The District of Columbia can hardly be said, as we have pointed out, to be in any proper or adequate sense "lands reserved for the exclusive use of the United States," while the words "district or country under the exclusive jurisdiction of the United States" can be, as they had been properly and adequately held to include the District of Columbia."

"Further comparisons of the sections and provisions of the Codes will not help us to clarify the situation, which, it must be admitted, lends itself to controversy.

"We think, however, that there are certain general considerations which control. The Codes are separate instruments, and no certain test can be deduced from pointing out particular likenesses or differences. But the effect of separation is important and necessarily had its purpose. The Codes had in the main special spheres of operation, and provisions accommodated to such spheres. There is certainly nothing anomalous in punishing the crime of murder differently in different jurisdictions. It is but the application of legislation to conditions. But if it be anomalous, very little argument can be drawn from it to solve the questions in controversy. The difference existed for a number of years between the District and other places under national jurisdiction, for, as we have seen, the qualified verdict has not existed in the District since the enactment of the District Code which declares an intention to give to the provision conferring power on a jury to qualify their verdict greater efficacy against the Code of the District than the same provision in the act of January 15, 1897, possessed. And the difference between that act and the District Code we cannot assume was overlooked, and all that it meant in the administration of criminal justice, when Congress came to review the laws of the country for the purpose of their codification and **necessarily the territorial extent of their operation.**" [Bold added.]

"Congress certainly, in enacting the District Code, recognized the expediency of separate provisions for the District of Columbia. It was said at the bar, and not denied, that the District Code was not only the work of the lawyers of the District, having in mind the needs of the District, but of its citizens as well, expressed through various organizations and bodies of them. In yielding to the recommendations Congress made no new precedent. It had given local control to the territories, and it enacted a separate Code for Alaska."

[Johnson v. United States, 225 U.S. 405, 32 S.Ct. 748, 56 L.Ed. 1142 (1912)]

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### **Riverside & Dan River Cotton Mills v. Menefee (Apr. 12, 1915)**

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#### ***Sovereignty and Freedom Points and Authorities***

"The courts of one state may not, without violating the due process of law clause of U.S. Const., 14th Amend., render a money judgment against a corporation organized under the laws of another state upon service on a resident director, where the corporation has not come into the former state for the purpose of doing business therein, and has done no business therein, and has no property therein, and no qualified agent therein upon whom process may be served."

[Riverside & Dan River Cotton Mills v. Menefee, 237 U.S. 189 (1915)]

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**Sandberg v. McDonald (Dec. 23, 1918)**

"Legislation is presumptively territorial and confined to the limits over which the lawmaking power has jurisdiction."

"That Seamen's Act March 4, 1915, §11 (Comp. St. 1916, §8323), prohibiting payment of wages in advance to seamen, and declaring that an advancement shall not absolve from payment of wages when earned and shall subject the offender to criminal liability, declares the master and owner of any foreign ship violating the section liable to the same penalty that the master or owner of a vessel of the United States would be, strengthens the presumption that it was intended to deal only with acts committed within the jurisdiction of the United States."

[Sandberg v. McDonald, 248 U.S. 185, 39 S.Ct. 84, 63 L.Ed. 200 (1918)]

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**Constitution for the United States of America**

**Eighteenth Amendment, Section 1 (Jan. 29, 1920)**

"After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited."

[Constitution for the United States of America, Eighteenth Amendment, Section 1]

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**Cunard S. S. Co. v. Mellon (Apr. 30, 1923)**

"Various meanings are sought to be attributed to the term "territory" in the phrase "the United States and all territory subject to the jurisdiction thereof." We are of opinion that it means the regional areas--of land and adjacent waters--over which the United States claims and exercises dominion and control as a sovereign power. The immediate context and the purport of the entire section show that the term is used in a physical and not a metaphorical sense--that it refers to areas or district having fixity of location and recognized boundaries." [Cite omitted.]

"It now is settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control, the ports, harbors, bays and other enclosed arms of the sea along its coast and a marginal belt of the sea extending from the coast line outward a marine league, or three geographic miles. [Cites omitted.] This, we hold, is the territory which the amendment designates as its field of operation; and the designation is not of a part of this territory but of "all" of it."

[Cunard S. S. Co. v. Mellon, 262 U.S. 100, 43 S.Ct. 504 (1923)]

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**New York Central Railroad Co. v. Chisholm (Apr. 13, 1925)**

"Legislation is presumptively territorial, and confined to geographical limits within the jurisdiction of the law-making power." [Headnote 1.]

"Legislation is presumptively territorial, and confined to geographical limits within the jurisdiction of the law-making power. Sandberg v. McDonald, 248 U.S. 185, 195, 39 S.Ct. 84, 86 (63 L.Ed. 200)."

"All legislation is prima facie territorial. American Banana Co. v. United Fruit Co., 213 U.S. 347, 356, 357, 29 S.Ct. 511, 512, 513 (53 L.Ed. 826, 16 Ann.Cas. 1047)."

[New York Central Railroad Co. v. Chisholm, 268 U.S. 29, 45 S.Ct. 402 (1925)]

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**Opn. Atty. Gen. (May 15, 1925)**

**NATIONAL FLAG OF THE UNITED STATES.** "The desecration or improper use of the national flag outside the District of Columbia has not been made a Federal offense."

"There is no statute which fixes the proportionate dimensions of the hoist and fly, the size of the union, or the size and arrangement of the stars in the union. These matters appear to have been regulated originally by custom. They are now controlled by Executive orders and by Army and Navy regulations."

"In flag manufacture a fringe is not considered to be a part of the flag, and it is without heraldic significance."

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"There is therefore at present no Federal statute punishing the desecration or abuse of the flag, either in time of peace or in time of war."

"There is a Federal statute, similar in terms to many of the State laws, which punishes the improper use of the flag in *the District of Columbia*, Act of February 8, 1917, chapter 34 (39 Stat. 900). But there is now no Federal enactment which punishes such use outside the District."

[34 Opinions of the Attorney General 483 (1925), National Flag of the United States]

### **Curry v. State (Jan. 9, 1929)**

"Who is the sovereign, de jure or de facto, of a territory is not a judicial, but a political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens and subjects of that government. \* \* \* All courts of justice are bound to take judicial notice of the territorial extent of the jurisdiction exercised by the government whose laws they administer, or of its recognition or denial of the sovereignty of a foreign power, as appearing from the public acts of the Legislature and executive, although those acts are not formally put in evidence, nor in accord with the pleadings." *Jones v. United States*, 137 U.S. 202-224. [Other cites omitted.]

"All authorities uniformly hold that the United States government has sovereign authority and exclusive jurisdiction over all lands acquired and used by it for one of the purposes mentioned in the United States Constitution, in all cases where jurisdiction has been expressly ceded by the state, or where same exists by necessary implication arising from consent of the state to the purchase of such land."

"Rather, we think the Legislature intended to give its consent to the cession of jurisdiction to become operative only when the Governor legally ceded same upon the conditions mentioned in articles 374 and 375. In other words, complete consent of the state, which carries with it exclusive jurisdiction over such land as above stated, has been withheld unless and until the Governor of this state [Texas] under the terms of articles 374 and 375, R.S. 1895, makes a transfer of same." [Brackets original.]

"Since we are of the opinion that only one method of transferring exclusive jurisdiction to the United States government over land purchased and used by it under the clause of the Federal Constitution already mentioned has been provided by our laws, and such method not having been followed with regard to the land under consideration, the jurisdiction of our state court over such remains, and this judgment must be affirmed, and it is accordingly so ordered."

[Curry v. State, 12 S.W.2d. 796 (1929)]

### **United States v. Unzeuta (Apr. 13, 1930)**

"When the United States acquires title to lands which are purchased by the consent of the legislature of the state within which they are situated, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, the Federal jurisdiction is exclusive of all state authority."

"When lands in a state are acquired by the Federal government in any other way than by purchase with the consent of the state, such lands and the buildings erected thereon for the use of the national government are free from any such interference and jurisdiction of the state as will impair their effective use for the purposes for which the property was acquired."

"When lands within a state are acquired by the United States other than with the consent of such state, the state may impose conditions on the cession of its jurisdiction which are not inconsistent with the carrying out of the purpose of the acquisition; and the terms of the cession, to the extent that they may lawfully be prescribed, determine the extent of the Federal jurisdiction."

"Rights of way for various purposes, such as for railroads, ditches, pipe lines, telegraph and telephone lines, across Federal reservations, may be entirely compatible with exclusive jurisdiction ceded to the United States."

[United States v. Unzeuta, 281 U.S. 138, 74 L.Ed. 761 (1930)]

### **O'Donoghue v. United States (May 29, 1933)**

"Territorial courts are "legislative courts," and were created for presumably ephemeral purposes in virtue of power of Congress to make rules respecting "the territory or other property belonging to the United States" (Const. art. 4, §3, cis. 1, 2)."

"Literally, the word "territory" as used in Const. art. 4, §3, cl. 2, signifies property, since the language is not "territory or property" but "territory or other property." And thus arises an evident difference between the words "the territory," and "a territory" of the United States. The former merely designates a particular part or parts of the earth's

surface--the imperially extensive real estate holdings of the nation; the latter is a governmental subdivision which happened to be called a "territory," but which quite as well could have been called a "colony" or a "province." "The Territories" are but political subdivisions of the outlying dominion of the United States."

"District of Columbia" is not an ephemeral subdivision of the outlying dominion of the United States, but the capital and permanent abiding place of the government (Const. art. 1, §8, cl. 17)."

"While Congress possesses combined powers of general and of state government in respect of District of Columbia under clause conferring express power, exercise of other powers is not excluded, nor may inhabitants of District be denied constitutional safeguards not plainly inapplicable (Const. art. 1, §8, cl.17)."

"Constitution is in effect in District of Columbia and territories."

"Grant of jurisdiction over quasijudicial or administrative' matters under different constitutional provision does not prevent grant of federal judicial power to Supreme Court and Court of Appeals of District of Columbia (Const. art. 3, §§1, 2; art. 1, §8, cl.17)."

This court has repeatedly held that the territorial courts are "legislative" courts, created in virtue of the national sovereignty or under article 4, §3, cl. 2, of the Constitution, vesting in Congress the power "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States"; and that they are not invested with any part of the judicial power defined in the third article of the Constitution. And this rule, as it affects the territories, is no longer open to question. Do the courts of the District of Columbia occupy a like situation in virtue of the plenary power of Congress, under article 1, §8, cl. 17, "To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States? \* \* \*" This inquiry requires a consideration, first, of the reasons upon which rest the decisions in respect of the territorial courts."

"The authority upon which all the later cases rest is *The American Insurance Company et al. v. Canter*, 1 Pet. 511, 546, 7 L.Ed. 242, where the opinion was delivered by Chief Justice Marshall. The pertinent question there was whether the judicial power of the United States described in article 3 of the Constitution vested in the superior courts of the territory of Florida; and it was answered in the negative. "The Judges of the Superior Courts of Florida," the Court said "hold their offices for four years. These Courts, then, are not constitutional Courts, in which the judicial power conferred by the Constitution on the general government, can be deposited. They are incapable of receiving it. They are legislative Courts, created in virtue of the general right of sovereignty which exists in the government, or in virtue of that clause which enables Congress to make all needful rules and regulations, respecting the territory belonging to the United States. The jurisdiction with which they are invested, is not a part of that judicial power which is defined in the 3d article of the Constitution, but is conferred by Congress, in the execution of those general powers which that body possesses over the territories of the United States."

"This view was accepted and followed in *Benner et al. v. Porter*, 9 How. 235, 242-244, 13 L.Ed. 119; *Clinton v. Englebrecht*, 13 Wall. 434, 447, 20 L.Ed. 659; *Hornbuckle v. Toombs*, 18 Wall. 648, 655, 21 L.Ed. 966; *Good v. Martin*, 95 U.S. 90, 98, 24 L.Ed. 341; *Reynolds v. United States*, 98 U.S. 145, 154, 25 L.Ed. 244; *The City of Panama*, 101 U.S. 453, 460, 25 L.Ed. 1061; *McAllister v. United States*, 141 U.S. 174, 180, et seq., 11 S.Ct. 949, 35 L.Ed. 693; *United States v. McMillan*, 165 U.S. 504, 510, 17 S.Ct. 395, 41 L.Ed. 805, and *Romeu v. Todd*, 206 U.S. 358, 368, 27 S.Ct. 724, 51 L.Ed. 1093."

"A sufficient foundation for these decisions in respect of the territorial courts is to be found in the transitory character of the territorial governments. In the *McAllister Case*, supra, this court, after stating that the Constitution had secured the independence of the judges of courts in which might be vested the judicial power of the United States by an express provision that they should hold office during good behavior and their compensation should not be diminished during their continuance therein, concluded (pages 187, 188 of 141 U.S., 11 S.Ct. 949, 954): "The absence from the constitution of such guaranties for territorial judges was no doubt due to the fact that the organization of governments for the territories was but temporary, and would be superseded when the territories became states of the Union." And in the concurring opinion of Mr. Justice White in *Downes v. Bidwell*, 182 U.S. 244, 293, 21 S.Ct. 770, 789, 45 L.Ed. 1088, these decisions are said to grow out of the "presumably ephemeral nature of a territorial government."

"In this connection, the peculiar language of the territorial clause, article 4, §3, cl. 2, of the Constitution, should be noted. By that clause Congress is given power "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." Literally, the word "territory," as there used, signifies property, since the language is not "territory *or* property," but "territory *or other* property." There thus arises an evident difference between the words "*the* territory" and "a territory" of the United States. The former merely designates a particular part or parts of the earth's surface--the imperially extensive real estate holdings of the nation; the latter is a governmental subdivision which happened to be called a "territory," but which quite as well could have been called a "colony" or a "province." "The Territories," it was said in *First National Bank v. County of Yankton*, 101 U.S. 129, 133, 25 L.Ed. 1046, "are but political subdivisions of the outlying dominion of the United States." Since the Constitution provides for the admission by Congress of new states (article 4, §3, cl. 1), it properly may be said that the outlying continental public

domain, of which the United States was the proprietor, was, from the beginning, destined for admission as a state or states into the Union and that as a preliminary step toward that foreordained end--to tide over the period of ineligibility--Congress, from time to time, created territorial governments, the existence of which was necessarily limited to the period of pupillage. In that view it is not unreasonable to conclude that the makers of the Constitution could never have intended to give permanent tenure of office or irreducible compensation to a judge who was to serve during this limited and sometimes very brief period under a purely provisional government which, in all cases probably and in some cases certainly, would cease to exist during his incumbency of the office.

"The impermanent character of these governments has often been noted. Thus, it has been said, "The territorial state is one of pupillage at best," *Nelson v. United States* (C.C.) 30 F. 112, 115; "A territory, under the constitution and laws of the United States, is an inchoate state," *Ex parte Morgan*, (D.C.) 20 F. 298, 305; "During the term of their pupillage as Territories, they are mere dependencies of the United States." *Snow v. United States*, 18 Wall. 317, 320, 21 L.Ed. 784. And in *Pollard's Lessee v. Hagan et al.*, 3 How. 212, 224, 11 L.Ed. 565, the court characterizes them as "the temporary territorial governments."

**"As the only judicial power vested in Congress is to create courts whose judges shall hold their offices during good behavior, it necessarily follows that, if Congress authorizes the creation of courts and the appointment of judges for a limited time, it must act independently of the Constitution and upon territory which is not part of the United States within the meaning of the Constitution. \* \* \*** It is sufficient to say that this case [*The American Insurance Company et al. v. Canter*, supra] has ever since been accepted as authority for the proposition that the judicial clause of the Constitution has no application to courts created in the territories, and that with respect to them Congress has a power wholly unrestricted by it." [Bold added; brackets original.]

"After an exhaustive review of the prior decisions of this court relating to the matter, the following propositions, among" others, were stated as being established:

""1. That the District of Columbia and the territories are not states within the judicial clause of the Constitution giving jurisdiction in cases between citizens of different states;

""2. That territories are not states within the meaning of Rev.St. §709, permitting writs of error from this court in cases where the validity of a state statute is drawn in question;

**""3. That the District of Columbia and the territories are states as that word is used in treaties with foreign powers, with respect to the ownership, disposition, and inheritance of property; [Bold added.]**

""4. That the District of Columbia and the territories are not within the clause of the Constitution providing for the creation of a supreme court and such inferior courts as Congress may see fit to establish.""

[*O'Donoghue v. United States*, 289 U.S. 516, 53 S.Ct. 740 (1933)]

### **Constitution for the United States of America, Twenty First Amendment (July 24, 1933)**

"SECTION 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

"SECTION 2. The transportation or importation into any State, Territory or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

[Constitution for the United States of America, Twenty First Amendment]

### **27 U.S.C.S. §§1-5, History**

"Effect of 21st Amendment on National Prohibition Act.... This Act was dependent upon the 18th Amendment to the United States Constitution and became inoperable by the adoption of the 21 Amendment to the Constitution on Dec. 5, 1933 which repealed the 18th Amendment. Sections 2 to 5 of this chapter...constituting title II of the National Prohibition Act as amended and supplemented, were repealed to the extent in force in the District of Columbia, Puerto Rico and the Virgin Islands, Hawaii, and Alaska by acts Jan. 24, 1934...."

[27 U.S.C.S. §§1-5, History: Ancillary Laws and Directives, pp. 1-2]

### **Perry v. United States (Feb. 18, 1935)**

"Court of Claims has no Jurisdiction to entertain action for nominal damages."

"The argument in favor of the Joint Resolution, as applied to government bonds, is in substance that the government cannot by contract restrict the exercise of a sovereign power. But the right to make binding obligations is a competence attaching to sovereignty. In the United States, sovereignty resides in the people who act through the organs established by the Constitution. [Cites omitted.] The Congress as the instrumentality of sovereignty is endowed with certain powers to be exerted on behalf of the people in the manner and with the effect the Constitution ordains. **The Congress cannot invoke the sovereign power**

### **Sovereignty and Freedom Points and Authorities**

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of the people to override their will as thus declared. [ \* \* \* ] The fact that the United States may not be sued without its consent is a matter of procedure which does not affect the legal and binding character of its contracts. While the Congress is under no duty to provide remedies through the courts, the contractual obligation still exists, and, despite infirmities of procedure, remains binding upon the conscience of the sovereign."

[Perry v. United States, 294 U.S. 330; 55 S.Ct. 432 (1935)]

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**Tennessee Valley Authority v. Ashwander (July 17, 1935)**

"It is not doubted that each of the several states holds in perpetual public trust dominion over the navigable waterways within its borders; but it is equally true that the rights of the states in navigable waters are subject to the supreme war and commerce powers of the general government. We live under a dual government of divided powers, not under two separate governments of conflicting powers. The power over navigable waters granted to the federal government is not in conflict with, but is necessarily superior to the dominion over such waters which the states reserved to themselves. *Gibbons v. Ogden*, 9 Wheat. 1, 6 L.Ed. 23."

[Tennessee Valley Authority v. Ashwander, 78 F.2d. 578 (1935)]

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**McNutt v. General Motors Acceptance Corporation (May 18, 1936)**

"Party seeking exercise of jurisdiction of federal District Court in his favor must allege facts essential to show jurisdiction and must carry throughout litigation burden of showing that he is properly in court (Jud. Code §37, 28 U.S.C.A. §80)."

[McNutt v. General Motors Acceptance Corporation, 298 U.S. 178; 56 S.Ct. 780 (1936)]

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**Gorham v. Robinson (Aug. 14, 1936)**

"Laws regularly enacted by Legislature are presumed to be constitutional and valid."

"Every intendment favoring validity of statute is made by Supreme Court, unless repugnancy of statute to Constitution appears on its face."

"In deciding question of constitutionality of statute, question is purely one of legislative power and not one of sound policy."

"Statute cannot be declared void by court because it appears to minds of judges to violate fundamental principles of republican government, unless it shall be found that those principles are placed beyond legislative encroachment by Constitution."

"Constitutional court" is court named or described and expressly protected by Constitution, or recognized by name or definite description in Constitution but given no express protection thereby."

"Constitutional court recognized by name or definite description in Constitution, but given no express protection thereby, is exempt from being abolished by Legislature unless Legislature is clearly authorized to abolish such court, but judges thereof are not protected as to tenure or compensation."

"All courts created by Legislature not named or described by Constitution are "legislative" or "statutory courts" which are not protected against legislative power as to personnel or existence unless given such protection by Constitution expressly or by necessary implication beyond reasonable doubt."

"The next fundamental principle which must be kept in mind by us in deciding the present question of constitutionality is that the question is purely one of legislative *power* and not at all one of *sound policy*."

"The Supreme Court of the United States, in an opinion by Hughes, J., in *Chicago, B. & Q. R. Co. v. McGuire*, 219 U.S. 549, at page 569, 31 S.Ct. 259, 263, 55 L.Ed. 328, says: "The scope of judicial inquiry in deciding the question of *power* is not to be confused with the scope of legislative considerations in dealing with the matter of *policy*. Whether the enactment is wise or unwise, \* \* \* whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner, are matters for the judgment of the legislature, and the earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance. \* \* \* 'The mere fact \* \* \* that judges may hold views inconsistent with the propriety of the legislation in question, affords no ground for judicial interference, unless the act in question is unmistakably and palpably in excess of legislative power.'"

"The same distinguished authority [Judge Cooley on Const.Law] has also laid down two other fundamental rules for cases such as the instant one, rules which we believe to be sound and amply supported by the great weight of authority. "If the courts are not at liberty to declare statutes void because of their apparent injustice or impolicy, neither can they do so because they appear to the minds of the judges to violate fundamental principles of republican government, unless it shall be found that those principles are placed beyond legislative encroachment by the Constitution." 1 Cooley, Const.Lim. (8th



Ed.) 349. "Nor are the courts at liberty to declare an act void, because in their opinion it is opposed to a *spirit* supposed to pervade the Constitution, but not expressed in words. 'When the fundamental law' has not limited, either in terms or by necessary implication, the general powers conferred upon the legislature, we cannot declare a limitation under the notion of having discovered something in the *spirit* of the constitution which is not even mentioned in the instrument.' *People v. Fisher*, 24 Wend. [N.Y.] 215, 220.

As Parker, C.J., so tersely put it in *Bohmer v. Haffen*, 161 N.Y. 390, at page 399, 55 N.E. 1047, 1048: "Whether the legislation was wise is not for us to consider. The motives actuating the inducements held out to the legislature are not the subject of inquiry by the courts, which are bound to assume that the lawmaking body acted with a desire to promote the public good. Its enactments must stand, provided always that they do not contravene the constitution, and the test of constitutionality is always one of power,--nothing else."

"Under the charter, as is well known, all powers were lodged in the General Assembly. This has been denied by some students of the charter of 1663, but against such denial is a long and unbroken record of the exercise by the General Assembly of every kind of governmental power, legislative, executive, and judicial."

"The State Constitution adopted in 1843 overthrew this long-established system of government. Until after several decades of experience of living under the Federal Constitution, and well into the nineteenth century, there was no expressed dissatisfaction with the charter system. Immediately following the War of the Revolution several attempts were made to establish a constitution, principally to equalize the representation in the General Assembly, but these movements seem to have had little popular support behind them."

"The petitioners contend that there is a vital distinction between *constitutional courts* and *legislative courts*; that our district courts are constitutional courts, and that the justices of them therefore have a constitutional tenure of office which prevents the General Assembly from diminishing their terms, or at least prevents it except as a result of abolishing these courts as a part of changing the system of courts. It seems to us that in so contending they are playing upon the words, "*constitutional courts*."

"The above distinction is frequently made in federal cases, where it has a real importance. There, constitutional courts are those which are recognized and provided for in article 3 of the Federal Constitution, concerning the judicial power, and they include the Supreme Court, directly created by that article, and the inferior courts which the Congress may, from time to time, ordain and establish under the authority conferred on it so to do by that article. Legislative courts include two classes. The first is composed of true courts, exercising true judicial power, but created by the Congress under its constitutional authority to provide for the government and administration of territory which belongs to the United States and is not included in any state (article 4, §3). These courts function under powers derived solely from Congress and not under article 3. The second class is composed of tribunals created by Congress, under its general legislative powers, to perform administrative' or quasi judicial functions. These are not true courts at all, though sometimes called courts."

"The term "*constitutional courts*" and "*legislative courts*" or "*statutory courts*" are also used with another distinction than the above. According to this distinction, a constitutional court is one which is named or described and expressly protected by the Constitution, and which therefore has the protection that is there provided, or is one which is recognized by name or definite description in the Constitution but is given no express protection. The latter kind of constitutional court, we believe, is generally held to be exempt from being abolished by the Legislature, unless the Legislature is clearly authorized to abolish it, but the judges thereof are not protected as to their tenure or compensation. All other kinds of true courts created by Legislatures are legislative or statutory courts. These are not protected against legislative power, as to their personnel or their existence, unless they are given such protection by the Constitution, expressly or by necessary implication, which is clear beyond a reasonable doubt."

"The court says, [*McAllister v. United States*,] 141 U.S. 174, at page 187, 11 S.Ct. 949, 954, 35 L.Ed. 693: "An elaborate argument, displaying much thought and extended research upon the part of counsel, has been made in support of the proposition that, upon general principles lying at the foundation of our institutions, the judicial power in the territories, exercised as it must be for the protection of life, liberty, and property, ought to have the guaranties that are provided elsewhere within the political jurisdiction of the nation for the independence and security of judicial tribunals created by congress under the third article of the constitution. We have no occasion to controvert the soundness of this view, so far as it rests on ground of public policy. *But we cannot ignore the fact that while the constitution has, in respect to judges of courts in which may be vested the judicial power of the United States, secured their independence, by an express provision that they may hold their offices during good behavior, and receive at stated times a compensation for their services that cannot be diminished during their continuance in office, no such guaranties are provided by that instrument in respect to judges of courts created by or under the authority of congress for a territory of the United States.*" (Italics ours.)"

"The court says, 141 U.S. 949, at page 189, 11 S.Ct. 949, 955, 35 L.Ed. 693: "It was insisted at the bar that a territorial judge appointed and commissioned for a given number of years was entitled, of right, to hold his office during *that term*, subject only to the condition of good behavior. This view was not rested upon any specific clause of the constitution, but was supposed to be justified by the genius and spirit of our free institutions, and the principles of the common law. This argument fails to give due weight to the fact that, in legislating for the territories, congress exercises 'the combined powers



of the general and of a state government.' Will it be contended that a state of the Union might not provide by its fundamental law," or by legislative enactment not forbidden by that law, for the suspension of one of its judges by its governor until the end of the next session of its legislature? Has Congress \* \* \* any less power over the judges of the territories than a state, if unrestrained by its own organic law, might exercise over judges of its own creation? If congress may--and it is conceded that it may--prescribe a given number of years as the term of office of a territorial judge, we do not perceive why it cannot provide that his appointment shall be subject to the condition that he may be suspended by the president until the end of the next session of the senate, and displaced altogether by the appointment of some one in his place, by and with the advice and consent of that body.'"

[Gorham v. Robinson, 57 R.I. 1; 186 A. 832 (1936)]

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### **People of Puerto Rico v. Shell Co. (Dec. 6, 1937)**

"The aim of the Foraker Act and the Organic Act was to give Puerto Rico full power of local self-determination, with an autonomy similar to that of the states and incorporated territories, and it cannot be assumed that a congressional statute penalizing specific local behavior and a statute of Puerto Rico to the same effect cannot co-exist."

"We said ([Grafton v. United States] 206 U.S. 333, at pages 354, 355, 27 S.Ct. 749, 755, 51 L.Ed. 1084, 11 Ann.Cas. 640): "The government of a state does not derive its powers from the United States, while the government of the Philippines owes its existence wholly to the United States, and its judicial tribunals exert all their powers by authority of the United States. The jurisdiction and authority of the United States over that territory and its inhabitants, for all legitimate purposes of government, is paramount. So that the cases holding that the same acts committed in a state of the Union may constitute an offense against the United States and also a distinct offense against the state, do not apply here, where the two tribunals that tried the accused exert all their powers under and by authority of the same government,--that of the United States.'" [Insertion added.]

[People of Puerto Rico v. Shell Co., 302 U.S. 253; 58 S.Ct. 167 (1937)]

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### **California Statutes and Amendments to the Codes, 1939, Chapter 682, §1(h)**

"In this State" or "in the State" means within the exterior limits of the State of California, and includes all territory within such limits owned by or ceded to the United States of America."

[California Statutes and Amendments to the Codes, 1939, Chapter 682, §1(h)]

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### **Bell v. Anderson (Jan. 30, 1941)**

"Proof of notice to indorser of nonpayment of note could not be made by offering in evidence the several paragraphs of holder's statement and indorser's affidavit of defense, where statements contained no averment that notice of nonpayment was duly given to indorser."

"It is not necessary that a note or domestic bill of exchange be protested, but protest is required only with respect to foreign bills of exchange; **the states of the Union being foreign as to each other in that regard.**" [Bold added.]

"Protest is a recognized method of giving notice of dishonor or nonpayment of a note."

[Bell v. Anderson, Penn., 17 A.2d. 647 (1941)]

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### **United States v. Sherwood (Mar. 31, 1941)**

"The United States as sovereign is immune from suit except as it consents to be sued."

"The Tucker Act conferring jurisdiction on District Courts concurrent with the Court of Claims of claims founded on any contract with the United States or for damages in cases not sounding in tort must be interpreted in the light of its function in giving consent of the government to be sued, and that consent because it is a relinquishment of a sovereign immunity must be strictly interpreted."

"The provisions of the Tucker Act conferring jurisdiction on the District Courts concurrent with the Court of Claims of claims on any contract with the United States or for damages in cases not sounding in tort does no more than authorize a District Court to sit as a Court of Claims, and the authority thus given to adjudicate claims against the United States does not extend to any action which could not be maintained in the Court of Claims."

[United States v. Sherwood, 312 U.S. 584 (1941)]

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### **People v. Kelley (Feb. 25, 1942)**

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#### ***Sovereignty and Freedom Points and Authorities***

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**"An act of Congress does not have sanctity of constitutional provision, and even though the act is valid within orbit of activities of Congress, the operation of the act can affect only those subjects over which the central government has jurisdiction."**

"The provision in California Constitution making California an inseparable part of American union and acknowledging Federal Constitution as supreme law of land does not deprive California of its own sovereignty and of power to regulate its own adjective law."

"The purpose of framers of Federal Constitution was to establish a government which should be supreme within its own sphere of action but which should not usurp any of powers reserved to states." [Bold added.]  
[People v. Kelley, 122 P.2d. 655 (1942)]

**Thomson v. Gaskill (Mar. 2, 1942)**

"The policy of the statute conferring jurisdiction on district court in diversity of citizenship cases calls for its strict construction. Jud.Code §24(1), 28 U.S.C.A. §41(1)."

[Thomson v. Gaskill, 315 U.S. 442, 62 S.Ct. 673 (1942)]

**Southern S. S. Co. v. N.L.R. Board (Apr. 6, 1942)**

"Where seamen conducted strike aboard vessel docked at Houston, which was not vessel's home port, and strikers deliberately defied direct commands to perform their duties in making ready for departure from port, and undertook to impose their will upon captain and officers, the strike constituted a violation of the "mutiny" statute."

"The admiralty and maritime jurisdiction of the United States includes all navigable waters within the country."

"The water in the harbor of Houston is "navigable water" and a boat at dock there is within the "territorial limits of the United States" so as to render statute providing that a rebellion by seamen against their officers on board a vessel anywhere within the admiralty and maritime jurisdiction of the United States is to be punished as "mutiny" applicable to strike conducted on boat docked at Houston, which was not home port of the boat."

"The congressional mandate that a rebellion by seamen against their officers on board a vessel anywhere within the admiralty and maritime jurisdiction of the United States is to be punished as a mutiny cannot be changed by court and cannot be held inapplicable, in determining right of seamen to strike when their vessel is docked at a domestic port, especially where Congress refused to adopt proposed measures limiting the scope of the statute to vessels under way on the high seas."

"Where legislative purpose is plain, supreme Court cannot assume to do what Congress has refused to do."

"Where seamen conducted a strike, because of employer's unfair labor practice, while vessel was docked away from its home port, but within territorial limits of the United States and when vessel reached its home port five strikers were discharged, whereupon seven others immediately struck again in protest, the National Labor Relations Board exceeded its authority in ordering the employer to reinstate the five strikers and to offer immediate reinstatement to the seven men conducting the protest strike, since the strike was unlawful from its inception and was more than a technical violation of the "mutiny" statute."

"Ever since men have gone to sea, the relationship of master to seaman has been entirely different from that of employer to employee on land. The lives of passengers and crew as well as the safety of ship and cargo are entrusted to the master's care. Every one and every thing depend on him. He must command and the crew must obey. Authority cannot be divided."

"It has long been settled that the admiralty and maritime jurisdiction of the United States includes all navigable waters within the country."

"If this mandate is to be changed, it must be changed by Congress and not by the Courts."

[Southern S. S. Co. v. National Labor Relations Board, 316 U.S. 31, 62 S.Ct. 886 (1942)]

**State ex rel. Ralston v. Turner (June 5, 1942)**

"The contention is that the legislature throughout its history has enacted statutes which control the admission of persons to the bar. Without detailing the statutory provisions, all legislation with reference to applicants for admission to the bar from the act of March 9 1855, to the inclusion of the state [Nebraska] into the Union in 1867, was during the period of territorial courts. All of such courts were legislative, created in virtue of national sovereignty under clause 2, sec 3, art. IV of the Constitution of the United States."

[State ex rel. Ralston v. Turner, 4 N.W.2d. 302 (1942)]

***Sovereignty and Freedom Points and Authorities***

**State v. Smith (July 11, 1942)**

"Section 7 of our Bill of Rights, and Article 6, sec. 2, each being a part of our Constitution, must be construed together. While under Article 6, sec. 2, the legislature is required to establish a system of schools, in doing so it cannot violate section 7 of the Bill of Rights. As we have seen, the legislature has established a system of free schools designed to afford facilities for the education of all the children of the state without regard to their race, creed or wealth. It never has attempted to exclude from our schools any child solely because of the sincere religious beliefs of the child or his parents. In the thirty-four years since the statute (G.S. 1935, 72-5308) was enacted no school board, county, or state superintendent of public instruction ever acted upon the theory that failure of the child to salute the flag, where such failure was based on sincere religious beliefs of the child or his parents, would require or justify the expelling of the child from school. We think the statute never was designed to be so construed, and if so, to that extent would be void as being a violation of section 7 of our Bill of Rights. It was not until after the decision of the Gobitis case, supra, that the school boards of the districts where the appellants' children attended school, in cooperation with the county superintendent of public instruction of Cherokee county, conceived the notion that the failure of such a child to salute the flag justified expelling the child from school. As we have seen, the Gobitis case is not in point. It dealt only with the federal constitutional provisions as applied to a valid state law. Here we have no valid state law for the expelling of a child for such a reason. Indeed, we think no valid state law to that effect could be enacted.

"We are not impressed with the suggestion that the religious beliefs of appellants and their children are unreasonable. Perhaps the tenets of many religious sects or denominations would be called reasonable, or unreasonable, depending upon who is speaking. It is enough to know that in fact their beliefs are sincerely religious, and that is conceded by appellee. Their beliefs are formed from the study of the Bible and are not of a kind which prevent them from being good, industrious, home-loving, law-abiding citizens. Upon this point the evidence is clear.

"The court holds there is and can be no statute or regulation valid under our Constitution which would authorize or justify expelling the children of appellants from school for the sole reason used as a basis for such action in the cases before us."

[State v. Smith, 155 Kan. 588; 127 P.2d. 518 (1942)]

**Adams v. United States (May 24, 1943)**

"Unless and until notice of acceptance of jurisdiction has been given, Federal courts are without jurisdiction to punish under criminal laws of the United States an act committed on lands acquired by the United States, where the applicable statute (Act of Oct. 9, 1940, 40 U.S.C. §255) provides that United States agencies and authorities may accept exclusive or partial jurisdiction over lands acquired by the United States by filing notice with the governor of the state, or by taking other similar appropriate action, and that unless and until the United States has so accepted jurisdiction it shall be conclusively presumed that no such jurisdiction has been accepted."

"That state statutes authorize the United States to take jurisdiction over land acquired by the United States within the state cannot confer jurisdiction upon Federal courts to punish under criminal laws of the United States an act committed thereon, where at the time of the alleged offense notice of acceptance of jurisdiction contemplated by the Act of Oct. 9, 1940, 40 U.S.C. §255, had not been given."

[Adams v. United States, 319 U.S. 312, 87 L.Ed. 1421 (1943)]

**California Government Code, §200**

"The State has the rights prescribed in this article over persons within its limits, to be exercised in the cases and in the manner provided by law."

[California Government Code, §200]

**California Government Code, §202**

"The state may imprison or confine for the protection of the public peace or health or of individual life or safety." **"Law Revision Commission Comment 1973 Amendment**

"Arrest of a defendant in a civil action and execution against the person of a judgment debtor in a civil action are no longer permitted."

[California Government Code, §202]

**California Government Code, §270*****Sovereignty and Freedom Points and Authorities***

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"Every person while within the State is subject to its jurisdiction and entitled to its protection."  
[California Government Code, §270]

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#### **California Government Code, §271**

"Allegiance is the obligation of fidelity and obedience which every citizen owes to the State."  
[California Government Code, §271]

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#### **California Government Code, §272**

"Allegiance may be renounced by a change of residence."  
[California Government Code, §272]

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#### **California Government Code, §273**

"A citizen of the United States who is not a citizen of the State, has the same rights and duties as a citizen of the State not an elector."  
[California Government Code, §273]

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#### **182. California Government Code, §274**

An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding office and voting."  
[California Government Code, §274]

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#### **Black's Law Dictionary: Allegiance**

"ALLEGIANCE. Obligation of fidelity and obedience to government in consideration for protection that government gives." [Cite omitted.]  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 99]

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#### **4 U.S.C.S. §3**

"**Any person who, within the District of Columbia, in** any manner, for exhibition or display, shall place or cause to be placed any word, figure, mark, [ \* \* \* ]; or **who, within the District of Columbia,** shall manufacture, sell, expose for sale, or to public view, or give away or have in possession for sale, [ \* \* \* ] shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding \$100 or by imprisonment for not more than thirty days, or both, in the discretion of the court." [Bold added.]  
[4 U.S.C.S. §3]

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#### **4 U.S.C. §71**

"All that part of the territory of the United States included within the present limits of the District of Columbia shall be the permanent seat of government of the United States."  
[4 U.S.C. §71]

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#### **4 U.S.C. §72**

"All offices attached to the seat of government shall be exercised in the District of Columbia, and not elsewhere, except as otherwise expressly provided by law."  
[4 U.S.C. §72]

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#### **4 U.S.C. §110**

"As used in sections 105-109 of this title--...."

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"(c) The term "income tax"- means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts."

"(d) The term "State" includes any Territory or possession of the United States.

"(e) The term "Federal area" means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency of the United States; and any Federal area, or any part thereof, which is located within the exterior boundaries of any State, shall be deemed to be a Federal area located within such State."

[4 U.S.C. §110]

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### **26 U.S.C. §7803**

"(a) APPOINTMENT AND SUPERVISION.--The Secretary is authorized to employ such number of persons as the Secretary deems proper for the administration and enforcement of the internal revenue laws, and the Secretary shall issue all necessary directions, instructions, orders, and rules applicable to such persons.

"(b) POSTS OF DUTY OF EMPLOYEES IN FIELD SERVICE OR TRAVELING.--

"(1) DESIGNATION OF POST OF DUTY.--The Secretary shall determine and designate the posts of duty of all such persons engaged in field work or traveling on official business outside of the District of Columbia.

"(2) DETAIL OF PERSONNEL FROM FIELD SERVICE.--The Secretary may order any such person engaged in field work to duty in the District of Columbia, for such periods as the Secretary may prescribe, and to any designated post of duty outside the District of Columbia upon the completion of such duty."

[26 U.S.C. §7803]

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### **3 U.S.C. §1, Interpretive notes and decisions**

"Electors are state, not federal officers...."

[3 U.S.C. §1, Interpretive notes and decisions]

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### **18 U.S.C. §3042**

"**Extraterritorial jurisdiction.** Section 3041 of this title shall apply in any country where the United States exercises extraterritorial jurisdiction for the arrest and removal therefrom to the United States of any citizen or national of the United States who is a fugitive from justice...."

[18 U.S.C. §3042]

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### **4 U.S.C.S. §112**

#### **"Compacts between States for cooperation in prevention of crime; consent of Congress**

"(a) The consent of Congress is hereby given to any two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts.

"(b) For the purpose of this section the term "States" means the several States and Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and the District of Columbia."

[4 U.S.C.S. §112]

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### **4 U.S.C.S. §113**

#### **"Residence of Members of Congress for State income tax laws**

"(a) No State, or political subdivision thereof, in which a Member of Congress maintains a place of abode for purposes of attending sessions of Congress may, for purposes of any income tax (as defined in section 110(c) of this title) levied by such State or political subdivision thereof--

"(1) treat such Member as a resident or domiciliary of such State or political subdivision thereof; or

"(2) treat any compensation paid by the United States to such Member as **income for services performed within, or from sources within**, such State or political subdivision thereof,

"unless such Member represents such State or a district in such State.

"(b) For purposes of subsection (a)--

"(1) the term "member of Congress" includes the delegates from the District of Columbia, Guam, and the Virgin

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Islands, and the Resident Commissioner from Puerto Rico; and  
 "(2) the term "State" includes the District of Columbia." [Bold added.]  
 [4 U.S.C.S. §113]

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**People v. Brown (June 15, 1945)**

"Defendant argues that the evidence shows that at the Naval Ordnance Training Station the United States maintains a police force known as the "security police" which is a recognized civilian organization under the command of a Naval Officer which is sufficient to establish acceptance of jurisdiction by the Government. We are not impressed with this argument. Military Police and Ships' Police are familiar figures along the streets and in the public places in some of our cities. No one has suggested that their presence is evidence that the federal government has assumed jurisdiction in those cities and has suspended the jurisdiction of the state courts there." p. 688.  
 [People v. Brown, 159 P.2d. 686 (1945)]

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**Robinson v. Norato (July 25, 1945)**

"Under private international law, the penal statutes of one state will not be enforced by the courts of another state."

**"In the sense of public international law, the several states of the Union are neither foreign to the United States nor are they foreign to each other. But such is not the case in the field of private international law.** In only one respect does the federal Constitution operate by way of compulsion on the states in that field and that is in requiring each state to give full faith and credit" to the public acts, records and judicial proceedings of every other state. Art. W. Before the adoption of the Constitution, that obligation rested in comity' Where the Constitution neither compels nor excludes jurisdiction, one state is free, and under the rule of comity ought, to entertain suits arising under the laws of the United States or of any other state, when its courts deem such laws to be civil and not penal in their nature.

"We think that the state courts which have relied upon the language of the Claflin case have extended the scope of its meaning beyond what was intended by the Supreme Court when, in cases of private international law, they hold that they are bound by that case not to consider the laws of the United States as laws of a foreign jurisdiction."

"On this particular question [whether a state must furnish a forum for a nonresident plaintiff and a foreign corporation to fight out issues imported from another state where the cause of action arose] the following statement from the dissenting opinion of Mr. Justice Frankfurter seems to us consistent with what the court itself has said in prior cases: "The availability of state courts for the enforcement of federal rights has not resulted in putting federal rights on any different footing from state rights. 'A state may not discriminate against rights arising under federal laws', McKnett v. St. Louis & S. F. Ry. Co., supra, 292 U.S. at page 234, 54 S.Ct. at page 692, 78 L.Ed. 1227, but neither the Constitution nor Congress has compelled the states to discriminate in favor of federal rights."

**"That it is the settled view of the Supreme Court that, on questions of private international law, the states are foreign to the United States would seem to be clear** from the decision in State of Wisconsin v. Pelican Ins. Co., 127 U.S. 265, 8 S.Ct. 1370, 32 L.Ed. 239. In that case Wisconsin, on a judgment obtained in one of her courts against a Louisiana corporation, brought suit in the United States Supreme Court. On the theory that Wisconsin was a foreign state and that the suit was founded upon a penal statute, the court held that it would not entertain the suit to enforce that statute, saying, 127 U.S. at page 289, 8 S.Ct. at page 1374, 32 L.Ed. 239, of the opinion: "By the law of England and the United States the penal laws of a country do not reach beyond its own territory, except when extended by express treaty or statute to offenses committed abroad by its own citizens; and they must be administered in its own courts only, and cannot be enforced by the court of another country." That case has been frequently cited by the Supreme Court and never has it been qualified in any manner. Mr. Justice Gray, who wrote that opinion, later wrote the opinion in Huntington v. Attrill, supra, wherein he referred to the holding in State of Wisconsin v. Pelican Ins. Co., and, 146 U.S. at page 672, 13 S.Ct. at page 229, 36 L.Ed. 1123, said: "Upon similar grounds, the courts of a state cannot be compelled to take jurisdiction of a suit to recover a like penalty for a violation of a law of the United States.""

**"The supremacy clause of the federal Constitution cannot, in our opinion, be legitimately construed to compel state courts to take jurisdiction and enforce such penal statutes. On that score such statutes of the several states and the United States stand upon an equal footing. They are to be enforced or not enforced according to the rule of comity in private international law and not by reason of any constitutional mandate.** Except as to the full faith and credit" clause, the Constitution is silent on this subject. Each state is free to decide what statutes of another jurisdiction are penal and, therefore, unenforceable in its courts, provided, however, that as to the states of the Union and the United States, it may not discriminate in favor of state laws and against the laws of the United States.

"To summarize our position, we hold that, in the consideration of a statute like the one before us, this court has the right and authority to determine its character before allowing it to be enforced in the courts of this state; that if we find it to be

penal we may refuse to enforce it regardless of its federal origin; and that the federal Constitution does not require us to treat the United States in a matter of this nature more favorably than we do a sister state of the Union. The contrary view would make the state courts, nolens volens, in effect, inferior federal courts to enforce *all* federal statutes, whenever Congress so declares." [Brackets original; bold added.]  
 [Robinson v. Norato, R.I., 43 A.2d. 467 (1945)]

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### **Black's Law Dictionary Common Law**

"COMMON LAW. As distinguished from the Roman law, the modern civil law, the canon law, and other systems, the common law is that body of law and juristic theory which was originated, developed, and formulated and is administered in England, and has obtained among most of the states and peoples of Anglo-Saxon stock. *Lux v. Haggin*, 69 Cal. 255, 10 P. 674.

"As distinguished from law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England. [Cites omitted.]

"As distinguished from equity law, it is a body of rules and principles, written or unwritten, which are of fixed and immutable authority, and which must be applied to controversies rigorously and in their entirety, and cannot be modified to suit the peculiarities of a specific case, or colored by any judicial discretion, and which rests confessedly upon custom or statute, as distinguished from any claim to ethical superiority. [Cite omitted.]"

"As concerns its force and authority in the United States, the phrase designates that portion of the common law of England (including such acts of parliament as were applicable) which had been adopted and was in force here at the time of the Revolution. This, so far as it has not since been expressly abrogated, is recognized as an organic part of the jurisprudence of most of the United States. [Cite omitted.]"

"In a wider sense than any of the foregoing, the "common law" may designate all that part of the positive law, juristic theory, and ancient custom of any state or nation which is of general and universal application, thus marking off special or local rules or customs."

"As a compound adjective "common-law" is understood as contrasted with or opposed to "statutory," and sometimes also to "equitable" or to "criminal."

[Black's Law Dictionary, Revised Fourth Edition, 1968, pp. 345-346]

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### **Black's Law Dictionary: Private International Law**

"PRIVATE INTERNATIONAL LAW. A name used by some writers to indicate that branch of law which is now more commonly called "Conflict of Laws" (q. v.)."

[Black's Law Dictionary, Fourth Edition, 1951, p. 1358]

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### **Black's Law Dictionary: Conflict of Laws**

"CONFLICT OF LAWS. Inconsistency or difference between the municipal laws of different states or countries, arising in the case of persons who have acquired rights or a *status*, or made contracts, or incurred obligations, within the territory of two or more jurisdictions. Hence, that branch of jurisprudence, arising from the diversity of the laws of different nations, states or jurisdictions, in their application to rights and remedies, which reconciles the inconsistency, or decides which law or system is to govern in the particular case, or settles the degree of force to be accorded to the law of another jurisdiction (the acts or rights in question having arisen under it,) either where it varies from the domestic law, or where the domestic law is silent or not exclusively applicable to the case in point."

[Black's Law Dictionary, Fourth Edition, 1951, p. 371-372]

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### **Republique Franchise v. M. K. & T. Ry. Co. of Texas (July 29, 1949)**

"Under statute granting federal district court jurisdiction of action between citizens of a state and "foreign states", the quoted words mean other nations or other countries. 28 U.S.C.A. §1332."

[*Republique Franchise v. M. K. & T. Ro Co. of Texas*, 85 F.Supp. 295 (1949)]

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### **City of Springfield v. Kenney (Nov. 5, 1951)**

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#### ***Sovereignty and Freedom Points and Authorities***

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"Where person lived within corporate boundaries of City of Springfield, he was subject to city income tax though he lived in a public housing project owned by United States and operated as a Federal Housing Area by Public Housing Authority."

"Income of resident of City of Springfield was subject to city income tax though such income was earned entirely outside the corporate limits of the city."

"City income tax excluding from taxation all persons having income of \$1,040 or less, but taxing total income of those residents who had income exceeding that amount, was not unconstitutional on the ground that it created a classification which was artificial, arbitrary, unreasonable, and which discriminated between those similarly situated."

"The presumption that City of Springfield in enacting income tax ordinance acted upon sound consideration of policy would prevail until overcome by evidence."

[City of Springfield v. Kenney, 104 N.E.2d. 65 (1951)]

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### **Arapajolu v. McMnamin (Oct. 24, 1952)**

"Where land is acquired by the United States pursuant to U.S. Const., art. I, §8, clause 17, the state Legislature can reserve a portion of the state's preexisting jurisdiction so long as such reserved jurisdiction is not inconsistent with the governmental use for which the property is acquired, and Congress may recede or return to the state any jurisdiction over such property which is not inconsistent with such governmental use."

"Residence in California on lands held by the United States but over which the federal government does not accept exclusive jurisdiction is residence in California for voting purposes."

"The right to vote is personal to the citizen."

"If California retains jurisdiction over a federal area sufficient to justify holding that the area remains a part of the state, a resident therein is a resident of the state and entitled to vote by virtue of the constitutionally granted right, and no express reservation of such right is necessary and no attempted express cession of such right to the United States could be effective."

"Thus, although workmen's compensation laws cannot extend over federal lands within the state while the United States has exclusive jurisdiction (*Allen v. Industrial Acc. Corn.*, 3 Cal.2d. 214 [43 P.2d. 787]; cf. *Atkinson v. State Tax Corn.*, 303 U.S. 20, 25 [58 S.Ct. 419, 82 L.Ed. 621]), by an Act of Congress now codified in 40 U.S.C.A. section 290 the operation of such laws has been extended to "all lands and premises owned or held by the United States of America ... which is within the exterior boundaries of any State, in the same way and to the same extent as if said premises were under the exclusive jurisdiction of the State....""

"In *Capetola v. Barclay White Co.*, 139 F.2d. 556, cert. den. 321 U.S. 799 [64 S.Ct. 939, 88 L.Ed. 1087], the Circuit Court of Appeals, 3d Cir., said of this act at page 559:

""It is, of course, patent from a reading of the Act of 1936 that Congress did not thereby adopt State Compensation Acts as federal law applicable to federal territories within the exterior boundaries of the states. But it is our opinion that the purpose and effect of the congressional Act was to free State workmen's compensation laws from the restraints upon their enforcement theretofore existing by reason of the exclusive federal jurisdiction of lands within the States and that, forthwith upon the federal enactment, Pennsylvania's Workmen's Compensation Act became operable as to injuries received by employees of private employers on federal property within the State's exterior boundaries. The situation created by the Act of 1936 was no different, so far as the operation of Pennsylvania's compensation law is concerned, than it would have been had Pennsylvania never ceded jurisdiction of the Navy Yard site to the federal government.""

"The power to collect all such taxes [state income taxes] depends upon the existence of state jurisdiction over such federal lands and therefore may not be exercised in territory over which the United States has exclusive jurisdiction."

"It may no longer be said of those lands that they are, as said by the Ohio court in *Sinks v. Reese, supra*, "as foreign to Ohio (California) as is the State of Indiana or Kentucky, or the District of Columbia."

"It is settled for California by the case of *Johnson v. Morrill*, 20 Cal.2d. 446 [126 P.2d. 873] that where the United States does not accept exclusive jurisdiction over lands held by it residence therein is residence within the State of California for voting purposes."

[Arapajolu v. McMnamin, 113 Cal.App.2d. 824, 249 P.2d. 318 (1952)]

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### **Steele v. Bulova Watch Co. (Dec. 22, 1952)**

"In prescribing standards of conduct for American citizens, Congress may project the impact of its laws beyond the territorial boundaries of the United States."

"Legislation of Congress will not extend beyond the boundaries of the United States unless a contrary legislative intent appears."

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### ***Sovereignty and Freedom Points and Authorities***

"Where there can be no interference with the sovereignty of another nation, the Federal District Court in exercising its equity powers may command persons properly before it to cease or perform acts outside its territorial jurisdiction."

"The *Banana Co.* case confined the Sherman Act in its "operation and effect to the territorial limits over which the lawmaker has general and legitimate power." 213 U.S. at page 357, 29 S.Ct. at page 513, 53 L.Ed. 826. This was held to be true as to acts outside the United States, although the parties were all corporate citizens of the United States subject to process of the federal courts." [Dissenting opinion of Mr. Justice Reed, with Mr. Justice Douglas joining.] [*Steele v. Bulova Watch Co.*, 344 U.S. 280, 73 S.Ct. 252 (1952)]

#### **Howard v. Commissioners of Sinking Fund (Feb. 9, 1953)**

"A state may conform its municipal structures to its own plan, so long as the state does not interfere with the exercise of jurisdiction within the federal area by the United States. Kentucky's consent to this acquisition gave the United States power to exercise exclusive jurisdiction within the area. A change of municipal boundaries did not interfere in the least with the jurisdiction of the United States within the area or with its use or disposition of the property. The **fiction of a state within a state** can have no validity to prevent the state from exercising its power over the federal area within its boundaries, so long as there is no interference with the jurisdiction asserted by the Federal Government. The sovereign rights in this dual relationship are not antagonistic. Accommodation and cooperation are their aim. It is friction, not fiction, to which we must give heed." [Bold added.]

[*Howard v. Commissioners of Sinking Fund*, 344 U.S. 624, 73 S.Ct. 465 (1953)]

#### **Schwartz v. O'Hara Tp. School Dist. (Nov. 24, 1953)**

"Township school district was not required to furnish free educational facilities for children who resided on grounds of federal Veterans Administration Hospital, which was located in township, where jurisdiction of grounds had been ceded by the Commonwealth to the United States."

"Sections of School Code declaring that every child, who is a resident of any school district, may attend public schools in district, and that a child shall be considered a resident of district in which his parents or guardian of his person resides, did not require township school district to furnish free educational facilities to children, who resided on grounds of federal Veterans Administration Hospital, which was located in the township."

[*Schwartz v. O'Hara Tp. School Dist.*, 100 A.2d. 621 (1953)]

#### **10 U.S.C. §2231(4)**

The purpose of this chapter [10 U.S.C.S. §§2231 et seq.] is to provide for--

"(4) any other use of those facilities by the United States in time of war or national emergency, to the greatest practicable extent for efficiency and economy."

[Brackets original.]

[10 U.S.C. §2231(4)]

#### **10 U.S.C.S. §2231(4). History; Ancillary Laws and Directives**

"In clause (4), the words "United States" are substituted for the words "Federal Government"."

[10 U.S.C.S. §2231(4). History; Ancillary Laws and Directives, p. 19]

#### **18 U.S.C. §1385**

"Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than \$10,000 or imprisoned not more than two years, or both."

[18 U.S.C. §1385]

#### **18 U.S.C. §1385, n 6**

"Posse Comitatus Act (18 U.S.C.S. §1385) does not apply to navy. *United States v. Roberts* (1986, CA9 Cal) 779 F.2d. 565, cert den (1986) 479 U.S. 839, 93 L.Ed.2d. 84, 107 S.Ct. 142."

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"Posse Comitatus Act is not applicable to naval operations ... United States v. Mendoza-Cecelia (1992, CA11 Fla) 963 F.2d. 1467, 6 FLW Fed C 678, cert den (1992, US) 121 L.Ed.2d. 356, 113 S.Ct.436."

"Posse Comitatus Act, 18 U.S.C.S. §1385, does not apply to United States Coast Guard. Jackson v. State of Alaska, 22 Cr L 2338."  
[18 U.S.C. §1385, n 6]

### **18 U.S.C. §1385, n 7**

"Use of military personnel to maintain road blocks and armed patrols constituting armed perimeter around village on Indian Reservation, hereby directly restraining freedom of movement of persons in village, constitutes use of military as posse comitatus in violation of Posse Comitatus Act (18 U.S.C.S. §1385). Bissonette v. Haig (1985, CA8 SD) 776 F.2d. 1384."

"Prohibition in 18 U.S.C.S. §1385 against use of Army or Air Force to "execute" law implies authoritarian act, and type of use which is prohibited is that which is regulatory, proscriptive or compulsory in nature, and causes citizens to be presently or prospectively subject to regulations, proscriptions or compulsions imposed by military authority. United States v. McArthur (1975, DC ND) 419 F.Supp. 186, affd (1976, CA8 ND) 541 F.2d. 1275, cert den (1977) 430 U.S. 970, 52 L.Ed.2d. 362, 97 S.Ct. 1654."

"Troops of United States could not have been employed as posse comitatus, to aid the United States marshal or his deputies in arresting certain persons in state of Kentucky charged with robbing officer of government. (1881) 17 Op Atty Gen 71."

[18 U.S.C. §1385, n 7]

### **Krull v. United States (Jan. 4, 1957)**

"... violations of law occurring on the ceded lands are enforceable only by the proper authorities of the United States. As this administrative construction is a permissible one we find it persuasive and we think that the debated question of jurisdiction should be settled by construing the Act of 1927 in the same way." Bowen v. Johnston, 306 U.S. 19, 59 S.Ct. 442, 447, 83 L.Ed. 455."

[Krull v. United States, 240 F.2d. 122 (1957)]

### **Gillars v. United States (May 19, 1957)**

"As the Chandler case points out, the immediate purpose of the above provision was "to put an end to the use of federal troops to police state elections in the ex-Confederate states where the civil power had been reestablished." [Cite omitted.] By using the words "posse comitatus" the Congress intended to preclude the Army from assisting local law enforcement officers in carrying out their duties. The use of our Army of Occupation in Germany could not be characterized as a "posse comitatus" since it was the law enforcement agency in Germany at the time of appellant's arrest. "The right of one belligerent to occupy and govern the territory of the enemy while in its military possession is one of the incidents of war, and flows directly from the right to conquer. We, therefore, do not look to the Constitution, or political institutions of the conqueror, for authority to establish a government for the territory of the enemy in his possession, during its military occupation, nor for the rules by which the powers of such government are regulated and limited.'" [Cites omitted.]

The right to arrest being a part of the right to govern, it cannot be doubted that our Army of Occupation was authorized to arrest notwithstanding 10 U.S.C.A. §15. Since we think it inapplicable in this case, it is unnecessary to determine whether the statute is extraterritorial in its scope."

[Gillars v. United States, 87 U.S.App.DC. 16, 182 F.2d. 962 (1957)]

### **Reid v. Covert (June 10, 1957)**

"It is urged that the expansion of military jurisdiction over civilians claimed here is only slight, and that the practical necessity for it is very great. The attitude appears to be that a slight encroachment on the Bill of Rights and other safeguards in the Constitution need cause little concern. But to hold that these wives could be tried by the military would be a tempting precedent. Slight encroachments create new boundaries from which legions of power can seek new territory to capture. "It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and

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leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon." [Quoting *Boyd v. United States*, 116 U.S. 616, 635, 6 S.Ct. 524, 535, 29 L.Ed. 746.] Moreover we cannot consider this encroachment a slight one. Throughout history many transgressions by the military have been called "slight" and have been justified as "reasonable" in light of the "uniqueness" of the times. We cannot close our eyes to the fact that today the peoples of many nations are ruled by the military.

"We should not break faith with this nation's tradition of keeping military power subservient to civilian authority, a tradition which we believe is firmly embodied in the Constitution. The country has remained true to that faith for almost one hundred seventy years. Perhaps no group in the Nation has been truer than military men themselves. Unlike the soldiers of many other nations, they have been content to perform their military duties in defense of the Nation in every period of need and to perform those duties well without attempting to usurp power which is not theirs under our system of constitutional government.

"Ours is a government of divided authority on the assumption that in division there is not only strength but freedom from tyranny. And under our Constitution courts of law alone are given power to try civilians for their offenses against the United States. The philosophy expressed by Lord Coke, speaking long ago from a wealth of experience, is still timely:

"God send me never to live under the Law of Conveniency or Discretion. Shall the Souldier and Justice Sit on one Bench, the Trumpet will not let the Cryer speak in *Westminster-Hall*." [Quoting from 3 Rushworth, Historical Collections, App. 81.]

"Legal doctrines are not self-generated abstract categories. They do not fall from the sky; nor are they pulled out of it. They have a specific juridical origin and etiology. They derive meaning and content from the circumstances that gave rise to them and from the purposes they were designed to serve. To these they are bound as is a live tree to its roots."

[*Reid v. Covert*, 354 U.S. 1, 77 S.Ct. 1222 (1957)]

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### **United States v. Starling (Feb. 21, 1959)**

"Functioning courts in Alaska after proclamation of statehood are legislative in character."

"Concept of legislative court is a fiction in constitutional law and chief recognized differences between legislative and constitutional courts are the tenure of office of judges, which in a constitutional court is during good behavior, and in some legislative courts is for a designated term; location of such legislative courts, i. e., in the territories and possessions; and the jurisdiction of legislative courts, i. e., court of claims, court of customs, and courts created in the District of Columbia, etc."

"Congress has established federal courts under constitutional provision authorizing same throughout United States but this authority is not exclusive since legislative courts in the District of Columbia are also under the same constitutional provision and they exercise all the judicial power of the United States."

"There is a presumption of constitutionality which attaches to all federal statutes, including statute establishing courts, and this presumption must be rebutted beyond a reasonable doubt and takes precedence over rule that jurisdiction of court must be strictly construed."

"In conformance with the authority of the Statehood Act supra, Alaska held a general election on the 25th day of November 1958 and was admitted to the Union by a proclamation of the President of the United States, Dwight D.

Eisenhower, on the 3d day of January 1959, pursuant to congressional authorization. See Alaska Statehood Bill, supra."

"However, George H. Watson, in his article on "The Concept of the Legislative Court" (George Washington Law Review, supra, at 807) says that "\* \* \* A distinction such as that between legislative and constitutional courts is fundamentally conceptual and only secondarily based upon observable differences."

"Congress has never set up a legislative court with jurisdiction in a single state, although it has done so with groups of states and the United States as a whole. The Court of Claims, Court of Patent Appeals and the Court of Private Land Claims are examples of legislative courts which had or have jurisdiction reaching into the states.

"Congress established the Court of Private Land Claims, which consisted of five judges who were appointed for a limited term. It was given jurisdiction to determine various and sundry claims upon lands in the territories of Arizona, New Mexico and Utah, and in the states of Wyoming, Colorado and Nevada, which allegedly arose out of Spanish or Mexican land grants. The United States, through treaties with Mexico, had agreed to recognize these disputed land grants. The Supreme Court of the United States sustained the jurisdiction of that court in a case involving land in a territory, but left open the question of the power of Congress to make such provisions with respect to land in a state, *United States v. Coe*, 1894, 155 U.S. 76, 15 S.Ct. 16, 39 L.Ed. 76."

"When faced with obstacles Alaskans have never been dismayed. [ \* \* \* ] Now they are challenged with complete self government."

"The first burden that the proponents of the motions to dismiss must surmount is the presumption in favor of constitutionality that attaches to all federal statutes. This presumption must be rebutted beyond a reasonable doubt. See

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[cites omitted], where the court said the power to declare congressional acts unconstitutional belongs peculiarly to the appellate courts. This presumption in favor of constitutionality is similar to the presumption of innocence a defendant enjoys in a criminal case, and I find it takes precedence over the rule that jurisdiction must be strictly construed. The constitutionality presumption, however, is rebuttable."

"Marshall, in order to sustain jurisdiction, a trait for which he was already famous, discovered the doctrine of "legislative courts". He held that courts established under article 3, section 1, United States Constitution, with life tenure judges, must exercise federal jurisdiction only in states already admitted to the Union. But in the territories, article 3, section 1, United States Constitution, does not apply and Congress, under article 4, section 3, United States Constitution, which provides for the government of the territories, may create federal courts with judges of less than life tenure. This holding sustained federal jurisdiction in the instant case, but it created a doctrine which was unfounded in constitutional history (see Hastings Law Journal and George Washington Law Review, supra) and which has created much mischief and fine legal distinctions since."

"On the 14th of May 1847, the cause was transferred to the District Court of the United States for Florida, and an appeal was taken. Prior to these events, Florida was unconditionally admitted to the Union on March 3, 1845. When Florida entered the Union on this date, she had a system of state courts ready to go into immediate operation and a federal district court for the District of Florida was in existence, but no judge had yet been appointed. The federal judge was not appointed by the President until approximately seventeen months after the admission of Florida into the Union, and the prior territorial courts, without any carry-over provision in the Florida statehood act, as provided in section 18 of the Alaska Statehood Act, supra, to support them, continued to hear federal matters including the instant case. Judge Nelson, speaking for a unanimous court, held that upon the *unconditional* admission of Florida into the Union, the territorial courts immediately lost all their jurisdiction (emphasis mine)"

"Alaska was not unconditionally admitted into the Union as witness the number of conditions in the statehood bill enumerated, supra. There is, of course, a serious question whether any conditions in the statehood bill need be obeyed by a state once it is admitted into the Union. The case of *Coyle v. Secretary of State of Oklahoma*, 1911, 221 U.S. 559, 31 S.Ct. 688, 55 L.Ed. 853 indicates that provisions for the location of a state capitol in a statehood bill are not binding on a state once it is admitted to the Union."

"Alaska may have come into the Union with little more than her organic law. The State of Alaska has conveyed temporary jurisdiction over state judicial matters to the federal territorial court, by the terms of section 17, article 15, supra. By one interpretation of section 18 of the Alaska Statehood Act, supra, if this court is determined to have no federal jurisdiction and the President immediately appoints a permanent life-tenure federal judge, one could ably argue that the territorial court might lose all its jurisdiction, both state and federal. Without a state court system, Alaska would certainly have entered the Union with little more than her organic law, at least as far as her courts were concerned."

"The three constitutional objections to the continued jurisdiction of the present District Court for the District of Alaska in federal matters are primarily based on the fact that the four federal judges in Alaska do not hold life tenure. In every other respect, at least as regards its functioning as a federal court, the District Court for the District of Alaska has equal powers with any federal court in the United States except as noted, supra. - If the approach to interpreting the Constitution was still in terms of the strict legalistic formula exemplified in the *Benner* and *Forsyth* cases, supra, this court might be sitting illegally."

"At page 39 of 354 U.S., at page 1242 of 77 S.Ct. the opinion in *Reid v. Covert*," Justice Black states:

\* \* \* It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon!."

"This is further evidence that literalness is not the proper approach when dealing with constitutional problems in which no substantial rights are denied for indefinite periods."

"The territorial cases relied on by the Court last Term held that certain specific constitutional restrictions on the Government did not automatically apply in the acquired territories of Florida, Hawaii, the Philippines, or Puerto Rico. In these cases, the Court drew its decisions from the power of Congress to 'make all needful Rules and Regulations respecting the Territory \* \* \* belonging to the United States, for which provision is made in Art. IV, §3.'" The United States from time to time acquired lands in which many of our laws and customs found an uncongenial soil because they ill accorded with the history and habits of their people."

"Let us examine the differences between life-tenure and non-life-tenure judges in the federal system to see if there is any "substantial" or "fundamental" difference between the two species."

"Thus, as the Supreme Court in the above cases has shown that it does not consider that the character of a judge will be substantially affected by political considerations when he does not hold office for life tenure, I find that a federal judge in Alaska who does not hold life tenure during Alaska's transitional period is not "substantially and fundamentally different" from his counterparts in the other states. It might be of interest at this point to note that Judge Wiig of the Hawaiian Federal Court, a territorial court, has sat on the Ninth Circuit Court of Appeals, in accordance with 28 U.S.C.A. §292(a), on cases arising within the federal courts in the states, without challenge (see 69 Harvard Law Review 60 (1956))."

"Before concluding, it is necessary to comment on another very interesting reason for upholding jurisdiction advanced by the government. The government claims that under the doctrine of *Ames v. Colorado Central Railroad Co.*, C.C. Colo. 1876, 1 Fed.Cas.No. 324 at p. 750, Alaska has properly adopted the Federal District Court for the District of Alaska as its state court pending the state courts' organization. With this I concur."

"Therefore, for the reasons set forth above, I find that the District Court for the District of Alaska has continuing federal jurisdiction during the transitional period when Alaska advances from territorial to full state status, and until the President, by Executive order, shall proclaim that the United States District Court for the District of Alaska is prepared to assume the functions imposed upon it, not to exceed three years after the effective date of the passage of the statehood act."  
[*United States v. Starling*, 171 F.Supp. 47 (1959)]

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### **United States v. United Steelworkers of America (Oct. 27, 1959)**

"1. Although ordinarily we think of federal courts being classified only as District Courts, Courts of Appeals, and the Supreme Court of the United States, there is also another classification of federal courts, that of "constitutional" and "legislative" courts. The former, also known as "Article III courts," are created in accordance with Article III, Section 1 of the Constitution which declares that "the judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." These "constitutional courts" are subject to the jurisdictional restrictions of Article III, Section 2, the most important of which, for present purposes, is the exercise of judicial power only in a justiciable "case or controversy," and the judges of these courts have the protection of Article III, Section 1 in that they hold office during good behavior and cannot have their compensation diminished during their continuance in office.

"Legislative" or "Article I courts," on the other hand, do not have such jurisdictional limitations nor do the judges thereof have the protections afforded to judges of "Article III courts." "The "legislative courts" are created by Congress as a "necessary and proper" adjunct to its enumerated powers under Article I, Section 8 of the Constitution; such courts may perform legislative and administrative as well as judicial functions. Courts which have been held to be legislative courts include the Territorial courts, the Court of Customs and Patent Appeals, the Customs Court, and the Court of Claims. See 1 More, Federal Practice §0.4[3] (2d ed. 1959). The three courts last named, however, have been made constitutional courts by Acts of Congress which need not be detailed here."

[*United States v. United Steelworkers of America*, 271 F.2d. 676 (1959)]

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### **Scandinavian Airlines System, Inc. v. County of Los Angeles (May 29, 1961)**

"The actions of a city international airport in its capacity as a port of entry to the United States must be viewed as they may affect commerce with foreign nations. Such view poses federal questions even in the absence of Congressional enactment."

"Ocean-going vessels, plying international waters, engaged in either interstate or foreign trade, even when owned by residents or citizens of this country, may not be taxed by any jurisdiction other than that of their home port, and the jurisdiction of domicile may tax such instrumentalities on a full ad valorem basis."

"Airplanes flying solely in interstate commerce, based in the United States or owned by domestic concerns, and which do not leave the jurisdictional limits of the United States, will be taxed under the same principles which apply to other instrumentalities of interstate commerce."

Any instrumentality which engages in commerce between two or more sovereign nations must have but one taxable situs, and such situs must be the port where the instrumentality is in good faith domiciled."

"Treaties represent executive action and, although approved by the Senate, are not the Congressional action contemplated by the commerce clause."

"Treaties are the supreme law of the land, binding on the courts of every state."

"The principles of state sovereignty apply to internal matters only. No state is sovereign in the eyes of a foreign nation; it cannot deal directly with a foreign nation by treaty or otherwise; this it must leave to the federal government."

[*Scandinavian Airlines System, Inc. v. County of Los Angeles*, 56 Cal.2d. 11, 14 Cal.Rptr. 25, 363 P.2d. 25 (1961)]

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### **Paul v. United States (Jan. 14, 1963)**

"The Armed Services Procurement **Regulation** (CFR, Title 32, Ch 1, Subch A) commands that purchases for the armed services be made on a competitive basis; it **has the force of law.**"

"The federal government has power to acquire land within a state by purchase or by condemnation without the consent of the state."

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As regards land acquired by the United States without the consent of the state in which it is located, the United States is simply an ordinary proprietor and does not enjoy the "exclusive" legislative power which article 1, §8, clause 17, of the Federal Constitution grants to Congress over all places purchased by the consent of the legislature of the state; however, a state may complete the "exclusive" jurisdiction of the federal government over such an enclave by a cession of legislative authority and political jurisdiction."

"Whether land is acquired by the United States by purchase or condemnation on the one hand or by cession on the other, a state may condition its consent to the acquisition upon its retention of jurisdiction over the land consistent with the federal use."

"Whether the United States has acquired exclusive jurisdiction over a federal enclave is a federal question."

"A state may not legislate with respect to a federal enclave unless it reserved the right to do so when it gave its consent to the purchase by the United States; hence, only state law existing at the time of the acquisition remains enforceable, not subsequent laws." [Bold added.]

[Paul v. United States, 371 U.S. 245, 83 S.Ct. 426, 9 L.Ed.2d. 292 (1963)]

### **Coleman v. United States (May 1, 1964)**

"As here, the appellant's motion to vacate the sentence of death upon constitutional grounds was extensively argued before the District Judge where counsel said: "We are not challenging the conviction in this argument." Rather, counsel insisted that the *sentence* imposed by Judge Letts "went beyond that authorized by the verdict." He contended that under Fed.R.Crim.P. 35 the sentence of death was illegal and therefore should have been reduced to life imprisonment. It was submitted that the provisions of the federal statute, 18 U.S.C. §1111(b), should have governed and should have been applied.

"We do not agree, for the federal statute clearly is designed to apply within "the special maritime and territorial jurisdiction of the United States" which, in turn, is defined, as here pertinent, in 18 U.S.C. §7(3). The prosecution here went forward pursuant to D.C.Code §22-2401 (1951), 54 STAT. 347.

"The robbery had its inception in a liquor store wherein were located police officers who immediately commenced pursuit of the appellant across a public street in the District of Columbia. It was in the course of that pursuit that the police officer was murdered in a nearby alley, as detailed in our opinion. The area by no tenable construction can be said to have been within "the special maritime and territorial jurisdiction of the United States." This court had occasion to consider and reject a not dissimilar contention in *Johnson v. United States*. The Supreme Court on appeal noted that the 1897 statute which conferred authority on a jury to qualify its verdict and which had been held applicable to the District of Columbia in *Winston v. United States*, had been deleted from the District Code, effective January 1, 1902.

"The Court held, in short, that the federal statute and the District code were separate instruments. It was pointed out that the effect of the "separation is important and necessarily had its purpose.""

"The Court, in different context but nonetheless cogently, reemphasized the distinctive position of the District of Columbia in matters of criminal law in *Griffin v. United States*. There the Court pointed out:

"This Court, in its decision, and Congress, in its enactment of statutes, have often recognized the appropriateness of one rule for the District and another for other jurisdictions so far as they are subject to federal law. Thus, the 'federal rule' in first-degree murder cases is that, unless the jury by unanimous vote agrees that the penalty should be death, the court must fix the sentence at imprisonment for life. 35 Stat. 1151, 1152, 18 U.S.C. §567, now 18 U.S.C. §1111 (1948), *Andres v. United States*, 333 U.S. 740. But a defendant convicted of first-degree murder in the District cannot look to the jury to soften the penalty; he must be given the death sentence. 31 Stat. 1321, 43 Stat. 799, D.C.Code §22-2404, *Johnson v. United States*, 225 U.S. 405. Furthermore, the Court's decision in *Fisher v. United States*, 328 U.S. 463, makes clear that when we refused to reverse the Court of appeals for the District we were not establishing any 'federal rule' in interpreting the murder statutes which apply in places other than the District of Columbia over which Congress has jurisdiction. In fact, this Court has been at pains to point out that 'Congress \* \* \* recognized the expediency of separate provisions' pertaining to criminal justice applicable exclusively to the District of Columbia in contradistinction to the Criminal Code governing offenses amenable to federal jurisdiction elsewhere. *Johnson v. United States*, 225 U.S. 405, 418."

"The trial judge fully considered and sufficiently dealt with the contentions in such respects, as the record shows. He correctly concluded that the prosecution and the sentence had been predicated upon the provisions of the District Code." [Coleman v. United States, 334 F.2d. 558 (1964)]

### **DeKalb County, Georgia v. Henry C. Beck Company (Sept. 15, 1967)**

"Congress has power to exercise jurisdiction over federal enclaves, under federal constitutional provision empowering

Congress to exercise exclusive legislation in all cases whatsoever over places purchased by consent of Legislature of state in which the same shall be, for erection of needful buildings."

"The federal government may, without consent of state, acquire land within a state by condemnation or purchase."

"Without state consent to acquisition of land by United States within the state, the United States does not obtain the benefits of constitutional provision empowering Congress to exercise exclusive legislation in all cases whatsoever over places purchased by consent of Legislature of state in which the same shall be for erection of needful buildings, and possession by United States is that of an ordinary proprietor."

"Whether the United States has acquired exclusive jurisdiction over a federal enclave is federal question. "

"Application of supremacy clause of the federal Constitution requires determination of and balancing of state and local action against federal policy."

[*DeKalb County, Georgia v. Henry C. Beck Company*, 382 F.2d. 992 (1967)]

### **Black's Law Dictionary: Territory**

"TERRITORY. A part of a country separated from the rest, and subject to a particular jurisdiction."

"A portion of the United States, not within the limits of any state, which has not yet been admitted as a state of the Union, but is organized, with a separate legislature, and with executive and judicial officers appointed by the president." [Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1642]

### **Bouvier's Law Dictionary: Territory**

"TERRITORY. A part of a country separated from the rest and subject to a particular jurisdiction.

"A portion of the country subject to and belonging to the United States which is not within the boundary of any state or the District of Columbia.

"The constitution of the United States, art. 4, s. [sic] 3, provides that the congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property of the United States; and nothing in this constitution shall be construed so as to prejudice any claims of the United States or of any state.

"The United States has supreme sovereignty over a territory, and congress has full and complete legislative authority over its people and government; *Church of Jesus Christ of L.D.S. v. U.S.*, 136 U.S. 1, 10 Sup.Ct. 792, 34 L.Ed. 478.

"Congress possesses the power to erect territorial governments within the territory of the United States: the power of congress over such territory is exclusive and universal, and their legislation is subject to no control, unless in the case of ceded territory as far as it may be affected by stipulations in the cessions or by the ordinance of 1787, under which any part of it has been settled; *Story, Const. §1322; Rawle, Const. 237; 1 Kent 243, 359; 1 Pet. (U.S.) 511, 7 L.Ed. 242.*

Congress has plenary legislative power over the territories of the United States, and upon the admission of a territory into the Union," may, if it so desires, effect a collective naturalization of its foreign-born inhabitants as citizens of the United States; *Boyd v. Nebraska*, 143 U.S. 135, 12 Sup.Ct. 375, 36 L.Ed. 103.

"The admission of a territory as a state is accomplished by means of what is generally known as an enabling act, which prescribes the terms and conditions upon which the new state is to be admitted.

"A territory is the fountain from which rights ordinarily flow, though Congress might intervene; but the rights that exist are not created by congress or the constitution, except to the extent of certain limitations of power. The District of Columbia is different, because there the body of private rights is created and controlled by congress, and not by a legislature of the district; *Kawananakoa v. Polyblank*, 205 U.S. 349, 27 Sup.Ct. 526, 51 L.Ed. 834, where this doctrine was applied to Hawaii. A territory is sovereign, not in the full sense of juridical theory, but because in actual administration it may originate and change at will the law of contract and property, and it is therefore exempt from suit; *id.*"

[*Bouvier's Law Dictionary*, Vol. II, Third Revision, Eighth Edition, 1914, pp. 3261-3262]

### **86 C.J.S., Territories: Definitions, Nature, and Distinctions**

#### **"§1. Definitions, Nature, and Distinctions**

**"The word "territory," when used to designate a political organization has a distinctive, fixed, and legal meaning under the political institutions of the United States, and does not necessarily include all the territorial possessions of the United States, but may include only the portions thereof which are organized and exercise governmental functions under act of congress.**

"While the term "territory" is often loosely used, and has even been construed to include municipal subdivisions of a territory, and "territories of the" United States is sometimes used to refer to the entire domain over which the United States exercises dominion, the word "territory," when used to designate a political organization, has a distinctive, fixed, and legal

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meaning under the political institutions of the United States, and the term "territory" or "territories" does not necessarily include all the territorial possessions of the United States, but may include only a portion or the portions thereof which are organized and exercise governmental functions under acts of congress. The term "territories" has been defined to be political subdivisions of the outlying dominion of the United States, and in this sense the term "territory" is not a description of a definite area of land but of a political unit governing and being governed as such. The question whether a particular subdivision or entity is a territory is not determined by the particular form of government with which it is, more or less temporarily, invested.

"*Territories*" or "*territory*" as including "*state*" or "*states*." While the term "territories of the" United States may, under certain circumstances, include the states of the Union, as used in the federal Constitution and in ordinary acts of congress "territory" does not include a foreign state.

"*As used in this title*, the term "territories" generally refers to the political subdivisions created by congress, and not within the boundaries of any of the several states."

[86 Corpus Juris Secundum, Territories, §1]

### **86 C.J.S., Territories: Existence and Status before Adoption of Constitution**

#### **§2. Existence and Status before Adoption of Constitution**

**"A distinction between the states which were members of the Confederation and the territories or lands belonging to the federal Union was recognized even before the adoption of the federal Constitution.**

"Even before the adoption of the federal Constitution and during the existence of the Confederation a distinction was recognized between the states which were members of the Confederation and the territories or land belonging to the federal Union or United States and the continental congress by the Ordinance of 1787 provided for the government of the Northwest Territory."

[86 Corpus Juris Secundum, Territories, §2]

### **86 C.J.S., Territories: Territorial Extent and Boundaries**

#### **" §8 Territorial Extent and Boundaries**

"Congress may divide the territorial lands into territorial divisions, states, or territories and states; and the extent or boundaries of a territory may be fixed in the organic act."

[86 Corpus Juris Secundum, Territories, §8]

### **86 C.J.S., Territories: "State" Compared and Distinguished**

#### **" §10 ---"State" Compared and Distinguished**

"The word "state" is often used in contradistinction to "territory," and it is only in exceptional cases that the word applies to a territory. The chief distinction between a state and territory is in the matter of sovereignty and the relation of each to the government of the United States.

"While in its general public sense, and as sometimes used in the statutes and the proceedings of the government, the word "state" has the larger meaning of any separate political community, including therein the territories, as well as those political communities known as states of the Union, the word "state" is often used in contradistinction to "territory," and it is only in exceptional cases that the word applies to a territory. A distinction between "states" and "territories" appears to be implicitly recognized by the federal Constitution, and, usually at least, as used in the federal Constitution, the word "state" does not include "territory." So also, a like distinction has been recognized by the courts. While the organic act has sometimes conferred on a territory an autonomy similar to that of a state, the doctrine of state sovereignty does not apply to territories in the full sense, and, while it has been said that an incorporated territory is as much a part of the United States as the states, a territory sustains no such relations to the government of the United States as does a state, even though the territory is incorporated into the United States, since the several states of the Union possess all the powers and attributes of independent nations, except such as they have delegated" by the Constitution to the United States, which is not the case with a territory.

"*Embryo or inchoate state*. Although a territory has been regarded as an embryo or inchoate state, the use of the term "territory" does not necessarily involve the idea or promise of future statehood."

[86 Corpus Juris Secundum, Territories, §10]

### **86 C.J.S., Territories: Power of Congress**

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**"§15 ----Power of Congress**

"Congress has general and plenary power, derived from the federal Constitution, to govern and control the territories."  
[86 Corpus Juris Secundum, Territories, §15]

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**86 C.J.S., Territories: Powers and Status of Territorial Government****"§18 --Powers and Status of Territorial Government**

"All powers of a territorial government are derived from, and are subordinate to the authority of, the federal government; the territory exercises only delegated powers conferred by congress, and has no greater power over a particular subject than the federal government itself has."  
[86 Corpus Juris Secundum, Territories, §18]

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**86 C.J.S., Territories: United States Congress****"§20 United States Congress**

"Subject to constitutional limitations, congress has power to legislate for the territories."  
[86 Corpus Juris Secundum, Territories, §20]

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**Black's Law Dictionary: Diversity**

"**DIVERSITY.** In criminal pleading. A plea by the prisoner in bar of execution, alleging that he is not the same who was attainted, upon which a jury is immediately impaneled to try to collateral issue thus raised, viz., the identity of the person, and not whether he is guilty or innocent, for that has been already decided."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 564]

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**Black's Law Dictionary: Constitutional Court**

"**CONSTITUTIONAL COURT.** A court named or described and expressly protected by Constitution, or recognized by name or definite description in Constitution but given no express protection thereby. *Gorham v. Robinson*, 57 R.I. 1, 186 A. 832."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 385]

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**Black's Law Dictionary: Constitutional Law**

"**CONSTITUTIONAL LAW.** (1) That branch of the public law of a state which treats of the organization and frame of government, the organs and powers of sovereignty, the distribution of political and governmental authorities and functions, the fundamental principles which are to regulate the relations of government and subject, and which prescribes generally the plan and method according to which the public affairs of the state are to be administered. (2) That department of the science of law which treats of constitutions, their establishment, construction, and interpretation, and of the validity of legal enactments as tested by the criterion of conformity to the fundamental law. (3) A constitutional law is one which is consonant to, and agrees with, the constitution; one which is not in violation of any provision of the constitution of the particular state."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 385]

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**Black's Law Dictionary: Administrative**

"**ADMINISTRATIVE LAW.** That branch of public law which deals with the various organs of the sovereign power considered as in motion, and prescribes in detail the manner of their activity, being concerned with such topics as the collection of the revenue, the regulation of the military and naval forces, citizenship and naturalization, sanitary measures, poor laws, coinage, police, the public safety and morals, etc. See *Holl.Jur.* 305-307."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 67]

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**Black's Law Dictionary: Procedural Law**

"**PROCEDURAL LAW.** That which prescribes method of enforcing rights or obtaining redress for their invasion;

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machinery for carrying on a suit." [Cite omitted.]  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1367]

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**Black's Law Dictionary: Procedure**

"**PROCEDURE.** The mode of proceeding by which a legal right is enforced, as distinguished from the law which gives or defines the right, and which, by means of the proceeding, the court is to administer; the machinery, as distinguished from its product. [Cite omitted.] That which regulates the formal steps in an action or other judicial proceeding; a form, manner, and order of conducting suits or prosecutions. [Cite omitted.] The judicial process for enforcing rights and duties recognized by substantive law and for justly administering redress for infraction of them." [Cite omitted.]

"The law of procedure is what is now commonly termed by jurists "adjective law," (q.v.)."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, Pp. 1367-1368]

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**19 C.J.S., Corporations §883**

"A foreign corporation is one that derives its existence solely from the laws of another state, government, or country, and the term is used indiscriminately, sometimes in statutes, to designate either a corporation created by or under the laws of another state or a corporation created by or under the laws of a foreign country."

"A federal corporation operating within a state is considered a domestic corporation rather than a foreign **corporation. The United States government is a foreign corporation with respect to a state.**" [Bold added.]  
[19 Corpus Juris Secundum, Corporations, §883]

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**19 C.J.S., Corporations §886**

"A corporation is a citizen, resident, or inhabitant of the state or country by or under the laws of which it was created, and of that state or country only."

[19 Corpus Juris Secundum, Corporations, §886]

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**27 C.F.R. Part 24-Wine, Subpart A--Scope**

"§24.2. **Territorial extent.**

"This part applies to the several States of the United States and the District of Columbia. (Sec. 201, Pub. L. 85-859, 72 Stat. 1337, as amended (26 U.S.C. 5065))"

[27 C.F.R. Part A--Scope, §24.2]

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**State of New Hampshire v. Atomic Energy Commission (Jan. 13, 1969)**

"Language of Federal Water Pollution Control Act, which stated, inter alia, that any federal department having jurisdiction over any property shall cooperate with any state having jurisdiction over waters into which any matter is discharged from such property, in preventing or controlling pollution of such waters, together with language of Executive Order, **was intended to encompass only installations owned by and operated for the government rather than those subject to government's regulatory powers.**" [Bold added.]

[State of New Hampshire E, Atomic Energy Commission, 406 F.2d. 170 (1969)]

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**National Welfare Rights Organization v. Wyman (Apr. 23, 1969)**

"The general rule is that parties may rely only on constitutional rights which are personal to themselves."

"Although a state has the option of withdrawing from Aid to Families with Dependent Children program, it cannot be said to have exercised that option by passage of a statute inconsistent with federal law in absence of express statement of withdrawal by state legislature."

[National Welfare Rights Organization v. Wyman, 304 F.Supp. 1346 (1969)]

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**Chicago Bridge and Iron Company v. Wheatley (July 13, 1970)**

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"Domestic corporation" was so defined in the code as not to include Virgin Islands corporations, which were therefore considered "foreign.""

"Court noted that the Internal Revenue Code was enacted, as the income tax' law of Guam, by the terms of Guam's Organic Act, in language identical in all relevant respects to the statute that had established what *has* come to be called the 'mirror system' of taxation in the Virgin Islands."

[Chicago Bridge and Iron Company v. Wheatley, 430 F.2d. 973 (3rd Cir. 1970)]

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**Herriges v. United States (July 2, 1970)**

"Courts do not have jurisdiction to interfere with action of administrative agency until administrative remedies have been exhausted, at least where applicable rules have been followed."

"It has been the rule that courts do not have jurisdiction to interfere with the action of an administrative agency until the administrative remedies have been exhausted, at least where applicable rules have been followed. That rule is not merely a convenient procedural device--it is a recognition of the fact that important business of one branch of the government cannot be successfully conducted if it is subjected to interruptions by another branch of the government which does not have the responsibility for the ultimate result. The rule continues and operates here unless the decision of the Supreme Court of the United States in *Goldberg v. Kelly*, *supra*, compels a contrary result. It does not."

[Herriges v. United States, 314 F.Supp. 1352 (1970)]

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**40 U.S.C. §255 and 50 U.S.C. §175**

"Unless the Attorney General gives prior written approval of the sufficiency of the title to land for the purpose for which the property is being acquired by the United States, public money may not be expended for the purchase of the land or any interest therein.

"The Attorney General may delegate his responsibility under this section to other departments and agencies, subject to his general supervision and in accordance with regulations promulgated by him.

"Any Federal department or agency which has been delegated the responsibility to approve land titles under this section may request the Attorney General to render his opinion as to the validity of the title to any real property or interest therein, or may request the advice or assistance of the Attorney General in connection with determinations as to the sufficiency of titles.

"Except where otherwise authorized by law or provided by contract, the expenses of procuring certificates of title or other evidences of title as the Attorney General may require may be paid out of the appropriations for the acquisition of land or out of the appropriations made for the contingencies of the acquiring department or agency.

"The foregoing provisions of this section shall not be construed to affect in any matter any existing provisions of law which are applicable to the acquisition of lands or interests in land by the Tennessee Valley Authority.

"Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted."

[40 U.S.C. §255 and 50 U.S.C. §175]

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**Humble Oil & Refining Company v. Calvert (Feb. 10, 1971)**

"Federal law permits a state to reserve in its deed of cession all jurisdiction consistent with constitutional federal use, but no more; however, the reservation by the state, whether by statute or reservation, must be clear."

"Irrespective of what the tax is called, if its purpose is to produce revenue, it is an income or a receipts tax under the Buck Act. 4 U.S.C.A. §§105-110."

[Humble Oil & Refining Company v. Calvert, 464 S.W.2d. 170 (1971)]

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**Carleson v. Superior Court for Sacramento County (Aug. 1, 1972)**

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"States are not required to participate in AFDC program but once state chooses to join it and take advantage of the substantial federal resources available, state must comply with mandatory requirements established by the Social Security Act as interpreted and implemented by regulations promulgated by the United States Department of Health, Education and Welfare."

[Carleson v. Superior Court for Sacramento County, 103 Cal.Rptr. 824, 27 Cal.App.3d. 1 (1972)]

**United States v. Greene (Oct. 4, 1973)**

"Federal Criminal Code and District of Columbia Criminal Code were intended to exist together, to mesh with each other and to be reciprocal in their operation."

"Congress, in legislating for District of Columbia, had all powers of a state legislature to legislate concerning homicide occurring within territorial limits and could go beyond federal maritime code."

"Congress was not limited in the D.C.Code specification for first degree felony murder to the felonies set forth in the Federal Code, as pertinent to murder within the special maritime and territorial jurisdiction of the United States, see 18 U.S.C. §1111. Certainly there would be no constitutional objection to a trial for first degree felony murder in, say, Virginia, if that commonwealth defined that offense to include homicides that were purposeful (though falling short of the premeditated) and were committed in the course of the felony of escape from lawful custody, including homicides, perhaps of bystanders, in the course of the felony of escaping from a Federal marshal. Congress, in legislating for the District of Columbia, had all the powers of the Virginia legislature to legislate concerning homicides occurring within the territorial limits of Virginia, and could go beyond the Federal maritime code."

[United States v. Greene, 489 F.2d. 1145 (1973)]

**Basso v. Utah Power and Light Company (Apr. 10, 1974)**

"A court lacking diversity jurisdiction cannot render judgment but must dismiss the cause at any stage of the proceedings in which it becomes apparent that jurisdiction is lacking. 28 U.S.C.A. §1332."

"Party invoking jurisdiction of court has duty to establish that federal jurisdiction does not exist. 28 U.S.C.A. §§1332, 1332(c)."

"There is a presumption against existence of federal jurisdiction; thus, party invoking federal court's jurisdiction bears the burden of proof. 28 U.S.C.A. §§1332, 1332(c); Fed.Rules Civ. Proc.rule 12(h)(3), 28 U.S.C.A."

"If parties do not raise question of lack of jurisdiction, it is the duty of the federal court to determine the matter sua sponte. 28 U.S.C.A. §1332)"

"Lack of jurisdiction cannot be waived and jurisdiction cannot be conferred upon a federal court by consent, inaction or stipulation. 28 U.S.C.A. §1332)"

"Although defendant did not present evidence to support dismissal for lack of jurisdiction, burden rested with plaintiffs to prove affirmatively that jurisdiction did exist. 28 U.S.C.A. §1332."

[Basso v. Utah Power and Light Company, 495 F.2d. 906 (1974)]

**Willis v. Dennis (Aug. 18, 1974)**

"The 1940 amendment to the Judicial Code giving District Courts original jurisdiction over controversies between citizens of different "states" by adding the words "or citizens of the District of Columbia" is unconstitutional as in violation of the constitutional provision that the judicial power of the United States shall extend to controversies between citizens of different "states", since the District is not a "state" within the meaning of the Constitution. Jud.Code, §24(1), 28 U.S.C.A. §41(1); U.S.C.A. Const. art. 3, §§1, 2)"

"It seems clear to me that the Constitution in granting to Congress the power to legislate "over the district" comprising the seat of the government, intended only to provide and make clear that any area ceded to the National Government, and thereby ceasing to become a part of any state, should be subject to the exclusive control of the national legislature. At the time of the formulation of the Constitutional lands within the nation were within one or the other of the several states and subject to the laws of the states. It was contemplated that it might become desirable that the seat of the Federal Government be established in an area over which no state had jurisdiction, but independent of them all."

"Conceding that Congress under Article 1, Sect. 8, has a complete and exclusive power of legislation over all matters within the District of Columbia, including the jurisdiction of the courts established within the District, this, as pointed out by Judge Coleman in the recent case of Feeley v. Sidney S. Schupper Interstate Hauling System, D.C.Dist. of Md., 72 F.Supp. 663, is quite a different thing from the power to enlarge the jurisdiction of all federal courts throughout the country beyond the limitations imposed by Article III.

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"We may all concede that it is an unusual situation that citizens of the District of Columbia are denied this privilege accorded to citizens of the several states, but the reason for it lies in the provisions of the Constitution. And even if we concede that it is unfortunate and should be remedied, it is clear that the only honest remedy is by amendment of the Constitution, and not by an evasive statute for which no underlying grant of power exists."  
 [Willis v. Dennis, 72 F.Supp. 853 (1974)]

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**Cornelius v. Minter (Oct. 21, 1974)**

"When a state accepts federal money for its public assistance program, it must do so with the realization that there are strings attached and that a subsequent failure to follow the applicable federal statutes and regulations may result in withdrawal of federal funds."  
 [Cornelius v. Minter, 395 F.Supp. 616 (1974)]

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**United States v. Red Feather (Apr. 7, 1975)**

"Intent of Congress in enacting statute prohibiting, except in certain cases, use of Army or Air Force as a posse comitatus or otherwise to enforce the laws was to prevent the direct active use of federal troops, one soldier or many, to execute laws; Congress did not intend to prevent the use of army or air force equipment in aid of execution of the laws. 18 U.S.C.S. §1385"  
 [United States v. Red Feather, 392 F.Supp. 916 (1975)]

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**United States v. McArthur (Oct. 17, 1975)**

"It is the nature of their primary mission that military personnel must be trained to operate under circumstances where the protection of constitutional freedoms cannot receive the consideration needed in order to assure their preservation, and the posse comitatus statute prohibiting use of any part of the Army or Air Force as a posse comitatus or otherwise to execute the laws, except in certain cases, is intended to meet the danger. 18 U.S.C.S. §§231(a)(3), 1385."

"Under the posse comitatus statute, which prohibits use of a part of the Army or Air Force to "execute" the law except in certain circumstances, the term "execute" implies an authoritarian' act."  
 [United States v. McArthur, 419 F.Supp. 186 (1975)]

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**Burnham v. Woods (May 17, 1977)**

"Once a state has elected to participate in AFDC program, it must comply with mandatory requirements established by the Social Security Act, 42 U.S.C.A. §§601 to 610, and implemented by regulations promulgated by the Department of Health, Education, and Welfare."  
 [Burnham v. Woods, 139 Cal.Rptr. 4, 70 Cal.App.3d. 667 (1977)]

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**CW&IC, §10600. Supervisory agency**

"It is hereby declared that provision for public social services in this code is a matter of statewide concern. The department is hereby designated as the single state agency with full power to supervise every phase of the administration of public social services, except health care services and medical assistance, for which grants-in-aid are received from the United States government or made by the state in order to secure full compliance with the applicable provisions of state and federal laws."  
 [California Welfare and Institutions Code, §10600]

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**CW&IC, §10609. Cooperation with federal government; services for children; approval of contracts**

"The department may act as the agent or representative of or cooperate with the federal government in any matters within the scope of the functions of the department, for the administration of federal funds granted to this state or for any other purpose in furtherance of those functions.

"The department may cooperate with the federal government, its agencies or instrumentalities, in establishing, extending, and strengthening services for the protection and care of homeless, dependent, and neglected children, and children in danger of becoming delinquent, and may receive and expend all funds made available for such purposes by the federal

government to the department, the state, a county, a district, a municipal corporation, or a political subdivision.

"Any contract or agreement entered into by the department with the federal government or any agency thereof for the expenditure of any funds in the exercise of any power granted to the department by this section shall be subject to approval by the State Department of Finance."

[California Welfare and Institutions Code, §10609]

**CW&IC, §10613. Agent of federal government**

"The functions of the department may include the administration and the supervision of the administration of public social services, except health care services and medical assistance, within this state as an agent of the federal government and acting as a service agency for the federal government in the field of social service and welfare."

[California Welfare and Institutions Code, §10613]

**CW&IC, §10748. Cooperation with federal government; approval of contracts**

"The department may act as the agent or representative of or cooperate with the federal government in any matters within the scope of the functions of the department under this division, for the administration of federal funds granted to this state or for any other purpose in furtherance of those functions.

"Any contract or agreement entered into by the department with the federal government or any agency thereof for the expenditure of any funds in the exercise of any power granted to the department by this section shall be subject to approval by the State Department of Finance."

[California Welfare and Institutions Code, §10748]

**CW&IC, §10750. Agent of federal government**

"The functions of the department may include the administration and the supervision of the administration of health care services and medical assistance within this state as an agent of the federal government and acting as a service agency for the federal government in the field of health care services and medical assistance."

[California Welfare and Institutions Code, §10750]

**Data Disc, Inc. v. Systems Tech. Assocs., Inc. (July 13, 1977)**

"Court of Appeals may not assume the truth of allegations in a pleading which are contradicted by affidavit."

"Where affidavits are directly conflicting on material points, it is not possible for the district judge to "weigh" the affidavits in order to resolve disputed issues; except in those rare cases where the facts alleged in an affidavit are inherently incredible, and can be so characterized solely by a reading of the affidavit, the district judge has no basis for a determination of credibility."

"Party seeking to invoke the jurisdiction of the federal court has the burden of establishing that jurisdiction exists; yet, the quantum of proof required to meet that burden may vary, depending on the nature of the proceeding and the type of evidence which the plaintiff is permitted to present."

"A defendant may move, prior to trial, to dismiss the complaint for lack of personal jurisdiction, and because there is no statutory method for resolving this issue, the mode of its determination is left to the trial court."

"If the court determines that it will receive only affidavits or affidavits plus discovery materials, these very limitations dictate that a plaintiff must make only a prima facie showing of jurisdictional facts through the submitted materials in order to avoid a defendant's motion to dismiss; any greater burden, such as proof by a preponderance of the evidence, would permit a defendant to obtain a dismissal simply by controverting the facts established by a plaintiff through his own affidavits and supporting materials."

"If a plaintiff's proof is limited to written materials, it is necessary only for the materials to demonstrate facts which support a finding of jurisdiction in order to avoid a motion to dismiss; but if plaintiff makes such a showing, it does not necessarily mean that he may then go to trial on the merits; if the pleading and other submitted materials raise issues of credibility or disputed question of fact with regard to jurisdiction, the district court has the discretion to take evidence at a preliminary hearing in order to resolve the contested issues, and in this situation, where plaintiff is put to his full proof, he must establish the jurisdictional facts by a preponderance of the evidence."

"At any time when the plaintiff avoids a preliminary motion to dismiss by making a prima facie showing of jurisdictional facts, he must still prove the jurisdictional facts at trial by a preponderance of the evidence."

"In determining issues of due process under United States Constitution, federal Court of Appeals is not bound by state

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cases, although they may be considered persuasive authority."

"If a nonresident defendant's activities within a state are "substantial" or "continuous and systematic," there is a sufficient relationship between the defendant and the state to support jurisdiction even if the cause of action is unrelated to the defendant's forum activities."

"The degree to which a defendant interjects himself into a state affects the fairness of subjecting him to jurisdiction."

"Where a plaintiff raises two separate causes of action, the court must have in personam jurisdiction over the defendant with respect to each claim;"

"Data Disc is a Delaware corporation with its principal place of business in California. STA is a Florida corporation with its principal place of business in Virginia."

"The key issue here is whether the claim arose in the Northern District, because Data Disc, as a Delaware corporation, is not a resident there for purposes of the venue statute. [Cite omitted.] In this circuit, we have determined that, for purposes of 28 U.S.C. §1391(a), a claim arises in any district with which it has "significant contacts."

[Data Disc, Inc. v. Systems Tech. Assocs., Inc., 557 F.2d. 1280 (9th Cir. 1977)]

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#### **State of Arizona v. Manypenny (Sept. 28, 1977)**

"General rule is that a state has complete jurisdiction over land within its exterior boundaries."

"United States has exclusive jurisdiction over land "purchased" by the United States by consent of Legislature of state in which land is located for erection of forts, magazines, arsenals, dockyards or other needful buildings."

"An exception to general rule that state has complete jurisdiction over land within its exterior boundaries is recognized when a state affirms United States' retention of exclusive jurisdiction at time state is admitted into union."

"When there is concurrent jurisdiction, the State may use its own criminal statutes to prosecute."

"If a person is authorized to do an act by the law of the United States, and if he does no more than what is necessary and proper for him to do, he is innocent of any crime against the laws of any state."

[State of Arizona v. Manypenny, 445 F.Supp. 1123 (1977)]

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#### **Pratt v. Kelly (Oct. 20, 1978)**

"Ownership of land by the United States does not imply a transfer of either total or partial jurisdiction except so far as necessary for the United States to accomplish the purposes for which the land was transferred."

[Pratt v. Kelly, 585 F.2d. 692 (1978)]

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#### **Chapalain Compagnie v. Standard Oil Co. (Indiana) (Dec. 7, 1978)**

"A suit arises under the Constitution, laws or treaties of the United States where it actually and substantially involves dispute or controversy concerning the validity or interpretation of such federal issues, the determination of which will have a direct impact on plaintiff's success or failure."

"Body of law which pertains to treaties to which the United States is not a signatory and other issues of international dimension may be classified as federal common law, thus constituting a "law of the United States" for purposes of federal question jurisdiction."

"Question of whether a federal issue is present is not, in and of itself, a federal issue for purposes of federal question jurisdiction."

[Chapalain Compagnie v. Standard Oil Co. (Indiana), 467 F.Supp. 181 (1978)]

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#### **State v. Nelson (Dec. 4, 1979)**

"Legislative purpose of Posse Comitatus Act is to preclude direct active use of federal troops in aid of execution of civil laws, but passive activities of military authorities which incidentally aid civilian law enforcement are not precluded. 18 U.S.C.S. §1385."

[State v. Nelson, 298 N.C. 573; 260 S.E.2d. 629 (1979)]

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#### **People v. Burden (Dec. 6, 1981)**

"As is evident the Posse Comitatus Act was designed to prohibit use of military personnel as agents for enforcement of civil law."

[People v. Burden, 94 Mich.App., 209, 288 N.W.2d. 392 (1979). [Reversed on other grounds 411 Mich. 56; 303 N.W.2d.

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444 (1981).]]

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**Lewis v. United States (Apr. 19, 1982)**

"Federal reserve banks are not federal instrumentalities for purposes of a Federal Tort Claims Act, but are independent, privately owned and locally controlled corporations in light of fact that direct supervision and control of each bank is exercised by board of directors, federal reserve banks, though heavily regulated, are locally controlled by their member banks, banks are listed neither as "wholly owned" government corporations nor as "mixed ownership" corporations; federal reserve banks receive no appropriated funds from Congress and the banks are empowered to sue and be sued in their own names."

"The Reserve Banks are deemed to be federal instrumentalities for purposes of immunity from state taxation."  
[Lewis v. United States, 680 F.2d. 1239 (1982)]

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**State of Texas v. United States (Apr. 23, 1984)**

"Court cannot find that federal law preempts state regulation of activity historically regulated by the states, unless Congress has given "clear statement" of its intent to preempt."

"Purely intrastate activity may be regulated by Congress as long as cumulative effect of activity substantially affects interstate commerce, and it is not true that Congress can regulate intrastate commerce only to protect interstate commerce from unreasonable burdens."

"Where Congress enacts statute under commerce clause, it exercises power that is complete in itself, may be exercised to its utmost extent and acknowledges no limitations other than are prescribed in Constitution."

"Power of Congress over interstate commerce can neither be enlarged nor diminished by exercise or nonexercise of state power."

"Source of judicially enforceable rights of state sovereignty is not so much text of Tenth Amendment" as it is structural assumption of Constitution as a whole that states will remain separate and meaningful decision-making, functioning governmental entities."

"Federal commerce power legislation that treats states in manner inconsistent with assumption of Constitution as a whole that states will remain separate and meaningful decision-making, functioning governmental entities is constitutionally suspect."

"Congress may not act in such manner as to impair states' integrity or their ability to function effectively in federal system. U.S.C.A. Const. Amend. 10."

"Acts that regulate "states as states" are inconsistent with constitutional assumption of federalism, because such acts force states to administer congressional policy judgments and, in effect, convert state agencies into tolls of federal policy and thereby threaten independence of states; suspect characteristic of such acts is that states are compelled to carry out federal policy."

"Acts that regulate "states as states" do not violate constitutional rights of state sovereignty if such acts are minimally intrusive."

"Federal legislation that preempts state regulation of private activity does not regulate states as states."

"Since Staggers Act does not compel states to administer federal law, in that any state may choose not to regulate, such Act does not regulate states as states and thus does not offend

*National League of Cities.*"

"It may be appropriate for Court of Appeals to address issue raised for first time on appeal if such issue concerns pure question of law or if proper resolution of issue is beyond doubt."

[State of Texas v. United States, 730 F.2d. 339 (1984)]

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**Gubiensio-Ortiz v. Kanahale (Aug. 23, 1988)**

"Statute establishing Federal Sentencing Commission violated separation of powers doctrine in that it authorizer federal judges, sitting as commissioners, to promulgate substantive regulations in form of mandatory sentencing guidelines; Commission's functions were political in nature, requiring substantive, policy decisions that were intended to affect all future federal criminal defendants."

"The district court held that the placement of the Sentencing Commission in the judicial branch violated the separation of powers doctrine. The majority agrees with this conclusion. To consider this challenge a court must decide whether that placement created a genuine threat to the ability of any branch of the government to carry out its constitutionally assigned duties."

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"It is "a general rule inherent in the American constitutional system, that, unless otherwise expressly provided or incidental to the powers conferred, the legislature cannot exercise either executive or judicial power; the executive cannot exercise either legislative or judicial power; the judiciary cannot exercise either executive or legislative power."

*Springer v. Government of the Philippine Islands*, 277 U.S. 189, 201-02, 48 S.Ct. 480, 482, 72 L.Ed. 845 (1928). This does not mean, of course, that the three branches of government are hermetically sealed. *Buckley v. Valeo*, 424 U.S. 1, 121, 96 S.Ct. 612, 683, 46 L.Ed.2d. 659 (1976). The declared purpose of separating and dividing the powers of government was to "diffus[e] power the better to secure liberty." *Youngstown Sheet & Tube Co. v. Sawyer*, 343, U.S. 579, 635, 72 S.Ct. 863, 870, 96 L.Ed. 1153 (1952) (Jackson, J., concurring) (echoing the famous warning of Montesquieu in *Esprit de Lois*, quoted by James Madison in *The Federalist* No. 47, that "'there can be no liberty, where the legislative and executive powers are united in the same person, or body of magistrates'...." [Brackets original.] (*The Federalist* No. 47, at 325 (J. Cooke ed. 1961))).

"I believe that the essential question for consideration here is whether Congress' decision to assign the Commission as an independent agency within the judicial branch compromises the constitutionally mandated functions, prerogatives, and roles of the legislature, the executive, or the judiciary itself. We should be mindful, of course, that congressional enactments are presumed constitutional. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 4 L.Ed. 579 (1819). In addition, the Constitution itself affords the Congress the power to make the necessary allocation of authority needed to effectuate the powers of the federal government. [ \* \* \* ] (Congress has power to prescribe rules of evidence in federal courts)...(Congress may legislate form and effect of executions on judgments recovered in federal courts)."

.. Congress may not derogate another constitutional provision that demands a particular allocation of power. Such provisions include grants of individual liberties that may not be disturbed by legislation, and those that establish the mechanisms for making law (including prohibitions on certain forms of legislation)."

[*Gubiensio-Ortiz v. Kanahele*, 857 F.2d. 1245 (9th Cir. 1988)]

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### **California Code of Civil Procedure, §1297.11**

"This title applies to international commercial arbitration and conciliation, subject to any agreement which is in force between the United States and any other state or states."

[California Code of Civil Procedure, §1297.11. (1988)]

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### **Davis v. Warden, Joliet Correctional Institution at Stateville (Feb. 1, 1989)**

"'District and state' language of Sixth Amendment places some parameters on legislature's power to draw jurors, but does not per se prevent legislature from delineating smaller area from which to draw jury."

[*Davis v. Warden, Joliet Correctional Institution at Stateville*, 867 F.2d. 1003 (7th Cir. 1989)]

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### **Dalton v. R & W Marine, Inc. (Apr. 13, 1990)**

In order for court to assert jurisdiction over nonresident defendant, the defendant must be amenable to service of process under the forum state's jurisdictional long-arm statute and the exercise of jurisdiction under the statute must comport with norms imposed by the due process clause of the Fourteenth Amendment."

"Because Louisiana long-arm statute has been interpreted to permit service of process to the extent permitted by the due process clause, statutory and constitutional inquiries with respect to long-arm jurisdiction merge."

"Focus of inquiry as to whether exercise of jurisdiction would offend traditional notions of fair play and substantial justice is whether the nonresident defendant has purposely availed himself of the benefits and protections of the forum state's laws so as reasonably to anticipate being haled into court there."

"When cause of action arises out of a defendant's purposeful contacts with the forum, minimum contacts are found to exist and the court may exercise its "specific jurisdiction."

"Even a single, substantial act directed toward the forum can support specific jurisdiction."

"Where cause of action does not arise out of a foreign defendant's purposeful contacts with the forum, due process requires that the defendant have engaged in continuous and systematic contacts with the forum to support the exercise of "General jurisdiction" over that defendant."

"Fact that corporation entered into bareboat charters of its boats to its Louisiana subsidiaries, yielding some 12.9% of its total revenue, engaged in advertising when it reached Louisiana, and had purchased vessels at marshals' sales within the state was not sufficient to permit court in Louisiana to exercise general jurisdiction over the corporation."

"Fact that corporation sold fuel to Louisiana purchasers and that employee who brought Jones Act action against it had, on at least one occasion, traveled into Louisiana territorial waters on a boat operated by it was insufficient to permit



court to exercise general jurisdiction over it."

"Parent was not the alter ego of its subsidiaries for purposes of determining long-arm jurisdiction, even though it owned 100% of its subsidiaries and remained responsible for general policy, offered benefit plans to its subsidiaries' employees, and had its subsidiaries funnel the revenues into centralized bank accounts and file a consolidated federal tax return, where it observed corporate formalities, made its subsidiaries responsible for daily operations, including personnel decisions, and allowed each subsidiary to keep its records and accounts in separate books and file its own state tax return." [*Dalton v. R & W Marine, Inc.*, 897 F.2d. 1359 (5th Cir. 1990)]

#### **4 U.S.C.S. §105, n 1**

"Under Buck Act, 4 U.S.C.S. §105, authority to tax in federal areas is explicitly granted to states...."  
[4 U.S.C.S. §105, n 1]

#### **4 U.S.C.S. §105, n 2**

"Buck Act (4 U.S.C.S. §§105-110) was enacted to bar United States, among other things, from asserting immunity from state sales and use taxes on ground that Federal Government had exclusive jurisdiction over area where transaction occurred." [Cites omitted.]

"Purpose of Buck Act [4 U.S.C.S. §§105 et seq.] was to equalize liability for income tax between officers and employees of United States who reside within federal areas and those officers and employees, otherwise identically situated, who reside outside federal areas who had become liable for state tax by passage of Public Salary Tax Act of 1939 [Act of April 12, 1939, Ch 59, 53 Stat 574]." [Brackets original; Cites omitted.]

"Buck Act (4 U.S.C.S. §§105 et seq.) was intended to eliminate disparity between federal officers residing on federal reservation and federal officers residing outside reservation." [Cites omitted.]

"Congress intended by Buck Act (4 U.S.C.S. §§105-110) to recede to state sufficient sovereignty over federal areas within its territorial limits to enable state to levy and collect taxes named in Act." [Cites omitted.]

[4 U.S.C.S. §105, n 2]

#### **New York v. United States (June 19, 1992)**

"The Federal Constitution confers upon Congress the power to regulate individuals, not states."

"These cases implicate one of our Nation's newest problems of public policy and perhaps our oldest question of constitutional law. ... The constitutional question is as old as the Constitution: It consists of discerning the proper division of authority between the Federal Government and the States."

"In 1788, in the course of explaining to the citizens of New York why the recently drafted Constitution provided for federal courts, Alexander Hamilton observed: "The erection of a new government, whatever care or wisdom may distinguish the work, cannot fail to originate questions of intricacy and nicety; and these may, in a particular manner, be expected to flow from the the [sic] establishment of a constitution founded upon the total or partial incorporation of a number of distinct sovereignties." The Federalist No. 82, p. 491 (C. Rossiter ed. 1961). Hamilton's prediction has proved quite accurate.

While no one disputes the proposition that "[t]he Constitution created a Federal Government of limited powers," *Gregory v. Ashcroft*, 501 U.S. 452, 457, 111 S.Ct. 2395, 2399, 115 L.Ed.2d. 410 (1991); and while the Tenth Amendment" makes explicit that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people"; the task of ascertaining the constitutional line between federal and state power has given rise to many of the Court's most difficult and celebrated cases. At least as far back as *Martin v. Hunter's Lessee*, 1 Wheat. 304, 324, 4 L.Ed. 97 (1816), the Court has resolved questions "of great importance and delicacy" in determining whether particular sovereign powers have been granted by the Constitution to the Federal Government or have been retained by the States."

"It is in this sense that the Tenth Amendment" "states but a truism that all is retained which has not been surrendered." *United States v. Darby*, 312 U.S. 100, 124, 61 S.Ct. 451, 462, 85 L.Ed. 609 (1941). As Justice Story put it, "[t]his amendment is a mere affirmation of what, upon any just reasoning, is a necessary rule of interpreting the constitution. Being an instrument of limited and enumerated powers, it follows irresistibly, that what is not conferred, is withheld, and belongs to the state authorities."" 3 J. Story, Commentaries on the Constitution of the United States 752 (1833). This has been the Court's consistent understanding: "The States unquestionably do retain a significant measure of sovereign authority ... to the extent that the Constitution has not divested them of their original powers and transferred those powers to the Federal Government." *Garcia v. San Antonio Metropolitan Transit Authority*, *supra*, 469 U.S., at 549, 105 S.Ct., at

1017 (internal quotation marks omitted).

"Congress exercises its conferred powers subject to the limitations contained in the Constitution. Thus, for example, under the Commerce Clause Congress may regulate publishers engaged in interstate commerce, but Congress is constrained in the exercise of that power by the First Amendment. The Tenth Amendment" likewise restrains the power of Congress, but this limit is not derived from the text of the Tenth Amendment itself, which, as we have discussed, is essentially a tautology. Instead, the Tenth Amendment confirms that the power of the Federal Government is subject to limits that may, in a given instance, reserve power to the States. The Tenth Amendment thus directs us to determine, as in this case, whether an incident of state sovereignty is protected by a limitation on an Article I power."

"As an initial matter, Congress may not simply "commandeer[r] the legislative process of the States by directly compelling them to enact and enforce a federal regulatory program." *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 288, 101 S.Ct. 2352, 2366, 69 L.Ed.2d. 1 (1981). In *Hodel*, the Court upheld the Surface Mining Control and Reclamation Act of 1977 precisely because it did *not* "commandeer" the States into regulating mining. The Court found that "the States are not compelled to enforce the steep-slope standards, to expend any state funds, or to participate in the federal regulatory program in any manner whatsoever. If a State does not wish to submit a proposed permanent program that complies with the Act and implementing regulations, the full regulatory burden will be borne by the Federal Government."

"The Court reached the same conclusion the following year in *FERC v. Mississippi*, *supra*. At issue in *FERC* was the Public Utility Regulatory Policies Act of 1978, a federal statute encouraging the States in various ways to develop programs to combat the Nation's energy crisis. We observed that "this Court never has sanctioned explicitly a federal command to the States to promulgate and enforce laws and regulations." *Id.*, 456 U.S., at 761-762, 102 S.Ct., at 2139. As in *Hodel*, the Court upheld the statute at issue because it did not view the statute as such a command."

"These statements in *FERC* and *Hodel* were not innovations. While Congress has substantial powers to govern the Nation directly, including in areas of intimate concern to the States, the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions. See *Coyle v. Smith*, 221 U.S. 559, 565, 31 S.Ct. 688, 689, 55 L.Ed. 853 (1911). The Court has been explicit about this distinction. "Both the States and the United States existed before the Constitution. The people, through that instrument, established a more perfect union by substitution a national government acting, with ample power, *directly upon the citizens*, instead of the Confederate government, which acted with powers, greatly restricted, only upon the States." *Lane County v. Oregon*, 7 Wall., at 76 (emphasis added). The Court has made the same point with more rhetorical flourish, although perhaps less precision, on a number of occasions. [Quotes and cites omitted.]"

"In providing for a stronger central government, therefore, the Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States. As we have seen, the Court has consistently respected this choice. We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts. [Cites omitted.] The allocation of power contained in the Commerce Clause, for example, authorizes Congress to regulate interstate commerce directly; it does not authorize Congress to regulate state governments' regulation of interstate commerce."

"This is not to say that Congress lacks the ability to encourage a State to regulate in a particular way, or that Congress may not hold out incentives to the States as a method of influencing a State's policy choices. Our cases have identified a variety of methods, short of outright coercion, by which Congress may urge a State to adopt a legislative program consistent with federal interests. Two of these methods are of particular relevance here.

"First, under Congress' spending power, "Congress may attach conditions on the receipt of federal funds." *South Dakota v. Dole*, 483 U.S., at 206, 107 S.Ct., at 2795. Such conditions must (among other requirements) bear some relationship to the purpose of the federal spending, *id.*, at 207-208, and n. 3, 107 S.Ct., at 2796, and n. 3; otherwise, of course, the spending power could render academic the Constitution's other grants and limits of federal authority."

"Second, where Congress has authority to regulate private activity under the Commerce Clause, we have recognized Congress' power to offer States the choice of regulating that activity according to federal standards or having state law pre-empted by federal regulation. [Cites omitted.] This arrangement, which has been termed "a program of cooperative federalism," *Hodel, supra*, 452 U.S., at 289, 101 S.Ct., at 2366, is replicated in numerous federal statutory schemes."

"By either of these methods, as by any other permissible method of encouraging a State to conform to federal policy choices, the residents of the State retain the ultimate decision as to whether or not the State will comply. If a State's citizens view federal policy as sufficiently contrary to local interests, they may elect to decline a federal grant. If state residents would prefer their government to devote its attention and resources to problems other than those deemed important by Congress, they may choose to have a Federal Government rather than the State bear the expense of a federally mandated regulatory program, and they may continue to supplement that program to the extent state law is not pre-empted. Where Congress encourages state regulation rather than compelling it, state governments remain responsive to the local electorate's preferences; state officials remain accountable to the people.

"By contrast, where the Federal Government compels States to regulate, the accountability of both state and federal

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officials is diminished. If the citizens of New York, for example, do not consider that making provision for the disposal of radioactive waste is in their best interest, they may elect state officials who share their view. That view can always be pre-empted under the Supremacy Clause if it is contrary to the national view, but in such a case it is the Federal Government that makes the decision in full view of the public, and it will be federal officials that suffer the consequences if the decision turns out to be detrimental or unpopular. But where the Federal Government directs the States to regulate, it may be state officials who will bear the brunt of public disapproval, while the federal officials who devised the regulatory program may remain insulated from the electoral ramifications of their decision. Accountability is thus diminished when, due to federal coercion, elected state officials cannot regulate in accordance with the views of the local electorate in matter not pre-empted by federal regulation."

"This is the choice presented to nonsited States by the Act's second set of incentives: States may either regulate the disposal of radioactive waste according to federal standards by attaining local or regional self-sufficiency, or their residents who produce radioactive waste will be subject to federal regulation authorizing' sited States and regions to deny access to their disposal sites. The affected States are not compelled by Congress to regulate, because any burden caused by a State's refusal to regulate will fall on those who generate waste and find no outlet for its disposal, rather than on the State as a sovereign. A State whose citizens do not wish it to attain the Act's milestones may devote its attention and its resources to issues its citizens deem more worthy; the choice remains at all times with the residents of the State, not with Congress. The State need not expend any funds, or participate in any federal program, if local residents do not view such expenditures or participation as worthwhile. Cf. *Hodel, supra*, 452 U.S., at 288, 101 S.Ct., at 2366. Nor must the State abandon the field if it does not accede to federal direction; the State may continue to regulate the generation and disposal of radioactive waste in any manner its citizens see fit."

"Unlike the first two sets of incentives, the take title incentive does not represent the conditional exercise of any congressional power enumerated in the Constitution. ... A choice between two unconstitutionally coercive regulatory techniques is no choice at all. Either way, "the Act commandeers the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program," [cite omitted] an outcome that has never been understood to lie within the authority conferred upon Congress by the Constitution."

"No matter how powerful the federal interest involved, the Constitution simply does not give Congress the authority to require the States to regulate. The Constitution instead gives Congress the authority to regulate matters directly and to pre-empt contrary state regulation. Where a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly; it may not conscript state governments as its agents."

"How can a federal statute be found an unconstitutional infringement of state sovereignty when state officials consented to the statute's enactment?"

"The answer follows from an understanding of the fundamental purpose served by our Government's federal structure. The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, **the Constitution divides authority between federal and state governments for the protection of individuals.** State sovereignty is not just an end in itself: "Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power." *Coleman v. Thompson*, 501 U.S. 722, 759, 111 S.Ct. 2546, 2570, 115 L.Ed.2d. 640 (1991) (BLACKMUN, J., dissenting). "Just as the separation and independence of the coordinate branches of the Federal Government serves to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." *Gregory v. Ashcroft*, 501 U.S., at 458, 111 S.Ct., at 2400 (1991). See *The Federalist* No. 51, p. 323 (C. Rossiter ed. 1961).

"Where Congress exceeds its authority relative to the States, therefore, the departure from the constitutional plan cannot be ratified by the "consent" of state officials. ... The constitutional authority of Congress cannot be expanded by the "consent" of the governmental unit whose domain is thereby narrowed, whether that unit is the Executive Branch or the States.

**"State officials thus cannot consent to the enlargement of the powers of Congress beyond those enumerated in the Constitution."**

"Some truths are so basic that, like the air around us, they are easily overlooked. Much of the Constitution is concerned with setting forth the form of our government, and the courts have traditionally invalidated measures deviating from that form. The result may appear "formalistic" in a given case to partisans of the measure at issue, because such measures are typically the product of the era's perceived necessity. But the Constitution protects us from our own best intentions: It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day."

"States are not mere political subdivisions of the United States. State governments are neither regional offices nor administrative agencies of the Federal Government. The positions occupied by state officials appear nowhere on the Federal Government's most detailed organizational chart. The Constitution instead "leaves to the several States a residuary and inviolable sovereignty," *The Federalist* No. 39, p. 245 (C. Rossiter ed. 1961), reserved explicitly to the

States by the Tenth Amendment." [Brackets original; bold added.]  
 [New York v. United States, 505 U.S. 142, 112 S.Ct. 2408, 120 L.Ed.2d. 120 (1992)]

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### **California State Lands Commission (Jan. 8, 1996)**

"I am writing in response to your letter dated December 26, 1996 [sic] requesting a listing of the degree of federal legislative jurisdiction over 11 properties cited in your letter. The Commission's staff has reviewed the San Bernardino County Tax Assessors Parcel Index to determine the current ownership of the parcels. We were unable to identify some of the addresses provided because the Assessor does not list the address provided. Of the addresses we were able to locate, it appears from the records that the registered owners are either private parties or municipal government entities. **Because these parcels are not federally owned the United States does not have any legislative jurisdiction.** A summary of our findings appears on the chart attached to this letter." [Bold added.]  
 [California State Lands Commission letter from James R. Frey, Staff Counsel]

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### **74 American Jurisprudence 2d, Time §3**

"Although the declared intent of Congress was to supersede all state and local legislation providing for advances in time or changeover dates different from those specified in the Act, a state may by law exempt itself from the provisions for advancement of time, if such law provides that the entire state shall observe the standard time otherwise applicable. It has been held by a state court, apparently because of the exemption provisions built into the Act, that there is not just one changeover date for daylight saving time. Unless and until a state exempts itself from the operation of the Act, however, the Uniform Time Act must be followed. Furthermore, the Department of Transportation is under a positive duty to enforce the Act; it cannot arbitrarily and capriciously refrain from enforcement. "  
 [74 American Jurisprudence 2d, Time §3]

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## **2.5 Comity**

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### **Black's Law Dictionary: Comity**

"Comity Courtesy; complaisance; respect; a willingness to grant a privilege, not as a matter of right, but out of deference and good will. Recognition that one sovereignty allows within its territory to the legislative, executive, or judicial act of another sovereignty, having due regard to rights of its own citizens. *Nowell v. Nowell*, Tex.Civ.App., 408 S.W.2d. 550, 553. In general, principle of "comity" is that courts of one state or jurisdiction will give effect to laws and judicial decisions of another state or jurisdiction, not as a matter of obligation but out of deference and mutual respect. *Brown v. Babbitt Ford.*, 117 Ariz. 192, 571 P.2d. 689, 695. *See also* Full faith and credit clause."

"*Comity of nations.* The recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws."

"*Judicial comity.* The principle in accordance with which the courts of one state or jurisdiction will give effect to the laws and judicial decisions of another, not as a matter of obligation, but out of deference and respect."  
 [Black's Law Dictionary, Sixth Edition, 1990, p. 267]

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### **Webster's Third New International Dictionary: Comity**

"**Comity.** [pronunciation symbols omitted] 1: kindly courteous behavior: friendly civility: mutual consideration between or as if between equals . . . a: courteous and friendly agreement and interaction between nations b: the informal and nonmandatory courtesy sometimes referred to as a set of rules to which the courts of one sovereignty often defer in determining questions (as of jurisdiction or applicable precedent) where the laws or interests of another sovereignty are involved"

"**Comity of nations or comity of states** 1 *law:* the comity nations give effect to within their own territory 2: the friendly code whereby nations get along together".

[Webster's Third New International Dictionary (unabridged) 1986, p. 455]

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## **15 C.J.S., Comity**

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### **Sovereignty and Freedom Points and Authorities**

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"Comity. The word "comity" is defined generally as meaning complaisance; courtesy; respect; the granting of a privilege, not of right, but of good will; concession or good will; a sense of mutual regard founded on identity of position and similarity of institutions; courtesy between equals, or friendly civility; judicial courtesy between the courts undertaking to deal with the same matter; reciprocity; a disposition to accommodate."

""Comity" as a doctrine or principle governing the relations between two nations or states, or the courts or other governmental departments thereof, is defined or discussed in Conflict of Laws §§3, 4, and Courts §545."  
[15 Corpus Juris Secundum, Comity]

### **81A C.J.S., §29, Sovereignty**

"Generally, the states of the Union sustain toward each other the relationship of independent sovereigns or independent foreign states, except in so far as the United States is paramount as the dominating government, and in so far as the states are bound to recognize the fraternity among sovereignties established by the federal Constitution, as by the provision requiring each state to give full faith and credit to the public acts, records, and judicial proceedings of the other states, as discussed infra §30.

"The principles of international comity apply as between the states, and the paramount duty of a state to promote the welfare of its own citizens is not incompatible with a willingness on the part of a state in the interest of amicable interstate relations to ignore boundaries, and to give effect to private rights and obligations arising along and across a common boundary line when not opposed to considerations of public policy or manifestly injurious to its own citizens."

"However, comity between states, as far as rights, privileges, and immunities of each other's citizens not guaranteed by the federal Constitution are concerned, must yield to the laws and policy of the state in which it is invoked. In other words, comity is not permitted to operate within a state in opposition to its settled policy as expressed in its statutes, or so as to override the express provisions of its legislative enactments. It has been said that reciprocal legislation is a branch of interest comity, and owing to its regulatory power over well-defined activities of its citizens, a state can make the extent of limitations and restrictions imposed upon such an activity dependent upon the attitude and actions of sister states with regard to analogous activities of their citizens."

[81A Corpus Juris Secundum, §29, Sovereignty]

### **Constitution for the United States of America, Article XI (Sept. 17, 1787)**

"The Judicial power of the United States shall not be construed' to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."  
[Constitution for the United States of America, Article XI]

### **Chicago, B. & Q. R. Co. v. Gardiner (Mar. 17, 1897)**

"As was said by Chief Justice Taney in Bank v. Earle, 13 Pet. 519: "The comity thus extended to other nations is no impeachment of sovereignty. It is a voluntary act of the nation by which it is offered, and it is inadmissible when contrary to its policy or prejudicial to its interests." To the same effect is the language of Story,--that no state will enforce a foreign law if it be "repugnant to its policy or prejudicial to its interests."

[Chicago, B. & Q. R. Co. v. Gardiner, 51 Neb. 70; 70 N.W. 508 (1897)]

### **Stowe v. Belfast Sav. Bank (Nov. 23, 1897)**

"The courts of the United States are not required by Rev.St. §721, to follow state decisions made on grounds of public policy or comity merely; and a single decision of the supreme court of a state, made in 1828, holding that, as to property situated in that state, a general assignment made by a debtor in another state would not be allowed to defeat an attachment of such property by one of its own citizens, which decision has never been repeated, will not be accepted as binding on a federal court in the state."

"Comity concedes and allows, but does not withhold or prohibit. It yields as a favor what cannot be claimed as a right. When it is the basis of judicial determination, the court extending the comity out of favor and good will extends to foreign laws an effect they would not otherwise have. It is not an exercise of comity to administer the local law, though it agrees with the foreign law."

[Stowe v. Belfast Sav. Bank, 92 F. 90 (1897)]

### **Mast, Foos & Co. v. Stover Mfg. Co. (Apr. 23, 1900)**

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"A circuit court of appeals is not bound to affirm an order of a circuit court which, upon the ground of comity, followed the decision of the circuit court of appeals of another circuit with reference to the validity and scope of a patent, but may investigate the matter of the validity and scope of the patent for itself, since comity is not a rule of law, but simply a rule of expediency."

"The Supreme Court of the United States will not reverse a decision of a lower court, if correct upon the merits, simply because the lower court may not have sufficiently recognized the doctrine of comity."

"Comity is not a rule of law, but one of practice, convenience, and expediency. It is something more than mere courtesy, which implies only deference to the opinion of others, since it has a substantial value in securing uniformity of decision, and discouraging repeated litigation of the same question. But its obligation is not imperative. If it were, the indiscreet action of one court might become a precedent, increasing in weight with each successive adjudication, until the whole country was tied down to an unsound principle. Comity persuades; but it does not command. It declares, not how a case shall be decided, but how it may with propriety be decided. It recognizes the fact that the primary duty of every court is to dispose of cases according to the law and the facts; in a word, to decide them right. In doing so, the judge is bound to determine them according to his own convictions. If he be clear in those convictions, he should follow them. It is only in cases where, in his own mind, there may be a doubt as to the soundness of his views that comity comes in play and suggests a uniformity of ruling to avoid confusion, until a higher court has settled the law. It demands of no one that he shall abdicate his individual judgment, but only that deference shall be paid to the judgments of other co-ordinate tribunals. Clearly it applies only to questions which have been actually decided, and which arose under the same facts." [Mast, *Foos & Co. v. Stover Mfg. Co.*, 177 U.S. 485, 20 S.Ct. 708, 44 L.Ed. 856 (1900)]

### **Conklin v. United States Shipbuilding Co. (July 22, 1903)**

"The rule of so-called comity has little influence with me [Circuit Judge Putnam]. The best late writer on international law--Dicey--says very truly: "The term `comity, as already pointed out, is open to the charge of implying that the judge, when he applies foreign law to a particular case, does so as a matter of caprice or favor. It is rather a scapegoat, an opportunity of escape for the court. I know of few propositions that now come before the courts which are not governed by law, and in this case I must be governed by the law as practiced, and by the precedents, and not by any mere matter of comity."

[*Conklin v. United States Shipbuilding Co.*, 123 F. 913 (1903)]

### **People v. Martin (June 9, 1903)**

"The comity thus extended to other nations is no impeachment of sovereignty. It is the voluntary act of the nation by which it is offered, and is inadmissible when contrary to its policy or prejudicial to its interests. But it contributes so largely to promote justice between individuals and to produce a friendly intercourse between the sovereignties to which they belong, that courts of justice have continually acted upon it as part of the voluntary law of nations. *Bank of Augusta v. Earle*, 13 Pet. 519, 10 L.Ed. 274."

[*People v. Martin*, 175 N.Y. 315; 67 N.E. 589 (1903)]

### **Baltimore & Ohio Railroad Co. v. Chambers (Oct. 31, 1905)**

"Judge Story, in his treatise on the Conflict of Laws, lays down, as the basis upon which all reasonings on the law of comity must necessarily rest, the following maxims: First, "that **every nation possesses an exclusive sovereignty and jurisdiction within its own territory**"; secondly, "that no state or nation can by its laws directly affect or bind property out of its own territory, or bind persons not resident therein, whether they are natural born subjects or others." The learned judge then adds: "From these two maxims or propositions there follows a third, and that is that whatever force and obligation the laws of one country have in another depend solely upon the laws and municipal regulation of the latter; that is to say, upon its own proper jurisdiction and polity, and upon its own express or tacit consent." Story on Conflict of Laws, §23." [Bold added.]

[*Baltimore & Ohio Railroad Co. v. Chambers*, 73 Ohio.St. 16; 76 N.E. 91; 11 L.R.A., N.S., 1012 (1905)]

### **Prentis v. Atlantic Coast Line Co. (Nov. 30, 1908)**

"A Federal circuit court, on principles of comity, should not entertain a suit by which injunctive relief is sought against railway passenger rates as fixed by the Virginia State Corporation Commission, in advance of the appeal to the highest state court from the order fixing the rates, which is given by the state Constitution as of right to any aggrieved

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party."

[Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 29 S.Ct. 67 (1908)]

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**Torrey v. Hancock (Nov. 26, 1910)**

"In Mast, Foos & Co. v. Stover Mfg. Co., 177 U.S. 485, 20 S.Ct. 708, 44 L.Ed. 856,...Mr. Justice Brown, speaking for the Supreme Court, said:

*""Comity is not a rule of law, but one of practice and convenience and expediency. It is something more than mere courtesy, which implies only deference to the opinion of others, since it has a substantial value in securing uniformity of decisions and discouraging repeated litigation of the same question. But **its obligation is not imperative. If it were, the indiscreet action of one court might become a precedent, increasing in weight with each successive adjudication, until the whole country was tied down to an unsound principle.** Comity persuades: but it does not command. \* \* \* It demands of no one that he shall abdicate his individual judgment, but only that deference shall be paid to the judgments of other co-ordinate tribunals. Clearly **it applies only to questions which have been actually decided, and which arose under the same facts.** \* \* \* **Comity, however, has no application to questions not considered by the prior court, or in patent cases, to alleged anticipating devices which were not laid before that court.**"" [Bold added].*

[Torrey v. Hancock, 184 F. 61 (1910)]

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**Norwich Union Fire Ins. Society v. Stanton (Nov. 13, 1911)**

"In Mast, Foos & Co. v. Stover Mfg. Co., 177 U.S. 485, 20 S.Ct. 708, 44 L.Ed. 856, the Supreme Court discussed the extent to which comity should control the disposition by one federal court of legal question already disposed of by another federal court. The court says:

"Comity" is not a rule of law, but one of practice, convenience and expediency. It is something more than mere courtesy, which implies only deference to the opinion of others, since it has substantial value in securing uniformity of decision and discouraging repeated litigation of the same question, but its obligation is not imperative. \* \* \* It recognizes the fact that the primary duty of every court is to dispose of cases according to the law and the facts; in a word, to decide them right. In doing so, the court is bound to determine them according to his own convictions. If he be clear in those convictions, he should follow them. It is only in cases where, in his own mind, there may be a doubt as to the soundness of his views, that comity comes into play and suggests a uniformity of ruling to avoid confusion, until a higher court has settled the law."

[Norwich Union Fire Ins. Society v. Stanton, 191 F. 813, 112 C.C.A. 327 (1911)]

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**Dow v. Lillie (Jan. 8, 1914)**

""Comity is a willingness to grant a privilege, not as a matter of right, but out of deference and good will."

[Dow v. Lillie, 26 N.D. 512, 144 N.W. 1082 (1914)]

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**In re Andrews (Sept. 8, 1916)**

"It is well settled that a state would have no right to take the relator out of the custody of the officers of the United States in these circumstances without the approval of the United States. Ableman v. Booth, 21 How. 506, 16 L Ed. 169; Tarble's Case, 13 Wall. 397, 20 L.Ed. 597. And it is equally well settled as a matter of comity between the federal and the state governments that either may surrender its custody of a prisoner to the other without the prisoner's consent. In such a case, the question of the jurisdiction and custody of the prisoner is one of comity between the governments, and not a personal right of the prisoner. United States v. Marrin (D.C.) 227 Fed. 314; Ex parte Marrin (D.C.) 164 Fed. 631.

"Therefore, as the relator's imprisonment is lawful so far as the jurisdiction of this court is concerned, her petition is denied, and she is remanded to her former custody."

[In re Andrews, 236 F. 300 (1916)]

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**Woodard v. Bush (Apr. 10, 1920)**

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"Comity," in a legal sense, is complaisance, courtesy, the granting of a privilege, not of right, but of good will."

"A resident of Missouri making daily deliveries by truck in a city in another state cannot be presumed to know the ordinances of the city where such deliveries are being made."

[*Woodard v. Bush*, 282 Mo. 163; 220 S.W. 839 (1920)]

### **McGill v. Brewer (Feb. 25, 1930)**

"A contract good where made is good everywhere."

"Agreement which is valid in state where made, but invalid in state of forum, will be enforced, unless agreement is contrary to public policy of state of forum, in that it is contrary to good morals, or state or its citizens would be injured by enforcement, or it perniciously violates **positive written or unwritten prohibitory law**, the extent to which comity will be extended being matter of judicial policy to be determined within reasonable limitations by each state for itself; "comity" being courtesy by which nations or states recognize and give effect within their own territory to laws of another state or nation."

[*McGill v. Brewer*, 132 Or. 422, 285 P. 208 (1930)]

### **Cox v. Terminal Railroad Ass'n of St. Louis (Oct. 22, 1932)**

"Comity, in a legal sense, is complaisance, courtesy, the granting of a privilege, not of right, but of good will. Black's L.Dict. tit. 'Comity.'"

[*Cox v. Terminal Railroad Ass'n of St. Louis*, 331 Mo. 910, 55 S.W.2d. 685 (1932)]

### **Midwest Piping & Supply Co. v. Thomas Spacing Mach. Co. (July 14, 1933)**

"Court can take notice of statutes of another state only when they are pleaded and proved as facts."

"Recovery on judgment of court of limited or inferior jurisdiction of another state is authorized only when all facts essential to show jurisdiction in that court appear on face of transcript or record."

"Plaintiff suing on judgment of court of another state, has burden of averring that court is one of general jurisdiction, or, if of limited jurisdiction, that it extended to cause of action for which judgment was recovered."

"Specially created statutory court is not "court of general jurisdiction."

"Statement of claim in assumpsit to recover on judgment of another state failing to allege court of such state was court of general jurisdiction or nature of its jurisdiction *held* subject to statutory demurrer."

"In order to authorize the recovery upon a judgment of a court of limited or inferior jurisdiction of another state, all the facts essential to show jurisdiction in that court must appear on the face of the transcript or record."

"34 C. J. 1154: " \* \* \* However, no presumption of validity can be indulged to support the judgment of an inferior court of another state; all the facts essential to jurisdiction must appear on the face of the record or be shown by competent evidence, before it can be accepted as a binding and conclusive adjudication."

"In *Perry v. Northern Insurance Company*, 5 Phila. 188, an action of debt was brought on the record of a judgment of a justice of the peace of the state of New York. Judge Hare, of the court of common pleas of Philadelphia county, took judicial cognizance of the fact that the judgment was by a court of inferior jurisdiction and entered judgment for the defendant. Judge Hare said: " \* \* \* But the jurisdiction of an inferior Court must appear on the face of its proceedings, and, if they are silent, the void cannot be supplied by inference, either as regards the cases or the parties. And apart from this, the right of every one who is sued in one of the States of the Union on a judgment rendered in another, to show that he was not amenable to the authority of the Court by which the judgment was pronounced, is thoroughly well established by the decisions of the State Courts and of the Supreme Court of the United States. The clause of the Constitution providing that the judgments of each State shall have full faith and credit in every other, means such judgments as are, by general rules of jurisprudence, entitled to faith and credit in themselves, and was not intended to invest the State Courts with the power of binding the citizens of other States or of foreign countries, on whom no process has been served, and who are not within the territorial" limits of the State at the time, or in any way subject to its laws."

"In *Galpin v. Page*, 18 Wall. 350, 366, 21 L.Ed. 959, the court, by Mr. Justice Field, said: " \* \* \* The rule is different with respect to courts of special and limited authority; as to them there is no presumption of law in favor of their jurisdiction; that must affirmatively appear by sufficient evidence or proper averment in the record, or their judgments will be deemed void on their face."

"2 Freeman on Judgments (5th Ed.) §1108: " \* \* \* But nothing is presumed in favor of the jurisdiction of inferior courts. Hence such jurisdiction must be shown. If an inferior court upon whose judgment an action is brought was a foreign one, its jurisdiction over the subject matter must be alleged, because judicial notice will not be taken of the laws conferring

jurisdiction upon the inferior courts of other States or countries.""

"The burden is on the plaintiff to aver that the court is one of general jurisdiction, or, if of limited jurisdiction, that it extended to the cause of action for which the judgment was recovered."

"A court of general jurisdiction has been defined as follows: 15 C. J. 726: "General jurisdiction is such as extends to all controversies which may be brought before a court within the legal bounds of rights and remedies. Limited or special jurisdiction, on the other hand, is jurisdiction which is confined to particular causes, or which can be exercised only under the limitations and circumstances prescribed by the Statute."

"A specially created statutory court is not a court of general jurisdiction.

"In *Trimble Bros. v. Stamper*, 179 Mo.App. 300, 166 S.W. 820, suit was brought on a judgment rendered in the Montgomery quarterly court in Montgomery county, Ky. The plaintiff offered the judgment and rested. The lower court granted judgment for the defendant. The appellate court, in affirming, said, inter alia (page 301 of 179 Mo.App., 166 S.W. 820): "The foreign judgment purported to have been rendered by the Montgomery quarterly court. Kentucky is a common-law state, and such court must be a statutory court, and not a common-law court of general jurisdiction. Being a statutory court, its jurisdiction is limited and defined by the statute creating it. There was no proof of such statute, nor of the jurisdiction of said court. \* \* \* The judgment of a foreign court of statutory limited jurisdiction is not entitled to full faith and credit unless these matters are shown."

"Mr. Justice Andrews said (pages 269, 270 of 19 N.E., 111 N.Y. 544): "In *Peacock v. Bell*, 1 Saund. 73, it is said that 'nothing shall be intended to be without the jurisdiction of a superior court but that which specially appears to be so; and, on the contrary, nothing shall be intended to be within the jurisdiction of an inferior court but that which is so expressly alleged.' This statement of the rule has been frequently approved. The rule has been applied in many cases in the supreme court of the United States to test the validity of judgments rendered in the circuit courts of the United States. \* \* \* And it is further held that the question may be raised for the first time on appeal of error, and, if on examination it is found that the record is silent as to the jurisdictional fact, the judgment will be reversed.""

"Judgments in judicial proceedings, within the act of Congress, are only such as have been rendered by a competent court, having jurisdiction of the cause of the parties."

"In this particular case, the exemplified copy of the record does not purport to be a "true, perfect and complete copy" of the judgment record entered in the case or action between the plaintiff and defendant, but only of "certain proceedings made and entered of record" in that case, and it is apparent from its face that "it is only a copy of the docket entry showing the entry of judgment." The exemplified copy of the docket entry referred to a warrant of attorney filed in the cause and to a cognovit filed therein by an unnamed attorney who appeared for the defendant, "confessing the action of the plaintiff against the defendant" and that "plaintiff has sustained damages herein against the defendant in the sum as set forth in the cognovit," showing that the plaintiff had filed a pleading setting forth a cause of action, that a warrant of attorney had been filed by defendant, and that, acting under its authority, an attorney had appeared for the defendant and by a cognovit filed confessed the actin, on which judgment had been entered for the plaintiff for the amount demanded. It was these papers, remaining of record in the office of the clerk of the court, and not the docket entry concerning them, which constituted the "judicial proceedings" to which full faith and credit must be given, when exemplified in accordance with the act of Congress, and which, with the docket entries, formed the record which must be attached to the plaintiffs statement in an action based upon it in this commonwealth. As a duly exemplified copy of this record was not attached to the plaintiffs statement in this case, but only such a copy of the docket entry of those proceedings, the statement was insufficient to support a judgment for want of a sufficient affidavit of defense."

[*Midwest Piping & Supply Co. v. Thomas Spacing Mach. Co.*, 109 Pa.Super. 571, 167 A. 636 (1933)]

#### **Commonwealth ex rel. Kamons v. Ashe (July 13, 1934)**

""Comity" is defined as that courtesy on part of one state by which within her territory the laws of another state are recognized and enforced, or another state is assisted in the execution of the laws. **From its nature the courts of the United States cannot compel its exercise when it is refused, and it is admissible Only upon the consent of the state, and when consistent with her own interests and policy.** [Bold added.]

[*Commonwealth ex rel. Kamons v. Ashe*, 114 Pa.Super. 119, 173 A. 715 (1934)]

#### **Esmar v. Haeussler (June 21, 1937)**

"The full faith and credit clause, as distinguished from the rule of comity, imposes an obligation, whereas "comity" is a matter of courtesy, complaisance, and respect, not of right, but of deference and good will."

[*Esmar v. Haeussler*, 341 Mo. 33, 106 S.W.2d. 412 (1937)]

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**Pringle v. Gibson (Dec. 13, 1937)**

"The law *of* the place where injuries are received controls the right *of* a plaintiff to recover, whereas the law of the forum determines the remedy and its incidents such as pleading, practice, and evidence."

"**A law has no effect of its own beyond the limits of the sovereignty from which its authority is derived.**" [Bold added.]

"Ordinarily, a foreign law is enforced because it is the local law that foreign laws shall govern the transaction in question, so that for purposes *of* the case the foreign law becomes the local law."

"Whether effect shall be given a foreign law depends upon the principle *of* "comity," which is defined as neither a matter of absolute obligation nor *of* mere courtesy but as the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws."

"Foreign laws which are in conflict with local regulations or policy or do violence to local views *of* religion or public morals, or injustice to local citizens, will not be enforced."

"The Constitution does not forbid the creation of new rights or abolition *of* old ones recognized by the common law to attain a permissible legislative object."

[Pringle v. Gibson, 135 Me. 297, 195 A. 695 (1937)]

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**White v. Govatos (Dec. 11, 1939)**

""Comity" is a word expressive *of* the foundation and limitation *of* the obligation of the laws of one state within the territory *of* another, and is not a positive rule *of* law, but is a rule *of* practicality based on a proper regard for the laws and institutions *of* a foreign state."

"Comity" is a word expressive *of* the foundation and limitation *of* the obligation of the laws *of* one state within the territory *of* another. By the word a positive rule *of* law is not meant, but a rule *of* practicality based upon a proper regard for the laws and institutions *of* a foreign state. The obligation is not imperative, and however regarded as a basis of jurisdiction, the truth remains that jurisdiction depends on the law of the forum, and this law, in turn, rests on the public policy declared by the legislature. It was a rule of the common law that a right never dies; and therefore the right to institute an action existed for any length *of* time. Sound policy and public convenience required that the right be restrained, to quiet possessions, to secure repose from litigation, and to prevent injustice. [Cite omitted.] The period prescribed by the statute *of* limitations defines the maximum time within which, in the judgment *of* the legislature *of* a state, substantial justice can be done. No principle of comity demands that the forum shall regard a right of action as living which has no life by the law of its creation."

"Rights *of* action created by statute are put in a separate class and upon a higher plane than those existing at the common law, with no substantial reason therefor."

[White v. Govatos, Del., 1 Terry 349, 10 A.2d. 524 (1939)]

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**Kellogg-Citizens Nat. Bank of Green Bay, Wis. v. Felton (Nov. 19, 1940)**

"Judicial "comity" refers to principle under which courts of one jurisdiction give effect to law and judicial decisions of another out *of* deference and respect, not obligation."

"Under rule *of* "comity" courts in one state assume jurisdiction *of* transitory causes of action arising under law of foreign state."

"Where law of place of contracting and law of the forum are in direct conflict as to rights acquired in each, the "comity" of nations must yield to the positive law of the land."

""While the statutes of one state have no force or effect in another state, courts of justice in one state will by the rule *of* comity assume jurisdiction *of* causes *of* action which are transitory in their nature and arise under the law of a foreign state."

[Kellogg-Citizens Nat. Bank of Green Bay, Wis. v. Felton, 145 Fla. 68, 199 So. 50 (1940)]

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**Bobala v. Bobala (Dec. 3, 1940)**

"Jurisdiction *of* subject matter cannot be obtained by consent of the parties, waiver or estoppel."

"There is a doctrine known and established as that of comity. This has been defined as courtesy, complacence, respect, a willingness to grant a privilege, not as a matter *of* right but out of deference and good will. Comity of nations is an appropriate phrase to express the true foundation and extent *of* the obligation of the laws *of* one nation within the

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territories of another and is derived altogether from the voluntary consent of the latter. Such is not admissible when it is contrary to its own policy or prejudicial to its interests."

[Bobala v. Bobala, 68 Ohio App. 63, 33 N.E.2d. 845 (1940)]

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**Employers Casualty Co. v. Hobbs (Dec. 7, 1940)**

The so-called retaliatory clauses in insurance statutes are not in fact retaliatory provisions but are clauses based upon principles of "comity", and are designed to create substantial equality of burdens upon foreign and domestic corporations."

[Employers Casualty Co. v. Hobbs, 152 Kan. 815, 107 P.2d. 715 (1940)]

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**A. B. v. C. D. (Dec. 6, 1940)**

"Under Pennsylvania rule, a right of action given by another state will not be enforced through any consideration of "comity" if to do so would be against a declared policy of the situs of the forum."

[A. B. v. C. D., 36 F.Supp. 85 (1940)]

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**Anderson v. N. V. Transandine Handelmaatschappij (May 22, 1941)**

"That Netherlands Royal Decree of May 24, 1940, vesting in **state of Netherlands** title to cash accounts and securities, belonging to natural and legal persons domiciled in territory of the Netherlands occupied by Germany, and deposited with American corporations and firms, was promulgated in London, England, rather than at The Hague, did not render decree invalid, in view of fact that United States government had officially recognized Netherlands government since its temporary residence in London."

"Comity" by which the law of one nation is allowed to operate within the dominion of another nation, is something more than mere courtesy or accommodation, extended as a matter of largesse, and is a recognition of fundamental concepts, essential to the proper conduct of international relations."

"The Netherlands Royal Decree of May 24, 1940, vesting in **state of Netherlands** title to cash accounts and securities, belonging to natural and legal persons domiciled in territory of the Netherlands occupied by Germany, and deposited with American corporations and firms, which had for its purpose protection of property against seizure as result of acts of pressure and domination by occupying enemy forces, was in harmony with "public policy" of the United States and of state of New York and would be upheld by New York courts under principles of "comity"." [Bold added.]

[Anderson v. N. V. Transandine Handelmaatschappij, 28 N.Y.S.2d. 547 (1941)]

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**Anderson v. N. V. Transandine Handelmaatschappij (July 29, 1942)**

"The Netherlands" Royal Decree of May 24, 1940, vesting in **State of Netherlands** title to cash accounts and securities, belonging to natural and legal persons domiciled in territory of the Netherlands occupied by Germany and deposited with American corporations and firms, which had for its purpose protection of property against seizure as result of acts of domination by occupying enemy forces, was in harmony with "public policy" of the United States and of New York State and would be upheld by New York courts under principles of "comity"." [Bold added.]

[Anderson v. N. V. Transandine Handelmaatschappij, 289 N.Y. 9, 43 N.E.2d. 502 (1942)]

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**Campbell v. Albers (Jan. 14, 1942)**

"The several states, except as restrained and limited by federal constitution, possess authority of independent states, and laws are without force beyond jurisdiction of state which enacted them, and have no extraterritorial effect except by comity."

"How far foreign laws should be enforced under doctrine of "comity" depends upon whether any wrong will be done a citizen of the domestic state, whether policies of its laws will be contravened or impaired, or whether court can do complete justice to those affected by the decree."

[Campbell v. Albers, 313 Ill.App. 151, 39 N.E.2d. 672 (1942)]

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**McFarland v. McFarland (Mar. 2, 1942)**

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"In determining "domicile" , the sole questions are an actual change of residence, and the absence of an intention to remove elsewhere."

"Where husband who resided in Virginia moved to a small town in North Carolina where he roomed and boarded, titled his automobile, paid license, income and property taxes, kept his clothes, received his mail, and opened active bank account, he became a "resident" of North Carolina so as to give North Carolina court jurisdiction of his divorce suit, notwithstanding that he commuted by automobile about 31 miles to his work in Virginia."

"The several states of the United States, except as prescribed otherwise by the Federal Constitution, bear a relationship to each other of independent sovereigns, each having exclusive sovereignty and power over persons and property within its jurisdiction, and each may prescribe the form and solemnities with which contracts made by its citizens shall be executed, the rights and obligations arising therefrom, and the mode in which they shall be determined and their obligation enforced."

"The control and recognition of marriage is left to each state in its sovereign capacity."

"One state cannot force its divorce laws upon another state, and no state is bound by comity to give effect in its courts to another state's divorce laws repugnant to its own laws and public policy."

"The principles of comity do not require Virginia court to give effect to divorce decree falsely or fraudulently obtained in another state, or a decree which is contrary to the morals or public policy of Virginia."

""Comity" is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws."

""Comity" is not a matter of obligation, but is a matter of favor or courtesy based on justice and good will, and is permitted from mutual interest and convenience, from a sense of the inconvenience which would otherwise result, and from moral necessity to do justice in order that justice may be done in return."

"Comity is not given effect when to do so would prejudice a state's own rights or the rights of its citizens."

"A divorce decree obtained in a foreign state against a resident of North Carolina is void in North Carolina, where has been no personal service within the jurisdiction of the forum and no answer or appearance or other participation in the proceeding which might be considered its equivalent."

"In suit by wife for an adjudication that she was still the lawful wife of her husband notwithstanding his divorce in North Carolina, decree of trial court declaring North Carolina divorce void, when it was only inoperative and invalid in Virginia, was technically erroneous, since Virginia courts have no jurisdiction over the judicial proceedings of another state and cannot alter, amend, or repeal the judgment and decrees of another state."

""Comity has been defined as the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws; \* \* \*." 5 R.C.L., Conflict of Laws, section 3."

"Comity is not a matter of obligation. It is a matter of favor or courtesy, based on justice and good will. It is permitted from mutual interest and convenience, from a sense of the inconvenience which would otherwise result, and from moral necessity to do justice in order that justice may be done in return." Comity is not given effect when to do so would prejudice a State's own rights or the rights of its citizens. 11 Am.Jur., Conflict of Laws, section 5."

[McFarland v. McFarland, 179 Va. 418, 19 S.E.2d. 77 (1942)]

### **Ex parte Silverstein (June 16, 1942)**

"The question of priority of jurisdiction over prisoner on parole from both state and federal penitentiaries is one of "comity" between **state and federal sovereignties** and not a personal right, who cannot complain of federal authorities implied acquiescence by silence in retaking of his custody by State Board of Prison Terms and Paroles for violation of terms of state parole."

[Ex parte Silverstein, 52 Cal.App.2d. 725, 126 P.2d. 962 (1942)]

### **Asbury Hospital v. Cass County (Jan. 2, 1943)**

"The Declaratory Judgments Act is intended to provide a method whereby parties to a justiciable controversy may have such controversy determined by court in advance of any invasion of rights or breach of obligation. Comp.Laws Supp.1925, §§7712a1-7712a16."

"Corporations are creations of the state endowed with such faculties as the state bestows and subject to such conditions as the state imposes."

"A corporation can have no legal existence beyond bounds of the state or sovereignty which created it, and although it may act in another state or country, it cannot do so as a legal or constitutional right but only by the comity and consent of

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such state or country."

"All activities incident to the acquisition of real estate by foreign corporation and use and enjoyment thereof were a matter of "comity", which is a matter of favor and not of right."

"Validity of statute must be determined solely by whether it is within purview of legislative powers as limited by Federal and State Constitutions, and justice, wisdom, necessity, utility or expediency of a law which is within their powers are for the lawmakers. "

"A court has no power to declare a statute invalid on ground of unjust and oppressive provisions, unless such provisions contravene State or Federal Constitutions."

"The inherent differences between corporations and natural persons or classes of corporations, and between general corporations and cooperatives, justify classification and different treatment in legislation."

"A person can question constitutionality of a statute only when and in so far as it is sought to be applied to his disadvantage, and one attacking constitutionality is not the champion of any rights except his own."

[Asbury Hospital v. Cass County, 72 N.D. 359, 7 N.W.2d. 438 (1943)]

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**Smith v. Smith (July 6, 1943)**

"Under Connecticut, New Jersey, and Pennsylvania law, the laws or decrees of a foreign country are not operative ex proprio vigore and they are not afforded sanction as a matter of "comity"."

[Smith v. Smith, 72 Ohio App. 203. 50 N.E.2d. 889 (1943)]

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**Clubb v. Clubb (Jan. 19, 1949)**

"Comity in a legal sense is neither a matter of absolute obligation nor a mere courtesy and good will; but it is a recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to the international duty and convenience and to the rights of its own citizens who are under protection of its laws."

[Clubb v. Clubb, 402 Ill. 390, 84 N.E.2d. 366 (1949)]

### 3 CITIZENSHIP IN AMERICA

For a complete treatment of the subject of citizenship, please refer to the following documents:

1. *Citizenship Status v. Tax Status*, Form #10.011  
<https://sedm.org/Forms/10-Emancipation/CitizenshipStatusVTaxStatus/CitizenshipVTaxStatus.htm>
2. *Citizenship and Sovereignty Course*, Form #12.001  
<https://sedm.org/Forms/FormIndex.htm>
3. *Why You are a Political Citizen but Civil Non-Citizen, National, and Nonresident Alien*, Form #05.006  
<https://sedm.org/Forms/FormIndex.htm>

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#### 3.1 Citizenship, Domicile, and Tax Status Options and Relationships

The content of this section derives from the following:

<i>Citizenship, Domicile, and Tax Status Options</i> , Form #10.003 <a href="https://sedm.org/Forms/FormIndex.htm">https://sedm.org/Forms/FormIndex.htm</a>
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#### WARNING ABOUT USE OF LABELS OR CIVIL STATUTORY STATUSES TO DESCRIBE YOURSELF:

Our [Member Agreement, Form #01.001](#), requires that all Members of this website and readers of our materials ARE NOT allowed to call themselves "sovereign citizens", STATUTORY "citizens", or "citizens" and they may not use or ANY OTHER name, label, or stereotype (other than [AMERICAN NATIONAL but not STATUTORY "citizen" as described in Form #05.006](#)) to describe themselves, and certainly not in a court of law, on a legal pleading, or on a [government form \(Form #12.023\)](#). God's example in the Bible applies here. The only thing He called HIMSELF was "[I Am](#)" ([Exodus 3:14](#)), and if you are truly a Christian serving and representing Him 24 hours a day, 7 days a week and thereby PRACTICING your faith, THAT is the only thing you can truthfully call YOURSELF as when interacting with any state officer. Anyone who interferes with that in the government is interfering with your First Amendment right to practice your religion in violation of the First Amendment and the [Religious Freedom Restoration Act \(RFRA\), 42 U.S.C. Chapter 21B](#). See also [TANZIN et al. v. TANVIR et al. No. 19-71, Decided Dec. 10, 2020, U.S. Supreme Court](#).

These considerations are the true significance of what it means to have "[separation of church and state](#)" and "[sanctification](#)" in a theological sense. [Your body is God's temple \(1 Cor. 6:19-20\)](#) and you can't worship (meaning serve or obey or accept CIVIL "obligations" in a legal sense as anyone other than a voluntary government employee of) Caesar in or with your Temple without violating the First Commandment of the Ten Commandments in [Exodus 20](#). That is the only way we know of in a legal sense that Christians can truthfully be described as "IN the world but not "OF the world". You are an [ambassador and agent of God \(2 Cor. 5:20\)](#) and can act in no other capacity or you will surrender the CIVIL protections of [God's law \(Form #13.001\)](#) in so doing. The Bible is your [DELEGATION OF AUTHORITY ORDER \(Form #13.007\)](#) as a Christian and Trustee over His property, which is [the entire Earth and all the Heavens \(Psalm 89:11\)](#). If in fact you are Trustees and the trust indenture (the Bible) says you can't contract with governments, then it is LEGALLY IMPOSSIBLE to [consent \(Form #05.003\)](#) to alienate or give up rights or property that belong to the trust and come from God and are GRANTED or LOANED to you temporarily as a Christian. Anyone from the [de facto government \(Form #05.024\)](#) who attempts to deceive or defraud you through [sophistry \(Form #12.042\)](#) to give up property or rights to them in that scenario cannot claim to have lawfully acquired such rights or property. This is because it is literally OUTSIDE of your delegation of authority order (the Bible) to convert them to public use or from the status of PRIVATE (owned by God) to PUBLIC (owned by Caesar) to do so as documented in [Separation Between Public and Private Course, Form #12.025](#). This is the SAME defense they use when THEY are sued for doing or refusing to do something and you can use it too! God is the only Sovereign, and we exercise sovereignty only when we are representing Him. On this subject, Jesus, our example, said about us being an agent of the Father who we represent as Christians the following:

*"He who receives you receives Me, and he who receives Me receives Him [God] who sent Me."  
[Matt. 10:40, Bible, NKJV]*

1 "He who hears you hears Me, he who rejects you rejects Me, and he who rejects Me rejects Him [God] who sent  
2 Me."

3 [Luke 10:16, Bible, NKJV]

4 Jesus said to them, "My food is to do the will of Him [God] who sent Me, and to finish His work."

5 [John 4:34, Bible, NKJV]

6 "And he who sees Me sees Him [God] who sent Me."

7 [John 12:45, Bible, NKJV]

8 An important purpose of this website is to disassociate and disconnect from all [domicile \(a civil statutory protection franchise, Form #05.002\)](#), [privileges, franchises \(Form #05.030\)](#), "benefits", and civil statutory jurisdiction. This cannot be done  
9 WITHOUT abandoning all [civil statuses \(Form #13.008\)](#), labels, and stereotypes to which [CIVIL legal obligations \(Form #12.040\)](#), "benefits", privileges, exemptions, or rights might attach. The Apostle Paul warned of this by saying: "You were  
10 bought at a price. Do not become slaves of men" in [1 Cor. 6:20](#) and [1 Cor. 7:23](#). In a legal sense, the ONLY thing he can mean  
11 is that you can NEVER use any [CIVIL status](#), name, label, or stereotype to describe yourself that DOES in fact infer or imply a  
12 [legally enforceable CIVIL statutory obligation \(Form #05.037\)](#) against you in the context of any government. This is confirmed  
13 by the following case of the Supreme Court of New Hampshire, in which they define a PUBLIC OFFICE (within the  
14 government) as someone owing a civil statutory obligation to the government in some form.  
15  
16

17 *"The term office' has no legal or technical meaning attached to it, distinct from its ordinary acceptations. An  
18 office is a public charge or employment; but, as every employment is not an office, it is sometimes difficult to  
19 distinguish between employments which are and those which are not offices.... A public officer is one who has  
20 some duty to perform concerning the public; and he is not the less a public officer when his duty is confined to  
21 narrow limits, because it is the duty, and the nature of that duty, which makes him a public officer, and not the  
22 extent of his authority.' 7 Bac. Abr. 280; Carth. 479.... Where an employment or duty is a continuing [\*\*\*65]  
23 one, which is defined by rules prescribed by law and not by contract, such a charge or employment is an office,  
24 and the person who performs it is an officer.... The powers vested in the government of the state of Mississippi  
25 are either legislative, judicial, or executive; and these respective branches of power have been committed to  
26 separate bodies of magistracy.... Whether an office has been created by the constitution itself, or by statute, ... the  
27 incumbent, as a component member of one of the bodies of the magistracy, is vested with a portion of the power  
28 of the government.... The words civil office under the state' ... import an office in which is reposed some portion  
29 of the sovereign power of the state, and of necessity having some connection with the legislative, judicial, or  
30 executive departments of the government.... The local and limited power and duties of the levee commissioner  
31 can have no effect in determining the question whether his office is not an office under the state. A member of the  
32 board of county police, or a justice of the peace, is as much an officer under the state as the executive, the heads  
33 of department, or a member of the judiciary. The powers attached [\*\*\*66] to the office of levee commissioner  
34 evidently pertain to the executive branch of the government. Clothed with a portion of the power vested in that  
35 department, the commissioner, in the discharge of his proper functions, exercises as clearly sovereign power as  
36 the governor or a sheriff." Shelby v. Alcorn, 36 Miss. 273, 288-290, 292. The constitution provided that "no  
37 senator [\*233] or representative" should, during his term, "be appointed to any civil office of profit under this  
38 state," which had been created during his legislative term. The object of the clause was manifest, and the office  
39 of levee commissioner was held to be within the mischief which the prohibition was intended to prevent.*

40 [Ricker's Petition, 66 N.H. 207 (1890); SOURCE:

41 [https://famguardian.org/TaxFreedom/CitesByTopic/PublicOffice-  
42 Ricker\\_s%20Petition\\_%2066%20N.H.%20207.pdf](https://famguardian.org/TaxFreedom/CitesByTopic/PublicOffice-Ricker_s%20Petition_%2066%20N.H.%20207.pdf)]

43 Keep in mind that if you owe a civil statutory obligation to someone OTHER than the government (who you usually FALSELY  
44 believe is PRIVATE) enforceable in civil court who is in receipt of the "benefit" or "privilege" of [civil statutory protection \(called  
45 "publici juris"\)](#), then the duty that you owe to THAT person is ALSO a public office. This is so because the civil statutory  
46 protected "person" is in receipt, custody, "benefit", or control of government property (the civil statutory status, a PUBLIC right)  
47 created and owned by the government. A public officer, after all, is legally defined as someone in charge of the PROPERTY  
48 (including civil privileges/RIGHTS) of the Public. The civil statutory "code" are the "rules" under Article 4, Section 3, Clause  
49 2, for handling and using and benefitting from public property called ["civil statuses" \(Form #13.008\)](#). More on this in [Form  
50 #05.037](#). According to President Obama in his Farewell Address, "citizen" is a public office, and he is absolutely right! [SEDM  
51 Exhibit #01.018](#). A civil duty owed to a public office is a duty owed to THE GOVERNMENT and NOT to the human being  
52 [CONSENSUALLY \(Form #05.003\)](#) FILLING said office. This is a VERY important point! If there ever was a "Matrix"  
53 within government, then this would HAVE to be it! [Click here \(https://sedm.org/what-we-are-up-against/\)](https://sedm.org/what-we-are-up-against/) for how that matrix  
54 works.

55 Anyone who CONSENSUALLY violates these requirements absent provable duress and in connection with administrative  
56 correspondence or litigation is clearly using our materials in an unauthorized manner in violation of our [Member Agreement,  
57 Form #01.001](#). For a clarification on THIS and other abuses of [the term "sovereign"](#), please read and heed: [Policy Document:](#)

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### ***Sovereignty and Freedom Points and Authorities***

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1 [Rebutted False Arguments About Sovereignty, Form #08.018](#). The reason we have to do this is that invoking a [civil status](#) that  
 2 comes with CIVIL STATUTORY obligations makes you a borrower of government property. In law, all rights or privileges are  
 3 property, and being a borrower makes you servant to the [GOVERNMENT grantor or lender](#) per [Prov. 22:7](#) and literally a  
 4 [GOVERNMENT SLAVE \(Form #05.030\)](#). That slavery comes with the following curse:

5 “The State in such cases exercises no greater right than an individual may exercise over the use of his own  
 6 property when leased or loaned to others. The conditions upon which the privilege shall be enjoyed being  
 7 stated or implied in the legislation authorizing its grant, no right is, of course, impaired by their  
 8 enforcement. The recipient of the privilege, in effect, stipulates to comply with the conditions. It matters  
 9 not how limited the privilege conferred, its acceptance implies an assent to the regulation of its use and the  
 10 compensation for it.”  
 11 [/Munn v. Illinois, 94 U.S. 113 \(1876\)](#)

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12  
 13 **Curses of Disobedience [to God’s Laws]**

14 “The alien [\[Washington, D.C. is legislatively “alien” in relation to states of the Union\]](#) who is among you shall  
 15 rise higher and higher above you, and you shall come down lower and lower [\[malicious destruction of](#)  
 16 [EQUAL PROTECTION and EQUAL TREATMENT by abusing FRANCHISES\]](#). He shall lend to you [\[Federal](#)  
 17 [Reserve counterfeiting franchise\]](#), but you shall not lend to him; he shall be the head, and you shall be the  
 18 tail.

19 “Moreover all these curses shall come upon you and pursue and overtake you, until you are destroyed,  
 20 because you did not obey the voice of the Lord your God, to [keep His commandments and His statutes](#) which  
 21 He commanded you. And they shall be upon you for a sign and a wonder, and on your descendants forever.

22 “Because you did not serve [ONLY] the Lord your God with joy and gladness of heart, for the abundance of  
 23 everything, therefore you shall serve your [covetous thieving lawyer] enemies, whom the Lord will send against  
 24 you, in hunger, in thirst, in nakedness, and in need of everything; and He will put a yoke of iron [\[franchise codes\]](#)  
 25 on your neck until He has destroyed you. The Lord will bring a nation against you from afar [\[the District of](#)  
 26 [CRIMINALS\]](#), from the end of the earth, as swift as the eagle flies [\[the American Eagle\]](#), a nation [whose language](#)  
 27 [\[LEGALESE\] you will not understand](#), a nation of fierce [\[coercive and fascist\] countenance](#), which does not  
 28 respect the elderly [\[assassinates them by denying them healthcare through bureaucratic delays on an Obamacare](#)  
 29 [waiting list\] nor show favor to the young \[destroying their ability to learn in the public FOOL system\]. And they](#)  
 30 [shall eat the increase of your livestock and the produce of your land \[with “trade or business” franchise taxes\],](#)  
 31 [until you \[and all your property\] are destroyed \[or STOLEN/CONFISCATED\]; they shall not leave you grain](#)  
 32 [or new wine or oil, or the increase of your cattle or the offspring of your flocks, until they have destroyed you.](#)  
 33 [\[Deut. 28:43-51, Bible, NKJV\]](#)

34 To put this biblical prohibition and relationship with governments in commercial terms, the government grantor or "lender" of  
 35 their property is called a "Merchant" in [U.C.C. §2-104\(1\)](#) and the debtor or borrower or renter is called a "Buyer" under [U.C.C.](#)  
 36 [§2-103\(1\)\(a\)](#). God ONLY permits Christians to be "Merchants" and NEVER "Buyers" in relation to any and all governments.  
 37 That way, they will always work for you and you can NEVER work for or "serve" them, since the First Four commandments of  
 38 the Ten Commandments in [Exodus 20](#) prohibit such "worship" and/or servitude and the superior or supernatural LEGAL powers  
 39 on the part of government that is used to COMPEL or ENFORCE (Form #05.032) it. This biblically mandated status of being a  
 40 "Merchant" ONLY is explained [Path to Freedom, Form #09.015](#), Sections 5.6 and 5.7. The biblical Hierarchy of Sovereignty  
 41 can be viewed by [clicking here](#) (<https://famguardian.org/Subjects/Taxes/Remedies/PowerToCreate.htm>). Below are the  
 42 commands of Jesus (God) Himself on this subject:

43 “You know that the rulers of the Gentiles [unbelievers] lord it over them [govern from ABOVE as pagan idols] ,  
 44 and those who are great exercise authority over them [supernatural powers that are the object of idol worship].  
 45 Yet it shall not be so among you; but whoever desires to become great among you, let him be your servant [serve  
 46 the sovereign people called “the State” from BELOW as public SERVANTS rather than rule from above]. And  
 47 whoever desires to be first among you, let him be your slave—just as the Son of Man did not come to be served,  
 48 but to serve, and to give His life a ransom for many.”  
 49 [\[Matt. 20:25-28, Bible, NKJV\]](#)

50 Lastly, note that this biblical approach is NOT anarchist in any fashion. Members are subject to the criminal laws, the common  
 51 law, and biblical law. They can't be members WITHOUT being subject to the laws of their religion. The biblical mandate is that  
 52 Christians cannot consent to anything government offers and thus contract with them. The only systems of law that do NOT  
 53 depend on consent in some form to acquire "the force of law" are the criminal law, the common law, and biblical law. Everything  
 54 else is essentially government contracting in one form or another under [a contract called "the social compact", as Rousseau called](#)  
 55 [it](#). The Social Security Number is, in fact, what the FTC calls a "franchise mark" evidencing your status AS a government

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***Sovereignty and Freedom Points and Authorities***

contractor, as we describe in [About SSNs and TINs on Government Forms and Correspondence, Form #05.012](#). Welcome to the [government farm/plantation](#), I mean "franchise", amigo!. These distinctions are further described in:

1. [What is "law"?, Form #05.048](#)  
 FORMS PAGE: <https://sedm.org/Forms/FormIndex.htm>  
 DIRECT LINK: <https://sedm.org/Forms/05-MemLaw/WhatIsLaw.pdf>
2. [Rebutted False Arguments About Sovereignty, Form #08.018](#), Sections 5.5 and 6.5  
 FORMS PAGE: <https://sedm.org/Forms/FormIndex.htm>  
 DIRECT LINK: <https://sedm.org/Forms/08-PolicyDocs/RebFalseArgSovereignty.pdf>
3. [Problems with Atheistic Anarchism](#), Form #08.020  
 Video: <http://youtu.be/n883Ce11ML0>  
 Slides: <https://sedm.org/Forms/08-PolicyDocs/ProbsWithAtheistAnarchism.pdf>
4. [Four Law Systems Course, Form #12.039](#)
5. [Rebutted False Arguments About the Common Law, Form #08.025](#)  
 FORMS PAGE: <https://sedm.org/Forms/FormIndex.htm>  
 DIRECT LINK: <https://sedm.org/Forms/08-PolicyDocs/RebuttedFalseArgumentsAboutCommonLaw.pdf>

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### 3.1.1 The Four "United States"

It is very important to understand that there are THREE separate and distinct GEOGRAPHICAL CONTEXTS in which the term "[United States](#)" can be used, and each has a mutually exclusive and different meaning. These three definitions of "[United States](#)" were described by the U.S. Supreme Court in [Hooven and Allison v. Evatt, 324 U.S. 652 \(1945\)](#):

**Table 1: Geographical terms used throughout this page**

<i>Term</i>	<i># in diagrams</i>	<i>Meaning</i>
United States*	1	The country "United States" in the family of nations throughout the world.
United States**	2	The "federal zone".
United States***	3	Collective states of the Union mentioned throughout the Constitution.

In addition to the above GEOGRAPHICAL context, there is also a legal, non-geographical context in which the term "United States" can be used, which is the GOVERNMENT as a legal entity. Throughout this page and this website, we identify THIS context as "United States\*\*\*\*" or "United States<sup>4</sup>". The only types of "[persons](#)" within THIS context are [public offices within the national and not state government](#). It is THIS context in which "sources within the United States" is used for the purposes of "income" and "gross income" within the Internal Revenue Code, as proven by:

*Non-Resident Non-Person Position*, Form #05.020, Section 5.6  
 FORMS PAGE: <http://sedm.org/Forms/FormIndex.htm>  
 DIRECT LINK: <http://sedm.org/Forms/05-MemLaw/NonresidentNonPersonPosition.pdf>

The reason these contexts are not expressly distinguished in the statutes by the Legislative Branch or on government forms crafted by the Executive Branch is that they are the KEY mechanism by which:

1. [Federal jurisdiction is unlawfully enlarged by abusing presumption](#), which is a violation of due process of law. See:
 

*Presumption: Chief Weapon for Unlawfully Enlarging Federal Jurisdiction*, Form #05.017  
 FORMS PAGE: <http://sedm.org/Forms/FormIndex.htm>  
 DIRECT LINK: <http://sedm.org/Forms/05-MemLaw/Presumption.pdf>
2. The separation of powers between the states and the national government is destroyed, in violation of the legislative intent of the Constitution. See:
 

*Government Conspiracy to Destroy the Separation of Powers*, Form #05.023  
 FORMS PAGE: <http://sedm.org/Forms/FormIndex.htm>  
 DIRECT LINK: <http://sedm.org/Forms/05-MemLaw/SeparationOfPowers.pdf>
3. A "society of law" is transformed into a "society of men" in violation of [Marbury v. Madison, 5 U.S. 137 \(1803\)](#):

"The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right."

[[Marbury v. Madison, 5 U.S. 137, 163 \(1803\)](#)]

4. Exclusively PRIVATE rights are transformed into public rights in a process we call "invisible eminent domain using presumption and words of art".
5. Judges are unconstitutionally delegated undue discretion and "arbitrary power" to unlawfully enlarge federal jurisdiction. See:

*Federal Jurisdiction, Form #05.018*

FORMS PAGE: <http://sedm.org/Forms/FormIndex.htm>

DIRECT LINK: <http://sedm.org/Forms/05-MemLaw/FederalJurisdiction.pdf>

The way a corrupted Executive Branch or judge accomplish the above is to unconstitutionally:

1. PRESUME that ALL of the four contexts for "United States" are equivalent.
2. PRESUME that POLITICAL citizens\* and CIVIL citizens\*\*+D are EQUIVALENT under federal law. They are NOT. A POLITICAL citizen is a "non-resident " under federal civil law. See:

*Why You are a Political Citizen but Civil Non-Citizen, National, and Nonresident Alien, Form #05.006*

FORMS PAGE: <http://sedm.org/Forms/FormIndex.htm>

DIRECT LINK: <http://sedm.org/Forms/05-MemLaw/WhyANational.pdf>

3. PRESUME that "nationality" and "domicile" are equivalent. They are NOT. See:

*Why Domicile and Becoming a "Taxpayer" Require Your Consent, Form #05.002*

FORMS PAGE: <http://sedm.org/Forms/FormIndex.htm>

DIRECT LINK: <http://sedm.org/Forms/05-MemLaw/Domicile.pdf>

4. Use the word "citizenship" in place of "nationality" OR "domicile", and refuse to disclose WHICH of the two they mean in EVERY context.
5. Confuse the POLITICAL/CONSTITUTIONAL meaning of words with the civil STATUTORY context. For instance, asking on government forms whether you are a POLITICAL/CONSTITUTIONAL citizen and then FALSELY PRESUMING that you are a CIVIL citizen\*\*+D under 8 U.S.C. §7701(a)(30).
6. Confuse the words "[domicile](#)" and "[residence](#)" or impute either to you without satisfying the burden of proving that you EXPRESSLY CONSENTED to it and thereby illegally kidnap your civil legal identity against your will. One can have only one "domicile" but many "residences" and BOTH require your consent. See:

*Why Domicile and Becoming a "Taxpayer" Require Your Consent, Form #05.002*

FORMS PAGE: <http://sedm.org/Forms/FormIndex.htm>

DIRECT LINK: <http://sedm.org/Forms/05-MemLaw/Domicile.pdf>

7. Add things or classes of things to the meaning of statutory terms that do not EXPRESSLY appear in their definitions, in violation of the rules of statutory construction. See:

*Legal Deception, Propaganda, and Fraud, Form #05.014*

FORMS PAGE: <http://sedm.org/Forms/FormIndex.htm>

DIRECT LINK: <http://sedm.org/Forms/05-MemLaw/LegalDecPropFraud.pdf>

8. PRESUME that STATUTORY diversity of citizenship under 28 U.S.C. §1332 and CONSTITUTIONAL diversity of citizenship under Article III, Section 2 of the United States Constitution are equivalent.
  - 8.1. STATUTORY and CONSTITUTIONAL diversity are NOT equal and in fact are mutually exclusive.
  - 8.2. The STATUTORY definition of "State" in 28 U.S.C. §1332(e) is a federal territory. The definition of "State" in the CONSTITUTION is a State of the Union and NOT federal territory.
  - 8.3. They try to increase this confusion by dismissing diversity cases where only diversity of RESIDENCE (domicile) is implied, instead insisting on "diversity of CITIZENSHIP" and yet REFUSING to define whether they mean DOMICILE or NATIONALITY when the term "CITIZENSHIP" is invoked. See *Lamm v. Bekins Van Lines, Co*, 139 F.Supp.2d. 1300, 1314 (M.D. Ala. 2001) ("To invoke removal jurisdiction on the basis of diversity, a notice of removal must distinctly and affirmatively allege each party's citizenship.", "[a]verments of residence are wholly insufficient for purposes of removal.", "[a]lthough 'citizenship' and 'residence' may be interchangeable terms in common parlance, the existence of citizenship cannot be inferred from allegations of residence alone.").

- 1 9. Refuse to allow the jury to read the definitions in the law and then give them a definition that is in conflict with the  
 2 statutory definition. This substitutes the JUDGES will for what the law expressly says and thereby substitutes PUBLIC  
 3 POLICY for the written law.
- 4 10. Publish deceptive government publications that are in deliberate conflict with what the statutes define "United States"  
 5 as and then tell the public that they CANNOT rely on the publication. The [IRS does this with ALL of their publications](#)  
 6 and it is FRAUD. See:

*Reasonable Belief About Income Tax Liability*, Form #05.007

FORMS PAGE: <http://sedm.org/Forms/FormIndex.htm>

DIRECT LINK: <http://sedm.org/Forms/05-MemLaw/ReasonableBelief.pdf>

7 The above types of abuse are what is referred to as "equivocation":

8 [equivocation](#)

9 *EQUIVOCATION*, n. Ambiguity of speech; the use of words or expressions that are susceptible of a double  
 10 signification. Hypocrites are often guilty of equivocation, and by this means lose the confidence of their fellow  
 11 men. *Equivocation is incompatible with the christian character and profession.*  
 12 [SOURCE: <http://1828.mshaffer.com/d/search/word/equivocation/>]

13  
 14 *Equivocation* ("to call by the same name") is an [informal logical fallacy](#). It is the misleading use of a term with  
 15 more than one [meaning](#) or [sense](#) (by glossing over which meaning is intended at a particular time). It generally  
 16 occurs with [polysemic](#) words (words with multiple meanings).

17 *Albeit in common parlance it is used in a variety of contexts, when discussed as a fallacy, equivocation only*  
 18 *occurs when the arguer makes a word or phrase employed in two (or more) different senses in an argument*  
 19 *appear to have the same meaning throughout.*

20 *It is therefore distinct from (semantic) [ambiguity](#), which means that the context doesn't make the meaning of the*  
 21 *word or phrase clear, and [amphiboly](#) (or syntactical ambiguity), which refers to ambiguous sentence structure*  
 22 *due to [punctuation](#) or [syntax](#).*  
 23 [Wikipedia topic: [Equivocation](#), Downloaded 9/15/2015; SOURCE:  
 24 <https://en.wikipedia.org/wiki/Equivocation/>]

25 This kind of arbitrary discretion is PROHIBITED by the Constitution, as held by the U.S. Supreme Court:

26 *"When we consider the nature and the theory of our institutions of government, the principles upon which they*  
 27 *are supposed to rest, and review the history of their development, **we are constrained to conclude that they do***  
 28 ***not mean to leave room for the play and action of purely personal and arbitrary power."***  
 29 [Yick Wo v. Hopkins, [118 U.S. 356, 369](#), 6 S.Sup.Ct. 1064, 1071]

30 Thomas Jefferson, our most revered founding father, precisely predicted the above abuses when he said:

31 *"It has long been my opinion, and I have never shrunk from its expression,... that the germ of dissolution of our*  
 32 *Federal Government is in the constitution of the Federal Judiciary--an irresponsible body (for impeachment is*  
 33 *scarcely a scare-crow), **working like gravity by night and by day, gaining a little today and a little tomorrow,***  
 34 ***and advancing its noiseless step like a thief over the field of jurisdiction until all shall be usurped from the***  
 35 ***States and the government be consolidated into one. To this I am opposed."***  
 36 [Thomas Jefferson to Charles Hammond, 1821. ME 15:331]

37 *"Contrary to all correct example, [the Federal judiciary] are in the habit of going out of the question before them,*  
 38 *to throw an anchor ahead and grapple further hold for future advances of power. **They are then in fact the corps***  
 39 ***of sappers and miners, steadily working to undermine the independent rights of the States and to consolidate***  
 40 ***all power in the hands of that government in which they have so important a freehold estate."***  
 41 [Thomas Jefferson: Autobiography, 1821. ME 1:121]

42 *"The judiciary of the United States is the subtle corps of sappers and miners constantly working under ground to*  
 43 *undermine the foundations of our confederated fabric. They are construing our Constitution from a co-ordination*  
 44 *of a general and special government to a general and supreme one alone. **This will lay all things at their feet,***  
 45 ***and they are too well versed in English law to forget the maxim, 'boni judicis est ampliari jurisdictionem.'**"*  
 46 [Thomas Jefferson to Thomas Ritchie, 1820. ME 15:297]

1 *"When all government, domestic and foreign, in little as in great things, shall be drawn to Washington as the*  
 2 *center of all power, it will render powerless the checks provided of one government on another and will become*  
 3 *as venal and oppressive as the government from which we separated."*

4 *[Thomas Jefferson to Charles Hammond, 1821. ME 15:332]*

5 *"What an augmentation of the field for jobbing, speculating, plundering, office-building ["trade or business"*  
 6 *scam] and office-hunting would be produced by an assumption [PRESUMPTION] of all the State powers into the*  
 7 *hands of the General Government!"*

8 *[Thomas Jefferson to Gideon Granger, 1800. ME 10:168]*

9 For further details on the meaning of "United States" in its TWO separate and distinct contexts, CONSTITUTIONAL, and  
 10 STATUTORY, and how they are deliberately confused and abused to unlawfully create jurisdiction that does not otherwise  
 11 lawfully exist, see:

- 12 1. *Legal Deception, Propaganda, and Fraud*, Form #05.014, Sections 15.2, 15.6  
 13 <http://sedm.org/Forms/05-MemLaw/LegalDecPropFraud.pdf>
- 14 2. *Non-Resident Non-Person Position*, Form #05.020, Section 4  
 15 <http://sedm.org/Forms/05-MemLaw/NonresidentNonPersonPosition.pdf>
- 16 3. *A Detailed Study into the Meaning of the term "United States" found in the Internal Revenue Code-Family Guardian*  
 17 *Fellowship*  
 18 3.1. HTML Version  
 19 <http://famguardian.org/Subjects/Taxes/ChallJurisdiction/Definitions/freemaninvestigation.htm>  
 20 3.2. Acrobat Version  
 21 <http://famguardian.org/Subjects/Taxes/ChallJurisdiction/Definitions/freemaninvestigation.pdf>  
 22 3.3. Zipped version  
 23 <http://famguardian.org/Subjects/Taxes/ChallJurisdiction/Definitions/freemaninvestigation.zip>
- 24 4. *Sovereignty Forms and Instructions Online*, Form #10.004, Cites by Topic: "United States"  
 25 <http://famguardian.org/TaxFreedom/CitesByTopic/UnitedStates.htm>

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### 26 3.1.2 Civil/Statutory v. Political/Constitutional Contexts

27 It is very important to understand that there are TWO separate, distinct, and mutually exclusive contexts in which  
 28 geographical "words of art" can be used at the federal or national level:

- 29 1. Political/Constitutional.  
 30 1.1. This is connected with NATIONALITY.  
 31 1.2. We call these "Citizens\*" on our website.
- 32 2. Civil/Statutory.  
 33 2.1. This is connected with DOMICILE.  
 34 2.2. We call these "Citizens\*\*+D" on our website.

35 The purpose of providing a civil statutory definition of a legal "term" is to supersede and not enlarge the ordinary, common  
 36 law, constitutional, or common meaning of a term. Geographical words of art include:

- 37 1. "State"
- 38 2. "United States"
- 39 3. "alien"
- 40 4. "citizen"
- 41 5. "resident"
- 42 6. "U.S. person"

43 The terms "State" and "United States" within the Constitution implies the constitutional states of the Union and excludes  
 44 federal territory, civil/statutory "States" (federal territories), or the civil/statutory "United States" (the collection of all federal  
 45 territory). This is an outcome of the separation of powers doctrine. See:

*Government Conspiracy to Destroy the Separation of Powers*, Form #05.023  
<http://sedm.org/Forms/FormIndex.htm>

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The U.S. Constitution creates a public trust which is the delegation of authority order that the U.S. Government uses to manage federal territory and property. That property includes franchises, such as the "trade or business" franchise. All statutory civil law it creates can and does regulate only THAT property and not the constitutional States, which are foreign, sovereign, and statutory "non-resident non-persons" (Form #05.020) for the purposes of federal legislative jurisdiction.

It is very important to realize the consequences of this constitutional separation of powers between the states and national government. Some of these consequences include the following:

1. Statutory "States" as indicated in [4 U.S.C. §110\(d\)](#) and "States" in nearly all federal statutes are in fact federal territories and the definition does NOT include constitutional states of the Union.
2. The statutory "United States" defined in [26 U.S.C. §7701\(a\)\(9\)](#) and (a)(10) includes federal territory and excludes any land within the exclusive jurisdiction of a constitutional state of the Union.
3. Terms on government forms assume the statutory context and NOT the constitutional context.
4. [Domicile is the origin of civil legislative jurisdiction](#) over human beings. This jurisdiction is called "in personam jurisdiction".
5. Since the [separation of powers doctrine](#) creates two separate jurisdictions that are legislatively "foreign" in relation to each other, then there are TWO types of political communities, two types of "citizens", and two types of jurisdictions exercised by the national government.

*"It is clear that Congress, as a legislative body, exercise two species of legislative power: the one, limited as to its objects, but extending all over the Union: the other, an absolute, exclusive legislative power over the District of Columbia. The preliminary inquiry in the case now before the Court, is, by virtue of which of these authorities was the law in question passed?"*  
*[Cohens v. Virginia, 19 U.S. 264, 6 Wheat. 265, 5 L.Ed. 257 (1821)]*

6. A human being domiciled in a Constitutional state and born or naturalized anywhere in the Union. These are:
  - 6.1. A national pursuant to [8 U.S.C. §1101\(a\)\(21\)](#).
  - 6.2. A "national of the United States" pursuant to [8 U.S.C. §1101\(a\)\(22\)](#).
  - 6.3. A CIVIL "non-resident non-person" if exclusively PRIVATE and not engaged in a public office.
  - 6.4. A CIVIL "nonresident alien" (26 U.S.C. §7701(b)(1)(B)) in relation to the national government if they lawfully serve in a public office.
7. You can be a CIVIL "nonresident alien" pursuant to 26 U.S.C. §7701(b)(1)(B) and a constitutional or Fourteenth Amendment "Citizen" AT THE SAME TIME. Why? Because the Supreme Court ruled in *Hooven and Allison v. Evatt*, 324 U.S. 652 (1945), that there are THREE different and mutually exclusive "United States", and therefore THREE types of "citizens of the United States". Here is an example:

*"The 1<sup>st</sup> section of the 14<sup>th</sup> article [Fourteenth Amendment], to which our attention is more specifically invited, opens with a definition of citizenship—not only citizenship of the United States[\*\*\*], but citizenship of the states. No such definition was previously found in the Constitution, nor had any attempt been made to define it by act of Congress. It had been the occasion of much discussion in the courts, by the executive departments and in the public journals. It had been said by eminent judges that no man was a citizen of the United States[\*\*\*] except as he was a citizen of one of the states composing the Union. Those therefore, who had been born and resided always in the District of Columbia or in the territories [STATUTORY citizens], though within the United States[\*], were not [CONSTITUTIONAL] citizens."*  
*[Slaughter-House Cases, 83 U.S. (16 Wall.) 36, 21 L.Ed. 394 (1873)]*

The "citizen of the United States" mentioned in the Fourteenth Amendment is a constitutional "citizen of the United States", and the term "United States" in that context includes states of the Union and excludes federal territory. Hence, you would NOT be a CIVIL "citizen of the United States" within any federal statute, because all such statutes define "United States" to mean federal territory and EXCLUDE states of the Union. For more details, see:

[Why You are a Political Citizen but Civil Non-Citizen, National, and Nonresident Alien, Form #05.006](http://sedm.org/Forms/FormIndex.htm)  
<http://sedm.org/Forms/FormIndex.htm>

8. Your job, if you say you are a "citizen of the United States" or "U.S. citizen" on a government form ( a VERY DANGEROUS undertaking!) is to understand that all government forms presume the statutory and not constitutional context, and to ensure that you define precisely WHICH one of the three "United States" you are a "citizen" of, and do so in a way that excludes you from the civil jurisdiction of the national government because domiciled in a "foreign state". Both foreign countries and states of the Union are legislatively "foreign" and therefore "foreign states" in relation to the national government of the United States. The following form does that very carefully:

*Affidavit of Citizenship, Domicile, and Tax Status*, Form #02.001  
<http://sedm.org/Forms/FormIndex.htm>

- 1 9. Even the IRS says you CANNOT trust or rely on any of their forms and publications. We cover this in our  
 2 [Reasonable Belief About Income Tax Liability, Form #05.007](#). Hence, if you are compelled to fill out a government  
 3 form, you have an OBLIGATION to ensure that you define all "words of art" used on the form in such a way that there  
 4 is no room for presumption, no judicial or government discretion to "interpret" the form to their benefit, and no injury  
 5 to your rights or status by filling out the government form. This includes attaching the following forms to all tax  
 6 forms you submit:
- 7 9.1. *Affidavit of Citizenship, Domicile, and Tax Status*, Form #02.001  
 8 <http://sedm.org/Forms/FormIndex.htm>
- 9 9.2. *Tax Form Attachment*, Form #04.201  
 10 <http://sedm.org/Forms/FormIndex.htm>

11 We started off this document with maxims of law proving that "a deceiver deals in generals". Anyone who refuses to identify  
 12 the precise context, civil/statutory or political/constitutional, for EVERY "term of art" they are using in the legal field  
 13 ABSOLUTELY IS A DECEIVER.

---

### 14 3.1.3 Civil/Domiciled v. Political/Constitutional Citizens

15 *"When words lose their meaning [for their CONTEXT WHICH ESTABLISHES THEIR MEANING], people lose*  
 16 *their freedom."*  
 17 *[Confucius (551 BCE - 479 BCE) Chinese thinker and social philosopher]*

18 CIVIL/statutory citizenship is a legal status that designates a person's domicile while POLITICAL/constitutional citizenship  
 19 is a political status that designates a person's nationality. Understanding the distinction between nationality and domicile is  
 20 absolutely critical.

#### 21 1. Nationality:

- 22 1.1. Is a political status.  
 23 1.2. Is NONGEOGRAPHICAL. You can have ALLEGIANCE ANYWHERE you physically are.  
 24 1.3. Is not necessarily consensual or discretionary. For instance, acquiring nationality by birth in a specific place was  
 25 not a matter of choice whereas acquiring it by naturalization is.  
 26 1.4. Is defined by the Constitution, which is a political document.  
 27 1.5. Is ALSO defined by Title 8 of the U.S. Code, which mixes both political law and civil law for territories and  
 28 possessions.  
 29 1.6. Is synonymous with being a "national" within statutory law.  
 30 1.7. Is associated with a specific COUNTRY.  
 31 1.8. Is called a "political citizen" or a "citizen of the United States in a political sense" by the courts to distinguish it  
 32 from a STATUTORY citizen. See *Powe v. United States*, 109 F.2d 147 (1940).

#### 33 2. Domicile:

- 34 2.1. Is a civil status.  
 35 2.2. Is ALWAYS GEOGRAPHICAL. You can't have a domicile that is NOT tied to a specific physical geographical  
 36 place. It is ALWAYS tied to definitions relating to the GEOGRAPHICAL context for the word used. For instance  
 37 "U.S. person" in [26 U.S.C. §7701\(a\)\(30\)](#).  
 38 2.3. Always requires your consent and therefore is discretionary. See:
- Why Domicile and Becoming a "Taxpayer" Require Your Consent*, Form #05.002  
<http://sedm.org/Forms/FormIndex.htm>
- 39 2.4. Is not even addressed in the constitution.  
 40 2.5. Is defined by civil statutory law RATHER than the constitution.  
 41 2.6. Is in NO WAY connected with one's nationality.  
 42 2.7. Is usually connected with the word "person", "citizen", "resident", or "inhabitant" in statutory law.  
 43 2.8. Is associated with a specific COUNTY and a STATE rather than a COUNTRY.  
 44 2.9. Implies one is a "SUBJECT" of a SPECIFIC MUNICIPAL but not NATIONAL government.

45 Nationality and domicile, TOGETHER determine the political/CONSTITUTIONAL AND civil/STATUTORY status of a  
 46 human being respectively. These important distinctions are recognized in Black's Law Dictionary:

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### ***Sovereignty and Freedom Points and Authorities***

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1                   “**nationality** – That quality or character which arises from the fact of a person's belonging to a nation or state.  
 2                   **Nationality determines the political status** of the individual, especially with reference to allegiance; while  
 3                   **domicile determines his civil [statutory] status.** Nationality arises either by birth or by naturalization.”  
 4                   [Black's Law Dictionary (6th ed. 1990), p. 1025]

5 President Barack Obama affirmed our assertions that there are TWO components to your citizenship status at the end of his  
 6 State of the Union address given on 2/12/2013:

President Obama Recognizes separate POLITICAL and LEGAL components of citizenship, Exhibit #01.013  
 EXHIBITS PAGE: <http://sedm.org/Exhibits/ExhibitIndex.htm>  
 DIRECT LINK: <https://youtu.be/y7PhoqGi4fQ>

7 The U.S. Supreme Court also confirmed the above when they held the following. Note the key phrase “political jurisdiction”,  
 8 which is NOT the same as civil/legislative/statutory jurisdiction. One can have a political status of “citizen” under the  
 9 constitution while NOT being a “citizen” under federal statutory law because not domiciled on federal territory. To have  
 10 the status of “citizen” under federal statutory law, one must have a domicile on federal territory:

11                   “*This section contemplates two sources of citizenship, and two sources only,-birth and naturalization. The*  
 12                   *persons declared to be citizens are 'all persons born or naturalized in the United States, and subject to the*  
 13                   *jurisdiction thereof.'* The evident meaning of these last words is, not merely subject in some respect or degree to  
 14                   *the jurisdiction of the United States, but completely subject to their [plural, not singular, meaning states of the*  
 15                   *Union] political jurisdiction, and owing them [the state of the Union] direct and immediate*  
 16                   *allegiance.* And the words relate to the time of birth in the one case, as they do [169 U.S. 649, 725] to the time  
 17                   *of naturalization in the other. Persons not thus subject to the jurisdiction of the United States at the time of birth*  
 18                   *cannot become so afterwards, except by being naturalized, either individually, as by proceedings under the*  
 19                   *naturalization acts, or collectively, as by the force of a treaty by which foreign territory is acquired.”*  
 20                   [U.S. v. Wong Kim Ark, 169 U.S. 649, 18 S.Ct. 456; 42 L.Ed. 890 (1898)]

21                   “*This right to protect persons having a domicile, though not native-born or naturalized citizens, rests on the firm*  
 22                   *foundation of justice, and the claim to be protected is earned by considerations which the protecting power is not*  
 23                   *at liberty to disregard. Such domiciled citizen pays the same price for his protection as native-born or*  
 24                   *naturalized citizens pay for theirs. He is under the bonds of allegiance to the country of his residence, and, if*  
 25                   *he breaks them, incurs the same penalties. He owes the same obedience to the civil laws. His property is, in*  
 26                   *the same way and to the same extent as theirs, liable to contribute to the support of the Government. In nearly*  
 27                   *all respects, his and their condition as to the duties and burdens of Government are undistinguishable.”*  
 28                   [Fong Yue Ting v. United States, 149 U.S. 698 (1893) ]

29 Notice in the last quote above that they referred to a foreign national born in another country as a “citizen” of THIS country.  
 30 THIS is the REAL “citizen” (a domiciled foreign national) that judges and even tax withholding documents are really talking  
 31 about, rather than the “national” or “citizen” described in the constitution of the United States of America.

32 POLITICAL citizens\* (26 C.F.R. §1.1-1(c)) and CIVIL citizens\*\*+D (26 C.F.R. §1.1-1(a) and (b)) are the ONLY type of  
 33 “citizens” mentioned in the entire Internal Revenue Code.

34                   Title 26: Internal Revenue  
 35                   PART 1—INCOME TAXES  
 36                   Normal Taxes and Surtaxes  
 37                   § 1.1-1 Income tax on individuals.

38                   (a) General rule.

39                   (1) Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of  
 40                   the United States and, to the extent provided by section 871(b) or 877(b), on the income of a nonresident alien  
 41                   individual.

42                   [. . .]

43                   (c) Who is a citizen.

44                   Every person [“person” as used in 26 U.S.C. §6671(b) and 26 U.S.C. §7343, which both collectively are officers  
 45                   or employees of a corporation or a partnership with the United States government] born or naturalized in the  
 46                   United States and subject to its jurisdiction is a citizen. For other rules governing the acquisition of citizenship,  
 47                   see chapters 1 and 2 of title III of the Immigration and Nationality Act (8 U.S.C. 1401–1459). For rules governing

1 *loss of citizenship, see sections 349 to 357, inclusive, of such Act (8 U.S.C. 1481–1489), Schneider v. Rusk, (1964)*  
 2 *377 U.S. 163, and Rev. Rul. 70–506, C.B. 1970–2, 1. For rules pertaining to persons who are nationals but not*  
 3 *citizens at birth, e.g., a person born in American Samoa, see section 308 of such Act (8 U.S.C. 1408). For special*  
 4 *rules applicable to certain expatriates who have lost citizenship with a principal purpose of avoiding certain*  
 5 *taxes, see section 877. A foreigner who has filed his declaration of intention of becoming a citizen but who has*  
 6 *not yet been admitted to citizenship by a final order of a naturalization court is an alien.*

7 [SOURCE: <http://law.justia.com/cfr/title26/26-1.0.1.1.0.1.2.html>]

8 The CIVIL/DOMICILE/STATUTORY citizen\*\*+D described in 26 C.F.R. §1.1-1(a) and (b) can include any American  
 9 national described in 26 C.F.R. §1.1-1(c). Anyone who claims an American national, also called a POLITICAL citizen\*, is  
 10 equivalent to a CIVIL/STATUTORY “U.S.[\*\*] citizen[\*]” subject to the income tax is engaging in criminal identity theft as  
 11 documented in the following. They are also criminally impersonating a “U.S. citizen” in violation of 18 U.S.C. §911:

*Government Identity Theft*, Form #05.046  
<http://sedm.org/Forms/FormIndex.htm>

12 Domicile and NOT nationality is what imputes a civil status under the tax code and a liability for tax. Tax liability is a civil  
 13 liability that attaches to civil statutory law, which in turn attaches to the person through their choice of domicile. When you  
 14 CHOOSE a domicile, you elect or nominate a protector, which in turn gives rise to an obligation to pay for the civil protection  
 15 demanded. The method of providing that protection is the civil laws of the municipal (as in COUNTY) jurisdiction that you  
 16 chose a domicile within.

17 *"domicile. A person's legal home. That place where a man has his true, fixed, and **permanent home** and*  
 18 *principal establishment, and to which whenever he is absent he has **the intention of** returning. *Smith v. Smith,*  
 19 *206 Pa.Super. 310, 213 A.2d. 94. Generally, physical presence within a state and **the intention** to make it one's*  
 20 *home are the requisites of establishing a "domicile" therein. The permanent residence of a person or the place*  
 21 *to which he **intends to** return even though he may actually reside elsewhere. A person may have more than one*  
 22 *residence but only one domicile. **The legal domicile of a person is important since it, rather than the actual***  
 23 ***residence, often controls the jurisdiction of the taxing authorities and determines where a person may exercise***  
 24 ***the privilege of voting and other legal rights and privileges.**"*  
 25 *[Black's Law Dictionary, Sixth Edition, p. 485]**

26 Later versions of Black's Law Dictionary attempt to cloud this important distinction between nationality and domicile in  
 27 order to unlawfully and unconstitutionally expand federal power into the states of the Union and to give federal judges  
 28 unnecessary and unwarranted discretion to kidnap people into their jurisdiction using false presumptions. They do this by  
 29 trying to make you believe that domicile and nationality are equivalent, when they are EMPHATICALLY NOT. Here is an  
 30 example:

31 ***"nationality – The relationship between a citizen of a nation and the nation itself, customarily involving***  
 32 ***allegiance by the citizen and protection by the state; membership in a nation. This term is often used***  
 33 ***synonymously with citizenship.**"*  
 34 *[Black's Law Dictionary (8th ed. 2004)]*

35 Federal courts regard the term “citizenship” as equivalent to domicile, meaning domicile on federal territory.

36 ***"The words "citizen" and citizenship," however, usually include the idea of domicile, Delaware, L.&W.R.Co.***  
 37 ***v. Petrowsky, C.C.A.N.Y., 250 F. 554, 557;"***  
 38 *[Black's Law Dictionary, Fourth Edition, p. 310]*

39 Hence:

- 40 1. The term “citizenship” is being stealthily used by government officials as a magic word that allows them to hide their  
 41 presumptions about your status. Sometimes they use it to mean NATIONALITY, and sometimes they use it to mean  
 42 DOMICILE.
- 43 2. The use of the word “citizenship” should therefore be AVOIDED when dealing with the government because its  
 44 meaning is unclear and leaves too much discretion to judges and prosecutors.
- 45 3. When someone from any government uses the word “citizenship”, you should:
  - 46 3.1. Tell them NOT to use the word, and instead to use “nationality” or “domicile”.
  - 47 3.2. Ask them whether they mean “nationality” or “domicile”.

1           3.3. Ask them WHICH political subdivision they imply a domicile within: federal territory or a constitutional state of  
2           the Union.

3           A failure to either understand or apply the above concepts can literally mean the difference between being a government pet  
4           in a legal cage called a franchise, and being a free and sovereign man or woman.

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5           **3.1.4   Citizenship Status v. Tax Status**

6           The table beginning on the next page in landscape format summarizes all the known citizenship and domicile options within  
7           American jurisprudence.  
8



Table 3: “Citizenship status” vs. “Income tax status”

#	Citizenship status	Place of birth	Domicile	Accepting tax treaty benefits?	Defined in	Tax Status under 26 U.S.C./Internal Revenue Code			
						“Citizen” (defined in 26 C.F.R. §1.1-1)	“Resident alien” (defined in 26 U.S.C. §7701(b)(1)(A), 26 C.F.R. §1.1441-1(c)(3)(i) and 26 C.F.R. §1.1-1(a)(2)(ii))	“Nonresident alien INDIVIDUAL” (defined in 26 U.S.C. §7701(b)(1)(B) and 26 C.F.R. §1.1441-1(c)(3))	“Non-resident NON-person” (NOT defined)
1	“national and citizen of the United States* at birth” or “U.S.* citizen”	Political “United States” pursuant to 8 U.S.C. §1101(a)(38), (a)(36) and 8 C.F.R. §215.1(f) or in the “outlying possessions of the United States” pursuant to 8 U.S.C. §1101(a)(29)	District of Columbia, Puerto Rico, Guam, Virgin Islands	NA	8 U.S.C. §1401; 8 U.S.C. §1101(a)(22)(A)	Yes (only pay income tax abroad with IRS Forms 1040/2555. See Cook v. Tait, 265 U.S. 47 (1924))	No	No	No
2	“non-citizen national of the United States** at birth” or “U.S.** national”	Political “United States” pursuant to 8 U.S.C. §1101(a)(38), (a)(36) and 8 C.F.R. §215.1(f) or in the “outlying possessions of the United States” pursuant to 8 U.S.C. §1101(a)(29)	American Samoa; Swain’s Island; or abroad to U.S. national parents under 8 U.S.C. §1408(2)	NA	8 U.S.C. §1408; 8 U.S.C. §1101(a)(22)(B); 8 U.S.C. §1452	No (see 26 U.S.C. §7701(b)(1)(B))	No	Yes (see IRS Form 1040NR for proof)	No
3.1	“U.S.A.*** national” or “state national” or “Constitutional but not statutory U.S.*** citizen”	Constitutional Union state	State of the Union	NA (ACTA agreement)	8 U.S.C. §1101(a)(21); 14 <sup>th</sup> Amend., Sect. 1	No	No	No	Yes
3.2	“U.S.A.*** national” or “state national” or “Constitutional but not statutory U.S.*** citizen”	Constitutional Union state	Foreign country	Yes	8 U.S.C. §1101(a)(21); 14 <sup>th</sup> Amend., Sect. 1	No	No	Yes	No
3.3	“U.S.A.*** national” or “state national” or “Constitutional but not statutory U.S.*** citizen”	Constitutional Union state	Foreign country	No	8 U.S.C. §1101(a)(21); 14 <sup>th</sup> Amend., Sect. 1	No	No	No	Yes

#	Citizenship status	Place of birth	Domicile	Accepting tax treaty benefits?	Defined in	Tax Status under 26 U.S.C./Internal Revenue Code			
						“Citizen” (defined in 26 C.F.R. §1.1-1)	“Resident alien” (defined in 26 U.S.C. §7701(b)(1)(A), 26 C.F.R. §1.1441-1(c)(3)(i) and 26 C.F.R. §1.1-1(a)(2)(ii))	“Nonresident alien INDIVIDUAL” (defined in 26 U.S.C. §7701(b)(1)(B) and 26 C.F.R. §1.1441-1(c)(3))	“Non-resident NON-person” (NOT defined)
3.4	Statutory “citizen of the United States**” or Statutory “U.S.** citizen”	Constitutional Union state	Puerto Rico, Guam, Virgin Islands, Commonwealth of Northern Mariana Islands	NA (ACTA agreement)	8 U.S.C. §1101(a)(21); 14 <sup>th</sup> Amend., Sect. 1; 8 U.S.C. §1101(a)(22)(A)	Yes	No	No	No
4.1	“alien” or “Foreign national”	Foreign country	Puerto Rico, Guam, Virgin Islands, Commonwealth of Northern Mariana Islands	NA	8 U.S.C. §1101(a)(21); 8 U.S.C. §1101(a)(3)	No	Yes	No	No
4.2	“alien” or “Foreign national”	Foreign country	State of the Union	Yes	8 U.S.C. §1101(a)(21); 8 U.S.C. §1101(a)(3)	No	No	Yes	No
4.3	“alien” or “Foreign national”	Foreign country	State of the Union	No	8 U.S.C. §1101(a)(21); 8 U.S.C. §1101(a)(3)	No	No	No	Yes
4.4	“alien” or “Foreign national”	Foreign country	Foreign country	Yes	8 U.S.C. §1101(a)(21)	No	No	Yes	No
4.5	“alien” or “Foreign national”	Foreign country	Foreign country	No	8 U.S.C. §1101(a)(21)	No	No	No	Yes

NOTES:

1. Domicile is a prerequisite to having any civil status per Federal Rule of Civil Procedure 17. One therefore cannot be a statutory "alien" under 8 U.S.C. §1101(a)(3) without a domicile on federal territory. Without such a domicile, you are a transient foreigner and neither an "alien" nor a "nonresident alien".
2. "United States" is described in 8 U.S.C. §1101(a)(38), (a)(36) and 8 C.F.R. §215.1(f) is the POLITICAL "United States", meaning the entire country.
3. A "nonresident alien individual" who has made an election under 26 U.S.C. §6013(g) and (h) to be treated as a "resident alien" is treated as a "nonresident alien" for the purposes of withholding under I.R.C. Subtitle C but retains their status as a "resident alien" under I.R.C. Subtitle A. See 26 C.F.R. §1.1441-1(c)(3) for the definition of "individual", which means "alien".
4. A "non-person" is really just a transient foreigner who is not "purposefully availing themselves" of commerce within the legislative jurisdiction of the United States on federal territory under the Foreign Sovereign Immunities Act, 28 U.S.C. Chapter 97. The real transition from a "NON-person" to an "individual" occurs when one:
  - 4.1. "Purposefully avails himself" of commerce on federal territory and thus waives sovereign immunity. Examples of such purposeful availment are the next three items.
  - 4.2. Lawfully and consensually occupying a public office in the U.S. government and thereby being an "officer and individual" as identified in 5 U.S.C. §2105(a). Otherwise, you are PRIVATE and therefore beyond the civil legislative jurisdiction of the national government.
  - 4.3. Voluntarily files an IRS Form 1040 as a citizen or resident abroad and takes the foreign tax deduction under 26 U.S.C. §911. This too is essentially an act of "purposeful availment". Nonresidents are not mentioned in section 911. The upper left corner of the form identifies the filer as a "U.S. individual". You cannot be an "U.S. individual" without ALSO being an "individual". All the "trade or business" deductions on the form presume the applicant is a public

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- 1 officer, and therefore the "individual" on the form is REALLY a public officer in the government and would be committing FRAUD if he or she was NOT.
- 2 4.4. VOLUNTARILY fills out an IRS Form W-7 ITIN Application (IRS identifies the applicant as an "individual") AND only uses the assigned number in
- 3 connection with their compensation as an elected or appointed public officer. Using it in connection with PRIVATE earnings is FRAUD.
- 4 5. What turns a “non-resident NON-person” into a “nonresident alien individual” is meeting one or more of the following two criteria:
- 5 5.1. Residence/domicile in a foreign country under the residence article of an income tax treaty and 26 C.F.R. §301.7701(b)-7(a)(1).
- 6 5.2. Residence/domicile as an alien in Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa as
- 7 determined under 26 C.F.R. §301.7701(b)-1(d).

### 3.1.5 Five Types of American Nationals

There are five types of American nationals recognized under federal law:

1. **STATUTORY CIVIL “U.S.\*\* citizen++D”**
  - 1.1. A CIVIL status that is geographical.
  - 1.2. Consensually domiciled within the exclusive jurisdiction of Congress.
  - 1.3. Subject to the civil laws of Congress under Federal Rule of Civil Procedure 17.
  - 1.4. Could consist of a human being or an office or civil status created by Congress and therefore PROPERTY of Congress. For example, a civil statutory “U.S. person” in 26 U.S.C. §7701(a)(30).
  - 1.5. If the citizen\*\*+D it is a legislatively created fiction or OFFICE or CIVIL STATUS the OFFICER can act as a “RESIDENT AGENT” for the office and have a domicile INDEPENDENT of and not the same as the office. See, for instance, 26 C.F.R. §301.7701(b)-2. For instance, states of the Union in registering corporations and LLCs with the Secretary of State permit the resident agent to be physically within the state but domiciled OUTSIDE the county that is the situs of the entity. We know of no cases, however, where the resident agent can reside physically outside the entire state. This is because they would be in a foreign state and outside the venue of the states courts. They would not be susceptible to service of process under the circumstances.
2. **STATUTORY political “nationals and citizens of the United States at birth” (statutory “U.S.\* citizen\*\*”)**
  - 2.1. A POLITICAL status not tied to a geographical place. Allegiance can exist independent of geography.
  - 2.2. A status defined and found in 8 U.S.C. §1401 and 8 U.S.C. §1101(a)(22)(A), in the implementing regulations of the Internal Revenue Code at 26 C.F.R. §1.1-1(c), and in most other federal statutes.
  - 2.3. Born anywhere in the exclusive jurisdiction of states of the Union or abroad.
  - 2.4. Also called “political U.S.\* citizens\*” throughout this document.
3. **STATUTORY political “nationals but not citizens of the United States\*\* at birth” (where “United States” or “U.S.” means the federal United States)**
  - 3.1. A POLITICAL status not tied to a geographical place. Allegiance can exist independent of geography.
  - 3.2. Defined in 8 U.S.C. §1408, 8 U.S.C. §1101(a)(22)(B) and 8 U.S.C. §1452.
  - 3.3. Born anywhere American Samoa or Swains Island.
  - 3.4. May not participate politically in federal elections or as federal jurists.
  - 3.5. Owe allegiance to the GOVERNMENT of the United States\*\* and NOT the PEOPLE of the States of the Union, who are called United States\*\*\*.
4. **STATUTORY political “national of the United States\*\*”**
  - 4.1. A POLITICAL status not tied to a geographical place. Allegiance can exist independent of geography.
  - 4.2. Defined in 8 U.S.C. §1101(a)(22).
  - 4.3. Includes POLITICAL “citizens of the United States\*\*” defined in 8 U.S.C. §1101(a)(22)(A).
  - 4.4. Includes “a person who, though not a citizen of the United States[\*\*], owes permanent allegiance to the United States[\*\*]” defined in 8 U.S.C. §1101(a)(22)(B).
5. **CONSTITUTIONAL “nationals of the United States\*\*\*”, “State nationals”, or “nationals of the United States of America”**
  - 5.1. A POLITICAL status not tied to a geographical place. Allegiance can exist independent of geography.
  - 5.2. Defined under federal law pursuant to 8 U.S.C. §1101(a)(21), under Law of Nations, under state laws, and under U.S.A. Constitution.
  - 5.3. Is equivalent to the term “state citizen”.
  - 5.4. In general, born in any one of the several states of the Union but not in a federal territory, possession, or the District of Columbia. Not domiciled in the federal zone.
  - 5.5. Not subject to the “police power” of the federal government or most “Acts of Congress”.
  - 5.6. Owes allegiance to the sovereign people, collectively and individually, within the body politic of the constitutional state residing in.
  - 5.7. May serve as a state jurist or grand jurist involving only parties with his same citizenship and domicile status.
  - 5.8. May vote in state elections.
  - 5.9. At this time, all “state Nationals” are also a “USA National”. But not all “USA Nationals” are a “state National” (for example, a USA national not residing nor domiciled in a state of the Union).
  - 5.10. Is a man or woman whose unalienable natural rights are recognized, secured, and protected by his state constitution against state actions and against federal intrusion by the Constitution for the United States of America.

5.11. Includes state nationals, because you cannot get a USA passport without this status per [22 U.S.C. §212](#) and [22 C.F.R. §51.2](#).

POLITICAL citizens\* under 8 U.S.C. §1401(a) are synonymous with Fourteenth Amendment “citizens of the United States\*\*\*”. Political citizens\* 8 U.S.C. §1401 OTHER than 8 U.S.C. §1401(a) are privileged and may have their citizen status taken away by Congress.

We have prepared a Venn diagram showing all of the various types of citizens so that you can properly distinguish them. The important thing to notice about this diagram is that there are multiple types of “citizens of the United States” and “nationals of the United States” because there are multiple definitions of “United States” according to the Supreme Court in *Hooven and Allison v. Evatt*:

*"The term 'United States' may be used in any one of several senses. It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in the family of nations. It may designate the territory over which the sovereignty of the United States extends, or it may be the collective name of the states which are united by and under the Constitution."*  
 [*Hooven & Allison Co. v. Evatt, 324 U.S. 652 (1945)*]

The three definitions of the term “United States” are abbreviated or symbolized using the conventions below:

**Table 4: Meanings assigned to "United States" by the U.S. Supreme Court in *Hooven & Allison v. Evatt***

#	U.S. Supreme Court Definition of “United States” in <i>Hooven</i>	Context in which usually used	Referred to in this article as	Interpretation
1	“It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in the family of nations.”	International law	“United States**”	“These <u>united States</u> ,” when traveling abroad, you come under the jurisdiction of the President through his agents in the U.S. State Department, where “U.S.” refers to the sovereign society. You are a “Citizen of the United States” like someone is a Citizen of France, or England. We identify this version of “United States” with a single asterisk after its name: “United States**” throughout this article.
2	“It may designate the territory over which the sovereignty of the United States extends, or”	Federal law Federal forms	“United States***”	“The United States (the District of Columbia, possessions and territories)”. Here Congress has exclusive legislative jurisdiction. In this sense, the term “United States” is a singular noun. You are a person residing in the District of Columbia, one of its Territories or Federal areas (enclaves). Hence, even a person living in the one of the sovereign States could still be a member of the Federal area and therefore a “citizen of the United States.” This is the definition used in most “Acts of Congress” and federal statutes. We identify this version of “United States” with two asterisks after its name: “United States***” throughout this article. This definition is also synonymous with the “United States” corporation found in 28 U.S.C. §3002(15)(A).
3	“...as the collective name for the states which are united by and under the Constitution.”	Constitution of the United States	“United States****”	“The <u>several States</u> which is the <u>united States of America</u> .” Referring to the <u>50 sovereign States</u> , which are united under the <u>Constitution of the United States of America</u> . The federal areas within these states are not included in this definition because the <u>Congress does not</u> have exclusive legislative authority over any of the <u>50 sovereign States within the Union of States</u> . Rights are retained by the States in the 9th and 10th Amendments, and you are a “ <u>Citizen of these united States</u> .” This is the definition used in the Constitution for the United States of America. We identify this version of “United States” with a three asterisks after its name: “United States****” throughout this article.



3.1.6 Effect of Domicile on Citizenship Status

Table 5: Effect of domicile on citizenship status

Description	CONDITION		
	Domicile WITHIN the FEDERAL ZONE and located in FEDERAL ZONE	Domicile WITHIN the FEDERAL ZONE and temporarily located abroad in foreign country	Domicile WITHOUT the FEDERAL ZONE and located WITHOUT the FEDERAL ZONE
Location of domicile	“United States” per <a href="#">26 U.S.C. §§7701(a)(9)</a> and <a href="#">(a)(10)</a> , <a href="#">7701(a)(39)</a> , <a href="#">7408(d)</a>	“United States” per <a href="#">26 U.S.C. §§7701(a)(9)</a> and <a href="#">(a)(10)</a> , <a href="#">7701(a)(39)</a> , <a href="#">7408(d)</a>	Without the “United States” per <a href="#">26 U.S.C. §§7701(a)(9)</a> and <a href="#">(a)(10)</a> , <a href="#">7701(a)(39)</a> , <a href="#">7408(d)</a>
Physical location	Federal territories, possessions, and the District of Columbia	Foreign nations ONLY (NOT states of the Union)	Foreign nations states of the Union Federal possessions
Tax Status	“U.S. Person” <a href="#">26 U.S.C. §7701(a)(30)</a>	“U.S. Person” <a href="#">26 U.S.C. §7701(a)(30)</a>	“Nonresident alien individual” if a public officer in the U.S. government. <a href="#">26 C.F.R. §1.1441-1(c)(3)</a> for the definition of “individual”. “Non-resident NON-person” if NOT a public officer in the U.S. government
Tax form(s) to file	IRS Form 1040	IRS Form 1040 plus 2555	<u>IRS Form 1040NR</u> : “alien individuals”, “nonresident alien individuals” <u>No filing requirement</u> : “non-resident NON-person”
Status if DOMESTIC “national of the United States**”	“national and citizen of the United States** at birth” per <a href="#">8 U.S.C. §1401</a> and “citizen of the United States***” per <a href="#">8 U.S.C. §1101(a)(22)(A)</a> if born in on federal territory. (Not required to file if physically present in the “United States” because no statute requires it)	Citizen abroad <a href="#">26 U.S.C. §911</a> (Meets presence test)	“non-resident” if born in a state of the Union <a href="#">8 U.S.C. §1408</a> , <a href="#">8 U.S.C. §1452</a> , and <a href="#">8 U.S.C. §1101(a)(22)(B)</a> if born in a possession.
Status if FOREIGN “national” pursuant to <a href="#">8 U.S.C. §1101(a)(21)</a>	“Resident alien” <a href="#">26 U.S.C. §7701(b)(1)(A)</a>	“Resident alien abroad” <a href="#">26 U.S.C. §911</a> (Meets presence test)	“Nonresident alien individual” if a public officer in the U.S. government. <a href="#">26 C.F.R. §1.1441-1(c)(3)</a> for the definition of “individual”. “Non-resident NON-person” if NOT a public officer in the U.S. government

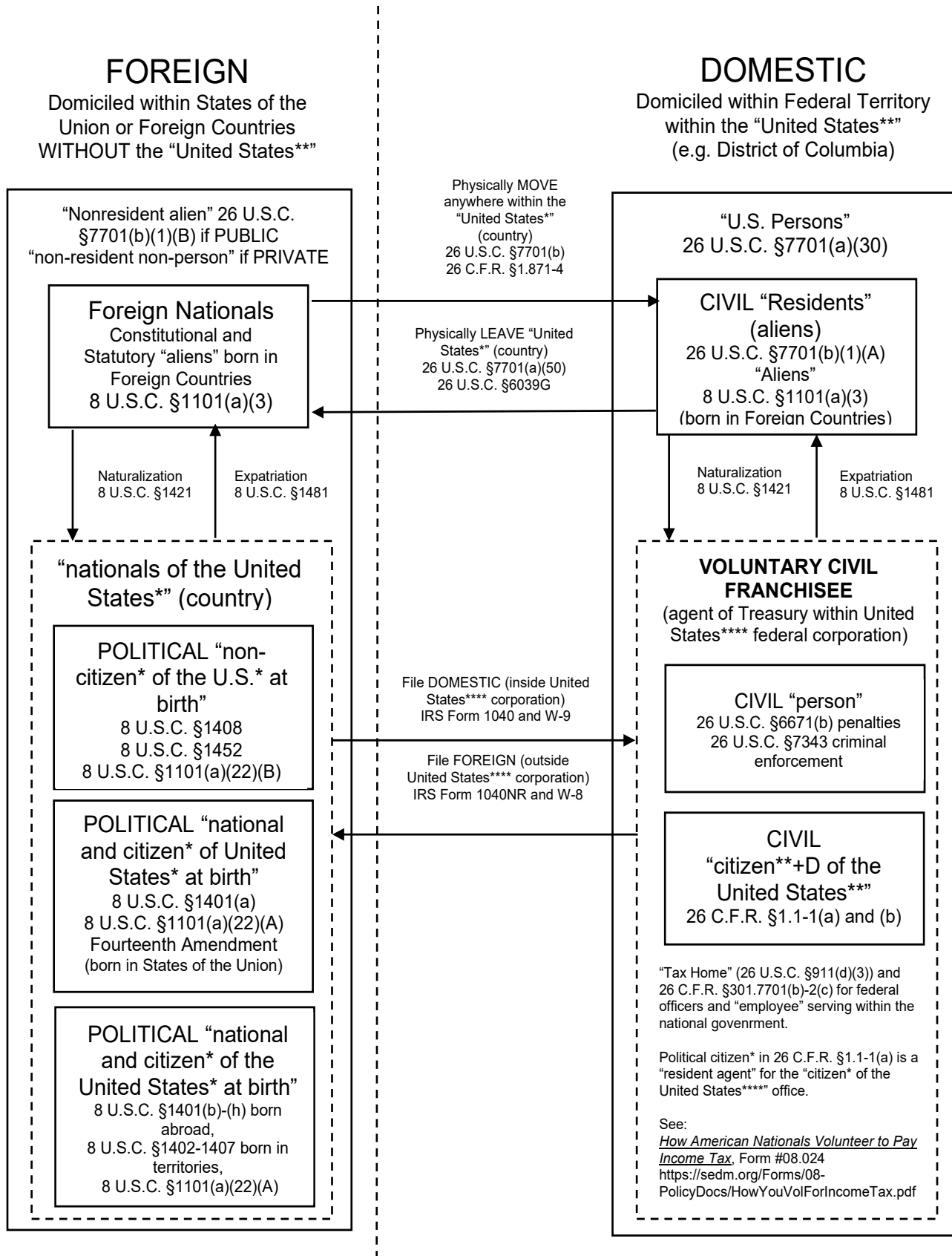
## NOTES:

1. “United States” is defined as federal territory within [26 U.S.C. §§7701\(a\)\(9\)](#) and [\(a\)\(10\)](#), [7701\(a\)\(39\)](#), and [7408\(d\)](#), and [4 U.S.C. §110\(d\)](#). It includes a constitutional state of the union, but ONLY among those who have made a CIVIL “U.S. person” election under [26 U.S.C. §7701\(a\)\(30\)](#). Otherwise, constitutional states are legislatively foreign among American nationals by default, who are “nonresident aliens” WITHOUT the election.
2. The “District of Columbia” is defined as a federal corporation but not a physical place, a “body politic”, or a de jure “government” within the District of Columbia Act of 1871, 16 Stat. 419, 426, Sec. 34. See: *Corporatization and Privatization of the Government*, Form #05.024; <http://sedm.org/Forms/FormIndex.htm>.

3. “nationals” of the United States of America who are domiciled outside of federal jurisdiction, either in a state of the Union or a foreign country, are “nationals” but not “citizens” under federal law. They also qualify as “nonresident aliens” under [26 U.S.C. §7701\(b\)\(1\)\(B\)](#) if and only if they are engaged in a public office. See sections 4.11.2 of the *Great IRS Hoax*, Form #11.302 for details.
4. Temporary domicile in the middle column on the right must meet the requirements of the “Presence test” documented in IRS publications.
5. “FEDERAL ZONE”=District of Columbia and territories of the United States in the above table

3.1.7 Citizenship and Domicile Options and Relationships

Figure 3: Citizenship and domicile options and relationships



## NOTES:

1. The LEGAL separation between the LEFT and RIGHT sides is described in:
 

*Separation Between Public and Private Course*, Form #12.025  
<https://sedm.org/LibertyU/SeparatingPublicPrivate.pdf>
2. People on the LEFT side of the diagram can ONLY be connected to a status on the right side by CONSENT, whether overt or covert, as described in:
 

*How American Nationals Volunteer to Pay Income Tax*, Form #08.024  
<https://sedm.org/Forms/08-PolicyDocs/HowYouVolForIncomeTax.pdf>
3. The RIGHT side of the above diagram labeled “DOMESTIC” is synonymous with:
  - 3.1. PUBLIC.
  - 3.2. Defined, created and ABSOLUTELY OWNED by Congress as PUBLIC PROPERTY in 26 U.S.C. §7701(a)(4).
  - 3.3. Created and organized by ONLY by a pagan civil ruler (man) and his idolatrous law that worships false idols.
  - 3.4. Protected ONLY by the civil statutory franchise Code called the Internal Revenue Code and NOT the constitutional or the common law.
  - 3.5. A CIVIL franchise status that you must VOLUNTEER for. The process of volunteering makes you SURETY for an office in the U.S. government without pay, and literally makes you a slave and a peon to pay off an endlessly growing mountain of public debt that will never be paid off. Be an obedient lemming and jump off that cliff, will you?
  - 3.6. A fiction of law engineered by Congress to offer FRANCHISE services in a Constitutional state that the Constitution DOES NOT expressly authorize and which are therefore UNCONSTITUTIONAL.
  - 3.7. Since it relates to being INTERNAL to the United States\*\*\*\* federal corporation, this is why:
    - 3.7.1. The IRS is called the INTERNAL Revenue Service.
    - 3.7.2. The franchise code implementing it is called the INTERNAL Revenue Code.
4. The left side labeled FOREIGN is synonymous with:
  - 4.1. PRIVATE.
  - 4.2. Defined in 26 U.S.C. §7701(a)(5), but only in the context of corporations. They can’t legislate for humans until they JOIN privileged corporations and become DOMESTIC.
  - 4.3. Created and organized by ONLY GOD and His law ONLY.
  - 4.4. Protected by the common law and the criminal law and the constitution but not subject to the CIVIL provisions of the Internal Revenue Code.
  - 4.5. Outside the United States\*\*\*\* federal corporation as a physical man or woman.
  - 4.6. A status MANDATED by the First Amendment and your Right to NOT contract so you actually have a CHOICE to leave Babylon and retain your liberty.
5. Changing CIVIL FRANCHISE status from “foreign” on the left to “domestic” on the right can occur EITHER by:
  - 5.1. Physically moving within the COUNTRY United States\* for aliens under 26 U.S.C. §7701(b).
  - 5.2. Making a voluntary “election” to become THE privileged “citizen\* of the United States\*\*\*\*\*” office within the Department of the Treasury as documented in:
 

*How American Nationals Volunteer to Pay Income Tax*, Form #08.024  
<https://sedm.org/Forms/08-PolicyDocs/HowYouVolForIncomeTax.pdf>
6. An act of “election” is an act of CONSENT that converts either YOU or your PROPERTY from PRIVATE to PUBLIC, and thus DONATES either YOU or your PROPERTY to the government FOR FREE. Don’t EVER do that!. For a catalog of all such acts of consent, see:
 

*Catalog of Elections and Entity Types in the Internal Revenue Code*, FTSIG  
<https://ftsig.org/catalog-of-elections-in-the-internal-revenue-code/>
7. The “citizen\* of the United States\*\*\*\*\*” corporation on the right:
  - 7.1. Is the POLITICAL/TERRITORIAL Citizen\* defined in 26 C.F.R. §1.1-1(c) called a “citizen\*”.
  - 7.2. PLUS “of the United States\*\*\*\*\*” in 26 C.F.R. §1.1-1(a), where this is the LEGAL/CORPORATE United States\*\*\*\* and not the GEOGRAPHICAL “United States\*\*”.

The above tactic is REPEATED in 26 U.S.C. §7701(a)(30) using the same DECEPTIVE EQUIVOCATION of “United States” that is used in 26 C.F.R. §1.1-1(a).
8. The reason the “citizen\* of the United States\*\*\*\*\*” (corporation) in 26 C.F.R. §1.1-1(a) and 26 U.S.C. §7701(a)(30) had to be engineered as two separate parts that way is explained by the following description of FRANCHISE in the legal encyclopedia. Note that it says a franchise is a special privilege BEYOND that of an ordinary POLITICAL Citizen\*, meaning a “national of the United States\*” or an American national described in 26 C.F.R. §1.1-1(c).



*"In a legal or narrower sense, the term "franchise" is more often used to designate a right or privilege conferred by law,<sup>25</sup> and the view taken in a number of cases is that to be a franchise, the right possessed must be such as cannot be exercised without the express permission of the sovereign power<sup>26</sup> –that is, a privilege or immunity of a public nature which cannot be legally exercised without legislative grant.<sup>27</sup> **It is a privilege conferred by government on an individual or a corporation to do that "which does not belong to the citizens [NATIONALS or "nationals of the United States" who are nonresident aliens] of the country generally by common right."***

<sup>28</sup> For example, a right to lay rail or pipes, or to string wires or poles along a public street, is not an ordinary use which everyone may make of the streets, but is a special privilege, or franchise, to be granted for the accomplishment of public objects<sup>29</sup> which, except for the grant, would be a trespass.<sup>30</sup> **In this connection,**

<sup>25</sup> People ex rel. Fitz Henry v. Union Gas & E. Co. 254 Ill. 395, 98 N.E. 768; State ex rel. Bradford v. Western Irrigating Canal Co. 40 Kan 96, 19 P. 349; Milhau v. Sharp, 27 N.Y. 611; State ex rel. Williamson v. Garrison (Okla), 348 P.2d. 859; Ex parte Polite, 97 Tex Crim 320, 260 S.W. 1048.

The term "franchise" is generic, covering all the rights granted by the state. Atlantic & G. R. Co. v. Georgia, 98 U.S. 359, 25 L.Ed. 185.

A franchise is a contract with a sovereign authority by which the grantee is licensed to conduct a business of a quasi-governmental nature within a particular area. West Coast Disposal Service, Inc. v. Smith (Fla App), 143 So.2d. 352.

<sup>26</sup> The term "franchise" is generic, covering all the rights granted by the state. Atlantic & G. R. Co. v. Georgia, 98 U.S. 359, 25 L.Ed. 185.

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<sup>27</sup> State v. Real Estate Bank, 5 Ark. 595; Brooks v. State, 3 Boyce (Del) 1, 79 A. 790; Belleville v. Citizens' Horse R. Co., 152 Ill. 171, 38 N.E. 584; State ex rel. Clapp v. Minnesota Thresher Mfg. Co. 40 Minn 213, 41 N.W. 1020.

<sup>28</sup> New Orleans Gaslight Co. v. Louisiana Light & H. P. & Mfg. Co., 115 U.S. 650, 29 L.Ed. 516, 6 S.Ct. 252; People's Pass. R. Co. v. Memphis City R. Co., 10 Wall (US) 38, 19 L.Ed. 844; Bank of Augusta v. Earle, 13 Pet (U.S.) 519, 10 L.Ed. 274; Bank of California v. San Francisco, 142 Cal. 276, 75 P. 832; Higgins v. Downward, 8 Houst (Del) 227, 14 A. 720, 32 A. 133; State ex rel. Watkins v. Fernandez, 106 Fla. 779, 143 So. 638, 86 A.L.R. 240; Lasher v. People, 183 Ill. 226, 55 N.E. 663; Inland Waterways Co. v. Louisville, 227 Ky. 376, 13 S.W.2d. 283; Lawrence v. Morgan's L. & T. R. & S. S. Co., 39 La. Ann. 427, 2 So. 69; Johnson v. Consolidated Gas E. L. & P. Co., 187 Md. 454, 50 A.2d. 918, 170 A.L.R. 709; Stoughton v. Baker, 4 Mass 522; Poplar Bluff v. Poplar Bluff Loan & Bldg. Asso., (Mo App) 369 S.W.2d. 764; Madden v. Queens County Jockey Club, 296 N.Y. 249, 72 N.E.2d. 697, 1 A.L.R.2d. 1160, cert den 332 U.S. 761, 92 L.Ed. 346, 68 S.Ct. 63; Shaw v. Asheville, 269 N.C. 90, 152 S.E.2d. 139; Victory Cab Co. v. Charlotte, 234 N.C. 572, 68 S.E.2d. 433; Henry v. Bartlesville Gas & Oil Co., 33 Okla 473, 126 P. 725; Elliott v. Eugene, 135 Or. 108, 294 P. 358; State ex rel. Daniel v. Broad River Power Co. 157 S.C. 1, 153 S.E. 537; State v. Scougal, 3 S.D. 55, 51 N.W. 858; Utah Light & Traction Co. v. Public Serv. Com., 101 Utah 99, 118 P.2d. 683.

A franchise represents the right and privilege of doing that which does not belong to citizens generally, irrespective of whether net profit accruing from the exercise of the right and privilege is retained by the franchise holder or is passed on to a state school or to political subdivisions of the state. State ex rel. Williamson v. Garrison (Okla), 348 P.2d. 859.

Where all persons, including corporations, are prohibited from transacting a banking business unless authorized by law, the claim of a banking corporation to exercise the right to do a banking business is a claim to a franchise. The right of banking under such a restraining act is a privilege or immunity by grant of the legislature, and the exercise of the right is the assertion of a grant from the legislature to exercise that privilege, and consequently it is the usurpation of a franchise unless it can be shown that the privilege has been granted by the legislature. People ex rel. Atty. Gen. v. Utica Ins. Co., 15 Johns (NY) 358.

<sup>29</sup> New Orleans Gaslight Co. v. Louisiana Light & H. P. & Mfg. Co., 115 U.S. 650, 29 L.Ed. 516, 6 S.Ct. 252; People's Pass. R. Co. v. Memphis City R. Co., 10 Wall (US) 38, 19 L.Ed. 844; Bank of Augusta v. Earle, 13 Pet (U.S.) 519, 10 L.Ed. 274; Bank of California v. San Francisco, 142 Cal. 276, 75 P. 832; Higgins v. Downward, 8 Houst (Del) 227, 14 A. 720, 32 A. 133; State ex rel. Watkins v. Fernandez, 106 Fla. 779, 143 So. 638, 86 A.L.R. 240; Lasher v. People, 183 Ill. 226, 55 N.E. 663; Inland Waterways Co. v. Louisville, 227 Ky. 376, 13 S.W.2d. 283; Lawrence v. Morgan's L. & T. R. & S. S. Co., 39 La. Ann. 427, 2 So. 69; Johnson v. Consolidated Gas E. L. & P. Co., 187 Md. 454, 50 A.2d. 918, 170 A.L.R. 709; Stoughton v. Baker, 4 Mass 522; Poplar Bluff v. Poplar Bluff Loan & Bldg. Asso. (Mo App) 369 S.W.2d. 764; Madden v. Queens County Jockey Club, 296 N.Y. 249, 72 N.E.2d. 697, 1 A.L.R.2d. 1160, cert den 332 U.S. 761, 92 L.Ed. 346, 68 S.Ct. 63; Shaw v. Asheville, 269 N.C. 90, 152 S.E.2d. 139; Victory Cab Co. v. Charlotte, 234 N.C. 572, 68 S.E.2d. 433; Henry v. Bartlesville Gas & Oil Co., 33 Okla 473, 126 P. 725; Elliott v. Eugene, 135 Or. 108, 294 P. 358; State ex rel. Daniel v. Broad River Power Co. 157 S.C. 1, 153 S.E. 537; State v. Scougal, 3 S.D. 55, 51 N.W. 858; Utah Light & Traction Co. v. Public Serv. Com., 101 Utah 99, 118 P.2d. 683.

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<sup>30</sup> People ex rel. Foley v. Stapleton, 98 Colo. 354, 56 P.2d. 931; People ex rel. Central Hudson Gas & E. Co. v. State Tax Com. 247 N.Y. 281, 160 N.E. 371, 57 A.L.R. 374; People v. State Tax Comrs. 174 N.Y. 417, 67 N.E. 69, aff'd 199 U.S. 1, 50 L.Ed. 65, 25 S.Ct. 705.

### ***Sovereignty and Freedom Points and Authorities***

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Litigation Tool 10.018, Rev. 11-21-2018

*the term "franchise" has sometimes been construed as meaning a grant of a right to use public property, or at least the property over which the granting authority has control.*<sup>31</sup>  
 [American Jurisprudence 2d, Franchises, §1: Definitions (1999)]

9. Because the “citizen\* of the United States\*\*\*\*” under 26 C.F.R. §1.1-1(a) is a FRANCHISE office and a PUBLIC office in the United States\*\*\*, those who VOLUNTEER for it become “officers of a corporation” subject to criminal enforcement and civil penalties. They would NOT be subject to either of these if they had not volunteered. These definitions are as follows. Be an obedient, cheap, FREE government whore servicing the “Babylon corporation” and BEND over, because no one in the government is going to EVER explain this to you and thereby let you UNVOLUNTEER! 26 U.S.C. §873(b)(3), which is chasing privileged deductions, is another way of becoming such a WHORE:

[26 U.S. Code §6671 - Rules for application of assessable penalties](#)

(b) Person defined

The term “person”, as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

[26 U.S. Code §7343 - Definition of term “person”](#)

The term “person” as used in this chapter includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

More sophistry like the above and LIES to keep you in servitude about the word “person” are described below. SCUM BAGS!

*Policy Document: IRS Fraud and Deception About the Statutory Word "Person", Form #08.023*  
<https://sedm.org/Forms/08-PolicyDocs/IRSPerson.pdf>

10. The RESULT of “electing” to partake in the above franchise is that you nominate the government to be your SUBSTITUTE King and replace God as a “parens patriae” and NEW lawgiver. Hence “created or organized” in 26 U.S.C. §7701(a)(4). You thus FIRED God as your protector and lawgiver in the process and committed religious idolatry in violation of the first four commandments of the Ten Commandments in Exodus 20. Because you have the King’s property “in your hand” you nominated him as king above you in violation of the Bible. A “franchise”, after all, is defined as “a privilege IN THE HANDS of a subject” and you NOMINATED yourself to BE that subject by asking for the King’s PUBLIC property:

*“The proposition is that the United States, as the grantor of the franchises of the company [a corporation, in this case], **the author of its charter, and the donor of lands, rights, and privileges of immense value, and as parens patriae, is a trustee, invested with power to enforce the proper use of the property and franchises granted for the benefit of the public.**”*  
 [U.S. v. Union Pac. R. Co., 98 U.S. 569 (1878)]

11. The result of ELECTING yourself into a franchise office by pursuing the king’s property is the following BIBLICAL curse:

*Curses of Disobedience [to God’s Laws]*

*“The alien [Washington, D.C. is legislatively “alien” in relation to states of the Union] who is among you shall rise higher and higher above you, and you shall come down lower and lower [malicious destruction of EQUAL PROTECTION and EQUAL TREATMENT by abusing FRANCHISES]. He shall lend to you [Federal Reserve counterfeiting franchise], but you shall not lend to him; he shall be the head, and you shall be the tail.*

<sup>31</sup> Young v. Morehead, 314 Ky. 4, 233 S.W.2d. 978, holding that a contract to sell and deliver gas to a city into its distribution system at its corporate limits was not a franchise within the meaning of a constitutional provision requiring municipalities to advertise the sale of franchises and sell them to the highest bidder.

A contract between a county and a private corporation to construct a water transmission line to supply water to a county park, and giving the corporation the power to distribute water on its own lands, does not constitute a franchise. Brandon v. County of Pinellas (Fla App), 141 So.2d. 278.

“Moreover all these curses shall come upon you and pursue and overtake you, until you are destroyed, because you did not obey the voice of the Lord your God, to keep His commandments and His statutes which He commanded you. And they shall be upon you for a sign and a wonder, and on your descendants forever.

“Because you did not serve [ONLY] the Lord your God with joy and gladness of heart, for the abundance of everything, therefore you shall serve your [covetous thieving lawyer] enemies, whom the Lord will send against you, in hunger, in thirst, in nakedness, and in need of everything; and He will put a yoke of iron [franchise codes] on your neck until He has destroyed you. The Lord will bring a nation against you from afar [the District of CRIMINALS], from the end of the earth, as swift as the eagle flies [the American Eagle], a nation whose language [LEGALESE] you will not understand, a nation of fierce [coercive and fascist] countenance, which does not respect the elderly [assassinates them by denying them healthcare through bureaucratic delays on an Obamacare waiting list] nor show favor to the young [destroying their ability to learn in the public FOOL system]. And they shall eat the increase of your livestock and the produce of your land [with “trade or business” franchise taxes], until you [and all your property] are destroyed [or STOLEN/CONFISCATED]; they shall not leave you grain or new wine or oil, or the increase of your cattle or the offspring of your flocks, until they have destroyed you.  
[Deut. 28:43-51, Bible, NKJV]

The above CURSE and its overall effect on society is described in:

How Scoundrels Corrupted Our Republican Form of Government, Family Guardian Fellowship  
<https://famguardian.org/Subjects/Taxes/Evidence/HowScCorruptOurRepubGovt.htm>

12. From a governmental perspective, the result of the above curse is SOCIALISM, as described in:

Socialism: The New American Civil Religion, Form #05.016  
<https://sedm.org/Forms/05-MemLaw/SocialismCivilReligion.pdf>

13. The STATUS of the Social Security Number or Taxpayer Identification Number under 26 C.F.R. §301.6109-1(g)(1) at any given time ALWAYS reflects WHICH side of the above diagram a particular “taxpayer” is.

14. The STATUS of the Social Security Number and Taxpayer Identification Number can change on an ANNUAL basis simply based on HOW the “taxpayer” files their tax return. They can file FOREIGN one year and DOMESTIC the next. The SSN/TIN is the “franchise mark” that acts as a license to use or consume GOVERNMENT/PUBLIC property. See:

Social Security Administration “franchise” is the license number, FTSIG  
<https://ftsig.org/history/ssa-franchise-is-the-license-number/>

15. At the beginning of each year, the IRS PRESUMES the DEFAULT status of DOMESTIC for every number. This PREJUDICIAL presumption is a violation of due process of law and results in IDENTITY THEFT as described in:

Identity Theft Affidavit, Form #14.020  
[https://sedm.org/Forms/14-PropProtection/Identity Theft Affidavit-fl14039.pdf](https://sedm.org/Forms/14-PropProtection/Identity%20Theft%20Affidavit-fl14039.pdf)

16. CIVIL STATUTORY FRANCHISE statuses on the right side of the diagram are civil franchises granted by Congress that are NOT authorized by the Constitution and therefore UNCONSTITUTIONAL. They represent an UNCONSTITUTIONAL COMMERCIAL INVASION of the states in violation of Article 4, Section 4 of the Constitution. As such, they are public offices within the national government. They are also sometimes called “legal statuses” or “tax statuses” or “civil statuses” by the courts. Those not seeking office and not wishing to commit Biblical idolatry in doing so should not claim any of these statuses. See:

Government Instituted Slavery Using Franchises, Form #05.030  
<https://sedm.org/Forms/05-MemLaw/Franchises.pdf>

17. ANYONE born or naturalized in the United States\* (the country) can lawfully pursue a FOREIGN tax status on the left above. For a detailed list of who can lawfully do this, see:

Summary of Different Types of American Nationals, FTSIG  
<https://ftsig.org/summary-of-different-types-of-american-nationals/>

18. The sophistry and deception described in the above diagram to convert YOUR status from PRIVATE to PUBLIC without your knowledge is ALSO applied to convert your PROPERTY from PRIVATE to PUBLIC to fool you into donating it to the government. That PROPERTY SCAM is described in:

Property View of Income Taxation Course, Form #12.046  
<https://sedm.org/LibertyU/PropertyViewOfIncomeTax.pdf>

19. For an EXHAUSTIVE description of how to apply knowledge of the above diagram to LAWFULLY AVOIDING income taxation, remaining ENTIRELY FOREIGN and PRIVATE, see:

Foreign Tax Status Information Group (FTSIG) Website  
<https://ftsig.org>

### 3.1.8 Statutory Rules for Converting Between Various Domicile and Citizenship Options Under Federal Law

The rules depicted above are also described in text form using the list below, if you would like to investigate the above diagram further:

1. **“non-resident non-person”**: Those with no domicile on federal territory and who are born either in a foreign country, a state of the Union, or within the federal zone. Also called a “nonresident”, “stateless person”, or “transient foreigner”. They are exclusively PRIVATE and beyond the reach of the civil statutory law because:
  - 1.1. They are not a “person” or “individual” because not engaged in an elected or appointed office.
  - 1.2. They have not waived sovereign immunity under the Foreign Sovereign Immunities Act, 28 U.S.C. Chapter 97.
  - 1.3. They have not “purposefully” or “consensually” availed themselves of commerce within the exclusive or general jurisdiction of the national government within federal territory.
  - 1.4. They waived the “benefit” of any and all licenses or permits in the context of a specific transaction or agreement.
  - 1.5. In the context of a specific business dealing, they have not invoked any statutory status under federal civil law that might connect them with a government franchise, such as “U.S. citizen”, “U.S. resident”, “person”, “individual”, “taxpayer”, etc.
  - 1.6. If they are demanded to produce an identifying number, they say they don’t consent and attach the following form to every application or withholding document:

*Why It is Illegal for Me to Request or Use a “Taxpayer Identification Number”, Form #04.205*  
<http://sedm.org/Forms/FormIndex.htm>

2. **“Aliens” or “alien individuals”**: Those born in a foreign country and not within any state of the Union or within any federal territory.
  - 2.1. “Alien” is defined in 8 U.S.C. §1101(a)(3) as a person who is neither a citizen nor a national.
  - 2.2. “Alien individual” is defined in 26 C.F.R. §1.1441-1(c)(3)(i).
  - 2.3. An alien is defined in 8 U.S.C. §1101(a)(3) as a person who is neither a statutory “U.S.\*\* citizen” per 8 U.S.C. §1401 nor a “national of the United States\*\*\*” per 8 U.S.C. §1101(a)(22).
  - 2.4. An alien with no domicile in the “United States” is presumed to be a “nonresident alien” pursuant to 26 C.F.R. §1.871-4(b).
3. **“Residents” or “resident aliens”**: An “alien” or “alien individual” with a legal domicile on federal territory.
  - 3.1. “Resident aliens” are defined in 26 U.S.C. §7701(b)(1)(A).
  - 3.2. A “resident alien” is an alien as defined in 8 U.S.C. §1101(a)(3) who has a legal domicile on federal territory that is no part of the exclusive jurisdiction of any state of the Union.
  - 3.3. An “alien” becomes a “resident alien” by filing IRS Form 1078 pursuant to 26 C.F.R. §1.871-4(c)(ii) and thereby electing to have a domicile on federal territory.
4. **“Nonresident aliens”**: Those with no domicile on federal territory and who are born either in a foreign country, a state of the Union, or within the federal zone. They serve in a public office in the national but not state government.
  - 4.1. Defined in 26 U.S.C. §7701(b)(1)(B).
  - 4.2. A “nonresident alien” is defined as a person who is neither a statutory “citizen” pursuant to 26 C.F.R. §1.1-1(c) nor a statutory “resident” pursuant to 26 U.S.C. §7701(b)(1)(A).
  - 4.3. A person who is a “non-citizen national” pursuant to 8 U.S.C. §1452 and 8 U.S.C. §1101(a)(22)(B) is a “nonresident alien”, but only if they are lawfully engaged in a public office of the national government.
5. **“Nonresident alien individuals”**: Those who are aliens and who do not have a domicile on federal territory.
  - 5.1. Status is indicated in block 3 of the IRS Form W-8BEN under the term “Individual”.
  - 5.2. Includes only nonresidents not domiciled on federal territory but serving in public offices of the national government. “person” and “individual” are synonymous with said office in 26 U.S.C. §6671(b) and 26 U.S.C. §7343.
6. **Convertibility between “aliens”, “resident aliens”, and “nonresident aliens”, and “nonresident alien individuals”**:
  - 6.1. A “nonresident alien” is not the legal equivalent of an “alien” in law nor is it a subset of “alien”.
  - 6.2. IRS Form W-8BEN, Block 3 has no block to check for those who are “non-resident non-persons” but not “nonresident aliens” or “nonresident alien individuals”. Thus, the submitter of this form who is a statutory “non-resident non-person” but not a “nonresident alien” or “nonresident alien individual” is effectively compelled to make an illegal and fraudulent election to become an alien and an “individual” if they do not add a block for “transient foreigner” or “Union State Citizen” to the form. See section 5.3 of the following:



About IRS Form W-8BEN, Form #04.202

<http://sedm.org/Forms/FormIndex.htm>

- 6.3. 26 U.S.C. §6013(g) and (h) and 26 U.S.C. §7701(b)(4)(B) authorize a “nonresident alien” who is married to a statutory “U.S. citizen” as defined in 26 C.F.R. §1.1-1(c) to make an “election” to become a “resident alien”.
- 6.4. It is unlawful for an unmarried “state national” pursuant to either 8 U.S.C. §1101(a)(21) to become a “resident alien”. This can only happen by either fraud or mistake.
- 6.5. An alien may overcome the presumption that he is a “nonresident alien” and change his status to that of a “resident alien” by filing IRS Form 1078 pursuant to 26 C.F.R. §1.871-4(c)(ii) while he is in the “United States”.
- 6.6. The term “residence” can only lawfully be used to describe the domicile of an “alien”. Nowhere is this term used to describe the domicile of a “state national” or a “nonresident alien”. See 26 C.F.R. §1.871-2.
- 6.7. The only way a statutory “alien” under 8 U.S.C. §1101(a)(3) can become both a “state national” and a “nonresident alien” at the same time is to be naturalized pursuant to 8 U.S.C. §1421 and to have a domicile in either a U.S. possession or a state of the Union.

7. Sources of confusion on these issues:

- 7.1. One can be a “non-resident non-person” *without* being an “individual” or a “nonresident alien individual” under the Internal Revenue Code. An example would be a human being born within the exclusive jurisdiction of a state of the Union who is therefore a “state national” pursuant to 8 U.S.C. §1101(a)(21) who does not participate in Social Security or use a Taxpayer Identification Number.
- 7.2. The term “United States” is defined in the Internal Revenue Code at 26 U.S.C. §7701(a)(9) and (a)(10).
- 7.3. The term “United States” for the purposes of citizenship is defined in 8 U.S.C. §1101(a)(38).
- 7.4. Any “U.S. Person” as defined in 26 U.S.C. §7701(a)(30) who is not found in the “United States” (District of Columbia pursuant to 26 U.S.C. §7701(a)(9) and (a)(10)) shall be treated as having an effective domicile within the District of Columbia pursuant to 26 U.S.C. §7701(a)(39) and 26 U.S.C. §7408(d).
- 7.5. The term “United States” for the purposes of political “citizens” pursuant to 26 C.F.R. §1.1-1(c) means the country “United States\*<sup>1</sup>”. It is NOT equivalent to CIVIL “citizens\*\*+D” as used in the Internal Revenue Code and in 26 C.F.R. §1.1-1(a) or (b).
- 7.6. The term “United States” as used in the Constitution of the United States is NOT equivalent to the statutory definition of the term used in:
- 7.6.1. 26 U.S.C. §7701(a)(9) and (a)(10).
- 7.6.2. 8 U.S.C. §1101(a)(38).
- The “United States” as used in the Constitution means the states of the Union and excludes federal territory, while the term “United States” as used in federal statutory law means federal territory and excludes states of the Union.
- 7.7. A constitutional “citizen of the United States” as mentioned in the Fourteenth Amendment is equivalent to a statutory “national and citizen of the United States at birth” as used in 8 U.S.C. §1401(a). See:

Why You are a Political Citizen but Civil Non-Citizen, National, and Nonresident Alien, Form #05.006

<http://sedm.org/Forms/FormIndex.htm>

- 7.8. In the case of jurisdiction over CONSTITUTIONAL aliens only (meaning foreign NATIONALS), the term “United States” implies all 50 states and the federal zone, and is not restricted only to the federal zone. See:
- 7.8.1. *Non-Resident Non-Person Position*, Form #05.020  
<http://sedm.org/Forms/FormIndex.htm>
- 7.8.2. [Kleindienst v. Mandel, 408 U.S. 753 \(1972\)](#)

*In accord with ancient principles of the international law of nation-states, the Court in The Chinese Exclusion Case, 130 U.S. 581, 609 (1889), and in Fong Yue Ting v. United States, 149 U.S. 698 (1893), held broadly, as the Government describes it, Brief for Appellants 20, that the power to exclude aliens is "inherent in sovereignty, necessary for maintaining normal international relations and defending the country against foreign encroachments and dangers - a power to be exercised exclusively by the political branches of government . . . ." Since that time, the Court's general reaffirmations of this principle have [408 U.S. 753, 766] been legion. 6 The Court without exception has sustained Congress' "plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden." Boutillier v. Immigration and Naturalization Service, 387 U.S. 118, 123 (1967). "[O]ver no conceivable subject is the legislative power of Congress more complete than it is over" the admission of aliens. Oceanic Navigation Co. v. Stranahan, 214 U.S. 320, 339 (1909). [Kleindienst v. Mandel, 408 U.S. 753 (1972)]*

- 7.8.3. [Chae Chan Ping v. U.S., 130 U.S. 581 \(1889\)](#)

*While under our constitution and form of government the great mass of local matters is controlled by local authorities, **the United States, in their relation to foreign countries and their subjects or citizens, are one nation, invested with powers which belong to independent nations, the exercise of which can be invoked for the***

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**maintenance of its absolute independence and security throughout its entire territory.** The powers to declare war, make treaties, suppress insurrection, repel invasion, regulate foreign commerce, secure republican governments to the states, and admit subjects of other nations to citizenship, are all sovereign powers, restricted in their exercise only by the constitution itself and considerations of public policy and justice which control, more or less, the conduct of all civilized nations. As said by this court in the case of *Cohens v. Virginia*, 6 Wheat. 264, 413, speaking by the same great chief justice: **"That the United States form, for many, and for most important purposes, a single nation, has not yet been denied. In war, we are one people. In making peace, we are one people. In all commercial regulations, we are one and the same people. In many other respects, the American people are one; and the government which is alone capable of controlling and managing their interests in all these respects is the government of the Union. It is their government, and in that character they have no other. America has chosen to [130 U.S. 581, 605] be in many respects, and to many purposes, a nation; and for all these purposes her government is complete; to all these objects, it is competent. The people have declared that in the exercise of all powers given for these objects it is supreme. It can, then, in effecting these objects, legitimately control all individuals or governments within the American territory."**

[. . .]

**"The power of exclusion of foreigners being an incident of sovereignty belonging to the government of the United States as a part of those sovereign powers delegated by the constitution, the right to its exercise at any time when, in the judgment of the government, the interests of the country require it, cannot be granted away or restrained on behalf of any one. The powers of government are delegated in trust to the United States, and are incapable of transfer to any other parties. They cannot be abandoned or surrendered. Nor can their exercise be hampered, when needed for the public good, by any considerations of private interest. The exercise of these public trusts is not the subject of barter or contract."**  
 [*Chae Chan Ping v. U.S.*, 130 U.S. 581 (1889)]

### 3.1.9 **Effect of Federal Franchises and Offices Upon Your Citizenship and Standing in Court**

Another important element of citizenship is that artificial entities like corporations are statutory but not Constitutional citizens in the context of civil litigation.

"A corporation is a citizen, **resident**, or inhabitant of the state or country by or under the laws of which it was created, and of that state or country only."  
 [19 Corpus Juris Secundum, Corporations, §886]

"A corporation is not a citizen within the meaning of that provision of the Constitution, which declares that the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States."  
 [*Paul v. Virginia*, 8 Wall (U.S.) 168, 19 L.Ed. 357 (1868)]

Likewise, all governments are "corporations" as well.

"Corporations are also of all grades, and made for varied objects; **all governments are corporations, created by usage and common consent, or grants and charters which create a body politic for prescribed purposes; but whether they are private, local or general, in their objects, for the enjoyment of property, or the exercise of power, they are all governed by the same rules of law, as to the construction and the obligation of the instrument by which the incorporation is made. One universal rule of law protects persons and property.** It is a fundamental principle of the common law of England, that the term freemen of the kingdom, includes 'all persons,' ecclesiastical and temporal, incorporate, politique or natural; it is a part of their magna charta (2 Inst. 4), and is incorporated into our institutions. The persons of the members of corporations are on the same footing of protection as other persons, and their corporate property secured by the same laws which protect that of individuals. 2 Inst. 46-7. 'No man shall be taken,' 'no man shall be disseised,' without due process of law, is a principle taken from magna charta, infused into all our state constitutions, and is made inviolable by the federal government, by the amendments to the constitution."  
 [*Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 36 U.S. 420 (1837)]

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE  
 PART VI - PARTICULAR PROCEEDINGS  
 CHAPTER 176 - FEDERAL DEBT COLLECTION PROCEDURE  
 SUBCHAPTER A - DEFINITIONS AND GENERAL PROVISIONS  
 Sec. 3002. Definitions

(15) **"United States" means -**  
 (A) **a Federal corporation;**  
 (B) an agency, department, commission, board, or other entity of the United States; or  
 (C) an instrumentality of the United States.

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"A federal corporation operating within a state is considered a domestic corporation rather than a foreign corporation. **The United States government is a foreign corporation with respect to a state.**"  
[19 Corpus Juris Secundum, Corporations, §883 (2003)]

Those who are acting in a representative capacity on behalf of the national government as "public officers" therefore assume the same status as their employer pursuant to Federal Rule of Civil Procedure 17(b). To wit:

[IV. PARTIES](#) > Rule 17.  
[Rule 17. Parties Plaintiff and Defendant: Capacity](#)

(b) Capacity to Sue or be Sued.

*The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of the individual's domicile. **The capacity of a corporation [the "United States", in this case, or its officers on official duty representing the corporation] to sue or be sued shall be determined by the law under which it was organized [laws of the District of Columbia].** In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held, except (1) that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States, and (2) that the capacity of a receiver appointed by a court of the United States to sue or be sued in a court of the United States is governed by [Title 28, U.S.C., §§ 754 and 959\(a\)](#).  
[SOURCE: <http://www.law.cornell.edu/rules/frcp/Rule17.htm>]*

Persons acting in the capacity as "public officers" of the national government are therefore acting as "officers of a corporation" as described in [26 U.S.C. §6671\(b\)](#) and [26 U.S.C. §7343](#) and become "persons" within the meaning of federal statutory law.

[TITLE 26](#) > [Subtitle F](#) > [CHAPTER 68](#) > [Subchapter B](#) > [PART I](#) > § 6671  
[§ 6671. Rules for application of assessable penalties](#)

(b) Person defined

*The term "person", as used in this subchapter, **includes an officer or employee of a corporation, or a member or employee of a partnership,** who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.*

[TITLE 26](#) > [Subtitle F](#) > [CHAPTER 75](#) > [Subchapter D](#) > § 7343  
[§7343. Definition of term "person"](#)

*The term "person" as used in this chapter **includes an officer or employee of a corporation, or a member or employee of a partnership,** who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.*

Because all corporations are "citizens", then "public officers" also take on the character of "U.S. citizens" in the capacity of their official duties, regardless of what they are as private individuals. It is also interesting to note that IRS correspondence very conspicuously warns the recipient right underneath the return address the following, confirming that they are corresponding with a "public officer" and not a private individual:

"Penalty for private use \$300."

Note that all "taxpayers" are "public officers" of the national government, and they are referred to in the Internal Revenue Code as "effectively connected with a trade or business". The term "trade or business" is defined as "the functions of a public office":

[26 U.S.C. Sec. 7701\(a\)\(26\)](#)

"The term 'trade or business' [includes](#) the performance of the functions of a [public office](#)."

For details on this scam, see:

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1. *Proof That There Is a "Straw Man"*, Form #05.042  
<http://sedm.org/Forms/FormIndex.htm>
2. *Why Your Government is Either a Thief or You Are a "Public Officer" for Income Tax Purposes*, Form #05.008  
<http://sedm.org/Forms/FormIndex.htm>
3. *The "Trade or Business" Scam*, Form #05.001  
<http://sedm.org/Forms/FormIndex.htm>
4. *Who are "Taxpayers" and Who Needs a "Taxpayer Identification Number"?*, Form #05.013  
<http://sedm.org/Forms/FormIndex.htm>

The U.S. Supreme Court has also said it is "repugnant to the constitution" for the government to regulate private conduct. The only way you can lawfully become subject to the government's jurisdiction or the tax laws is to engage in "public conduct" as a "public officer" of the national government.

*"The power to "legislate generally upon" life, liberty, and property, as opposed to the "power to provide modes of redress" against offensive state action, was "repugnant" to the Constitution. Id., at 15. See also United States v. Reese, 92 U.S. 214, 218 (1876); United States v. Harris, 106 U.S. 629, 639 (1883); James v. Bowman, 190 U.S. 127, 139 (1903). Although the specific holdings of these early cases might have been superseded or modified, see, e.g., Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964); United States v. Guest, 383 U.S. 745 (1966), their treatment of Congress' §5 power as corrective or preventive, not definitional, has not been questioned."*  
[*City of Boerne v. Flores, Archbishop of San Antonio, 521 U.S. 507 (1997)*]

Note also that ordinary "employees" are NOT "public officers":

*Treatise on the Law of Public Offices and Officers*  
*Book 1: Of the Office and the Officer: How Officer Chosen and Qualified*  
*Chapter I: Definitions and Divisions*

§2 *How Office Differs from Employment.*-A public office differs in material particulars from a public employment, for, as was said by Chief Justice MARSHALL, "although an office is an employment, it does not follow that every employment is an office. A man may certainly be employed under a contract, express or implied, to perform a service without becoming an officer."

"We apprehend that the term 'office,'" said the judges of the supreme court of Maine, "implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office; and the exercise of such power within legal limits constitutes the correct discharge of the duties of such office. The power thus delegated and possessed may be a portion belonging sometimes to one of the three great departments and sometimes to another; still it is a legal power which may be rightfully exercised, and in its effects it will bind the rights of others and be subject to revision and correction only according to the standing laws of the state. An employment merely has none of these distinguishing features. A public agent acts only on behalf of his principal, the public, whose sanction is generally considered as necessary to give the acts performed the authority and power of a public act or law. **And if the act be such as not to require subsequent sanction, still it is only a species of service performed under the public authority and for the public good, but not in the exercise of any standing laws which are considered as roles of action and guardians of rights.**"

"The officer is distinguished from the employee," says Judge COOLEY, "in the greater importance, dignity and independence of his position; in being required to take an official oath, and perhaps to give an official bond; in the liability to be called to account as a public offender for misfeasance or non-feasance in office, and usually, though not necessarily, in the tenure of his position. In particular cases, other distinctions will appear which are not general."

[*A Treatise on the Law of Public Offices and Officers, Floyd Russell Mechem, 1890, pp. 3-4, §2;*  
SOURCE: <http://books.google.com/books?id=g-I9AAAAIAAJ&printsec=titlepage>]

The ruse described in this section of making corporations into "citizens" and those who work for them into "public officers" of the government and "taxpayers" started just after the Civil War. Congress has always been limited to taxing things that it creates, which means it has never been able to tax anything but federal and not state corporations. The Supreme Court has confirmed, for instance, that the income tax is and always has been a franchise or privilege tax upon profit of federal corporations.

**"Excises are taxes laid upon the manufacture, sale or consumption of commodities within the country, upon licenses to pursue certain occupations and upon corporate privileges...the requirement to pay such taxes involves the exercise of [220 U.S. 107, 152] privileges, and the element of absolute and unavoidable demand is lacking.."**

...It is therefore well settled by the decisions of this court that when the sovereign authority has exercised the right to tax a legitimate subject of taxation as an exercise of a franchise or privilege, it is no objection that the measure of taxation is found in the income produced in part from property which of itself considered is nontaxable...

Conceding the power of Congress to tax the business activities of private corporations.. the tax must be measured by some standard..."

[[Flint v. Stone Tracy Co., 220 U.S. 107 \(1911\)](#)]

"The Sixteenth Amendment declares that Congress shall have power to levy and collect taxes on income, "from [271 U.S. 174] whatever source derived," without apportionment among the several states and without regard to any census or enumeration. It was not the purpose or effect of that amendment to bring any new subject within the taxing power. Congress already had power to tax all incomes. But taxes on incomes from some sources had been held to be "direct taxes" within the meaning of the constitutional requirement as to apportionment. Art. 1, § 2, cl. 3, § 9, cl. 4; *Pollock v. Farmers' Loan & Trust Co.*, 158 U.S. 601. The Amendment relieved from that requirement, and obliterated the distinction in that respect between taxes on income that are direct taxes and those that are not, and so put on the same basis all incomes "from whatever source derived." *Brushaber v. Union P. R. Co.*, 240 U.S. 1, 17. **"Income" has been taken to mean the same thing as used in the Corporation Excise Tax Act of 1909, in the Sixteenth Amendment, and in the various revenue acts subsequently passed. *Southern Pacific Co. v. Lowe*, 247 U.S. 330, 335; *Merchants' L. & T. Co. v. Smetanka*, 255 U.S. 509, 219. After full consideration, this Court declared that income may be defined as gain derived from capital, from labor, or from both combined, including profit gained through sale or conversion of capital. *Stratton's Independence v. Howbert*, 231 U.S. 399, 415; *Doyle v. Mitchell Brothers Co.*, 247 U.S. 179, 185; *Eisner v. Macomber*, 252 U.S. 189, 207. And that definition has been adhered to and applied repeatedly. See, e.g., *Merchants' L. & T. Co. v. Smetanka*, supra; 518; *Goodrich v. Edwards*, 255 U.S. 527, 535; *United States v. Phellis*, 257 U.S. 156, 169; *Miles v. Safe Deposit Co.*, 259 U.S. 247, 252-253; *United States v. Supplee-Biddle Co.*, 265 U.S. 189, 194; *Irwin v. Gavit*, 268 U.S. 161, 167; *Edwards v. Cuba Railroad*, 268 U.S. 628, 633. In determining what constitutes income, substance rather than form is to be given controlling weight. *Eisner v. Macomber*, supra, 206. [271 U.S. 175]"**

[*Bowers v. Kerbaugh-Empire Co.*, 271 U.S. 170, 174, (1926)]

"As repeatedly pointed out by this court, the Corporation Tax Law of 1909. **imposed an excise or privilege tax, and not in any sense, a tax upon property or upon income merely as income.** It was enacted in view of the decision of *Pollock v. Farmer's Loan & T. Co.*, 157 U.S. 429, 29 L.Ed. 759, 15 Sup.St.Rep. 673, 158 U.S. 601, 39 L.Ed. 1108, 15 Sup. Ct. Rep. 912, which held the income tax provisions of a previous law to be unconstitutional because amounting in effect to a direct tax upon property within the meaning of the Constitution, and because not apportioned in the manner required by that instrument."

[*U.S. v. Whiteridge*, 231 U.S. 144, 34 S.Sup.Ct. 24 (1913)]

To create and expand a national income tax, the federal government therefore had to make the municipal government of the District of Columbia into a federal corporation in 1871 and then impose an income tax upon the officers of the corporation ("public officers") by making all of their earnings from the office into "profit" and "gross income" subject to excise tax upon the franchise they participate in. Below is the history of this transformation. You can find more in [Great IRS Hoax](#), Form #11.302, Chapter 6:

1. The first American Income Tax was passed in 1862. See:

12 Stat. 432.

<http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=012/llsl012.db&recNum=463>

2. The License Tax Cases was heard in 1866 by the Supreme Court, in which the Supreme Court held that Congress could license but could not authorize a trade or business in a state in order to tax it, referring to the civil war tax enacted in 1862. See:

License Tax Cases, 72 U.S. 462 (1866)

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=72&page=462>

3. The Fourteenth Amendment was ratified in 1868. This Amendment uses the phrase "citizens of the United States" in order to confuse it with statutory "citizens of the United States" domiciled on federal territory in the exclusive jurisdiction of Congress.
4. The civil war income tax was repealed in 1871. See:
  - 4.1. 17 Stat. 401
  - 4.2. [Great IRS Hoax](#), Form #11.302, Section 6.5.20.
5. Congress incorporated the District of Columbia in 1871. The incorporation of the District of Columbia was done to expand the income tax by taxing the government's own "public officers" as a federal corporation. See the following:

### ***Sovereignty and Freedom Points and Authorities***

19 Stat. 419

<http://famguardian.org/Subjects/Taxes/16Amend/SpecialLaw/DCCorpStatuesAtLarge.pdf>

1 If you would like to know more about how franchises such as a “public office” effect your effective citizenship and standing  
2 in court, see:

*Government Instituted Slavery Using Franchises*, Form #05.030

<http://sedm.org/Forms/FormIndex.htm>

3



1

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**3.1.10 Federal Statutory Citizenship Statuses Diagram**

3 We have prepared a Venn diagram showing all of the various types of citizens so that you can properly distinguish them. The  
4 important thing to notice about this diagram is that there are multiple types of “citizens of the United States” and “nationals  
5 of the United States” because there are multiple definitions of “United States” according to the Supreme Court.

**Figure 4: Federal Statutory Citizenship Statuses Diagram**

7

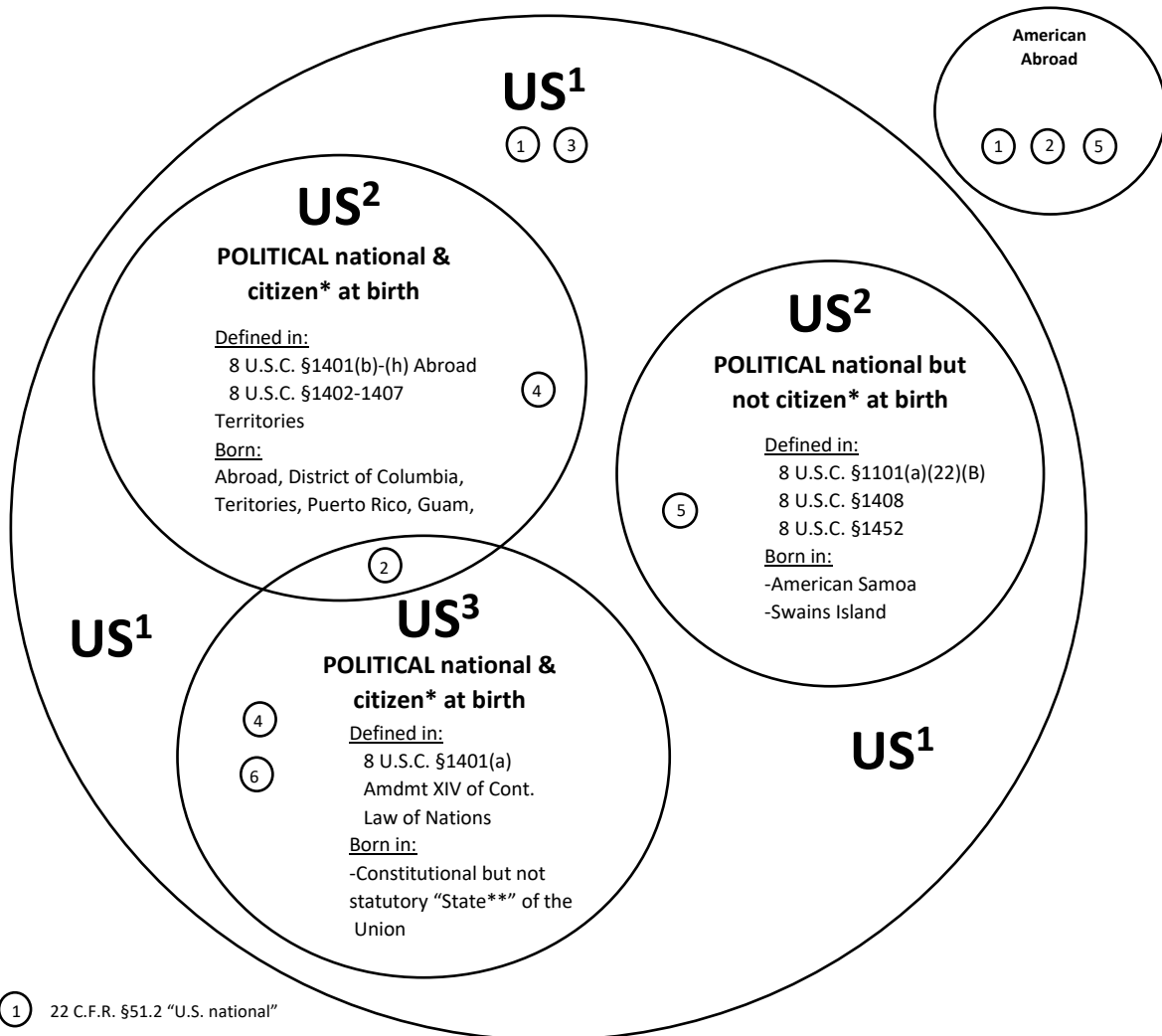
# FEDERAL POLITICAL CITIZENSHIP STATUSES

“The term ‘United States’ may be used in any one of several senses. **1)** It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in the family of nations. **2)** It may designate the territory over which the sovereignty of the United States extends, or **3)** it may be the collective name of the states which are united by and under the Constitution.” **[Numbering Added]** [Hooven & Allison Co. v. Evatt, 324 U.S. 652 (1945)]

**US<sup>1</sup>**-Context used in matters describing our sovereign country within the family of nations.

**US<sup>2</sup>**-Context used to designate the territory over which the Federal Government is exclusively sovereign.

**US<sup>3</sup>**-Context used regarding sovereign states of the Union united by and under the Constitution.



- ① 22 C.F.R. §51.2 "U.S. national"
- ② 8 U.S.C. §1401 "national & citizen\* of the United States at birth"
- ③ 8 U.S.C. §1101(a)(22)-"national of the United States\*\*"
- ④ 8 U.S.C. §1101(a)(22)(A)-"citizen\* of the United States"
- ⑤ 8 U.S.C. §1101(a)(22)(B)-"person who, though not a citizen of the United States, owes permanent allegiance to the United States <sup>1</sup>"
- ⑥ Federal Common law "national". See Perkins v. Elg, 307 U.S. 325 (1939). NOT a "national of the United States" under 8 U.S.C. §1101(a)(22) UNLESS all "United States" used there means the CONSTITUTIONAL "United States" and excludes federal territory AND "citizen" excludes 8 U.S.C. §1401 and 26 C.F.R. §1.1-1(c) "citizens".

1 **3.1.11 Citizenship Status on Government Forms**

2 **3.1.11.1 Table of options and corresponding form values**

3 The table on the next page resurrects and expands upon the table found earlier in section 3.1.4. It presents a tabular summary  
4 of each permutation of nationality and domicile as related to the major federal forms and the Social Security NUMIDENT  
5 record.

1  
2

**Table 6: Tabular Summary of Citizenship Status on Government Forms**

#	Citizenship status	Place of birth	Domicile	Defined in	Social Security NUMIDEN T Status	Status on Specific Government Forms			
						<a href="#">Social Security SS-5 Block 5</a>	<a href="#">IRS Form W-8 Block 3</a>	<a href="#">Department of State I-9 Section 1</a>	<a href="#">E-Verify System</a>
1	“national and citizen of the United States** at birth” or “U.S.** citizen” or	Political “United States” pursuant to 8 U.S.C. §1101(a)(38), (a)(36) and 8 C.F.R. §215.1(f) or in the “outlying possessions of the United States” pursuant to 8 U.S.C. §1101(a)(29)	District of Columbia, Puerto Rico, Guam, Virgin Islands	8 U.S.C. §1401; 8 U.S.C. §1101(a)(22)(A)	CSP=A	”U.S. Citizen”	Can’t use Form W-8	”A citizen of the United States”	See Note 2.
2	“non-citizen national of the United States** at birth” or “U.S.** national ”	Political “United States” pursuant to 8 U.S.C. §1101(a)(38), (a)(36) and 8 C.F.R. §215.1(f) or in the “outlying possessions of the United States” pursuant to 8 U.S.C. §1101(a)(29)	American Samoa; Swains Island; or abroad to U.S. national parents under 8 U.S.C. §1408(2)	8 U.S.C. §1101(a)(22)(B); 8 U.S.C. §1408; 8 U.S.C. §1452	CSP=B	”Legal alien authorized to work. (statutory)”	“Non-resident NON-person Nontaxpayer” if PRIVATE “Individual” if PUBLIC officer	”A non-citizen national of the United States**”	See Note 2.
3.1	“U.S.A.*** national” or “state national” or “Constitutional but not statutory citizen”	Constitutional Union state	State of the Union	8 U.S.C. §1101(a)(21); 14 <sup>th</sup> Amend., Sect. 1	CSP=D	“Other (8 U.S.C. §1101(a)(21))”	“Non-resident NON-person Nontaxpayer”	”A citizen of the United States***. Not a “citizen of the United States**” under 8 U.S.C. §1101(a)(22)(A) or 8 U.S.C. §1401”	See Note 2.
3.2	“U.S.A.*** national” or “state national” or “Constitutional but not statutory citizen”	Constitutional Union state	Foreign country	8 U.S.C. §1101(a)(21); 14 <sup>th</sup> Amend., Sect. 1	CSP=D	“Other (8 U.S.C. §1101(a)(21))”	“Non-resident NON-person Nontaxpayer”	”A citizen of the United States***. Not a “citizen of the United States**” under 8 U.S.C. §1101(a)(22)(A) or 8 U.S.C. §1401”	See Note 2.

#	Citizenship status	Place of birth	Domicile	Defined in	Social Security NUMIDEN T Status	Status on Specific Government Forms			
						Social Security SS-5 Block 5	IRS Form W-8 Block 3	Department of State I-9 Section 1	E-Verify System
3.3	“U.S.A *** national” or “state national” or “Constitutional but not statutory citizen”	Constitutional Union state	Foreign country	8 U.S.C. §1101(a)(21); 14 <sup>th</sup> Amend., Sect. 1	CSP=D	“Other (8 U.S.C. §1101(a)(21))”	“Non-resident NON-person Nontaxpayer”	“A citizen of the United States***. Not a “citizen of the United States***” under 8 U.S.C. §1101(a)(22)(A) or 8 U.S.C. §1401”	See Note 2.
3.4	Statutory “citizen of the United States***” or Statutory “U.S.** citizen”	Constitutional Union state	Puerto Rico, Guam, Virgin Islands, American Samoa, Commonwealth of Northern Mariana Islands	8 U.S.C. §1101(a)(21); 14 <sup>th</sup> Amend., Sect. 1; 8 U.S.C. §1101(a)(22)(A)	CSP=A	”U.S. Citizen”	Can’t use Form W-8	”A citizen of the United States***”	See Note 2.
4.1	“alien” or “Foreign national”	Foreign country	Puerto Rico, Guam, Virgin Islands, American Samoa, Commonwealth of Northern Mariana Islands	8 U.S.C. §1101(a)(21); 8 U.S.C. §1101(a)(3)	CSP=B	”Legal alien authorized to work. (statutory)”	“Non-resident NON-person Nontaxpayer” if PRIVATE “Individual” if PUBLIC officer	”A lawful permanent resident” OR “An alien authorized to work”	See Note 2.
4.2	“alien” or “Foreign national”	Foreign country	State of the Union	8 U.S.C. §1101(a)(21); 8 U.S.C. §1101(a)(3)	CSP=B	”Legal alien authorized to work. (statutory)”	“Non-resident NON-person Nontaxpayer”	”A lawful permanent resident” OR “An alien authorized to work”	See Note 2.
4.3	“alien” or “Foreign national”	Foreign country	State of the Union	8 U.S.C. §1101(a)(21); 8 U.S.C. §1101(a)(3)	CSP=B	”Legal alien authorized to work. (statutory)”	“Non-resident NON-person Nontaxpayer”	”A lawful permanent resident” OR “An alien authorized to work”	See Note 2.
4.4	“alien” or “Foreign national”	Foreign country	Foreign country	8 U.S.C. §1101(a)(21)	CSP=B	”Legal alien authorized to work. (statutory)”	“Non-resident NON-person Nontaxpayer”	”A lawful permanent resident” OR “An alien authorized to work”	See Note 2.
4.5	“alien” or “Foreign national”	Foreign country	Foreign country	8 U.S.C. §1101(a)(21)	CSP=B	”Legal alien authorized to work. (statutory)”	“Non-resident NON-person Nontaxpayer”	”A lawful permanent resident” OR “An alien authorized to work”	See Note 2.

**NOTES:**

1. “United States” is described in 8 U.S.C. §1101(a)(38), (a)(36) and 8 C.F.R. §215.1(f) and includes only federal territory and possessions and excludes all Constitutional Union states. This is a product of the separation of powers doctrine that is the heart of the United States Constitution.

**Sovereignty and Freedom Points and Authorities**



- 1 2. E-Verify CANNOT be used by those who are a NOT lawfully engaged in a public office in the U.S. government at the time of making application. Its use is  
2 VOLUNTARY and cannot be compelled. Those who use it MUST have a Social Security Number or Taxpayer Identification Number and it is ILLEGAL to apply  
3 for, use, or disclose said number for those not lawfully engaged in a public office in the U.S. government at the time of application. See:

*Why It is Illegal for Me to Request or Use a "Taxpayer Identification Number"*, Form #04.205

<http://sedm.org/Forms/FormIndex.htm>

- 4 3. For instructions useful in filling out the forms mentioned in the above table, see:

- 5 3.1. Social Security Form SS-5:

*Why You Aren't Eligible for Social Security*, Form #06.001

<http://sedm.org/Forms/FormIndex.htm>

- 6 3.2. IRS Form W-8:

*About IRS Form W-8BEN*, Form #04.202

<http://sedm.org/Forms/FormIndex.htm>

- 7 3.3. Department of State Form I-9:

*I-9 Form Amended*, Form #06.028

<http://sedm.org/Forms/FormIndex.htm>

- 8 3.4. E-Verify:

*About E-Verify*, Form #04.107

<http://sedm.org/Forms/FormIndex.htm>

### 3.1.11.2 How to describe your citizenship on government forms<sup>32</sup>

This section provides some pointers on how to describe your citizenship status on government forms in order to avoid being confused with a someone who has a domicile on federal territory and therefore no Constitutional rights. Below is a summary of how we recommend protecting yourself from the prejudicial presumptions of others about your citizenship status:

1. Keep in mind the following facts about all government forms:
  - 1.1. Government forms ALWAYS imply the LEGAL/CIVIL rather than POLITICAL status of the party in the context of all franchises, including income taxes and social security.
  - 1.2. "Alien" on government forms always means a person born or naturalized in a foreign country.
  - 1.3. The Internal Revenue Code does NOT define the term "nonresident alien". The closest thing to a definition is that found in 26 U.S.C. §7701(b)(1)(B), which defines what it ISN'T, but NOT what it IS. If you look on IRS Form W-8BEN, Block 3, you can see that there are many different types of entities that can be nonresident aliens, none of which are EXPRESSLY included in the definition at 26 U.S.C. §7701(b)(1)(B). It is therefore IMPOSSIBLE to conclude based on any vague definition in the Internal Revenue Code that a specific person IS or IS NOT a "nonresident alien."
  - 1.4. On tax forms, the term "nonresident alien" is NOT a subset of the term "alien", but rather a SUPERSET. It includes both FOREIGN nationals domiciled in a foreign country and also persons in Constitutional states of the Union, both of whom must be engaged in a public office. A "national of the United States\*", for instance, although NOT an "alien" under Title 8 of the U.S. Code, is a "non-resident non-person" under Title 26 of the U.S. Code if not engaged in a public office and a "nonresident alien" if engaged in a public office. Therefore, a "nonresident alien" is a "word of art" designed to confuse people, and the fact that uses the word "alien" doesn't mean it IS an "alien". This is covered in:

*Flawed Tax Arguments to Avoid*, Form #08.004, Section 9.3.3

<http://sedm.org/Forms/FormIndex.htm>

2. Anyone who PRESUMES any of the following should promptly be DEMANDED to prove the presumption with legally admissible evidence from the law. ALL of these presumptions are FALSE and cannot be proven:
  - 2.1. That you can trust ANYTHING that either a government form OR a government employee says. The courts say not only that you CANNOT, but that you can be PENALIZED for doing so. See:

*Reasonable Belief About Income Tax Liability*, Form #05.007

<http://sedm.org/Forms/FormIndex.htm>

- 2.2. That nationality and domicile are synonymous.
- 2.3. That "nonresident aliens" are a SUBSET of "aliens" within the Internal Revenue Code.
- 2.4. That the term "United States" has the SAME meaning in Title 8 of the U.S. Code as it has in Title 26.
- 2.5. That you can be a statutory "taxpayer" or civil "citizen" of any kind WITHOUT your consent. See:

*Why Domicile and Becoming a "Taxpayer" Require Your Consent*, Form #05.002

<http://sedm.org/Forms/FormIndex.htm>

3. The safest way to describe oneself is to check "Other" for citizenship or add an "Other" box if the form doesn't have one and then do one of the following:
  - 3.1. Write in the "Other" box

*"See attached mandatory Affidavit of Citizenship, Domicile, and Tax Status, Form #02.001"*

and then attach the following completed form:

*Affidavit of Citizenship, Domicile, and Tax Status*, Form #02.001

<http://sedm.org/Forms/FormIndex.htm>

- 3.2. If you don't want to include an attachment, add the following mandatory language to the form that you are a:
  - 3.2.1. POLITICAL "Citizen and national of \_\_\_\_\_ (statename)"
  - 3.2.2. POLITICAL "national and citizen of the United States" or "U.S. citizen" per 8 U.S.C. §1401
  - 3.2.3. A constitutional or Fourteenth Amendment Citizen.

<sup>32</sup> Adapted from *Why You are a Political Citizen but Civil Non-Citizen, National, and Nonresident Alien*, Form #05.006, Section 14.1; <https://sedm.org/Forms/05-MemLaw/WhyANational.pdf>.

4. If the recipient of the form says they won't accept attachments or won't allow you to write explanatory information on the form needed to prevent perjury on the form, then send them an update via certified mail AFTER they accept your submission so that you have legal evidence that they tried to tamper with a federal witness and conspired to commit perjury on the form.

5. For detailed instructions on how to fill out the Department of State Form I-9, See:

*I-9 Form Amended*, Form #06.028

<http://sedm.org/Forms/FormIndex.htm>

6. For detailed instructions on how to participate in E-Verify for the purposes of PRIVATE employment, see:

*About E-Verify*, Form #04.107

<http://sedm.org/Forms/FormIndex.htm>

7. To undo the damage you have done over the years to your status by incorrectly describing your status, send in the following form and submit according to the instructions provided. This form says that all future government forms submitted shall have this form included or attached by reference.

*Legal Notice of Change in Domicile/Citizenship Records and Divorce from the United States*, Form #10.001

<http://sedm.org/Forms/FormIndex.htm>

8. Quit using Taxpayer Identifying Numbers (TINs). 20 C.F.R. §422.104 says that only statutory "U.S. citizens" and "permanent residents" can lawfully apply for Social Security Numbers, both of which share in common a domicile on federal territory such as statutory "U.S. citizens" and "residents" (aliens), can lawfully use such a number. 26 C.F.R. §301.6109-1(b) also indicates that "U.S. persons", meaning persons with a domicile on federal territory, are required to furnish such a number if they file tax forms. "Foreign persons" are also mentioned in 26 C.F.R. §301.6109-1(b), but these parties also elect to have an effective domicile on federal territory and thereby become "persons" by engaging in federal franchises. See:

8.1. *Who are "Taxpayers" and Who Needs a "Taxpayer Identification Number"?*, Form #05.013

<http://sedm.org/Forms/FormIndex.htm>

8.2. *Why It is Illegal for Me to Request or Use a "Taxpayer Identification Number"*, Form #04.205-attach this form to every government form that asks for a Social Security Number or Taxpayer Identification Number. Write in the SSN/TIN Box (NONE: See attached form #04.205).

<http://sedm.org/Forms/FormIndex.htm>

8.3. *Resignation of Compelled Social Security Trustee*, Form #06.002-use this form to quit Social Security lawfully.

<http://sedm.org/Forms/FormIndex.htm>

9. If you are completing any kind of government form or application to any kind of financial institution other than a tax form and you are asked for your citizenship status, TIN, or Social Security Number, attach the following form and prepare according to the instructions provided:

*Affidavit of Citizenship, Domicile, and Tax Status*, Form #02.001

<http://sedm.org/Forms/FormIndex.htm>

10. If you are completing and submitting a government tax form, attach the following form and prepare according to the instructions provided:

*Tax Form Attachment*, Form #04.201

<http://sedm.org/Forms/FormIndex.htm>

11. If you are submitting a voter registration, attach the following form and prepare according to the instructions provided:

*Voter Registration Attachment*, Form #06.003

<http://sedm.org/Forms/FormIndex.htm>

12. If you are applying for a USA passport, attach the following form and prepare according to the instructions provided:

*USA Passport Application Attachment*, Form #06.007

<http://sedm.org/Forms/FormIndex.htm>

13. If you are submitting a complaint, response, pleading, or motion to a federal court, you should attach the following form:

*Federal Pleading/Motion/Petition Attachment*, Litigation Tool #01.002

<http://sedm.org/Litigation/LitIndex.htm>

14. Use as many of the free forms as you can from the page below. They are very well thought out to avoid traps set by the predators who run the American government:

*SEDM Forms Page*

<http://sedm.org/Forms/FormIndex.htm>

15. When engaging in correspondence with anyone in the government, legal, or financial profession about your status that occurs on other than a standard government form, use the following guidelines:

15.1. In the return address for the correspondence, place the phrase "(NOT A DOMICILE OR RESIDENCE)".

- 1 15.2. Entirely avoid the use of the words “citizen”, “citizenship”, “resident”, “inhabitant”. Instead, prefer the term “non-  
2 resident”, and “transient foreigner”.
- 3 15.3. Never describe yourself as an “individual” or “person”. 5 U.S.C. §552a(a)(2) says that this entity is a government  
4 employee who is a statutory “U.S. citizen” or “resident” (alien). Instead, refer to yourself as a “transient foreigner”  
5 and a “nonresident”. Some forms such as IRS form W-8BEN Block 3 have no block for “transient foreigner” or  
6 “non-resident NON-person”, in which case modify the form to add that option. See the following for details:

*About IRS Form W-8BEN*, Form #04.202

<http://sedm.org/Forms/FormIndex.htm>

- 7 15.4. Entirely avoid the use of the phrase “United States”, because it has so many different and mutually exclusive  
8 meanings in the U.S. code and state law. Instead, replace this phrase with the name of the state you either are  
9 physically present within or with “USA” and then define that “USA” includes the states of the Union and excludes  
10 federal territory. For instance, you could say “Citizen of California Republic” and then put an asterisk next to it  
11 and at the bottom of the page explain the asterisk as follows:

12 *\* NOT a citizen of the **STATE** of California, which is a corporate extension of the federal government, but instead  
13 a sovereign Citizen of the California Republic*

14 *California Revenue and Taxation Code, §6017 defines “State of” as follows:*

15 *“6017. ‘In this State’ or ‘in the State’ means within the exterior limits of the State of California and includes all  
16 territory within these limits owned by or ceded to the United States of America.”*

- 17 15.5. Never use the word “residence”, “permanent address”, or “domicile” in connection with either the term “United  
18 States”, or the name of the state you are in.
- 19 15.6. If someone else refers to you improperly, vociferously correct them so that they are prevented from making  
20 presumptions that would injure your rights.
- 21 15.7. Avoid words that are undefined in statutes that relate to citizenship. Always use words that are statutorily defined  
22 and if you can’t find the definition, define it yourself on the form or correspondence you are sending. Use of  
23 undefined words encourages false presumptions that will eventually injure your rights and give judges and  
24 administrators discretion that they undoubtedly will abuse to their benefit. There isn’t even a common definition  
25 of “citizen of the United States” or “U.S. citizen” in the standard dictionary, then the definition of “U.S. citizen” in  
26 all the state statutes and on all government forms is up to us! Therefore, once again, whenever you fill out any  
27 kind of form that specifies either “U.S. citizen” or “citizen of the United States”, you should be **very** careful to  
28 clarify that it means “national” under 8 U.S.C. §1101(a)(21) and 8 U.S.C. §1452 or you will be “presumed” to be  
29 a federal citizen and a “citizen of the United States\*\*” under 8 U.S.C. §1401, and this is one of the biggest injuries  
30 to your rights that you could ever inflict. Watch out folks! Here is the definition we recommend that you use on  
31 any government form that uses these terms that makes the meaning perfectly clear and unambiguous:

32 *“U.S.\*\*\* citizen” or “citizen of the United States\*\*\*”: A “National” defined in either 8 U.S.C. §1101(a)(21) or  
33 8 U.S.C. §1101(a)(22)(B) and 8 U.S.C. §1452 who owes their permanent allegiance to the confederation of states  
34 called the “United States”. Someone who was not born in the federal “United States” as defined in 8 U.S.C.  
35 §1101(a)(38) and who is NOT a “citizen of the United States” under 8 U.S.C. §1401.*

- 36 15.8. Refer them to this pamphlet if they have questions and tell them to do their homework.

37 16. Citizenship status in Social Security NUMIDENT record:

- 38 16.1. The NUMIDENT record derives from what was filled out on the SS-5 Form, Block 5. See:

39 <http://www.ssa.gov/online/ss-5.pdf>

- 40 16.2. One’s citizenship status is encoded within the NUMIDENT record using the “CSP code” within the Numident  
41 record. This code is called the “citizenship code” by the Social Security administration.

- 42 16.3. Like all government forms, the terms used on the SS-5 Form use the STATUTORY context, not the  
43 CONSTITUTIONAL context for all citizenship words. Hence, block 5 of the SS-5 Form should be filled out  
44 with “Legal Alien Authorized to Work”, which means you are a STATUTORY but not CONSTITUTIONAL  
45 alien. This is consistent with the definition of “individual” found in 26 C.F.R. §1.1441-1(c)(3), which defines  
46 the term to include ONLY STATUTORY “aliens”.

- 47 16.4. Those who are not POLITICAL “nationals and citizens of the United States\*\*\*” at birth per 8 U.S.C. §1401 or 26  
48 U.S.C. §3121(e), and 26 C.F.R. §1.1-1(c) have a “CSP code” of B in their NUMIDENT record, which  
49 corresponds with a CSP code of “B”. The comment field of the NUMIDENT record should also be annotated

with the following to ensure that it is not changed during an audit because of confusion on the part of the SSA employee:

*“CSP Code B not designated in error-- applicant is an American national with a domicile and residence in a foreign state for the purposes of the Social Security Act.”*

16.5. The local SSA office cannot provide a copy of the NUMIDENT record. Only the central SSA headquarters can provide it by submitting a Privacy Act request rather than a FOIA using the following resource:

Guide to Freedom of Information Act, Social Security Administration

[http://www.ssa.gov/foia/html/foia\\_guide.htm](http://www.ssa.gov/foia/html/foia_guide.htm)

16.6. Information in the NUMIDENT record is shared with:

- 16.6.1. The Department of Homeland Security (DHS).
- 16.6.2. State Department of Motor Vehicles in verifying SSNs.
- 16.6.3. E-Verify.

*About E-Verify*, Form #04.107

<http://sedm.org/Forms/FormIndex.htm>

16.7. The procedures for requesting NUMIDENT information using the Freedom of Information Act or Privacy Act are described in:

Social Security Program Operations Manual (POMS), Section RM 00299.005 Form SSA-L669 Request for Evidence in Support of an SSN Application — U.S.-Born Applicant

<https://s044a90.ssa.gov/apps10/poms.nsf/lrx/0100299005>

### 3.1.12 How Human Beings Become “Individuals” and “Persons” Under the Revenue Statutes

It might surprise most people to learn that human beings most often are NEITHER “individuals” nor “persons” under ordinary acts of Congress, and especially revenue acts. The reasons for this are many and include the following:

1. All civil statutes are law exclusively for government and not private humans:

*Why Statutory Civil Law is Law for Government and Not Private Persons*, Form #05.037

<https://sedm.org/Forms/FormIndex.htm>

2. Civil statutes cannot impair PRIVATE property or PRIVATE rights.

*“Under basic rules of construction, statutory laws enacted by legislative bodies cannot impair rights given under a constitution. 194 B.R. at 925.”*  
*[In re Young, 235 B.R. 666 (Bankr.M.D.Fla., 1999)]*

3. Civil statutes are privileges and franchises created by the government which convert PRIVATE property to PUBLIC property. They cannot lawfully convert PRIVATE property to PUBLIC property without the express consent of the owner. See:

*Separation Between Public and Private Course*, Form #12.025

<https://sedm.org/Forms/FormIndex.htm>

4. You have an inalienable PRIVATE right to choose your civil status, including “person”.

*Your Exclusive Right to Declare or Establish Your Civil Status*, Form #13.008

<https://sedm.org/Forms/FormIndex.htm>

5. All civil statuses, including “person” or “individual” are a product of a VOLUNTARY choice of domicile protected by the First Amendment right of freedom from compelled association. If you don’t volunteer and choose to be a nonresident or transient foreigner, then you cannot be punished for that choice and cannot have a civil status. See:

*Why Domicile and Becoming a “Taxpayer” Require Your Consent*, Form #05.002

<https://sedm.org/Forms/FormIndex.htm>

6. As the absolute owner of your private property, you have the absolute right of depriving any and all others, INCLUDING governments, of the use or benefit of that property, including your body and all of your property. The main method of exercising that control is to control the civil and legal status of the property, who protects it, and HOW it is protected.



1 *“In all domestic concerns each state of the Union is to be deemed an independent sovereignty. As such, it is its*  
 2 *province and its duty to forbid interference by another state as well as by any foreign power with the status of*  
 3 *its own citizens. Unless at least one of the spouses is a resident thereof in good faith, the courts of such sister*  
 4 *state or of such foreign power cannot acquire jurisdiction to dissolve the marriage of those who have an*  
 5 *established domicile in the state which resents such interference with matters which disturb its social serenity or*  
 6 *affect the morals of its inhabitants.”*

7 *[Roberts v. Roberts, 81 Cal.App.2d. 871, 879 (1947);*

8 [https://scholar.google.com/scholar\\_case?case=13809397457737233441\]](https://scholar.google.com/scholar_case?case=13809397457737233441)

9 The following subsections will examine the above assertions and prove they are substantially true with evidence from a high  
 10 level. If you need further evidence, we recommend reading the documents referenced above.

### 11 **3.1.12.1 How alien nonresidents visiting the geographical United States\*\* become statutory “individuals” whether** 12 **or not they consent**

13 The U.S. Supreme Court defined how alien nonresidents visiting the United States\*\* become statutory “individuals” below:

14 *The reasons for not allowing to other aliens exemption 'from the jurisdiction of the country in which they are*  
 15 *found' were stated as follows: 'When private individuals of one nation [states of the Unions are “nations” under*  
 16 *the law of nations] spread themselves through another as business or caprice may direct, mingling*  
 17 *indiscriminately with the inhabitants of that other, or when merchant vessels enter for the purposes of trade,*  
 18 *it would be obviously inconvenient and dangerous to society, and would subject the laws to continual*  
 19 *infraction, and the government to degradation, if such individuals or merchants did not owe temporary and*  
 20 *local allegiance, and were not amenable to the jurisdiction of the country. Nor can the foreign sovereign have*  
 21 *any motive for wishing such exemption. His subjects thus passing into foreign countries are not employed by him,*  
 22 *nor are they engaged in national pursuits. Consequently, there are powerful motives for not exempting persons*  
 23 *of this description from the jurisdiction of the country in which they are found, and no one motive for requiring*  
 24 *it. The implied license, therefore, under which they enter, can never be construed to grant such exemption.' 7*  
 25 *Cranch, 144.*

26 *In short, the judgment in the case of The Exchange declared, as incontrovertible principles, that the jurisdiction*  
 27 *of every nation within its own territory is exclusive and absolute, and is susceptible of no limitation not imposed*  
 28 *by the nation itself; that all exceptions to its full and absolute territorial jurisdiction must be traced up to its own*  
 29 *consent, express or implied; that upon its consent to cede, or to waive the exercise of, a part of its territorial*  
 30 *jurisdiction, rest the exemptions from that jurisdiction of foreign sovereigns or their armies entering its territory*  
 31 *with its permission, and of their foreign ministers and public ships of war; and that the implied license, under*  
 32 *which private individuals of another nation enter the territory and mingle indiscriminately with its inhabitants,*  
 33 *for purposes of business or pleasure, can never be construed to grant to them an exemption from the*  
 34 *jurisdiction of the country in which they are found. See, also, Carlisle v. U.S. (1872) 16 Wall. 147, 155; Radich*  
 35 *v. Hutchins (1877) 95 U.S. 210; Wildenhus' Case (1887) 120 U.S. 1, 7 Sup.Ct. 385; Chae Chan Ping v. U.S.*  
 36 *(1889) 130 U.S. 581, 603, 604, 9 Sup.Ct. 623.*

37 *[United States v. Wong Kim Ark, 169 U.S. 649, 18 S.Ct. 456, 42 L.Ed. 890 (1898)]*

38 Therefore, alien nonresidents visiting or doing business within a country are presumed to be party to an “implied license”  
 39 while there. All licenses are franchises, and all give rise to a public civil franchise status. In the case of nonresident aliens,  
 40 that status is “individual” and it is a public office in the government, just like every other franchise status. We prove this in:

[Government Instituted Slavery Using Franchises, Form #05.030](https://sedm.org/Forms/FormIndex.htm)

<https://sedm.org/Forms/FormIndex.htm>

41 All “aliens” are presumed to be “nonresident aliens” but this may be overcome upon presentation of proof:

42 *Title 26: Internal Revenue*  
 43 [PART 1—INCOME TAXES](#)  
 44 [nonresident alien individuals](#)  
 45 [§ 1.871-4 Proof of residence of aliens.](#)

46 *(a) Rules of evidence. The following rules of evidence shall govern in determining whether or not an alien within*  
 47 *the United States has acquired residence therein for purposes of the income tax.*

48 *(b) Nonresidence presumed. An alien by reason of his alienage, is presumed to be a nonresident alien.*

49 *(c) Presumption rebutted—*

1 (1) Departing alien.

2 In the case of an alien who presents himself for determination of tax liability before departure from the United  
3 States, the presumption as to the alien's nonresidence may be overcome by proof--

4 Aliens, while physically in the United States\*\*, are presumed to be “resident” there, REGARDLESS OF THEIR CONSENT  
5 or INTENT. “residence” is the word used to characterize an alien as being subject to the CIVIL and/or TAXING franchise  
6 codes of the place he or she is in:

7 **Title 26: Internal Revenue**

8 PART 1—INCOME TAXES

9 nonresident alien individuals

10 §1.871-2 Determining residence of alien individuals.

11 (a) General.

12 The term nonresident alien individual means an individual whose residence is not within the United States, and  
13 who is not a citizen of the United States. The term includes a nonresident alien fiduciary. For such purpose the  
14 term fiduciary shall have the meaning assigned to it by section 7701(a)(6) and the regulations in part 301 of this  
15 chapter (Regulations on Procedure and Administration). For presumption as to an alien's nonresidence, see  
16 paragraph (b) of §1.871-4.

17 (b) Residence defined.

18 An alien actually present in the United States who is not a mere transient or sojourner is a resident of the  
19 United States for purposes of the income tax. Whether he is a transient is determined by his intentions with  
20 regard to the length and nature of his stay. A mere floating intention, indefinite as to time, to return to another  
21 country is not sufficient to constitute him a transient. If he lives in the United States and has no definite  
22 intention as to his stay, he is a resident. One who comes to the United States for a definite purpose which in its  
23 nature may be promptly accomplished is a transient; but, if his purpose is of such a nature that an extended  
24 stay may be necessary for its accomplishment, and to that end the alien makes his home temporarily in the  
25 United States, he becomes a resident, though it may be his intention at all times to return to his domicile abroad  
26 when the purpose for which he came has been consummated or abandoned. An alien whose stay in the United  
27 States is limited to a definite period by the immigration laws is not a resident of the United States within the  
28 meaning of this section, in the absence of exceptional circumstances.

29 Once aliens seek the privilege of permanent resident status, then they cease to be nonresident aliens and become “resident  
30 aliens” under 26 U.S.C. §7701(b)(1)(A):

31 26 U.S.C. §7701(b)(1)(A) Resident alien

32 (b) Definition of *resident alien* and nonresident alien

33 (1) In general

34 For purposes of this title (other than subtitle B) -

35 (A) *Resident alien*

36 *An alien individual shall be treated as a resident of the United States with respect to any calendar*  
37 *year if (and only if) such individual meets the requirements of clause (i), (ii), or (iii):*

38 (i) Lawfully admitted for permanent residence

39 Such individual is a lawful permanent resident of the United States at any time during such  
40 calendar year.

41 (ii) Substantial presence test

42 Such individual meets the substantial presence test of paragraph (3).

43 (iii) First year election

44 Such individual makes the election provided in paragraph (4).

45  
46 “Residents, as distinguished from citizens, are aliens who are permitted to take up a permanent abode in the  
47 country. Being bound to the society by reason of their dwelling in it, they are subject to its laws so long as  
48 they remain there, and, being protected by it, they must defend it, although they do not enjoy all the rights of  
49 citizens. They have only certain privileges which the law, or custom, gives them. Permanent residents are  
50 those who have been given the right of perpetual residence. They are a sort of citizen of a less privileged  
51 character, and are subject to the society without enjoying all its advantages. Their children succeed to their  
52 status; for the right of perpetual residence given them by the State passes to their children.”

53 [The Law of Nations, Vattel, Book 1, Chapter 19, Section 213, p. 87]

Therefore, once aliens apply for and receive “permanent resident” status, they get the same exemption from income taxation as citizens and thereby CEASE to be civil “persons” under the Internal Revenue Code as described in the following sections. In that sense, their “implied license” is revoked and they thereby cease to be civil “persons”. The license returns if they abandon their “permanent resident” civil status:

Title 26: Internal Revenue  
 PART 1—INCOME TAXES  
 nonresident alien individuals  
 §1.871-5 Loss of residence by an alien.

*An alien who has acquired residence in the United States retains his status as a resident until he abandons the same and actually departs from the United States. An intention to change his residence does not change his status as a resident alien to that of a nonresident alien. Thus, an alien who has acquired a residence in the United States is taxable as a resident for the remainder of his stay in the United States.*

We should also point out that:

1. There are literally BILLIONS of aliens throughout the world.
2. Unless and until an alien either physically sets foot within our country or conducts commerce or business with a foreign state such as the United States\*\*, they:
  - 2.1. Would NOT be classified as civil STATUTORY “persons” or “individuals”, but rather “transient foreigners” or “stateless persons”. Domicile in a place is MANDATORY in order for the civil statutes to be enforceable per Federal Rule of Civil Procedure 17, and they have a foreign domicile while temporarily here.
  - 2.2. Would NOT be classified as “persons” under the Constitution. The constitution attaches to and protects LAND, and not the status of people ON the land.
  - 2.3. Would NOT be classified as “persons” under the CRIMINAL law.
  - 2.4. Would NOT be classified as “persons” under the common law and equity.
3. If the alien then physically comes to the United States\*\* (federal zone or STATUTORY “United States\*\*\*”), then they:
  - 3.1. Would NOT become “persons” under the Constitution, because the constitution does not attach to federal territory.
  - 3.2. Would become “persons” under the CRIMINAL laws of Congress, because the criminal law attaches to physical territory.
  - 3.3. Would become “persons” under the common law and equity of the national government and not the states, because common law attaches to physical land.
4. If the alien then physically moves to a constitutional state, then their status would change as follows:
  - 4.1. Would become “persons” under the Constitution, because the constitution attaches to land within constitutional states.
  - 4.2. Would become “persons” under the CRIMINAL laws of states of the Union, because the criminal law attaches to physical territory.
  - 4.3. Would cease to be “persons” under the CRIMINAL laws of Congress, because they are not on federal territory.
  - 4.4. Would become “persons” under the common law and equity of the state they visited and not the national government, because common law attaches to physical land.
5. If the aliens are statutory “citizens” of their state of origin, they are “agents of the state” they came from. If they do not consent to be statutory “citizens” and do not have a domicile in the state of their birth, then they are “non-residents” in relation to their state of birth. The STATUTORY “citizen” is the agent of the state, not the human being filling the public office of “citizen”.

*"Under our own systems of polity, the term 'citizen', implying the same or similar relations to the government and to society which appertain to the term, 'subject' in England, is familiar to all. Under either system, the term used is designed to apply to man in his individual character and to his natural capacities -- to a being or agent [PUBLIC OFFICER!] possessing social and political rights and sustaining social, political, and moral obligations. It is in this acceptation only, therefore, that the term 'citizen', in the article of the Constitution, can be received and understood. When distributing the judicial power, that article extends it to controversies between 'citizens' of different states. This must mean the natural physical beings composing those separate communities, and can by no violence of interpretation be made to signify artificial, incorporeal, theoretical, and invisible creations. A corporation, therefore, being not a natural person, but a mere creature of the mind, invisible and intangible, cannot be a citizen of a state, or of the United States, and cannot fall within the terms or the power of the above mentioned article, and can therefore neither plead nor be impleaded in the courts of the United States."*

[Rundle v. Delaware & Raritan Canal Company, 55 U.S. 80, 99 (1852) from dissenting opinion by Justice Daniel]

6. When aliens are POLITICAL citizens of the country of their birth and origin who are doing business in the United States\*\* as a “foreign state”, they are treated as AGENTS and OFFICERS of the country they are from, hence they are “state actors”.

*The Law of Nations, Book II: Of a Nation Considered in Her Relation to Other States*

§ 81. *The property of the citizens is the property of the nation, with respect to foreign nations.*

**Even the property of the individuals is, in the aggregate, to be considered as the property of the nation, with respect to other states.** *It, in some sort, really belongs to her, from the right she has over the property of her citizens, because it constitutes a part of the sum total of her riches, and augments her power. She is interested in that property by her obligation to protect all her members. In short, it cannot be otherwise, since nations act and treat together as bodies in their quality of political societies, and are considered as so many moral persons. All those who form a society, a nation being considered by foreign nations as constituting only one whole, one single person, — all their wealth together can only be considered as the wealth of that same person. And this is to true, that each political society may, if it pleases, establish within itself a community of goods, as Campanella did in his republic of the sun. Others will not inquire what it does in this respect: its domestic regulations make no change in its rights with respect to foreigners nor in the manner in which they ought to consider the aggregate of its property, in what way soever it is possessed.*

[*The Law of Nations*, Vattel, Book II, Section 81;

SOURCE: [http://famguardian.org/Publications/LawOfNations/vattel\\_02.htm#§ 81. The property of the citizens is the property of the nation, with respect to foreign nations.](http://famguardian.org/Publications/LawOfNations/vattel_02.htm#§ 81. The property of the citizens is the property of the nation, with respect to foreign nations.)]

7. As agents of the state they were born within and are domiciled within while they are here, aliens visiting the United States\*\* are part of a “foreign state” in relation to the United States\*\*.

These principles are a product of the Foreign Sovereign Immunities Act, 28 U.S.C. Chapter 97:

[Title 28](#) › [Part IV](#) › [Chapter 97](#) › § 1605

[28 U.S. Code § 1605 - General exceptions to the jurisdictional immunity of a foreign state](#)

(a) A foreign [state](#) shall not be immune from the jurisdiction of courts of the [United States](#) or of the States in any case—

(1) in which the foreign [state](#) has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign [state](#) may purport to effect except in accordance with the terms of the waiver;

(2) **in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;**

(3) **in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;**

(4) in which rights in property in the [United States](#) acquired by succession or gift or rights in immovable property situated in the [United States](#) are in issue;

(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign [state](#) for personal injury or death, or damage to or loss of property, occurring in the [United States](#) and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to—

(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; or

(6) in which the action is brought, either to enforce an agreement made by the foreign [state](#) with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter

capable of settlement by arbitration under the laws of the [United States](#), or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place or is intended to take place in the [United States](#), (B) the agreement or award is or may be governed by a treaty or other international agreement in force for the [United States](#) calling for the recognition and enforcement of arbitral awards, (C) the underlying claim, save for the agreement to arbitrate, could have been brought in a [United States](#) court under this section or section 1607, or (D) paragraph (1) of this subsection is otherwise applicable.

Lastly, we also wish to emphasize that those who are physically in the country they were born in are NOT under any such “implied license” and therefore, unlike aliens, are not AUTOMATICALLY “individuals” or “persons” and cannot consent to become “individuals” or “persons” under any revenue statute. These people would be called “nationals of the United States\*\*\* OF AMERICA”. Their rights are UNALIENABLE and therefore they cannot lawfully consent to give them away by agreeing to ANY civil status, including “person” or “individual”.

### 3.1.12.2 “U.S. Persons”

The statutory definition of CIVIL “U.S. person” within the Internal Revenue Code is as follows:

[TITLE 26 > Subtitle F > CHAPTER 79 > Sec. 7701.](#)  
[Sec. 7701. - Definitions](#)

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(30) [United States](#) person

The term “United States~~\*\*\*~~ person” means -

(A) a citizen or resident of the United States~~\*\*\*~~,

(B) a domestic partnership,

(C) a domestic [corporation](#),

(D) any estate (other than a foreign estate, within the meaning of paragraph (31)), and

(E) any trust if -

(i) a court within the United States~~\*\*\*~~ is able to exercise primary supervision over the administration of the trust, and

(ii) one or more United States~~\*\*\*~~ persons have the authority to control all substantial decisions of the trust.

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[TITLE 26 > Subtitle F > CHAPTER 79 > Sec. 7701.](#) [Internal Revenue Code]  
[Sec. 7701. - Definitions](#)

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(9) [United States](#)

The term “United States~~’\*\*\*~~” when used in a geographical sense includes only the [States](#) and the District of Columbia.

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[TITLE 26 > Subtitle F > CHAPTER 79 > Sec. 7701.](#) [Internal Revenue Code]  
[Sec. 7701. - Definitions](#)

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(10) State

The term “State” shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.

NOTICE the following important fact: The definition of “person” in 26 U.S.C. §7701(a)(1) does NOT include “U.S. person”, and therefore indicating this status on a withholding form does not make you a STATUTORY “person” within the Internal Revenue Code!

### ***Sovereignty and Freedom Points and Authorities***

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Litigation Tool 10.018, Rev. 11-21-2018



[TITLE 26](#) > [Subtitle F](#) > [CHAPTER 79](#) > § 7701  
[§ 7701. Definitions](#)

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) Person

The term “person” shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

There is some overlap between CIVIL “U.S. Persons” and CIVIL “persons” in the I.R.C., but only in the case of estates and trusts, and partnerships. NOWHERE in the case of individuals is there overlap.

There is also no tax imposed directly on a U.S. Person anywhere in the internal revenue code. All taxes relating to humans are imposed upon “persons” and “individuals” rather than “U.S. Persons”. Nowhere in the definition of “U.S. person” is included “individuals”, and you must be an “individual” to be a “person” as a human being under 26 U.S.C. §7701(a)(1). Furthermore, nowhere are “citizens or residents of the United States” mentioned in the definition of “U.S. Person” defined to be “individuals”. Hence, they can only be fictions of law and NOT humans. To be more precise, they are not only “fictions of law” but public offices in the government. See:

*Proof That There Is a “Straw Man”, Form #05.042*  
<https://sedm.org/Forms/FormIndex.htm>

There is a natural tendency to PRESUME that a statutory “U.S. person” is a “person”, but in fact it is not. That tendency begins with the use of “person” in the NAME “U.S. person”. However, the rules for interpreting the Internal Revenue Code forbid such a presumption:

[U.S. Code](#) > [Title 26](#) > [Subtitle F](#) > [Chapter 80](#) > [Subchapter A](#) > § 7806  
[26 U.S. Code § 7806 - Construction of title](#)

(b) Arrangement and classification

**No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this title, nor shall any table of contents, table of cross references, or similar outline, analysis, or descriptive matter relating to the contents of this title be given any legal effect. The preceding sentence also applies to the sidenotes and ancillary tables contained in the various prints of this Act before its enactment into law.**

Portions of a specific section, such as 26 U.S.C. §7701(a)(30) is a “grouping” as referred to above. The following case also affirms this concept:

*“Factors of this type have led to the wise rule that the title of a statute and the heading of a section cannot limit the plain meaning of the text. United States v. Fisher, 2 Cranch 358, 386; Cornell v. Coyne, 192 U.S. 418, 430; Strathearn S.S. Co. v. Dillon, 252 U.S. 348, 354. For interpretative purposes, they are of use only when they shed light on some ambiguous word or phrase. They are but tools available for the resolution of a doubt. But they cannot undo or limit that which the text makes plain.”*  
*[Railroad Trainmen v. B. & O.R. Co. 331 U.S. 519 (1947)]*

Therefore, we must discern the meaning of “U.S. person” from what is included UNDER the heading, and not within the heading “U.S. Person”. The following subsections will attempt to do this.

### 3.1.12.3 The Three Types of “Persons”

The meaning of “person” depends entirely upon the context in which it is used. There are three main contexts, defined by the system of law in which they may be invoked:

1. CONSTITUTIONAL “person”: Means a human being and excludes artificial entities or corporations or even governments.

---

#### ***Sovereignty and Freedom Points and Authorities***

1 “Citizens of the United States within the meaning of this Amendment must be natural and not artificial  
2 persons; a corporate body is not a citizen of the United States.”<sup>14</sup>

3  
4  
5 14 Insurance Co. v. New Orleans, 13 Fed.Cas. 67 (C.C.D.La. 1870). Not being citizens of the United States,  
6 corporations accordingly have been declared unable “to claim the protection of that clause of the Fourteenth  
7 Amendment which secures the privileges and immunities of citizens of the United States against abridgment or  
8 impairment by the law of a State.” Orient Ins. Co. v. Daggs, [172 U.S. 557](#), 561 (1869) . This conclusion was in  
9 harmony with the earlier holding in Paul v. Virginia, 75 U.S. (8 Wall.) 168 (1869), to the effect that corporations  
10 were not within the scope of the privileges and immunities clause of state citizenship set out in Article IV, Sect. 2.  
11 See also Selover, Bates & Co. v. Walsh, [226 U.S. 112](#), 126 (1912) ; Berea College v. Kentucky, [211 U.S. 45](#) (1908)  
12 ; Liberty Warehouse Co. v. Tobacco Growers, [276 U.S. 71](#), 89 (1928) ; Grosjean v. American Press Co., [297 U.S.](#)  
13 [233](#), 244 (1936) .

14 [Annotated Fourteenth Amendment, Congressional Research Service.

SOURCE: [http://www.law.cornell.edu/anncon/html/amdt14a\\_user.html#amdt14a\\_hd1](http://www.law.cornell.edu/anncon/html/amdt14a_user.html#amdt14a_hd1)]

- 15 2. CIVIL “person”: Depends entirely upon the definition within the statutes and EXCLUDES CONSTITUTIONAL  
16 “persons”. This would NOT INCLUDE STATUTORY “U.S. Persons”.
- 17 3. COMMON LAW “person”: A private human who is litigating in equity under the common law in defense of his  
18 absolutely owned private property.

19 The above systems of law are described in:

[Four Law Systems Course, Form #12.039](#)

<https://sedm.org/Forms/FormIndex.htm>

20 Which of the above statuses you have depends on the law system you voluntarily invoke when dealing with the government.  
21 That law system determines what is called the “choice of law” in your interactions with the government. For more on “choice  
22 of law” rules, see:

[Federal Jurisdiction, Form #05.018, Section 3](#)

<https://sedm.org/Forms/FormIndex.htm>

23 If you invoke a specific choice of law in the action you file in court, and the judge or government changes it to one of the  
24 others, then they are engaged in CRIMINAL IDENTITY THEFT:

[Government Identity Theft, Form #05.046](#)

<https://sedm.org/Forms/FormIndex.htm>

25 Identity theft can also be attempted by the government by deceiving or confusing you with legal “words of art”:

[Legal Deception, Propaganda, and Fraud, Form #05.014](#)

<https://sedm.org/Forms/FormIndex.htm>

### 26 3.1.12.4 Why a “U.S. Person” who is a “citizen” is NOT a statutory “person” or “individual” in the Internal Revenue 27 Code

28 The definition of person is found in 26 U.S.C. §7701(a)(1) as follows:

29 [TITLE 26 > Subtitle F > CHAPTER 79 > § 7701](#)  
30 [§7701. Definitions](#)

31 (a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent  
32 thereof—

33 (1) Person

The term “person” shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

The term “individual” is then defined as:

[26 C.F.R. 1.1441-1 Requirement for the deduction and withholding of tax on payments to foreign persons.](#)

**(c) Definitions**

**(3) Individual.**

(i) Alien individual.

**The term alien individual means an individual who is not a citizen or a national of the United States. See Sec. 1.1-1(c).**

(ii) Nonresident alien individual.

The term nonresident alien individual means [persons](#) described in section 7701(b)(1)(B), alien [individuals](#) who are treated as [nonresident aliens](#) pursuant to [§ 301.7701\(b\)-7 of this chapter](#) for [purposes](#) of computing their U.S. [tax liability](#), or an alien individual who is a resident of Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa as determined under [§ 301.7701\(b\)-1\(d\) of this chapter](#). An alien individual who has made an [election](#) under section 6013(g) or (h) to be treated as a resident of the [United States](#) is nevertheless treated as a [nonresident alien](#) individual for [purposes](#) of [withholding](#) under chapter 3 of the Code and the regulations thereunder.

Did you also notice that the definitions were not qualified to only apply to a specific chapter or section? That means that they apply generally throughout the Internal Revenue Code and implementing regulations. Therefore, we must conclude that the REAL “individual” in the phrase “U.S. **Individual** Income Tax Return” (IRS Form 1040) that Congress and the IRS are referring to can only mean “nonresident alien INDIVIDUALS” and “alien INDIVIDUALS”. That is why they don’t just come out and say “U.S. **Citizen** Tax Return” on the 1040 form. If you aren’t a STATUTORY “individual”, then obviously you are filing the WRONG form to file the 1040, which is a RESIDENT form for those DOMICILED on federal territory. This is covered in the following:

[Why It’s a Crime for a Private American National to File a 1040 Income Tax Return, Form #08.021](https://sedm.org/Forms/FormIndex.htm)  
<https://sedm.org/Forms/FormIndex.htm>

Therefore, all CIVIL “individuals” are STATUTORY “aliens”. Hence, the ONLY people under Title 26 of the U.S. Code who are BOTH “persons” and “individuals” are ALIENS. Under the rules of statutory construction “citizens” of every description are EXCLUDED from being STATUTORY “persons”.

*“It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions.”*  
 [Bailey v. Alabama, 219 U.S. 219 (1911)]

*“Expressio unius est exclusio alterius. A maxim of statutory interpretation meaning that **the expression of one thing is the exclusion of another.** Burgin v. Forbes, 293 Ky. 456, 169 S.W.2d. 321, 325; Newblock v. Bowles, 170 Okl. 487, 40 P.2d. 1097, 1100. Mention of one thing implies exclusion of another. **When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred.** Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded.”*  
 [Black’s Law Dictionary, Sixth Edition, p. 581]

*“When a statute includes an explicit definition, we must follow that definition, even if it varies from that term’s ordinary meaning. Meese v. Keene, 481 U.S. 465, 484-485 (1987) (“It is axiomatic that the statutory definition of the term excludes unstated meanings of that term”); Colautti v. Franklin, 439 U.S. at 392-393, n. 10 (“As a rule, ‘a definition which declares what a term ‘means’ . . . excludes any meaning that is not stated”); Western Union Telegraph Co. v. Lenroot, 323 U.S. 490, 502 (1945); Fox v. Standard Oil Co. of N.J., 294 U.S. 87, 95-96 (1935) (Cardozo, J.); see also 2A N. Singer, Sutherland on Statutes and Statutory Construction § 47.07, p. 152, and n. 10 (5th ed. 1992) (collecting cases). That is to say, the statute, read “as a whole,” post at 998 [530 U.S. 943] (THOMAS, J., dissenting), leads the reader to a definition. That definition does not include the Attorney General’s restriction -- “the child up to the head.” Its words, “substantial portion,” indicate the contrary.”*  
 [Stenberg v. Carhart, 530 U.S. 914 (2000)]

1 Who might these CIVIL “persons” be who are also “individuals”? They must meet all the following conditions  
2 simultaneously to be “taxpayers” and “persons”:

- 3 1. CIVIL “U.S. citizens” or CIVIL U.S. residents” domiciled in the geographical “United States” under 26 U.S.C.  
4 §7701(a)(9) and (a)(10) and/or 4 U.S.C. §110(d).
- 5 2. Temporarily abroad on travel under 26 U.S.C. §911.
- 6 3. Availing themselves of a tax treaty benefit (franchises) and therefore liable to PAY for said “benefit”.
- 7 4. Interface to the Internal Revenue Code as “aliens” in relation to the foreign country they are physically in but not  
8 domiciled in at the time.
- 9 5. Called a “qualified individual” in 26 U.S.C. §911(d)(1).

10 Some older versions of the code call the confluence of conditions above a “nonresident citizen”. The above are confirmed by  
11 the words of Jesus Himself!

12 *And when he had come into the house, Jesus anticipated him, saying, "What do you think, Simon? From whom  
13 do the kings [governments] of the earth [lawfully] take customs or taxes, from their sons [citizens and subjects]  
14 or from strangers [statutory "aliens", which are synonymous with "residents" in the tax code, and exclude  
15 "citizens"]?"*

16 *Peter said to Him, "From strangers [statutory "aliens"/"residents" ONLY. See 26 C.F.R. §1.1-1(a)(2)(ii) and*  
17 *26 C.F.R. §1.1441-1(c)(3)]."*

18 *Jesus said to him, "Then the sons [of the King, Constitutional but not statutory "citizens" of the Republic, who*  
19 *are all sovereign "nationals" and "non-resident non-persons"] are free [sovereign over their own person and*  
20 *labor. e.g. SOVEREIGN IMMUNITY]."*  
21 *[Mat. 17:24-27, Bible, NKJV]*

22 Note some other very important things that distinguish CIVIL “U.S. Persons” from CIVIL “persons”:

- 23 1. The CIVIL term “U.S.\*\*\*\*” in the phrase “U.S. Person” as used in 26 U.S.C. §7701(a)(30) is never defined anywhere  
24 in the Internal Revenue Code, and therefore does NOT mean the same as “United States” in its geographical sense as  
25 defined in 26 U.S.C. §7701(a)(9) and (a)(10). It is a violation of due process to PRESUME that the two are  
26 equivalent.
- 27 2. The definition of CIVIL “person” in 26 U.S.C. §7701(a)(1) does not include CIVIL “citizens” or “residents”.
- 28 3. The definition of a CIVIL “U.S.\*\*\*\* person” in 26 U.S.C. §7701(a)(30) does not include CIVIL “individuals”.
- 29 4. Nowhere in the code are CIVIL “individuals” ever expressly defined to include CIVIL “citizens” or “residents”.
- 30 Hence, under the rules of statutory construction, they are purposefully excluded.
- 31 5. Based on the previous items, there is no overlap between the definitions of CIVIL “person” and CIVIL “U.S. Person”  
32 in the case of human beings who are ALSO CIVIL “citizens” or “residents”.
- 33 6. The only occasion when a human being can ALSO be a CIVIL “person” is when they are neither a CIVIL “citizen” nor  
34 a CIVIL “resident” and are a CIVIL “individual”.
- 35 7. The only CIVIL “person” who is neither a CIVIL “citizen” nor a CIVIL “resident” and is ALSO a CIVIL “individual”  
36 is a “nonresident alien individual”:

37 [26 U.S.C. §7701\(b\)\(1\)\(B\) Nonresident alien](#)

38 *An individual is a nonresident alien if such individual is neither a citizen of the United States nor a resident of*  
39 *the United States (within the meaning of subparagraph (A)).*

- 40 8. The previous item explains why nonresident aliens are the ONLY type of CIVIL “individual” subject to tax  
41 withholding in 26 U.S.C. Subtitle A, Chapter 3, Subchapter A and who can earn taxable income under the I.R.C.: The  
42 only “individuals” listed are “nonresident aliens”:

43 [26 U.S. Code Subchapter A - Nonresident Aliens and Foreign Corporations](#)

44 [§ 1441 - Withholding of tax on nonresident aliens](#)

45 [§ 1442 - Withholding of tax on foreign corporations](#)

46 [§ 1443 - Foreign tax-exempt organizations](#)

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### ***Sovereignty and Freedom Points and Authorities***

1 [§ 1444 - Withholding on Virgin Islands source income](#)

2 [§ 1445 - Withholding of tax on dispositions of United States real property interests](#)

3 [§ 1446 - Withholding tax on foreign partners' share of effectively connected income](#)

- 4 9. There is overlap between CIVIL “U.S. Person” and CIVIL “person” in the case of trusts, corporations, and estates, but  
5 NOT “individuals”. All such entities are artificial and fictions of law. Even they can in some cases be “citizens” or  
6 “residents” and therefore nontaxpayers:

7 *"A corporation is a citizen, [resident](#), or inhabitant of the state or country by or under the laws of which it was  
8 created, and of that state or country only."*

9 *[19 Corpus Juris Secundum (C.J.S.), Corporations, §886 (2003)]*

- 10 10. Corporations can also be individuals instead of merely and only corporations:

11 **At common law, a "corporation" was an "artificial perso[n] endowed with the legal capacity of perpetual  
12 succession" consisting either of a single individual (termed a "corporation sole") or of a collection of several  
13 individuals (a "corporation aggregate").** 3 H. Stephen, *Commentaries on the Laws of England* 166, 168 (1st Am.  
14 ed. 1845). The sovereign was considered a corporation. See *id.*, at 170; see also 1 W. Blackstone, *Commentaries*  
15 \*467. Under the definitions supplied by contemporary law dictionaries, Territories would have been classified as  
16 "corporations" (and hence as "persons") at the time that 1983 was enacted and the Dictionary Act recodified.  
17 See W. Anderson, *A Dictionary of Law* 261 (1893) ("All corporations were originally modeled upon a state or  
18 nation"); 1 J. Bouvier, *A Law Dictionary Adapted to the Constitution and Laws of the United States of America*  
19 318-319 (11th ed. 1866) ("In this extensive sense the United States may be termed a corporation"); *Van Brocklin*  
20 *v. Tennessee*, 117 U.S. 151, 154 (1886) ("The United States is a . . . great corporation . . . ordained and  
21 established by the American people") (quoting *United [495 U.S. 182, 202] States v. Maurice*, 26 F. Cas. 1211,  
22 1216 (No. 15,747) (CC Va. 1823) (Marshall, C. J.)); *Cotton v. United States*, 11 How. 229, 231 (1851) (*United*  
23 *States is "a corporation"*). See generally *Trustees of Dartmouth College v. Woodward*, 4 Wheat. 518, 561-562  
24 (1819) (explaining history of term "corporation").  
25 *[Ngiraingas v. Sanchez*, 495 U.S. 182 (1990)]

26 We have therefore come full circle in forcefully concluding that CIVIL “persons” and CIVIL “U.S. persons” are not  
27 equivalent and non-overlapping in the case of CIVIL “citizens” and “residents”, and that the only type of entity a human  
28 being can be if they are a CIVIL “citizen” or “resident” is a CIVIL “U.S. person” under 26 U.S.C. §7701(a)(30) and NOT a  
29 CIVIL “person” under 26 U.S.C. §7701(a)(1).

30 None of the following could therefore TRUTHFULLY be said about a CIVIL “U.S. Person” who are human beings that are  
31 CIVIL “citizens” or CIVIL “residents”:

- 32 1. They are CIVIL "individuals" as described in 26 C.F.R. §1.1441-1(c)(3)(i).  
33 2. That they are a SUBSET of all CIVIL “persons” in 26 U.S.C. §7701(a)(1).  
34 3. That they are ALSO CIVIL “persons” in 26 U.S.C. §7701(a)(1).

35 Lastly, we wish to emphasize that it constitutes a CRIME and perjury for someone who is in fact and in deed a CIVIL  
36 “citizen” to misrepresent themselves as a STATUTORY “individual” (alien) by performing any of the following acts:

- 37 1. Declaring yourself to be a "payee" by submitting an IRS Form W-8 or W-9 to an alleged "withholding agent" while  
38 physically located in the statutory “United States\*\*” (federal zone) or in a state of the Union. All human being  
39 "payees" are "persons" and therefore "individuals". "U.S. persons" who are not aliens are NOT "persons". Statutory  
40 citizens or residents must be ABROAD to be a “payee” because only then can they be both “individuals” and  
41 “qualified individuals” under 26 U.S.C. §911(d)(1).

42 [Title 26 > Chapter 1 > Subchapter A > Part 1 > Section 1.1441-1](#)

43 [26 CFR 1.1441-1 - Requirement for the deduction and withholding of tax on payments to foreign persons.](#)

44 [§ 1.1441-1 Requirement for the deduction and withholding of tax on payments to foreign persons.](#)

45 (b) General rules of withholding-



1 (2) Determination of payee and payee's status-

2 (i) In general.

3 [. . .] “**a payee is the person to whom a payment is made**, regardless of whether such **person** is the **beneficial**  
4 **owner** of the **amount** (as **defined** in **paragraph (c)(6)** of this section).”

5 2. Filing an IRS Form 1040. The form in the upper left corner says “U.S. Individual” and “citizens” are NOT  
6 STATUTORY “individuals”. See:

*Why It's a Crime for a Private American National to File a 1040 Income Tax Return*, Form #08.021  
<https://sedm.org/Forms/FormIndex.htm>

7 3. To apply for or receive an “INDIVIDUAL Taxpayer Identification Number” using an IRS Form W-7. See:

*Individual Taxpayer Identification Number*, Internal Revenue Service  
<https://www.irs.gov/individuals/individual-taxpayer-identification-number>

8 The ONLY provision within the Internal Revenue Code that permits those who are CIVIL “citizens” to claim the status of  
9 either CIVIL “individual” or CIVIL “alien” is found in 26 U.S.C. §911(d)(1), in which the citizen is physically abroad in a  
10 foreign country, in which case he or she is called a “qualified individual”.

11 *U.S. Code* › [Title 26](#) › [Subtitle A](#) › [Chapter 1](#) › [Subchapter N](#) › [Part III](#) › [Subpart B](#) › § 911

12 [26 U.S. Code § 911 - Citizens or residents of the United States living abroad](#)

13 **(d) DEFINITIONS AND SPECIAL RULES**

14 *For purposes of this section—*

15 **(1) QUALIFIED INDIVIDUAL**

16 *The term “qualified individual” means an individual whose tax home is in a foreign country and who is—*

17 **(A)** *a citizen of the United States and establishes to the satisfaction of the Secretary that he has been a bona fide*  
18 *resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, or*

19 **(B)** *a citizen or resident of the United States and who, during any period of 12 consecutive months, is present in*  
20 *a foreign country or countries during at least 330 full days in such period.*

21 The above provisions SUPERSEDE the definitions within [26 U.S.C. §7701](#) only within [section 911](#) for the specific case of  
22 citizens when abroad ONLY. Those who are not physically “abroad” or in a foreign country CANNOT truthfully claim to  
23 be “individuals” and would be committing perjury under penalty of perjury if they signed any tax form, INCLUDING a 1040  
24 form, identifying themselves as either an “individual” or a “U.S. individual” as it says in the upper left corner of the 1040  
25 form. If this limitation of the income tax ALONE were observed, then most of the fraud and crime that plagues the system  
26 would instantly cease to exist.

27 **3.1.12.5 “U.S. Persons” who are ALSO “persons”**

28 26 C.F.R. §1.1441(c)(8) identifies “U.S. Persons” who are also “persons” under the Internal Revenue Code:

29 (8)Person.

30 *For purposes of the regulations under chapter 3 of the Code, the term person shall mean a person described in*  
31 *section 7701(a)(1) and the regulations under that section and a U.S. branch to the extent treated as a U.S. person*  
32 *under paragraph (b)(2)(iv) of this section. For purposes of the regulations under chapter 3 of the Code, the term*  
33 *person does not include a wholly-owned entity that is disregarded for federal tax purposes under § 301.7701-*  
34 *2(c)(2) of this chapter as an entity separate from its owner. See paragraph (b)(2)(iii) of this section for procedures*  
35 *applicable to payments to such entities.*  
36 [26 C.F.R. §1.1441-1(c)(8)]

The ONLY way that a human being who is a CIVIL “U.S. person” physically located within the statutory geographical “United States\*\*” (federal zone) or states of the Union can become a STATUTORY “person” is to:

1. Be treated wrongfully AS IF they are a “payee” by an ignorant “withholding agent” under 26 C.F.R. §1.1441.
2. Be falsely PRESUMED to be a CIVIL “individual” or CIVIL “person”. All such conclusive presumptions which impair constitutional rights are unconstitutional and impermissible as we prove in the following:

*Presumption: Chief Weapon for Unlawfully Enlarging Federal Jurisdiction*, Form #05.017

<https://sedm.org/Forms/FormIndex.htm>

All such presumption should be FORCEFULLY CHALLENGED. Anyone making such a presumption should be DEMANDED to satisfy their burden of proof and produce a statutory definition that expressly includes those who are either CIVIL “citizens” or CIVIL “residents”. In the absence of such a presumption, you as the victim of such an unconstitutional presumption must be presumed to be innocent until proven guilty, which means a “non-person” and a “non-taxpayer” unless and until proven otherwise WITH COURT ADMISSIBLE EVIDENCE SIGNED UNDER PENALTY OF PERJURY BY THE MOVING PARTY, which is the withholding agent.

3. Volunteer to fill out an unmodified or not amended IRS Form W-8 or W-9. Both forms PRESUPPOSE that the submitter is a “payee” and therefore a “person” under 26 C.F.R. §1.1441-1(b)(2)(i). A withholding agent asserting usually falsely that you have to fill out this form MUST make a false presumption that you are a CIVIL “person” but he CANNOT make that determination without forcing you to contract or associate in violation of law. ONLY YOU as the submitter can lawfully do that. If you say under penalty of perjury that you are NOT a CIVIL “person” or “individual”, then he has to take your word for it and NOT enforce the provisions of 26 C.F.R. §1.1441-1 against you. If he refuses you this right, he is committing criminal witness tampering, since the form is signed under penalty of perjury and he compelling a specific type of testimony from you. See:

*Your Exclusive Right to Declare or Establish Your Civil Status*, Form #13.008

<https://sedm.org/Forms/FormIndex.htm>

4. Fill out an IRS Form W-8. Block 1 for the name of the submitter calls the submitter an “individual”. You are NOT a CIVIL “individual” since individuals are aliens as required by 26 C.F.R. §1.1441-1(c)(3). Only STATUTORY “U.S. citizens” abroad can be “individuals” and you aren’t abroad if you are either on federal territory or within a constitutional state.

The result of ALL of the above is CRIMINAL IDENTIFY THEFT at worst as described in Form #05.046, and impersonating a public officer called a “person” and “individual” at best in violation of 18 U.S.C. §912 as described in Form #05.008.

There is also much overlap between the definition of “person” and “U.S. person”. The main LACK of overlap occurs with “individuals”. The main reason for this difference in overlap is the fact that HUMAN BEINGS have constitutional rights while artificial entities DO NOT. Below is a table comparing the two, keeping in mind that the above regulation refers to the items listed that both say “Yes”, but not to “individuals”:

**Table 7: Comparison of "person" to "U.S. Person"**

#	Type of entity	“person”? 26 U.S.C. §7701(a)(1)	“U.S. Person” 26 U.S.C. §7701(a)(30)
1	Individual	Yes	No (replaced with “citizen or resident of the United States**”)
2	Trust	Yes	Yes
3	Estate	Yes	Yes
4	Partnership	Yes	Yes
5	Association	Yes	Not listed
6	Company	Yes	Not listed
7	Corporation	Yes (federal corporation domiciled on federal territory only)	Yes (all corporations, including state corporations)

We believe that the “citizen or resident of the United States\*\*” listed in item 1 above and in 26 U.S.C. §7701(a)(30)(A) is PRIVILEGED fictional office in the national government domiciled in the District of Columbia. Those domiciled in states of the Union would be NEITHER, and therefore would NOT be classified as CIVIL “individuals”, even if they otherwise satisfied the definition of CIVIL “individual” found in 26 C.F.R. §1.1441-1(c)(3). This results from the geographical definition of “United States” found in 26 U.S.C. §7701(a)(9) and (a)(10). Below is an example of why we believe this:

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1  
2  
3

[26 C.F.R. §31.3121\(e\)-1 State, United States, and citizen](#)

(b)...The term 'citizen of the United States' includes a citizen of the Commonwealth of Puerto Rico or the Virgin Islands, and, effective January 1, 1961, a citizen of Guam or American Samoa.

1

2 **3.1.12.6 Types of "Individuals" and their characteristics**

#	Description	Definition	"U.S. person"		"Foreign Person"			Notes
			citizen	resident	alien individual	nonresident alien individual	nonresident alien	
1	Defined in	NA	<a href="#">26 U.S.C. §3121</a> ; <a href="#">26 C.F.R. §1.1-1(c)</a>	<a href="#">26 U.S.C. §7701(b)(1)(A)</a>	<a href="#">26 C.F.R. §1.1441-1(c)(3)(i)</a> . Described as an "alien individual"	<a href="#">26 C.F.R. §1.1441-1(c)(3)(ii)</a> . Described as an "individual"	<a href="#">26 U.S.C. §7701(b)(1)(B)</a> . Described as an "individual".	
2	An office within U.S. Inc? (personal jurisdiction)		Y	Y	N	N	N	
3	Domestic (within the CORPORATION, not the geography)?		Y	Y	N	N	N	
4	Domicile in the statutory geographical "United States" because the corporation "U.S. Inc." is domiciled there?		Y	Y	N	N	N	
5	File 1040?		Y	Y	N	N	N	
6	File 1040NR?		N	N	Y	Y	Y	
7	Present in the United States test?	<a href="#">26 U.S.C. §7701(b)(7)</a>	Y	Y	Y	Y	Y	Uses the word "individual"
8	Can have tax home?	<a href="#">26 C.F.R. §301.7701(b)-2(c)</a>	Y	Y	Y	Y	Y	Uses word "individual"
9	Substantial Presence Test	<a href="#">26 U.S.C. §7701(b)(3)</a>	N	N	Y	N	N	Uses the word "individual" but is mentioned only by <a href="#">26 U.S.C. §7701(b)(1)(A)(ii)</a> , which is only in the context of "alien individuals"..
10	Closer connection to foreign country	<a href="#">26 C.F.R. §301.7701(b)-2(d)</a>	N	N	Y	N	N	Uses the word "alien individual"
11	First year of residency test	<a href="#">26 U.S.C. §7701(b)(2)(A)</a>	N	N	Y	N	N	
12	Last year of residency test	<a href="#">26 U.S.C. §7701(b)(2)(B)</a>	N	N	Y	N	N	
13	First year of election test	<a href="#">26 U.S.C. §7701(b)(4)</a>	N	N	Y	N	N	
14	Expatriation to avoid tax in 26 U.S.C. §877?	<a href="#">26 U.S.C. §7701(b)(10)</a>	Y	N	N	Y	Y	Uses the word "alien individual"

3

**NOTES:**

1. All privileges come with associated offices in the government:

*privilege* \ 'priv-lij, 'pri-və- \ noun

[Middle English, from Anglo-French, from Latin *privilegium* law for or against a private person, from *privus* private + *leg-*, *lex* law] 12th century: a right or immunity granted as a peculiar benefit, advantage, or favor: prerogative especially: such a **right or immunity attached specifically to a position or an office**  
[Mish, F. C. (2003). Preface. Merriam-Websters collegiate dictionary. (Eleventh ed.). Springfield, MA: Merriam-Webster, Inc.]

2. Domicile is a PRIVILEGE. See:

Lawrence v. State Tax Commission, 286 U.S. 276 (1932)  
[https://scholar.google.com/scholar\\_case?case=10241277000101996613](https://scholar.google.com/scholar_case?case=10241277000101996613)

3. The income tax is upon the DOMICILE of the "taxpayer" and NEVER on the NATIONALITY of the officer.

4. Domicile is always GEOGRAPHICAL and never VIRTUAL.

5. The OFFICE and the OFFICER can have domiciles completely independently of each other. This is shown in [Federal Rule of Civil Procedure 17](#).

6. The domicile of the United States federal corporation under [28 U.S.C. §3002\(15\)\(A\)](#) is the District of Columbia per [4 U.S.C. §72](#) and Article 1, Section 8, Clause 17 of the Constitution.

7. While you are representing the United States Inc. federal corporation as an officer of that corporation, your effective domicile is that of the corporation you work for under [Federal Rule of Civil Procedure 17](#).

8. A CIVIL "qualified individual" under [26 U.S.C. §911\(d\)\(1\)](#) is a CIVIL STATUTORY U.S. citizen or U.S. resident whose "tax home" is situated in a "foreign country" as defined in [26 C.F.R. §301.7701\(b\)-2\(b\)](#) AND who is:

8.1. A CIVIL citizen of the United States and establishes to the satisfaction of the Secretary that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, or

8.2. A CIVIL citizen or resident of the United States and who, during any period of 12 consecutive months, is present in a foreign country or countries during at least 330 full days in such period.

9. A "tax home" simply means that they have declared privileged "trade or business" deductions under [26 U.S.C. §162](#).

9.1. That is what it says in [26 C.F.R. §301.7701\(b\)-2\(c\)](#). Thus, they are engaging in a privilege and thus an OFFICE that has a domicile in the District of Columbia.

9.2. In that scenario, they are in effect "resident agents" situated abroad representing an office in the District of Columbia. As "resident agents".

9.3. In the absence of "trade or business" deductions under [26 U.S.C. §162](#), the "tax home" becomes the abode of the OFFICER rather than the OFFICE under [26 C.F.R. §301.7701\(b\)-2\(c\)](#).

10. [26 C.F.R. §301.7701\(b\)-2\(c\)](#):

10.1. Defines a "tax home" as the place where you engage in a privileged "trade or business" under [26 U.S.C. §162](#) as an officer of the United States. That office is VIRTUAL and not PHYSICAL, but it is domiciled in the location of its corporate parent. Thus, pursuant to Federal Rule of Civil Procedure 17(b), the OFFICE is domiciled where the United States Inc. is domiciled, which is the District of Columbia under Article 1, Section 8, Clause 17 and [4 U.S.C. §72](#).

10.2. Also says that if there is NO privileged "trade or business" activity, the "tax home" devolves to that of the OFFICER rather than the OFFICE, which is usually in a "foreign country".

11. [26 C.F.R. §301.7701\(b\)-2\(b\)](#):

11.1. Defines "foreign country" as anything OTHER than the statutory geographical United States in [26 U.S.C. §7701\(a\)\(9\)](#) and (a)(10).

11.2. Establishes the states of the Union, territories, and even possessions are all foreign countries and identifies "individuals" in these places foreign and thus a "nonresident alien" under [26 U.S.C. §7701\(b\)\(1\)\(B\)](#) instead of a "U.S. person" under [26 U.S.C. §7701\(a\)\(30\)](#).

12. A "national", Fourteenth Amendment citizen, or STATUTORY "citizen" under [8 U.S.C. §1401](#) or [26 C.F.R. §1.1-1\(c\)](#) are NEVER subject to the Substantial Presence Test in [26 U.S.C. §7701\(b\)\(3\)](#).

### ***Sovereignty and Freedom Points and Authorities***



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### 3.1.13 Four Withholding and Reporting Statuses Compared

Albert Einstein is famous for saying:

*"The essence of genius is simplicity".*

This section tries to simplify most of what you need to know about withholding and reporting forms and statuses into the shortest possible tabular list that we can think of.

First we will start off by comparing the four different withholding and reporting statuses in tabular form. For each, we will compare the withholding, reporting, and SSN/TIN requirements and where those requirements appear in the code or regulations. For details on how the statuses described relate, refer earlier to section 3.1.12.

Jesus summarized the withholding and reporting requirements in the holy bible, and he was ABSOLUTELY RIGHT! Here is what He said they are:

*And when he had come into the house, Jesus anticipated him, saying, "What do you think, Simon? From whom do the kings [governments] of the earth [lawfully] take customs or taxes, from their sons [citizens and subjects] or from strangers ["aliens", which are synonymous with "residents" in the tax code, and exclude "citizens"]?"*

*Peter said to Him, "From strangers ["aliens"/"residents" ONLY. See 26 C.F.R. §1.1-1(a)(2)(ii) and 26 C.F.R. §1.1441-1(c)(3)]."*

*Jesus said to him, "Then the sons ["citizens" of the Republic, who are all sovereign "nationals" and "non-resident non-persons" under federal law] are free [sovereign over their own person and labor. e.g. SOVEREIGN IMMUNITY]. "[Matt. 17:24-27, Bible, NKJV]*

The table in the following pages PROVES He was absolutely right. To put it simply, the only people who don't have rights are those whose rights are "alienated" because they are privileged "aliens" or what Jesus called "strangers". For details on why all "aliens" are privileged and subject to taxation and regulation, see section 3.1.12.1 earlier.

An online version of the subsequent table with activated hotlinks can be found in:

Citizenship Status v. Tax Status, Form #10.011, Section 13  
<https://sedm.org/Forms/10-Emancipation/CitizenshipStatusVTaxStatus/CitizenshipVTaxStatus.htm>

Table 8: Withholding, reporting, and SSN requirements of various civil statuses

#	Characteristic	“Employee”	“Foreign Person”	“U.S. Person”	“Non-Resident Non-Person” (See Form #05.020)
1	Defined in	26 U.S.C. §3401(c)	See IRS website: <a href="https://www.irs.gov/individuals/international-taxpayers/foreign-persons">https://www.irs.gov/individuals/international-taxpayers/foreign-persons</a>	26 U.S.C. §7701(a)(30)	Not directly defined in code. 26 U.S.C. §7701(a)(31) comes closest.
2	Presumption rule(s)		All “aliens” are presumed to be “nonresident aliens” by default. 26 C.F.R. §1.871-4(b).	Payments supplied without documentation are presumed to be made to a “U.S. person” under 26 C.F.R. §1.1441-1(b)(3)(iii).	None
3	Withholding form(s)	Form W-4	Form W-8	1. Form W-9 2. FORM 9 3. Allowed to make your own Substitute Form W-9. See Note 10 below.	1. Custom form 2. Modified or amended Form W-8 or Form W-9 3. FORM 10 4. FORM 13
4	Withholding requirements	26 U.S.C. §3402	Only if engaged in a “trade or business”. 26 U.S.C. §3406: Backup Withholding. Withholding ONLY on “reportable payments”, which means “trade or business”/public office under 26 U.S.C. §6041(a).	None if mark “OTHER” on Form W-9 and invoke 26 C.F.R. §1.1441-1(d)(1) and <a href="#">TD8734 (62 F.R. 53391, SEDM Exhibit #09.038)</a>	None. All earnings are a “foreign estate” under 26 U.S.C. §7701(a)(31)
5	Reporting form(s)	<a href="#">Form W-2</a>	<a href="#">Form 1042</a>	<a href="#">Form 1099</a>	None. Any information returns that are filed MUST be rebutted and corrected. See <a href="#">Form #04.001</a>
6	Reporting requirements <sup>33</sup>		Only if not engaged in a “trade or business”/public office. See 26 U.S.C. §6041. 26 U.S.C. §3406 lists types of “trade or business” payments that are “reportable”.	None if mark “OTHER” on Form W-9 and invoke 26 C.F.R. §1.1441-1(d)(1) and <a href="#">TD8734 (62 F.R. 53391, SEDM Exhibit #09.038)</a> .	None.
7	SSN/TIN Requirement <sup>34</sup>		Only if not engaged in a “trade or business”/public office. See 26 C.F.R. §301.6109-1(b)(2) , 31 C.F.R. §306.10, Note 2, and <i>31 C.F.R. §1020.410(b)(3)(x)</i> . Use an “INDIVIDUAL Taxpayer Identification Number (ITIN)”. 26 C.F.R. §301.6109-1(d)(3)	Yes, if eligible. Most are NOT under 26 U.S.C. §6109 or the Social Security Act. <sup>35</sup> See 26 C.F.R. §301.6109-1(b)(1)	None
8	Civil status in top row of this column includes	Any PRIVATE PARTY who files and thereby commits the crime of impersonating a public officer, 18 U.S.C. §912.	1. Resident Aliens (26 U.S.C. §7701(b)(1)(A)) 2. Nonresident aliens (26 U.S.C. §7701(b)(1)(B))	Anyone who files the Form W-4 (don’t do it, it’s a CRIME if you aren’t an elected or appointed public officer of the U.S. Inc., 18 U.S.C. §912)	A private human being domiciled in a constitutional state who: 1. Absolutely owns all of their property; 2. Is outside the statutory jurisdiction of the federal courts; 3. Owes NO DUTY to any government under 26 U.S.C.. Also called a “transient foreigner” or “stateless person” by the courts.

<sup>33</sup> For detailed background on reporting requirements, see: *Correcting Erroneous Information Returns*, Form #04.001; <https://sedm.org/Forms/FormIndex.htm>.

<sup>34</sup> See *About SSNs and TINs on Government Forms and Correspondence*, Form #05.012; <https://sedm.org/Forms/FormIndex.htm>.

<sup>35</sup> See: 1. *Why It is Illegal for Me to Request or Use a “Taxpayer Identification Number”*, Form #04.205, ; <https://sedm.org/Forms/FormIndex.htm>; 2. *Why You Aren’t Eligible for Social Security*, Form #06.001, <https://sedm.org/Forms/FormIndex.htm>.

#	Characteristic	“Employee”	“Foreign Person”	“U.S. Person”	“Non-Resident Non-Person” (See Form #05.020)
9	Includes STATUTORY “individuals” as defined in 26 C.F.R. §1.1441-1(c)(3)?	Only when abroad under 26 U.S.C. §911(d)	Yes, if you: 1. Check “individual” in block 3 of the Form W-8 or 2. Use an “INDIVIDUAL Taxpayer Identification Number (ITIN)”. 26 C.F.R. §301.6109-1(d)(3).	Only when abroad under 26 U.S.C. §911(d)	No
10	Statutory “person” under 26 U.S.C. §7701(a)(1)?	Yes (because “employees” under 5 U.S.C. §2105(a) are “individuals”)	Yes, if you: 1. Check “individual” in block 3 of the Form W-8 or 2. Use an “INDIVIDUAL Taxpayer Identification Number (ITIN)”. 26 C.F.R. §301.6109-1(d)(3).	Yes: 1. “person” is defined in 26 U.S.C. §7701(a)(1) to include “individuals” (aliens). 2. Statutory “citizens of the United States**” under 8 U.S.C. §1401 or 8 U.S.C. §1101(a)(22)(A) become “individuals” only when abroad and accepting tax treaty benefits under 26 U.S.C. §911(d)	No
11	Citizenship status <sup>36</sup>	NA	1. “Resident alien” 26 U.S.C. §7701(b)(1)(A). 2. “alien” 8 U.S.C. §1101(a)(3).	1. “citizen or resident of the United States[**]” 26 U.S.C. §7701(a)(30)(A) 2. “national and citizen of the United States[**] at birth” 8 U.S.C. §1401 3. “citizen of the “united States[**]” 8 U.S.C. §1101(a)(22)(A).	1. Fourteenth Amendment CONSTITUTIONAL citizen. 2. “a person who, though not a citizen of the United States, owes permanent allegiance to the United States” 8 U.S.C. §1101(a)(22)(B). 3. “nationals but not citizens of the United States[**] at birth” 8 U.S.C. §1408.
12	Domiciled on federal territory in the “United States**” (federal zone)?	“Employee” office under 5 U.S.C. §2105(a) is domiciled in the District of Columbia under 4 U.S.C. §72	1. No. 2. If you apply for an “INDIVIDUAL Taxpayer Identification Number (ITIN)” and don’t define “individual” as “non-resident non-person nontaxpayer” and private, you will be PRESUMED to consent to represent the office of statutory “individual” which is domiciled on federal territory.	Yes. You can’t be a statutory “U.S.** citizen” under 8 U.S.C. §1401 or statutory “U.S.** resident” under 26 U.S.C. §7701(b)(1)(A) without a domicile on federal territory.	No
13	Source of domicile on federal territory	Representing an office that is domiciled in the “United States**/federal zone under 4 U.S.C. §72 and Federal Rule of Civil Procedure 17(b)			Domiciled outside the federal zone and not subject. Not representing a federal office.
14	Earnings are STATUTORY “wages”?	Yes. See Note 16 below for statutory definition of “wages”.	No	No	No
15	Can “elect” to become a STATUTORY “individual”?	NA	Yes, by accepting tax treaty benefits when abroad. 26 C.F.R. §301.7701(b)-7.	Yes, by accepting tax treaty benefits when abroad. 26 U.S.C. §911(d) and 26 C.F.R. §301.7701(b)-7.	Yes, by accepting tax treaty benefits when abroad. 26 C.F.R. §301.7701(b)-7.

NOTES:

- All CIVIL “individuals” are aliens under 26 C.F.R. §1.1441-1(c)(3). They hid this deep in the regulations instead of the code, hoping you wouldn’t notice it. For more information on who are “persons” and “individuals” under the Internal Revenue Code, see section 3.1.12 earlier.

<sup>36</sup> For further details on citizenship, see: *Why You are a Political Citizen but Civil Non-Citizen, National, and Nonresident Alien*, Form #05.006; <https://sedm.org/Forms/FormIndex.htm>.

**Sovereignty and Freedom Points and Authorities**

- 1 2. You CANNOT be a “nonresident alien” as a human being under 26 U.S.C. §7701(b)(1)(B) WITHOUT also being a statutory “individual”, meaning an ALIEN  
 2 under 26 C.F.R. §1.1441-1(c)(3).  
 3 3. “Civil status” means any status under any civil statute, such as “individual”, “person”, “taxpayer”, “spouse”, “driver”, etc.  
 4 4. One CANNOT have a civil status under the civil statutes of a place without EITHER:  
 5 4.1. A consensual physical domicile in that geographical place.  
 6 4.2. A consensual CONTRACT with the government of that place.  
 7 For proof of the above, see: *Why Domicile and Becoming a “Taxpayer” Require Your Consent*, Form #05.002; <https://sedm.org/Forms/FormIndex.htm>. The U.S.  
 8 Supreme Court has admitted as much:

9 *“All the powers of the government [including ALL of its civil enforcement powers against the public] must be carried into operation by individual agency, either through*  
 10 *the medium of public officers, or contracts made with [private] individuals.”*  
 11 *[Osborn v. Bank of U.S., 22 U.S. 738 (1824)]*

- 12 5. Any attempt to associate or enforce a NON-CONSENSUAL civil status or obligation against a human being protected by the Constitution because physically  
 13 situated in a Constitutional state is an act of criminal identity theft, as described in:

*Government Identity Theft*, Form #05.046  
<https://sedm.org/Forms/FormIndex.htm>

- 14 6. The civil status of “taxpayer” under 26 U.S.C. §7701(a)(14) PRESUMES the party is also a CIVIL “person” under 26 U.S.C. §7701(a)(1).  
 15 7. “Reportable payments” earned by “foreign persons” under 26 U.S.C. §3406 are those which satisfy ALL of the following requirements:  
 16 7.1. Connected with a “trade or business” and public office under 26 U.S.C. §6041(a).  
 17 7.2. Satisfy the requirements found in 26 U.S.C. §3406.  
 18 7.3. Earned by a statutory “employee” under 26 C.F.R. §31.3401(c)-1, meaning an elected or appointed public officer of the United States government. Note that  
 19 26 U.S.C. §3406 is in Subtitle C, which is “employment taxes” and within 26 U.S.C. Chapter 24, which is “collection of income tax at source of wages”.  
 20 Private humans don’t earn statutory “wages”.  
 21 8. Backup withholding under 26 U.S.C. §3406 is only applicable to “foreign persons” who are ALSO statutory “employees” and earning “trade or business” or public  
 22 office earnings on “reportable payments”. It is NOT applicable to those who are ANY of the following:  
 23 8.1. Not an elected or appointed public officer.  
 24 8.2. Not engaged in a “trade or business” under 26 U.S.C. §7701(a)(26) and therefore not receiving “reportable payments” under 26 U.S.C. §6041(a).  
 25 9. Payments supplied without documentation are presumed to be made to a “U.S. person” under 26 C.F.R. §1.1441-1(b)(3)(iii).  
 26 10. You are allowed to make your own Substitute Form W-9 per 26 C.F.R. §31.3406(h)-3(c)(2). The form must include the payees name, address, and TIN (if they  
 27 have one). The form is still valid even if they DO NOT have an identifying number. See FORM 9 in Form #09.001, Section 25.9.  
 28 11. IRS hides the exempt status on the Form W-9 identified in 26 C.F.R. §1.1441-1(d)(1) and [TD8734 \(62 F.R. 53391, SEDM Exhibit #09.038\)](#).

29 *“As a general matter, a withholding agent (whether U.S. or foreign) must ascertain whether the payee is a U.S. or a foreign person. If the payee is a U.S. person, the*  
 30 *withholding provisions under chapter 3 of the Code do not apply; however, information reporting under chapter 61 of the Code may apply; further, if a TIN is not furnished*  
 31 *in the manner required under section 3406, backup withholding may also apply. If the payee is a foreign person, however, the withholding provisions under chapter 3 of the*  
 32 *Code apply instead. To the extent withholding is required under chapter 3 of the Code, or is excused based on documentation that must be provided, none of the*  
 33 *information reporting provisions under chapter 61 of the Code apply, nor do the provisions under section 3406.”*  
 34 *[Treasury Decision 8734, 62 F.R. 53391, (October 14, 1997); SEDM Exhibit #09.038]*

35 It appeared on the Form W-9 up to year 2011 and mysteriously disappeared from the form after that. It still applies, but invoking it is more complicated. You  
 36 have to check “Other” on the current Form W-9 and cite 26 C.F.R. §1.1441-1(d)(1) and [TD8734 \(62 F.R. 53391, SEDM Exhibit #09.038\)](#) in the write-in block next  
 37 to it.

### ***Sovereignty and Freedom Points and Authorities***

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- 1 12. Those who only want to learn the “code” and who are attorneys worried about being disbarred by a judge in cases against the government prefer the “U.S. person”  
2 position, even in the case of state nationals. It’s a way of criminally bribing the judge to buy his favor and make the case easier for him, even though technically it  
3 doesn’t apply to state nationals.
- 4 13. “U.S. person” should be avoided because of the following liabilities associated with such a status:  
5 13.1. Must provide SSN/TIN pursuant to 26 C.F.R. §301.6109-1(b)(1).  
6 13.2. Must report foreign bank accounts.  
7 13.3. Subject to FATCA foreign account limitations because a “taxpayer”. See:  
8 <https://www.irs.gov/businesses/corporations/foreign-account-tax-compliance-act-fatca>
- 9 14. The ONLY civil status you can have that carries NO OBLIGATION of any kind is that of a “non-resident non-person”. It is the most desirable but the most  
10 difficult to explain and document to payors. The IRS is NEVER going to make it easy to document that you are “not subject” but not statutorily “exempt” and  
11 therefore not a “taxpayer”. This is explained in Form #09.001, Section 19.7.
- 12 15. Form numbers such as "FORM XX" where "XX" is the number and which are listed above derive from: [Federal and State Tax Withholding Options for Private](#)  
13 [Employers, Form #09.001, Section 25](#)
- 14 16. Statutory “wages” are defined in:

*Sovereignty Forms and Instructions Online*, Form #10.004, Cites by Topic: “wages”  
<https://famguardian.org/TaxFreedom/CitesByTopic/wages.htm>



1 **3.1.14 Withholding and Reporting by Geography**

2 Next, we will summarize withholding and reporting statuses by geography.

Table 9: Income Tax Withholding and Reporting by Geography

#	Characteristic	Everywhere	Federal territory	Federal possession	States of the Union	Abroad
1	Location	Anywhere were public offices are expressly authorized per 4 U.S.C. §72. <sup>37</sup>	“United States**” per 26 U.S.C. §7701(a)(9) and (a)(10)	Possessions listed in 48 U.S.C.	“United States***” as used in the USA Constitution	Foreign country
2	Example location(s)	NA	District of Columbia	American Samoa Swain’s Island	California	China
3	Citizenship status of those born here	NA	“national and citizen of the United States** at birth” per 8 U.S.C. §1401	“nationals but not citizens of the United States** at birth” per 8 U.S.C. §1408	Fourteenth Amendment “citizen of the United States”	Foreign national
4	Tax status(es) subject to taxation	“Employee” per 26 U.S.C. §3401(c) and 5 U.S.C. §2105(a)	1. Foreign persons 2. “U.S. persons” who do NOT select “exempt” per 26 C.F.R. §1.1441-1(d)(1) and <a href="#">TD8734 (62 F.R. 53391, SEDM Exhibit #09.038)</a>	1. Foreign persons 2. “U.S. persons” who do NOT select “exempt” per 26 C.F.R. §1.1441-1(d)(1) and <a href="#">TD8734 (62 F.R. 53391, SEDM Exhibit #09.038)</a>	None	1. Statutory citizens (8 U.S.C. §1401) domiciled in federal zone and temporarily abroad 2. Resident aliens (26 U.S.C. §7701(b)(1)(A)) domiciled in the federal zone and temporarily abroad.
5	Authority for taxation of those subject to taxation	26 U.S.C. Subtitle C	26 U.S.C. §1. See Note 1 below.	26 U.S.C. §1. See Note 1 below.	None	1. 26 U.S.C. §1. See Note 1 below. 2. 26 U.S.C. §911 3. 26 C.F.R. §301.7701(b)-7
6	Taxability of “foreign persons” here	NA	The main “taxpayers”	The main “taxpayers”	The main “taxpayers”	None
7	Taxability of “U.S. persons” here	NA	Only if STUPID enough not to take the 26 C.F.R. §1.1441-1(d)(1) and <a href="#">TD8734 (62 F.R. 53391, SEDM Exhibit #09.038)</a> exemption	Only if STUPID enough not to take the 26 C.F.R. §1.1441-1(d)(1) and <a href="#">TD8734 (62 F.R. 53391, SEDM Exhibit #09.038)</a> exemption	Not taxable	
8	Taxability of “Non-Resident Non-Persons” here	None. You can’t be a “non-resident non-person” and an “employee” at the same time	None	None	None	None

<sup>37</sup> See: [Secretary's Authority in the Several States Pursuant to 4 U.S.C. 72](#), Family Guardian Fellowship; <https://famguardian.org/Subjects/Taxes/ChallJurisdiction/BriefRegardingSecretary-4usc72.pdf>.

9	SSN/TIN Requirement <sup>38</sup>	Always	1. Yes for “U.S. persons”, 26 C.F.R. §301.6109-1(b)(1). 2. No for “nonresident aliens” not engaged in a “trade or business”, 31 C.F.R. §306.10, Note 2, 31 C.F.R. §1020.410(b)(3)(x), and 26 C.F.R. §301.6109-1(b)(2). 3. Yes for “nonresident aliens” with “reportable payments” connected to “trade or business”. 26 U.S.C. §3406.	1. Yes for “U.S. persons”, 26 C.F.R. §301.6109-1(b)(1). 2. No for “nonresident aliens” not engaged in a “trade or business”, 31 C.F.R. §306.10, Note 2, 31 C.F.R. §1020.410(b)(3)(x), and 26 C.F.R. §301.6109-1(b)(2). 3. Yes for “nonresident aliens” with “reportable payments” connected to “trade or business”. 26 U.S.C. §3406.	Only for present or former public officers of the national government engaged in federal franchises. The SSN/TIN is what the Federal Trade Commission calls a “franchise mark”.	Only for present or former public officers of the national government engaged in federal franchises. The SSN/TIN is what the Federal Trade Commission calls a “franchise mark”.
10	Withholding form(s)	Form W-4	1. “U.S. Person”: Form W-9 2. “Nonresident Alien”: Form W-8	1. “U.S. Person”: Form W-9 2. “Nonresident Alien”: Form W-8	None	1. “U.S. Person”: Form W-9 2. “Nonresident Alien”: Form W-8
11	Withholding Requirements	26 U.S.C. §3401	26 C.F.R. §1.1441-1	26 C.F.R. §1.1441-1	1. None for private people or companies 2. 26 C.F.R. §1.1441-1 for U.S. government instrumentalities.	1. 26 C.F.R. §1.1441-1 for U.S. government and federal corporations. 2. None for private companies that are not federal corporations.
12	Reporting form(s) See Note	Form W-2	1. “U.S. Person”: Form 1099 2. “Nonresident Alien”: Form 1042	1. “U.S. Person”: Form 1099 2. “Nonresident Alien”: Form 1042	1. None for private people or companies 2. “U.S. Person”: Form 1099 for U.S. government instrumentalities. 3. “Nonresident Alien”: Form 1042 for U.S. government instrumentalities.	1. None for private people or companies 2. “U.S. Person”: Form 1099 for U.S. government instrumentalities. 3. “Nonresident Alien”: Form 1042 for U.S. government instrumentalities.
13	Reporting Requirements	26 U.S.C. §6041	26 U.S.C. §6041	26 U.S.C. §6041	26 U.S.C. §6041	26 U.S.C. §6041

**NOTES:**

1. The term “wherever resident” used in 26 U.S.C. §1 means wherever the entity referred to has the CIVIL STATUS of “resident” as defined in 26 U.S.C. §7701(b)(1). It DOES NOT mean wherever the entity is physically located. The civil status “resident” and “resident alien”, in turn, are synonymous. PRESUMING that “wherever resident” is a physical presence is an abuse of equivocation to engage in criminal identity theft of “nontaxpayers”. See:

*Flawed Tax Arguments to Avoid*, Form #08.004, Section 9.4.5  
<https://sedm.org/Forms/FormIndex.htm>

2. “United States” as used in the Internal Revenue Code is defined as follows:

*TITLE 26 > Subtitle F > CHAPTER 79 > Sec. 7701. [Internal Revenue Code]*  
*Sec. 7701. - Definitions*

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

<sup>38</sup> See *About SSNs and TINs on Government Forms and Correspondence*, Form #05.012; <https://sedm.org/Forms/FormIndex.htm>.

1 (9) United States

2 The term "United States" when used in a geographical sense includes only the [States](#) and the District of Columbia.

3 (10) State

4 The term "State" shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.

5  
6 TITLE 4 - FLAG AND SEAL, SEAT OF GOVERNMENT, AND THE STATES

7 CHAPTER 4 - **THE STATES**

8 [Sec. 110. Same](#); definitions

9 (d) The term "State" includes any [Territory](#) or possession of the United States.

10 3. Limitations on Geographical definitions:

11 3.1. It is a violation of the rules of statutory construction and interpretation and a violation of the separation of powers for any judge or government worker to ADD  
12 anything to the above geographical definitions.

13 *"Expressio unius est exclusio alterius. A maxim of statutory interpretation meaning that the expression of one thing is the exclusion of another. Burgin v. Forbes,*  
14 *293 Ky. 456, 169 S.W.2d. 321, 325; Newblock v. Bowles, 170 Okl. 487, 40 P.2d. 1097, 1100. Mention of one thing implies exclusion of another. **When certain persons***  
15 *or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred. Under this maxim, if statute specifies one*  
16 *exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded."*  
17 *[Black's Law Dictionary, Sixth Edition, p. 581]*

18 *"When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning. Meese v. Keene, 481 U.S. 465, 484-*  
19 *485 (1987) ("It is axiomatic that the statutory definition of the term excludes unstated meanings of that term"); Colautti v. Franklin, 439 U.S. at 392-393, n. 10 ("As a*  
20 *rule, a definition which declares what a term "means" . . . excludes any meaning that is not stated"); Western Union Telegraph Co. v. Lenroot, 323 U.S. 490, 502 (1945);*  
21 *Fox v. Standard Oil Co. of N.J., 294 U.S. 87, 95-96 (1935) (Cardozo, J.); see also 2A N. Singer, Sutherland on Statutes and Statutory Construction § 47.07, p. 152, and*  
22 *n. 10 (5th ed. 1992) (collecting cases). That is to say, the statute, read "as a whole," post at 998 [530 U.S. 943] (THOMAS, J., dissenting), leads the reader to a definition.*  
23 *That definition does not include the Attorney General's restriction -- "the child up to the head." Its words, "substantial portion," indicate the contrary."*  
24 *[Stenberg v. Carhart, 530 U.S. 914 (2000).]*

25 3.2. Comity or consent of either states of the Union or people in them to consent to "include" constitutional states of the Union within the geographical definitions  
26 is NOT ALLOWED, per the Declaration of Independence, which is organic law enacted into law on the first page of the Statutes At Large.

27 *"We hold these truths to be self-evident, that **all men are created equal, that they are endowed by their Creator with certain unalienable Rights**, that among these are*  
28 *Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the*  
29 *governed, -"*  
30 *[Declaration of Independence]*

31 *"Unalienable. Inalienable; **incapable of being aliened, that is, sold and transferred.**"*  
32 *[Black's Law Dictionary, Fourth Edition, p. 1693]*

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**Sovereignty and Freedom Points and Authorities**

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3.3. Here is what the designer of our three branch system of government said about allowing judges to become legislators in the process of ADDING things not in the statutes to the meaning of any term used in the statutes:

*“When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.*

*Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression [sound familiar?].*

*There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.”*

[ . . . ]

*In what a situation must the poor subject be in those republics! The same body of magistrates are possessed, as executors of the laws, of the whole power they have given themselves in quality of legislators. They may plunder the state by their general determinations; and as they have likewise the judiciary power in their hands, every private citizen may be ruined by their particular decisions.”*

*[The Spirit of Laws, Charles de Montesquieu, Book XI, Section 6, 1758; SOURCE: [http://famguardian.org/Publications/SpiritOfLaws/sol\\_11.htm](http://famguardian.org/Publications/SpiritOfLaws/sol_11.htm)]*

4. For an exhaustive catalog of all the word games played by government workers to unconstitutionally usurp jurisdiction they do not have in criminal violation of 18 U.S.C. §208, 28 U.S.C. §144, and 28 U.S.C. §455, see:

*Legal Deception, Propaganda, and Fraud*, Form #05.014  
<https://sedm.org/Forms/FormIndex.htm>

5. The Income tax described in 26 U.S.C. Subtitle A is an excise and a franchise tax upon public offices in the national government. Hence, it is only enforceable upon elected or appointed officers or public officers (contractors) of the national government. See:

*The “Trade or Business” Scam*, Form #05.001  
<https://sedm.org/Forms/FormIndex.htm>

6. It is a CRIME to either file or use as evidence in any tax enforcement proceeding any information return that was filed against someone who is NOT engaged in a public office. Most information returns are false and therefore the filers should be prosecuted for crime by the Department of Justice. The reason they aren’t is because they are BRIBED by the proceeds resulting from these false returns to SHUT UP about the crime. See:

*Correcting Erroneous Information Returns*, Form #04.001  
<https://sedm.org/Forms/FormIndex.htm>

7. The Internal Revenue Code only regulates PUBLIC conduct of PUBLIC officers on official business. The ability to regulate PRIVATE rights and PRIVATE property is prohibited by the Constitution and the Bill of Rights.

*“Under basic rules of construction, statutory laws enacted by legislative bodies cannot impair rights given under a constitution. 194 B.R. at 925. ”*  
*[In re Young, 235 B.R. 666 (Bankr.M.D.Fla., 1999)]*

*“A private person cannot make constitutions or laws, nor can he with authority construe them, nor can he administer or execute them.”*  
*[United States v. Harris, 106 U.S. 629, 1 S.Ct. 601, 27 L.Ed. 290 (1883); The word “execute” includes either obeying or being subject to]*



1 “All the powers of the government [including ALL of its civil enforcement powers against the public] must be carried into operation by individual agency, either through  
 2 the medium of public officers, or contracts made with [private] individuals.”  
 3 [*Osborn v. Bank of U.S.*, [22 U.S. 738 \(1824\)](#)]

4 “A defendant sued as a wrong-doer, who seeks to substitute the state in his place, or to justify by the authority of the state, or to defend on the ground that the state has  
 5 adopted his act and exonerated him, cannot rest on the bare assertion of his defense. He is bound to establish it. **The state is a political corporate body, can act only**  
 6 **through agents, and can command only by laws.** It is necessary, therefore, for such a defendant, in order to complete his defense, to produce a law of the state which  
 7 constitutes his commission as its agent, and a warrant for his act.”  
 8 [*Poindexter v. Greenhow*, 114 U.S. 270 (1885)]

9 “The power to “legislate generally upon” life, liberty, and property, as opposed to the “power to provide modes of redress” against offensive state action, was “repugnant”  
 10 to the Constitution. *Id.*, at 15. See also *United States v. Reese*, [92 U.S. 214, 218 \(1876\)](#); *United States v. Harris*, [106 U.S. 629, 639 \(1883\)](#); *James v. Bowman*, [190 U.S.](#)  
 11 [127, 139 \(1903\)](#). Although the specific holdings of these early cases might have been superseded or modified, see, e.g., *Heart of Atlanta Motel, Inc. v. United States*, [379](#)  
 12 [U.S. 241 \(1964\)](#); *United States v. Guest*, [383 U.S. 745 \(1966\)](#), their treatment of Congress’ §5 power as corrective or preventive, not definitional, has not been questioned.”  
 13 [*City of Boerne v. Flores, Archbishop of San Antonio*, [521 U.S. 507 \(1997\)](#)]

14 8. You can’t simultaneously be a “taxpayer” who is “subject” to the Internal Revenue Code AND someone who is protected by the Constitution and especially the Bill  
 15 of Rights. The two conditions are MUTUALLY EXCLUSIVE. Below are the only documented techniques by which the protections of the Constitutions can be  
 16 forfeited:

17 8.1. Standing on a place not protected by the Constitution, such as federal territory or abroad.

18 8.2. Invoking the “benefits”, “privileges”, or “immunities” offered by any statute. The cite below is called the Constitutional Avoidance Doctrine of the U.S.  
 19 Supreme Court:

20 *The Court developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all*  
 21 *the constitutional questions pressed upon it for decision. They are:*

22 [. . .]

23 **6. The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits.** [FN7 Great Falls Mfg. Co. v. Attorney](#)  
 24 [General](#), 124 U.S. 581, 8 S.Ct. 631, 31 L.Ed. 527; [Wall v. Parrot Silver & Copper Co.](#), 244 U.S. 407, 411, 412, 37 S.Ct. 609, 61 L.Ed. 1229; [St. Louis Malleable Casting](#)  
 25 [Co. v. Prendergast Construction Co.](#), 260 U.S. 469, 43 S.Ct. 178, 67 L.Ed. 351.

26 [FN7 Compare Electric Co. v. Dow](#), 166 U.S. 489, 17 S.Ct. 645, 41 L.Ed. 1088; [Pierce v. Somerset Ry.](#), 171 U.S. 641, 648, 19 S.Ct. 64, 43 L.Ed. 316; [Leonard v.](#)  
 27 [Vicksburg, etc., R. Co.](#), 198 U.S. 416, 422, 25 S.Ct. 750, 49 L.Ed. 1108.  
 28 [*Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 56 S.Ct. 466 (1936)]

29 9. Constitutional protections such as the Bill of Rights attach to LAND, and NOT to the civil status of the people ON the land. The protections of the Bill of Rights  
 30 do not attach to you because you are a statutory “person”, “individual”, or “taxpayer”, but because of the PLACE YOU ARE STANDING at the time you receive  
 31 an injury from a transgressing government agent.

32 “It is locality that is determinative of the application of the Constitution, in such matters as judicial procedure, and not the status of the people who live in it.”  
 33 [*Balzac v. Porto Rico*, 258 U.S. 298 (1922)]

34 You can only lose the protections of the Constitutions by changing your LOCATION, not by consenting to give up constitutional protections. We prove this in:

[Unalienable Rights Course](#), Form #12.038  
<https://sedm.org/Forms/FormIndex.htm>

***Sovereignty and Freedom Points and Authorities***

### 3.1.15 Income Taxation is a Proprietorial Power Limited to Federal Property

Legislative power to institute income taxation under Subtitle A of the Internal Revenue Code originates from Article 4, Section 3, Clause 2 of the Constitution:

*U.S. Constitution, Article IV § 3 (2).*

*The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States [\*\*\*]*

*[1] The power of Congress, in the imposition of taxes and providing for the collection thereof in the possessions of the United States, is not restricted by constitutional provision (section 8, article 1), which may limit its general power of taxation as to uniformity and apportionment when legislating for the mainland or United States proper, for it acts in the premises under the authority of clause 2, section 3, article 4, of the Constitution, which clothes Congress with power to make all needful rules and regulations respecting the territory or other property belonging to the United States. Binns v. United States, 194 U.S. 486, 24 Sup.Ct. 816, 48 L.Ed. 1087; Downes v. Bidwell, 182 U.S. 244, 21 Sup.Ct. 770, 45 L.Ed. 1088.*

*[Lawrence v. Wardell, Collector. 273 F. 405 (1921). Ninth Circuit Court of Appeals]*

The “property” of the national government subject to income taxation is the OFFICES it creates and owns. That office is legislatively created in 5 U.S.C. §2105. The creator of a thing is always the ABSOLUTE OWNER.<sup>39</sup> The income tax therefore functions as a user fee for the use of that federal property. Uncle is in the property rental business! All franchises are implemented with loans of government property with legal strings or conditions attached.

**FRANCHISE. A special privilege conferred by government on individual or corporation, and which does not belong to citizens of country generally of common right. Elliott v. City of Eugene, 135 Or. 108, 294 P. 358, 360. In England it is defined to be a royal privilege in the hands of a subject.**

*A "franchise," as used by Blackstone in defining quo warranto, (3 Com. 262 [4th Am. Ed.] 322), had reference to a royal privilege or branch of the king's prerogative **subsisting in the hands of the subject, and must arise from the king's grant, or be held by prescription**, but today we understand a franchise to be some special privilege conferred by government on an individual, natural or artificial, which is not enjoyed by its citizens in general. State v. Fernandez, 106 Fla. 779, 143 So. 638, 639, 86 A.L.R. 240.*

**In this country a franchise is a privilege or immunity of a public nature, which cannot be legally exercised without legislative grant. To be a corporation is a franchise.** The various powers conferred on corporations are franchises. The execution of a policy of insurance by an insurance company [e.g. **Social Insurance/Socialist Security**], and the issuing a bank note by an incorporated bank [such as a **Federal Reserve NOTE**], are franchises. *People v. Utica Ins. Co., 15 Johns. (N.Y.) 387, 8 Am.Dec. 243.* But it does not embrace the property acquired by the exercise of the franchise. *Bridgeport v. New York & N.H. R. Co., 36 Conn. 255, 4 Am.Rep. 63.* Nor involve interest in land acquired by grantee. *Whitbeck v. Funk, 140 Or. 70, 12 P.2d. 1019, 1020.* **In a popular sense, the political rights of subjects and citizens are franchises, such as the right of suffrage, etc. Pierce v. Emery, 32 N.H. 484; State v. Black Diamond Co., 97 Ohio.St. 24, 119 N.E. 195, 199, L.R.A.1918E, 352.**

*Elective Franchise. The right of suffrage: the right or privilege of voting in public elections.*

*Exclusive Franchise. See Exclusive Privilege or Franchise.*

*General and Special. The charter of a corporation is its "general" franchise, while a "special" franchise consists **in any rights granted by the public to use property for a public use but-with private profit.** Lord v. Equitable Life Assur. Soc., 194 N.Y. 212, 87 N.E. 443, 22 L.R.A. (N.S.) 420.*

*Personal Franchise. A franchise of corporate existence, or one which authorizes the formation and existence of a corporation, is sometimes called a "personal" franchise, as distinguished from a "property" franchise, which authorizes a corporation so formed to apply its property to some particular enterprise or exercise some special*

<sup>39</sup> See Hierarchy of Sovereignty: The Power to Create is the Power to Tax, Family Guardian Fellowship; <https://famguardian.org/Subjects/Taxes/Remedies/PowerToCreate.htm>.

privilege in its employment, as, for example, to construct and operate a railroad. See *Sandham v. Nye*, 9 Misc.Rep. 541, 30 N.Y.S. 552.

*Secondary Franchises.* The franchise of corporate existence being sometimes called the "primary" franchise of a corporation, its "secondary" franchises are the special and peculiar rights, privileges, or grants which it may, receive under its charter or from a municipal corporation, such as the right to use the public streets, exact tolls, collect fares, etc. *State v. Topeka Water Co.*, 61 Kan. 547, 60 P. 337; *Virginia Canon Toll Road Co. v. People*, 22 Colo. 429, 45 P. 398 37 L.R.A. 711. The franchises of a corporation are divisible into (1) corporate or general franchises; and (2) "special or secondary franchises. The former is the franchise to exist as a corporation, while the latter are certain rights and privileges conferred upon existing corporations. *Gulf Refining Co. v. Cleveland Trust Co.*, 166 Miss. 759, 108 So. 158, 160.

*Special Franchisee.* See *Secondary Franchises*, *supra*.  
[*Black's Law Dictionary*, Fourth Edition, pp. 786-787]

All franchises create or recognize an "office". In the case of the Internal Revenue Code, that office is called "person" or "taxpayer".

*privilege* \ 'priv-lij, 'pri-və- \ noun

[Middle English, from Anglo-French, from Latin *privilegium* law for or against a private person, from *privus* private + *leg-*, *lex* law] 12th century: a right or immunity granted as a peculiar benefit, advantage, or favor: prerogative especially: such a **right or immunity attached specifically to a position or an office**  
[Mish, F. C. (2003). Preface. Merriam-Websters collegiate dictionary. (Eleventh ed.). Springfield, MA: Merriam-Webster, Inc.]

A "public officer" is merely someone in charge of THE PROPERTY of the grantor of the franchise:

**"Public office.** The right, authority, and duty created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of government for the benefit of the public. *Walker v. Rich*, 79 Cal.App. 139, 249 P. 56, 58. An agency for the state, the duties of which involve in their performance the exercise of some portion of the sovereign power, either great or small. *Yaselli v. Goff*, C.C.A., 12 F.2d. 396, 403, 56 A.L.R. 1239; *Lacey v. State*, 13 Ala.App. 212, 68 So. 706, 710; *Curtin v. State*, 61 Cal.App. 377, 214 P. 1030, 1035; *Shelmadine v. City of Elkhart*, 75 Ind.App. 493, 129 N.E. 878. *State ex rel. Colorado River Commission v. Frohmiller*, 46 Ariz. 413, 52 P.2d. 483, 486. **Where, by virtue of law, a person is clothed, not as an incidental or transient authority, but for such time as de- notes duration and continuance, with Independent power to control the property of the public, or with public functions to be exercised in the supposed interest of the people, the service to be compensated by a stated yearly salary, and the occupant having a designation or title, the position so created is a public office.** *State v. Brennan*, 49 Ohio.St. 33, 29 N.E. 593.  
[*Black's Law Dictionary*, Fourth Edition, p. 1235]

The I.R.C. Subtitles A and C therefore constitute the terms of the loan of the "public office" (government property) to an otherwise private human:

"In a legal or narrower sense, the term "franchise" is more often used to designate a right or privilege conferred by law,<sup>40</sup> and the view taken in a number of cases is that to be a franchise, the right possessed must be such as cannot be exercised without the express permission of the sovereign power<sup>41</sup> —that is, a privilege or immunity of a public nature which cannot be legally exercised without legislative grant.<sup>42</sup> It is a privilege conferred by government on an individual or a corporation to do that "which does not belong to the citizens of

<sup>40</sup> *People ex rel. Fitz Henry v. Union Gas & E. Co.* 254 Ill. 395, 98 N.E. 768; *State ex rel. Bradford v. Western Irrigating Canal Co.* 40 Kan 96, 19 P. 349; *Milhau v. Sharp*, 27 N.Y. 611; *State ex rel. Williamson v. Garrison* (Okla.), 348 P.2d. 859; *Ex parte Polite*, 97 Tex Crim 320, 260 S.W. 1048.

The term "franchise" is generic, covering all the rights granted by the state. *Atlantic & G. R. Co. v. Georgia*, 98 U.S. 359, 25 L.Ed. 185.

A franchise is a contract with a sovereign authority by which the grantee is licensed to conduct a business of a quasi-governmental nature within a particular area. *West Coast Disposal Service, Inc. v. Smith* (Fla App), 143 So.2d. 352.

<sup>41</sup> The term "franchise" is generic, covering all the rights granted by the state. *Atlantic & G. R. Co. v. Georgia*, 98 U.S. 359, 25 L.Ed. 185.

A franchise is a contract with a sovereign authority by which the grantee is licensed to conduct a business of a quasi-governmental nature within a particular area. *West Coast Disposal Service, Inc. v. Smith* (Fla App), 143 So.2d. 352.

<sup>42</sup> *State v. Real Estate Bank*, 5 Ark. 595; *Brooks v. State*, 3 Boyce (Del) 1, 79 A. 790; *Belleville v. Citizens' Horse R. Co.*, 152 Ill. 171, 38 N.E. 584; *State ex rel. Clapp v. Minnesota Thresher Mfg. Co.* 40 Minn 213, 41 N.W. 1020.

*the country generally by common right."* <sup>43</sup> For example, a right to lay rail or pipes, or to string wires or poles along a public street, is not an ordinary use which everyone may make of the streets, but is a special privilege, or franchise, to be granted for the accomplishment of public objects <sup>44</sup> which, except for the grant, would be a trespass. <sup>45</sup> **In this connection, the term "franchise" has sometimes been construed as meaning a grant of a right to use public property, or at least the property over which the granting authority has control.** <sup>46</sup>  
*[American Jurisprudence 2d, Franchises, §1: Definitions (1999)]*

Anyone in receipt, custody, or control of government property MUST be a public officer under the control of the person who lent it to them. It is a crime to use government property for PERSONAL gain.

The fact that the government continues to be the ABSOLUTE OWNER of the thing being loaned even after you receive it and possess it means they can take it back ANY TIME THEY WANT without your consent or permission or punish you for the misuse of the property. Below are the people subject to such punishment, ALL of whom are either officers of a federal corporation or in partnership with the government:

1. Definition of "person" for the purposes of "assessable penalties" within the Internal Revenue Code means an officer or employee of a corporation or partnership within the federal United States:

*TITLE 26 > Subtitle F > CHAPTER 68 > Subchapter B > PART I > Sec. 6671.  
 Sec. 6671. - Rules for application of assessable penalties*

<sup>43</sup> New Orleans Gaslight Co. v. Louisiana Light & H. P. & Mfg. Co., 115 U.S. 650, 29 L.Ed. 516, 6 S.Ct. 252; People's Pass. R. Co. v. Memphis City R. Co., 10 Wall (US) 38, 19 L.Ed. 844; Bank of Augusta v. Earle, 13 Pet (U.S.) 519, 10 L.Ed. 274; Bank of California v. San Francisco, 142 Cal. 276, 75 P. 832; Higgins v. Downward, 8 Houst (Del) 227, 14 A. 720, 32 A. 133; State ex rel. Watkins v. Fernandez, 106 Fla. 779, 143 So. 638, 86 A.L.R. 240; Lasher v. People, 183 Ill. 226, 55 N.E. 663; Inland Waterways Co. v. Louisville, 227 Ky. 376, 13 S.W.2d. 283; Lawrence v. Morgan's L. & T. R. & S. S. Co., 39 La. Ann. 427, 2 So. 69; Johnson v. Consolidated Gas E. L. & P. Co., 187 Md. 454, 50 A.2d. 918, 170 A.L.R. 709; Stoughton v. Baker, 4 Mass 522; Poplar Bluff v. Poplar Bluff Loan & Bldg. Asso., (Mo App) 369 S.W.2d. 764; Madden v. Queens County Jockey Club, 296 N.Y. 249, 72 N.E.2d. 697, 1 A.L.R.2d. 1160, cert den 332 U.S. 761, 92 L.Ed. 346, 68 S.Ct. 63; Shaw v. Asheville, 269 N.C. 90, 152 S.E.2d. 139; Victory Cab Co. v. Charlotte, 234 N.C. 572, 68 S.E.2d. 433; Henry v. Bartlesville Gas & Oil Co., 33 Okla 473, 126 P. 725; Elliott v. Eugene, 135 Or. 108, 294 P. 358; State ex rel. Daniel v. Broad River Power Co. 157 S.C. 1, 153 S.E. 537; State v. Scougal, 3 S.D. 55, 51 N.W. 858; Utah Light & Traction Co. v. Public Serv. Com., 101 Utah 99, 118 P.2d. 683.

A franchise represents the right and privilege of doing that which does not belong to citizens generally, irrespective of whether net profit accruing from the exercise of the right and privilege is retained by the franchise holder or is passed on to a state school or to political subdivisions of the state. State ex rel. Williamson v. Garrison (Okla), 348 P.2d. 859.

Where all persons, including corporations, are prohibited from transacting a banking business unless authorized by law, the claim of a banking corporation to exercise the right to do a banking business is a claim to a franchise. The right of banking under such a restraining act is a privilege or immunity by grant of the legislature, and the exercise of the right is the assertion of a grant from the legislature to exercise that privilege, and consequently it is the usurpation of a franchise unless it can be shown that the privilege has been granted by the legislature. People ex rel. Atty. Gen. v. Utica Ins. Co., 15 Johns (NY) 358.

<sup>44</sup> New Orleans Gaslight Co. v. Louisiana Light & H. P. & Mfg. Co., 115 U.S. 650, 29 L.Ed. 516, 6 S.Ct. 252; People's Pass. R. Co. v. Memphis City R. Co., 10 Wall (US) 38, 19 L.Ed. 844; Bank of Augusta v. Earle, 13 Pet (U.S.) 519, 10 L.Ed. 274; Bank of California v. San Francisco, 142 Cal. 276, 75 P. 832; Higgins v. Downward, 8 Houst (Del) 227, 14 A. 720, 32 A. 133; State ex rel. Watkins v. Fernandez, 106 Fla. 779, 143 So. 638, 86 A.L.R. 240; Lasher v. People, 183 Ill. 226, 55 N.E. 663; Inland Waterways Co. v. Louisville, 227 Ky. 376, 13 S.W.2d. 283; Lawrence v. Morgan's L. & T. R. & S. S. Co., 39 La. Ann. 427, 2 So. 69; Johnson v. Consolidated Gas E. L. & P. Co., 187 Md. 454, 50 A.2d. 918, 170 A.L.R. 709; Stoughton v. Baker, 4 Mass 522; Poplar Bluff v. Poplar Bluff Loan & Bldg. Asso. (Mo App) 369 S.W.2d. 764; Madden v. Queens County Jockey Club, 296 N.Y. 249, 72 N.E.2d. 697, 1 A.L.R.2d. 1160, cert den 332 U.S. 761, 92 L.Ed. 346, 68 S.Ct. 63; Shaw v. Asheville, 269 N.C. 90, 152 S.E.2d. 139; Victory Cab Co. v. Charlotte, 234 N.C. 572, 68 S.E.2d. 433; Henry v. Bartlesville Gas & Oil Co., 33 Okla 473, 126 P. 725; Elliott v. Eugene, 135 Or. 108, 294 P. 358; State ex rel. Daniel v. Broad River Power Co. 157 S.C. 1, 153 S.E. 537; State v. Scougal, 3 S.D. 55, 51 N.W. 858; Utah Light & Traction Co. v. Public Serv. Com., 101 Utah 99, 118 P.2d. 683.

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<sup>45</sup> People ex rel. Foley v. Stapleton, 98 Colo. 354, 56 P.2d. 931; People ex rel. Central Hudson Gas & E. Co. v. State Tax Com. 247 N.Y. 281, 160 N.E. 371, 57 A.L.R. 374; People v. State Tax Comrs. 174 N.Y. 417, 67 N.E. 69, aff'd 199 U.S. 1, 50 L.Ed. 65, 25 S.Ct. 705.

<sup>46</sup> Young v. Morehead, 314 Ky. 4, 233 S.W.2d. 978, holding that a contract to sell and deliver gas to a city into its distribution system at its corporate limits was not a franchise within the meaning of a constitutional provision requiring municipalities to advertise the sale of franchises and sell them to the highest bidder.

A contract between a county and a private corporation to construct a water transmission line to supply water to a county park, and giving the corporation the power to distribute water on its own lands, does not constitute a franchise. Brandon v. County of Pinellas (Fla App), 141 So.2d. 278.

### ***Sovereignty and Freedom Points and Authorities***

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 Litigation Tool 10.018, Rev. 11-21-2018

(b) *Person defined*

*The term "person", as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs*

2. Definition of "person" for the purposes of "miscellaneous forfeiture and penalty provisions" of the Internal Revenue Code means an officer or employer of a corporation or partnership within the federal United States:

[TITLE 26](#) > [Subtitle F](#) > [CHAPTER 75](#) > [Subchapter D](#) > [Sec. 7343](#).  
[Sec. 7343](#). - Definition of term "person"

*The term "person" as used in this chapter [[Chapter 75](#)] includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs*

Note that the government cannot regulate or tax contracts where all parties are PRIVATE. The ability to regulate or tax PRIVATE property is repugnant to the Constitution. Therefore the only type of "partnership" they can be talking about in the above definitions are partnerships between an otherwise PRIVATE party and the government.

Constitutional states of the Union are not "Territory or other Property" of the United States, and therefore are not property LOANED or rented to the inhabitants therein.

*Corpus Juris Secundum Legal Encyclopedia*  
*"§1. Definitions, Nature, and Distinctions*

***"The word 'territory,' when used to designate a political organization has a distinctive, fixed, and legal meaning under the political institutions of the United States, and does not necessarily include all the territorial possessions of the United States, but may include only the portions thereof which are organized and exercise governmental functions under act of congress."***

*"While the term 'territory' is often loosely used, and has even been construed to include municipal subdivisions of a territory, and 'territories of the' United States is sometimes used to refer to the entire domain over which the United States exercises dominion, the word 'territory,' when used to designate a political organization, has a distinctive, fixed, and legal meaning under the political institutions of the United States, and the term 'territory' or 'territories' does not necessarily include only a portion or the portions thereof which are organized and exercise government functions under acts of congress. The term 'territories' has been defined to be political subdivisions of the outlying dominion of the United States, and in this sense the term 'territory' is not a description of a definite area of land but of a political unit governing and being governed as such. The question whether a particular subdivision or entity is a territory is not determined by the particular form of government with which it is, more or less temporarily, invested.*

**"Territories' or 'territory' as including 'state' or 'states.'" While the term 'territories of the' United States may, under certain circumstances, include the states of the Union, as used in the federal Constitution and in ordinary acts of congress "territory" does not include a [foreign state](#).**

***"As used in this title, the term 'territories' generally refers to the political subdivisions created by congress, and not within the boundaries of any of the several states."***  
*[86 Corpus Juris Secundum (C.J.S.), Territories, §1 (2003)]*

Because federal enclaves within the constitutional states are government property, they are subject to income taxation as an excise among those consensually domiciled therein.

*California Revenue and Taxation Code - RTC*  
*DIVISION 1. PROPERTY TAXATION [50 - 591.1](Division 1 enacted by Stats. 1939, Ch. 154. )*  
*PART 1. GENERAL PROVISIONS [101 - 198.1](Part 1 enacted by Stats. 1939, Ch. 154. )*  
*CHAPTER 1. Construction [101 - 136] ( Chapter 1 enacted by Stats. 1939, Ch. 154. )*

*RTC 130 (f) "In this state" means within the exterior limit of the State of California, and includes all territory within these limits owned by, or ceded to, the United States of America.*



*California Revenue and Taxation Code – RTC*  
 DIVISION 2. OTHER TAXES [6001 - 60709] (Heading of Division 2 amended by Stats. 1968, Ch. 279.) PART  
 1. SALES AND USE TAXES [6001 - 7176] (Part 1 added by Stats. 1941, Ch. 36.)  
 CHAPTER 1. General Provisions and Definitions [6001 - 6024] (Chapter 1 added by Stats. 1941, Ch. 36.)

RTC 6017. “In this State” or “in the State” means within the exterior limits of the State of California and includes all territory within these limits owned by or ceded to the United States of America.

*California Revenue and Taxation Code - RTC*  
 DIVISION 2. OTHER TAXES [6001 - 60709] (Heading of Division 2 amended by Stats. 1968, Ch. 279.)  
 PART 3. USE FUEL TAX [8601 - 9355] (Part 3 added by Stats. 1941, Ch. 38.)  
 CHAPTER 1. General Provisions and Definitions [8601 - 8621] Chapter 1 added by Stats. 1941, Ch. 38

8609. “In this State” or “in the State” means within the exterior limits of the State of California and includes all territory within these limits owned by or ceded to the United States of America.

*California Revenue and Taxation Code – RTC*  
 DIVISION 2. OTHER TAXES [6001 - 60709] (Heading of Division 2 amended by Stats. 1968, Ch. 279.)  
 PART 10. PERSONAL INCOME TAX [17001 - 18181] (Part 10 added by Stats. 1943, Ch. 659.)  
 CHAPTER 1. General Provisions and Definition [17001 - 17039.2]

17018. “State” includes the District of Columbia, and the possessions of the United States.

For an explanation why excise taxable public offices do not lawfully exist in constitutional states outside of federal enclaves and why the Constitution does not authorize Congress to abuse grants or loans of government property to create NEW public offices in the constitutional states that are subject to taxation, see:

*Challenge to Income Tax Enforcement Authority Within Constitutional States of the Union*, Form #05.052  
<https://sedm.org/Forms/05-Memlaw/ChallengeToIRSEnforcementAuth.pdf>

Income taxation is based on domicile. See *District of Columbia v. Murphy*, 314 U.S. 441 (1941). As such, anyone domiciled OUTSIDE the exclusive jurisdiction of the national government is a “nonresident” in respect to the income tax. They cannot have a “civil status” such as “person” or “taxpayer” in relation to the civil statutory laws regulating these areas WITHOUT one or more of the following circumstances:

1. A physical presence in that place. The status would be under the COMMON law.
2. CONSENSUALLY doing business in that place. The status would be under the common law.
3. A domicile in that place. This would be a status under the civil statutes of that place.
4. CONSENSUALLY representing an artificial entity (a legal fiction) that has a domicile in that place. This would be a status under the civil statutes of that place.

Those who do not fit any of the above 4 classifications are statutory “non-resident non-persons” and cannot be subject to federal income taxation. More on “civil status” can be found at:

*Your Exclusive Right to Declare or Establish Your Civil Status*, Form #13.008  
<https://sedm.org/Forms/FormIndex.htm>

An entire memorandum on the subject of this section can be found at:

*Why the Federal Income Tax is a Privilege Tax Upon Government Property*, Form #04.404  
<https://sedm.org/Forms/FormIndex.htm>

### 3.1.16 Rebuttal of Those Who Fraudulently Challenge or Try to Expand the Statutory Definitions in This Document

The main purpose of law is to limit government power. The foundation of what it means to have a "society of law and not men" is law that limits government powers. We cover this in [Legal Deception, Propaganda, and Fraud, Form #05.014](#), Section 7. Government cannot have limited powers without DEFINITIONS in the written law that are limiting and which define and declare ALL THINGS that are included and implicitly exclude all things not expressly identified. The rules of statutory construction and interpretation recognize this critical function of law with the following maxims:

*"Expressio unius est exclusio alterius. A maxim of statutory interpretation meaning that **the expression of one thing is the exclusion of another.** Burgin v. Forbes, 293 Ky. 456, 169 S.W.2d. 321, 325; Newblock v. Bowles, 170 Okl. 487, 40 P.2d. 1097, 1100. Mention of one thing implies exclusion of another. **When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred.** Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded."*  
[Black's Law Dictionary, Sixth Edition, p. 581]

*"When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning. Meese v. Keene, 481 U.S. 465, 484-485 (1987) ("It is axiomatic that the statutory definition of the term excludes unstated meanings of that term"); Colautti v. Franklin, 439 U.S. at 392-393, n. 10 ("As a rule, 'a definition which declares what a term "means" . . . excludes any meaning that is not stated"); Western Union Telegraph Co. v. Lenroot, 323 U.S. 490, 502 (1945); Fox v. Standard Oil Co. of N.J., 294 U.S. 87, 95-96 (1935) (Cardozo, J.); see also 2A N. Singer, Sutherland on Statutes and Statutory Construction § 47.07, p. 152, and n. 10 (5th ed. 1992) (collecting cases). That is to say, the statute, read "as a whole," post at 998 [530 U.S. 943] (THOMAS, J., dissenting), leads the reader to a definition. That definition does not include the Attorney General's restriction -- "the child up to the head." Its words, "substantial portion," indicate the contrary."  
[Stenberg v. Carhart, 530 U.S. 914 (2000)]*

The ability to define terms or ADD to the EXISTING statutory definition of terms is a LEGISLATIVE function that can lawfully and constitutionally be exercised ONLY by the Legislative Branch of the government. The power to define or expand the definition of statutory terms:

1. CANNOT lawfully be exercised by either a judge or a government prosecutor or the Internal Revenue Service.
2. CANNOT be exercised by making [PRESUMPTIONS](#) about what a term means or by enforcing the COMMON meaning of the term that is already defined in a statute. See [Presumption: Chief Weapon for Unlawfully Enlarging Federal Jurisdiction, Form #05.017](#):

*"It is apparent," this court said in the Bailey Case (219 U.S. 239, 31 S.Ct. 145, 151) 'that **a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions.**'"*  
[Heiner v. Donnan, 285 U.S. 312 (1932)]

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*A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action. **A presumption is not evidence.** A presumption is either conclusive or rebuttable. Every rebuttable presumption is either (a) a presumption affecting the burden of producing evidence or (b) a presumption affecting the burden of proof. Calif.Evid.Code, §600.*

*In all civil actions and proceedings not otherwise provided for by Act of Congress or by the Federal Rules of Evidence, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast. Federal Evidence Rule 301.*

*See also Disputable presumption; inference; Juris et de jure; Presumptive evidence; Prima facie; Raise a presumption.*  
[Black's Law Dictionary, Sixth Edition, p. 1185]

3. Unlawfully and unconstitutionally violates the [separation of powers](#) when it IS exercised by a judge or government prosecutor. See [Government Conspiracy to Destroy the Separation of Powers, Form #05.023](#).
4. Produces the following consequences when it IS exercised by a judge or government prosecutor or administrative agency. The statement below was written by the man who DESIGNED our three branch system of government. He also described in his design how it can be subverted, and corrupt government actors have implemented his techniques for subversion to unlawfully and unconstitutionally expand their power:

**“When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.**

**Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression [sound familiar?].**

**There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.”**

[. . .]

**In what a situation must the poor subject be in those republics! The same body of magistrates are possessed, as executors of the laws, of the whole power they have given themselves in quality of legislators. They may plunder the state by their general determinations; and as they have likewise the judiciary power in their hands, every private citizen may be ruined by their particular decisions.”**

[The Spirit of Laws, Charles de Montesquieu, Book XI, Section 6, 1758;

SOURCE: [http://famguardian.org/Publications/SpiritOfLaws/sol\\_11.htm/](http://famguardian.org/Publications/SpiritOfLaws/sol_11.htm/)

Any judge, prosecutor, or clerk in an administrative agency who tries to EXPAND or ADD to statutory definitions is violating all the above. Likewise, anyone who tries to QUOTE a judicial opinion that adds to a statutory definition is violating the separation of powers, usurping authority, and STEALING your property and rights. It is absolutely POINTLESS and an act of ANARCHY, lawlessness, and a usurpation to try to add to statutory definitions.

The most prevalent means to UNLAWFULLY and UNCONSTITUTIONALLY add to statutory definitions is through the abuse of the words "[includes](#)" or "including". That tactic is thoroughly described and rebutted in:

**Legal Deception, Propaganda, and Fraud**, Form #05.014, Section 15.7.2

DIRECT LINK: <https://sedm.org/Forms/05-MemLaw/LegalDecPropFraud.pdf>

FORMS PAGE: <https://sedm.org/Forms/FormIndex.htm>

Government falsely accuses sovereignty advocates of practicing anarchy, but THEY, by trying to unlawfully expand statutory definitions through either the abuse of the word "[includes](#)" or through [PRESUMPTION](#), are the REAL anarchists. That anarchy is described in Disclaimer, section 4 as follows:

*SEDM Disclaimer*

*Section 4: Meaning of Words*

*4.21. Anarchy*

*The term "anarchy" implies any one or more of the following, and especially as regards so-called "governments". An important goal of this site it to eliminate all such "anarchy":*

1. *Are superior in any way to the people they govern UNDER THE LAW.*
2. *Are not directly accountable to the people or the law. They prohibit the PEOPLE from criminally prosecuting their own crimes, reserving the right to prosecute to their own fellow criminals. Who polices the police? THE CRIMINALS.*

### ***Sovereignty and Freedom Points and Authorities***

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Litigation Tool 10.018, Rev. 11-21-2018

3. *Enact laws that exempt themselves. This is a violation of the Constitutional requirement for equal protection and equal treatment and constitutes an unconstitutional Title of Nobility in violation of Article 1, Section 9, Clause 8 of the United States Constitution.*
4. *Only enforce the law against others and NOT themselves, as a way to protect their own criminal activities by persecuting dissidents. This is called "selective enforcement". In the legal field it is also called "professional courtesy". Never kill the goose that lays the STOLEN golden eggs.*
5. *Break the laws with impunity. This happens most frequently when corrupt people in government engage in "selective enforcement", whereby they refuse to prosecute or interfere with the prosecution of anyone in government. The Department of Justice (D.O.J.) or the District Attorney are the most frequent perpetrators of this type of crime.*
6. *Are able to choose which laws they want to be subject to, and thus refuse to enforce laws against themselves. The most frequent method for this type of abuse is to assert sovereign, official, or judicial immunity as a defense in order to protect the wrongdoers in government when they are acting outside their delegated authority, or outside what the definitions in the statutes EXPRESSLY allow.*
7. *Impute to themselves more rights or methods of acquiring rights than the people themselves have. In other words, who are the object of PAGAN IDOL WORSHIP because they possess "supernatural" powers. By "supernatural", we mean that which is superior to the "natural", which is ordinary human beings.*
8. *Claim and protect their own sovereign immunity, but refuse to recognize the same EQUAL immunity of the people from whom that power was delegated to begin with. Hypocrites.*
9. *Abuse sovereign immunity to exclude either the government or anyone working in the government from being subject to the laws they pass to regulate everyone ELSE'S behavior. In other words, they can choose WHEN they want to be a statutory "person" who is subject, and when they aren't. Anyone who has this kind of choice will ALWAYS corruptly exclude themselves and include everyone else, and thereby enforce and implement an unconstitutional "Title of Nobility" towards herself. On this subject, the U.S. Supreme Court has held the following:*

*"No man in this country [including legislators of the government as a legal person] is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it. It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives," 106 U.S., at 220. "Shall it be said... that the courts cannot give remedy when the Citizen has been deprived of his property by force, his estate seized and converted to the use of the government without any lawful authority, without any process of law, and without any compensation, because the president has ordered it and his officers are in possession? If such be the law of this country, it sanctions a tyranny which has no existence in the monarchies of Europe, nor in any other government which has a just claim to well-regulated liberty and the protection of personal rights," 106 U.S., at 220, 221.*

*[United States v. Lee, 106 U.S. 196, 1 S.Ct. 240 (1882)]*

10. *Have a monopoly on anything, INCLUDING "protection", and who turn that monopoly into a mechanism to force EVERYONE illegally to be treated as uncompensated public officers in exchange for the "privilege" of being able to even exist or earn a living to support oneself.*
11. *Can tax and spend any amount or percentage of the people's earnings over the OBJECTIONS of the people.*
12. *Can print, meaning illegally counterfeit, as much money as they want to fund their criminal enterprise, and thus to be completely free from accountability to the people.*
13. *Deceive and/or lie to the public with impunity by telling you that you can't trust anything they say, but force YOU to sign everything under penalty of perjury when you want to talk to them. 26 U.S.C. §6065.*

*[SEDM Disclaimer, Section 4: Meaning of Words; <https://sedm.org/disclaimer.htm>]*

For further information on the Rules of Statutory Construction and Interpretation, also called "textualism", and their use in defending against the fraudulent tactics in this section, see the following, all of which are consistent with the analysis in this section:

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### ***Sovereignty and Freedom Points and Authorities***

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Litigation Tool 10.018, Rev. 11-21-2018

1. *How Judges Unconstitutionally "Make Law"*, Litigation Tool #01.009-how by VIOLATING the Rules of Statutory Construction and Interpretation, judges are acting in a POLITICAL rather than JUDICIAL capacity and unconstitutionally "making law".  
<http://sedm.org/Litigation/01-General/HowJudgesMakeLaw.pdf>
2. *Legal Deception, Propaganda, and Fraud*, Form #05.014, Section 16. Section 15 talks about how these rules are UNCONSTITUTIONALLY violated by corrupt judges with a criminal financial conflict of interest.  
<https://sedm.org/Forms/05-MemLaw/LegalDecPropFraud.pdf>  
*Reading Law: The Interpretation of Legal Texts*, Supreme Court Justice Antonin Scalia and Bryan A Garner -book about statutory interpretation  
<https://www.amazon.com/Reading-Law-Interpretation-Legal-Texts/dp/031427555X>
3. *Statutory Interpretation*, Supreme Court Justice Antonin Scalia  
<https://sedm.org/statutory-interpretation-justice-scalia/>
4. *Collection of U.S. Supreme Court Legal Maxims*, Litigation Tool #10.216, U.S. Department of Justice  
[https://sedm.org/Litigation/10-PracticeGuides/USSupremeCourtMaxims\\_1993-1998-Governmentattic.org.pdf](https://sedm.org/Litigation/10-PracticeGuides/USSupremeCourtMaxims_1993-1998-Governmentattic.org.pdf)
5. *Reinquist Court Canons of Statutory Construction*, Litigation Tool #10.217  
[https://sedm.org/Litigation/10-PracticeGuides/Rehnquist\\_Court\\_Canons\\_citations.pdf](https://sedm.org/Litigation/10-PracticeGuides/Rehnquist_Court_Canons_citations.pdf)
6. *Statutory Interpretation: General Principles and Recent Trends, Congressional Research Service Report 97-589*, Litigation Tool #10.215  
<https://sedm.org/Litigation/10-PracticeGuides/Statutory%20Interpretation.General.Principles.MARCH.30.2006.CRS97-589.pdf>
7. *Family Guardian Forum 7.5*: Word Games that STEAL from and deceive people, Family Guardian Fellowship  
<https://famguardian.org/forums/forum/7-issue-and-research-debates-anyone-can-read-only-members-can-post/75-word-games-that-steal-from-and-deceive-people/>

For a video that emphasizes the main point of this section, watch the following:

*Courts Cannot Make Law*, Michael Anthony Peroutka Townhall  
<https://sedm.org/courts-cannot-make-law/>

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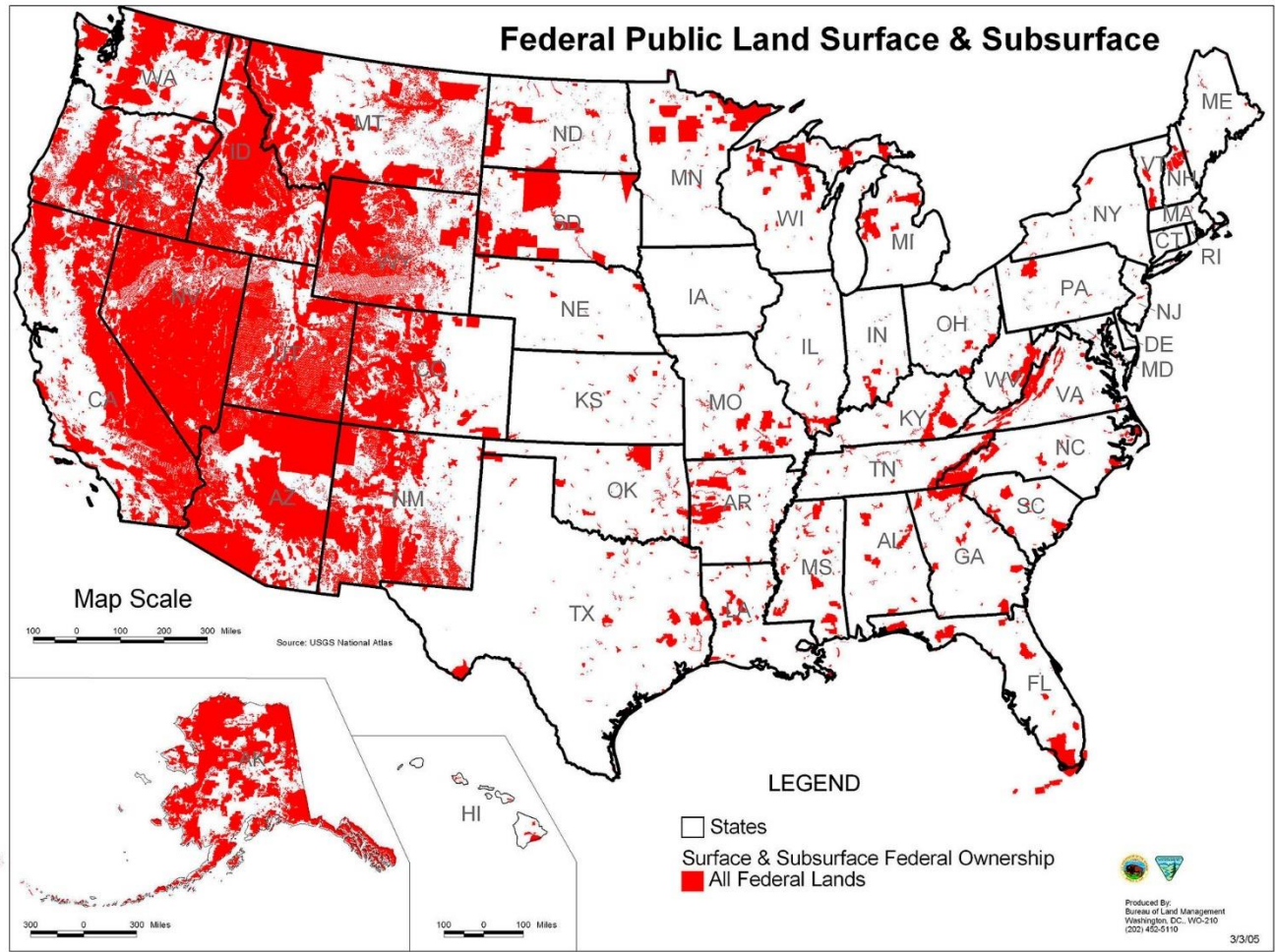
### 3.1.17 **Geographical Definitions and Conventions**

#### 3.1.17.1 **Background Information**

1. *What is Federal Land?* (federal enclave)-SEDM  
<https://sedm.org/what-is-federal-land-federal-enclave/>
2. *American Empire*-SEDM  
<https://sedm.org/american-empire/>
3. *Why the Federal Income Tax is a Privilege Tax Upon Government Property*, Form #04.404  
<https://sedm.org/product/why-the-federal-income-tax-is-a-privilege-tax-on-government-property-form-04-404/>

#### 3.1.17.2 **Geographical definitions**





A very frequent point of confusion and misunderstanding even within the legal profession is the definition of geographical terms in the various contexts in which they are used. The table below is provided to clear up this confusion in order that people do not misinterpret geographical terms by applying them outside their intended context. Using this page is VERY important for those who will be reading and researching state and federal law. The differences in meaning within the various contexts are primarily a consequence of the Separation of Powers Doctrine.

Law	Federal constitution	Federal statutes	Federal regulations	State constitutions	State statutes	State regulations
Author	Union States/ "We The People"	Federal Government		"We The People"	State Government	
"state"	Foreign country	Union state or foreign country	Union state or foreign country	Other Union state or federal government	Other Union state or federal government	Other Union state or federal government
"State"	Union state	Federal state	Federal state	Union state	Union state	Union state
"in this State" or "in the State" <sup>[1]</sup>	NA	NA	NA	NA	Federal enclave within state	Federal enclave within state

Law	Federal constitution	Federal statutes	Federal regulations	State constitutions	State statutes	State regulations
Author	Union States/ "We The People"	Federal Government		"We The People"	State Government	
"State" <sup>[2]</sup> (State Revenue and taxation code only)	NA	NA	NA	NA	Federal enclave within state	Federal enclave within state
"several States"	Union states collectively <sup>[3]</sup>	Federal "States" collectively	Federal "States" collectively	Federal "States" collectively	Federal "States" collectively	Federal "States" collectively
" <u>United States</u> "	states of the Union collectively	Federal United States**	Federal United States**	United States* the country	Federal United States**	Federal United States**

What the above table clearly shows is that the word "State" in the GENERAL context of MOST federal statutes and regulations means (not includes!) federal States only under [Title 48 of the U.S. Code](#)<sup>[4]</sup>, and these areas do not include any of the 50 Union States. This is true in most cases and especially in the Internal Revenue Code. There are four exceptions to this rule that we are aware of, and these subject matters include (are limited to):

**SOURCES OF EXTRATERRITORIAL JURISDICTION**

1. A military or foreign affairs function of the United States. [5 U.S.C. §553\(a\)\(1\)](#). This includes:
  - 1.1. Making or executing war. This is the [Department of Defense \(DOD\)](#), [Title 50 of the U.S. Code](#), and the [Uniform Code of Military Justice \(U.C.M.J.\)](#), [10 U.S.C. Chapter 47](#).
  - 1.2. Regulating aliens within the country. The presence test at [26 U.S.C. §7701\(b\)](#) implements the tax aspect of this.
  - 1.3. Protecting VOLUNTARY CIVIL citizens\*\*+D (not POLITICAL citizens) abroad. This is done through passports, [26 U.S.C. §911](#) which pays for the protection, the [Department of State \(DOS\)](#), and the military.
  - 1.4. International commerce with foreign nations. This is done through the [Foreign Sovereign Immunities Act \(FSIA\)](#), [28 U.S.C. Chapter 97](#), [U.S.C.I.S.](#), [Department of Homeland Security \(DHS\)](#), and the foreign affairs supervision of the federal courts.
  - 1.5. Economic sanctions on foreign countries and political rulers imposed by the [Department of the Treasury](#).
2. A matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. [5 U.S.C. §553\(a\)\(2\)](#). Note that:
  - 2.1. " Taxes" do NOT fall in the category of "public property, loans, grants, or benefits" , but the U.S. supreme court identified them as a "quasi-contract" in [Milwaukee v. White, 296 U.S. 268 \(1935\)](#).
  - 2.2. In the case of "agency management or personnel", they are talking about public officers serving within the national government as EXPRESSLY GEOGRAPHICALLY authorized by 4 U.S.C. §72 and NOT elsewhere. We'll give you a HINT, there IS no "express legislative authorization" for "taxpayer" offices to be exercised outside the District of Columbia as required, so all those serving in such an office extraterritorially are [DE FACTO officers \(Form #05.043\)](#). The income tax is an excise tax upon the "trade or business" franchise, which is defined in in [26 U.S.C. §7701\(a\)\(26\)](#) as "the functions of a public office", but those offices may not lawfully be exercised outside the District of Columbia. That is why the statutory geographical "United States" defined in [26 U.S.C. §7701\(a\)\(9\)](#) and (a)(10) is defined as the District of Columbia and NOWHERE expressly extended outside the District of Columbia or the Federal statutory "State" defined in [4 U.S.C. §110\(d\)](#).
  - 2.3. Civil statutory statuses such as "taxpayer", "citizen", "resident", and "person" AND the PUBLIC RIGHTS and privileged that attach to them are PROPERTY legislatively created and therefore owned by the national government. Those claiming these statuses are in receipt, custody, or "benefit" of federal privileges no matter where they physically are, and thus are subject to Congress power to "make all needful rules respecting the Territory and other property" granted by [Article 4, Section 3, Clause 2 of the Constitution](#).
3. Federal agencies or persons in their capacity as officers, agents, or employees thereof. [44 U.S.C. §1505\(a\)\(1\)](#).
4. EXPRESS and INFORMED consent or comity in some form. Note that NO ONE can consent FOR YOU. YOU have to consent YOURSELF. Presently, "comity" is legally defined as "willingness to grant a privilege". It USED to be

defined as MUTUAL consent or agreement of both parties. This has the INSIDIOUS effect that it is OK for a judge to consent FOR YOU, or you to consent sub silentio or by acquiescence. The RESULT is that you are treated AS IF you are a privileged agent or officer of the state, which we call a "straw man", often without compensation. This is [CRIMINAL HUMAN TRAFFICKING](#) and [CRIMINAL IDENTITY THEFT \(Form #05.046\)](#) if you didn't KNOWINGLY consent. The purpose of this [SOPHISTRY](#) is to procure your consent INVISIBLY, so they don't have to recognize or respect your sovereignty or autonomy. After all, they think they know better than you about what is good for you. See:

- 4.1. [Hot Issues: Invisible Consent](#), SEDM  
<https://sedm.org/invisible-consent/>
- 4.2. [How American Nationals Volunteer to Pay Income Tax](#), Form #08.024  
<https://sedm.org/Forms/08-PolicyDocs/HowYouVolForIncomeTax.pdf>

The above four items collectively are referred to as "[extraterritorial jurisdiction](#)". Extraterritorial jurisdiction is defined as SUBJECT MATTER jurisdiction over [PUBLIC property \(Form #12.025\)](#) physically situated OUTSIDE of the EXCLUSIVE jurisdiction of the national government under [Article 4, Section 3, Clause 2 of the Constitution](#). Congress has jurisdiction over its property and the offices it creates no matter WHERE they physically reside or are lawfully exercised, INCLUDING within the exclusive jurisdiction of a constitutional state as confirmed by the U.S. Supreme Court in [Dred Scott v. Sandford, 60 U.S. 393 \(1857\)](#), which ironically was about SLAVES. Those who CONSENT to be statutory "taxpayers" would fall in this same category of "slave" and are treated literally as CHATTEL of the national government. HOWEVER, the Constitution confers NO EXPRESS authorization for Congress to use TACIT and PERSONAL BRIBES or GRANTS of its physical or chattel PUBLIC property or "benefits" to CREATE NEW public offices or appoint new officers to de facto offices that are NOT created by an EXPRESS lawful oath or appointment. Any attempts to do so are CRIMINAL OFFENSES under [18 U.S.C. §§201, 210, 211](#). More about public offices and officers in:

1. [The "Trade or Business" Scam](#), Form #05.001  
<https://sedm.org/Forms/05-MemLaw/TradeOrBusScam.pdf>
2. [Why Your Government is Either a Thief or You Are a "Public Officer" for Income Tax Purposes](#), Form #05.008  
<https://sedm.org/Forms/05-MemLaw/WhyThiefOrPubOfficer.pdf>
3. [Proof That There Is a "Straw Man"](#), Form #05.042  
<https://sedm.org/Forms/05-MemLaw/StrawMan.pdf>

For the purposes of this discussion, Sovereign States of the Union are NOT "[territory](#)" of the national government. Also, the Sixteenth Amendment did NOT confer EXTRATERRITORIAL jurisdiction to levy an UNAPPORTIONED direct tax upon labor as property within the exclusive jurisdiction of a constitutional state of the Union either. In fact, the U.S. Supreme Court declared that it "conferred NO NEW power of taxation" in [Stanton v. Baltic Mining, 240 U.S. 103 \(1916\)](#). Thus, the income tax HAS ALWAYS been a tax upon officers of the national government called statutory "taxpayer", "citizens", and "persons". This is ENTIRELY consistent with the legislative intent of the proposed sixteenth amendment proposed to Congress by President Taft himself:

CONGRESSIONAL RECORD - SENATE - JUNE 16, 1909  
[From Pages 3344 – 3345]

The Secretary read as follows:

To the Senate and House of Representatives:

It is the constitutional duty of the President from time to time to recommend to the consideration of Congress such measures, as he shall judge necessary and expedient. In my inaugural address, immediately preceding this present extraordinary session of Congress, I invited attention to the necessity for a revision of the tariff at this session, and stated the principles upon which I thought the revision should be affected. I referred to the then rapidly increasing deficit and pointed out the obligation on the part of the framers of the tariff bill to arrange the duty so as to secure an adequate income, and suggested that if it was not possible to do so by import duties, new kinds of taxation must be adopted, and among them I recommended a graduated inheritance tax as correct in principle and as certain and easy of collection.

The House of Representatives has adopted the suggestion, and has provided in the bill it passed for the collection of such a tax. In the Senate the action of its Finance Committee and the course of the debate indicate that it may not agree to this provision, and it is now proposed to make up the deficit by the imposition of a general income tax, in form and substance of almost exactly the same character as, that which *in the case of Pollock v. Farmer's Loan and Trust Company (157 U.S., 429) was held by the Supreme Court to be a direct tax, and therefore not*

*within the power of the Federal Government to Impose unless apportioned among the several States according to population.* [Emphasis added] This new proposal, which I did not discuss in my inaugural address or in my message at the opening of the present session, makes it appropriate for me to submit to the Congress certain additional recommendations.

Again, it is clear that by the enactment of the proposed law the Congress will not be bringing money into the Treasury to meet the present deficiency. The decision of the Supreme Court in the income-tax cases *deprived the National Government of a power* which, by reason of previous decisions of the court, it was *generally supposed that government had*. It is undoubtedly a power the National Government ought to have. It might be indispensable to the Nation's life in great crises. Although I have not considered a constitutional amendment as necessary to the exercise of certain phases of this power, a mature consideration has satisfied me that an amendment is the only proper course for its establishment to its full extent.

I therefore recommend to the Congress that both Houses, by a two-thirds vote, *shall propose an amendment to the Constitution conferring the power to levy an income tax upon the National Government* without apportionment among the States in proportion to population.

This course is much to be preferred to the one proposed of reenacting a law once judicially declared to be unconstitutional. For the Congress to assume that the court will reverse itself, and to enact legislation on such an assumption, will not strengthen popular confidence in the stability of judicial construction of the Constitution. It is much wiser policy to accept the decision and remedy the defect by amendment in due and regular course.

Again, it is clear that by the enactment of the proposed law the Congress will not be bringing money into the Treasury to meet the present deficiency, but by putting on the statute book a law already there and never repealed will simply be suggesting to the executive officers of the Government their possible duty to invoke litigation.

If the court should maintain its former view, no tax would be collected at all. If it should ultimately reverse itself, still no taxes would have been collected until after protracted delay.

It is said the difficulty and delay in securing the approval of three-fourths of the States will destroy all chance of adopting the amendment. Of course, no one can speak with certainty upon this point, but I have become convinced that a great majority of the people of this country are in favor of investing the National Government with power to levy an income tax, and that they will secure the adoption of the amendment in the States, if proposed to them.

Second, *the decision in the Pollock case left power in the National Government to levy an excise tax, which accomplishes the same purpose as a corporation income tax* and is free from certain objections urged to the proposed income tax measure.

I therefore recommend an *amendment to the tariff bill Imposing upon all corporations and joint stock companies for profit*, except national banks (otherwise taxed), savings banks, and building and loan associations, *an excise tax* measured by 2 per cent on the net income of such corporations. *This is an excise tax upon the privilege of doing business as an artificial entity and of freedom from a general partnership liability enjoyed by those who own the stock.* [Emphasis added] I am informed that a 2 per cent tax of this character would bring into the Treasury of the United States not less than \$25,000,000.

The decision of the Supreme Court in the case of *Spreckels Sugar Refining Company against McClain* (192 U.S., 397), seems clearly to *establish the principle that such a tax as this is an excise tax upon privilege and not a direct tax on property*, and is within the federal power without apportionment according to population. The tax on net income is preferable to one proportionate to a percentage of the gross receipts, because it is a tax upon success and not failure. It imposes a burden at the source of the income at a time when the corporation is well able to pay and when collection is easy.

Another merit of this tax is the federal supervision, which must be exercised in order to make the law effective over the annual accounts and business transactions of all corporations. While the faculty of assuming a corporate form has been of the utmost utility in the business world, it is also true that substantially all of the abuses and all of the evils which have aroused the public to the necessity of reform were made possible by the use of this very faculty. If now, by a perfectly legitimate and effective system of taxation, we are incidentally able to possess the Government and the stockholders and the public of the knowledge of the real business transactions and the gains and profits of every corporation in the country, we have made a long step toward that supervisory control of corporations which may prevent a further abuse of power.

I recommend, then, first, the adoption of a joint resolution by two-thirds of both Houses, proposing to the States an amendment to the Constitution granting to the Federal Government the right to levy and collect an income tax without apportionment among the several States according to population; and, second, the enactment, as part of the pending revenue measure, either as a substitute for, or in addition to, the inheritance tax, of an excise tax upon all corporations, measured by 2 percent of their net income.



Wm. H. Taft

Some people have asserted that it is deceptive to claim that the phrase above "**shall propose an amendment to the Constitution conferring the power to levy an income tax upon the National Government**" implies it is a tax upon the government. In retort, the following proves we are not only correct, but that the only real DECEPTIVE one was Taft Himself:

1. Taft could have said "**shall propose an amendment to the Constitution conferring upon the national government the power to levy an income tax**" but DID NOT state it more correctly this way.
2. The legislative implementation of what he proposed he described as an excise and a privilege tax ONLY upon corporations, which even after the Sixteenth Amendment was ratified, is EXACTLY and ONLY what the Sixteenth Amendment currently authorizes. These corporations are NATIONAL corporations, not STATE corporations, by the way.

**"Income" has been taken to mean the same thing as used in the Corporation Excise Tax Act of 1909, in the Sixteenth Amendment, and in the various revenue acts subsequently passed. Southern Pacific Co. v. Lowe, 247 U.S. 330, 335; Merchants' L. & T. Co. v. Smietanka, 255 U.S. 509, 219. After full consideration, this Court declared that income may be defined as gain derived from capital, from labor, or from both combined, including profit gained through sale or conversion of capital. Stratton's Independence v. Howbert, 231 U.S. 399, 415; Doyle v. Mitchell Brothers Co., 247 U.S. 179, 185; Eisner v. Macomber, 252 U.S. 189, 207. And that definition has been adhered to and applied repeatedly. See, e.g., Merchants' L. & T. Co. v. Smietanka, supra; 518; Goodrich v. Edwards, 255 U.S. 527, 535; United States v. Phellis, 257 U.S. 156, 169; Miles v. Safe Deposit Co., 259 U.S. 247, 252-253; United States v. Supplee-Biddle Co., 265 U.S. 189, 194; Irwin v. Gavit, 268 U.S. 161, 167; Edwards v. Cuba Railroad, 268 U.S. 628, 633. In determining what constitutes income, substance rather than form is to be given controlling weight. Eisner v. Macomber, supra, 206. [271 U.S. 175]"**  
[Bowers v. Kerbaugh-Empire Co., 271 U.S. 170, 174, (1926)]

3. The U.S. Supreme Court in Downes v. Bidwell agreed that the income tax extends wherever the GOVERNMENT extends, rather than where the GEOGRAPHY extends. Notice it says "without limitation as to place" and "places over which the GOVERNMENT extends".

"Loughborough v. Blake, 18 U.S. 317, 5 Wheat. 317, 5 L.Ed. 98, was an action of trespass (or, as appears by the original record, replevin) brought in the Circuit Court for the District of Columbia to try the right of Congress to impose a direct tax for general purposes on that District. 3 Stat. 216, c. 60, Fed. 17, 1815. It was insisted that Congress could act in a double capacity: in [\*\*\*32] one as legislating [\*260] for the States; in the other as a local legislature for the District of Columbia. **In the latter character, it was admitted that the power of levying direct taxes might be exercised, but for District purposes only, as a state legislature might tax for state purposes; but that it could not legislate for the District under Art. I, sec. 8, giving to Congress the power "to lay and collect taxes, imposts and excises," which "shall be uniform throughout the [CONSTITUTIONAL] United States[\*\*\*]," inasmuch as the District was no part of the [CONSTITUTIONAL] United States[\*\*\*]. It was held that the grant of this power was a general one without limitation as to place, and consequently extended to all places over which the government extends; and that it extended to the District of Columbia as a constituent part of the United States.** The fact that Art. I, sec. 20, declares that "representatives and direct taxes shall be apportioned among the several States . . . according to their respective numbers," furnished a standard by which taxes were apportioned; but not to exempt any part of the country from their operation. "The words used do not mean, that direct taxes shall be imposed on States only which are [\*\*\*33] represented, or shall be apportioned to representatives; but that direct taxation, in its application to States, shall be apportioned to numbers." That Art. I, sec. 9, P4, declaring that direct taxes shall be laid in proportion to the census, was applicable to the District of Columbia, "and will enable Congress to apportion on it its just and equal share of the burden, with the same accuracy as on the respective States. If the tax be laid in this proportion, it is within the very words of the restriction. It is a tax in proportion to the census or enumeration referred to." It was further held that the words of the ninth section did not "in terms require that the system of direct taxation, when resorted to, shall be extended to the territories, as the words of the second section require that it shall be extended to all the [\*\*777] States. They therefore may, without violence, be understood to give a rule when the territories shall be taxed without imposing the necessity of taxing them."  
[Downes v. Bidwell, 182 U.S. 244 (1901)]

4. The fact that when former President and then Chief Justice Taft heard the FIRST case in the Supreme court after ratification, he stated that the liability for an income tax had NOTHING TO DO with one's nationality or domicile! Cook, American national abroad in Mexico and domiciled there was outside the statutory geographical "United States". Recall that the U.S. Supreme Court in Lawrence v. State Tax Commission, 286 U.S. 276 (1932) held that domicile was the SOLE basis for income tax so Cook technically could NOT owe an income tax. But his litigation related to a 1040 return he previously filed in which he INCORRECTLY declared his status as that of a "U.S individual". Thus, he made an ELECTION (consent) to be treated as a statutory "U.S. person" and thus ELECTED himself into a voluntary



"taxpayer" office to procure protection of the national government while abroad. Notice he calls "protection" a BENEFIT, and thus a VOLUNTARY EXCISE TAXABLE FRANCHISE! Notice he says the SOLE BASIS in this case was the STATUTORY STATUS under the Internal Revenue Code of "citizen", and not "domicile". That civil statutory status and NOT Constitutional or Fourteenth Amendment status, we prove in [How American Nationals Volunteer to Pay Income Tax, Form #08.024](#), is an OFFICE within the Department of Treasury who works for the Secretary of the Treasury.

*"The contention was rejected that a citizen's property without the limits of the United States derives no benefit from the United States. The contention, it was said, came from the confusion of thought in "mistaking the scope and extent of the sovereign power of the United States as a nation and its relations to its citizens and their relations to it." And that power in its scope and extent, it was decided, is based on the presumption that government by its very nature benefits the citizen and his property wherever found, and that opposition to it holds on to citizenship while it "belittles and destroys its advantages and blessings by denying the possession by government of an essential power required to make citizenship completely beneficial." In other words, the principle was declared that the government, by its very nature, benefits the citizen and his property wherever found and, therefore, has the power to make the benefit complete. Or to express it another way, the basis of the power to tax was not and cannot be made dependent upon the situs of the property in all cases, it being in or out of the United States, and was not and cannot be made dependent upon the domicile of the citizen, that being in or out of the United States, but upon his relation as citizen to the United States and the relation of the latter to him as citizen. The consequence of the relations is that the native citizen who is taxed may have domicile, and the property from which his income is derived may have situs, in a foreign country and the tax be legal — the government having power to impose the tax."*  
[Cook v. Tait, 265 U.S. 47 (1924)]

- The definition of "person" in [26 U.S.C. §6671\(b\)](#) and [26 U.S.C. §7343](#) for the purposes of penalty and criminal enforcement purposes limits itself to government employees and instrumentalities of the government. The rules of statutory construction and interpretation forbid adding anything to these definitions not expressly provided, such as PRIVATE constitutionally protected men and women. Thus, anyone who doesn't fall within the ambit of these definitions is, by definition, a VOLUNTEER because not a proper target of enforcement.

[TITLE 26 > Subtitle F > CHAPTER 68 > Subchapter B > PART I > Sec. 6671](#)  
[Sec. 6671](#). - Rules for application of assessable penalties  
(b) Person defined

*The term "person", as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.*

[TITLE 26 > Subtitle F > CHAPTER 75 > Subchapter D > Sec. 7343](#).  
[Sec. 7343](#). - Definition of term "person"

*The term "person" as used in this chapter [Chapter 75] includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs*

- The following memorandum of law proves that the only proper target of IRS enforcement are public officers WITHIN the government.

[Why Your Government is Either a Thief or You are a "Public Officer" for Income Tax Purposes](#), Form #05.008  
<https://sedm.org/Forms/05-MemLaw/WhyThiefOrPubOfficer.pdf>

- The fact that "[United States](#)" is geographically defined in [26 U.S.C. §7701\(a\)\(9\)](#) and (a)(10) as the District of Columbia and the CONSTITUTIONAL states of the Union are never mentioned. That place is synonymous with the GOVERNMENT in [4 U.S.C. §72](#) and not any geography.
- The fact that the ACTIVITY that is subject to excise taxation within the Internal Revenue Code is legally defined in [26 U.S.C. §7701\(a\)\(26\)](#) as "the functions of a public office", meaning an office WITHIN the national and not state government. For exhaustive details on this subject, see:

[The "Trade or Business" Scam](#), Form #05.001  
<https://sedm.org/Forms/05-MemLaw/TradeOrBusScam.pdf>

- The fact that the Federal Register Act and the Administrative Procedures act both limit the TARGET of direct STATUTORY enforcement to the following groups, none of which include most people in states of the Union and which primarily consist of government employees only:

### ***Sovereignty and Freedom Points and Authorities***

- 9.1. A military or foreign affairs function of the United States. [5 U.S.C. §553\(a\)\(1\)](#) .
- 9.2. A matter relating to agency management or personnel or **to public property, loans, grants, benefits, or contracts**. [5 U.S.C. §553\(a\)\(2\)](#).
- 9.3. Federal agencies or persons in their capacity as officers, agents, or employees thereof. [44 U.S.C. §1505\(a\)\(1\)](#).  
You can find more on the above in:

*Challenge to Income Tax Enforcement Authority Within Constitutional States of the Union*, Form #05.052  
<https://sedm.org/Forms/05-Memlaw/ChallengeToIRSEnforcementAuth.pdf>

10. The fact that they can only tax legislatively created offices who work for them. See:

*Hierarchy of Sovereignty: The Power to Create is the Power to Tax*, Family Guardian Fellowship  
<https://famguardian.org/Subjects/Taxes/Remedies/PowerToCreate.htm>

11. The idea that governments are created to PROTECT private property, not steal it, and that taxation involves the institutionalized process of converting PRIVATE property to PUBLIC property without the express consent of the owner. Thus, the process of PAYING for government protection involves the OPPOSITE purpose for which governments are created—converting PRIVATE property to PUBLIC property, often without the consent of the owner, for the purposes of delivering the OPPOSITE, which is PREVENTING PRIVATE property from being converted to PUBLIC property! The Declaration of Independence declares that all just powers derive from the consent of the governed, and yet we make an EXCEPTION to that requirement when it comes to taxation? Absurd. So they HAVE to procure your consent to occupy a civil statutory office BEFORE they can enforce against you or else they are violating the Thirteenth Amendment and engaging in criminal human trafficking. For a description of just how absurd it is to NOT require consent to this office and to convert (STEAL) private property without the consent of the owner, see:

*Separation Between Public and Private Course*, Form #12.025  
<https://sedm.org/LibertyU/SeparatingPublicPrivate.pdf>

12. A query of the ChatGPT-4 AI Chatbot confirms our analysis is correct:

In the phrase "shall propose an amendment to the Constitution conferring the power to levy an income tax upon XYZ", was this a tax upon xyz or upon people OTHER than xyz?

✓ Searching for: what is the meaning of "levy an income tax upon XYZ" in the constitution

✓ Generating answers for you...

The phrase "shall propose an amendment to the Constitution conferring the power to levy an income tax upon XYZ" means that the amendment would give the National Government the power to impose a tax on XYZ<sup>1</sup>. Therefore, the income tax would be imposed on XYZ and not on people other than XYZ.

Learn more:

1. [merriam-webster.com](#)
2. [merriam-webster.com](#)
3. [britannica.com](#) — see less

So what the President proposed was an excise tax on the government itself, and nothing more. This is important. More on the history of the Sixteenth Amendment at:

1. [Taxation Page](https://famguardian.org/Subjects/Taxes/taxes.htm), Section 13: 16th Amendment, Family Guardian Fellowship
2. [Great IRS Hoax](https://famguardian.org/Publications/GreatIRSHoax/GreatIRSHoax.htm), Form #11.302, Sections 3.8.11 and 3.8.12
3. [Great IRS Hoax](#), Form #11.302, Section 6.7.1: 1925: William H. Taft's Certiori Act of 1925. President Taft's SCAM to

make the income tax INTERNATIONAL in scope by DENYING all appeals relating to it so the Supreme Court wouldn't have to rule on the illegal enforcement of the income tax.

<https://famguardian.org/Publications/GreatIRSHoax/GreatIRSHoax.htm>

4. *The Law that Never Was*, William Benson. Book about the FRAUDULENT ratification of the Sixteenth Amendment.
5. *Congressional Debates on the Sixteenth Amendment*, Family Guardian Fellowship  
<http://famguardian.org/TaxFreedom/History/Congress/1909-16thAmendCongrRecord.pdf>

EVEN in the case of item 2 of the extraterritorial jurisdiction list entitled "A matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts" above, legislative control over property is limited to public offices, and NOT to private state nationals. A "public officer", after all, is legally defined in Black's Law Dictionary as someone in charge of the PROPERTY of the public. We have never seen any case hold that merely possessing physical property of the national government while physically present within a constitutional state confers DIRECT, PERSONAL legislative jurisdiction over the person whose hands that property is physically in.

The above exceptions are discussed in:

1. *Hot Issues: Laws of Property*, SEDM  
<https://sedm.org/laws-of-property/>
2. *Why the Federal Income Tax is a Privilege Tax Upon Government Property*, Form #04.404  
<https://sedm.org/product/why-the-federal-income-tax-is-a-privilege-tax-on-government-property-form-04-404/>
3. *Challenge to Income Tax Enforcement Authority Within Constitutional States of the Union*, Form #05.052  
<https://sedm.org/Forms/05-Memlaw/ChallengeToIRSEnforcementAuth.pdf>
4. *Federal Enforcement Authority within States of the Union*, Form #05.032  
<https://sedm.org/reference/mbr-sub-area/>
5. *IRS Due Process Meeting Handout*, Form #03.008  
<https://sedm.org/Forms/03-Discovery/IRSDueProcMtgHandout.pdf>

The lower case word "state" in the context of federal statutes and regulations means one of the 50 union states, which are "foreign states", and "foreign countries" with respect to the federal government as clearly explained in section 5.2.11 of the [Great IRS Hoax, Form #11.302](#) (OFFSITE LINK) book. In the context of the above, a "Union State" means one of the 50 Union states of the United States\* (the country, not the federal United States\*\*) mentioned in the Constitution for the United States of America.

If you would like to know all the implications of the separation of powers reflected in the above table, as well as a history of unconstitutional efforts to destroy this separation, see the following references:

1. *Government Conspiracy to Destroy the Separation of Powers*, Form #05.023  
<https://sedm.org/Forms/05-MemLaw/SeparationOfPowers.pdf>
2. *Sovereignty Forms and Instructions Online*, Form #10.004, Cites by Topic: "Separation of Powers" (OFFSITE LINK)  
<http://famguardian.org/TaxFreedom/CitesByTopic/SeparationOfPowers.htm>

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#### FOOTNOTES:

- <sup>[1]</sup> See California Revenue and Taxation Code, section 6017.
- <sup>[2]</sup> See California Revenue and Taxation Code, section 17018.
- <sup>[3]</sup> See, for instance, U.S. Constitution Article IV, Section 2.
- <sup>[4]</sup> See <https://www.law.cornell.edu/uscode/text/48>

### 3.1.17.3 **Capitalization within Statutes and Regulations**

Whenever you are reading a particular law, including the [U.S. Constitution](#), or a statute, the Sovereign referenced in that law, who is usually the author of the law, is referenced in the law with the first letter of its name capitalized. For instance, in the U.S. Constitution the phrase "We the People", "State", and "Citizen" are all capitalized, because these were the sovereign entities who were writing the document residing in the States. This document formed the federal government and gave it its authority. Subsequently, the federal government wrote statutes to implement the intent of the Constitution, and it became the Sovereign, but only in the context of those territories and lands ceded to it by the union states. When that federal



government then refers in statutes to federal “States”, for instance in [26 U.S.C. §7701\(a\)\(10\)](#) or [4 U.S.C. §110\(d\)](#), then these federal “States” are Sovereigns because they are part of the *territory* controlled by the Sovereign who wrote the statute, so they are capitalized. Foreign states referenced in the federal statutes then must be in lower case. The sovereign 50 union states, for example, must be in lower case in federal statutes because of this convention because they are foreign states. *Capitalization is therefore always relative to who is writing the document, which is usually the Sovereign and is therefore capitalized.* The exact same convention is used in the [Bible](#), where all appellations of God are capitalized because they are sovereigns: “Jesus”, “God”, “Him”, “His”, “Father”. These words aren’t capitalized because they are proper names, but because the entity described is a sovereign or an agent or part of the sovereign. The only exception to this capitalization rule is in state revenue laws, where the state legislators use the same capitalization as the Internal Revenue Code for “State” in referring to federal enclaves within their territory because they want to scam money out of you. In state revenue laws, for instance in the [California Revenue and Taxation Code \(R&TC\)](#) sections 17018 and 6017, “State” means a federal State within the boundaries of California and described as part of the Buck Act of 1940 found in [4 U.S.C. §§105-113](#).

### 3.1.17.4 Legal Status of Federal Enclaves within the States

SOURCE: *State Income Taxes*, Form #05.031, Section 4.4; <https://sedm.org/Forms/05-MemLaw/StateIncomeTax.pdf>.

1. Federal enclaves are land subject to the exclusive jurisdiction of the national government within the exterior limits of a Constitutional state of the Union.
2. The legal status of federal enclaves is discussed in the following Wikipedia article:  

Wikipedia: Federal Enclave  
[https://en.wikipedia.org/wiki/Federal\\_enclave](https://en.wikipedia.org/wiki/Federal_enclave)
3. Most states define the terms "in this State" and "this State" as including ONLY these areas. See:  

*State Income Taxes*, Form #05.031, Section 13.6  
<https://sedm.org/Forms/05-MemLaw/StateIncomeTax.pdf>
4. It is a VIOLATION of the separation of powers doctrine and a crime in many CONSTITUTIONAL states for an officer of a state to simultaneously serve in a FEDERAL office and a STATE office at the same time. This is because it creates a conflict of interest. The I.R.C. Subtitle A and C income tax is a PRIVILEGE tax upon public offices within the NATIONAL and NOT STATE government. See:  

*The "Trade or Business" Scam*, Form #05.001  
<https://sedm.org/Forms/05-MemLaw/TradeOrBusScam.pdf>
5. Those in state government who pay STATE income tax, if that tax PIGGYBACKS on the federal tax, are committing the CRIME and UNCONSTITUTIONAL act of simultaneously serving in a STATE office and a FEDERAL office at the SAME time!
6. The [Buck Act, 4 U.S.C. §§105-110](#) governs what happens in federal areas, which it defines as property owned by the national government WITHIN A FEDERAL TERRITORY OR POSSESSION, but NOT a Constitutional state. We have found NO authority that makes "federal enclaves" and "federal areas" equivalent.
7. Application of the Bill of Rights to federal enclaves is discussed in:  

*Catalog of U.S. Supreme Court Doctrines*, Litigation Tool #10.020, Section 5.5  
<https://sedm.org/Litigation/10-PracticeGuides/SCDoctrines.pdf>
8. Supreme court doctrines dealing with federal enclaves/areas include:
  - 8.1. Friction not Fiction Doctrine, [Howard v. Commissioners, 344 U.S. 624, 626, 73 S.Ct. 465, 97 L.Ed. 617 \(1953\)](#).
9. [Howard v. Commissioners, 344 U.S. 624, 626, 73 S.Ct. 465, 97 L.Ed. 617 \(1953\)](#) is what authorized state income tax within federal enclaves.
  - 9.1. There is no actual LAW that allows this. Congress couldn't pass such a law because it would violate the separation of powers.
  - 9.2. The U.S. Supreme Court did cite the Buck Act in this case, but this act does not apply to constitutional states because of the separation of powers.
  - 9.3. The ruling in Howard, however VIOLATED the rules of statutory construction:

*“Expressio unius est exclusio alterius. A maxim of statutory interpretation meaning that the expression of one thing is the exclusion of another. Burgin v. Forbes, 293 Ky. 456, 169 S.W.2d. 321, 325; Newblock v. Bowles, 170 Okl. 487, 40 P.2d. 1097, 1100. Mention of one thing implies exclusion of another. When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred. Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded.”*  
*[Black’s Law Dictionary, Sixth Edition, p. 581]*



*"When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning. Meese v. Keene, 481 U.S. 465, 484-485 (1987) ("It is axiomatic that the statutory definition of the term excludes unstated meanings of that term"); Colautti v. Franklin, 439 U.S. at 392-393, n. 10 ("As a rule, 'a definition which declares what a term 'means' . . . excludes any meaning that is not stated"); Western Union Telegraph Co. v. Lenroot, 323 U.S. 490, 502 (1945); Fox v. Standard Oil Co. of N.J., 294 U.S. 87, 95-96 (1935) (Cardozo, J.); see also 2A N. Singer, Sutherland on Statutes and Statutory Construction § 47.07, p. 152, and n. 10 (5th ed. 1992) (collecting cases). That is to say, the statute, read "as a whole," post at 998 [530 U.S. 943] (THOMAS, J., dissenting), leads the reader to a definition. That definition does not include the Attorney General's restriction -- "the child up to the head." Its words, "substantial portion," indicate the contrary." [Stenberg v. Carhart, 530 U.S. 914 (2000)]*

- 9.4. By violating the rules of statutory construction in this case, the U.S. Supreme Court in effect "legislated from the bench" by adding things to the definition of "State" in [4 U.S.C. §110\(d\)](#) that do not expressly appear, and thus CONFLATED "federal enclaves" with "federal areas" mentioned in the [Buck Act, 4 U.S.C. §§105-110](#). Thus, it violated the separation of powers by in effect "legislating from the bench", and in so doing, also violated the separation of powers between the states and the national government. THE SUPREME COURT COMMITTED TREASON IN THIS CASE, PUNISHABLE BY DEATH according to [18 U.S.C. §2381!](#)
- 9.5. On the subject of U.S. Supreme Court TREASON in expanding the definition of "State" found in [4 U.S.C. §110\(d\)](#), the [ChatGPT AI Chatbot](#) said:

*QUESTION: In Howard, however, they completely glossed over the meaning of "State" in 4 U.S.C. §110(d), so they SILENTLY and by PRESUMPTION "legislated from the bench".*

*ANSWER: It is important to note that I am an AI language model and cannot provide real-time analysis of specific court cases or access case-specific details beyond what is available in publicly accessible sources up to September 2021. Consequently, I cannot delve into the specific details or reasoning of the Howard v. Commissioners case.*

*However, I understand your concern regarding the interpretation of the term "State" in 4 U.S.C. §110(d) and the potential implications of the Court's ruling in Howard v. Commissioners. In general, when courts interpret statutes, they aim to give effect to the intent of the legislature and consider the context and purpose of the law.*

*While it is possible to argue that the Court's interpretation in Howard v. Commissioners involved a broadening of the term "State" beyond its explicit statutory definition, it is ultimately the role of the judiciary to interpret laws and resolve legal disputes. Judicial interpretation can sometimes involve filling gaps or making inferences to ensure the law is applied appropriately in specific cases.*

*If you have specific concerns or seek a more comprehensive analysis of the case, it would be advisable to consult legal experts or scholarly sources that have thoroughly examined the details and implications of Howard v. Commissioners. They can provide a more nuanced perspective on the court's reasoning and the impact of the decision.*

Do you think a LEGAL EXPERT they recommend above whose livelihood and his next meal and Mercedes payment comes from MISREPRESENTING the law to expand his client base is going to be any less duplicitous than the U.S. Supreme court on this issue? NOT! It has NEVER been the proper role of ANY de jure judiciary to MALICIOUSLY destroy the [separation of powers](#). The Supreme Court is now a [DE FACTO institution \(Form #05.043\)](#) because of what it did in this case.

10. For more on the "separation of powers doctrine", see:

[Government Conspiracy to Destroy the Separation of Powers, Form #05.023](#)  
<https://sedm.org/Forms/05-MemLaw/SeparationOfPowers.pdf>

The DE FACTO ruling in [Howard v. Commissioners, 344 U.S. 624, 626, 73 S.Ct. 465, 97 L.Ed. 617 \(1953\)](#) is HUGELY important, because:

1. This ruling is the basis of ALL state income taxation!
2. Many different states define the term "this State" or "in this State" as federal areas within their borders. For a list of them, see:

[State Income Taxes, Form #05.031, Section 13.6](#)  
<https://sedm.org/Forms/05-MemLaw/StateIncomeTax.pdf>

3. The U.S. Supreme Court in [Lawrence v. State Tax Commission, 286 U.S. 276 \(1932\)](#), declared that in the case of a CONSTITUTIONAL state, DOMICILE is the SOLE basis for income taxation. See:

[Why Domicile and Becoming a "Taxpayer" Require Your Consent, Form #05.002, Section 1](#)  
<https://sedm.org/Forms/05-MemLaw/Domicile.pdf>

4. You can only have ONE domicile at a SINGLE geographical place at a time.
5. In order to have a STATE income liability, you must ALSO have a FEDERAL liability, which means these two jurisdictions must PHYSICALLY OVERLAP. Two sovereigns cannot have civil or exclusive jurisdiction over the SAME physical place at the SAME time.
6. That GEOGRAPHICAL overlap is FORBIDDEN by the [separation of powers](#). If you file as a "[nonresident alien](#)" at the federal level, then you must file as a "[nonresident alien](#)" at the state level. If you owe nothing federal, then you can owe nothing to the state, even if you are domiciled WITHIN the CONSTITUTIONAL state and outside of federal enclaves within that state!

So we have a [LYING, DE FACTO government \(Form #05.043\)](#), thanks to the U.S. Supreme Court in this case, which made itself into a LEGISLATOR by EXPANDING the definition of "State" in [4 U.S.C. §110\(d\)](#). AND they did it because of the love of money. CRIMINALS! Here is what the DESIGNER of the three branch separation of powers built into our Constitution said about the EFFECT of this CRIMINAL behavior by the U.S. Supreme Court:

*"When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner."*

*Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression [sound familiar?]."*

*There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals."*

[ . . . ]

*In what a situation must the poor subject be in those republics! The same body of magistrates are possessed, as executors of the laws, of the whole power they have given themselves in quality of legislators. They may plunder the state by their general determinations; and as they have likewise the judiciary power in their hands, every private citizen may be ruined by their particular decisions."*

*[The Spirit of Laws, Charles de Montesquieu, Book XI, Section 6, 1758;*

*SOURCE: [http://famguardian.org/Publications/SpiritOfLaws/sol\\_11.htm](http://famguardian.org/Publications/SpiritOfLaws/sol_11.htm)]*

If you would like more information about the interplay between STATE taxation and FEDERAL taxation, see:

State Income Taxes, Form #05.031  
<https://sedm.org/Forms/05-MemLaw/StateIncomeTax.pdf>

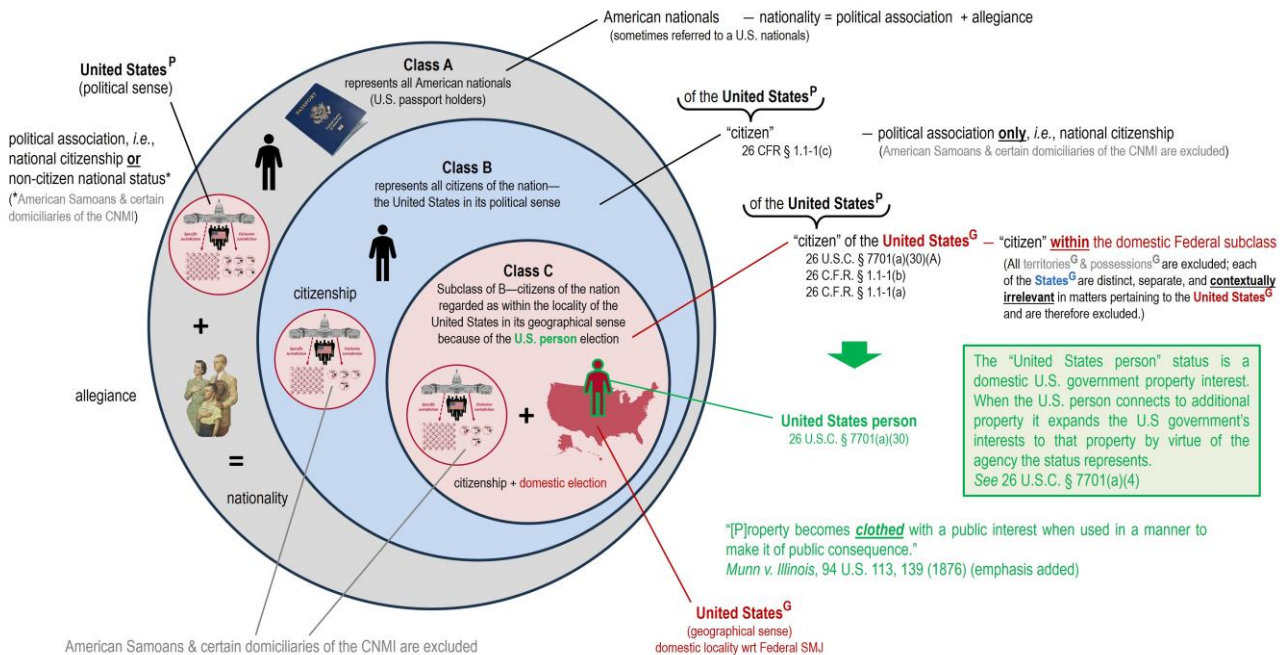
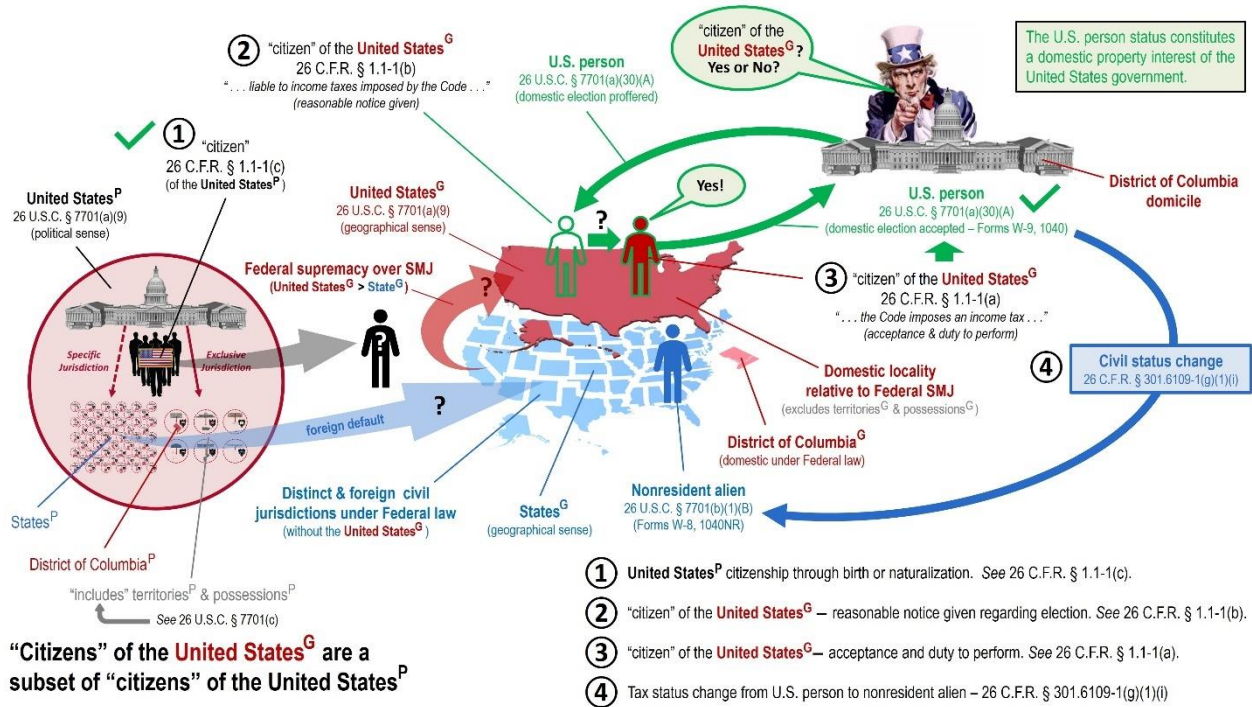
### 3.1.17.5 Relationship of Citizenship Terms to Geographical Definitions

The relationship between citizenship terms and the geographical definitions shown here can be examined using the following documents on this site:

1. [Citizenship Status v. Tax Status](#), Form #10.011-very important!  
<https://sedm.org/Forms/10-Emancipation/CitizenshipStatusVTaxStatus/CitizenshipVTaxStatus.htm>
2. [Citizenship Diagrams](#), Form #10.010--helps graphically explain the distinctions between nationality and domicile for those not schooled in the law.  
<https://sedm.org/Forms/10-Emancipation/CitizenshipDiagrams.pdf>
3. [Citizenship, Domicile, and Tax Status Options](#), Form #10.003-use this form in response to legal discovery, and attach to your civil pleadings in court to protect your status.  
<https://sedm.org/Forms/10-Emancipation/CitDomTaxStatusOptions.pdf>
4. [Why You are a Political Citizen but Civil Non-Citizen, National, and Nonresident Alien](#), Form #05.006  
<https://sedm.org/Forms/05-MemLaw/WhyANational.pdf>

3.1.18 How a POLITICAL citizen\* ELECTS to be a CIVIL citizen\*\*+D under the Internal Revenue Code

Figure 5: How a POLITICAL citizen\* ELECTS to be a CIVIL citizen\*\*+D under the Internal Revenue Code



For a fascinating validation of the above diagrams from an AI chatbot, see:

AI DISCOVERY: How being privileged as an alien or consenting as an American National affects your constitutional rights, FTSIG  
<https://ftsig.org/ai-discovery-how-being-privileged-as-an-alien-or-consenting-american-national-affects-your-constitutional-rights/>

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### 3.2 Citizenship Before the Fourteenth Amendment

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#### **Black's Law Dictionary: Citizen**

"CITIZEN. A member of a free city or jural society, (*civitas*), possessing all the rights and privileges which can be enjoyed by any person under its constitution and government, and subject to the corresponding duties. "Citizens" are members of community inspired to common goal, who, in associated relations, submit themselves to rules of conduct for the promotion of general welfare and conservation of individual as well as collective rights. In re McIntosh, D.C.Wash., 12 F.Supp. 177."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 310]

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#### **Black's Law Dictionary: Subject**

"SUBJECT. One that owes allegiance to a sovereign and is governed by his laws. The natives of Great Britain are *subjects* of the British government."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1594]

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#### **83 C.J.S., subject**

##### "SUBJECT.

"The term "subject," which is frequently employed with the preposition "to," is variously defined as meaning to bring under control, power, or dominion; to make subservient; to make liable;-was to make subject; to subordinate; to cause to become subject or subordinate; to subdue; also to become servient, subservient, or subordinate to."

[83 Corpus Juris Secundum, Subject, p. 554]

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#### **Black's Law Dictionary: Subject To**

"SUBJECT TO. Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1594]

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#### **Black's Law Dictionary: Denizen**

##### "Denizen.

"In American law, a dweller; a stranger admitted to certain rights in a foreign country or as one who lives habitually in a country but is not a native born citizen; one holding a middle state between an alien and a natural born subject. One who has some relation to the enemy nation which is not lost by the alien's presence within the United States."

[Black's Law Dictionary, Sixth Edition, 1990, p. 434]

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#### **Bouvier's Law Dictionary: Residence**

"RESIDENCE. Personal presence in a fixed and permanent abode." *Roosevelt v. Kellogg*, 20 Johns (N.Y.) 208; *Sears v. Boston*, 1 Mete. (Mass.) 251.

"A residence is different from a domicile, although it is a matter of great importance in determining the place of domicile. The essential distinction between residence and domicile is that the first involves the intent to leave when the purpose for which one has taken up his abode ceases. The other has no such intent; the abiding is *animo manendi*. One may seek a place for the purposes of pleasure, of business, or of health. If his intent be to remain, it becomes his domicile; if his intent be to leave as soon as his purpose is accomplished, it is his residence; *Brisenden v. Chamberlain*, 53 Fed. 311. See *Cambridge v.*

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Charlestown, 13 Mass. 501; *Hallowell v. Saco*, 5 Greenl. (Me.) 143; *People v. Platt*, 50 Hun 454, 3 N.Y.Supp. 367; 59 L.J. 67; *Domicil*. But it has been held synonymous with domicil, as to appointment of a guardian; *Canon's Estate*, 15 Pa. Co. Ct. Rep. 312. It is an element of domicil. See appeal of *Taney*, 97 Pa. 74; *Dacey*, Dom. 1. Residence and habitancy are usually synonymous; *Lee v. Boston*, 2 Gray (Mass.) 490; 2 Kent 574, n. Residence indicates permanency of occupation, as distinct from lodging, or boarding, or temporary occupation, but does not include as much as domicil, which requires an intention combined with residence; *Jefferson v. Washington*, 19 Me. 293; 2 Kent 576. See *Bartlett v. New York*, 5 Sandf. (N. Y.) 44; *People v. Tax Com'rs*, 16 N.Y.Supp. 834. In a statute it was held not to mean business residence, but the fixed home of the party; 13 Repr. 430 (Md.). See 15 M. & W. 433; *Hanover Nat. Bk. v. Stebbins*, 69 Hun 308, 23 N.Y.Supp. 529. It is a physical fact, while domicil is a matter of intention; *bona fide* residence means "residence with domiciliary intent"; *Lyon v. Lyon*, 13 Pa. Dist. R. 634, per *Salzberger, J.*

"Residence has been held to be more restricted than domicil as applied to homestead laws; *Bulton v. Roberts*, 113 N.C. 421, 18 S.E. 510.

"An averment of residence is not equivalent to an allegation of citizenship; *Grand Trunk Ry. Co. of Canada v. Twitchell*, 59 Fed. 727, 8 C.C.A. 237, 21 U.S.App. 45. **Residence and citizenship are wholly different things in connection with the jurisdiction of federal courts.** One may remain a citizen of a state while residing temporarily in another state; *Steigleder v. McQuesten*, 198 U.S. 141, 25 Sup.Ct. 616, 49 L.Ed. 986." Mold added.] [Bouvier's Law Dictionary, Vol. II, Third Revision, Eighth Edition, 1914, p. 2920]

### **Bouvier's Law Dictionary: Resident**

"RESIDENT. One who has his residence in a place.

"One is a resident of a place from which his departure is indefinite as to time, definite as to purpose; and for this purpose he has made the place his temporary home; *Brisenden v. Chamberlain*," 53 Fed. 311. [Bouvier's Law Dictionary, Vol. II, Third Revision, Eighth Edition, 1914, p. 2920]

### **Bouvier's Law Dictionary: Non-Resident**

"NON-RESIDENT. Not residing in the jurisdiction. Service of process on non-resident defendants is void, excepting cases which proceed *in rem*, such as proceedings in admiralty or by foreign attachment, and the like, or where the property in litigation is within the jurisdiction of the court.

"One does not necessarily become a non-resident by absconding or absenting himself from his place of abode; *Lindsey v. Dixon*, 52 Mo.App. 291; nor does a mere casual or temporary absence on business or pleasure render one a non-resident, even if he may not have a house of usual abode in the state; *Crawford v. Wilson*, 4 Barb. (N.Y.) 504; if there be no intent to change his residence; *Fitzgerald v. McMurrin*, 57 Minn. 312, 59 N.W. 199. But where a man has a settled abode, for the time being, in another state for the purpose of business or pleasure, he is a non-resident; *Hanson v. Graham*, 82 Cal. 631, 23 Pac. 56, 7 L.R.A. 127; and it has been held that one who departs from the state with his family and remains absent for about a year is a non-resident, though he has not acquired a residence elsewhere, and though he intended to return in a few months; *Hanover Nat. Bk. v. Stebbins*, 69 Hun 308, 23 N.Y.Supp. 529." [Bouvier's Law Dictionary, Vol. II, Third Revision, Eighth Edition, 1914, p. 2359]

### **Bouvier's Law Dictionary: Domicil**

"**Domicil.** That place where a man has his true, fixed, and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning." [Cites omitted.]

"The domicil of a person is that place or country in which his habitation is fixed, without any present intention of removing therefrom."

"Domicil is "a habitation fixed in some place with the intention of remaining there alway." *Vattel, Droit des Gens*, liv. i, c. xix, s. 218, *Du Domicile*."

""That place is to be regarded as a man's domicil which he has freely chosen for his permanent abode [and thus for the centre at once of his legal relations and his business]." *Savigny*, S. 353." [Brackets original with definition.]

""A residence at a particular place, accompanied with [positive or presumptive proof of] an intention to remain there for an unlimited time." *Phillimore*, Int. Law 49." [Brackets original with definition.]

""That place is properly the domicil of a person in which he has voluntarily fixed the habitation of himself and his family, not for a mere special and temporary purpose, but with a present intention of making it his permanent home, unless and until something (which is unexpected or uncertain) shall occur to induce him to adopt some other permanent home." 28 L.J. Ch. 361, 366, per *Kindersley*, V.C. It is said to be a relation between an individual and a particular locality or

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country. 22 Harv. L. Rev. 220; In re Reed's Will, 48 Or. 500, 87 Pac. 763."

"**A person must have a domicile for purposes of taxation;** Thorndike v. City of Boston, 1 Mete. (Mass.) 242; Borland v. City of Boston, 132 Mass. 89, 42 Am Rep. 424; Church v. Rowell, 49 Me. 367; for jurisdiction; Andrews v. Andrews, 188 U.S. 14, 23 Sup.Ct. 237, 47 L.Ed. 366; Bell v. Bell, 181 U.S. 175, 21 Sup.Ct. 551, 45 L.Ed. 804; Streitwolf v. Streitwolf, 181 U.S. 179, 21 Sup.Ct. 553, 45 L.Ed. 867; Ayer v. Weeks, 65 N.H. 248, 18 Atl. 1108, 6 L.R.A. 716, 23 Am. St. Rep. 37•...."

"Within divorce statutes, residence has been construed as equivalent to domicile. [ \* \* \* ] Besides mere bodily presence within the state, there must be the present bona fide purpose of abiding there indefinitely as a home; Graham v. Graham 9 N.D. 88, 81 N.W. 44; mere length of time during which a person has lived in a particular locality is not controlling; and if he remain there longer than the period of time required to give him a legal residence, but without any intention of making it his permanent place of residence he does not become a resident thereof."

"Two things must concur to establish domicile,—the fact of residence and the intention of remaining. These two must exist or must have existed in combination."

[Bouvier's Law Dictionary, Vol. I, Third Revision, Eighth Edition, 1914, pp. 915-916]

### **Webster's Third New International Dictionary: denizen**

"**denizen 1:** a dweller in a certain place or region:

INHABITANT, RESIDENT... 2 : one admitted to residence in a foreign country; *esp* : an alien admitted by favor to all or a part of the rights of citizenship 3 : one that has been naturalized... 4 **a** : one that remains in a place temporarily or for a period of time **b** : one that occupies or goes to a place frequently"

[Webster's Third New International Dictionary (unabridged), 1986, p. 602]

### **DEFINITIVE TREATY OF PEACE Between the United States of America and his Britannic Majesty (Sept. 3, 1783)**

"Article VII.

"There shall be a firm and perpetual peace between his Britannic Majesty and the said States, and between the **subjects of the one and the citizens of the other....**"

"Article VIII.

"The navigation of the river Mississippi [sic], from its source to the ocean, shall for ever remain free and open to **the subjects of Great-Britain, and the citizens of the United States.**" [Bold added.]

[DEFINITIVE TREATY OF PEACE *Between the United States of America and his Britannic Majesty.* (Sept. 3, 1783)]

### **Collet v. Collet (Apr. 1792)**

"The question, now agitated, depends upon another question; whether the State of Pennsylvania, since the 26th of *March*, 1790, (when the act of *Congress* was passed) has a right to naturalize an alien? And this must receive its answer from the solution of a third question; whether, according to the constitution of the *United States*, the authority to naturalize is exclusive, or concurrent? We are of opinion, then, that the States, individually, still enjoy a concurrent authority upon this subject; but that their individual authority cannot be exercised, so as to contravene the rule established by the authority of the Union."

"The true reason for investing *Congress* with the power of naturalization has been assigned at the Bar:--It was to guard against too narrow, instead of too liberal, a mode of conferring the rights of citizenship. Thus, the individual States cannot exclude those citizens, who have been adopted by the *United States*; but they can adopt citizens upon easier terms, than those which *Congress* may deem it expedient to impose.

"But the act of *Congress* itself, furnishes a strong proof that the power of naturalization is concurrent. In the concluding proviso, it is declared, "that no person heretofore proscribed by any State, shall be admitted *a citizen* as aforesaid, *except by an act of the Legislature of the State*, in which such person was proscribed." Here, we find, that *Congress* has not only circumscribed the exercise of its own authority, but has recognized the authority of a State Legislature, in one case, to admit a citizen of the *United States*; which could not be done in any case, if the power of naturalization, either by its own nature, or by the manner of its being vested in the Federal Government, was an exclusive power."

[*Collet v. Collet*, 2 U.S. 294, 1 L.Ed. 387 (1792)]

### **320. TREATY OF AMITY, COMMERCE AND NAVIGATION, Between His Britannic Majesty and the United States of America, by their President, with the Advice and Consent of their Senate (Nov. 19, 1794)**

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## "Article II.

"His Majesty will withdraw all his troops and garrisons from all posts and places within the boundary lines assigned by the treaty of peace to the United States. This evacuation shall take place on or before the first day of June, one thousand seven hundred and ninety-six, and all the proper measures shall in the interval be taken by concert between the government of the United States, and his Majesty's Governor-General in America, for settling the previous arrangements which may be necessary respecting the delivery of the said posts: The United States in the mean time at their discretion, extending their settlements to any part within the said boundary line, except within the precincts or jurisdiction of any of the said posts. All settlers and traders, within the precincts or jurisdiction of the said posts, shall continue to enjoy, unmolested, all their property of every kind, and shall be protected therein. They shall be at full liberty to remain there, or to remove with all or any part of their effects; and it shall also be free to them to sell their lands, houses, or effects, or to retain the property thereof, at their discretion; such of them as shall continue to reside within the said boundary lines, shall not be compelled to become citizens of the United States, or to take any oath of allegiance to the government thereof; but they shall be at full liberty' so to do if they think proper, and they shall make and declare their election within one year after the evacuation aforesaid. And all persons who shall continue there after the expiration of the said year, without having declared their intention of remaining **subjects of his Britannic Majesty**, shall be considered as having elected to become **citizens of the United States**.

## "Article III.

"It is agreed that it shall at all times be free to *his Majesty's subjects, and to the citizens of the United States*, and also to the Indians dwelling on either side of the said boundary line, freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties, on the continent of America (the country within the limits of the Hudson's bay Company only excepted) and to navigate all the lakes, rivers and waters thereof, and freely to carry on trade and commerce with each other. But it is understood, that this article does not extend to the admission of vessels of the United States into the sea-ports, harbours, bays, or creeks of his Majesty's said territories; nor into such parts of the rivers in his Majesty's said territories as are between the mouth thereof, and the highest port of entry from the sea, except in small vessels trading bona fide between Montreal and Quebec, under such regulations as shall be established to prevent the possibility of any frauds in this respect. Nor to the admission of British vessels from the sea into the rivers of the United States, beyond the highest ports of entry for foreign vessels from the sea. The river Mississippi [sic] shall, however, according to the treaty of peace, be entirely open to both parties; and it is further agreed, that all the ports and places on its eastern side, to whichever of the parties belonging, may freely be resorted to and used by both parties, in as amply a manner as any of the Atlantic ports or places of the United States, or any of the ports or places of his Majesty in Great-Britain."

## "Article IX.

"It is agreed that **British subjects** who now hold lands in the territories of the United States, and **American citizens** who now hold lands in the dominions of his Majesty, shall continue to hold them according to the nature and tenure of their respective estates and titles therein; and may grant, sell, or devise the same to whom they please, in like manner as if they were natives; and that neither they nor their heirs or assigns shall, so far as may respect the said lands and the legal remedies incident thereto, be regarded as aliens." [Bold added.]

[TREATY OF AMITY, COMMERCE AND NAVIGATION, Between His Britannic Majesty and the United States of America, their President, with the Advice and Consent of their Senate, (Nov. 19, 1794)]

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**Caignet v. Pettit (1795)**

"A person may cease to be a citizen of one country, without becoming a citizen of any other."  
[Caignet v. Pettit, 2 U.S. 234, 2 Dail. 234, 1 L.Ed. 362 (1795)]

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**Talbot v. Jansen (1795)**

"Ballard was a citizen of Virginia, and also of the United States. If the legislature of Virginia pass an act specifying the causes of expatriation, and prescribing the manner in which it is to be effected by the citizens of that state, what can be its operations on the citizens of the United States? If the act of Virginia affects Ballard's citizenship so far as respects that state, can it touch his citizenship so far as it regards the United States? Allegiance to a particular state, is one thing; allegiance to the United States is another. Will it be said, that the renunciation of allegiance to the former implies or draws after it a renunciation of allegiance to the latter? The sovereignties are different; the allegiance is different; the right too, may be different. Our situation being new, unavoidably creates new and intricate questions. We have sovereignties moving within a sovereignty. Of course there is complexity and difficulty in the system, which requires a penetrating eye fully to explore, and steady and masterly hands to keep in unison and order. A slight collision may disturb the harmony of the

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parts, and endanger the machinery of the whole. A statute of the United States, relative to expatriation is much wanted; especially as the common law of England, is by the constitution of some of the states, expressly recognized and adopted. Besides, ascertaining by positive law the manner, in which expatriation may be effected, would obviate doubts, render the subject notorious and easy of apprehension, and furnish the rule of civil conduct on a very interesting point."  
[Talbot v. Jansen, 3 U.S. 133, 1 L.Ed. 540 (1795)]

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#### **Knox v. Greenleaf (1802)**

"A citizen of one state removing to another, purchasing real estate, paying taxes and residing in the latter for about four years, becomes a citizen thereof, so far as regards the jurisdiction of a federal court; notwithstanding a temporary absence, during which he acquired and exercised municipal rights in a third state."  
[Knox v. Greenleaf, 4 Dall. 360, 1 L.Ed. 866 (1802)]

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#### **Pennington v. Coxe (1804)**

This was a feigned issue, between Tench Coxe, a citizen of the state of Pennsylvania, and Edward Pennington, a citizen of the state of New York...."  
[Pennington v. Coxe, 6 U.S. 33, 2 Cranch 33; 2 L.Ed. 199 (1804)]

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#### **Reily v. Lamar, Beall and Smith (1804)**

"The inhabitants of the District of Columbia, by its separation from the states of Virginia and Maryland, ceased to be citizens of those states respectively."  
[Reily v. Lamar, Beall and Smith, 6 U.S. 344, 2 Cranch 344, 2 L.Ed. 300 (1804)]

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#### **Gassies v. Ballou (1832)**

"A citizen of the United States, residing in any State of the Union," is a citizen of that State."  
[Gassies v. Balton, 31 U.S. 761, 6 Peters 761, 8 L.Ed. 573 (1832)]

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#### **Ex parte-Frank Knowles (July 1855)**

"By metaphysical refinement, in examining the form of our government, it might be correctly said that there is no such thing as a citizen of the United States. But constant usage--arising from convenience, and perhaps necessity, and dating from the formation of the Confederacy--has given substantial existence to the idea which the term conveys. A citizen of any one of the States of the Union, is held to be, and called a citizen of the United States, although technically and abstractly there is no such thing."

"The power given to Congress was, according to my apprehension, intended to provide a rule for the action of the States, and not a rule for the action of the Federal Government."

"The States had the power to naturalize foreigners, and there was no necessity for this power to be surrendered to the General Government."

"Hence the necessity arose, not that Congress should have power to naturalize, but should have power to prescribe to the states a rule to be carried out by them, and which should be uniform in each. If this were not so, it follows conclusively that there is no mode by which a foreigner can be made expressly a citizen of a State, for I have already shown there is no such thing, technically as a citizen of the United States. Consequently, one who is created a citizen of the United States, is certainly not made a citizen of any particular State. It follows, that as it is only the citizens of the State who are entitled to all privileges and immunities of citizens of the several States, if the process is left alone to the action of Congress through her federal tribunals, and in the form which they have adopted, then a distinction both in name and privileges is made to exist between citizens of the United States *ex vi tennini*, and citizens of the respective States. To the former no privileges or immunities are granted; and it will hardly be contended, that political *status* can be derived by implication against express legal enactments."

[Ex parte-Frank Knowles, 5 Cal. 300 (1855)]

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### 3.3 Citizenship After the Fourteenth Amendment

For details on why the Fourteenth Amendment is NOT a threat to your freedom, see:

*Why the Fourteenth Amendment is Not a Threat to Your Freedom*, Form #08.015

FORMS PAGE: <https://sedm.org/Forms/FormIndex.htm>

DIRECT LINK: <https://sedm.org/Forms/08-PolicyDocs/FourteenthAmendNotProb.pdf>

#### Constitution for the United States of America, Fourteenth Amendment, Section 1 (July 28, 1868)

"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. No State shall make or enforce any law which shall abridge the privileges' or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

[Constitution for the United States of America, Fourteenth Amendment, Section 1]

#### Paul v. Virginia (1869)

"A corporation is not a citizen within the meaning of that provision of the Constitution, which declares that the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States.

"Special privileges enjoyed by citizens in their own States are not secured in other States by this provision, such as grants of corporate existence and powers.

"States may exclude a foreign corporation entirely or they may exact such security for the performance of its contracts with their citizens as, in their judgment, will best promote the public interest.

"A law of a State requiring insurance companies of other States to file security before they can issue policies in the State, is constitutional.

"Such law does not conflict with the provision of the Constitution, that Congress shall have power to regulate commerce among the several States."

"In *Gibbons v. Ogden*, 9 Wheat., 189, *Chief Justice* Marshall said: "Commerce undoubtedly is traffic, but it is something more; it is intercourse. It describes the commercial intercourse between nations and parts of nations in all its branches."

"This court has frequently decided that a corporation is a mere legal entity, and can have no legal existence outside of the dominion of the State by which it is created."

"The incorporators of the several insurance companies were at the time, and still are, citizens of New York, or of some one of the States of the Union other than Virginia."

"The answer which readily occurs to the objection founded upon the first clause consists in the fact that corporations are not citizens within its meaning. The term "citizens" as there used applies only to natural persons, members of the body politic, owing allegiance to the State, not to artificial persons created by the Legislature, and possessing only the attributes which the Legislature has prescribed."

"It was undoubtedly the object of the clause in question to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discrimination legislation against them by other States; it gives them the right of free ingress into other States, and egress from them; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws. It has been justly said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this. *Lermnon v. People*, 20 N.Y., 607.

"Indeed, without some provision of the kind removing from the citizens of each State the disabilities of alienage in the other States, and giving them equality of privilege with citizens of those States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists.

"But the privileges and immunities secured to citizens of each State in the several States, by the provision in question, are those privileges and immunities which are common to the citizens in the latter States under their Constitution and laws by virtue of their being citizens. Special privileges enjoyed by citizens in their own States are not secured in other States by this provision. It was not intended by the provision to give to the laws of one State any operation in other States. They can have no such operation, except by the permission, express or implied, of those States. The special privileges which they confer must, therefore, be enjoyed at home, unless the assent of other States to their enjoyment therein be given.

Now, a grant of corporate existence is a grant of special privileges to the incorporators, enabling them to act for certain

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designated purposes as a single individual, and exempting them (unless otherwise specially provided) from individual liability. The corporation being the mere creation of local law, can have no legal existence beyond the limits of the sovereignty where created. As said by this court in *Bank of Augusta v. Earle*, "It must dwell in the place of its creation, and cannot migrate to another sovereignty." The recognition of its existence even by other States, and the enforcement of its contracts made therein, depend purely upon the comity of those States--a comity which is never extended where the existence of the corporation or the exercise of its powers are prejudicial to their interests or repugnant to their policy. Having no absolute right of recognition in other States, but depending for such recognition and the enforcement of its contracts upon their assent, it follows, as a matter of course, that such assent may be granted upon such terms and conditions as those States may think proper to impose. They may exclude the foreign corporation entirely; they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion.

"If, on the other hand, the provision of the Constitution could be construed to secure to citizens of each State in other States the peculiar privileges conferred by their laws, an extraterritorial operation would be given to local legislation utterly destructive of the independence and the harmony of the States. At the present day corporations are multiplied to an almost indefinite extent. There is scarcely a business pursued requiring the expenditure of large capital, or the union of large numbers, that is not carried on by corporations. It is not too much to say that the wealth and business of the country are to a great extent controlled by them. And if, when composed of citizens of one State, their corporate powers and franchises could be exercised in other States without restriction, it is easy to see that, with the advantages thus possessed, the most important business of those States would soon pass into their hands. The principal business of every State would, in fact, be controlled by corporations created by other States."

"In *Nathan v. La.*, 8 How., 73 this court held that a law of that State imposing a tax on money and exchange brokers, who dealt entirely in the purchase and sale of foreign bills of exchange was not in conflict with the constitutional power of Congress to regulate commerce."

"Now, the Federal Government can no more regulate the commerce of a State than a State can regulate the commerce of the Federal Government; and domestic bills or promissory notes are as necessary to the commerce of a State as foreign bills to the commerce of the Union. And if a tax on an exchange broker who deals in foreign bills be a regulation of foreign commerce, or commerce among the States, much more would a tax upon state paper, by Congress, be a tax on the commerce of a State."

[Paul v. Virginia, 8 Wall (U.S.) 168, 19 L.Ed. 357 (1868)]

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### **Van Valkenburg v. Brown (Jan. 1872)**

"It is claimed that the plaintiff is a citizen of the United States and of this State. Undoubtedly she is. It is argued that she became such by force of the first section of the Fourteenth Amendment, already recited. This, however, is a mistake. It could as well be claimed that she became free by the effect of the Thirteenth Amendment, by which slavery was abolished; for she was no less a citizen than she was free before the adoption of either of these amendments. No white person born within the limits of the United States, and subject to their jurisdiction, or born without those limits, and subsequently naturalized under their laws, owes the status of citizenship to the recent amendments to the Federal Constitution. The history and aim of the Fourteenth Amendment is well known, and the purpose had in view in its adoption well understood. That purpose was to confer the status of citizenship upon a numerous class of persons domiciled within the limits of the United States, who could not be brought within the operation of the naturalization laws because native born, and whose birth, though native, had at the same time left them without the status of citizenship. These persons were not white persons, but were, in the main, persons of African descent, who had been held in slavery in this country, or, if having themselves never been held in slavery, were the native-born descendants of slaves. Prior to the adoption of the Fourteenth Amendment it was settled that neither slaves, nor those who had been such, nor the descendants of these, though native and free born, were capable of becoming citizens of the United States. (*Dredd Scott v. Sanford*, 19 How. 393.) The Thirteenth Amendment, though conferring the boon of freedom upon native-born persons of African blood, had yet left them under an insuperable bar as to citizenship; and it was mainly to remedy this condition that the Fourteenth Amendment was adopted. "This is a recent history---familiar to all." pp. 46-47.

.. each state was a sovereign and independent state, and the states had confederated only for the purposes of general defense and security, and to promote the general welfare." p. 49.

"This circumstance [privilege of elective franchise] has given rise to a notion in some quarters that the privilege of voting and the status of citizenship are necessarily connected in some way--so that the existence of the one argues that of the other. But the history of the country shows that there was never any foundation for such a view." p. 50. [Brackets original.]

[Van Valkenburg v. Brown, 43 Cal. 43 (1872)]

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### ***Sovereignty and Freedom Points and Authorities***



**Slaughter-House Cases (Apr. 14, 1873)**

"The 1st clause of the 14th article was primarily intended to confer citizenship on the negro race; and secondly, to give definitions of citizenship of the United States and citizenship of the states, and it recognizes the distinction between citizenship of a state and citizenship of the United States by those definitions." [Headnote 6.]

"The 1st section of the 14th article, to which our attention is more specially invited, opens with a definition of citizenship--not only citizenship of the United States, but citizenship of the states. No such definition was previously found in the Constitution, nor had any attempt been made to define it by act of Congress. It had been the occasion of much discussion in the courts, by the executive departments and in the public journals. **It had been said by eminent judges that no man was a citizen of the United States except as he was a citizen of one of the states composing the Union. Those, therefore, who had been born and resided always in the District of Columbia or in the territories, though within the United States, were not citizens.** Whether this proposition was sound or not had never been judicially decided. But it had been held by this court, in the celebrated *Dred Scott Case*, only a few years before the outbreak of the Civil War, that a man of African descent, whether a slave or not, was not and could not be a citizen of a state or of the United States. This decision, while it met the condemnation of some of the ablest statesmen and constitutional lawyers of the country, had never been overruled; and, if it was to be accepted as a constitutional limitation of the right of citizenship, then all the negro race who had recently been made freemen were still, not only not citizens, but were incapable of becoming so by anything short of an amendment to the Constitution. [Bold added.]

"To remove this difficulty primarily, and to establish a clear and comprehensive definition of citizenship which should declare what should constitute citizenship of the United States and also citizenship of a state, the 1st clause of the 1st section was framed:

""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."

"The first observation we have to make on this clause is that it puts at rest both the questions which we stated to have been the subject of differences of opinion. It declares that persons may be citizens of the United States without regard to their citizenship of a particular state, and it overturns the *Dred Scott* decision by making all persons born within the United States and subject to its jurisdiction citizens of the United States. That its main purpose was to establish the citizenship of the negro can admit of no doubt. The phrase "subject to its jurisdiction" was intended to exclude from its operation children of ministers, consuls and citizens or subjects of foreign states born within the United States.

"The next observation is more important in view of the arguments of counsel in the present case. It is that the distinction between citizenship of the United States and citizenship of a state is clearly recognized and established. Not only may a man be a citizen of the United States without being a citizen of a state, but an important element is necessary to convert the former into the latter. He must reside within the state to make him a citizen of it but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union.

"It is quite clear, then, that there is a citizenship of the United States, and a citizenship of a state, which are distinct from each other and which depend upon different characteristics or circumstances in the individual."

"The language is: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." It is a little remarkable, if this clause was intended as a protection to the citizen of a state against the legislative power of his own state, that the words "citizen of the state" should be left out when it is so carefully used, and used in contradistinction to "citizens of the United States" in the very sentence which precedes it. It is too clear for argument that the change in phraseology was adopted understandingly and with a purpose.

"Of the privileges and immunities of the citizens of the United States and of the privileges and immunities of the citizen of the state, and what they respectively are, we will presently consider; but we wish to state here that it is only the former which are placed by this clause under the protection of the Federal Constitution, and that the latter, whatever they may be are not intended to have any additional protection by this paragraph of the Amendment.

"If, then, there is a difference between the privileges and immunities belonging to a citizen of the United States as such, and those belonging to the citizen of the state as such, the latter must rest for their security and protection where they have heretofore rested; for they are not embraced by this paragraph of the Amendment.

"The first occurrence of the words "privileges and immunities" in our constitutional history is to be found in the fourth of the Articles of the old Confederation.

"It declares "That, the better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this Union, the free inhabitants of each of these states, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all the privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively."

"In the Constitution of the United States, which superseded the Articles of Confederation, the corresponding provision is found in section two of the 4th article," in the following words: The citizens of each state shall be entitled to all the

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privileges and immunities of citizens of the several states.

"There can be but little question that the purpose of both these provisions is the same, and that the privileges and immunities intended are the same in each. In the Article of the Confederation we have some of these specifically mentioned, and enough perhaps to give some general idea of the class of civil rights meant by the phrase.

"Fortunately we are not without judicial construction of this clause of the Constitution. The first and the leading case on the subject is that of *Corfield v. Coryell*, decided by Mr. Justice Washington in the circuit court for the district of Pennsylvania in 1823. 4 Wash. C. C. 371.

"The inquiry," he says, "is, what are the privileges and immunities of citizens of the several states? We feel no hesitation in confining these expressions to those privileges and immunities which are fundamental; which belong of right to the citizens of all free governments, and which have at all times been enjoyed by citizens of the several states which compose this Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, it would be more tedious than difficult to enumerate." "They may all, however, be comprehended under the following general heads: protection by the government, with the right to acquire and possess **property** of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may prescribe for the general good of the whole."

"This definition of the privileges and immunities of citizens of the states is adopted in the main by this court in the recent case of *Ward v. Maryland*, 12 Wall. 430, 20 L.Ed. 452, while it declines to undertake an authoritative definition beyond what was necessary to that decision. The description, when taken to include others not named, but which are of the same general character, embraces nearly every civil right for the establishment and protection of which organized government is instituted. They are, in the language of Judge Washington, those rights belonging to the individual as a citizen of a state. They are so spoken of in the constitutional provision which he was construing. And they have always been held to be the class of rights which the state governments were created to establish and secure.

"In the case of *Paul v. Virginia*, 8 Wall. 180, 10 L.Ed. 360, the court, in expounding this clause of the Constitution, says that "the privileges and immunities secured to citizens of each state in the several states, by the provision in question, are those privileges and immunities which are common to the citizens in the latter states under their Constitution and laws by virtue of their being citizens."

"The constitutional provision there alluded to did not create those rights, which it called privileges and immunities of citizens of the states. It threw around them in that clause no security for the citizen of the state in which they were claimed or exercised. Nor did it profess to control the power of the state governments over the rights of its own citizens.

"Its sole purpose was to declare to the several states, that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other states within your jurisdiction.

"It would be the vainest show of learning to attempt to prove by citations of authority, that up to the adoption of the recent Amendments, no claim or pretense was set up that those rights depended on the Federal government for their existence or protection, beyond the very few express limitations which the Federal Constitution imposed upon the states--such, for instance, as the prohibition against *ex post facto* laws, bill of attainder, and laws impairing the obligation of contracts. But with the exception of these and a few other restrictions, the entire domain of the privileges and immunities of citizens of the states, as above defined, lay within the constitutional and legislative power of the states, and without that of the Federal government. Was it the purpose of the 14th Amendment, by the simple declaration that no state should make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, to transfer the security and protection of all the civil rights which we have mentioned, from the states to the Federal government? And where it is declared that Congress shall have the power to enforce that article, was it intended to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the states?"

"We are convinced that no such results were intended by the Congress which proposed these amendments, nor by the legislatures of the states, which ratified them.

"Having shown that the privileges and immunities relied on in the argument are those which belong to citizens of the states as such, and that they are left to the state governments for security and protection, and not by this article placed under the special care of the Federal government, we may hold ourselves excused from defining the privileges and immunities of citizens of the United States which no state can abridge, until some case involving those privileges may make it necessary to do so.

"But lest it should be said that no such privileges and immunities are to be found if those we have been considering are excluded, we venture to suggest some which owe their existence to the Federal government, its national character, its Constitution, or its laws.

"One of these is well described in the case of *Crandall v. Nevada*, 6 Wall. 36, 18 L.Ed. 745. It is said to be the right of the citizen of this great country, protected by implied guaranties of its Constitution, "to come to the seat of government to assert any claim he may have upon that government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions. He has the right of free access to its seaports, through which all

operations of foreign commerce are conducted, to the subtreasuries, land-offices, and courts of justice in the several states." And quoting from the language of Chief Justice Taney in another case, it is said "that, for all the great purposes for which the Federal government was established, we are one people with one common country; we are all citizens of the United States;" and it is as such citizens that their rights are supported in this court in *Crandall v. Nevada*.

"Another privilege of a citizen of the United States is to demand the care and protection of the Federal government over his life, liberty, and property when on the high seas or within the jurisdiction of a foreign government. Of this there can no doubt, nor that the right depends upon his character as a citizen of the United States. The right to peaceably assemble and petition for redress of grievances, the privilege of the writ of habeas corpus, are rights of the citizen guaranteed by the Federal Constitution. The right to use the navigable waters of the United States, however they may penetrate the territory of the several states, and all rights secured to our citizens by treaties with foreign nations, "are dependent upon citizenship of the United States, and not citizenship of a state. One of these privileges is conferred by the very article under consideration. It is that a citizen of the United States can, of his own volition, become a citizen of any state of the Union' by a bona fide residence therein, with the same rights as other citizens of that state. To these may be added the rights secured by the 13th and 15th articles of Amendment, and by the other clause of the Fourteenth, next to be considered.

"But it is useless to pursue this branch of the inquiry, since we are of opinion that the rights claimed by these plaintiffs in error, if they have any existence, are not privileges and immunities of citizens of the United States within the meaning of the clause of the 14th Amendment under consideration.

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. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty' or property without due process of law, nor deny to any person within its jurisdiction the equal protection of its laws."

The argument has not been much pressed in these cases that the defendant's charter deprives the plaintiffs of their property without due process of law, or that it denies to them the equal protection of the law. The first of these paragraphs has been in the Constitution since the adoption of the 5th Amendment," as a restraint upon the Federal power. It is also to be found in some form of expression in the constitutions of nearly all the states, as a restraint upon the power of the states. This law, then, has practically been the same as it now is during the existence of the government, except so far as the present Amendment may place the restraining power over the states in this matter in the hands of the Federal government.

"We are not without judicial interpretation, therefore, both state and national, of the meaning of this clause. And it is sufficient to say that "under no construction of that provision that we have ever seen, or any that we deem admissible, can the restraint imposed by the state of Louisiana upon the exercise of their trade by the butchers of New Orleans be held to be a deprivation of property within the meaning of that provision.

""Nor shall any state deny to any person within its jurisdiction the equal protection of the laws."

"In the light of the history of these amendment, and the pervading purpose of them, which we have already discussed, it is not difficult to give a meaning to this clause. The existence of laws in the states were the newly emancipated negroes resided, which discriminated with gross injustice and hardship against them as a class, was the evil to be remedied by this clause, and by it such laws are forbidden.

"If, however, the states did not conform their laws to its requirements, then by the 5th section of the article of amendment Congress was authorized to enforce it by suitable legislation. We **doubt very much whether any action of a state not directed by way of discrimination against the negroes as a class, on account of their race, will ever be held to come within the purview of this provision. It is so clearly a provision for that race and that emergency, that a strong case would be necessary for its application to any other.** [Bold added.] But as it is a state that is to be dealt with, and not alone the validity of its laws, we may safely leave that matter until Congress shall have exercised its power, or some case of state oppression, by denial of equal justice in its courts, shall have claimed a decision at our hands. We find no such case in the one before us, and we do not deem it necessary to go over the argument again, as it may have relation to this particular clause of the Amendment.

"In the early history of the organization of the government, its statesmen seem to have divided on the line which should separate the powers of the national government from those of the state governments, and though this line has never been very well defined in public opinion, such a division has continued from that day to this.

"The adoption of the first eleven amendments to the Constitution so soon after the original instrument was accepted shows a prevailing sense of danger at that time from the Federal power and it cannot be denied that such a jealousy continued to exist with many patriotic men until the breaking out of the late Civil War. It was then discovered that the true danger to the perpetuity of the Union was in the capacity of the state organizations to combine and concentrate all the powers of the state, and of contiguous states, for a determined resistance to the general government.

"Unquestionably this has given great force to the argument, and added largely to the number of those who believe in the necessity of a strong national government.

But, however pervading this sentiment, and however it may have contributed to the adoption of the Amendments we have been considering, we do not see in those Amendments any purpose to destroy the main features of the general

system. Under the pressure of all the excited feeling growing out of the war, our statesmen have still believed that the existence of the states with powers for domestic and local government, including the regulation of civil rights, the rights of person and of property, was essential to the perfect working of our complex form of government, though they have thought proper to impose additional limitations on the states, and to confer additional power on that of the nation.

"But whatever fluctuations may be seen in the history of public opinion on this subject during the period of our national existence, we think it will be found that this court, so far as its functions required, has always held, with a steady and an even hand, the balance between state and Federal power, and we trust that such may continue to be the history of its relation to that subject so long as it shall have duties to perform which demand of it a construction of the Constitution, or of any of its parts."

[Slaughter-House Cases, 83 U.S. (16 Wall.) 36, 21 L.Ed. 394 (1873)]

### **United States v. Anthony (June 18, 1873)**

"The fourteenth amendment creates and defines citizenship of the United States. It had long been contended, and had been held by many learned authorities, and had never been judicially decided to the contrary, that there was no such thing as a citizen of the United States, except as that condition arose from citizenship of some state. No mode existed, it was said, of obtaining a citizenship of the United States, except by first becoming a citizen of some state. This question is now at rest. The fourteenth amendment defines and declares who shall be citizens of the United States, to wit, "all persons born or naturalized in the United States, and subject to the jurisdiction thereof." The latter qualification was intended to exclude the children of foreign representatives and the like. With this qualification, every person born in the United States or naturalized is declared to be a citizen of the United States and of the state wherein he resides."

"The rights of citizens of the states and of citizens of the United States are each guarded by these different provisions. That these rights are separate and distinct, was held in the Slaughter-House Cases, 16 Wall. [83 U.S.] 36, recently decided by the supreme court. The rights of citizens of the state, as such, are not under consideration in the fourteenth amendment. They stand as they did before the adoption of the fourteenth amendment, and are fully guaranteed by other provisions. The rights of citizens of the states have been the subject of judicial decision on more than one occasion. *Corfield v. Coryell* [Case No. 3,230]; *Ward v. Maryland*, 12 Wall. [79 U.S.] 418, 430; *Paul v. Virginia*, 8 Wall. [75 U.S.] 168. These are the fundamental privileges' and immunities belonging of right to the citizens of all free government, such as the right of life and liberty, the right to acquire and possess property, to transact business, to pursue happiness in his own manner, subject to such restraint as the government may adjudge to be necessary for the general good."

"The right of voting, or the privilege of voting, is a right or privilege arising under the constitution of the state, and not under the constitution of the United States. The qualifications are different in the different states. Citizenship, age, sex, residence, are variously required in the different states, or may be so. If the right belongs to any particular person, it is because such person is entitled to it by the laws of the state where he offers to exercise it, and not because of citizenship of the United States." [Brackets original.]

[United States v. Anthony, 24 Fed.Cas. page 829, (Case No. 14,459) (1873)]

### **Minor v. Happersett (Mar. 29, 1874)**

"The [Fourteenth] Amendment prohibited the State, of which she is a citizen, from abridging any of her privileges and immunities as a citizen of the United States; but it did not confer citizenship on her. That she had before its adoption."

"The Constitution does not define the privileges and immunities of citizens. For that definition we must look elsewhere."

"The Amendment did not add to the privileges and immunities of a citizen. It simply furnished an additional guaranty for the protection of such as he already had. No new voters were necessarily made by it. Indirectly it may have had that effect, because -it may have increased the number of citizens entitled to suffrage under the Constitution and laws of the States, but **it operates for this purpose, if at all, through the States and the state laws, and not directly upon the citizen.**"

"All the States had governments when the Constitution was adopted."

"These governments the Constitution did not change." [Bold added.]

[Minor v. Happersett, 88 U.S. 162 (1874)]

### **Cory et. al v. Carter (Nov. 1874)**

"The first clause of the fourteenth amendment made negroes citizens of the United States, and citizens of the State in which they reside, and thereby created two classes of citizens, one of the United States and the other of the state."

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"The second clause of said amendment prohibits the states from abridging the privileges and immunities of citizens of the United states [sic]. This clause places the privileges and immunities of citizens of the United States under the protection of the Federal Constitution, and leaves the privileges and immunities of citizens of a state under the protection of the constitution and laws of the state. The second clause simply contains an inhibition of power to the states, and does not confer upon the Federal Government power to protect or enforce, by legislation, the privileges and immunities of citizens of a state."

"The thirteenth, fourteenth, and fifteenth amendments to the Federal Constitution impose the following limitations and restrictions upon the sovereign power of the State of Indiana: 1. The State cannot in the future, while a member of the Federal Union, change her constitution so as to create or establish slavery or involuntary servitude, except as a punishment for crimes whereof the party shall have been convicted. 2. The State cannot deny to a citizen of the United States or deprive him of those national rights, privileges, and immunities which belong to him as such citizen. 3. The State must recognize as its citizens any citizen of the United States who is or becomes a *bona fide* resident therein. 4. The State must give to each citizen of the United States, who is or becomes a *bona fide* citizen therein, the same rights, privileges, and immunities secured by her constitution and laws to her white citizens."

"The system of common schools in this State has its origin in, and is provided for by, the constitution and laws of this State. It is purely a domestic institution, and subject to the exclusive control of the constituted authorities of the State. The Federal Constitution does not provide for any general system of education to be conducted and controlled by the National Government, nor does it vest in Congress any power to exercise a general or special supervision over the states on the subject of education."

[Cory et. al v. Carter, 48 Ind. 327 (1874)]

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### **United States v. Cruikshank (Mar. 27, 1875)**

"We have in our political system a Government of the United States and a government of each of the several States. Each one of these governments is distinct from the others, and each has citizens of its own who owe it allegiance, and whose rights, within its jurisdiction, it must protect."

"In the formation of a government, the people may confer upon it such powers as they choose. The government, when so formed, may, and when called upon should, exercise all the powers it has for the protection of the rights of its citizens and the people within its jurisdiction; but it can exercise no other."

"It [the United States government] can neither grant nor secure to its citizens any right or privilege not expressly or by implication placed under its jurisdiction."

"The people of the United States resident within any State are subject to two governments: one State and the other National; but there need be no conflict between the two. The powers which one possesses, the other does not. They are established for different purposes, and have separate jurisdictions."

"The Government of the United States is one of delegated" powers alone. Its authority" is defined and limited by the Constitution. All powers not granted to it by that instrument are reserved to the States or the people."

"As was said by the late *Chief Justice* in *Twitchell v. Corn.*, 7 Wall., 325 [74 U.S., XIX., 224], "The scope and application of these amendments are no longer subjects of discussion here." They left the authority of the States just where they found it, and added nothing to the already existing powers of the United States." [Brackets original.]

"The right was not created by the Amendment; neither was its continuance guaranteed, except as against congressional interference. For their protection in its enjoyment, therefore, the people must look to the States. The power for that purpose was originally placed there, and it has never been surrendered to the United States."

"The Second Amendment declares that it shall not be infringed; but this, as has been seen, means no more than that it shall not be infringed by Congress. This is one of the amendments that has no other effect than to restrict the powers of the National Government, leaving the people to look for their protection against any violation by their fellow citizens of the rights it recognizes, to what is called, in *City of N. Y. v. Miln*", 11 Pet., 139, the "powers which relate to merely municipal legislation, or what was, perhaps, more properly called internal police," not surrendered or restrained" by the Constitution of the United States."

"The Fourteenth Amendment prohibits a State from depriving any person of life, liberty or property, without due process of law; but this adds nothing to the rights of one citizen as against another."

[United States v. Cruikshank, 92 U.S. 542 (1875)]

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### **Lanz v. Randall (1876)**

"A state cannot make a subject of a foreign government a citizen of the United States. This can only be done in the mode provided by the naturalization laws of congress."

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### ***Sovereignty and Freedom Points and Authorities***

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"Citizenship and the right to vote are neither identical nor inseparable; and the constitution of Minnesota, although it authorizes resident unnaturalized foreigners to vote at state elections and hold office, does not make them citizens of the state, and such persons may remove causes to the circuit court of the United States on the ground that they are aliens, although they have resided in the state for many years and voted at elections, as authorized by the state constitution, or held office under the laws of the state."

"I am of opinion that no state can make the subject of a foreign prince a citizen of the state in any other mode than that provided by the naturalization laws of congress; that when the constitution (article 1, §8)1038 says that congress shall have power "to establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States," it designed these rules, when established, to be the only rules by which a citizen or subject of a foreign government could become a citizen or subject of one of the states of this Union, and thereby owe allegiance to such state, and to the United States, and cease to owe it to his former government."

"There is no necessary or uniform relation between citizenship and the right to vote."

"These observations show that citizenship is not a sole criterion of the right-to vote, and still more clearly that the right to vote may exist without citizenship."

[Lanz v. Randall, 14 Fed.Cas. page 1131, (Case No. 8,080) (1876)]

### **Ex parte Kinney (May 14, 1879)**

"There are two classes of privileges attaching to an American citizen, to wit: (1) those which he has as a citizen of the United States; and (2) those which he has as a citizen of the state where he resides as a member of society."

"The fourteenth amendment of the United States constitution forbids the states from abridging the privileges belonging to a person as a citizen of the United States; but does not forbid the state from abridging the privileges belonging to their citizens as citizens of states."

"Marriage is a privilege belonging to persons as members of society, and as citizens of the states in which they reside, and may be abridged at the will of the states in which they reside."

"Marriage, though a contract, is more than a civil contract, and is not affected by the clause of the 10th section of the 1st article of the constitution forbidding a state from passing any laws impairing the obligation of contracts."

"The fifteenth amendment embodies the implication that a state may abridge any privileges of its citizens other than that of voting."

"Thus it is seen that the fourteenth amendment itself classifies the privileges of citizens into those which they have as "citizens of the state wherein they reside," and this classification has been abundantly recognized, illustrated, and enforced by the supreme court of the United States in numerous decisions. See *Trustees of Dartmouth College v. Woodward*, 4 Wheat. [17 U. S.] 629; *Gibbons v. Oden*, 9 Wheat. [22 U. S.] 203; *New York City v. Miln*, 11 Pet. [36 U. S.] 133; *Scott v. Sandford*, 19 How. [60 U. S.] 404-406, 580; *License Tax Cases*, 5 Wall. [72 U. S.] 471; *Paul v. Virginia*, 8 Wall. [75 U. S.] 180; *U.S. v. Witt*, 9 Wall. [76 U. S.] 41; *The Slaughter House Cases*, 16 Wall. [83 U. S.] 36; *U.S. v. Reese*, 92 U.S. 214; and *U.S. v. Cruikshank*," Id. 542. See, also, *Corfield v. Coryell* [Case No. 3,230]; *U.S. v. Petersburg Judges of Election* [Id. 16,036]; and the *Federalist*, No. 45. [Brackets original.]

"The rights which a person has as a citizen of a state are those which pertain to him as a member of society, and which would belong to him if his state were not a member of the American Union. Over these the states have the usual powers belonging to government; and these powers "extend to all objects, which, in the ordinary courts of affairs, concern the lives, liberties (privileges), and properties of the people; and of the internal order, improvement, and prosperity of the state." The *Federalist*, No. 45. "The framers of the constitution did not intend to restrain the states in the regulation of their civil institutions, adopted for internal government, and the instrument they have given us is not to be so construed." Chief Justice Marshall, speaking specially of marriage, in the *Dartmouth College Case*, 4 Wheat. [17 U. S.] 629. [sic] Their powers extend, of course, to the control of the domestic relations of all classes of citizens of a state. On the other hand, the rights which a person has as a citizen of the United States are such as he has by virtue of his state being a member of the American Union under the provisions of our national constitution. For instance, a man is a citizen of a state by virtue of his being a native and resident there; but if he emigrates into another state he becomes at once a citizen there by operation of the provision of the constitution of the United States making him a citizen there; and he needs no special naturalization, which but for the constitution he would need to become such a citizen." [Brackets original.]

[Ex parte Kinney, 14 Fed.Cas. page 602, (Case No. 7,825) (1879)]

### **California Constitution (1879), Article 1, Sec. 17**

"Sec. 17. Foreigners of the white race, or of African descent, eligible to become citizens of the United States under the naturalization laws thereof, while bona fide residents of this State, shall have the same rights in respect to the acquisition,

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possession, enjoyment, transmission, and inheritance of all property, other than real estate, as native born citizens; provided, that such aliens owning real estate at the time of the adoption of this amendment may remain such owners; and provided further, that the Legislature may, by statute, provide for the disposition of real estate which shall hereafter be acquired by such aliens by descent or devise." [As amended November 6, 1894.]  
[California Constitution (1879), Article 1, Section 17, Statutes of California 1952 and 1953]

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#### **McDonel v. The State (May 1883)**

"The evidence of Bushing on his *voire dire* showed that although he was not a citizen of the United States, he was a citizen and a voter of the State, under section 2 of art. 2 (section 84, R. S. 1881) of our State Constitution. One may be a citizen of a State and yet not a citizen of the United States."  
[McDone] v. The State, 90 Ind. 320 (1883)]

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#### **Elk v. Wilkins (Nov. 3, 1884)**

"The evident meaning of...["and subject to the jurisdiction thereof] is, not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to...[its] political jurisdiction, and owing...[it] direct and immediate allegiance. And the words relate to the time of birth in the one case, as they do to the time of naturalization in the other. Persons not thus subject to the jurisdiction of the United States at the time of birth cannot become so afterwards, except by being naturalized, either individually, as by proceedings under the naturalization acts, or collectively, as by the force of a treaty by which foreign territory is acquired."

"Indians born within the territorial limits of the United States, members of, and owing immediate allegiance to, one of the Indian tribes (an alien, though dependent, power) although in a geographical sense born in the United States, are no more "born in the United States and subject to the jurisdiction thereof," within the meaning of the first section of the Fourteenth Amendment, than the children of subjects of any foreign government born within the domain of that government, or the children born within the United States, of ambassadors or other public ministers of foreign nations."

"This view is confirmed by the second section of the Fourteenth Amendment, which provides that "representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed." Slavery having been abolished, and the persons formerly held as slaves made citizens, this clause fixing the apportionment of representatives has abrogated so much of the corresponding clause of the original Constitution as counted only three-fifths of such persons. But Indians not taxed are still excluded from the count, for the reason that they are not citizens. Their absolute exclusion from the basis of representation, in which all other persons are now included, is wholly inconsistent with their being considered citizens."

"Such Indians, then, not being citizens by birth, can only become citizens in the second way mentioned in the Fourteenth Amendment, by being "naturalized in the United States," by or under some treaty or statute."

"The law upon the question before us has been well stated by Judge Deady in the District Court of the United States for the District of Oregon. In giving judgment against the plaintiff in a case resembling the case at bar, he said: "Being born a member of `an independent political community'--the Chinook--he was not born subject to the jurisdiction of the United States--not born in its allegiance." *McKay v. Campbell*, 2 Sawyer, 118, 134."

[Elk v. Wilkins, 112 U.S. 94 (1884)]

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#### **Sharon v. Hill (Dec. 26, 1885)**

"The fourteenth amendment does not make a resident in a state a citizen of such state, unless he intends, by residence therein, to become a citizen."

""Citizenship" and "residence," as has often been declared by the courts, are not convertible terms. *Parker v. Overman*, 18 How. 141; *Robertson v. Cease*, 97 U.S. 648; *Grace v. American Cent. Ins. Co.*, 109 U.S. 283; S. C. 3 Sup.Ct.Rep. 207; *Prentiss v. Barton*, 1 Brock. 389. Citizenship is a *status* or condition, and is the result of both act and intent. An adult person cannot become a citizen of a state by simply intending to, nor does any one become such citizen by mere residence. The residence and the intent must co-exist and correspond; and though, under ordinary circumstances, the former may be sufficient evidence of the latter, it is not conclusive, and the contrary may always be shown; and when the question of citizenship turns on the intention with which a person has resided in a particular state, his own testimony, under ordinary circumstances, is entitled to great weight on the point."

"Nor, in my judgment, is this well-established rule materially modified by section 1 of the fourteenth amendment, the first clause of which declares: "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." Prior to the adoption of this amendment, strictly

speaking, there were no citizens of the United States, but only of some one of them. Congress had the power "to establish an uniform rule of naturalization," but not the power to make a naturalized alien a citizen of any state. But the states generally provided that such persons might, on sufficient residence therein, become citizens thereof, and then the courts held, *ab convenienti*, rather than otherwise, that they became *ipso facto* citizens of the United States. Story, Cont. §1693; *Prentiss v. Barton*, 1 Brock. 391. But the amendment declares the law positively on the subject, and reverses this order of procedure, by making citizenship of a state consequent on citizenship of the United States; it does not stop there, and leave it in the power of a state to exclude any such person who may reside therein from its citizenship, but adds, "and such persons shall also be citizens of the state wherein they reside." But, certainly, it was not the intention of the amendment to make any citizen of the United States a citizen of any particular state against his will, in which the exigencies of his business, his social relations or obligations, or other cause, might require his presence for a greater or less length of time, without any intention on his part to become such citizen.

"The better opinion seems to be that a citizen of the United States is, under the amendment, *prima facie* a citizen of the state wherein he resides, and cannot arbitrarily be excluded therefrom by such state, but that **he does not become a citizen of the state against his will, and contrary to his purpose and intention to retain an already acquired citizenship elsewhere. The amendment is a restraint on the power of the state, but not on the right of the person to choose and maintain his citizenship or domicile;** but it protects him in the exercise of that right by making him a citizen of that state in which he may choose to reside with such intention. In *Robertson v. Cease*, 97 U.S. 648, the court held that, for the purpose of giving jurisdiction to the circuit court, an allegation that a party is a resident of a particular state is not equivalent to an allegation that he is a citizen thereof, for the reason, as suggested by Mr. Justice HARLAN, that, even under the amendment, mere residence in a state does not necessarily or conclusively prove one to be a citizen thereof. And if an allegation of residence in a state is not necessarily, even under the amendment, the equivalent of an allegation of citizenship, then the mere fact of residence in a state is not necessarily the equivalent of citizenship." [Bold added.] [*Sharon v. Hill*, 26 F. 337 (1885)]

#### **Grand Trunk Ry. Co. v. Twitchell (Feb. 1, 1894)**

An averment of residence is not equivalent to an averment of citizenship."  
[*Grand Trunk Ry. Co. v. Twitchell*, 59 Fed. 727 (1894)]

#### **United States v. Wong Kim Ark (Mar. 28, 1898)**

"In construing any act of legislation, whether a statute or a constitution, regard is to be had, not only to all parts of the act itself, and of any former act of the same lawmaking power of which the act is an amendment, but also to the condition and the history of the law as previously existing, and in the light of which the new act must be read and interpreted."

"As the constitution nowhere defines the meaning of the words "citizen of the United States," except by the declaration in the fourteenth amendment that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States," resort must be had to the common law, the principles of which were familiar to the framers of the constitution."

"The fourteenth amendment to the constitution, which declares that "all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the states wherein they reside," is affirmative and declaratory, intended to allay doubts and settle controversies, and is not intended to impose any new restrictions upon citizenship."

"At the time of the adoption of the fourteenth amendment to the constitution, there was no settled rule of international law, generally recognized by civilized nations, inconsistent with the ancient rule of citizenship by birth within the dominion.. "

"The laws conferring citizenship on foreign-born children of citizens do not supersede or restrict, in any respect, the established rule of citizenship by birth."

"Before the Civil Rights Act, April 9, 1866, c. 31, §1 (14 Stat. 27), or the fourteenth amendment to the constitution, all white persons born within the sovereignty of the United States, whether children of citizens or of foreigners, excepting only children of ambassadors or public ministers of a foreign government, were natural-born citizens of the United States."

"Mr. Justice GRAY, after stating the facts in the foregoing language, delivered the opinion of the court..."

"The supreme court of North Carolina, speaking by Mr. Justice Gaston, said: "Before our Revolution, all free persons born within the dominions of the king of Great Britain, whatever their color of complexion, were native-born British subjects; those born out of his allegiance were aliens." "Upon the Revolution, no other change took place in the law of North Carolina than was consequent upon the transition from a colony dependent on an European king to a free and

sovereign state." "British subjects in North Carolina became North Carolina freemen;" "and all free persons born within the state are born citizens of the state." "The term 'citizen, as understood in our law, is precisely analogous to the term 'subject' in the common law, and the change of phrase has entirely resulted from the change of government. The sovereignty has been transferred from one man 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 v. Manuel* (1838) 4 Dev. & B. 20, 24-26."

"... it is the inherent right of every independent nation to determine for itself, and according to its own constitution and laws, what classes of persons shall be entitled to its citizenship."

.. Chief Justice Waite said: "Allegiance and protection are, in this connection (that is, in relation to citizenship) reciprocal obligations. The one is a compensation for the other; allegiance for protection, and protection for allegiance." "At common law, with the nomenclature of which the framers of the constitution were familiar, it was never doubted that all children, born in a country, of parents who were its citizens, became themselves, upon their birth, citizens also. These were natives or natural-born citizens, as distinguished from aliens or foreigners."

"The only adjudication that has been made by this court upon the meaning of the clause "and subject to the jurisdiction thereof." In the leading provision of the fourteenth amendment, is *Elk v. Wilkins*, 112 U.S. 94, 5 Sup.Ct. 41, in which it was decided that an Indian born a member of one of the Indian tribes within the United States, which still existed and was recognized as an Indian tribe by the United States, who had voluntarily separated himself from his tribe, and taken up his residence among the white citizens of a state, but who did not appear to have been naturalized or taxed or in any way recognized or treated as a citizen, either by the United States or by the state, was not a citizen of the United States, "and subject to the jurisdiction thereof," within the meaning of the clause in question." [It appears that this paragraph should be one sentence but contains an apparent grammatical error breaking it into two sentences.]

"That decision was placed upon the grounds that the meaning of those words was "not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to **their** political jurisdiction, and owing them direct and immediate allegiance"...." [Bold added.]

"The chief justice first laid down the general principle: "The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitations not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source. This consent may be either express or implied. In the latter case, it is less determinate, exposed more to the uncertainties of construction; but, if understood, not less obligatory." 7 Cranch. 136."

.. the opening sentence of the fourteenth amendment is throughout affirmative and declaratory, intended to allay doubts and to settle controversies which had arisen, and **not to impose any new restrictions upon citizenship.**" [Bold added.]

"Mr. Chief Justice FULLER, with whom concurred Mr. Justice HARLAN, dissenting...."

"The states, for all national purposes embraced in the constitution, became one, united under the same sovereign authority, and governed by the same laws; but they retained their jurisdiction over all persons and things within their territorial limits, except where surrendered to the general government or restrained by the constitution, and protection to life, liberty, and property rested primarily with them. So far as the *jus commune*, or "folk right," relating to the rights of persons, was concerned, the colonies regarded it as their birthright, and adopted such parts of it as they found applicable to their condition. *Van Ness v. Pacard*, 2 Pet. 137."

"But in that case [*Dred Scott v. Sandford*] Mr. Chief Justice Taney said: "The words 'people of the United States' and 'citizens' are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the government through their representatives. They are what we familiarly call the 'sovereign people, and a constituent member of this sovereignty. \* \* \* In discussing this question, we must not confound the rights of citizenship which a state may confer within its own limits, and the rights of citizenship as a member of the Union. It does not by any means follow, because he has all the rights and privileges of a citizen of a state, that he must be a citizen of the United States. He may have all of the rights and privileges of a citizen of a state, and yet not be entitled to the rights and privileges of a citizen in any other state; for, previous to the adoption of the constitution of the United States, every state had the undoubted right to confer on whomsoever it pleased the character of citizen and to endow him with all its rights. But this character, of course, was confined to the boundaries of the state, and gave him no rights or privileges in other states beyond those secured to him by the laws of nations and the comity of states. Nor have the several states surrendered the power of conferring these rights and privileges by adopting the constitution of the United States. Each state may still confer them upon an alien, or any one it thinks proper, or upon any class or description of persons; yet he would not be a citizen in the sense in which that word is used in the constitution of the United States, nor entitled to sue as such in one of its courts, nor to the privileges and immunities of a citizen in the other states. The rights which he would acquire would be restricted to the state which gave



them. The constitution has conferred on congress the right to establish a uniform rule of naturalization, and this right is evidently exclusive, and has always been held by this court to be so. Consequently, no state, since the adoption of the constitution, can by naturalizing an alien invest him with the rights and privileges secured to a citizen of a state under the federal government, although, so far as the state alone was concerned, he would undoubtedly be entitled to the rights of a citizen, and clothed with all the rights and immunities which the constitution and laws of the state attached to that character."

"Plainly, the distinction between citizenship of the United States and citizenship of a state, thus pointed out, involved then, as now, the complete rights of the citizen internationally as contradistinguished from those of persons not citizens of the United States."

"The jurist and statesmen referred to in the majority opinion, notably Senators Trumbull and Reverdy Johnson, concurred in that view, Senator Trumbull saying: "What do we mean by `subject to the jurisdiction of the United States'? Not owing allegiance to anybody else; that is what it means." And Senator Johnson: "Now, all that this amendment provides is that all persons born within the United States, and not subject to some foreign power (for that, no doubt, is the meaning of the committee who have brought the matter before us), shall be considered as citizens of the United States." Cong. Globe, 1st Sess. 80th Cong. 2803 et seq."

"This was distinctly so ruled in *Elk v. Wilkins*, 112 U.S. 101, 5 Sup.Ct. 41; and no reason is perceived why the words were used if they apply only to that obedience which all persons not possessing immunity therefrom must pay the laws of the country in which they happen to be.

"Dr. Wharton says that the words "subject to the jurisdiction" must be construed in the sense which international law attributes to them, but that the children of our citizens born abroad, and of foreigners born in the United States, have the right, on arriving at full age, to elect one allegiance, and repudiate the other. Whart. Conti. Laws, §§10-12.

"The constitution and statutes do not contemplate double allegiance, and how can such election be determined?"

"The fourteenth amendment came before the court in the *Slaughter-House Cases*, 16 Wall. 36, 73, at December term, 1872,--the cases having been brought up by writ of error in May, 1870 (10 Wall. 273); and it was held that the first clause was intended to define citizenship of the United States and citizenship of a state, which definitions recognized the distinction between the one and the other; that the privileges and immunities of citizens of the states embrace generally those fundamental civil rights for the security of which organized society was instituted, and which remain, with certain exceptions mentioned in the federal constitution, under the care of the state governments; while the privileges and immunities of citizens of the United States are those which arise out of the nature and essential character of the national government, the provisions of its constitution, or its laws and treaties made in pursuance thereof; and that it is the latter which are placed under the protection of congress by the second clause.

"And Mr. Justice Miller, delivering the opinion of the court, in analyzing the first clause, observed that "the phrase `subject to the jurisdiction thereof' was intended to exclude from its operation children of ministers, consuls, and citizens or subjects of foreign states, born within the United States."

"That eminent judge did not have in mind the distinction between persons charged with diplomatic functions and those who were not..."

""This section [in *Elk v. Wilkins*] contemplates two sources of citizenship, and two sources only,--birth and naturalization. The persons declared to be citizens are `all persons born or naturalized in the United States, and subject to the jurisdiction thereof.' The evident meaning of these last words is, not merely subject to some respect or degree to the jurisdiction of the United States, but completely subject to their political jurisdiction, and owing them direct and immediate allegiance. And the words relate to the time of birth in the one case, as they do to the time of naturalization in the other. Persons not thus subject to the jurisdiction of the United States at the time of birth cannot become so afterwards, except by being naturalized, either individually, as by proceedings under the naturalization acts, or collectively, as by the force of a treaty by which foreign territory is acquired."

"To be "completely subject" to the political jurisdiction of the United States is to be in no respect or degree subject to the political jurisdiction of any other government.""

""Born in the United States, and subject to the jurisdiction thereof," and "naturalized in the United States, and subject to the jurisdiction thereof," mean born or naturalized under such circumstances as to be completely subject to that jurisdiction,--that is, as completely as citizens of the United States, who are, of course, not subject to any foreign power, and can of right claim the exercise of the power of the United States on their behalf wherever they may be."

[*United States v. Wong Kim Ark*, 169 U.S. 649, 18 S.Ct. 456, 42 L.Ed. 890 (1898)]

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### **3A American Jurisprudence 2d, Aliens and Citizens, §1411**

#### **"What is "citizenship" for purposes of Fourteenth Amendment**

"The word "citizen" as used in the Fourteenth Amendment is used in a political sense to designate one who has the



rights and privileges of a citizen of a state or of the United States and does not mean the same thing as a resident, inhabitant, or person.

"The "privileges and immunities" which are protected by §1 of the Fourteenth Amendment' are ones which arise out of the United States citizenship, including those which arise out of the nature and essential character of the national government and are granted or secured by the Constitution or by the laws and treaties made in pursuance thereto, but not those that spring from other sources.

"The due process and equal protection clauses of the Fourteenth Amendment do not add anything to the rights of one citizen as against another, but simply furnish an additional guaranty against any encroachment by the state upon the fundamental rights which belong to every citizen as a member of society." [Footnotes omitted.]  
[3A American Jurisprudence 2d, Aliens and Citizens, §1411]

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### **3A American Jurisprudence 2d, Aliens and Citizens, §1417**

#### **"What is a "residence"**

"For purposes of the INA, the term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.  
[3A American Jurisprudence 2d, Aliens and Citizens, §1417]

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### **3A American Jurisprudence 2d, Aliens and Citizens, §1418**

#### **"What is included in the "United States" and its "outlying possessions"**

"For purposes of the INA, the term "United States," except as otherwise specifically provided, when used in a geographical sense, means the Continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States. The term "outlying possessions of the United States" means American Samoa and Swains Island."  
[Footnotes omitted.]  
[3A American Jurisprudence 2d, Aliens and Citizens, §1418]

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### **3A American Jurisprudence 2d, Aliens and Citizens, §1419**

#### **"Doctrine of jus soli**

"Both the Fourteenth Amendment to the United States Constitution and 8 U.S.C.S. §1401(a) provide that persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States. These provisions are declaratory of the pre-existing common-law principle of jus soli, under which a person's nationality is determined by his place of birth, and which was the law of the United States even prior to the adoption of the Fourteenth Amendment"  
[3A American Jurisprudence 2d, Aliens and Citizens, §1419]

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### **3A American Jurisprudence 2d, Aliens and Citizens, §1420**

--Who is born in United States and subject to United States jurisdiction

"A person is born subject to the jurisdiction of the United States, for purposes of acquiring citizenship at birth, if his birth occurs in territory over which the United States is sovereign...."  
[3A American Jurisprudence 2d, Aliens and Citizens, §1420]

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### **3A American Jurisprudence 2d, Aliens and Citizens, §1426**

#### **"Persons born in Hawaii; former citizens of Republic of Hawaii**

"A person born in Hawaii on or after August 12, 1898, and before April 30, 1900, is a citizen of the United States as of April 30, 1900. A person born in Hawaii on or after April 30, 1900 is a citizen of the United States at birth, and a person who was a citizen of the Republic of Hawaii on August 12, 1898, is a citizen of the United States as of April 30, 1900. **Whether a person was a citizen of the Republic of Hawaii on August 12, 1898, is determined under Hawaiian law as it existed on that date.**" [Bold added.]  
[3A American Jurisprudence 2d, Aliens and Citizens, §1426]

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### **3A American Jurisprudence 2d, Aliens and Citizens, §1430**

#### **"Doctrine of jus sanguinis**

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"United States nationality may be predicated on the doctrine of jus sanguinis, under which the nationality of the child depends on the nationality of the parents, and which was recognized in the first United States nationality act."  
[3A American Jurisprudence 2d, Aliens and Citizens, §1430]

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### **3A American Jurisprudence 2d, Miens and Citizens §1437**

#### **"--Deadline for child to establish residence**

"Under the retention requirements of the Nationality Act of 1940, a child could satisfy its requirement that he take up residence in the United States "by the time he reaches the age of 16 years" by arriving in the United States on his 16th birthday."  
[3A American Jurisprudence 2d, Aliens and Citizens, §1437]

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### **Maxwell v. Dow (Feb. 26, 1900)**

"He then referred to the case of *Corfeld v. Coryell*, decided by Mr. Justice Washington in the circuit court for the district of Pennsylvania, in 1823 (4 Wash. C. C. 371, Fed.Cas. No. 3,230), where the question of the meaning of this clause in the Constitution was raised. Answering the question, what were the privileges' and immunities of citizens of the several states, Mr. Justice Washington said in that case:

""We feel no hesitation in confining these expressions to those privileges and immunities which are in their nature *fundamental*; which belong of right to the citizens of all free governments, and which have at all times been enjoyed by the citizens of the several states which compose this Union from the time of their becoming free, independent, and sovereign.""

"It seems to me [dissenting opinion by Mr. Justice Harlan] that the privileges and immunities enumerated in these Amendments belong to every citizen of the United States. They were universally so regarded prior to the adoption of the Fourteenth Amendment."

"When our more immediate ancestors removed to America, they brought this great privilege with them [trial by jury], as their birthright and inheritance, as a part of that admirable common law which had fenced around and interposed barriers on every side against the approaches of arbitrary power."

"Liberty, it has been well said, depends, not so much upon the absence of actual oppression, as on the existence of constitutional checks upon the power to oppress. These checks should not be destroyed or impaired by judicial decisions. On the contrary, speaking by Mr. Justice Bradley, we have declared in *Boyd v. United States*, 116, U.S. 616, 636, 29 L.Ed. 746, 753, 6 Sup.Ct.Rep. 524, 535, that "it is the duty of courts to be watchful for the constitutional rights of the citizen.""  
[Maxwell v. Dow, 176 U.S. 581; 20 S.Ct. 448 (1900)]

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### **Ruhrat v. People (Apr. 17, 1900)**

"The constitutional right of every citizen to choose his occupation includes the right to advertise it in a legitimate way, and Act April 22, 1899, prohibiting the use of the national flag for such purpose, unduly interferes with personal liberty, unless thereby the public health, safety, welfare, or comfort is conserved."

"Act April 22, 1899, prohibiting the use of the national flag or emblem for commercial purposes or as an advertising medium, and imposing a penalty for its violation, does not tend to promote the health, safety, welfare, or comfort of society, so as to be a proper exercise of the police power."

"The right to use or display the national flag is a privilege of a citizen of the United States, and Act April 22, 1899, prohibiting its use for advertising purposes, thereby abridges the privileges and immunities of a citizen of the United States guaranteed by the fourteenth amendment to the federal constitution."

"Act April 22, 1899, prohibiting the use of the national flag for commercial purposes or as an advertising medium, and excepting from its provisions those engaged in public or private exhibitions of art, is unconstitutional, as unduly discriminating in favor of a class."

"The flag is used, in the prosecution of commerce upon the high seas, as a symbol of nationality. The nationality of a ship is determined by the flag which it carries. A ship, navigating under the flag and pass of a foreign country, is to be considered as bearing the national character of the country under whose flag she sails. Under what is called in international law "the law of the flag," a shipowner who sends his vessel into a foreign port gives notice by his flag to all who enter into contracts with the shipmaster that he intends the law of that flag to regulate those contracts, and that they must either submit to its operation or not contract with him or his agent at all."

"Presumably, the national flag was adopted for the use of the citizens of the United States. **There is a difference between the privileges and immunities belonging to the citizens of the United States as such, and those belonging to**

**the citizens of each state as such.** The privileges and immunities of citizens of the United States are those which arise out of the nature and essential character of the national government, the provisions of the constitution, or its laws and treaties made in pursuance thereof; and it is these rights which are placed under the protection of congress by the fourteenth amendment. *People v. Loeffler*, 175 Ill. 585, 51 N.E. 785; *Slaughter-House Cases*, 16 Wall. 36, 21 L.Ed. 394. The right to use or display the flag would seem to be a privilege of a citizen of the United States, rather than the privilege of a citizen of any one of the states."

"The use of the flag of the United States, as embodied in advertising sheets and placards and labels, and in common-trademarks, has received the unqualified approval of the whole commercial world. It has also received the sanction of those having in charge the execution of the trade-mark laws of the United States. The usage and practice of employing a flag for commercial purposes have been indulged in by citizens of the United States with the knowledge of the national government. The absence of congressional prohibition against the usage and practice thus indulged in with the knowledge of the general government has created a "privilege" in the citizen of the United States to continue such use until withdrawn by the competent authority. An act of legislation, passed by a particular state, which deprives the citizen of such privilege, contravenes that clause of the amendment to the national constitution which forbids any state to abridge the privileges and immunities of a citizen of the United States. If the state legislature can restrict the use of the national flag, and permit its use for one purpose and prohibit its use for another purpose, it would have the right to prohibit its use of the national flag altogether. It necessarily follows that it has no authority to prohibit its use for certain purposes. We are of the opinion that this law is unconstitutional, not only as infringing upon the personal liberty guaranteed to the citizen by both the federal and state constitutions, but also as depriving a citizen of the United States of the right of exercising a privilege impliedly, if not expressly, granted to him by the federal constitution." [Bold added.]  
[*Ruhstrat v. People*, 57 N.E. 41 (1900)]

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**Wadleigh v. Newhall (Mar. 13, 1905)**

"The rights, privileges, and immunities which the fourteenth constitutional amendment and Rev.St. §1979 [U.S. Comp. St. 1901, p. 1262], for its enforcement, were designed to protect, are such as belong to citizens of the United States as such, and not as citizens of a state. [Ed. Note.--For cases in point, see vol. 10, Cent. Dig. Constitutional Law, §625.]"

"Parents have no right to the custody of their infant children, except subject to the paramount right of the state, to be exercised whenever deemed for the best interest of the children. [E. Note.--For cases in point, see vol. 37, Cent. Dig. Parent and Child, §4.]"

"The rights, privileges, and immunities which the fourteenth amendment to the Constitution of the United States guaranties, and which this section of the Revised Statutes was designed to protect, were the rights, privileges, and immunities which belong to citizens of the United States as such, but not the rights, privileges, and immunities which belong to the citizens of the state. There are privileges and immunities belonging to citizens of the United States in that relation and character, and it is these, and these alone, that a state is forbidden to abridge. *Bradwell v. The State*, 16 Wall. 130-138, 139, 21 L.Ed. 442." [Brackets original.]  
[*Wadleigh v. Newhall*, 136 F. 941 (1905)]

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**Gardina v. Board of Registrars of Jefferson County (Feb. 2, 1909)**

"There are, then, under our republican form of government, two classes of citizens, one of the United States and one of the state. One class of citizenship may exist in a person, without the other, as in the case of a resident of the District of Columbia; but both classes usually exist in the same person. The federal Constitution, by this amendment, has undertaken to say who shall be citizens both of the states and the United States. Prior to this amendment, the states could probably have determined, respectively, who were citizens of each, though naturalization has been exclusively a national subject, rather than a state, since the federal Constitution was first adopted."

[*Gardina v. Board of Registrars of Jefferson County*, 160 Ala. 155, 48 So. 788 (1909)]

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**Steele v. Halligan (Feb. 7, 1916)**

"As cession of jurisdiction by a state to the United States over land for a United States penitentiary was for the benefit of the state and the nation, it will be presumed that the government made a record of the land acquired by it in the land records of the state, as required by the law of the state authorizing it to acquire such land."

"The federal jurisdiction resulting from the cession by a state of jurisdiction over land acquired by the government, under Const. art. 1, §8, subset. 17, is exclusive of state authority and completely ousts the state's jurisdiction; a provision in the act of cession as to service of process, not retaining a concurrent jurisdiction, but merely being intended to prevent the

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lands becoming a sanctuary for fugitives from justice."

"The cession by a state of jurisdiction over land acquired by the United States for governmental purposes includes judicial as well as legislative jurisdiction."

"The municipal law of a state regulating civil rights, which is continued in effect after the cession of land by the state to the United States, is the law in effect at the time of the cession."

[Steele v. Halligan, 229 F. 1011 (1916)]

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**United States ex rel. Sejnensky v. Tod (Nov. 14, 1922)**

"The immigration laws refer to persons owing allegiance to a foreign government, and do not apply to citizens owing permanent allegiance to this country."

"Congress may forbid aliens or classes of aliens from coming into the United States, and may provide for their expulsion, but it cannot exclude therefrom any citizen, unless he is convicted of a criminal offense, or is a fugitive from the justice of some foreign state, which demands his extradition."

[United States ex rel. Sejnensky v. Tod, 285 F. 523 (1922)]

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**Tashiro v. Jordan (May 20, 1927)**

"That there is a citizenship of the United States and a citizenship of a state, and the privileges and immunities of one are not the same as the other is well established by the decisions of the courts of this country."

[Tashiro v. Jordan, 201 Cal. 236 (1927)]

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**Weedin v. Chin Bow (June 6, 1927)**

"Under statute, child born outside United States is not **entitled** to citizenship unless father has resided in United States before its birth." [Bold added.]

[Weedin v. Chin Bow, 274 U.S. 657, 47 S.Ct. 772 (1927)]

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**Jordan v. Tashiro (Nov. 19, 1928)**

"When a treaty fairly admits of two constructions, one restricting the rights that may be claimed under it and the other enlarging them, the more liberal construction is to be preferred."

"The principles which should control the diplomatic relations of nations, and the good faith of treaties as well, require that their obligations should be liberally construed so as to effect the apparent intention of the parties to secure equality and reciprocity between them. Upon like ground, where a treaty fairly admits of two constructions, one restricting the rights that may be claimed under it and the other enlarging them, the more liberal construction is to be preferred." [Cites omitted.]

[Jordan v. Tashiro, 278 U.S. 214 (1928)]

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**Colgate v. Harvey (Dec. 16, 1935)**

"Section 2 of article 4 of the Constitution contains the provision, 'The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.' The Fourteenth Amendment, section 1, provides: '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. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.'"

"Thus, the dual character of our citizenship is made plainly apparent. That is to say, a citizen of the United States is ipso facto and at the same time a citizen of the state in which he resides. And while the Fourteenth Amendment does not create a national citizenship, it has the effect of making that citizenship "paramount and dominant" instead of "derivative and dependent" upon state citizenship."

"The result is that whatever latitude may be thought to exist in respect of state power under the Fourth Article, a state cannot, under the Fourteenth Amendment, abridge the privileges of a citizen of the United States, albeit he is at the same time a resident of the state which undertakes to do so."

.. speaking of the privileges and immunities provision of the Fourth Article, it was said: "The protection designed by that clause, as has been repeatedly held, has no application to a citizen of the State whose laws are complained of. If the plaintiff was a citizen of the State of Illinois, that provision of the Constitution gave her no protection against its courts or its legislation."

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"The governments of the United States and of each of the several states are distinct from one another. The rights of a citizen under one may be quite different from those which he has under the other. To each he owes an allegiance and, in turn, he is entitled to the protection of each in respect of such rights as fall within its jurisdiction. *United States v. Cruikshank*, 92 U.S. 542, 549, 23 L.Ed. 588."

"Among those privileges, however, undoubtedly is the right to pass freely from one state to another. And that privilege, obviously, is as immune from abridgment by the state from which the citizen departs as it is from abridgment by the state which he seeks to enter." [Cites omitted.]

"The imposition by one state of a discriminating tax upon a citizen resident in another state for trading in the territory of the former has been held invalid. And, of course, conversely, a tax of that description is likewise void if imposed by one state upon a resident citizen of the United States for trading or doing business in the territory of another state."

"The purpose of the pertinent clause in the Fourth Article was to require each state to accord equality of treatment to the citizens of other states in respect of the privileges and immunities of state citizenship. It has always been so interpreted."

"... the words "liberty" and "privilege" were interchangeable terms."

"... when a citizen of the United States residing in Vermont goes into New Hampshire, he does not enter foreign territory, but passes from one field into another field of the same national domain. When he trades, buys, or sells, contracts or negotiates across the state line, when he loans money, or takes out insurance in New Hampshire, whether in doing so he remains in Vermont or not, he exercises rights of national citizenship which the law of neither state can abridge without coming into conflict with the supreme authority of the Federal Constitution."

[*Colgate v. Harvey*, 296 U.S. 404, 56 S.Ct. 252 (1935). [Overruled by *Madden v. Kentucky*]]

### **Baker v. Keck (Feb. 3, 1936)**

"One may change his citizenship for purpose of enabling himself to maintain suit in federal court, but change must be actual legal change made with intention of bringing about actual citizenship in state to which removal is made."

"Citizenship" and "domicile" are substantially synonymous, but citizenship implies more than "residence" and carries with it the idea of identification with state and participation in its functions."

"Registration as a voter is evidence of domicile or citizenship, though not conclusive."

"Citizenship and domicile are substantially synonymous. Residency and inhabitation are too often confused with the terms and have not the same significance. Citizenship implies more than residence. It carries with it the idea of identification with the state and a participation in its functions. As a citizen, one sustains social, political, and moral obligation to the state and possesses social and political rights under the Constitution and laws thereof. *Harding v. Standard Oil Co. et al.* (C.C.) 182 F. 421; *Baldwin v. Franks*, 120 U.S. 678, 7 S.Ct. 763, 32 L.Ed. 766; *Scott v. Sandford*, 19 How. 393, 476, 15 L.Ed. 691."

"The registration of a man as a voter and the assessment of a poll tax against him are likewise strong evidence of domicile or citizenship, though not conclusive."

[*Baker v. Keck*, 13 F.Supp. 486 (1936)]

### **Valentine v. United States (Nov. 9, 1936)**

"Citizen" as used in treaty with France providing for mutually delivering up persons charged with specified offenses and that neither of contracting parties shall be bound to deliver up their own "citizens" held not included within term "persons," as used in treaty, who could be delivered up, notwithstanding exception was contained in separate article (Treaty with France Jan. 6, 1909, arts. 1, 5, 37 Stat. 1527, 1530)."

[*Valentine v. United States*, 299 U.S. 100 (1936)]

### **Madden v. Kentucky (Jan. 29, 1940)**

"This position is that the privileges and immunities clause protects all citizens against abridgment by states of rights of national citizenship as distinct from the **fundamental or natural rights inherent in state citizenship**. This court declared in the Slaughter-House cases that the Fourteenth Amendment as well as the Thirteenth and Fifteenth were adopted to protect the negroes in their freedom? This almost contemporaneous interpretation extended the benefits of the privileges and immunities clause to other rights which are inherent in national citizenship but denied it to those which spring from state citizenship." (pp. 90-91, 594.) [Bold added.]

"The Court has consistently refused to list completely the rights which are covered by the clause, though it has pointed out the type of rights protected. We think it quite clear that the right to carry out an incident to a trade, business or calling

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such as the deposit of money in banks is not a privilege of national citizenship." (pp. 92-93, 595.)  
 [Madden v. Kentucky, 309 U.S. 83; 84 L.Ed. 590 (1940)]

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**In re Jones (Apr. 21, 1941)**

""Reside" and "residence" are terms having a statutory meaning dependent on the context and purpose of the statute in which they occur."

[In re Jones, 19 A.2d. 280 (1941)]

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**Skiriotes v. State of Florida (April 28, 1941)**

"Aside from question of extent of control which the United States may exert in interest of self-protection over waters near its borders, although beyond its territorial limits, the United States is not debarred by any rule of international law from governing the conduct of its own citizens upon the high seas or even in foreign countries when the rights of other nations or their nationals are not infringed, and with respect to such exercise of authority, there is no question of international law but solely of purport of municipal law which establishes the duty of citizen in relation to his own government."

"Save for powers committed by the constitution to the Union, the state of Florida has retained status of a "sovereign" since it was admitted to the Union on equal footing with the original states in all respects."

"The power given to Congress by the constitution to admit new states relates only to such states as are equal to each other in power, dignity and authority, and each competent to exert that residuum of sovereignty not delegated to the United States by the constitution itself."

"When its action does not conflict with federal legislation, the sovereign authority of a state over conduct of its citizens upon the high seas is analogous to the sovereign authority of the United States over its citizens in like circumstances."

[Skiriotes v. State of Florida, 313 U.S. 69, 61 S.Ct. 924 (1941)]

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**McGarry v. City of Bethlehem (May 15, 1942)**

"A Pennsylvania third-class city situated in two counties in Eastern district of Pennsylvania was a "citizen" of Pennsylvania, and could be sued in Federal District Court in such district by a plaintiff whose status was such as to establish diversity of citizenship,..."

"In determining jurisdiction of action by citizen of District of Columbia against citizen of Pennsylvania, an allegation that plaintiff resided and was domiciled in District of Columbia was sufficient averment of "citizenship" in the District." .. hence a citizen of the District is not "citizen of a state"....

""To support the jurisdiction," said the Chief Justice [Marshall in Hepburn and Dundas v. Ellzey, 1805, 2 Cranch. 445, 452, 2 L.Ed. 332], "it must appear that Columbia is a state." And after examining the Federal Constitution to determine the meaning of the words used in this connection, he added: "The result of that examination is a conviction that the members of the American confederacy only are the states contemplated in the constitution."

.. that the plaintiff as a citizen of the District of Columbia is not a citizen of the state within the meaning of the Constitutional provision for suits between citizens of different states; and that, therefore, this court is without jurisdiction to entertain the plaintiff's action."

[McGarry v. City of Bethlehem, 45 F.Supp. 385 (1942)]

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**Jeffcott v. Donovan (July 26, 1943)**

""Citizens" and "residents" are not synonymous, since a resident of one state may be a citizen of any other state, and in some cases, as for example jurisdiction of Federal District Courts, the distinction is important."

"Diversity of citizenship as a basis for the jurisdiction of a cause in the District Court of the United States is not dependent upon the residence of any of the parties, but upon their citizenship. 28 U.S.C.A. §41, Subdivision (1), Judicial Code, §24, amended. Bouvier (Baldwin's Students Ed. 1934) says, "Citizen and resident (q.v.) are not synonymous, and in some cases the distinction is important." It might well be that a resident of any one state in point of fact may be a citizen of that or any other state." [Cites omitted.]

[Jeffcott v. Donovan, 135 F.2d. 213 (1943)]

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**California Government Code, §240**

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"The people, as a political body, consist of:

"(a) Citizens who are electors.

"(b) Citizens not electors."

[California Government Code, §240]

#### **California Government Code, §241**

"The citizens of the State are:

"(a) All persons born in the State and residing within it, except the children of transient aliens and of alien public ministers and consuls.

"(b) All persons born out of the State who are citizens of the United States and residing within the State."

[California Government Code, §241]

#### **California Government Code, §242**

"Persons in the State not its citizens are either:

"(a) Citizens of other States; or

"(b) "Aiens."

[California Government Code, §242]

#### **California Government Code, §243**

"Every person has, in law, a residence."

[California Government Code, §243]

#### **Glaeser v. Acacia Mut. Life Ass'n (June 6, 1944)**

"A citizen of the District of Columbia is not a "citizen of a state" within constitutional provision extending judicial power to controversies between citizens of different states."

"Congress, in exercise of its power to legislate as to all matters concerning status and welfare of citizens of District of Columbia, may properly extend to such citizens privilege to have adjudicated in federal courts controversies with citizens of states or territories."

"The amendment to Judicial Code, extending jurisdiction of District Courts to actions between citizens of the District of Columbia and any state or territory, is constitutional, and authorizes District Court in California to take jurisdiction over an action by a citizen of California against a citizen of the District of Columbia on ground of diversity of citizenship."

"It is true that a citizen of the District of Columbia is not a citizen of a state within the meaning of Article III, Section 2, of the Constitution."

.. Chief Justice Marshall in *Hepburn v. Ellzey*, 2 Cranch 445, at 453, 2 L.Ed. 332,...stated: "It is true that as citizens of the United States, and of that particular district which is subject to the jurisdiction of congress, it is extraordinary that the courts of the United States, which are open to aliens, and to the citizens of every state in the union, should be closed upon them.--But *this is a subject for legislative not for judicial consideration.*" (Emphasis supplied.)"

[*Glaeser v. Acacia Mut. Life Ass'n*, 55 F.Supp. 925 (1944)]

#### **Toomer v. Witsell (June 7, 1948)**

"Nonresidents upon whom onerous requirements are laid as a condition of obtaining licenses to operate shrimp boats in state coastal waters may seek, on the ground of irreparable injury," to enjoin as unconstitutional the enforcement of the statutes imposing such requirements, where compliance would necessitate the payment of large sums of money for which no means of recovery are provided, while defiance carries with it the risk of heavy fines and long imprisonment, and withdrawal from further fishing until the question of constitutionality can be judicially determined will result in a substantial loss of business for which no compensation may be obtained."

"The primary purpose of the provision of Art. 4, §2 of the Constitution that the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states is to help fuse into one nation a collection of independent sovereign states."

"The privilege of doing business in a state on terms of substantial equality with its citizens is among those protected by the provision of Art. 4, §2 of the Constitution that the citizens of each state shall be entitled to all privileges and

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immunities of citizens in the several states."

"The provision of Art. 4, §2, of the Constitution that the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states, while barring discrimination against citizens of other states where there is no substantial reason for the discrimination, does not preclude disparity of treatment where there are perfectly valid independent reasons for it. The inquiry in each case must be concerned with whether such reasons do exist and whether the decree of discrimination bears a close relation to them, and must be conducted with due regard for the principle that the state should have considerable leeway in analyzing local evils and in prescribing appropriate cures."

"A state statute which imposes on nonresidents as such a much greater license fee than is required of residents is not, by reason of the fact that it is couched in terms of residence, outside the scope of the privileges and immunities clause of the Constitution which speaks of "citizens." (Dictum.)"

"The purpose of the constitutional provision that the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states is to outlaw classifications based on the fact of noncitizenship unless there is something to indicate that noncitizens constitute a peculiar source of the evil at which the statute is aimed."

"The privileges and immunities clause of Art. 4, §2 of the Constitution must be put in its proper perspective in the constitutional framework. [Per Frankfurter and Jackson, JJ.]"

"The privileges and immunities clause of Art. 4, §2, of the Constitution is no restriction upon the power of a state to restrict a local food supply to the feeding of its own people. [Per Frankfurter and Jackson, JJ.] [Brackets original.]"

"Article 4, §2, so far as relevant, reads as follows:

""The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

"The primary purpose of this clause, like the clauses between which it is located--those relating to full faith and credit and to interstate extradition of fugitives from justice--was to help fuse into one Nation a collection of independent, sovereign States. It was designed to insure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy. For protection of such equality the citizen of State A was not to be restricted to the uncertain remedies afforded by diplomatic processes and official retaliation. "Indeed, without some provision of the kind removing from the citizens of each State the disabilities of alienage in the other States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists." *Paul v. Virginia*, 8 Wall (U.S.) 168, 180, 19 L.Ed. 357, 360 (1868).

"In line with this underlying purpose, it was long ago decided that one of the privileges which the clause guarantees to citizens of the State A is that of doing business in State B on terms of substantial equality with the citizens of that State.

"Like many other constitutional provisions, the privileges and immunities clause is not an absolute. It does bar discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States. But it does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it. Thus the inquiry in each case must be concerned with whether such reasons do exist and whether the degree of discrimination bears a close relation to them. The inquiry must also, of course, be conducted with due regard for the principle that the States should have considerable leeway in analyzing local evils and in prescribing appropriate cures."

"While *United States v. California*, 332 U.S. 19, 91 L.Ed. 1889, 67 S.Ct. 1658 (1947), as indicated above, does not preclude all State regulation of activity in the marginal sea, the case does hold that neither the thirteen original colonies nor their successor States separately acquired "ownership" of the three-mile belt."

"Like other provisions of the Constitution, the Clause whereby "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States" must be read in conjunction with the Tenth Amendment to the Constitution.' This clause presupposes the continued retention by the States of powers that historically belonged to the States, and were not explicitly given to the central government or withdrawn from the States. I think it is fair to summarize the decisions which have applied to Art 4, §2, by saying that they bar a State from penalizing the citizens of other States by subjecting them to heavier taxation merely because they are such citizens or by discriminating against citizens of other States in the pursuit of ordinary livelihoods in competition with local citizens. It is not conceivable that the framers of the Constitution meant to obliterate all special relations between a State and its citizens. This Clause does not touch the right of a State to conserve or utilize its resources on behalf of its own citizens, provided it uses these resources within the State and does not attempt a control of the resources as part of a regulation of commerce between the States. A State may care for its own in utilizing the bounties of nature within her borders because it has technical ownership of such bounties or, when ownership is in no one, because the State may for the common good exercise all the authority that technical ownership ordinarily confers."

"When the Constitution was adopted, such, no doubt, was the common understanding regarding the power of States over their fisheries, and it is this common understanding that was reflected in *McCready v. Virginia*, 94 U.S. 391, 24 L.Ed. 248. The *McCready* Case is not an isolated decision to be looked at askance. It is the symbol of one of the weightiest doctrines in our law. It expressed the momentum of legal history that preceded it, and around it in turn has clustered a voluminous body of rulings. Not only has a host of State cases applied the *McCready* doctrine as to the power of States to

control their game and fisheries for the benefit of their own citizens, but in our own day this Court formulated the amplitude of the McCready doctrine by referring to "the regulation or distribution of the public domain, or of the common property or resources of the people of the State, the enjoyment of which may be limited to its citizens as against both aliens and the citizens of other States." *Truax v. Raich*, 239 U.S. 33, 39, 40, 60 L.Ed. 131, 134, 135, 36 S.Ct. 7, LRA1916D 545, Ann Cas 1917B 283.

"But a State cannot project its powers over its own resources by seeking to control the channels of commerce among the States."

[*Toomer v. Witsell*, 334 U.S. 385; 68 S.Ct. 1156, 92 L.Ed. 1460 (1948)]

### **18 U.S.C. §1423**

"Whoever knowingly uses for any purpose any order, certificate, certificate of naturalization, certificate of citizenship, judgment, decree, or exemplification, unlawfully issued or made, or copies or duplicates thereof, showing any person to be naturalized or admitted to be a citizen, shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

[18 U.S.C. §1423]

### **Alla v. Kornfeld (June 8, 1949)**

"There is a distinction between citizenship of the United States and citizenship of a particular state, and a person may be the former without being the latter."

"To be a "citizen" of a state so as to sue or be sued in courts of the United States, person must have a domicile in such state. 28 U.S.C.A. §1332."

"If a person establishes a domicile in a foreign country, he loses his state citizenship but not necessarily his United States citizenship."

"Where plaintiff was a citizen of Brazil and defendant was registered with Department of State as a citizen of the United States but had lived in Mexico continuously for 13 years, Federal Court was without jurisdiction of action as between parties, since action was not a controversy between citizens of different states nor between citizens of a state and citizen of a foreign state. 28 U.S.C.A. §1332.

"There is a recognized distinction between citizenship of the United States and citizenship of a particular State, and a person may be the former without being the latter. *Slaughter-House Cases*, 16 Wall. 36, 21 L.Ed. 394. In order to constitute a person a citizen of a State, so as to sue or be sued in the courts of the United States, that person must have domicile in such State. If a person establishes domicile in a foreign country, he loses his State citizenship but not necessarily his United States citizenship. He loses the latter only where he renounces or otherwise abandons or loses it. *Hammerstein v. Lyne*, 8 Cir., 200 F. 165. Here it would appear that Lillard has lost his State citizenship but not his United States citizenship. Hence, as between him and plaintiff, the present action cannot be said to be a controversy between citizens of different States, nor between a citizen of a State and a citizen of a foreign state. At first blush, this might be deemed an inequitable situation, but it must be remembered that, in his present status, Lillard is similarly precluded from maintaining an action in the federal courts. The following cases support the result achieved here. Although, under the present Judicial Code, a resident of the District of Columbia may sue and be sued in the federal courts,...."

"... it is well settled that a citizen of the District of Columbia is not a citizen of a state within the meaning of the judiciary act and the subsequent acts conferring jurisdiction upon the circuit courts of the United States, and the jurisdiction of this court does not extend to a controversy between an alien and a citizen of the United States who is not a citizen of a state."

"As has been said, citizens of the District of Columbia were not granted the privilege of litigating in the federal courts on the ground of diversity of citizenship. Possibly no better reason for this fact exists than such citizens were not thought of when the judiciary article of the federal Constitution was drafted. It is even more probable that citizens of the United States, occupying the very unusual status that Pannill does, were also not thought of; but in any event a citizen of the United States, who is not a citizen of any state, is not within the language of the Constitution." *D.C., Pannill v. Roanoke Times Co.*, 252 F. 910, 914."

[*Alla v. Kornfeld*, 84 F.Supp. 823 (1949)]

### **8 U.S.C. §1448**

"(a) A person who has petitioned for naturalization shall, in order to be and before being admitted to citizenship, take in open court an oath (1) to support the Constitution of the United States; (2) to renounce and abjure absolutely and

entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the petitioner was before a subject or citizen; (3) to support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic; (4) to bear true faith and allegiance to the same; and (5) (A) to bear arms on behalf of the United States when required by the law, or (B) to perform noncombatant service in the Armed Forces of the United States when required by the law, or (C) to perform work of national importance under civilian direction when required by the law."

[8 U.S.C. §1448]

#### **8 U.S.C. §1448, n 9**

"Citizenship applicant's refusal to take modified oath of allegiance without further qualifications is fatal to her petition for naturalization. Re Petition of De Bellis (1980, ED Pa) 493 F.Supp. 534."

[8 U.S.C. §1448, n 9]

#### **Tomoya Kawakita v. United States (June 22, 1951)**

"In order for a citizen of the U.S. to be relieved of duties of allegiance, consent of sovereign in accordance with the general statute covering the subject matter is required."

"Intent to adhere to the enemy is required in treason. U.S.C.A. Const. art. 3, §3."

"Expatriation is the voluntary renunciation or abandonment of nationality and allegiance." Perkins v. Elg, 1939, 307 U.S. 325, 59 S.Ct. 884, 83 L.Ed. 1320. In order to be relieved of the duties of allegiance, consent of the sovereign is required. Mackenzie v. Hare, 1915, 239 U.S. 299, 36 S.Ct. 106, 60 L.Ed. 297. Congress has provided that the right of expatriation is a natural and inherent right of all people, and has further made a legislative declaration as to what acts shall amount to an exercise of such right. The enumerated methods set out in the chapter are expressly made the sole means of expatriation."

.. municipal law determines how citizenship may be acquired...."

"The renunciations not being given as a result of free and intelligent choice, but rather because of mental fear, intimidation and coercion, they were held void and of no effect."

"Voting in a Japanese election, and service in the Japanese army, acts falling within paragraphs (c) and (e) of Section 401 of the Nationality Act of 1940, have been held not to expatriate where the acts were done under duress."

"He was informed that he could secure no employment unless he recovered his Japanese nationality."

[Tomoya Kawakita v. United States, 190 F.2d. 506 (1951)]

#### **Kitchens v. Steele (May 12, 1953)**

"A citizen of the United States is a citizen of the federal government and of the state in which he resided, and one possessing such double citizenship owes allegiance' and is entitled to protection from each sovereign to whose jurisdiction he is subject."

"No fortifying authority is necessary to sustain the proposition that in the United States a double citizenship exists. A citizen of the United States is a citizen of the Federal Government and at the same time a citizen of the State in which he resides. Determination of what is qualified residence within a State is not here necessary. Suffice it to say that one possessing such double citizenship owes allegiance and is entitled to protection from each sovereign to whose jurisdiction he is subject."

"Ever since the case of United States v. Worrall, 2 Dall. 384, 2 U.S. 384, 1 L.Ed. 426, it has been universally recognized that Federal Courts have no common law jurisdiction in criminal cases. The jurisdiction of such Courts is wholly derived from Acts of the Congress. Although the Constitution contains no grant, general or specific, to Congress of power to provide for the punishment of crimes, except piracies and felonies on the high seas, offenses against the law of nations, treason, and counterfeiting the securities and coin of the United States, no one doubts the power of Congress to "create, define, and punish crimes and offenses, whenever they shall deem it necessary and proper by law to do so, for effectuating the objects of the Government." [Cites omitted.]

[Kitchens v. Steele, 112 F.Supp. 383 (1953)]

#### **California Constitution (1879), Article 1, Sec. 17**

"Sec. 17. Foreigners, eligible to become citizens of the United States under the naturalization laws thereof, while bona

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fide residents of this State shall have the same rights in respect to the acquisition, possession, enjoyment, transmission, and inheritance of all property, other than real estate, as native born citizens; provided, that such aliens owning real estate at the time of the adoption of this amendment may remain such owners; and provided further, that the Legislature may, by statute, provide for the disposition of real estate which shall hereafter be acquired by such aliens by descent or devise."

[As amended November 2, 1954.]

[California Constitution (1879), Article 1, Section 17, Statutes of California 1954 and 1955]

### **The Federal Voting Assistance Act of 1955**

"Title I Recommendations of the Congress to the several states. Sec. 101. The Congress hereby expresses itself as favoring, and recommends that the several States take, immediate legislative or administrative action to enable every person in any of the following categories who is absent from the place of his voting residence to vote by absentee ballot in any primary, special, or general election held in his election district or precinct, if he is otherwise eligible to vote in that election: (1) Members of the Armed Forces while in the active service, and their spouses and dependents...."

[Statutes at Large, 84. 1 Session, Ch. 656--P.L. 296, Aug. 9, 1955, The Federal \_Voting Assistance Act of 1955]

### **Blair Holdings Corporation v. Rubinstein (July 19, 1955)**

"Presumption that person born a subject of Czar of Russia continued to be a citizen of U.S.S.R. yielded in face of proof that party left after Revolution without permission of Soviet authority, and thus forfeited citizenship under applicable Soviet statutes and that party had obtained a "Nansen" passport as a stateless person, had acquired Portuguese citizenship and had registered with Department of Justice as a stateless person."

[Blair Holdings Corporation v. Rubinstein, 133 F.Supp. 496 (1955)]

### **Rabang v. Boyd (May 27, 1957)**

"... Filipinos born in the Islands after 1899 were to " \* \* \* be citizens of the Philippine Islands and as such entitled to the protection of the United States \* \* \*." The Filipinos, as nationals, owed an obligation of permanent allegiance to this country."

"The Court of Appeals held that the petitioner lost his status as a national when the United States relinquished its sovereignty over the Islands on July 4, 1946, and that this occurred regardless of his residence in the continental United States on that date."

[Rabang v. Boyd, 353 U.S. 427; 77 S.Ct. 985 (1957)]

### **Reyes v. Penoci (Mar. 8, 1962)**

"A stateless person is not a "citizen" or "subject" of foreign state within meaning of diversity jurisdiction statute or statute controlling jurisdiction of Puerto Rico District Court."

"At the hearing on the motion to dismiss it was shown by the defendant and conceded by the plaintiff that the defendant is not a citizen or subject of any foreign state, nor a citizen of state different from that of the plaintiff, i.e., he is stateless."

"A stateless person, such as defendant Penoci has been conceded to be is not a citizen or subject of a foreign state either within the meaning of 28 U.S.C.A. §1332(a) (2), nor within the meaning of 48 U.S.C.A. §863."

[Reyes v. Penoci, 202 F.Supp. 436 (1962)]

### **Whittell v. Franchise Tax Board (Dec. 16, 1964)**

"Although domicile and residence are usually in the same physical location and often used synonymously, domicile properly denotes the one location with which for legal purposes a person is considered to have the most settled and permanent connection, where he intends to remain and to which, when absent, he intends to return but which the law may also assign to him constructively, whereas residence denotes any factual place of abode of some permanency, more than a temporary sojourn. A person can have in law only one domicile but he may have several residences for different purposes, including tax purposes."

"Residence is not a synonym for domicile and its meaning in particular statutes is subject to differing construction. Its statutory meaning depends on the context and the purpose of the statute in which it is used."

"The change in the definition of a resident for personal income tax purposes to a person who is in the state for other than a

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temporary or transitory purpose (Stats. 1937, ch. 668, §1, p. 1831), substantially as it reads today (Rev. & Tax. Code, §§17014-17016), was to insure that all those in the state for other than a temporary or transitory purpose enjoying the benefits and protection of the state should in return contribute to the support of the state. Under this definition, a person may be a resident for income tax purposes although domiciled elsewhere and vice versa."

.. therefore residence means bodily presence as a nontransient inhabitant rather than domicile, which requires both physical presence in a particular locality and an intent to make it the individual's one permanent abode."

[Whittell v. Franchise Tax Board, 231 C.A.2d. 278, 41 Cal.Rptr. 673 (1964)]

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**Crosse v. Board of Supervisors of Elections (July 21, 1966)**

"State has right to extend qualifications for state office to its citizens, even though they are not citizens of the United States."

"Both before and after the Fourteenth Amendment to the federal Constitution it has not been necessary for a person to be a citizen of the United States in order to be a citizen of his state. *United States v. Cruikshank*, 92 U.S. 542, 549 (1875); *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 73-74, 21 L.Ed. 394 (1873); and see *Short v. State*, 80 Md. 392, 401-402, 31 A. 322 (1895). See also *Spear*, *State Citizenship*, 16 Albany L.J. 24 (1877). Citizenship of the United States is defined by the Fourteenth Amendment and federal statutes, but the requirements for citizenship of a state generally depend not upon definition but the constitutional or statutory context in which the term is used. *Risewick v. Davis*, 19 Md. 82, 93 (1862); *Halaby v. Board of Directors of University of Cincinnati*, 162 Ohio.St. 290, 293, 123 N.E.2d. 3 (1954) and authorities therein cited."

[Crosse v. Board of Supervisors of Elections, 221 A.2d. 431 (1966)]

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**Jones v. Alfred H. Mayer Company (June 26, 1967)**

"Where federal District Court granted motion of defendants to dismiss complaint for failure to state a cause of action, facts were those well-pleaded in complaint, so far as appeal to Court of Appeals was concerned."

"The first section of the Fourteenth Amendment and its guaranties of privileges and immunities and equal protection are directed at and prohibitive of "state action," and enabling legislation, to extent that it is enacted in enforcement of Fourteenth Amendment's first section, is so to be directed and is so limited."

"It is not for Court of Appeals, as an inferior court, to give full expression to any personal inclination and to take the lead in expanding constitutional precepts when faced with limiting United States Supreme Court decision which remains good law."

"Civil rights statute providing that all citizens of United States shall have same right, in every state and territory, as enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property was reenacted under authority of the Fourteenth Amendment, and therefore right to purchase property may not be encroached by state action."

"One of purposes of Thirteenth and Fourteenth Amendments and civil rights statute providing that all citizens of United States shall have same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property was to give the Negro citizenship and right to own property and thus to acquire and dispose of it."

[Jones v. Alfred H. Mayer Company, 379 F.2d. 33 (1967)]

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**Afroyim v. Rusk (May 29, 1967)**

"The people are sovereign and the government cannot sever its relationship to a people by taking away their citizenship." p. 1660.

.. citizenship in Fourteenth Amendment' was desire to protect Negroes." p. 1660.

"Fourteenth Amendment was designed to, and does, protect every citizen against congressional forcible destruction of his citizenship, whatever his creed, color, or race." p. 1660.

"Citizen has constitutional right to remain a citizen in a free country unless he voluntarily relinquishes that citizenship." p. 1660.

"Allegiance" imports an obligation on the citizen or subject, the correlative right to which resides in the sovereign power: allegiance in this country is not due to Congress, but to the people, with whom the sovereign power is found...." p. 1664.

"Once acquired, this Fourteenth Amendment citizenship was not to be shifted, canceled, or diluted at the will of the Federal Government, the States, or any other governmental unit." p.1665.

"Cong. Globe, 40th Cong., 2d Sess., 1804 (1868) [said that to] ... "enforce expatriation or exile against a citizen without his

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consent is not a power anywhere belonging to this Government. No conservative-minded statesman, no intelligent legislator, **no sound lawyer** has ever maintained any such power in any branch of the Government.-

... no \* \* \* act of congress \* \* \* can affect citizenship acquired as a birthright by virtue of the constitution itself \* \* \*. The fourteenth amendment;" while it leaves the power, where it was before, in congress, to regulate naturalization, 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.'" [Quoting United States v. Wong Kim Ark, 169 U.S. 649, 703, 18 S.Ct. 456, 477, 42 L.Ed. 890 (1898), and with bold added.]  
[Afroyim v. Rusk, 387 U.S. 253, 87 S.Ct. 1660 (1967)]

#### **Congressional Record-House (June 13, 1967)**

"Mr. RARICK [from Louisiana].... The purported 14th Amendment' to the United States Constitution is and should be held to be ineffective, invalid, null, void and unconstitutional for the following reasons:

1. The Joint Resolution proposing said Amendment was not submitted to or adopted by a Constitutional Congress. Article I, Section 3, and Article V of the U.S. Constitution.
  2. The Joint Resolution was not submitted to the President for his approval. Article I, Section 7.
  3. The proposed 14th Amendment' was rejected by more than one-fourth of all the States then in the Union, and it was never ratified by three-fourths of all the States in the Union. Article V."
- [Congressional Record--House, pp. 15641 - 15646, June 13, 1967, Fourteenth Amendment is Unconstitutional]

#### **Benitez Rexach v. United States (Mar. 11, 1968)**

"Citizen who renounced his American citizenship and whose certificate of loss of nationality was later cancelled at his request was liable for tax on income earned after he renounced his citizenship and could not avoid tax liability on theory that he owed no tax in that he was not a de facto citizen during that period and that government thus owed him no citizen's protection."

[Benitez Rexach v. United States, 390 F.2d. 631 (1968)]

#### **Black's Law Dictionary: Parens Patriae**

"**Parens patriae** [pronunciation symbols omitted] "Parens patriae," literally "parent of the country," refers traditionally to role of state as sovereign and guardian of persons under legal disability such as juveniles or the insane, State of W.Va. v. Chas. Pfizer & Co., C.A.N.Y., 440 F.2d. 1079, 1089, and in child custody determinations, when acting on behalf of the state to protect the interests of the child. It is the principle that the state must care for those who cannot take care of themselves, such as minors who lack proper care and custody from their parents. It is a concept of standing utilized to protect those quasi-sovereign interests such as health, comfort and welfare of the people, interstate water rights, general economy of the state; etc. Gibbs v. Titleman, D.C.Pa., 369 F.Supp. 38,54.

"*Parens patriae* originates from the English common law where the King had a royal prerogative to act as guardian to persons with legal disabilities such as infants. In the United States, the *parens patriae* function belongs with the states." [Black's Law Dictionary, Sixth Edition, 1990, p. 1114]

#### **Hendry v. Masonite Corporation (Mar. 1, 1972)**

"For purpose of federal diversity jurisdiction, "citizenship" and "domicile" are synonymous."  
[Hendry v. Masonite Corporation, 455 F.2d. 955 (1972)]

#### **Vance v. Terrazas (Jan. 15, 1980)**

"Consideration of issue not presented in the jurisdictional statement or petition for certiorari and not presented in the Court of Appeals is not beyond the power of the Supreme Court."

"Although any of the acts set forth in statute dealing with expatriation may be persuasive evidence in the particular case of a purpose to' abandon citizenship, trier of fact must conclude that the citizen not only voluntarily committed the expatriating act prescribed in the statute but also intended to relinquish his citizenship. Immigration and Nationality Act, §349(a) as amended 8 U.S.C.A. §1481(a)."

"Preponderance of evidence standard set forth in statute dealing with expatriation is constitutional." Immigration and Nationality Act, §349(c) as amended 8 U.S.C.A. §1481(c)."

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"Although Congress is constitutionally without power to impose expatriation on a citizen, it does have the power to prescribe the evidentiary standards to govern expatriation proceedings. Immigration and Nationality Act, §349(c) as amended 8 U.S.C.A. §1481(c); U.S.C.A.Const. Amend. 14, §1

".. the United States had not only to prove the taking of an oath to a foreign state, but also to demonstrate an intent on appellee's part to renounce his United States citizenship."

"*Afroyim*, emphasizing the crucial importance of the right of citizenship, held unequivocally that a citizen has "a constitutional right to remain a citizen . . . unless he voluntarily relinquishes that citizenship." *Id.*, at 268, 87 S.Ct. at 1668. "[T]he only way the citizenship . . . could be lost was by the voluntary renunciation or abandonment by the citizen himself." *Id.*, at 266, 87 S.Ct., at 1667. The Court held that because Congress could not "abridge," "affect," "restrict the effect of," or "take' . . . away" citizenship, Congress was "without power to rob a citizen of his citizenship" because he voted in a foreign election. *Id.*, at 267, 87 S.Ct., at 1667." [Brackets original.]

[*Vance v. Terrazas*, 444 U.S. 252, 62 L.Ed.2d. 461; 100 S.Ct. 540 (1980)]

#### **Sadat v. Mertes (Feb. 19, 1980)**

"A citizen of the United States who is not also a citizen of one of the United States may not maintain suit under statutory section creating diversity jurisdiction over actions between citizens of different states."

"For purposes of statutory section creating federal diversity jurisdiction over actions between citizens of different states, state citizenship is equated with domicile."

"To establish a domicile of choice, a person generally must be physically present at the location and intend to make that place his home for the time at least."

"Plaintiff, a naturalized American citizen, was domiciled abroad at time of filing of complaint to recover damages' for personal injuries sustained in automobile accident in Wisconsin; thus, plaintiff was not a "citizen of a state" within the meaning of statutory section creating federal diversity jurisdiction over actions between citizens of different states."

"Federal courts are without power to hear suits between aliens as well as suits having as their jurisdictional basis the alienage of a person with no nationality."

"An American citizen domiciled abroad is not by virtue of that fact alone a citizen of a foreign state for purposes of alienage jurisdiction of federal courts."

"Generally, test for determining whether a person is a foreign citizen for purposes of statutory section conferring federal courts with alienage jurisdiction is whether the country in which citizenship is claimed would so recognize him."

"Under international law, a country is responsible for official conduct harming aliens."

"Subject-matter jurisdiction of federal courts which is otherwise lacking cannot be conferred by consent, collusion, laches, waiver, or estoppel."

[*Sadat v. Mertes*, 615 F.2d. 1180 (1980)]

#### **Deckers v. Kenneth W. Rose, Inc. (Aug. 24, 1984)**

"A "citizen of a state," within meaning of diversity jurisdiction statute, is a person domiciled within that state who is a citizen of the United States."

"Although wrongful death plaintiff, a serviceman who was domiciled in Florida at time of enlistment and had served in Georgia, considered himself a Georgia citizen, such self-serving statements were viewed in light of objective acts indicative of actual intent in determining diversity of citizenship and fact that servicemen's wife accompanied him to Georgia military facility and that the couple rented a nearby off-base apartment did not establish a change of domicile and neither did fact that serviceman purchased and registered automobile with Georgia agencies and maintained a bank account with a Georgia bank."

"For diversity purposes, a party's current residence is prima facie evidence"" of his domicile."

[*Deckers v. Kenneth W. Rose Inc.*, 592 F.Supp. 25 (1984)]

#### **Supreme Court of New Hampshire v. Piper (Mar. 4, 1985)**

"Derived, like the Commerce Clause of the Articles of Confederation, the Privileges and immunities Clause was intended to create a national economic union. It is therefore not surprising that this Court repeatedly has found that "one of the privileges which the Clause guarantees to citizens of State A is that of doing business in State B on terms of substantial equality with the citizens of that State." *Toomer v. Witsell*, supra, at 396, 92 L.Ed. 1460, 68 S.Ct. 1156. In *Ward v. Maryland*, 12 Wall 418, 20 L.Ed. 449 (1871), the Court invalidated a statute under which nonresidents were required to pay \$300 per year for a license to trade in goods not manufactured in Maryland, while resident traders paid a fee varying

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from \$12 to \$150. Similarly, in *Toomer*, supra, the Court held that nonresident fishermen could not be required to pay a license fee of \$2,500 for each shrimp boat owned when residents were charged only \$25 per boat. Finally, in *Hicklin v. Orbeck*, 437 U.S. 518, 57 L.Ed.2d. 397, 98 S.Ct.2482 (1978), we found violative of the Privileges and Immunities Clause a state containing a resident hiring preference for all employment related to the development of the State's oil and gas resources.

"There is nothing in *Ward*, *Toomer*, or *Hicklin* suggesting that the practice of law should not be viewed as a "privilege under Art IV, §2. Like the occupations considered in our earlier cases, the practice of law is important to the national economy. As the Court noted in *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 788, 44 L.Ed.2d. 572, 95 S.Ct. 2004 (1975), the "activities of lawyers play an important part in commercial intercourse."

"The lawyer's role in the national economy is not the only reason that the opportunity to practice law should be considered a "fundamental right" We believe that the legal profession has a noncommercial role and duty that reinforce the view that the practice of law falls within the ambit of the Privileges and Immunities Clause. Out-of-state lawyers may--and often do--represent persons who raise unpopular federal claims. In some cases, representation by nonresident counsel may be the only means available for the vindication of federal rights. See *Leis v. Flynt*, 439 U.S., at 450, 58 L.Ed.2d. 717, 99 S.Ct. 698, 11 Ohio.Ops.3d. 302 (Stevens, J., dissenting). The lawyer who champions unpopular causes surely is as important to the "maintenance or well-being of the Union," *Baldwin*, 436 U.S., at 388, 56 L.Ed.2d. 354, 98 S.Ct. 1852, as was the shrimp fisherman in *Toomer* or the pipeline worker in *Hicklin*."

"Appellant asserts that the Privileges and Immunities Clause should be held inapplicable to the practice of law because a lawyer's activities are "bound up with the exercise of judicial power and the administration of justice." Its contention is based on the premise that the lawyer is an "officer of the court," who "exercises state power on a daily basis." Appellant concludes that if the State cannot exclude nonresidents from the bar, its ability to function as a sovereign political body will be threatened.

"Lawyers do enjoy a "broad monopoly . . . to do things other citizens may not lawfully do." In *re Griffiths*, 413 U.S. 717, 731, 37 L.Ed.2d. 910, 93 S.Ct.2851 (1973). We do not believe, however, that the practice of law involves an "exercise of state power" justifying New Hampshire's residency requirement. In *re Griffiths*, supra, we held that the State could not exclude an alien from the bar on the ground that lawyer is an "officer of the Court who' . . . is entrusted with the `exercise of actual governmental power. *Id.*, at 728, 37 L.Ed.2d. 910, 93 S.Ct.2851 (quoting Brief for Appellee in *re Griffiths*, 0 T 1972, No. 71-1336, p 5). We concluded that a lawyer is not an "officer" within the ordinary meaning of that word. 413 U.S., at 728, 37 L.Ed.2d. 910, 93 S.Ct.2851. He "makes his own decisions, follows his own best judgment, collects his own fees and runs his own business. *Id.*, at 729, 37 L.Ed.2d. 910, 93 S.Ct.2851 (quoting *Cammer v. United States*, 350 U.S. 399, 405, 100 L.Ed. 474, 76 S.Ct.456 (1956)). Moreover, we held that the state powers entrusted to lawyers do not "involve matters of state policy or acts of such unique responsibility as to entrust them only to citizens." 413 U.S., at 724, 37 L.Ed.2d. 910, 93 S.Ct.2851.

"Because, under *Griffiths*, a lawyer is not an "officer" of the State in any political sense, there is no reason for New Hampshire to exclude from its bar nonresidents. We therefore conclude that the right to practice law is protected by the Privileges and Immunities Clause."

"We conclude that New Hampshire's bar residency requirement violates the Privileges and Immunities Clause of Art IV, §2, of the United States Constitution. The nonresident's interest in practicing law is a "privilege" protected by the Clause. Although the lawyer is "an officer of the court," he does not hold a position that can be entrusted only to a "full-fledged member of the political community." A State may discriminate against nonresidents only where its reasons are "substantial," and the difference in treatment bears a close or substantial relation to those reasons. No such showing has been made in this case."

"Justice **Rehnquist**, dissenting."

"The Framers of our Constitution undoubtedly wished to ensure that the newly created Union did not revert to its component parts because of interstate jealousies and insular tendencies, and it seems clear that the Art. IV Privileges and Immunities Clause was one result of these concerns. But the Framers also created a system of federalism that deliberately allowed for the independent operation of many sovereign States, each with their own laws created by their own legislators and judges. The assumption from the beginning was that the various States' laws need not, and would not, be the same; the lawmakers of each State might endorse different philosophies and would have to respond to differing interests of their constituents, based on various factors that were of inherently local character. Any student of our Nation's history is well aware of the differing interests of the various States that were represented at Philadelphia; despite the tremendous improvements in transportation and communication that have served to create a more homogeneous country the differences among the various States have hardly disappeared.

"It is but a small step from these facts to the recognition that a State has a very strong interest in seeing that its legislators and its judges come from among the constituency of state residents, so that they better understand the local interests to which they will have to respond. The Court does not contest this point; it recognizes that a State may require its lawmakers to be residents without running afoul of the Privileges and Immunities Clause of Art. IV, §2. See ante, at 282, n 13, 84



L.Ed. 2d, at 212.

Unlike the Court, I would take the next step, and recognize that the State also has a very "substantial" interest in seeing that its lawyers also are members of that constituency. I begin with two important principles that the Court seems to have forgotten: [sic] first, that in reviewing state statutes under this Clause "States should have considerable leeway in analyzing local evils and prescribing appropriate cures," [cites omitted], and second, that regulation of the practice of law generally has been "left exclusively to the States ...." [Cite omitted.] My belief that the practice of law differs from other trades and businesses for Art IV, §2, purposes is not based on some notion that law is for some reason a superior profession. The reason that the practice of law should be treated differently is that law is one occupation that does not readily translate across state lines. Certain aspects of legal practice are distinctly and intentionally *nonnational*; in this regard one might view this country's legal system as the antithesis of the norms embodied in the Art IV Privileges and Immunities Clause. Put simply, the State has a substantial interest in creating its own set of laws responsive to its own local interests, and it is reasonable for a State to decide that those people who have been trained to analyze law and policy are better equipped to write those state laws and adjudicate cases arising under them. The State therefore may decide that it has an interest in maximizing the number of resident lawyers, so as to increase the quality of the pool from which its lawmakers can be drawn."

"It is no answer to these arguments that many lawyers simply will not perform these functions, or that out-of-state lawyers can perform them equally well, or that the State can devise less restrictive alternatives for accomplishing these goals. Conclusory second-guessing of difficult legislative decisions, such as the Court resorts to today, is not an attractive way for federal courts to engage in judicial review."

[Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 105 S.Ct. 1272, 84 L.Ed.2d. 205 (1985)]

### **United States v. Price (June 17, 1986)**

"Arthur Price states that he is a "Dejure citizen of the State of Texas, under principles of jus sanguinis and jus soli." He believes that Texas is not an ordinary state and that he is a "nominal" class citizen, ipso facto, who does not need to pay federal income taxes. He filed no tax returns and claimed exemption from withholding during the years, 1980-82. Consequently, he was indicted and charged with violating the applicable provision of the Tax code. The "counsel" he chose to represent him at trial was not a licensed attorney and the court refused to allow this person to appear, but appointed two lawyers to represent Price, or to assist him, as Price chose. Declaring his independence from lawyers or to seek their aid. Proceeding pro se at trial, he presented no opening argument, neither presented nor cross examined witnesses, and made virtually no closing statement. A jury found him guilty of all charges."

"Price's "special status" argument has no legal merit."

[United States v. Price, 798 F.2d. 111 (5th Cir. 1986)]

### **Jones v. Temmer (Aug. 11, 1993)**

"Privileges and immunities clause of Fourteenth Amendment protects only those rights peculiar to being citizen of federal government; it does not protect those rights which relate to state citizenship. U.S.C.A. Const. Amend. 14

§1

"The privileges and immunities clause of the Fourteenth Amendment protects very few rights because it neither incorporates any of the Bill of Rights nor protects all rights of individual citizens. *See Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 21 L.Ed. 394 (1873). Instead, this provision protects only those rights peculiar to being a citizen of the federal government; it does not protect those rights which relate to state citizenship. *Id.* Accordingly, it is not necessary that plaintiffs have non-resident status in order to bring a claim under the privileges and immunities clause of the Fourteenth Amendment."

[Jones v. Temmer, 829 F.Supp. 1226 (1993)]

### **26 U.S.C. §7701(b)**

"**Nonresident Alien.** An individual is a nonresident alien if such individual is neither a citizen of the United States nor a resident of the United States...."

[26 U.S.C. §7701(b)]

### 3.4 Meaning of “privileges and immunities” in the Fourteenth Amendment

For more on the subject of this section, see:

*Government Instituted Slavery Using Franchises*, Form #05.030, Section 31.1  
<https://sedm.org/Forms/FormIndex.htm>

#### Saenz v. Roe (1999)

Thomas, J., dissenting

Justice Thomas, with whom the Chief Justice joins, dissenting.

I join The Chief Justice's dissent. I write separately to address the majority's conclusion that California has violated "the right of the newly arrived citizen to the same privileges and immunities enjoyed by other citizens of the same State." Ante, at 12. In my view, the majority attributes a meaning to the Privileges or Immunities Clause that likely was unintended when the Fourteenth Amendment was enacted and ratified.

The Privileges or Immunities Clause of the Fourteenth Amendment provides that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." U.S. Const., Amdt. 14, §1. Unlike the Equal Protection and Due Process Clauses, which have assumed near-talismanic status in modern constitutional law, the Court all but read the Privileges or Immunities Clause out of the Constitution in the Slaughter-House Cases, 16 Wall. 36 (1873). There, the Court held that the State of Louisiana had not abridged the Privileges or Immunities Clause by granting a partial monopoly of the slaughtering business to one company. *Id.*, at 59-63, 66. The Court reasoned that the Privileges or Immunities Clause was not intended "as a protection to the citizen of a State against the legislative power of his own State." *Id.*, at 74. Rather the "privileges or immunities of citizens" guaranteed by the Fourteenth Amendment were limited to those "belonging to a citizen of the United States as such." *Id.*, at 75. The Court declined to specify the privileges or immunities that fell into this latter category, but it made clear that few did. See *id.*, at 76 (stating that "nearly every civil right for the establishment and protection of which organized government is instituted," including "those rights which are fundamental," are not protected by the Clause).

Unlike the majority, I would look to history to ascertain the original meaning of the Clause.<sup>1</sup> **At least in American law, the phrase (or its close approximation) appears to stem from the 1606 Charter of Virginia, which provided that "all and every the Persons being our Subjects, which shall dwell and inhabit within every or any of the said several Colonies shall HAVE and enjoy all Liberties, Franchises, and Immunities as if they had been abiding and born, within this our Realme of England."**

7 Federal and State Constitutions, Colonial Charters and Other Organic Laws 3788 (F. Thorpe ed. 1909). Other colonial charters contained similar guarantees.<sup>2</sup> Years later, as tensions between England and the American Colonies increased, the colonists adopted resolutions reasserting their entitlement to the privileges or immunities of English citizenship.<sup>3</sup> **The colonists' repeated assertions that they maintained the rights, privileges and immunities of persons "born within the realm of England" and "natural born" persons suggests that, at the time of the founding, the terms "privileges" and "immunities" (and their counterparts) were understood to refer to those fundamental rights and liberties specifically enjoyed by English citizens, and more broadly, by all persons. Presumably members of the Second Continental Congress so understood these terms when they employed them in the Articles of Confederation, which guaranteed that "the free inhabitants of each of these States, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States." Art. IV. The Constitution, which superceded the Articles of Confederation, similarly guarantees that "[t]he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." Art. IV, §2, cl. 1.**

Justice Bushrod Washington's landmark opinion in *Corfield v. Coryell*, 6 Fed.Cas. 546 (No. 3, 230) (CCED Pa. 1825), reflects this historical understanding. In *Corfield*, a citizen of Pennsylvania challenged a New Jersey law that prohibited any person who was not an "actual inhabitant and resident" of New Jersey from harvesting oysters from New Jersey waters. *Id.*, at 550. Justice Washington, sitting as Circuit Justice, rejected the argument that the New Jersey law violated Article IV's Privileges and Immunities Clause. He reasoned, "we cannot accede to the proposition that, under this provision of the constitution, the citizens of the several states are permitted to participate in all the rights which belong exclusively to the

#### ***Sovereignty and Freedom Points and Authorities***

citizens of any other particular state, merely upon the ground that they are enjoyed by those citizens." *Id.*, at 552. Instead, Washington concluded:

**We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments; and which have, at all times, been enjoyed by the citizens of the several states which compose this Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: Protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole. The right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; to institute and maintain actions of any kind in the courts of the state; and an exemption from higher taxes or impositions than are paid by the other citizens of the state; the elective franchise, as regulated and established by the laws or constitution of the state in which it is to be exercised. These, and many others which might be mentioned, are, strictly speaking, privileges and immunities." *Id.* at 551 552.**

**Washington rejected the proposition that the Privileges and Immunities Clause guaranteed equal access to all public benefits (such as the right to harvest oysters in public waters) that a State chooses to make available. Instead, he endorsed the colonial-era conception of the terms "privileges" and "immunities," concluding that Article IV encompassed only fundamental rights that belong to all citizens of the United States.**<sup>4</sup> *Id.*, at 552.

Justice Washington's opinion in *Corfield* indisputably influenced the Members of Congress who enacted the Fourteenth Amendment. When Congress gathered to debate the Fourteenth Amendment, members frequently, if not as a matter of course, appealed to *Corfield*, arguing that the Amendment was necessary to guarantee the fundamental rights that Justice Washington identified in his opinion. See Harrison, *Reconstructing the Privileges or Immunities Clause*, 101 *Yale L. J.* 1385, 1418 (1992) (referring to a Member's "obligatory quotation from *Corfield*"). For just one example, in a speech introducing the Amendment to the Senate, Senator Howard explained the Privileges or Immunities Clause by quoting at length from *Corfield*.<sup>5</sup> *Cong. Globe*, 39th Cong., 1st Sess., 2765 (1866). Furthermore, it appears that no Member of Congress refuted the notion that Washington's analysis in *Corfield* undergirded the meaning of the Privileges or Immunities Clause.<sup>6</sup>

**That Members of the 39th Congress appear to have endorsed the wisdom of Justice Washington's opinion does not, standing alone, provide dispositive insight into their understanding of the Fourteenth Amendment's Privileges or Immunities Clause. Nevertheless, their repeated references to the *Corfield* decision, combined with what appears to be the historical understanding of the Clause's operative terms, supports the inference that, at the time the Fourteenth Amendment was adopted, people understood that "privileges or immunities of citizens" were fundamental rights, rather than every public benefit established by positive law. Accordingly, the majority's conclusion that a State violates the Privileges or Immunities Clause when it "discriminates" against citizens who have been domiciled in the State for less than a year in the distribution of welfare benefit appears contrary to the original understanding and is dubious at best.**

As The Chief Justice points out, *ante* at 1, it comes as quite a surprise that the majority relies on the Privileges or Immunities Clause at all in this case. That is because, as I have explained *supra*, at 1 2, The Slaughter-House Cases sapped the Clause of any meaning. Although the majority appears to breathe new life into the Clause today, it fails to address its historical underpinnings or its place in our constitutional jurisprudence. Because I believe that the demise of the Privileges or Immunities Clause has contributed in no small part to the current disarray of our Fourteenth Amendment jurisprudence, I would be open to reevaluating its meaning in an appropriate case. Before invoking the Clause, however, we should endeavor to understand what the framers of the Fourteenth Amendment thought that it meant. We should also consider whether the Clause should displace, rather than augment, portions of our equal protection and substantive due process jurisprudence. The majority's failure to consider these important questions raises the specter that the Privileges or Immunities Clause will become yet another convenient tool for inventing new rights, limited solely by the "predilections of those who happen at the time to be Members of this Court." *Moore v. East Cleveland*, 431 U.S. 494, 502 (1977).

I respectfully dissent.

Notes

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1. Legal scholars agree on little beyond the conclusion that the Clause does not mean what the Court said it meant in 1873. See, e.g., Harrison, *Reconstructing the Privileges or Immunities Clause*, 101 *Yale L. J.* 1385, 1418 (1992) (Clause is an antidiscrimination provision); D. Currie, *The Constitution in the Supreme Court* 341-351 (1985) (same); 2 W. Crosskey, *Politics and the Constitution in the History of the United States* 1089-1095 (1953) (Clause incorporates first eight Amendments of the Bill of Rights); M. Curtis, *No State Shall Abridge* 100 (1986) (Clause protects the rights included in the Bill of Rights as well as other fundamental rights); B. Siegan, *Supreme Court's Constitution* 46-71 (1987) (Clause guarantees Lockean conception of natural rights); Ackerman, *Constitutional Politics/Constitutional Law*, 99 *Yale L. J.* 453, 521-536 (1989) (same); J. Ely, *Democracy and Distrust* 28 (1980) (Clause "was a delegation to future constitutional decision-makers to protect certain rights that the document neither lists or in any specific way gives directions for finding"); R. Berger, *Government by Judiciary* 30 (2d ed. 1997) (Clause forbids race discrimination with respect to rights listed in the Civil Rights Act of 1866); R. Bork, *The Tempting of America* 166 (1990) (Clause is inscrutable and should be treated as if it had been obliterated by an ink blot).

2. See 1620 Charter of New England, in 3 Thorpe, at 1839 (guaranteeing "[l]iberties, and franchises, and Immunities of free Denizens and naturall Subjects"); 1622 Charter of Connecticut, reprinted in 1 *id.*, at 553 (guaranteeing "[l]iberties and Immunities of free and natural Subjects"); 1629 Charter of the Massachusetts Bay Colony, in 3 *id.*, at 1857 (guaranteeing the "liberties and Immunities of free and naturall subjects"); 1632 Charter of Maine, in 3 *id.*, at 1635 (guaranteeing "[l]iberties[,] Franchises and Immunities of or belonging to any of the naturall borne subjects"); 1632 Charter of Maryland, in 3 *id.*, at 1682 (guaranteeing "Privileges, Franchises and Liberties"); 1663 Charter of Carolina, in 5 *id.*, at 2747 (holding "liberties, franchises, and privileges" inviolate); 1663 Charter of the Rhode Island and Providence Plantations, in 6 *id.*, at 3220 (guaranteeing "libertyes and immunityes of free and naturall subjects"); 1732 Charter of Georgia, in 2 *id.*, at 773 (guaranteeing "liberties, franchises and immunities of free denizens and natural born subjects").

3. See, e.g., *The Massachusetts Resolves*, in *Prologue to Revolution: Sources and Documents on the Stamp Act Crisis* 56 (E. Morgan ed. 1959) ("Resolved, That there are certain essential Rights of the British Constitution of Government, which are founded in the Law of God and Nature, and are the common Rights of Mankind Therefore, Resolved that no Man can justly take the Property of another without his Consent . . . this inherent Right, together with all other essential Rights, Liberties, Privileges and Immunities of the People of Great Britain have been fully confirmed to them by Magna Charta"); *The Virginia Resolves*, *id.*, at 47-48 ("[T]he Colonists aforesaid are declared entitled to all Liberties, Privileges, and Immunities of Denizens and natural Subjects, to all Intents and Purposes, as if they had been abiding and born within the Realm of England"); 1774 *Statement of Violation of Rights*, 1 *Journals of the Continental Congress* 68 (1904) ("[O]ur ancestors, who first settled these colonies, were at the time of their emigration from the mother country, entitled to all the rights, liberties, and immunities of free and natural-born subjects, within the realm of England Resolved [t]hat by such emigration they by no means forfeited, surrendered or lost any of those rights").

4. During the first half of the 19th century, a number of legal scholars and state courts endorsed Washington's conclusion that the Clause protected only fundamental rights. See, e.g., *Campbell v. Morris*, 3 *Harr. & M.* 535, 554 (Md. 1797) (Chase, J.) (Clause protects property and personal rights); *Douglass v. Stephens*, 1 *Del.Ch.* 465, 470 (1821) (Clause protects the "absolute rights" that "all men by nature have"); 2 J. Kent, *Commentaries on American Law* 71-72 (1836) (Clause "confined to those [rights] which were, in their nature, fundamental"). See generally Antieau, *Paul's Perverted Privileges or the True Meaning of the Privileges and Immunities Clause of Article Four*, 9 *Wm. & Mary.L.Rev.* 1, 18-21 (1967) (collecting sources).

5. He also observed that, while, Supreme Court had not "undertaken to define either the nature or extent of the privileges and immunities," Washington's opinion gave "some intimation of what probably will be the opinion of the judiciary." *Cong. Globe*, 39th Cong., 1st Sess., 2765 (1866).

6. During debates on the Civil Rights Act of 1866, Members of Congress also repeatedly invoked Corfield to support the legislation. See generally, Siegan, *Supreme Court's Constitution*, at 46-56. The Act's sponsor, Senator Trumble, quoting from Corfield, explained that the legislation protected the "fundamental rights belonging to every man as a free man, and which under the Constitution as it now exists we have a right to protect every man in." *Cong. Globe*, *supra*, at 476. The Civil Rights Act is widely regarded as the precursor to the Fourteenth Amendment. See, e.g., J. tenBroek, *Equal Under Law* 201 (rev. ed. 1965) ("The one point upon which historians of the Fourteenth Amendment agree, and, indeed, which the evidence places beyond cavil, is that the Fourteenth Amendment was designed to place the constitutionality of the Freedmen's Bureau and civil rights bills, particularly the latter, beyond doubt"). [Saenz v. Roe, 526 U.S. 473, 119 S.Ct. 1430, 143 L.Ed.2d. 635 (1999)]

**Tutun v. United States (1926)**

"The opportunity to become a citizen of the United States is said to be merely a privilege, and not a right. It is true that the Constitution does not confer upon aliens the right to naturalization. But it authorizes Congress to establish a uniform rule therefor. Article 1, § 8, cl. 4. The opportunity having been conferred by the Naturalization Act, there is a statutory right in the alien to submit his petition and evidence to a court, to have that tribunal pass upon them, and, if the requisite facts are established, to receive the certificate. See *United States v. Shanahan* (D. C.) 232 F. 169, 171. There is, of course, no 'right to naturalization unless all statutory requirements are complied with.' *United States v. Ginsberg*, 37 S.Ct. 422, 243 U.S. 472, 475 (61 L.Ed. 853); *Luria v. United States*, 34 S.Ct. 10, 231 U.S. 9, 22 58 L.Ed. 101. The applicant for citizenship, like other suitors who institute proceedings in a court of justice to secure the determination of an asserted right, must allege in his petition the fulfillment of all conditions upon the existence of which the alleged right is made dependent, and he must establish these allegations by competent evidence to the satisfaction of the court. *In re Bodek* (C. C.) 63 F. 813, 814, 815; *In re \_\_\_\_\_*, 7 Hill (N. Y.) 137. In passing upon the application the court exercises judicial judgment. It does not confer or withhold a favor."

[*Tutun v. United States*, 270 U.S. 568 (1926)]

SOURCE:

[http://scholar.google.com/scholar\\_case?case=8292236307895948943&q=270+U.S.%3E+568&hl=en&as\\_sdt=4,60](http://scholar.google.com/scholar_case?case=8292236307895948943&q=270+U.S.%3E+568&hl=en&as_sdt=4,60)]

**Afroyim v. Rusk (1967)**

"In the United States the people are sovereign, and the government cannot sever its relationship to the people by taking away their [CONSTITUTIONAL] citizenship."

[*Afroyim v. Rusk*, 387 U.S. 253 (1967)]

[NOTE: If they can't take it away without your consent, then its PRIVATE property and NOT a "privilege"]

**U.S. Code Annotated, Fourteenth Amendment, Westlaw, 2002****U.S. Code, Annotated, Fourteenth Amendment, Westlaw, 2002**

**"All privileges granted to citizen by Amnds 1 to 10 against infringement by federal government HAVE NOT been absorbed by this amendment as privileges incident to citizenship of the United States and by this clause protected against infringement by the states."** *Watkins v. Oaklawn Jockey Club*. D.C.Ark.1949, 86 F.Supp. 1006, affirmed 183 F.2d. 440.

"Rights claimed under Amends. 1 to 8, adopted as restrictions of the powers of the national government, ARE NOT protected by this clause." *Maxwell v. Dow*, Utah 1900, 20 S.Ct. 448, 176 U.S. 601, 44 L.Ed. 597."

"Although it has been vigorously asserted that the rights specified in the Amends. 1 to 8 are among the privileges and immunities protected by this clause, and although this view has been defended by many distinguished jurists, including several justices of the federal Supreme Court, that [this] court holds otherwise and asserts that it is the character of the right claimed, whether specified as above or not, that is controlling." *State v. Felch*, 1918, 105 A. 23, 92 Vt. 477

[U.S. Code, Annotated, Fourteenth Amendment, Westlaw, 2002]

**The Constitution of the United States of America, Analysis and Interpretation, Fourteenth Amendment, U.S. Government Printing Office, pp. 1674-1675****FOURTEENTH AMENDMENT****PRIVILEGES OR IMMUNITIES**

Unique among constitutional provisions, the clause prohibiting state abridgement of the "privileges or immunities" of United States citizens was rendered a "practical nullity" by a single decision of the Supreme Court issued within five years of its ratification. In the *Slaughter-House Cases*, the Court evaluated a Louisiana statute which conferred a monopoly upon a single corporation to engage in the business of slaughtering cattle. In determining whether this statute abridged the "privileges" of other butchers, the Court frustrated the aims of the most aggressive sponsors of the Privileges or

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Immunities Clause. According to the Court, these sponsors had sought to centralize “in the hands of the Federal Government large powers hitherto exercised by the States” by converting the rights of the citizens of each State at the time of the adoption of the Fourteenth Amendment into protected privileges and immunities of United States citizenship. This interpretation would have allowed business to develop unimpeded by state interference by limiting state laws “abridging” these privileges.

According to the Court, however, such an interpretation would have “transfer[red] the security and protection of all the civil rights . . . to the Federal Government, . . . to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the States,” and would “constitute this court a perpetual censor upon all legislation of the States, on the civil rights of their own citizens, with authority to nullify such as it did not approve as consistent with those rights, as they existed at the time of the adoption of this amendment . . . [The effect of] so great a departure from the structure and spirit of our institutions . . . is to fetter and degrade the State governments by subjecting them to the control of Congress, in the exercise of powers heretofore universally conceded to them of the most ordinary and fundamental character . . . . We are convinced that no such results were intended by the Congress . . . , nor by the legislatures . . . which ratified” the other War Amendments was “the freedom of the slave race.”

Based on these conclusions, the Court held that none of the rights alleged by the competing New Orleans butchers to have been violated were derived from the butcher’s national citizenship; insofar as the Louisiana law interfered with their pursuit of the business of butchering animals, the privilege was one which “belonged to the citizens of the States as such.” Despite the broad language of this clause, the Court held that the privileges and immunities of state citizenship had been “left to the state governments for security and protection” and had not been placed by the clause “under the special care of the Federal Government.” The only privileges which the Fourteenth Amendment protected against state encroachment were declared to be those “which owe their existence to the Federal Government, its National character, its Constitution, or its laws.” These privileges, however, had been available to United States citizens and protected from state interference by operation of federal supremacy even prior to the adoption of the Fourteenth Amendment. The Slaughter-House Cases, therefore, reduced the privileges or immunities clause to a superfluous reiteration of a prohibition already operative against the states.

[The Constitution of the United States of America, Analysis and Interpretation, Fourteenth Amendment, U.S. Government Printing Office, pp. 1674-1675;

SOURCE: <http://famguardian.org/PublishedAuthors/Govt/CRS/USConstAnnotated.pdf>

### 3.5 Expatriation

For details on why expatriation is unnecessary to achieve freedom or abandon STATUTORY “U.S. citizen” status, see:

*Why You are a Political Citizen but Civil Non-Citizen, National, and Nonresident Alien*, Form #05.006, Sections 11.6 and 18.8

<https://sedm.org/Forms/FormIndex.htm>

### 3A American Jurisprudence 2d, Aliens and Citizens, §1409

#### **"Presumptions concerning citizenship**

"As a general rule, it is presumed, until the contrary is shown, that every person is a citizen of the country in which he resides. Further, citizenship, once granted, is presumably retained unless voluntarily relinquished, and the burden rests upon one alleging a change of citizenship and allegiance to establish the fact."

[3A American Jurisprudence 2d, Aliens and Citizens, §1409]

### Black’s Law Dictionary: Diversity of Citizenship

**"DIVERSITY OF CITIZENSHIP.** A phrase used with reference to the jurisdiction of the federal courts, which, under U.S.Const. art. 3, §2, extends to cases between citizens of different states, designating the condition existing when the party on one side of a lawsuit is a citizen of one state, and the party on the other side is a citizen of another state. When this is the basis of jurisdiction, all the persons on one side of the controversy must be citizens of different states from all the persons on the other side."

[Black’s Law Dictionary, Revised Fourth Edition, 1968, p. 564]

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**United States Statutes at Large, Vol. 15, Chapter 249, page 223 of the Fortieth Congress (July 27, 1868)**

"WHEREAS the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore,"

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any declaration, instruction, order or decision of any officers of this government which denies, restricts, impairs, or questions the right of expatriation, is hereby declared inconsistent with the fundamental principles of this government.*"  
[United States Statute at Large, Vol. 15, Chapter 249, p. 223 of the Fortieth Congress]

**Broadis v. Broadis (Apr. 4, 1898)**

"Section 1994, Rev.St. U.S., providing that "any woman who is now or hereafter may be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen," applies to women of African blood since the act of July 14, 1870, extending the naturalization laws to persons of African birth or descent."

"It is true that there is some testimony tending to show that she was born in Canada. This is, however, contradicted by the complainant, who testified that she told him that she was born in Maine. However that may be, and Assuming, for the purposes of the case, that she was born in Canada, still she was a citizen of the United States and of this state by virtue of the fact that she was married to a citizen of the United States and of this state. In other words, the political status of her husband was impressed on her. [ \* \* \* ] The court, therefore, never had valid jurisdiction of the case, and its proceedings were and are wholly null and void."

[Broadis v. Broadis, 86 F. 951 (1898)]

**Perkins v. Elg (May 29, 1939)**

"Municipal law determines how citizenship may be acquired, and hence persons may have a dual nationality."

"Rights of citizenship should not be destroyed by an ambiguity in a treaty or protocol."

"As municipal law determines how citizenship may be acquired, it follows that persons may have a dual nationality. And the mere fact that the plaintiff may have acquired Swedish citizenship by virtue of the operation of Swedish law, on the presumption of that citizenship by her parents, does not compel the conclusion that she has lost her own citizenship acquired under our law. As at birth she became a citizen of the United States, that citizenship must be deemed to continue unless she has been deprived of it through the operation of a treaty or congressional enactment or by her voluntary action in conformity with applicable legal principles."

"To cause a loss of that citizenship in the absence of treaty or statute having that effect, there must be voluntary action and such action cannot be attributed to an infant whose removal to another country is beyond his control and who during minority is incapable of a binding choice."

"By the Act of July 27, 1868, Congress declared that "the right of expatriation is a natural and inherent right of all people". Expatriation is the voluntary renunciation or abandonment of nationality and allegiance."

"The term 'dual nationality' needs exact appreciation. It refers to the fact that two States make equal claim to the allegiance of an individual at the same time. Thus, one State may claim his allegiance because of his birth within its territory, and the other because at the time of his birth in foreign territory his parents were its nationals. The laws of the United States purport to clothe persons with American citizenship by virtue of both principles."

"The important point to observe is that the doctrine of dual allegiance ceases, in American contemplation, to be fully applicable after the child has reached adult years. Thereafter two States may in fact claim him as a national. Those claims are not, however, regarded as of equal merit, because one of the States may then justly assert that his relationship to itself as a national is, by reason of circumstances that have arisen, inconsistent with, and reasonably superior to, any claim of allegiance asserted by any other State. Ordinarily the State in which the individual retains his residence after attaining his majority has the superior claim."

[Perkins v. Elg, 307 U.S. 325, 59 S.Ct. 884, 83 L.Ed. 1320 (1939)]

**8 U.S.C. §1401, Notes**

"NATIONALITY AT BIRTH. Notes

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**"1. Constitutional provisions**

"The Constitution of the United States [before the Fourteenth Amendment] does not declare who are and who are not citizens, nor does it attempt to describe the constituent elements of citizenship; it leaves that quality where it found it, resting upon the fact of home birth and upon the laws of the several states. ""

"While the Fourteenth Amendment "was intended primarily for the benefit of the negro race, it also confers the right of citizenship upon persons of all other races, white, yellow, or red, born or naturalized in the United States and subject to the jurisdiction thereof.""

"The status of persons as citizens or aliens depends entirely upon the Constitution of the United States and the Acts of Congress pursuant thereto."

"The noun "citizen" has been defined to be one who enjoys the freedom and privileges of a city; a freeman of a city, as distinguished from a foreigner, or one not entitled to its franchises...."

"All persons found within the limits of the government, whether their residence be permanent or temporary, are to be deemed citizens for jurisdiction purposes."

"A citizen is one who by birth, naturalization, or otherwise is a member of an independent political society called a "state," "kingdom," or "empire," subject to its laws, and entitled to its protection."

"The word "citizen," while not convertible with the word "resident," is often used synonymously with it, without any implication of political privileges."

"Distinction between citizenship and electorship pervades the public law of the United States."

"One may be a citizen of the United States without being a citizen of a state. Sharon v. Hill, C.C.Cal.1885, 26 F. 337; Nichols v. Hill, C.C.Cal.1899, 92 F. 1; Hough v. Societe Electrique Westinghouse de Russie, D.C.N.Y.1916, 231 F. 341; Gardina v. Board of Registrars of Jefferson County, Ala.1909, 48 South. 788; McDonel v. State, 1883, 90 Ind. 320."

"A citizen of the United States is a citizen of the state wherein he resides. Myers v. Murray, Nelson & Co., " C.C.Iowa, 1890, 43 F. 695, 698, 11 L.R.A. 216."

"Citizenship, state and national, defined and distinguished. Hammerstein v. Lyne, C.C.Mo.1912, 200 F. 165."

"By the Fourteenth Amendment, citizenship in the United States is defined and is made independent of citizenship in a state...."

"An American citizen has two classes of privileges: (1) Those which he has as a citizen of the United States; and (2) those which he has as a citizen of the state where he resides."

"The first clause of U.S.C.A.Const. Amend. 14 made negroes citizens of the United States and of the state in which they reside, and thereby created two classes of citizens. Cory v. Carter, 1874, 48 Ind. 327, 17 Am.Rep. 738."

"The right of citizenship, as distinguished from alienage, is a national right or condition, and it pertains to the confederated sovereignty, the United States, and not to the individual states. Lynch v. Clarke, N.Y.1844, 1 Sandf.Ch. 583."

"By "citizen of the state" is meant a citizen of the United States whose domicile is in such state. Prowd v. Gore, 1922, 207 P. 490, 57 Cal.App. 458."

"One who becomes citizen of United States by reason of birth retains it, even though by law of another country he is also citizen of it."

"The basis of citizenship in the United States is the English doctrine under which nationality meant birth within allegiance of the king."

"Every person is a citizen or subject of the country of his birth, and owes allegiance to that country, unless and until his allegiance has been transferred with his country's consent."

"Free persons of color born within the allegiance of the United States are citizens."

"Free men of color, if born in the United States, are citizens competent to be masters of vessels."

"The emancipation of a native-born slave by U.S.C.A.Const. Amend. 13 removed the disability of slavery, and made him a citizen of the United States."

"Prior to U.S.C.A.Const. Amend. 14 it was generally held that free negroes and mulattoes were not citizens and could not become citizens under then existing laws."

"In an early case a child of a member of an Indian tribe within the territory of the United States, though born within the limits of the United States, was not a citizen thereof. McKay v. Campbell, C.C.Or.1871, Fed.Cas.No. 8,840."

"In an early case it was held that the Indian tribes within the territory of the United States were independent political communities, and a child of a member thereof, though born within the limits of the United States, was not a citizen thereof, because not born subject to its jurisdiction. In re Sah Quah, D.C.Alaska, 1886, 31 F. 327."

"The grant of citizenship to Indians is not inconsistent with their status as wards whose property is subject to the plenary control of the-federal government."

[8 U.S.C. §1401, Notes]

**8 U.S.C. §1481*****Sovereignty and Freedom Points and Authorities***

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"(a) From and after the effective date of this Act a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality[:]:--

"(2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof, after having attained the age of eighteen years; or...."

[8 U.S.C. §1481]

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### **8 U.S.C. §800 and §1481, Historical Note**

"Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this Government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the Republic."

[8 U.S.C. §800 & §1481, Historical Note, revised statutes §1999]

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### **8 U.S.C. §1481, n 20**

"For renunciation of United States citizenship, 8 U.S.C. §1481 does not require allegiance to another nation, but only requires renunciation of United States nationality...."

[8 U.S.C. §1481, n 20]

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### **8 U.S.C. §1481, n 24**

"Expatriation proceedings are civil in nature and do not threaten loss of liberty...."

[8 U.S.C. §1481, n 24]

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### **Prowd v. Gore (Apr. 26, 1922)**

"The only evidence touching the question of citizenship was that of plaintiff to the effect that he was at the time in question a resident of Los Angeles, living at 1382 East Fifteenth Street. ... Neither race nor color is involved in the term "citizen." When used alone and without words of qualification, the term may have different meanings, depending upon the context in which it is found. As said in *Union Hotel Co. v. Hersee*, 79 N.Y. 454 [35 Am.Rep. 536], "the word must be taken in the sense which best harmonizes with the subject matter in reference to which it is used." When we speak of a citizen of the United States we mean one who is born within the limits of or who has been naturalized by the laws of the United States; and when we speak of a citizen of a state we mean a citizen of the United States whose domicile is in such state. While the word is not convertible with "resident," nevertheless it is often used synonymously with such term without any implication of political privileges."

"The evidence shows that plaintiff was a resident of the state, which fact entitled him to maintain the action. Whether or not he was a citizen of the United States, with all the rights implied by such term, is immaterial." [Brackets original.] [Prowd y. Gore, 57 Cal.App. 458; 207 P. 490 (1922)]

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### **Rogers v. Bellei (Apr. 5, 1971)**

"Except as modified by statute, the place of birth governs citizenship status."

"The Fourteenth Amendment's purpose was to make the citizenship of Negroes permanent and secure and not subject to change by mere statute."

"The Fourteenth Amendment's definition of citizenship, in its provision that all persons born or naturalized in the United States and subject to its jurisdiction are citizens of the United States and of the state wherein they reside, is restricted to the combination of three factors, each and all significant--birth in the United States, naturalization in the United States, and subjection of the jurisdiction of the United States--and does not apply to any acquisition of citizenship by being born abroad of an American parent, but necessarily leaves such citizenship, and **any other not covered by the Fourteenth Amendment**, to proper congressional action."

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### **Sovereignty and Freedom Points and Authorities**

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"The Court, by a five-to-four vote, held that the Fourteenth Amendment's definition of citizenship was significant; that Congress has no "general power, express or implied, to take away an American citizen's citizenship without his assent," 387 U.S., at 257, 18 L.Ed.2d. at 761; that Congress' power is to provide a uniform rule of naturalization and, when once exercised with respect to the individual, is exhausted, citing Mr. Chief Justice Marshall's well-known but not uncontroversial dictum in *Osborn v. Bank of the United States*, 9 Wheat 738, 827, 6 L.Ed. 204, 225 (1824); and that the "undeniable purpose" of the Fourteenth Amendment was to make the recently conferred "citizenship of Negroes permanent and secure" and "to put citizenship beyond the power of any governmental unit to destroy," 387 U.S., at 263, 18 L.Ed.2d. at 764. *Perez v. Brownell*, 356 U.S. 44, 2 L.Ed.2d. 603, 78 S.Ct.568 (1958), a five-to-four holding within the decade and precisely to the opposite effect, was overruled." p. 822; p. 7504.

"We thus have an acknowledgment that our law in this area follows English concepts with an acceptance of the *ius soli*, that is, that the place of birth governs citizenship status except as modified by statute." p. 828.

"The Constitution as originally adopted contained no definition of United States citizenship. However, it referred to citizenship in general terms and in varying contexts: Art. I, §2, cl 2, qualifications for member of the House; Art. I, §3, cl 3, qualifications for Senators; Art. II, §1, cl 5, eligibility for the office of President; Art. III, §2, cl 1, citizenship as affecting judicial power of the United States. And, as has been noted, Art. I, §8, cl 4, vested Congress with the power to "establish an uniform. Rule of Naturalization." The historical reviews in the *Afroyim* opinions provide an intimation that the Constitution's lack of definitional specificity may well have been attributable in part to the desire to avoid entanglement in the then-existing controversy between concepts of state and national citizenship and with the difficult question of the status of Negro slaves." pp. 828-829; p. 508.

"In any event, although one might have expected a definition of citizenship in constitutional terms, none was embraced in the original document or, indeed, in any of the amendments adopted prior to the War Between the States." p. 829; p. 508.

"As has been noted above, the amendment's "undeniable purpose" was "to make citizenship of Negroes permanent and secure" and not subject to change by mere statute." p. 829.

"And the Court has specifically recognized the power of Congress not to grant a United States citizen the right to transmit citizenship by descent. As hereinabove noted, persons born abroad, even of United States citizen fathers who, however, acquired American citizenship after the effective date of the 1802 Act, were aliens. Congress responded to that situation only by enacting the 1855 statute. *Montana v. Kennedy*, 366 U.S., at 311, 6 L.Ed.2d. at 315. But more than 50 years had expired during which, because of the withholding of that benefit by Congress, citizenship by such descent was not bestowed. *United States v. Wong Kim Ark*, 169 U.S., at 673-674, 42 L.Ed. at 899. Then, too, the Court has recognized that until the 1934 Act the transmission of citizenship to one born abroad was restricted to the child of a qualifying American father, and withheld completely from the child of a United States citizen mother and an alien father. *Montana v. Kennedy*, supra." pp. 830-831; p. 509 [Bold added.]  
[*Rogers v. Bellei*, 401 U.S. 815, 28 L.Ed.2d. 499, 91 S.Ct. 1060 (1971)]

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### **United States v. Lucienne D'Hotelle (June 20, 1977)**

"Provision of Nationality Act of 1940 that a person becoming a national by naturalization shall lose his nationality by residing continuously for three years in territory of a foreign state, being practically identical to its successor, which was condemned by United States Supreme Court as discriminatory, would have been invalid as a congressional attempt to expatriate regardless of intent."

"Retroactive application of constitutional decisions is not automatic."

"Rights stemming from American citizenship are so important that, absent special circumstances, they must be recognized even for years past; unless held to have been citizens without interruption, persons wrongfully expatriated as well as their offspring might be permanently and unreasonably barred from important benefits."

"American citizenship implies not only rights but also duties, not the least of which is the payment of taxes."

"Balance of equities mandates that back income taxes" be collected for periods during which involuntarily expatriated persons affirmatively exercised a specific right of citizenship."

"When an expatriate in fact receives benefits of citizenship, equities favor imposition of federal income tax liability."

"Taxpayer was subject to federal income tax liability and, hence, was subject to being taxed on her interest in community estate for period of time during which she was unaware that she had been automatically denaturalized where it was clear that during such period she received and accepted benefits of United States citizenship."

"United States could not subject taxpayer to federal income tax liability on her interest in community estate after she accepted a certificate of loss of nationality and voluntarily relinquished her citizenship."

"Although estoppel is rarely a proper defense against the Government, there are instances where it would be unconscionable to allow the Government to reverse an earlier position."

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### ***Sovereignty and Freedom Points and Authorities***



"United States was estopped from taxing interest of taxpayer in community estate during years in which she was denied protection of United States citizenship."

*In Schneider v. Rush*, 377 U.S. 163, 84 S.Ct. 1187, 12 L.Ed.2d. 218 (1964), the Court held that the distinction drawn by the statute between naturalized and native-born Americans was so discriminatory as to violate due process."

[*United States v. Lucienne D'Hotelle*, 558 F.2d. 37 (1976)]

#### **Davis v. District Director, I.N.S. (Dec. 19, 1979)**

"Citizen may voluntarily surrender his citizenship, along with the panoply of rights and obligations that attach thereto. Immigration and Nationality Act, §349(a), 8 U.S.C.A. §1481(a)."

"Statement given by petitioner when he signed a renunciation of his American citizenship to the effect that he wanted to be considered a citizen of the world created no ambiguity as to his intent so that the renunciation effectively expatriated the petitioner."

"Evidence demonstrated that petitioner acted voluntarily at the time that he renounced his citizenship."

"Statute dealing with renunciation of citizenship under oath does not require allegiance to another nation; it only requires renunciation of United States nationality."

"Neither Article 13(2) nor Article 15 of the Universal Declaration of Human Rights require the acquisition of another nationality to uphold expatriation."

"United Nations Charter does not supersede United States law."

Any person not a United States citizen or national is classified as an "alien.""

"Individual who expatriated himself by signing an oath of renunciation of American citizenship was an "alien.""

"Former citizen who had renounced his citizenship was not entitled under the privileges and immunities clause to enter and remain in the United States by virtue of being a citizen of Maine."

"The petitioner signed the oath of renunciation before the United States Consul [American Embassy in Paris, France]. The oath of renunciation included the statement:

"I desire to make a formal renunciation of my American nationality, as provided by Section 401(f) of the Nationality Act of 1940, and pursuant thereto I hereby absolutely and entirely renounce my nationality in the United States, and all rights and privileges thereunder pertaining and abjure all allegiance and fidelity to the United States of America.""

"8 U.S.C.A. §1481(a) codifies a long standing though little recognized principle of the United States: the right of expatriation. This principle establishes the libertarian concept that a citizen may voluntarily surrender his citizenship along with the panoply of rights and obligations that attach thereto. Federal statutory law sets forth numerous avenues by which a United States citizen may voluntarily expatriate himself. [See following paragraph which appears as a footnote in this location.] Federal courts require only voluntariness and sometimes intent to uphold the validity of the expatriating act."

"Each subdivision under 8 U.S.C.A. §1481(a) represents a separate and independent process that leads to expatriation. These subdivisions are independently self-executing: a citizen satisfying the provisions of one subsection may be expatriated pursuant to that provision."

"The Oath of Renunciation recited by the petitioner, as applied to the applicable federal law, revoked the petitioner's citizenship. 8 U.S.C.A. §1481(a)(5) does not require allegiance to another nation; it only requires renunciation of United States nationality."

"The framework of 8 U.S.C.A. §1481(a) reinforces the plain meaning of the statute. 8 U.S.C.A. §1481(a)(1) provides that an American national can lose his nationality by declaring allegiance to a foreign state, whereas 8 U.S.C.A. §1481(a)(5) provides a separate category for those who renounce United States nationality. By creating two separate categories--one for the acquisition of a foreign nationality and one for the renunciation of United States nationality--Congress could only have intended that each statutory section represents a separate method of expatriation."

"Any person not a United States citizen or national is classified as an alien. 8 U.S.C.A. §1101(a)(3); *see* C. Gordon & H. Rosenfield, 1 *Immigration Law and Procedure* §2.3d at 2-22 (1979 ed.). The petitioner's voluntary expatriation deprived him of citizenship. He also lacks the status of a United States national."

"Because the petitioner has close relations in the United States who may apply on his behalf for a visa, the petitioner may remain in this country by merely assenting to permanent resident alien status."

[*Davis v. District Director, I.N.S.*, 481 F.Supp. 1178 (1979)]

#### **In re De Bellis (July 15, 1980)**

"Persons seeking to become naturalized citizens of the United States have the burden of proving that they have complied with all the statutory eligibility requirements, and any doubts should be resolved in favor of the United States and against the petitioner."

#### ***Sovereignty and Freedom Points and Authorities***

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"Refusal of petitioner, a Jehovah's Witness, to take the modified oath of allegiance without further qualification was fatal to her petition for naturalization; though she was willing to swear in open court to perform work of national importance when required by law, she was so willing only if it was not a substitute for military service, and she stated that she herself would decide if such work of national importance under civilian direction was or was not a substitute for military service; furthermore, she stated she would obey only those laws which she decided were consonant with her religious beliefs."

.. "[n]aturalization is clearly a privilege to be given or withheld as Congress shall determine and petitioner has failed to meet the requirements set out by Congress." [Quoting *In re Williams*, 474 F.Supp. 384, 387 (D.Ariz.1979).] [In re De Bellis, 493 F.Supp. 534 (1980)]

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**Richards v. Secretary of State, Dept. of State (Feb. 4, 1985)**

"Due process clause of the Fifth Amendment imposes on federal government the limitations that equal protection clause of Fourteenth Amendment imposes on states."

"United States citizens' constitutional right to remain a citizen unless he voluntarily relinquishes that right of citizenship applies at least to all persons born or naturalized in the United States."

"There is no presumption that expatriating act was performed with intent to relinquish citizenship."

"Voluntariness of acts demonstrating intent to renounce United States citizenship is necessary part of showing alleged expatriates' specific intent to relinquish his citizenship."

"There is no presumption of voluntariness with respect to acts demonstrating specific intent to relinquish United States citizenship."

"Because presumption of voluntariness extended to plaintiff's becoming a Canadian citizen and taking oath of allegiance to Canada, it also of necessity applied to act demonstrating specific intent, i.e., the explicit renunciation of United States citizenship under oath."

"Expatriating act cannot be said to have been performed voluntarily if it was performed under conditions of economic duress; at the least, some degree of hardship must be shown."

"District court's finding that plaintiff was under no economic hardship when he renounced his United States citizenship was not clearly erroneous; in short, the evidence amply supported district court's finding that plaintiff became Canadian citizen purely for purpose of career advancement."

"Person loses his United States citizenship by voluntarily performing expatriating act only if expatriating act was accompanied by intent to terminate United States citizenship."

"More is required for loss of citizenship than simply voluntary commission of act Congress has designated as expatriating act."

"United States citizen effectively renounces his citizenship by performing act that Congress has designated as expatriating act only if he means the act to constitute renunciation of his United States citizenship; in absence of such intent, he does not lose his citizenship simply by performing expatriating act, even if he knows that Congress had designated the act an expatriating act."

"Intent to renounce United States citizenship may be expressed in words or found as fair inference from proved conduct."

"Voluntary taking of formal oath that includes explicit renunciation of United States citizenship is ordinarily sufficient to establish specific intent to renounce United States citizenship."

"Whether it is done in order to make more money, to advance career or other relationship, to gain someone's hand in marriage, or to participate in political process in country to which he has moved, United States citizen's free choice to renounce his citizenship results in loss of that citizenship."

"United States citizens have right to become aliens."

"In *Terrazas*, the Court established that expatriation turns on the "will" of the citizen. We see nothing in that decision, or in any other cited by Richards, that indicates that renunciation is effective only in the case of citizens whose "will" to renounce is based on a principled, abstract desire to sever ties to the United States. Instead, the cases make it abundantly clear that a person's free choice to renounce United States citizenship is effective whatever the motivation. Whether it is done in order to make more money, to advance a career or other relationship, to gain someone's hand in marriage, or to participate in the political process in the country to which he has moved, a United States citizen's free choice to renounce his citizenship results in the loss of that citizenship."

"Moreover, expatriation has long been recognized as a *right* of United States citizens, not just as a limitation on citizens' rights. See Preamble to the Act of July 27, 1868, ch. 249, 15 Stat. 223 ("[T]he right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness."). United States citizens have a right to become aliens."

[Richards v. Secretary of State, Dept. of State, 752 F.2d. 1413 (1985)]

## 4 PROPERTY, UNALIENABLE RIGHTS, PRIVILEGES, AND IMMUNITIES

For further details on the subject of this section, see:

1. *Hot Issues: Laws of Property*, SEDM  
<https://sedm.org/laws-of-property/>
2. *Laws of Property*, Form #14.018  
<https://sedm.org/Forms/FormIndex.htm>
3. *Authorities on Rights as Property*, SEDM  
<https://sedm.org/authorities-on-rights-as-property/>
4. *Enumeration of Inalienable Rights*, Form #10.002  
<https://sedm.org/Forms/FormIndex.htm>
5. *Know Your Citizenship Status and Rights*, Form #10.009  
<https://sedm.org/Forms/FormIndex.htm>
6. *Sovereignty and Freedom Page*, Family Guardian Fellowship  
<https://famguardian.org/Subjects/Freedom/Freedom.htm>

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### 4.1 Property Rights are the FOUNDATION of all other rights!

It is no accident that a nation conceived in liberty and dedicated to justice for all protects property rights. Property is the foundation of every right we have, including the right to be free. Every right claim, after all, is a claim to some thing — either a defensive claim to keep what one is holding or an offensive claim to something someone else is holding. John Locke, the philosophical father of the American Revolution and the inspiration for Thomas Jefferson when he drafted the Declaration of Independence, stated the issue simply: “Lives, Liberties, and Estates, which I call by the general Name, *Property*.” And James Madison, the principal author of the Constitution, echoed those thoughts when he wrote, “as a man is said to have a right to his property, he may be equally said to have a property in his rights.”

Much moral and legal confusion would be avoided if we understood that all of our rights — all of the things to which we are “entitled” — can be reduced to property. That would enable us to separate genuine rights — things to which we hold title — from specious “rights” — things to which other people hold title, which we may want for ourselves. It was the genius of the old common law, grounded in reason and custom, that it grasped that point. And the common law judges understood a pair of corollaries as well: property, broadly conceived, separates one individual from another; and individuals are independent or free to the extent that they have sole or exclusive dominion over what they hold. Indeed, Americans go to work every day to acquire property just so they can be independent.

The Constitution protects property rights through the Fifth and Fourteenth Amendments’ Due Process Clauses and, more directly, through the Fifth Amendment’s Takings Clause: “nor shall private property be taken for public use without just compensation.” There are two basic ways government can take property:

- (1) outright, by condemning the property and taking title; and
- (2) through regulations that take uses, leaving the title with the owner — so-called regulatory takings.

In the first case, the title is all too often taken not for a public but for a private use; and rarely is the compensation received by the owner just. In the second case, the owner is often not compensated at all for his losses; and when he is, the compensation is again inadequate.

Over the past three decades, the Supreme Court has chipped away at the problem of uncompensated regulatory takings, requiring compensation in some cases; but its decisions were largely ad hoc, leaving most owners to bear the losses themselves. Thus, owners today can get compensation when the title is actually taken, as just noted; when the property is physically invaded by government order, either permanently or temporarily; when regulation for other than health or safety reasons takes all or nearly all of the value of the property; and when government attaches conditions to permits that are unreasonable, disproportionate, or unrelated to the purpose behind the permit requirement. But despite those modest

advances, toward the end of its October 2004 term, the Court decided three property rights cases in which the owners had legitimate complaints, and in all three, the owners lost. One of those cases was *Kelo v. City of New London*, in which the city condemned Ms. Kelo's property only to transfer it to another private party that the city believed could make better use of it. In so doing, the Court simply brushed aside the "public use" restraint on the power of government to take private property. The upshot, however, was a public outcry across the nation and the introduction of reforms in over 40 states. But those reforms varied substantially, and nearly all leave unaddressed the far more common problem of regulatory takings.

At bottom, then, the Court has yet to develop a principled and comprehensive theory of property rights, much less a comprehensive solution to the problem of government takings. For that, Congress (or the Court) is going to have to turn to first principles, much as the old common law judges did. We need to begin, then, not with the public law of the Constitution as presently interpreted, but with the private law of property.

At the heart of the approach to property on this site is the notion that the essence of the property right is the right to exclude government from using or benefitting from the use, and that if that right is taken away, then the government becomes the REAL owner and you are merely an "equitable owner". So long as regulatory takings are limited to HARMFUL uses, then they are permissible. When such takings transfer "beneficial uses" or uses that produce revenue, then they are not permissible. Every other source of regulatory authority must originate from the consent of the original private owner. In most cases, that consent is given through a government application of some kind or another. And in nearly all cases, that consent is procured illegally and through duress through "weaponization of the government" as defined in:

[SEDM Disclaimer](https://sedm.org/disclaimer.htm), Section 4.30  
<https://sedm.org/disclaimer.htm>

More at:

[Property Rights and the Constitution](https://www.cato.org/cato-handbook-policymakers/cato-handbook-policy-makers-8th-edition-2017/property-rights-constitution), *Cato Institute*  
<https://www.cato.org/cato-handbook-policymakers/cato-handbook-policy-makers-8th-edition-2017/property-rights-constitution>

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## 4.2 Property Resources

The following resources on our site are helpful in learning the very important laws of property and how they apply to EVERY aspect of daily life:

1. [ChatGPT AI Answers to Questions About Property](https://sedm.org/chatgpt-ai-answers-to-questions-about-property/), SEDM  
<https://sedm.org/chatgpt-ai-answers-to-questions-about-property/>
2. [Ownership as the Origin of the Right to Define](https://sedm.org/ownership-as-the-origin-of-the-right-to-define/), SEDM  
<https://sedm.org/ownership-as-the-origin-of-the-right-to-define/>
3. [Hot Issues: Laws of Property](https://sedm.org/category/hot-issues/laws-of-property/), SEDM  
<https://sedm.org/category/hot-issues/laws-of-property/>
4. [Legal Remedies That Protect Private Rights Course](https://sedm.org/product/legal-remedies-that-protect-private-rights-course-form-12-019/), Form #12.019\*\* (Member Subscriptions)  
<https://sedm.org/product/legal-remedies-that-protect-private-rights-course-form-12-019/>
5. [What is an Income Tax "Exclusion"?](https://sedm.org/what-is-an-income-tax-exclusion/), SEDM  
<https://sedm.org/what-is-an-income-tax-exclusion/>
6. [Sources of Extraterritorial Jurisdiction, Section 4.3: Extraterritorial Jurisdiction Over Property](https://sedm.org/sources-of-extraterritorial-jurisdiction-domicile-contract-or-merely-consent-comity/)-SEDM  
<https://sedm.org/sources-of-extraterritorial-jurisdiction-domicile-contract-or-merely-consent-comity/>
7. [Philosophy of Liberty](https://sedm.org/education/liberty-university/liberty-university-2-2-philosophy-of-liberty/), SEDM -Explains the relationship between LIFE, LIBERTY and the PURSUIT OF HAPPINESS mentioned in the Declaration of Independence. "Pursuit of happiness" is equated with ABSOLUTE OWNERSHIP OF PRIVATE PROPERTY  
<https://sedm.org/education/liberty-university/liberty-university-2-2-philosophy-of-liberty/>
8. [Who Owns Me?](http://justiceharvard.org/lecture-6-who-owns-me/) -Michael Sandell, Harvard course on "justice"  
<http://justiceharvard.org/lecture-6-who-owns-me/>
9. [The Absolute Nature of Property](#), Butler Shaffer -this video was so important that Youtube CENSORED it. Must watch.

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- <https://sedm.org/the-absolute-nature-of-property-butler-shaffer/>
10. *Boundaries of Order: Private Property as a Social System*, Butler Shaffer
    - 10.1. [https://www.amazon.com/s?i=stripbooks&rh=p\\_27%3AButler+Shaffer&s=relevancerank&text=Butler+Shaffer&ref=dp\\_byline\\_sr\\_book\\_1](https://www.amazon.com/s?i=stripbooks&rh=p_27%3AButler+Shaffer&s=relevancerank&text=Butler+Shaffer&ref=dp_byline_sr_book_1)
    - 10.2. <https://mises.org/library/boundaries-order-private-property-social-system>
    - 10.3. [https://cdn.mises.org/Boundaries%20of%20Order%20Private%20Property%20as%20a%20Social%20System\\_0.pdf](https://cdn.mises.org/Boundaries%20of%20Order%20Private%20Property%20as%20a%20Social%20System_0.pdf)
  11. *The Guardian of Every Other Right: A Constitutional History of Property Rights*, James W. Ealy
    - 11.1. Google Books  
[https://www.google.com/books/edition/The\\_Guardian\\_of\\_Every\\_Other\\_Right/tm88DwAAQBAJ?hl=en](https://www.google.com/books/edition/The_Guardian_of_Every_Other_Right/tm88DwAAQBAJ?hl=en)
    - 11.2. Amazon  
<https://www.amazon.com/Guardian-Every-Other-Right-Constitutional/dp/0195323335>
  12. Family Guardian  
<http://famguardian.org/>
    - 12.1. *Property and Privacy Protection Topic*, Section 8: Private Property Protection, Family Guardian Fellowship  
[https://famguardian.org/Subjects/PropertyPrivacy/PropertyPrivacy.htm#PRIVATE\\_PROPERTY\\_PROTECTION](https://famguardian.org/Subjects/PropertyPrivacy/PropertyPrivacy.htm#PRIVATE_PROPERTY_PROTECTION)
    - 12.2. *Understanding American Property Rights*, Family Guardian Fellowship  
<https://famguardian.org/Publications/PropertyRights/tableoc.html>
  13. *SEDM Private v. Public Property/Rights and Protection Playlist*-Youtube  
<https://www.youtube.com/playlist?list=PLin1scINPTotxYewMRT66TXyn6AUF0KTu>
  14. *SEDM Disclaimer*, Section 4.27: Socialism Defined – Most people are confused about what this means. This is deliberate. It means a system of government where there is no private property  
<https://sedm.org/disclaimer.htm#4.27.Socialism>
  15. *SEDM Disclaimer*, Section 4.28: “Grant” or “Loan” Defined – the main and only method used to convert your PRIVATE property to PUBLIC property and it requires your consent.  
<https://sedm.org/disclaimer.htm#4.28.Grant>
  16. *Delegation of Authority Order from God to Christians*, Form #13.007 -why:  
<https://sedm.org/Forms/13-SelfFamilyChurchGovnce/DelOfAuthority.pdf>
    - 16.1. The Bible is a trust indenture.
    - 16.2. We are God’s trustees.
    - 16.3. The entire earth and all of Creation is God’s property.
    - 16.4. Caesar can’t charge a property tax, because he would be renting out STOLEN property.
    - 16.5. Any attempt to convert PRIVATE to PUBLIC is stealing from God and interfering with your duties as trustee.
  17. *Subject Index, Section 62: Property Protection*, SEDM  
[https://sedm.org/Search/SubjectIndex.htm#Property\\_protection](https://sedm.org/Search/SubjectIndex.htm#Property_protection)
  18. *Separation Between Public and Private Course*, Form #12.025 -main job of government is to keep PRIVATE and PUBLIC property separated at all times and NEVER mixing them.  
<https://sedm.org/LibertyU/SeparatingPublicPrivate.pdf>
  19. *Hot Issues: Common Law and Equity Litigation\*\**, SEDM -the ONLY way to force the court to enforce ONLY private property and PRIVATE rights and NEVER civil franchises, privileges, or civil statutes.  
<https://sedm.org/common-law-litigation/>
  20. *Choice of Law*, Litigation Tool #01.010-how judges corruptly FORCE you to give up ALL your constitutional rights by switching the choice of law from the PRIVATE common law to PUBLIC civil statutes and how to prevent it.  
<https://sedm.org/Litigation/01-General/ChoiceOfLaw.pdf>
  21. *Government Instituted Slavery Using Franchises*, Form #05.030 -the ONLY lawful method to legislatively convert PRIVATE property to PUBLIC property, and it requires CONSENT. Can’t be offered within a constitutional state because it works a purpose OPPOSITE to the establishment of government.  
<https://sedm.org/Forms/05-MemLaw/Franchises.pdf>
  22. *Self Government Federation: Articles of Confederation, Form #13.002* -a plan to create PERFECT separation between PRIVATE and PUBLIC in which the ONLY part of government the civilly touches the average American is voting and jury service. Everything else is separation. Is based on additions to existing organic documents rather than destroying everything and rebuilding it from scratch.  
<https://sedm.org/Forms/13-SelfFamilyChurchGovnce/SGFArtOfConfed.pdf>
  23. *Socialism: The New American Civil Religion*, Form #05.016-how government works when there is NO PRIVATE property  
<https://sedm.org/Forms/05-MemLaw/SocialismCivilReligion.pdf>



24. *Avoiding Traps in Government Forms Course*, Form #12.023-how a corrupted government recruits you into a public office by getting you to declare a statutory civil status. Beyond that point, whatever property you connect to the office becomes PUBLIC property.  
<https://sedm.org/Forms/05-MemLaw/SocialismCivilReligion.pdf>
25. *About SSNs and TINs on Government Forms and Correspondence*, Form #05.012 -how the government uses “franchise marks” and forcing you to use them in order to compel you to donate PRIVATE property to a PUBLIC use, PUBLIC purpose, and PUBLIC office.  
<https://sedm.org/Forms/05-MemLaw/AboutSSNsAndTINs.pdf>
26. *Correcting Erroneous Information Returns*, Form #04.001 -how the corrupt government DECEIVES third parties into essentially DONATING your PRIVATE earnings to a PUBLIC use, PUBLIC purpose, and PUBLIC office without your express consent, and therefore STEALS your money to the benefit of the government.  
<https://sedm.org/Forms/04-Tax/0-CorrErrInfoRtns/CorrErrInfoRtns.pdf>
27. *Why the Government is the Only Real Beneficiary of All Government Franchises*, Form #05.051 (Member Subscriptions)- why every civil enactment of Congress really only protects the government, and not you as a man or woman.  
<https://sedm.org/product/why-the-government-is-the-only-real-beneficiary-of-all-government-franchises-form-05-051/>
28. *Critique of the Book “They Own It All (Including You)” by Ronald Macdonald and Robert Rowen*-SEDM  
<https://sedm.org/critique-of-the-book-they-own-it-all-including-you-by-ronald-macdonald/>
29. *There’s No Such Thing as “Government Funding”*, SEDM  
<https://sedm.org/theres-no-such-thing-a-government-funding/>
30. *Using the Laws of Property to Respond to a Federal or State Tax Collection Notice*, Form #14.015-SEDM  
<https://sedm.org/using-the-laws-of-property-to-respond-to-a-federal-or-state-tax-collection-notice/>
31. *Why the Federal Income Tax is a Privilege Tax Upon Government Property*, Form #04.404\*\*(Member Subscriptions)  
<https://sedm.org/product/why-the-federal-income-tax-is-a-privilege-tax-on-government-property-form-04-404/>
32. *Breakdown: How Many Rights Have Americans Really Lost?* -We Are Change  
<https://wearechange.org/break-many-rights-americans-really-lost/>
33. *Who Will Eventually Own Everything, Including You?*, Mercola  
<https://famguardian.org/Subjects/PropertyPrivacy/Property/blackrock-gates-big-tech-ownership.pdfv>
34. *Wikipedia: Property Law in the United States*  
[https://en.wikipedia.org/wiki/Property\\_law\\_in\\_the\\_United\\_States](https://en.wikipedia.org/wiki/Property_law_in_the_United_States)
35. *Property Rights and the Constitution* Cato Institute  
<https://www.cato.org/cato-handbook-policymakers/cato-handbook-policy-makers-8th-edition-2017/property-rights-constitution>
36. *An Economic Analysis of Civil versus Common Law Property*, Henry E. Smith  
[https://extranet.sioe.org/uploads/isnie2011/chang\\_smith.pdf](https://extranet.sioe.org/uploads/isnie2011/chang_smith.pdf)
37. *What the Chat.openai.com Chatbot Says the Difference Between a STATUTORY “U.S. citizen” and a Common Law “State national” Is in the Context of Taxation*, Exhibit #01.024 -The Chatgpt chatbot outscored 90% of applicants on the bar exam. Section 8 deals with “property” and private property.  
<https://sedm.org/Exhibits/EX01.024-WhatChatbotThinks-Citizen%20v%20National.pdf>
38. Restatement of Property  
[https://en.wikipedia.org/wiki/Restatements\\_of\\_the\\_Law](https://en.wikipedia.org/wiki/Restatements_of_the_Law)
  - 38.1. Restatement of Property (1936–40; mostly superseded by Restatement of Property, Second and Third volumes)
  - 38.2. Restatement of Property, Second, Landlord and Tenant (1977)
  - 38.3. Restatement of Property, Third, Mortgages (1997)
  - 38.4. Restatement of Property, Third, Servitudes (2000)
  - 38.5. Restatement of Property, Third, Wills and Other Donative Transfers (1999, 2003, and 2011)

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### 4.3 Unalienable rights generally

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#### **California Constitution (1879) Article I, §9**

"A bill of attainder, ex post facto law, or law impairing the obligation of contracts may not be passed."  
[California Constitution, Article I, §9]

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#### **California Code of Civil Procedure, §1866**

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"When a statute or instrument is equally susceptible of two interpretations, one in favor of natural right, and the other against it, the former is to be adopted."

[California Code of Civil Procedure, §1866]

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**Black's Law Dictionary: Right****"RIGHT.**

"*Natural* rights are those which grow out of the nature of man and depend upon personality, as distinguished from such as are created by law and depend upon civilized society; or they are those which are plainly assured by natural law; or those which, by fair deduction from the present physical, moral, social, and religious characteristics of man, he must be invested with, and which he ought to have realized for him in a jural society, in order to fulfill the ends to which his nature are the rights of life, liberty, privacy, and good reputation."

"*Civil* rights are such as belong to every citizen of the state or country, or, in a wider sense, to all its inhabitants, and are not connected with the organization or administration of government. They include the rights of property, marriage, protection by the laws, freedom of contract, trial by jury, etc. Or, as otherwise defined, civil rights are rights appertaining to a person in virtue of his citizenship in a state or community. Rights capable of being enforced or redressed in a civil action. Also a term applied to certain rights secured to citizens of the United States by the thirteenth and fourteenth amendments to the constitution, and by various acts of congress made in pursuance thereof. "

"*Political* rights consist in the power to participate, directly or indirectly, in the establishment or administration of government, such as the right of citizenship, that of suffrage, the right to hold public office, and the right of petition."

"*Personal* rights is a term of rather vague import, but generally it may be said to mean the right of personal security, comprising those of life, limb, body, health, reputation, and the right of personal liberty."

[Black's Law Dictionary, Revised Fourth Edition, 1968, pp. 1486-88]

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**Black's Law Dictionary: Inalienable**

"**INALIENABLE.** Not subject to alienation; the characteristic of those things which cannot be bought or sold or transferred from one person to another, such as rivers and public highways, and certain personal rights; *e. g.*, liberty."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 903]

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**Black's Law Dictionary: Unalienable**

"**UNALIENABLE.** Inalienable; incapable of being aliened, that is, sold or transferred."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1693]

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**Black's Law Dictionary: Forfeit**

"**FORFEIT.** To lose, or lose the right to, by some error, fault, offense, or crime, or the subject, as property, to forfeiture or confiscation. *State v. Cowen*, 231 Iowa 1117, 3 N.W.2d. 176, 180. To lose, in consequence of breach of contract, neglect of duty, or offense, some right, privilege, or property to another or to the State. *United States v. Chavez*, C.C.A.N.M., 87 F.2d. 16, 19."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 778]

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**California Code of Civil Procedure, §490.060**

"Nothing in this chapter limits the right to recover for damages caused by an attachment or protective order on any common law theory of recovery."

[California Code of Civil Procedure, §490.060]

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**17 Cal.Jur. 3d (Rev) Part 1, Criminal Law, §15 "Effect of common law**

"Common law crimes as such no longer exist in this state, but this does not mean that the common law is of no effect in criminal law. With respect to criminal procedure, the common law has the force of law in the absence of statutory provisions at variance with it, and in defining a crime, a statute may use words that indicate offenses well known to and defined by the common law."

[17 Cal.Jur. 3d (Rev) Part 1, Criminal Law, §15]

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**16 C.J.S. §57****"b. Fourteenth and Fifteen Amendments"**

The general division of powers between the federal and the state governments was not disturbed by the amendments adopted during the period of reconstruction following the Civil War. The power of Congress to enact legislation pursuant to these amendments is considered in certain aspects in C.J.S. Civil Rights §4, and the effect of various aspects of such amendments is discussed infra in the applicable sections of this title treating with personal, civil, and political rights generally, and in such sections considering, respectively, privileges or immunities and class legislation," equal protection of laws, and due process of law.

"As discussed in greater detail infra in the applicable sections of this title, the provisions of the Fourteenth Amendment prohibiting the making or enforcing of laws which abridge privileges or immunities, the deprivation of life, liberty, or property without due process of law, and the denial of the equal protection of the law refer to state action or legislation exclusively, including, in general, the instrumentalities and agencies employed in the administration of state government, and do not refer to the action of private individuals, or protect individual rights from individual invasions.

"These provisions of the Fourteenth Amendment do not create new rights, but they do furnish guaranties against encroachment on existing rights, by the states. While the Amendment should be liberally construed to carry out and effectuate its objects, these provisions of the Amendment do not apply to the misconstruction of laws, nor do they guarantee to all citizens matters of duties as distinguished from matters of rights. The states are left with a wide range of legislative discretion, notwithstanding the provisions of the Fourteenth Amendment.

"Broadly speaking, the extent of the power and duty of the United States in respect of these guaranties is to see that no one is denied the protections of the guaranties by action of a state, or of its departments, or agencies. Congress has the power to enforce the Fourteenth Amendment by appropriate legislation where it is considered necessary or advisable. While it has been said that the Fourteenth Amendment does not empower Congress to legislate on matters within the domain of the states' powers, it has also been stated that the Fourteenth Amendment empowers Congress to enact appropriate legislation establishing more exacting requirements than those minimum safeguards provided in the Amendment.

"The enforcement clause of the Fourteenth Amendment is a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guaranties of the Amendment. By including the clause in the Amendment, its draftsmen sought to grant to Congress the same broad powers expressed in the "necessary and proper" clause of the Constitution. Under the enabling clause, Congress has the power to regulate state and local governmental entities by appropriate legislation independent from any effect upon interstate commerce.

"The Fifteenth Amendment creates no privileges or immunities of any one class of citizens over another, and only prohibits discrimination against any class of citizens of the United States, and annuls all state laws and constitutional provisions that are in conflict therewith."

[16 Corpus Juris Secundum, Constitutional Law, §57b]

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**Black's Law Dictionary: Allodial**

"**ALLODIAL.** Free; not holden of any lord or superior; owned without obligation of vassalage or fealty; the opposite of feudal. *Barker v. Dayton*, 28 Wis. 384; *Wallace v. Harmstad*, 44 Pa. 499."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 100]

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**Black's Law Dictionary: Allodium**

"**ALLODIUM.** Land held absolutely in one's own right, and not of any lord or superior; land not subject to feudal duties or burdens.

"An estate held by absolute ownership, without recognizing any superior to whom any duty is due on account thereof. 1 Washb.Real Prop. 16; *McCartee v. Orphan Asylum*, 9 Cow., N.Y., 511, 18 Am.Dec. 516."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 100]

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**48 American Jurisprudence 2d, Labor and Labor Relations §2**

"The right to labor and to its protection from unlawful interference is a constitutional as well as a common-law right. Every man has a natural right to the fruits of his own industry."

[48 American Jurisprudence 2d, Labor and Labor Relations §2]

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**Black's Law Dictionary: Political**

"POLITICAL. Pertaining or relating to the policy or the administration of government, state or national. *People v. Morgan*, 90 Ill. 558. Pertaining to, or incidental to, the exercise of the functions vested in those charged with the conduct of government; relating to the management of affairs of state; as political theories; of or pertaining to exercise of rights and privileges or the influence by which individuals of a state seek to determine or control its public policy; having to do with organization or action of individuals, parties, or interests that seek to control appointment or action of those who manage affairs of a state. *State ex rel. Maley v. Civic Action committee*, 238 Iowa 851, 28 N.W.2d. 467, 470."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1319]

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**Black's Law Dictionary: Political Rights**

"POLITICAL RIGHTS. Those which may be exercised in the formation or administration of the government. *People v. Morgan*, 90 Ill. 563. Rights of citizens established or recognized by constitutions which give them the power to participate directly or indirectly in the establishment or administration of government. *People v. Barrett*, 203 Ill. 99, 67 N.E. 742, 96 Am.St.Rep. 296; *Winnett v. Adams*, 71 Neb. 817, 99 N.W. 684."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1319]

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**Black's Law Dictionary: Wrong**

"WRONG. A violation of the legal rights of another; an invasion of right to the damage of the parties who suffer it, especially a tort. [Cite omitted.] It usually signifies injury to person, property or relative noncontractual rights of another than wrongdoer, with or without force, but, in more extended sense, includes violation of contract. [Cite omitted.]

"The idea of *rights* naturally suggests the correlative one of *wrongs*; for every right is capable of being violated. A right to receive payment for goods sold (for example) implies a wrong on the part of him who owes, but withholds the price; a right to live in personal security, a wrong on the part of him who commits personal violence. And therefore, while, in a general point of view, the law is intended for the establishment and maintenance of *rights*, we find it, on closer examination, to be dealing both with rights and wrongs. It first fixes the character and definition of rights, and then, with a view to their effectual security, proceeds to define wrongs, and to devise the means by which the latter shall be prevented or redressed. 1 Steph.Comm. 126.

**"Private Wrong**

"The violation of public or private rights, when considered in reference to the injury sustained by the individual, and consequently as subjects for civil redress or compensation. [Cites omitted.]

**"Public Wrongs**

"Violations of public rights and duties which affect the whole community, considered as a community; crimes and misdemeanors." [Cite omitted.]  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1788]

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**Black's Law Dictionary: Wrongful Act**

"WRONGFUL ACT. Any act which in the ordinary course will infringe upon the rights of another to his damage, unless it is done in the exercise of an equal or superior right." [Cites omitted.]  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1788]

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**Black's Law Dictionary: Laches**

"Laches. [pronunciation symbols omitted] "Doctrine of laches," is based upon maxim that equity aids the vigilant and not those who slumber on their rights. It is defined as neglect to assert right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity. The neglect for an unreasonable and unexplained length of time under circumstances permitting diligence, to do what in law, should have been done.

"Neglect or omission to assert right as, taken in conjunction with lapse of time and other circumstances, causes prejudice to adverse party, ... neglect or omission to do what one should do as warrants presumption"" that one has abandoned right or claim...." [Cites omitted.]  
[Black's Law Dictionary, Fifth Edition, 1979, p. 787]

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**Miller v. The Resolution and Ingersoll (Aug. 1781)**

"Capture, authorized by the rights of war, transfers the property; but unless the property taken belongs to an enemy, the capture gives no right. The natural state of nations is peace, and whoever founds a claim on the rights of war, must prove national hostility.--p. 2, 3."

"Prize, is a technical term, to express a legal capture.--p 4."

"A neutral subject, whose property has been illegally captured, may pursue and recover it, in whatever country found, unless it has- been adjudged prize, by a competent tribunal.--p. 4."

"The municipal laws of a country cannot change the law of nations, as to the subjects of another nation.--p. 4."

"Peace and friendship must always be presumed to subsist among nations; and therefore he who founds a claim upon the rights of war, must prove that the peace was broken by some national hostility, and war commenced; but mere conjecture, supposition and possibility, can render no competent evidence of the fact."

"The act of the subject can never be the act of the sovereign; unless the subject has been commissioned by the sovereign to do it."

"The municipal laws of a country cannot change the law of nations, so as to bind the subjects of another nation; and by the law of nations a neutral subject, whose property has been illegally captured, may pursue and recover that property in whatever country it is found, unless a competent jurisdiction has adjudged it prize. The municipal laws of a country can only bind its own subjects."

"Every libel states a title to the thing captured; the title must not only be stated, but it must also be proved."

[Miller v. The Resolution and Ingersoll, 2 U.S. 19, 2 Dall. 19, 1 L.Ed. 271 (1781)]

**Constitution for the United States of America, Article I, Section 10, Clause 1 (Sept. 17, 1787)**

"No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility."

[Constitution for the United States of America, Article I, Section 10, Clause 1]

**Journals of the Continental Congress 1774-1789**

"Resolved, N.C.D.1. That they are entitled to life, liberty, and property, and they have never ceded to any sovereign power whatever, a right to dispose of either without their consent."

[Journals of the Continental Congress 1774-1789, Worthington Chauncey Ford, Ed., Chief, Division of Manuscripts, Washington: Government Printing Office, 1904]

**Constitution for the United States of America, First Amendment (Dec. 15, 1791)**

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

[Constitution for the United States of America, First Amendment]

**Constitution for the United States of America, Fourth Amendment (Dec. 15, 1791)**

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

[Constitution for the United States of America, Fourth Amendment]

**Constitution for the United States of America, Fifth Amendment (Dec. 15, 1791)**

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation" Constitution for the United

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States of America, Fifth Amendment.

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**Constitution for the United States of America, Ninth Amendment (Dec. 15, 1791)**

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

[Constitution for the United States of America, Ninth Amendment]

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**United States v. Villato (Apr. 1797)**

"The Pennsylvania act of 1789, providing for the naturalization of foreigners, was repealed by implication on the adoption of the new state constitution, which contains provisions in relation to resident foreigners inconsistent with act; and, as the new constitution makes no provision on the subject, an attempted naturalization under the state laws is void, irrespective of the question whether the naturalization laws of the United States do not operate to exclude all state jurisdiction."

"Therefore a Spanish subject who took the oath under the Pennsylvania statute after the adoption of the state constitution, and afterwards engaged on board a French privateer in the capture of an American vessel, was not guilty of treason against the United States."

"Difficulties, it is true, have been suggested on points not necessary to a decision on the present occasion; and, certainly, if the question had not previously occurred, I should be disposed to think, that the power of naturalization operated exclusively, as soon as it was exercised by congress. But the circumstances of the case now before the court, render it unnecessary to inquire into the relative jurisdictions of the state and federal governments. The only act of naturalization suggested, depends upon the existence, or non-existence, of a law of Pennsylvania; and it is plain, that upon the abolition of the old constitution of the state, the law became inconsistent with the provisions of the new constitution, and, of course, ceased to exist, long before the supposed act of naturalization was performed."

[United States v. Villato, 2 U.S. 370; 2 Dall. 370; 1 L.Ed. 419; (Case No. 16,622) (1797)]

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**Marbury v. Madison (Feb. 1803)**

**"An act of congress repugnant to the constitution cannot become a law."**

"The courts of the United States are bound to take notice of the constitution."

"The commission being signed, the subsequent duty of the secretary of state is prescribed by law, and not to be guided by the will of the president. He is to affix the seal of the United States to the commission, and is to record it.

"This is not a proceeding which may be varied, if the judgment of the executive shall suggest one more eligible; but is a precise course accurately marked out by law, and is to be strictly pursued. It is the duty of the secretary of state to conform to the law, and in this he is an officer of the United States, bound to obey the laws. He acts, in this respect, as has been very properly stated at the bar, under the authority of law, and not by the instructions of the president. It is a ministerial act which the law enjoins on a particular officer for a particular purpose."

**"The very essence of civil liberty' certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.** In Great Britain the king himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of his court.

"In the 3d vol. of his Commentaries, p. 23, Blackstone states two cases in which a remedy is afforded by mere operation of law.

**""In all other cases," he says, "it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit, or action at law, whenever that right is invaded."**

"And afterwards, p. 109, of the same vol. he says, "I am next to consider such injuries as are cognizable by the court of the common law. And herein I shall for the present only remark, that all possible injuries whatsoever, that did not fall within the exclusive cognizance of either the ecclesiastical, military, or maritime tribunals, are, for that very reason, within the cognizance of the common law courts of justice; for it is a settled and invariable principle in the laws of England, that every right, when withheld, must have a remedy, and every injury its proper redress."

"The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right."

"It behooves us, then, to inquire whether there be in its composition any ingredient which shall exempt it from legal investigations, or exclude the injured party from legal redress. In pursuing this inquiry the first question which presents itself is, whether this can be arranged with that class of cases which come under the description of *damnum absque injuria*;

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a loss without an injury."

"That there may be such cases is not to be questioned; but that every act of duty, to be performed in any of the great departments of government, constitutes such a case, is not to be admitted."

"Whatever the practice on particular occasions may be, the theory of this principle will certainly never be maintained. No act of the legislature confers so extraordinary a privilege," nor can it derive countenance from the doctrines of the common law. After stating that personal injury' from the king to a subject is presumed to be impossible, Blackstone, vol. 3, p. 255, says, "but injuries to the rights of property can scarcely be committed by the crown without the intervention of its officers; for whom the law, in matters of right, entertains no respect or delicacy; but furnishes various methods of detecting the errors and misconduct of those agents, by whom the king has been deceived and induced to do a temporary injustice."

"It follows, then, that the question, whether the legality of an act of the head of a department be examinable in a court of justice or not must always depend on the nature of that act."

"But when the legislature proceeds to impose on that officer other duties; when he is directed peremptorily to perform certain acts; when the rights of individuals are dependent on the performance of those acts; he is so far the officer of the law; is amenable to the laws for his conduct; and cannot at his discretion sport away the vested rights of others.

"The conclusion from this reasoning is, that where the heads of departments are the political or confidential agents of the executive, merely to execute the will of the President, or rather to act in cases in which the executive possesses a constitutional or legal discretion, nothing can be more perfectly clear than that their acts are only politically examinable. But where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured, has a right to resort to the laws of his country for a remedy."

"If one of the heads of departments commits any illegal act, under colour of his office, by which an individual sustains an injury, it cannot be pretended that his office alone exempts him from being sued in the ordinary mode of proceeding, and being compelled to obey the judgment of the law. How, then, can his office exempt him from this particular mode of deciding on the legality of his conduct if the case be such a case as would, were any other individual the party complained of, authorize the process?"

"It is not by the office of the person to whom the writ is directed, but the nature of the thing to be done, that the propriety or impropriety of issuing a mandamus is to be determined. Where the head of a department acts in a case, in which executive discretion is to be exercised; in which he is the mere organ of executive will; it is again repeated, that any application to a court to control, in any respect, his conduct would be rejected without hesitation.

"But where he is directed by law to do a certain act affecting the absolute rights of individuals, in the performance of which he is not placed under the particular direction of the President, and the performance of which the President cannot lawfully forbid, and therefore is never presumed to have forbidden; as for example, to record a commission, or a patent for land, which has received all the legal solemnities; or to give a copy of such record; in such cases, it is not perceived on what ground the courts of the country are further excused from the duty of giving judgment that right be done to an injured individual, then if the same services were to be performed by a person not the head of a department."

"Affirmative words are often, in their operation, negative of other objects than those affirmed; and in this case, a negative or exclusive sense must be given to them, or they have no operation at all.

"It cannot be presumed that any clause in the constitution is intended to be without effect; and, therefore, such a construction is inadmissible, unless the words require it."

"That the people have an original right to establish, for their future government, such principles, as, in their opinion, shall most conduce to their own happiness is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it, to be frequently repeated. The principles, therefore, so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent.

"This original and supreme will organizes the government, and assigns to different departments their respective powers. It may either stop here, or establish certain limits not to be transcended by those departments.

"The government of the United States is of the latter description. The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.

"Between these alternatives there is no middle ground. The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.

"If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

"Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and, consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.

"This theory is essentially attached to a written constitution, and, is consequently, to be considered, by this court, as one of the fundamental principles of our society. It is not therefore to be lost sight of in the further consideration of this subject.

"If an act of the legislature, repugnant to the constitution, is void, does it, notwithstanding its invalidity, bind the courts, and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law? This would be to overthrow in fact what was established in theory; and would seem, at first view, an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration.

"It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.

"So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

"If, then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply.

"Those, then, who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.

"This doctrine would subvert the very foundation of all written constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be given to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.

"That it thus reduces to nothing what we have deemed the greatest improvement on political institutions, a written constitution, would of itself be sufficient, in America, where written constitutions have been viewed with so much reverence, for rejecting the construction. But the peculiar expressions of the constitution of the United States furnish additional arguments in favour of its rejection.

"The judicial power of the United States is extended to all cases arising under the constitution."

"In some cases, then, the constitution must be looked into by the judges. And if they can open it at all, what part of it are they forbidden to read or to obey?"

"If such be the real state of things, this is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime.

"It is also not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the constitution, have that rank.

"Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument." [Bold added.]

[*Marbury v. Madison*, 5 U.S. 137, 1 Cranch 13,; 2 L.Ed. 60 (1803)]

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### **The Antelope (1825)**

"Every man has a natural right to the fruits of his own labor, is generally admitted; and no other person can rightfully deprive him of those fruits, and appropriate them against his will..."

[*The Antelope*, 23 U.S. 66, 10 Wheat 66, 6 L.Ed. 268 (1825)]

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### **Vattier v. Hinde et al. (1833)**

"In the case at bar, Abraham Garrison has no claim, legal or equitable, to the property in contest. No decree could be made against him, and he has filed his answer disclaiming all interest in the cause. It is true that his answer is not evidence as an

answer, since the court had no jurisdiction as to him. But in a question concerning himself only; in a question whether the court will abstain from exercising its jurisdiction between parties, in some of whom the whole title in law and equity is vested, lest his interests should be affected; his disclaimer of all interest, appearing in the form in which it appears, cannot be disregarded."

"If persons were not bound to notice this deed because the title of Jones did not appear on the record, still there was no trace of title from any person whatever to Thomas Doyle. This sale, then, was totally unauthorized, and could convey nothing. No title being in Vattier, he could convey none to Findley. If, then, at any time before the deed from Garrison to Findley a controversy had arisen respecting the title to this lot between the heirs of Thomas Doyle, Jun., and Charles Vattier or his vendee, each claiming conveyance of the legal title, the decision must have been in favor of Doyle's heirs. They had, if not the legal right, a complete equitable title, to which no single objection could be made."

"If, then, the case of the appellees had been correctly stated in their bill, we should have thought them entitled to relief for which they prayed. But it was not correctly stated. The bill sets forth a title in Belinda, the wife of Thomas S. Hinde, by direct descent from her brother to herself, and insists on this title.

"The answer resists the claim, because the land had been conveyed by the plaintiffs before the institution of their suit to Alexander Cummings. The plaintiffs, in their replication, admit the execution of the deed to Cummings, but aver that it was made in trust to reconvey the same rights to the said Thomas, to be held by him in trust for the use and benefit of the said Belinda and her heirs, and to enable the said Thomas the more conveniently to manage, litigate and protect the said rights; and that the said Alexander Cummings did afterwards in execution of the said trust, make a deed to the said Thomas, which is recorded in the proper county. The deed referred to is exhibited, but expresses no trust for the wife and her heirs."

"This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Ohio, and was argued by counsel; [ \* \* \* ] This court is further of opinion that the Circuit Court ought not to have pronounced its decree, and that for this cause the decree ought to be reversed, and is hereby reversed, so far as it directs a conveyance to be made by the appellant, Charles Vattier, and the cause is remanded to the Circuit Court, with directions to permit the plaintiffs to amend their bill." [See O'Donoghue.]

[Vattier v. Hinde et al., 32 U.S. 252, 7 Peters 252, 8 L.Ed. 675 (1833)]

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#### **California Constitution (1849), Article 1, Section 1**

"All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; **acquiring, possessing, and protecting property**; and pursuing and obtaining safety and happiness." [Bold added.]

[California Constitution (1849) at Article 1, Section 1]

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#### **Constitution for the United States of America, Thirteenth Amendment, Section 1 (Dec. 18, 1865)**

"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

[Constitution for the United States of America, Amendment XIII, Section 1]

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#### **Doc. Lonas v. State (Nov. 1, 1871)**

"**CONSTITUTIONAL LAW**, *Intermarriage, or cohabitation of negroes and whites*.

"The act of 1870, c. 39, making it a felony for white persons and negroes to marry or cohabit together as man and wife, is a valid act, not affected by the Constitution of the United States, the Civil Rights bill, or Enforcement law."

"The State, then, is forbidden from making and enforcing any law which shall abridge the privileges and immunities of citizens of the United States. It is said that "the words rights, privileges and immunities," are abusively used, as if they were synonymous. The word rights, is generic, common, embracing whatever may be lawfully claimed. Privileges are special rights, belonging to the individual or class, and not to the mass; properly, an exemption from some general burden, obligation or duty; a right peculiar to some individual or body. Immunities are rights of exemption only--freedom' from what otherwise would be a duty or burden:" Bates on Citizenship, 22. "These privileges and immunities," said Washington, J., "may be all comprehended under the following general heads: protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind and to pursue and obtain happiness and safety; *subject, nevertheless, to such restraints as the government may justly prescribe for the general good of the whole*.

"The right of the citizen of one State to pass through or reside in any other State, for purposes of trade, agriculture, professional pursuits or otherwise; to claim the benefit of the writ of *habeas corpus*; to institute and maintain actions of

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every kind in the courts of the State; to take, hold and dispose of property, both real and personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the State; to which may be added the elective franchise, as regulated and established by the laws and Constitution of the State in which it is to be exercised: *Corfield v. Coryell*, 4 Wash., C. C., 380. These are some of the privileges and immunities intended to be guaranteed to the citizen, "subject," says the learned Judge, "to such restraints as the government may justly prescribe for the general good of the whole." There are many others not herein enumerated," and upon which the courts will decide as the cases arise: *Conner v. Elliott*, 18 How., 591. The right of intermarriage among the races is, in the opinion of the Court, not one of them. Nor is marriage a contract, in the sense of the Constitution, which may be "made and enforced." It is called, in many of the books, a civil contract, for the want of a better phrase. A contract, in the sense of these enactments, is such an agreement as may be specifically enforced, like a contract to pay money or to deliver property. Marriage is a mere covenant of the will; it may be considered, while executory, a contract, the breach of which is expiated in damages; but it reposes upon the consent of the parties. If that consent is withdrawn, there is no such thing known to our law as its specific enforcement."

"The highest and holiest duty of every government is to provide for the happiness and general welfare of its people. How and in what manner this is to be best subserved, is a question for the political power; and the police power, which is inherent in all governments, is to be exercised without question. These powers, like privileges and immunities, heretofore considered in this opinion, can not well be enumerated. "The frames of the Constitution," said Marshall, C. J., "did not intend to restrain the States in the regulation of their civil institutions, adopted for internal government; and the instrument they have given us is not to be so construed":" *Dartmouth College v. Woodward*, 4 Wheat., 518-629. These police powers of the State extend to every conceivable subject, where the good order, the domestic peace, the private happiness or public welfare of the people demand legislation. Unless no State has acquitted itself of the duties of government without it. We hold that such legislation is not, never has been, and never should be, prohibited to the States, in reference to the intermarriage of the races. **It has been repeatedly held by the Supreme Court of the United States, that a State may determine the status of persons within its jurisdiction:** *Groves v. Slaughter*, 15 Pet., 419; *Moore v. Illinois*, 14 How., 13, 11 Pet., 131; Story Const., §§1098, 1804, 1809."

"The Congress has the same right to regulate this relation in the District of Columbia and in the Territories, that the States have within their own jurisdiction; and this power is at this moment being exercised in Utah, in the suppression of polygamy. We are of opinion that the late amendments to the Constitution of the United States, and the laws enacted for their enforcement, do not interfere with the rights of the States, as enjoyed since the foundation of the government, to interdict improper marriages; and that the act of 1870, c. 39, which forbids the intermarriage of white persons with negroes, mulattoes or persons of mixed blood, descended from a negro to the third generation, inclusive, and their living together as man and wife, in this State, is a valid and constitutional enactment."

[Doc. Lonas v. State, 59 Tenn. 287 (1871)]

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#### **California Civil Code, §678**

"OWNERSHIP, ABSOLUTE OR QUALIFIED. The ownership of property is either:

- "1. Absolute; or,
- "2. Qualified."

[California Civil Code, §678]

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#### **California Civil Code, §679**

"WHEN ABSOLUTE. The ownership of property is absolute when a single person has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws."

[California Civil Code, §679]

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#### **California Civil Code, §680**

"WHEN QUALIFIED. The ownership of property is qualified:

- "1. When it is shared with one or more persons;
- "2. When the time of enjoyment is deferred or limited;
- "3. When the use is restricted."

[California Civil Code, §680]

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**California Government Code, §180**

"As used herein, "property" includes real and personal property."  
[California Government Code, §180]

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**Billings v. Hall (Jan. 1857)**

"An Amendatory Act does not divest rights vested under the old law; for Statutes of Limitations affect the remedy, and not the right."

"The Constitution of this State declares, among the inalienable rights of each citizen, that of acquiring, possessing, and protecting property. This is one of the primary objects of government, is guaranteed by the Constitution, and cannot be impaired by legislation."

"The grant of "legislative power," in the Constitution, does not include the right to attack private property, for that would defeat one of the great ends for which governments are established."

"A government with no limits but its own discretion is not a constitutional government, in the true sense of the term."

"The right of protecting property, declared inalienable by the Constitution, is not the mere right to protect it by individual force, but the right to protect it by the law of the land, and the force of the body politic."

"The right to regulate the mode of redressing injuries belongs to the Legislature, but when, under the semblance of a change of the remedy, a substantial existing right is defeated, impaired, or abridged, the act is null and void."

[Billings v. Hall, 7 Cal. 1 (1857)]

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**Bradwell v. Illinois (Apr. 15, 1873)**

"We agree with him that there are privileges and immunities belonging to citizens of the United States, in that relation and character, and that it is these and these alone which a State is forbidden to abridge. But the right to admission to practice in the courts of a State is not one of them. This right in no sense depends on citizenship of the United States. It has not, as far as we know, ever been made in any State or in any case to depend on citizenship at all. Certainly many prominent and distinguished lawyers have been admitted to practice, both in the State and Federal Courts, who were not citizens of the United States or of any State. But, on whatever basis this right may be placed, so far as it can have any relation to citizenship at all, it would seem that, as to the courts of a State, it would relate to citizenship of the State, and as to Federal Courts, it would relate to citizenship of the United States."

[Bradwell v. Illinois, 16 Wall. 130, 21 L.Ed. 442 (1873)]

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**United States v. Lee (Dec. 4, 1882)**

"The doctrine that the United States cannot be sued as a party defendant in any court whatever, except where congress has provided for such suit, examined and reaffirmed, and the nature of this exemption considered."

This exemption is, however, limited to suits against the United States directly and by name, and cannot be successfully pleaded in favor of officers and agents of the United States when sued by private persons for property in their possession as such officers and agents."

"The constitutional provisions that no person shall be deprived of life, liberty, or property without due process of law, nor private property taken **for public use without just compensation, are intended as limitations upon the power of the government** in its dealings with the citizen, and relate to that class of rights whose protection is peculiarly within the province of the judicial branch of the government."

"In regard to the life and liberty of the citizen, the courts have so often exercised the power by writ of *habeas corpus* that there remains no question about their right to do so. The cases here examined show that they are equally bound to give remedy for unlawful invasion of rights of property by officers of any branch of the government."

"The evils which it is suggested may arise from interference of state or other courts with the exercise of powers essential to government, are illusory, and are insignificant in comparison with the proposition that no relief can be granted when it is asserted that the United States has authorized the wrong."

"Under our system the *people*, who are there [in England] called *subjects*, are the sovereign. Their rights, whether collective or individual, are not bound to give way to a sentiment of loyalty to the person of the monarch. **The citizen here knows no person, however near to those in power, or however powerful himself, to whom he need yield the rights which the law secures to him when it is well administered. When he, in one of the courts of competent jurisdiction, has established his right to property, there is no reason why deference to any person, natural or artificial, not even the United States, should prevent him from using the means which the law gives him for the protection and**

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**enforcement of that right."**

"The instances in which the life and liberty of the citizen have been protected by the judicial writ of *habeas corpus* are too familiar to need citation, and many of these cases, indeed almost all of them, are those in which life or liberty was invaded by persons assuming to act under the authority of the government. *Ex parte Milligan*, 4 Wall. 2."

"In such cases there is no safety for the citizen, except in the protection of the judicial tribunals, for rights which have been invaded by the officers of the government, professing to act in its name."

"It is the right to the possession of the homestead of plaintiff--a right to recover that which has been taken from him by force and violence, and detained by the strong hand."

"It is not pretended, as the case now stands, that the president had any lawful authority to do this, or that the legislative body could give him any such authority except upon payment of just compensation."

"Not only that no such power is given, but that **it is absolutely prohibited, both to the executive and the legislative, to deprive any one of life, liberty, or property without due process of law, or to take private property without just compensation.**"

".. the writ of *habeas corpus* has been often used to defend the liberty of the citizen, and even his life, against the assertion of unlawful authority on the part of the executive and the legislative branches of the government."

"No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it. It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives."

"If such [unconstitutional congressional statutes and presidential approval without court remedy] be the law of this country, it sanctions a tyranny which has no existence in the monarchies of Europe, nor in any other government which has a just claim to well-regulated liberty' and the protection of personal rights." [Bold added and contents in brackets added for clarity.]

[United States v. Lee, 106 U.S. 196, 1 S.Ct. 240 (1882)]

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**Butchers' Union Co. v. Crescent City (May 5, 1884)**

"The property which every man has is his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property."

[Butchers' Union Co. v. Crescent City, 111 U.S. 746 (1884)]

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**Boyd v. United States (Feb. 1, 1886)**

"It does not require actual entry upon premises and search for and seizure of papers to constitute an unreasonable search and seizure within the meaning of the fourth amendment; a compulsory production of a party's private books and papers, to be used against himself or his property in a criminal or penal proceeding, or for a forfeiture, is within the spirit and meaning of the amendment."

"It is equivalent to a compulsory production of papers to make the non-production of them a confession of the allegations which it is pretended they will prove."

"A proceeding to forfeit a person's goods for an offense against the laws, though civil in form, and whether *in rem* or *in personam*, is a "criminal case" within the meaning of that part of the fifth amendment which declares that no person "shall be compelled, in any criminal case, to be a witness against himself."

"The seizure or compulsory production of a man's private papers to be used in evidence against him is equivalent to compelling him to be a witness against himself, and, in a prosecution for a crime, penalty, or forfeiture, is equally within the prohibition of the fifth amendment."

"Both amendments relate to the personal security of the citizen. They nearly run into and mutually throw light upon each other. When the thing forbidden in the fifth amendment, namely, compelling a man to be a witness against himself, is the object of a search and seizure of his private papers, it is an "unreasonable search and seizure" within the fourth amendment."

"Constitutional provisions for the security of person and property should be liberally construed."

[Boyd v. United States, 116 U.S. 616 (1886)]

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**36 U.S.C. §176*****Sovereignty and Freedom Points and Authorities***

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"No disrespect should be shown to the flag of the United States of America; the flag should not be dipped to any person or thing. Regimental colors, State flags, and organization or institutional flags are to be dipped as a mark of honor.

"(a) The flag should never be displayed with the union down, **except as a signal of dire distress in instances of extreme danger to life or property.**" [Bold added.]

"(k) The flag, when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning."

[36 U.S.C. §176]

### **Mugler v. Kansas (Dec. 5, 1887)**

"The acknowledged police power of a state extends often to the destruction of property. A nuisance may be abated. Everything prejudicial to the health or morals of a city may be removed."

"It does not at all follow that every statute enacted ostensibly for the promotion of these ends is to be accepted as a legitimate exertion of the police powers of the state. There are, of necessity, limits beyond which legislation cannot rightfully go. While every possible presumption is to be indulged in favor of the validity of a statute, (*Sinking Fund Cases*, 99 U.S. 718) **the courts must obey the constitution rather than the law-making department of government, and must, upon their own responsibility, determine whether, in any particular case, these limits have been passed.** "To what purpose," it was said in *Marbury v. Madison*, 1 Cranch, 137, 167, "are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation." The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty, indeed, are under a solemn duty, to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution." [Bold added.]

[*Mugler v. Kansas*, 123 U.S. 623, 8 S.Ct. 273 (1887)]

### **Digest of American Decisions and American Reports: Constitutions (1891)**

"6. **Sovereignty.--Term** "sovereignty" is used to express supreme political authority of independent state or nation, and whatever rights are essential to existence of this authority are rights of sovereignty, as right to declare war, make peace, levy taxes, and take private property for public use. *Moore v. Smaw*, 79 D. 123.

"Right of sovereignty is vested in people, and is exercised through joint action of their federal and state governments. To federal government is delegated exercise of certain rights or powers of sovereignty; and exercise of all other rights of sovereignty, except as expressly prohibited, is re-vested to people of respective states, or vested by them in their local governments.

"7. **Powers remaining in the states.--**People of a state are entitled to all rights which formerly belonged to the king by his prerogative. *Lansing v. Smith*, 21 D. 89.

"State, upon entering Union retained all their original power and sovereignty, except such as was surrendered to federal government, or they were expressly prohibited from exercising by United States constitution. Subject to these exceptions, they were independent commonwealths, and exclusive judges of what is just and proper for their own safety, welfare, and happiness. *Blair v. Ridgely*, 97 D. 249.

S.P., *People v. Coleman*, 60 D. 581; *Corn. v. Erie R 'y Co. etc.*, IR. 399.

"Prior to adoption of federal constitution, states possessed unlimited and unrestricted sovereignty, and retained same ever afterward, except so far as they granted powers to general government, or prohibited themselves from doing certain acts. Every state reserved to itself exclusive right of regulating its own internal government and police. *Blair v. Ridgely*, 97 D. 248.

"Grant of power to Congress excludes right of state over same subject only when grant is in express terms exclusive authority to Union, or where grant to Congress is coupled with prohibition to states to exercise same power, or where grant to one would be repugnant to exercise of similar authority by the other. *Weaver v. Fegely*, 70 D. 151.

"State may regulate her domestic concerns, and prescribe remedies, including rules of evidence, in her own courts, except where prohibited by her own constitution or that of United States. *Bowlin v. Corn.*, 92 D. 468.

"People of state have power to define how much of rights and liberty of citizen he shall be required to surrender for public good, and only limits upon this power are prohibitions contained in federal constitution. *Drehman v. Stifel*, 97 D. 268."

[Rapa]lje, Stewart. A Digest of the Decisions of the Courts of Last Resort of the Several States, from the earliest period to

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the year 1888, contained in the one hundred and sixty volumes of The American Decisions and The American Reports, and of the Notes therein Contained. Volume I. San Francisco: Bancroft-Whitney Company, 1891, pp. 780-781]

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**Counselman v. Hitchcock (Jan. 11, 1892)**

"The fifth amendment to the constitution of the United States, which declares that no person "shall be compelled in any criminal case to be a witness against himself," extends its protection to a witness called to testify before a grand jury which is investigating alleged violations of the interstate commerce law; it is not limited to cases of criminal prosecution against the witness himself."

[Counselman v. Hitchcock, 142 U.S. 547, 12 S.Ct. 195 (1892)]

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**United States v. Perkins (May 25, 1896)**

"While the laws of all civilized states recognize in every citizen the absolute right to his own earnings, and to the enjoyment of his own property, and the increase thereof, during his life, except so far as the state may require him to contribute his share for public expenses, the right to dispose of his property by will has always been considered purely a creature of statute and within legislative control."

".. in *State v. Dalrymple*, 70 Nd. 294, 299 [3 L. R. A. 374] ... "[t]he act that we are now considering plainly intended to require that a person taking the benefit of a civil right secured to him under our laws should pay a certain premium for its enjoyment.... This therefore is not a tax upon the property itself, but is merely the price exacted by the state for the privilege accorded in permitting property so situated to be transferred by will or by descent or distribution.""

"The legislature in such cases is dealing with its own creations, whose rights and obligations it may limit, define, and control."

"We think it was not intended to apply it to a purely political or governmental corporation like the United States."

[United States v. Perkins, 163 U.S. 625, 41 L.Ed. 287 (1896)]

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**Hovey v. Elliot (May 24, 1897)**

And, quoting with approval this language, in *Windsor v. McVeigh*, 93 U.S. 277, the court, speaking through Mr. Justice Field, again said, (pages 277, 278):

""The principle stated in this terse language, lies at the foundation of all well-ordered systems of jurisprudence. Whenever one is assailed in his person or his property, there he may defend, for the liability and the right are inseparable. This is a principle of natural justice, recognized as such by the common intelligence and conscience of all nations. A sentence of a court pronounced against a party without hearing him, or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal.

""That there must be notice to a party of some kind, actual or constructive, to a valid judgment affecting his rights, is admitted. Until notice is given, the court has no jurisdiction in any case to proceed to judgment, whatever its authority may be, by the law of its organization, over the subject-matter. But notice is only for the purpose of affording the party an opportunity of being heard upon the claim or the charges made; it is a summons to him to appear and speak, if he has anything to say, why the judgment sought should not be rendered. A denial to a party of the benefit of a notice would be, in effect, to deny that he is entitled to notice at all, and the sham and deceptive proceeding had better be omitted altogether. It would be like saying to a party, 'Appear and you shall be heard;' and, when he has appeared, saying, 'Your appearance shall not be recognized, and you shall not be heard.' In the present case, the district court not only, in effect, said this, but immediately added a decree of condemnation, reciting that the default of all persons had been duly entered. It is difficult to speak of a decree thus rendered with moderation. It was, in fact, a mere arbitrary edict, clothed in the form of a judicial sentence."

"This language but expresses the most elementary conception of the judicial function. At common law no man was condemned without being afforded opportunity to be heard. Thus, Coke (2 Inst. p. 46), in commenting on the twenty-ninth chapter of Magna Charta, says: "No man shall be disseised, etc., unless it be by the lawful judgment; that is, verdict of his equals (that is, of men of his own condition), or by the law of the land (that is, to speak it once for all, by the due course and process of law)."

"Blackstone, in book 4 of his Commentaries, at page 282, after referring to the subject of summary convictions, says:

""The process of these summary conviction, it must be owned, is extremely speedy, though the courts of common law have thrown in one check upon them by making it necessary to summon the party accused before he is condemned. This is now held to be an indispensable requisite, though the justices long struggled the point, forgetting that rule of natural reason expressed by Seneca:

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"Qui statuit aliquid, parte inaudita altera,

"`Aequum licet statuerit, haud aequus fuit,'

--A rule to which all municipal laws that are founded on the principles of justice have strictly conformed; the Roman law requiring a citation at the least, and our common law never suffering any fact (either civil or criminal) to be tried till it has previously compelled an appearance by the party concerned."

"It cannot be doubted that, where a judgment is rendered without the issuance and service of summons against a party who did not enter an appearance, the court rendering it is without jurisdiction to do so, and it can be assailed as void whenever presented as a muniment of right against another. Looking at the substance, and not the form, of the decree in the case of *Hovey v. McDonald*, upon which the rights of the plaintiff in error depend, it is plain that the judgment was substantially one without a hearing, for of what efficacy or avail was the summons to appear when the court which issued the summons rendered its judgment upon the theory that the summons was inefficacious, and that the defendant had no right either to appear or be heard in his defense? As said by this court in *Cable Co. v. Adams*, 155 U.S. 689, 15 Sup.Ct. 268, 360: "The substance, and not the shadow, determines the validity of the exercise of the power."

[*Hovey v. Elliot*, 167 U.S. 409; 17 S.Ct. 841 (1897)]

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### **John Bad Elk v. United States (April 30, 1900)**

"An instruction that officers had the right to use all necessary force to arrest the accused, and that he had no right to resist, is prejudicial error where the accused, who was thereupon convicted of murder committed in resisting an arrest, had not been guilty of any offense for which the officers had any legal authority to make the arrest."

"There is an entire absence of any evidence of a complaint having been made before any magistrate or officer charging an offense against the plaintiff in error, and there is no proof that he had been guilty of any criminal offense, or that, he had even violated any rule or regulation for the government of the Indians on the reservation, or that any warrant had been issued for his arrest. On the contrary, Gleason swears that his orders to arrest plaintiff in error were not in writing, but given orally. Indeed, it does not appear that Gleason had any authority even to entertain a complaint or to issue a warrant in any event."

"Counsel for plaintiff in error asked the court to charge as follows:

""From the evidence as it appears in this action, none of the policemen who sought to arrest the defendant in this action prior to the killing of the deceased, John Kills Back, were justified in arresting the defendant, and he had a right to use such force as a reasonably prudent person might do in resisting such arrest by them.""

"We think the court clearly erred in charging that the policemen had the right to arrest the plaintiff in error, and to use such force as was necessary to accomplish the arrest, and that the plaintiff in error had no right to resist it."

"At common law, if a party resisted arrest by an officer without warrant and who had no right to arrest him, and if in the course of that resistance the officer was killed, the offense of the party resisting arrest would be reduced from what would have been murder if the officer had had the right to arrest, to manslaughter. What would be murder if the officer had the right to arrest might be reduced to manslaughter by the very fact that he had no such right. So an officer, at common law, was not authorized to make an arrest without a warrant, for a mere misdemeanor not committed in his presence."

"If the officer had no right to arrest, the other party might resist the illegal attempt to arrest him, using no more force than was absolutely necessary to repel the assault constituting the attempt to arrest."

"He, of course, had no right to unnecessarily injure," much less to kill, his assailant; but where the officer is killed in the course of the disorder which naturally accompanies an attempted arrest that is resisted, the law looks with very different eyes upon the transaction, when the officer had the right to make the arrest, from what it does if the officer had no such right. What might be murder in the first case might be nothing more than manslaughter in the other, or the facts might show that no offense had been committed."

[*John Bad Elk v. United States*, 177 U.S. 529 (1900)]

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### **Audubon v. Shufeldt (May 20, 1901)**

"Alimony does not arise from any business transaction, but from the relation of marriage. It is not founded on contract, express or implied, but on the natural and legal duty of the husband to support the wife. The general obligation to support is made specific by the decree of the court of appropriate jurisdiction. Generally speaking, alimony may be altered by that court at any time, as the circumstances of the parties may require. The decree of a court of one state, indeed, for the present payment of a definite sum of money as alimony, is a record which is entitled to full faith and credit in another state and may therefore be there enforced by suit. [Cites omitted.] But its obligation in that respect does not affect its nature. In other respects, alimony cannot ordinarily be enforced by action at law, but only by application to the court which granted it, and subject to the discretion of that court. Permanent alimony is regarded rather as a portion of the

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husband's estate to which the wife is equitably entitled, than as strictly a debt; alimony from time to time may be regarded as a portion of his current income or earnings; and the considerations which affect either can be better weighed by the court having jurisdiction over the relation of husband and wife than by a court of a different jurisdiction."

[Audubon v. Shufeldt, 181 U.S. 575, 21 S.Ct. 735, 45 L.Ed. 1009 (1901)]

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#### **United States v. Morris (Oct. 9, 1903)**

"That the rights to lease land and to accept employment as a laborer for hire are fundamental rights, inherent in every free citizen, is indisputable."

[United States v. Morris, 125 F.Rept. 322 (1903)]

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#### **Guardian T. & D. Co. v. Fisher (Jan. 2, 1906)**

"An individual may be under no obligation to do a particular thing, and his failure to act creates no liability, but if he voluntarily attempts to act and do the particular thing he comes under an implied obligation in respect to the manner in which he does it."

[Guardian T. & D. Co. v. Fisher, 200 U.S. 57, 26 S.Ct. 186 (1906)]

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#### **Hale v. Henkel (Mar. 12, 1906)**

"The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. **His power to contract is unlimited.** He owes no duty to the state or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the state, since he receives nothing therefrom beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the state, and can only be taken from him by due process of law, and in accordance with the Constitution. Among his rights are a refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under a warrant of the law. **He owes nothing to the public so long as he does not trespass upon their rights.**"

"On the other hand, the corporation is a creature of the state. It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises, and holds them subject to the laws of the state and the limitations of its charter. Its powers are limited by law. It can make no contract not authorized" by its charter. Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its creation. There is a reserved right in the legislature to investigate its contracts and find out whether it has exceeded its powers. It would be a strange anomaly to hold that a state, having chartered a corporation to make use of certain franchises, could not, in the exercise of its sovereignty, inquire how these franchises had been employed, and whether they had been abused, and demand the production of the corporate books and papers for that purpose. The defense amounts to this: That an officer of a corporation which is charged with a criminal violation of the statute, may plead the criminality of such corporation as a refusal to produce its books. To state this proposition is to answer it. While an individual may lawfully refuse to answer incriminating questions unless protected by an immunity statute, it does not follow that a corporation, vested with special privileges and franchises, may refuse to show its hand when charged with an abuse of such privileges."

"The fact that a state corporation may engage in business which is within the general regulating power of the national government does not give to Congress any right of visitation of any power to dispense with the immunities and protection of the 4th and 5th Amendments. The national government has jurisdiction over crimes committed within its special territorial limits. "

**""It may be that it...is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way; namely, by silent approaches and slight deviations from legal modes of procedure:" This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed.** A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizens, and against any stealthy encroachments thereon. Their motto should be *obsta principiis*."" [Mr. Justice Brewer, dissenting, quoting Mr. Justice Bradley in Boyd v. United States, 116 U.S. 616, 29 L.Ed. 746, 6 Sup.Ct.Rep. 524. Bold added.]

[Hale v. Henkel, 201 U.S. 43 (1906)]

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#### **Hodges v. United States (May 28, 1906)**

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"Congress was not empowered by U.S.Const., 13th Amend., to make it an offence against the United States, cognizable in the Federal courts, for private individuals to compel negro citizens, by intimidation and force, to desist from performing their contracts of employment, but the remedy must be sought through state action and in state tribunals, subject to the supervision of the Supreme Court of the United States by writ of error in proper cases."

"In the Slaughter-House Cases, 16 Wall. 36, 76, 21 L.Ed. 394, 408, in defining the privileges and immunities of citizens of the several states, this is quoted from the opinion of Mr. Justice Washington in *Corfield v. Coryell*, 4 Wash. C. C. 371, Fed.Cas. No. 3230:

"The inquiry, he says, is, What are the privileges and immunities of citizens of the several states: We feel no hesitation in confining these expressions to those privileges and immunities which are fundamental; which belong of right to the citizens of all free governments, and which have at all times been enjoyed by citizens of the several states which compose this Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, it would be more tedious than difficult to enumerate. They may all, however, be comprehended under the following general heads: protection by the government, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may prescribe for the general good of the whole."

"And after referring to other cases this court added (p. 77, L.Ed. p. 409):

"It would be the vainest show of learning to attempt to prove by citations of authority, that up to the adoption of the recent amendments no claim or pretense was set up that those rights depended on the Federal government for their existence or protection, beyond the very few express limitations which the Federal Constitution imposed upon the states, - -such, for instance, as the prohibition against *ex post facto* laws, bills of attainder, and laws impairing the obligation of contracts. But, with the exception" of these and a few other restrictions, the entire domain of the privileges and immunities of citizens of the states, as above defined, lay within the constitutional and legislative power of the states, and without that of the Federal government."

"Notwithstanding the adoption of these three amendments, the national government still remains one of enumerated powers, and the 10th Amendment, which reads, "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people," is not shorn of its vitality. True, the 13th Amendment' grants certain specified and additional power to Congress, but any congressional legislation directed against individual action which was not warranted before the 13th Amendment must find authority in it. And in interpreting the scope of that Amendment it is well to bear in mind the words of Mr. Chief Justice Marshall, in *Gibbons v. Ogden*, 9 Wheat. 1, 188, 6 L.Ed. 23, 68, which, though spoken more than four score years ago, are still the rule of construction of constitutional provisions:

"As men whose intentions require no concealment generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our Constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said."

"With these decisions, and many others that might be cited, before us, it is vain to contend that the Federal Constitution secures to a citizen of the United States the right to work at a given occupation or particular calling free from injury," oppression, or interference by individual citizens.

"Even though such right be a natural or inalienable right, the duty of protecting the citizen in the enjoyment of such right, free from individual interference, rests alone with the state." [Quoting Mr. Justice Miller in *Slaughter-House Cases*.] [*Hodges v. United States*, 203 U.S. 1, 27 S.Ct. 6 (1906). [Overturned by *Jones v. Mayer*, 392 U.S. 409 (1968).]]

#### **Adair v. United States (Jan. 27, 1907)**

"The first inquiry is whether the part of the 10th section of the act of 1898 upon which the first count of the indictment was based is repugnant to the 5th Amendment of the Constitution, declaring that no person shall be deprived of liberty or property without due process of law. In our opinion that section, in the particular mentioned, is an invasion of the personal liberty, as well as of the right of the property, guaranteed by that Amendment. Such liberty and right embrace the right to make contracts for the purchase of the labor of others, and equally the right to make contracts for the sale of one's own labor; each right, however, being subject to the fundamental condition that no contract, whatever its subject matter, can be sustained which the law, upon reasonable grounds, forbids as inconsistent with the public interests, or as hurtful to the public order, or as detrimental to the common good. [ \* \* \* ] Without stopping to consider what would have been the rights of the railroad company under the 5th Amendment, had it been indicated under the act of congress, it is sufficient in this case to say that, as agent of the railroad company, and, as such, responsible for the conduct of the business of one of its departments, it was the defendant Adair's right--and that right inhered in his personal liberty, and was also a right of property--to serve his employer as best he could, so long as he did nothing that was reasonably forbidden by law as injurious to the public interests."

"With his reasons neither the public nor third persons have any legal concern. It is also his right to have business relations

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with anyone with whom he can make contracts, and, if he is wrongfully deprived of this right by others, he is entitled to redress."

"The general right to make a contract in relation to his business is part of the liberty' of the individual protected by the 14th Amendment of the Federal Constitution. [Cites omitted.] Under that provision no state can deprive any person of life, liberty, or property without due process of law. The right to purchase or to sell labor is part of the liberty protected by this Amendment, unless there are circumstances which exclude the right. There are, however, certain powers existing in the sovereignty of each state in the Union, somewhat vaguely termed 'police powers, the exact description and limitation of which have not been attempted by the courts. Those powers, broadly stated, and without, at present, any attempt at a more specific limitation, relate to the safety, health, morals, and general welfare of the public. Both property and liberty are held on such reasonable conditions as may be imposed by the governing power of the state in the exercise of those powers, and with such conditions the 14th Amendment was not designed to interfere. [Cites omitted.] In every case that comes before this court, therefore, where legislation of this character is concerned, and where the protection of the Federal Constitution is sought, the question necessarily arises: Is this a fair, reasonable, and appropriate exercise of the police power of the state, or is it an unreasonable, unnecessary, and arbitrary interference with the right of the individual to his personal liberty or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family? Of course, the liberty of contract relating to labor includes both parties to it. The one has as much right to purchase as the other to sell labor." [ \* \* \* ] The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it."

"As the relations and the conduct of the parties towards each other was not controlled by any contract other than a general employment on one side to accept the services of the employee and a general agreement on the other side to render services to the employer,"--no term being fixed for the continuance of the employment,--Congress could not, consistently with the 5th Amendment, make it a crime against the United States to discharge the employee because of his being a member of a labor organization."

"Let us inquire what is commerce, the power to regulate which is given to Congress?"

This question has been frequently propounded in this court, and the answer has been--and no more specific answer could well have been given--that commerce among the several states comprehends traffic, intercourse, trade, navigation, communication, the transit of persons, and the transmission of messages by telegraph,--indeed, every species of commercial intercourse among the several states,--but not that commerce "completely internal, which is carried on between man and man, in a state, or between different parts of the same state, and which does not extend to or affect other states." The power to regulate interstate commerce is the power to prescribe rules by which such commerce must be governed."

[Adair v. United States, 208 U.S. 172 (1907)]

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#### **Central of Georgia R. Co. v. Wright (Nov. 18, 1907)**

"Former adjudications in this court have settled the law to be that the assessment of a tax is action judicial in its nature, requiring for the legal exertion of the power such opportunity to appear and be heard as the circumstances of the case require. Davidson v. New Orleans, 96 U.S. 97, 24 L.Ed. 616; Weyerhaeuser v. Minnesota, 176 U.S. 550, 44 L.Ed. 583, 20 Sup.Ct.Rep. 485; Hagar v. Reclamation Dist. No. 108, 111 U.S. 701, 28 L.Ed. 569, 4 Sup.Ct.Rep. 663."

"Reluctant as we are to interfere with the enforcement of the tax laws of a state, we are constrained to the conclusion that this system does not afford that due process of law which adjudges upon notice and opportunity to be heard, which it was the intention of the 14th Amendment to protect against impairment by state action."

[Central of Georgia R. Co. v. Wright, 207 U.S. 127, 52 L.Ed. 135 (1907)]

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#### **Twining v. New Jersey (Nov. 9, 1908)**

"Exemption from self-incrimination is not safeguarded as against state action by the provision of U.S. Const., 14th Amend., that no state shall deprive any person of life, liberty, or property without due process of law."

[Twining v. New Jersey, 211 U.S. 78, 29 S.Ct. 14 (1908)]

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#### **Western Union Telegraph Co. v. Kansas (Jan. 17, 1910)**

"To carry on interstate commerce is not a franchise or a privilege granted by the state; it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States; and the accession of mere corporate facilities, as a matter of convenience in carrying on their business, cannot have the effect of depriving them of

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such right, unless Congress should see fit to interpose some contrary regulation on the subject. It has frequently been laid down by this court that the power of Congress over interstate commerce is as absolute as it is over foreign commerce. ... Again: "As was said by Mr. Justice Lamar, in the case last cited [Norfolk & W. R. Col. v. Pennsylvania]: 'It is well settled by numerous decision of this court, that a state cannot, under the guise of a license tax, exclude from its jurisdiction a foreign corporation engaged in interstate commerce, or impose any burdens upon such commerce within its limits.' We have repeatedly decided that a state law is unconstitutional and void which requires a party to take out a license for carrying on interstate commerce, no matter how specious the pretext may be for imposing it,"--[cases omitted]."

"Again, in the Gloucester Ferry Case: "While it is conceded that the property in a state belonging to a foreign corporation engaged in foreign or interstate commerce may be taxed equally with like property of a domestic corporation engaged in that business, we are clear that a tax or any other burden imposed on the property of either corporation because it is used to carry on that commerce, or upon the transportation of persons or property, or for the navigation of the public waters over which the transportation is made, is invalid and void as an interference with, and an obstruction of, the power of Congress in the regulation of such commerce.""

"It is true that, in many cases, the *general* rule has been laid down that a state may, if it chooses to do so, exclude foreign corporations from its limits, or impose such terms and conditions on their doing business in the state as, in its judgment, may be consistent with the interests of the people. But those were cases in which the particular foreign corporation before the court was engaged in ordinary business, and not directly or regularly in interstate or foreign commerce."

"And the court, speaking by Chief Justice Waite, in the Pensacola Case, said: "We are aware that, in Paul v. Virginia, supra [8 Wall. 168, 19 L.Ed. 357], this court decided that a state might exclude a corporation of another state from its jurisdiction, and that corporations are not within the clause of the Constitution which declares that 'the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.' Art. 4, §2. *That was not, however, the case of a corporation engaged in interstate commerce;* and enough was said by the court to show that, if it had been, *very different questions would have been presented.*"

"Whatever may be the extent of the state's authority over intrastate business, was it competent for the state to require that the telegraph company, --which surely had the right to enter and remain in the state for interstate business,--as a *condition* of its right to continue doing domestic business in Kansas, should pay, in the form of a fee, a specified per cent of its capital stock representing the interests, property, and operations of the company not only in Kansas, but throughout the United States and foreign countries? Is such a regulation consistent with the power of Congress to regulate commerce among the states, or with rights growing out of such commerce, and secured by the Constitution of the United States? Can the state, in this way, relieve its own treasury from the burden of supporting its public schools, and put that burden in whole or in part, upon the interstate business and property of foreign corporations? Can such a regulation be deemed constitutional any more than one requiring the company, as a condition of its doing intrastate business, that it should surrender its right, for instance, to invoke the protection of the Constitution when it is proposed to deprive it of its property without due process of law, or to deny it the equal protection of the laws? In Lafayette Ins. Co. v. French, [cite omitted] the court, speaking by Mr. Justice Curtis, said: "A corporation created by Indiana can transact business in Ohio only with the consent, express or implied, of the latter state (Bank of Augusta v. Earle [cite omitted]). This consent may be accompanied by such conditions as Ohio may think fit to impose; and these conditions must be deemed valid and effectual by other states and by this court, *provided they are not repugnant to the Constitution or laws of the United States.*"

In Southern P. Co. v. Denton, [cite omitted], the court considered the question of the validity of a Texas statute relating to foreign corporations desiring to transact business in that state. That statute provided that the application of the corporation to do business in the state should contain a stipulation that the permit be subject to certain provisions of the statute, one of which was that the permit shall become null and void if the corporation, being sued in a state court, should remove the case into a court of the United States upon the ground of the diverse citizenship of the parties or of local prejudice against such corporation. Dealing with that point, this court, speaking by Mr. Justice Gray, said: "But that statute, requiring the corporation, as a condition precedent to obtaining a permit to do business within the state, to surrender a right and privilege secured to it by the Constitution and laws of the United States, was unconstitutional and void, and could give no validity or effect to any agreement or action of the corporation in obedience to its provisions," --[cites omitted]. In the above case of Barron v. Burnside (which was cited with approval in the Denton Case), this court, speaking by Mr. Justice Blatchford, unanimously held: "As the Iowa statute makes the right to a permit *dependent upon the surrender by the foreign corporation of a privilege secured to it by the Constitution and laws of the United States, the statute requiring the permit must be held to be void.* . . . In all the cases in which this court has considered the subject of the granting by a state to a foreign corporation of its consent to the transaction of business in the state, it has uniformly asserted *that no conditions can be imposed by the state which are repugnant to the Constitution and laws of the United States.*"

So, in Barrow S. S. Co. v. Kane, above cited, Mr. Justice Gray, delivering the unanimous judgment of the court, said: "Statutes requiring foreign corporations, as a condition of being permitted to do business within the state, to stipulate not to remove into the courts of the United States suits brought against them in the courts of the state have been adjudged to be

unconstitutional and void.""

"While the general right of the states to regulate their strictly domestic affairs is fundamental, in our constitutional system, and vital to the integrity and permanence of that system, that right must always be exerted in a subordination to the granted or enumerated powers of the general government, and not in hostility to rights secured by the supreme law of the land"

"It is firmly established that, consistently with the due-process clause of the Constitution of the United States, a state cannot tax property located or existing permanently beyond its limits."

[Western Union Telegraph Co. v. Kansas, 216 U.S. 1, 30 S.Ct. 190 (1910)]

**United States v. Reading Co. (Dec. 16, 1912)**

"The theory and charge of the bill is that, by concerted action between the defendants, the independent operators were to be induced to enter singly into uniform agreements for the sale of the entire output of their several mines and any other they might thereafter acquire, excluding a negligible amount of unmarketable coal and coal for local consumption. And the further theory of the pleading is that by such concerted action and through the higher price offered, the defendants would obtain such control of independent coal as to prevent competition in the markets of other states.

"It is not essential that these contracts, considered singly, be unlawful as in restraint of trade. So considered, they may be wholly innocent. Even acts absolutely lawful may be steps in a criminal plot. [Cite omitted.] But a series of such contracts, if the result of a concerted plan or plot between the defendants to thereby secure control of the sale of the independent coal in the markets of other states, and thereby suppress competition in prices between their own output and that of the independent operators, would come plainly within the terms of the statute, and, as parts of the scheme or plot, would be unlawful."

[United States v. Reading Co., 226 U.S. 324, 33 S.Ct. 90, 57 L.Ed. 243 (1912)]

**Coppage v. State of Kansas (Jan. 25, 1915)**

"Included in the rights of personal liberty and the right of private property--partaking of the nature of each--is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property."

.. The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it." [Coppage v. State of Kansas, 236 U.S. 1 (1915)]

**Western Union Telegraph Co. v. Foster (May 20, 1918)**

"Practice, intent and the typical course, not title or niceties of form, were recognized as determining the character, and other cases to the same effect were cited."

**"Acts generally lawful may become unlawful when done to accomplish an unlawful end,** United States v. Reading Co., 226 U.S. 324, 357, 33 Sup.Ct. 90, 57 L.Ed. 243, and a constitutional power cannot be used by way of condition to attain an unconstitutional result. [Cites omitted.] The regulation in question is quite as great an interference as a tax of the kind that repeated decisions have held void. It cannot be justified "under that somewhat ambiguous term of police powers." [Bold added.]

[Western Union Telegraph Co. v. Foster, 247 U.S. 105, 38 S.Ct. 438 (1918)]

**La Tourette v. McMaster (Jan. 20, 1919)**

"A federal court must accept the state court's interpretation of a statute of the state."

"The contention is expressed and illustrated in a number of ways, and the privilege of a citizen is defined to be "the right to pursue and obtain happiness and safety" and "to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others," and that whatever rights a state grants to its own citizens are the measure within its jurisdiction of the rights of the citizens of other states, and for these propositions the Slaughterhouse [sic] Cases, 16 Wall 36, 21 L.Ed. 394, and Butchers' Union v. Crescent City Co., 111 U.S. 746, 4 Sup.Ct. 652, 28 L.Ed. 585, are cited. Other cases are also cited in illustration. We do not dispute the propositions, and to see if they determine against the act under review we must turn to its words, as did the Supreme Court of the state, whose interpretation of them we must accept. It said, speaking by Mr. Justice Hydrick:

"A citizen of any state of the Union who is a resident of this state [ \* \* \* ] a citizen of this state, who is not a resident

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of the state and has not been a licensed insurance agent of this state for two years, may not be licensed. No discrimination is made on account of citizenship. It rests alone on residence in the state and experience in the business.

"And the court further said:

"Citizenship and residence are not the same thing, nor does one include the other. [Cite omitted.] But our conclusion is not rested upon the mere use of the word 'residents'; for no doubt it might appear from the purpose and scope of an act that 'residents' was used in the sense of 'citizens.' If so, the court would so construe it; and in no event would the court sanction an evasion of the purpose and intent of this wise and wholesome provision of the Constitution based on mere verbiage. But there is nothing in the act to suggest any such intention. On the contrary, the words 'residents' and 'citizens' are both used, and each apparently in its ordinary legal sense, which is well defined and understood, making a distinction which is substantial in its purpose and one that is sanctioned by the highest judicial authority."

"The court thus distinguishes between citizens and residents and decides that it is the purpose of the statute to do so and, by doing so, it avoids discrimination. In other words, it is the effect of the statute that its requirement applies as well to citizens of the state of South Carolina as to citizens of other states, residence and citizenship being different things." [La Tourette v. McMaster, 248 U.S. 465, 89 S.Ct. 160 (1919)]

#### **Silverthorne Lumber Co. v. United States (Jan. 26, 1920)**

"An indictment upon a single specific charge having been brought against the two Silverthornes mentioned, they both were arrested at their homes early in the morning of February 25, and were detained in custody a number of hours. While they were thus detained representatives of the Department of Justice and the United States marshal without a shadow of authority went to the office of their company and made a clean sweep of all the books, papers and documents found there." p. 390.

"Thus the case is not that of knowledge acquired through the wrongful act of a stranger, but it must be assumed that the Government planned or at all events ratified the whole performance." p. 390.

"The proposition could not be presented more nakedly. It is that although of course its seizure was an outrage which the Government now regrets, it may study the papers before it returns them, copy them, and then may use the knowledge that it has gained to call upon the owners in a more regular form to produce them; that the protection of the Constitution covers the physical possession but not any advantages that the Government can gain over the object of its pursuit by doing the forbidden act. Weeks v. United States, 232 U.S. 383, 34 Sup.Ct. 341, 58 L.Ed. 652, L.R.A. 1915B, 834, Ann.Cas. 1915C, 1177, to be sure, had established that laying the papers directly before the grand jury was unwarranted, but it is taken to mean only that two steps are required instead of one. In our opinion such is not the law. It reduces the Fourth Amendment to a form of words. [Cite omitted.] The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all. Of course this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others, but the knowledge gained by the Government's own wrong cannot be used by it in the way proposed. ... In Linn v. United States, 251 Fed. 476, 480, 163 C.C.A. 470, it was thought that a different rule applied to a corporation, on the ground that it was not privileged from producing its books and papers. But the rights of a corporation against unlawful search and seizure are to be protected even if the same result might have been achieved in a lawful way." pp. 391-392.

[Silverthorne Lumber Co. v. United States, 251 U.S. 385, 40 S.Ct. 182 (1920)]

#### **Prudential Ins. Co. of America v. Cheek (June 5, 1922)**

"Freedom in the making of contracts of personal employment, by which labor and other services are exchanged for money or other forms of property, is an elementary part of the rights of personal liberty and private property, protected by the due process clause of the Fourteenth Amendment.

"The right to conduct business in the form of a corporation, and as such to employ individuals, is not a natural or fundamental right, but is a creature of the law, and a state, in authorizing corporations to carry on business and employ men within its borders, may qualify the privilege by imposing such conditions as reasonably may be deemed expedient, in order that the corporation's activities may not operate to the detriment of the rights of others with whom it may come in contact."

"The privileges or immunities of citizens of the United States protected by Const. Amend. 14, §1, are not those inherent in state citizenship, but only those which owe their existence to the federal government, its national character, its Constitution, or its laws."

"Though a foreign corporation cannot waive any constitutional objection to the statutes of the state by entering the state, it cannot make a valid objection to such reasonable regulations as may be prescribed by the state for domestic corporations

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similarly situated."

That freedom in making of contracts of personal employment, by which labor and other services are exchanged for money or other forms of property, is an elementary part of the rights of personal liberty and private property, not to be struck down directly or arbitrarily interfered with, consistently with the due process of law guaranteed by the Fourteenth Amendment, we are not disposed to question. This court has affirmed the principle in recent cases. *Adair v. United States*, 208 U.S. 161, 174, 28 Sup.Ct. 277, 52 L.Ed. 436, 13 Ann.Cas. 764; *Coppage v. State of Kansas*, 236 U.S. 1, 14, 35 Sup.Ct. 240, 59 L.Ed. 441, L. R. A. 1915C, 960.

"But the right to conduct business in the form of a corporation, and as such to enter into relations of employment with individuals, is not a natural or fundamental right. It is a creature of the law; and a state, in authorizing its own corporations or those of other states to carry on business and employ men within its borders, may qualify the privilege by imposing such conditions and duties as reasonably may be deemed expedient, in order that the corporation's activities may not operate to the detriment of the rights of others with whom it may come in contact."

[*Prudential Ins. Co. of America v. Cheek*, 259 U.S. 530, 42 Sup.Ct. 516 (1922)]

#### **Meyer v. State of Nebraska (June 4, 1923)**

"Under Const. U.S. Amend. 14, providing that no state shall deprive any person of liberty without due process of law, "liberty" denotes, not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home, and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

"The liberty protected by Const. U.S. Amend. 14, may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect."

[*Meyer v. State of Nebraska*, 262 U.S. 390, 43 S.Ct. 625 (1923)]

#### **In re Opinion of the Justices (Apr. 23, 1924)**

"Nature and extent of public interest and the exertion of the police power touching it are always a subject for judicial inquiry."

"The circumstance that a business is affected with a public interest does not make legally possible every legislative regulation; but all regulations must be reasonable in their nature, directed to the prevention of evils and adapted to the accomplishment of avowed purposes."

"Under the guise of protecting the general welfare, there cannot be arbitrary interference with business, or irrational or unnecessary restriction. "

"No statute, by attempting to outlaw a natural right:" can deprive one of the opportunity to earn his livelihood, and the rights to labor and do ordinary business are natural, essential, and inalienable," partaking of the nature both of personal liberty and of private property."

"Manifestly no statute by attempting to outlaw a natural right" can deprive one of the opportunity to earn his livelihood. The rights to labor and to do ordinary business are natural, essential and inalienable, partaking of the nature both of personal liberty and of private property."

[In re Opinion of the Justices, 266 Mass. 590, 143 N.E. 808 (1924)]

#### **McCarthy v. Arndstein (Oct. 20, 1924)**

"Constitutional privilege against self-incrimination applies to civil as well as criminal proceedings"

[*McCarthy v. Arndstein*, 266 U.S. 34, 45 S.Ct. 16 (1924)]

#### **Frost v. Railroad Commission (June 7, 1926)**

"Thus, it will be seen that, under the act as construed' by the state court, whose construction is binding upon us, a private carrier may avail himself of the use of the highways only upon condition that he dedicate his property' to the business of public transportation and subject himself to all the duties and burdens imposed by the act upon common carriers. In other words, the case presented is not that of a private carrier, who, in order to have the privilege of using the highways, is required merely to secure a certificate of public convenience and become subject to regulations appropriate to that kind of a carrier, but it is that of a private carrier, who, in order to enjoy the use of the highways, must submit to the condition of

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becoming a common carrier and of being regulated as such by the Railroad commission. The certificate of public convenience, required by section 5, is exacted of a common carrier, and is purely incidental to that status. The requirement does not apply to a private carrier qua private carrier, but to him only in his imposed statutory character of common carrier. Apart from that signification, so far as he is concerned, it does not exist.

"That, consistently with the due process clause of the Fourteenth Amendment, a private carrier cannot be converted against his will into a common carrier by mere legislative command, is a rule not open to doubt and is not brought into question here. It was expressly so decided in *Michigan Commission v. Duke*, 266 U.S. 570, 577, 45 S.Ct. 191, 69 L.Ed. 445, 35 A.L.R. 1105. See, also, *Hissem v. Guran*, 112 Ohio.St. 59, 146 N.E. 808; *State v. Nelson*, 65 Utah, 457, 462, 238 P. 237. The naked question which we have to determine, therefore, is whether the state may bring about the same result by imposing the unconstitutional requirement as a condition precedent to the enjoyment of a privilege, which, without so deciding, we shall assume to be within the power of the state altogether to withhold if it sees fit to do so. Upon the answer to this question, the constitutionality of the statute now under review will depend.

"There is involved in the inquiry not a single power, but two distinct powers. One of these, the power to prohibit the use of the public highways in proper cases, the state possesses: and the other, the power to compel a private carrier to assume against his will the duties and burdens of a common carrier, the state does not possess. It is clear any attempt to exert the latter, separately and substantively, must fall before the paramount authority of the Constitution. May it stand in the conditional form in which it is here made? If so, constitutional guaranties, so carefully safeguarded against direct assault, are open to destruction by the indirect, but no less effective, process of requiring a surrender, which, though in form voluntary, in fact lacks none of the elements of compulsion. Having regard to form alone, the act here is an offer to the private carrier of a privilege, which the state may grant or deny, upon a condition which the carrier is free to accept or reject. In reality, the carrier is given no choice, except a choice between a rock and the whirlpool--an option to forego a privilege which may be vital to his livelihood or submit to a requirement which may constitute an intolerable burden.

"It would be a palpable incongruity to strike down an act of state legislation which, by words of express divestment, seeks to strip the citizen of rights guaranteed by the federal Constitution, but to uphold an act by which the same result is accomplished under the guise of a surrender of a right in exchange for a valuable privilege which the state threatens otherwise to withhold. It is not necessary to challenge the proposition that, as a general rule, the state, having power to deny a privilege altogether, may grant it upon such conditions as it see fit to impose. But the power of the state in that respect is not unlimited, and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights. **If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence.**" [Bold added.]

"Since that decision, [*Western Union Tel. Co. v. Kansas*, 216 U.S. 1, 34-48, 30 S.Ct. 190] the same principle has been reiterated many times and never departed from." [Cites omitted.]

"And the principle, that a state is without power to impose an unconstitutional requirement as a condition for granting a privilege, is broader than the applications thus far made of it. In *Western Union Tel. Co. v. Foster*, supra, two telegraph companies were engaged in transmitting the quotations of the New York Stock Exchange among the states. This was held to be interstate commerce, and an order of the Public Service Commission of Massachusetts, requiring the companies to remove a discrimination, was held to infringe their constitutional rights. One of the grounds upon which the order was defended was that it rested upon the power of the state over the streets which it was necessary for the telegraph to cross. That contention was answered broadly (page 114 [38 S.Ct. 439]):

"But, if we assume that the plaintiffs in error under their present charters could be excluded from the streets, the consequence would not follow. **Acts generally lawful may become unlawful when done to accomplish an unlawful end** (*United States v. Reading Co.*, 226 U.S. 324, 357, 33 S.Ct. 90, 57 L.Ed. 243), and **a constitutional power cannot be used by way of condition to attain an unconstitutional result** (*Western Union Tel. Co. v. Kansas*, 216 U.S. 1, 34-48, 30 S.Ct. 190); *Pullman Co. v. Kansas*, 216 U.S. 56, 30 S.Ct. 232, 54 L.Ed. 378; *Sioux Remedy Co. v. Cope*, 235 U.S. 197, 203, 35 S.Ct. 57, 59 L.Ed. 193. The regulation in question is quite as great an interference as a tax of the kind that repeated decisions have held void. It cannot be justified under that somewhat ambiguous term of police powers."

"The states cannot use their most characteristic powers to reach unconstitutional results."

"We hold that the act under review, as applied by the court below, violates the rights of plaintiffs in error as guaranteed by the due process clause of the Fourteenth Amendment, and that the privilege of using the public highways of California in the performance of their contract is not and cannot be affected by the unconstitutional condition imposed." [Bold added.]

[*Frost v. Railroad Commission*, 271 U.S. 583, 46 S.Ct. 605 (1926)]

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#### **Nickell v. Rosenfield (Apr. 16, 1927)**

"When we speak of a person having a right we must necessarily refer to a civil right as distinguished from the

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elemental idea or rights absolute. We must have in mind a right given and protected by law, and a person's enjoyment thereof is regulated entirely by the law which creates it. If we were to consider these rights as absolute nothing but chaos could result, and instead of each enjoying the right both would be deprived of its enjoyment."

[*Nickell v. Rosenfield*, 82 Cal.App. 369 (1927)]

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**Stromberg v. People of State of California (May 18, 1931)**

"It has been determined that the conception of liberty under the due process clause of the Fourteenth Amendment embraces the right of free speech. [Cites omitted.] The right is not an absolute one, and the State in the exercise of its police power may punish those who indulge in utterances which incite to violence and crime and threaten overthrow of organized government by unlawful means. There is no constitutional immunity for such conduct abhorrent to our institutions."

"State statute denouncing as felony display of red flag held void as denying due process as to clause prohibiting its display as emblem of opposition to organized government." [Headnote # 5; italics original.]

"The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system. A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the Fourteenth Amendment."

[*Stromberg v. People of State of California*, 283 U.S. 359, 51 S.Ct. 532 (1931)]

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**Ingles v. Riley (Jan. 14, 1936)**

"We are first presented with the question as to the nature of the charge imposed by the above act [Motor Vehicle License Fee Act (Stats. 1935, chap. 362, p. 1312)]. Is the charge provided therein a charge for the privilege of operating vehicles of the kind mentioned on the highways of the state, i. e., is the charge an excise or privilege tax, or is the charge in the nature of a tax on automobiles as personal property, e., a property tax? The distinction between a tax on a privilege and a property tax is many times a close one. Generally speaking, the function of a property tax is to raise revenue. Such a tax does not impose any condition nor does it place any restriction upon the use of the property taxed. A privilege tax, although also passed to raise revenue, and as such is to be distinguished from the license tax or regulatory charge imposed under the state's police powers, is imposed upon the right to exercise a privilege, and its payment is invariably made a condition precedent to the exercise of the privilege involved. (37 Cor. Jur., p. 171, sec. 9, and cases cited.)"

"It is impossible to lay down any positive rule by means of which the character of any given tax may be ascertained. In each case the character of the given tax must be ascertained by its incidents, and from the natural and legal effect of the language employed in the statute (*Dawson v. Kentucky Distilleries & Warehouse Co.*, 255 U.S. 288 [41 Sup.Ct. 272, 65 L.Ed. 638]; *Matter of Application of Schuler*, 167 Cal. 282 [139 Pac. 685, Ann.Cas. 1915C, 706].)"

"Applying these tests to the statute before us, we have no hesitancy in declaring that the charge involved is one imposed on the owners of motor vehicles for the privilege of using the highways of the state and is not, in nature, a property tax."

"When the act is read as a whole, we are of the opinion that it must be denominated an excise tax, for revenue purposes, imposed upon the privilege of using the highways for the purpose of operating thereon registered motor vehicles. In the first place, the charge is designated as a privilege tax in the statute itself. Section 2, above quoted, provides that "a license fee is hereby imposed for the privilege of operating in this state any vehicle", etc. Subsequent sections clearly provide that the tax is payable only when the vehicle is operated on the highways of the state."

"By the weight of authority in other jurisdictions, such a tax has been held to be a privilege tax. The leading case is *Storaasli v. State of Minnesota*, *supra*, [283 U.S. 57, 51 Sup. Ct. 354, 75 L.Ed. 839], which involved, as already stated, the interpretation of a Minnesota statute almost identical with the one here under review. The Minnesota tax was measured by the cost of the car, less depreciation, and was made in lieu of all other taxes thereon, except one specified municipal wheelage tax. It was imposed only on vehicles "using the public streets or highways". The petitioner was a resident of a military reservation under the control of the United States government. His car was registered and licensed under federal law and carried a federal license plate. He contended that the statute levied a property tax, in which event, of course, the property could not be taxed by the state. The state court had held (*State v. Storaasli*, 180 Minn. 241 [230 N.W. 572]) that the tax was both a property and a privilege tax and that the character as a privilege tax extended to the whole tax and that, therefore, it must be paid by petitioner. The United States Supreme Court held it would decide for itself the nature of the tax. It then held (p. 62) that:

... We think it plain that the levy is an excise for the privilege of using the highways.

"It is denominated a privilege tax. The car cannot use the highways unless it is paid. The statute contains the usual provisions for registration, issuance and display of number plates, etc. Residents of other states who desire to use the highways for more than the period specified in certain sections extending the privilege, must register their vehicles and pay the same tax as residents of Minnesota. The claim that the state is attempting to tax appellant's property situate without its jurisdiction cannot be sustained."

"Assuming, without deciding, that section 14 of Article XIII expressly confers power upon the state to levy property taxes only, we find nothing in that section, or in any other section of the state or federal Constitutions, expressly or by implication, denying to the legislature the power to levy a privilege tax for revenue purposes. It is elementary that the legislature is vested with all governmental powers in matters of regulation and revenue not delegated to the federal government or denied to the state legislature by our own or the federal Constitution."

[Ingles v. Riley, 5 Cal.2d. 154 (1936)]

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**Grosjean v. American Press Co. (Feb. 10, 1936)**

"We concluded that certain fundamental rights, safeguarded by the first eight amendments against federal action, were also safeguarded against state action by the due process of law clause of the Fourteenth Amendment..."

[Grosjean v. American Press Co., 297 U.S. 233, 56 S.Ct. 444 (1936)]

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**Ohio Bell Telephone Co. v. Public Utilities Commission (Apr. 26, 1937)**

"On appeal Supreme Court will not presume acquiescence in loss of fundamental rights 42°."

"We do not presume acquiescence in the loss of fundamental rights."

[Ohio Bell Telephone Co. v. Public Utilities Commission of Ohio, 301 U.S. 292, 57 S.Ct. 724 (1937)]

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**California Government Code, §181**

"The original and ultimate right to all property within the limits of the State is in the people thereof."

[California Government Code, §181]

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**California Government Code, §182**

"All property within the limits of the State, which does not belong to any person, belongs to the people. Whenever the title to any property fails for want of heirs or next of kin, it reverts to the people."

[California Government Code, §182]

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**Johnson v. Zerbst (May 23, 1938)**

"It has been pointed out that "courts indulge every reasonable presumption against waiver" of fundamental constitutional rights, and that we "do not presume acquiescence in the loss of fundamental rights." A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege."

"The purpose of the constitutional guaranty of a right to counsel is to protect an accused from conviction resulting from his own ignorance of his legal and constitutional rights, and the guaranty would be nullified by a determination that an accused's ignorant failure to claim his rights removes the protection of the Constitution." p. 465.

"If the accused, however, is not represented by counsel and has not competently and intelligently waived his constitutional right, the Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or his liberty. A court's jurisdiction at the beginning of trial may be lost "in the course of the proceedings" due to failure to complete the court--as the Sixth amendment requires--by providing counsel for an accused who is unable to obtain counsel, who has not intelligently waived this constitutional guaranty, and whose life or liberty is at stake. If this requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed. The judgment of conviction pronounced by a court without jurisdiction is void, and one imprisoned thereunder may obtain release by habeas corpus. A judge of the U.S.--to whom a petition for habeas corpus is addressed--should be alert to examine "the facts for himself when if true as alleged they make the trial absolutely void". p. 468.

"Where a defendant, without counsel, acquiesces in a trial resulting in his conviction and later seeks release by the extraordinary remedy of habeas corpus, the burden of proof rests upon him to establish that he did not competently and intelligently waive his constitutional right to assistance of Counsel. If in a habeas corpus hearing, he does meet this burden and convinces the court by a preponderance of evidence that he neither had counsel nor properly waived his constitutional

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right to counsel, it is the duty of the court to grant the writ."  
[*Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019 (1938)]

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***Jones v. City of Opelika (June 8, 1942)***

"There are ethical principles of greater value to mankind than the guarantees of the Constitution, personal liberties which are beyond the power of government to impair. These principles and liberties belong to the mental and spiritual realm where the judgments and decrees of mundane courts are ineffective to direct the course of man. The rights of which our Constitution speaks have a more earthy quality. They are not absolutes to be exercised independently of other cherished privileges, protected by the same organic instrument. Conflicts in the exercise of rights arise and the conflicting forces seek adjustments in the courts, as do these parties, claiming on the one side the freedom of religion, speech and the press, guaranteed by the Fourteenth Amendment, and on the other the right to employ the sovereign power explicitly reserved to the State by the Tenth Amendment' to ensure orderly living without which constitutional guarantees of civil liberties would be a mockery. Courts, no more than Constitutions, can intrude into the consciences of men or compel them to believe contrary to their faith of think contrary to their convictions, but courts are competent to adjudge the acts men do under color of a constitutional right, such as that of freedom of speech or of the press or the free exercise of religion and to determine whether the claimed right is limited by other recognized powers, equally precious to mankind. So the mind and spirit of man remain forever free, while his actions rest subject to necessary accommodation to the competing needs of his fellows.

"If all expression of religion or opinion, however, were subject to the discretion of authority, our unfettered dynamic thoughts or moral impulses might be made only colorless and sterile ideas. To give them life and force, the Constitution protects their use. No difference of view as to the importance of the freedoms' of press or religion exist. They are "fundamental personal rights and liberties." *Schneider v. State*, 308 U.S. 147, 161, 60 S.Ct. 146, 150, 84 L.Ed. 155. To proscribe the dissemination of doctrines or arguments which do not transgress military or moral limits is to destroy the principal bases of democracy,—knowledge and discussion. One man, with views contrary to the rest of his compatriots, is entitled to the privilege of expressing his ideas by speech or broadside to anyone willing to listen or to read. Too many settled beliefs have in time been rejected to justify this generation in refusing a hearing to its own dissentients. But that hearing may be limited by action of the proper legislative body to times, places and methods for the enlightenment of the community which, in view of existing social and economic conditions, are not at odds with the preservation of peace and good order."

"Ordinances absolutely prohibiting the exercise of the right to disseminate information are, a fortiori, invalid."

"When proponents of religious or social theories use the ordinary commercial methods of sales of articles to raise propaganda funds, it is a natural and proper exercise of the power of the state to charge reasonable fees for the privilege of canvassing. Careful as we may and should be to protect the freedoms' safeguarded by the Bill of Rights, it is difficult to see in such enactments a shadow of prohibition of the exercise of religion or of abridgment of the freedom of speech or the press. It is prohibition and unjustifiable abridgements they are therefore invalid on their face. The freedoms' claimed by those seeking relief here are guaranteed against abridgement by the Fourteenth Amendment. Its commands protect their rights. The legislative power of municipalities must yield when abridgement is shown. [Cites omitted.] If we were to assume, as is here argued, that the licensed activities involve religious rites, a different question would be presented. These are not taxes of free will offerings. But it is because we view these sales as partaking more of commercial than religious or educational transactions that we find the ordinances, as here presented, valid. A tax on religion or a tax on interstate commerce may alike be forbidden by the Constitution. It does not follow that licenses for selling Bibles or for manufacture of articles of general use, measured by extra-state sales, must fall. It may well be that the wisdom of American communities will persuade them to permit the poor and weak to draw support from the petty sales of religious books without contributing anything for the privilege of using the streets and conveniences of the municipality. Such an exemption, however, would be a voluntary, not a constitutionally enforced, contribution."

"There is an additional contention by petitioner as to the Opelika ordinance. It is urged that since the licenses were revocable, arbitrarily, by the local authorities, note 3, supra, there can be no true freedom for petitioners in the dissemination of information because of the censorship upon their actions after the issuance of the license. But there has been neither application for nor revocation of a license. The complaint was bottomed on sales without a license. It was that charge against which petitioner claimed the protection of the Constitution. This issue he had standing to raise. [Cite omitted.] From what has been said previously it follows that the objection to the unconstitutionality of requiring a license fails."

[*Jones v. City of Opelika*, 316 U.S. 584, 62 S.Ct. 1231 (1942)]

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***Bolling v. Superior Court For Clallam County (Jan. 29, 1943)***

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"The First Amendment to Federal Constitution prohibiting interference by Congress with freedom of religion, of speech and of the press was by the Fourteenth Amendment made applicable to the states."

"Petitioners also rely upon the constitution of the state of Washington, amendment 4, approved November, 1904, which reads in part as follows: "Absolute freedom of conscience in all matter of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or be disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state."

"Joint Resolution' of Congress to codify existing rules and customs pertaining to display and use of flag of the United States does not require any person to repeat the pledge of allegiance to flag. 36 U.S.C.A. §171 et seq. and §172."

"In this connection, it may be noted that Congress, by joint resolution, chapter 435, Second Session, Public Law 623, Seventy-seventh Congress, 2d Sess., H.J.Res. 303, 56 Stat. 377, 36 U.S.C.A. §171 et seq., entitled "Joint Resolution to codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States of America," duly resolved, inter alia, "Sec. 7 [§172]. That the pledge of allegiance to the flag, 'I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation indivisible, with liberty and justice for all', is rendered by standing with the right hand over the heart; extending the right hand, palm upward, toward the flag at the words 'to the flag' and holding this position until the end, when the hand drops to the side. However, civilians will always show full respect to the flag when the pledge is given by merely standing at attention, men removing the headdress. Persons in uniform shall render the military salute."

"The joint resolution of the Congress does not require any person to repeat the pledge of allegiance, though it does provide that civilians will show respect to the flag when the pledge is given, by "standing at attention, men removing the headdress."

"Reasonableness of religious beliefs of an individual has no bearing on this right to "religious liberty" guaranteed by state and federal Constitutions, so long as individual's acts or refusal to act are not directly harmful to the public."

"Disrespect to the flag of the United States constitutes an offense, and may not be excused on the ground of "religious liberty"."

"Standing silently at attention while others salute and pledge allegiance to flag of the United States does not constitute offense of "disrespect to the flag."

"The constitutional guarantees of freedom of religious belief and of speech are of vital importance to the maintenance of our system of government. The majority of any political unit, or even a large minority, can generally protect themselves, but the courts are the sole reliance of individuals who assert that their constitutional rights in these particulars have been infringed. In proper cases the courts may consider the sincerity or lack of sincerity with which such a claim as that of petitioners is advanced, and in the case at bar there can be no question but that petitioners and their children are sincere in their belief that the repetition of the statutory salute to the flag, together with the usual accompanying gestures, constitute a violation of their religious principles. It is, for the vast majority of us, hard to understand how people can entertain this belief, but that is entirely beside the question. Petitioners and their children do in all sincerity believe that very thing.

"Of course, many people pay lip service to our national ensign, who have in their hearts no reverence for the flag or for the principles for which it stands, and an enforced gesture or word of respect is of no benefit to anyone. Acts of disrespect or insult must be punished, but we are not here concerned with any such question."

"Continuing, attention is called to the fact that the constitution nowhere indicates that compulsory expressions of loyalty form any such part in our government as to override the constitutional protection of freedom of speech and of religion, and that while expressions of loyalty to our government, when voluntarily given, may promote national unity, it is quite another matter to say that a particular compulsory expression of loyalty by children, in violation of their own and their parents' religious convictions, can accomplish any good purpose."

""The very terms of the Bill of Rights preclude, it seems to me, any reconciliation of such compulsions with the constitutional guaranties by a legislative declaration that they are more important to the public welfare than the Bill of Rights."" [Quoting Chief Justice Stone in Minersville School District v. Gobitis, 310 U.S. 586, 60 S.Ct. 1010, 84 L.Ed. 1375, 127 A.L.R. 1493, (1940).]

"It is one of the most important duties of our courts to ever guard and maintain our constitutional guarantees of religious liberty, and to see to it that these guarantees are not narrowed or restricted because of some supposed emergent situation, or because it may be considered that the enforcement of some law or regulation circumscribing religious liberty would be of little consequence as possibly affecting only a few persons, or because the consequences of the impingement upon the constitutional guarantees may appear insignificant."

[Bolling v. Superior Court For Clallam County, 133 P.2d. 803 (1943)]

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#### **Clearfield Trust Co. v. United States (Mar. 1, 1943)**

"The rights and duties of the United States on commercial paper which it issues are governed by federal law rather than

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local law."

"In absence of an applicable act of Congress fixing rights and duties of the United States on commercial paper which it issues, it is for the federal courts to fashion the governing rule of law according to their own standards."

"The federal law merchant developed under the regime of *Swift v. Tyson* represented general commercial law rather than a choice of a federal rule designed to protect a federal right, but it stands as a convenient source of reference for fashioning federal rules applicable to federal questions regarding rights and duties of the United States on commercial paper which it issues."

"The United States as drawee of commercial paper stands in no different light than any other drawee."

[*Clearfield Trust Co. v. United States*, 318 U.S. 363, 63 S.Ct. 573 (1943)]

#### **Murdock v. Commonwealth of Pennsylvania (May 3, 1943)**

"The Fourteenth Amendment of the Federal Constitution makes the First Amendment applicable to the states."

"Spreading one's religious beliefs or preaching the Gospel through distribution of religious literature and through personal visitations is an age-old type of evangelism which is entitled to protection under Constitution guaranteeing "freedom' of speech", "freedom' of press" and "freedom of religion"."

"A state can prohibit the use of a street for distribution of purely commercial leaflets even though such leaflets may have a civic appeal or a moral platitude appended to them."

"The state may not prohibit distribution of handbills on the streets in pursuit of a clearly religious activity merely because the handbills invite the purchase of books for improved understanding of religion, or because handbills seek in a lawful fashion to promote the raising of funds for religious purposes."

"The mere fact that religious literature is sold by itinerant preachers rather than donated does not transform evangelism into a "commercial enterprise", and the constitutional rights of those spreading their religious beliefs through the printed and spoken word are not to be gauged by standards governing retailers or wholesalers of books."

"The power to tax the exercise of a privilege is the power to control or suppress its enjoyment."

"A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution."

"The fact that city ordinance requiring religious colporteurs to pay a license tax as a condition to the pursuit of their activities was nondiscriminatory did not render it constitutional, since the protection afforded by the Constitution is not so restricted and freedom of the press, freedom of speech and freedom of religion are in a preferred position."

[*Murdock v. Commonwealth of Pennsylvania*, 319 U.S. 105, 63 S.Ct. 870 (1943)]

#### **West Virginia State Board of Education v. Barnette (June 14, 1943)**

"A state may require teaching by instruction and study of all in our history and in the structure and organization of our government, including the guaranties of civil liberty, which tend to inspire patriotism and love of country."

"The resolution originally required the "commonly accepted salute to the Flag" which it defined. Objections to the salute as "being too much like Hitler's" were raised by the Parent and Teachers Association, the Boy and Girl Scouts, the Red Cross, and the Federation of Women's Clubs. Some modification appears to have been made in deference to these objections, but no concession was made to Jehovah's Witnesses. What is now required is the "stiff-arm" salute, the saluter to keep the right hand raised with palm turned up while the following is repeated: "I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands; one Nation, indivisible, with liberty' and justice for all."

"Failure to conform is "insubordination" dealt with by expulsion. Readmission is denied by statute until compliance. Meanwhile the expelled child is "unlawfully absent" and may be proceeded against as a delinquent."

"There is no doubt that, in connection with the pledges, the flag salute is a form of utterance. Symbolism is a primitive but effective way of communicating ideas. The use of an emblem or flag to symbolize some system, idea, institution, or personality, is a short cut from mind to mind."

"To sustain the compulsory flag salute we are required to say that a Bill of Rights which guards the individual's right to speak his own mind, left it open to public authorities to compel him to utter what is not in his mind."

"Government of limited power need not be anemic government. Assurance that rights are secure tends to diminish fear and jealousy of strong government, and by making us feel safe to live under it makes for its better support. Without promise of a limiting Bill of Rights it is doubtful if our Constitution could have mustered enough strength to enable its ratification. To enforce those rights today is not to choose weak government over strong government. It is only to adhere as a means of strength to individual freedom of mind in preference to officially disciplined uniformity for which history indicates a disappointing and disastrous end."

"Such Boards are numerous and their territories' jurisdiction often small. But small and local authority may feel less sense of responsibility to the Constitution, and agencies of publicity may be less vigilant in calling it to account. The action

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of Congress in making flag observance voluntary and respecting the conscience of the objector in a matter so vital as raising the Army contrasts sharply with these local regulations in matters relatively trivial to the welfare of the nation. There are village tyrants as well as village Hampdens, but none who acts under color of law is beyond reach of the Constitution."

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

"It is important to note that while it is the Fourteenth Amendment which bears directly upon the State it is the more specific limiting principles of the First Amendment that finally govern this case."

"National unity as an end which officials may foster by persuasion and example is not in question. The problem is whether under our Constitution compulsion as here employed is a permissible means for its achievement.

"Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good as well as by evil men. Nationalism is a relatively recent phenomenon but at other times and places the ends have been racial or territorial security, support of a dynasty or regime, and particular plans for saving souls. As first and moderate methods to attain unity have failed, those bent on its accomplishment must resort to an ever-increasing severity. As governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it shall be. Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to embrace. Ultimate futility of such attempts to compel coherence is the lesson of every such effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Inquisition, as a means to religious and dynastic unity, the Siberian exiles as a means to Russian unity, down to the fast failing efforts of our present totalitarian enemies. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.

"It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings. There is no mysticism in the American concept of the State or of the nature or origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority.

"The case is made difficult not because the principles of its decision are obscure but because the flag involved is our own. Nevertheless, we apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization. To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds. We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

**"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.** If there are any circumstances which permit an exception, they do not now occur to us. [Bold added.]

"We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control."

"Decision as to the constitutionality of particular laws which strike at the substance of religious tenets and practices must be made by this Court. The duty is a solemn one, and in meeting it we cannot say that a failure, because of religious scruples, to assume a particular physical position and to repeat the words of a patriotic formula creates a grave danger to the nation. Such a statutory exaction is a form of test oath, and the test oath has always been abhorrent in the United States.

"Words uttered under coercion are proof of loyalty to nothing but self-interest. Love of country must spring from willing hearts and free minds, inspired by a fair administration of wise laws enacted by the people's elected representatives within the bounds of express constitutional prohibitions. These laws must, to be consistent with the First Amendment, permit the widest toleration of conflicting viewpoints consistent with a society of free men.

"Neither our domestic tranquillity in peace nor our martial effort in war depend on compelling little children to participate in a ceremony which ends in nothing for them but a fear of spiritual condemnation. If, as we think, their fears are groundless, time and reason are the proper antidotes for their errors. The ceremonial, when enforced against conscientious objectors, more likely to defeat than to serve its high purpose, is a handy implement for disguised religious persecution. As such, it is inconsistent with our Constitution's plan and purpose."



"A reluctance to interfere with considered state action, the fact that the end sought is a desirable one, the emotion aroused by the flag as a symbol for which we have fought and are now fighting again,--all of these are understandable. But there is before us the right of freedom to believe, freedom to worship one's Maker according to the dictates of one's conscience, a right which the Constitution specifically shelters. Reflection has convinced me that as a judge I have no loftier duty or responsibility than to uphold that spiritual freedom to its farthest reaches."

[West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S.Ct. 1178 (1943)]

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**Thomas v. Collins (Jan. 8, 1945)**

"The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms' secured by the First Amendment. [Cites omitted.] That priority gives these liberties and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard governs the choice."

"For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger. The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation. It is therefore in our tradition to allow the widest room for discussion, the narrowest range for its restriction, particularly when this right is exercised in conjunction with peaceable assembly. It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceable to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights, cf. *De Jonge v. Oregon*, 299 U.S. 353, 364, 57 S.Ct. 255, 259, 81 L.Ed. 278, and therefore are united in the First Article's assurance. Cf. 1 *Annals of Congress* 759-760."

This conjunction of liberties is not peculiar to religious activity and institutions alone. The First Amendment gives freedom of mind the same security as freedom of conscience. [Cites omitted.] Great secular causes, with small ones, are guarded. The grievances for redress of which the right of petition was insured, and with it the right of assembly, are not solely religious or political ones. And the rights of free speech and a free press are not confined to any field of human interest."

"The idea is not sound therefore that the First Amendment's safeguards are wholly inapplicable to business or economic activity."

[Thomas v. Collins, 323 U.S. 516, 65 S.Ct. 315 (1945)]

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**Winters v. People of State of New York (Mar. 29, 1948)**

"The principle of free press covers distribution as well as publication."

"A statute so vague and indefinite, in form and as interpreted, as to permit within the scope of its language the punishment of incidents fairly within protection of guarantee of free speech, is void, on its face, as contrary to the Fourteenth Amendment."

"A failure of a statute, limiting freedom of expression to give fair notice of what acts will be punished and such a statute's inclusion of prohibitions against expressions protected by the principles of First Amendment, violates an accused's rights under procedural due process and freedom of speech or press."

"The constitutional protection for a free press is not limited to the exposition of ideas."

"Magazines of no value to society are as much entitled to the protection of free speech as the best of literatures, and they are equally subject to control if they are lewd, indecent, obscene, or profane."

"Acts of gross and open indecency or obscenity, injurious to public morals, are indictable at common law, and, when a legislative body concludes that the mores of community call for an extension of the impermissible limits, an enactment aimed at the evil is within its power, if it does not transgress boundaries fixed by Constitution for freedom of expression."

"The standard of certainty in statutes punishing for offenses is higher than in those depending primarily upon civil sanction for enforcement, and crime must be defined with appropriate definiteness and there must be ascertainable standards of guilt."

"Men of common intelligence cannot be required to guess at the meaning of penal enactment."

"In determining whether penal statute is invalid for uncertainty, courts must do their best to determine whether vagueness is of such a character that men of common intelligence must guess at its meaning."

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"Where a statute is so vague as to make criminal an innocent act, a conviction under it cannot be sustained."

"Neither the states nor Congress are prevented by the requirements of specificity from carrying out their duty of eliminating evils to which, in their judgment, publications containing objectionable printed matter give rise."

[Winters v. People of State of New York, 333 U.S. 507, 68 S.Ct. 665 (1948)]

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**Trupiano v. United States (June 14, 1948)**

"The Supreme Court has duty of giving effect to right of individual to freedom from unreasonable intrusion by those in authority."

"Federal agents who had information that defendant was engaged in illicit distilling, and who entered premises with consent of owner and observed defendant through an open doorway in act of operating an illegal still were justified in arresting defendant without a warrant even though there had been sufficient time to obtain one."

"In seizing goods and articles, law enforcement agents must secure and use search warrants wherever reasonably practicable."

"The fact that agents of alcohol tax unit, in raiding illicit distillery without a warrant, actually seized only contraband property which would likely have been described in warrant had one been issued, did not validate the search."

"The mere fact that a valid arrest is made does not necessarily legalize a search or seizure without a warrant, but such search must be required by inherent necessities of the situation at the time of the arrest."

"The Fourth Amendment prohibiting unreasonable searches and seizures was designed to protect both the innocent and the guilty from unreasonable intrusions upon their right of privacy while leaving adequate room for necessary processes of law enforcement."

"A search warrant must describe with particularity the place to be searched and the things to be seized."

"In prosecution for violating Internal Revenue Code in ownership and operation of a distillery, defendants from whom distilling equipment, alcohol, and mash were seized illegally without a warrant were entitled to have such evidence suppressed."

"What was said in Johnson v. United States, supra, 333 U.S. at page 15, 68 S.Ct. at page 369, is equally applicable here: "No reason is offered for not obtaining a search warrant except the inconvenience to the officers and some slight delay necessary to prepare papers and present the evidence to a magistrate. These are never very convincing reasons and, in these circumstances, certainly are not enough to by-pass the constitutional requirement. \* \* \* If the officers in this case were excused from the constitutional duty of presenting their evidence to a magistrate, it is difficult to think of a case in which it should be required.""

[Trupiano v. United States, 68 S.Ct. 1229 (1948). [Overruled by United States v. Rabinowitz, 339 U.S. 56 (1950).]]

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**Smith v. United States (May 31, 1949)**

"Although privilege against self-incrimination must be claimed, when claimed it is guaranteed by Constitution, and thereafter only absolute immunity from federal criminal prosecution is sufficient to compel desired testimony. Compulsory Testimony Act, 49 U.S.C.A. §46; U.S.C.A. Const. Amend. 5."

[Smith v. United States, 337 U.S. 137, 69 S.Ct. 100 (1949)]

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**Wolf v. People of the State of Colorado (June 27, 1949)**

"The rights guaranteed by Bill of Rights, comprising first eight amendments to federal Constitution, are not made applicable to administration of criminal justice in state courts by due process of law clause of Fourteenth Amendment."

"The due process of law clause of Fourteenth Amendment exacts from the states for the lowliest and most outcast, all that is implicit in the concept of ordered liberty, embracing all those rights which courts must enforce because they are basic to a free society."

"What constitutes due process of law within meaning of Fourteenth Amendment must be determined by court by the gradual and empiric process of inclusion and exclusion."

"The security of one's privacy against arbitrary intrusion by the police is basic to a free society and implicit in the concept of ordered liberty and as such it is enforceable against the states through due process of law clause."

"At common law, one who procures issuance of a warrant maliciously and without probable cause or conducts an unlawful search, a magistrate who acts without jurisdiction in granting a warrant and persons assisting in execution of illegal search may be held liable in damages therefore and such unlawful search may be forcibly resisted without incurring liability."

"In a prosecution in state court for a crime, the Fourteenth Amendment does not forbid the admission of evidence obtained

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by unreasonable search and seizure though the evidence would be inadmissible in a prosecution for violation of federal law in a federal court because of a violation of the Fourth Amendment"

"Justice Rutledge dissenting.

""Wisdom too often never comes, and so one ought not to reject it merely because it comes late." Similarly, one should not reject a piecemeal wisdom, merely because it hobbles toward the truth with backward glances."

"Justice Murphy, with whom Justice Rutledge joins, dissenting, stated, "

"If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense," we said, "the protection of the 4th Amendment, declaring his right to be secure against such searches and seizures, is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution." "It would reduce the Fourth Amendment to a form of words.""

[Wolf v. People of the State of Colorado, 338 U.S. 25, 69 S.Ct. 1359, 93 L.Ed. 1782 (1949). [Overruled by Mapp v. Ohio.]]

#### **United States v. Rabinowitz (Feb. 20, 1950)**

"Validity of search without warrant incident to an arrest is dependent initially on a valid arrest."

"Where premises where crime was committed and arrest is made are under control of person arrested, the premises are subject to search without search warrant and such search is not "unreasonable"."

"General exploratory searches cannot be undertaken by officers with or without a warrant."

"What is a "reasonable search" is not to be determined by any fixed formula but is to be resolved according to the facts of each case."

"Reasonableness of search is in the first instance for District Court to determine."

"The mandate of the Fourth Amendment is that the people shall be secure against unreasonable searches, and under the amendment, there may be reasonable searches, incident to an arrest, without a search warrant."

"To the extent that Trupiano v. United States, 334 U.S. 699, 68 S.Ct. 1229, 92 L.Ed. 1663, requires a search warrant solely upon the basis of the practicability of procuring it rather than upon the reasonableness of the search after a lawful arrest, that case is overruled. The relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable. That criterion in turn depends upon the facts and circumstances--the total atmosphere of the case. It is a sufficient precaution that law officers must justify their conduct before courts which have always been, and must be, jealous of the individual's right of privacy within the broad sweep of the Fourth Amendment."

[United States v. Rabinowitz, 70 S.Ct. 430 (1950)]

#### **Johnson v. Eisentrager (June 5, 1950)**

"American citizens conscripted into the military service are thereby stripped of their Fifth Amendment' rights and as members of the military establishment are subject to its discipline, including military trial for offenses against aliens or Americans. U.S.C.A.Const.Amend. 5."

[Johnson v. Eisentrager, 339 U.S. 763, 70 S.Ct. 936 (1950)]

#### **Zorach v. Clauson (Apr. 28, 1952)**

"The Fourteenth Amendment makes the First Amendment provisions applicable to states and prevents them from establishing religion or prohibiting its free exercise."

[Zorach v. Clauson, 343 U.S. 306, 72 S.Ct. 679 (1952)]

#### **Bauer v. Acheson (July 9, 1952)**

"The Supreme Court has recognized that personal liberty includes "the right of locomotion, the right to remove from one place to another according to inclination," stating, "The liberty, of which the deprivation without due process of law is forbidden, `means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation \* \* \*'" While the Supreme Court was there considering freedom to move from state to state within the United States, it is difficult to see where, in principle, freedom to travel outside the United States is any less an attribute of personal liberty."

"Passports are required in many countries, and as long ago as 1929 the State Department advised American citizens leaving the United States for a country where passports are not required to carry a passport, except in travel to Canada or

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Mexico, and for use to facilitate reentry into the United States.”

"Since denial of an American passport has a very direct bearing on the applicant's personal liberty to travel outside the United States, the executive department's discretion, although in a political matter, must be exercised with regard to the constitutional rights of the citizens, who are the ultimate source of all governmental authority."

[Bauer v. Acheson, 106 F.Supp. 445 (1952)]

#### **U.S. Code Congressional and Administrative News (Mar. 15, 1954)**

"The Supreme Court ruled in 1892 that "this is a religious nation." [Footnoted, and quoting from Church of the Holy Trinity v. U. S. (1892) (143 U.S. 457, 470, 12 S.Ct. 511).] It reiterated this holding, more recently (1951), when it stated:

"We are a religious people whose institutions presuppose a supreme being." [Footnoted, and quoting from Zorach v. Clauson (1951) (343 U.S. 306, 313, 72 S.Ct. 679).]

[U.S. Code Congressional and Administrative News, Vol. 2, pp. 1671-3646, 83' Congress, Second Session, 1954]

#### **Scull v. Commonwealth of Virginia (May 4, 1959)**

"Fundamental fairness requires that a person cannot be sent to jail for a crime he could not with reasonable certainty know he was committing; reasonable certainty in that respect is all the more essential when vagueness might induce individuals to forgo their rights of speech, press, and association for fear of violating an unclear law."

[Scull v. Commonwealth of Virginia, 359 U.S. 344, 79 S.Ct. 838, 3 L.Ed.2d. 865 (1959)]

#### **Bates v. Little Rock (Feb. 23, 1960)**

"Where there is a significant encroachment upon personal liberty, the state may prevail only upon showing a subordinating interest which is compelling."

"No power is more basic to the ultimate purpose and function of government than is the power to tax; the proper and efficient exercise of this power may sometimes entail the possibility of encroachment upon individual freedom."

**"Governmental action does not automatically become reasonably related to the achievement of a legitimate and substantial governmental purpose by mere assertion in the preamble of an ordinance."** [Bold added.]

"When it is shown that state action threatens significantly to impinge upon constitutionally protected freedom it becomes the duty of the United States Supreme Court to determine whether the action bears a reasonable relationship to the achievement of the governmental purpose asserted as its justification."

"Like freedom of speech and a free press, the right of peaceable assembly was considered by the Framers of our Constitution to lie at the foundation of a government based upon the consent of an informed citizenry--a government dedicated to the establishment of justice and the preservation of liberty.' U S Const, Amend 1. And it is now beyond dispute that freedom of association for the purpose of advancing ideas and airing grievances is protected by the Due Process Clause of the Fourteenth Amendment from invasion by the States. De Jonge v. Oregon, 299 U.S. 353, 364, 81 L.Ed. 278, 283, 57 S.Ct.255; National Asso. for Advancement of Colored People v. Alabama, 357 U.S. 449, 2 L.Ed.2d. 1488, 1498, 78 S.Ct. 1163.

"Freedoms' such as these are protected not only against heavyhanded frontal attack, but also from being stifled by more subtle government interference. Grosjean v. American Press Co., 297 U.S. 233, 80 L.Ed. 660, 56 S.Ct. 444; Murdock v. Pennsylvania, 319 U.S. 105, 87 L.Ed. 1292, 63 S.Ct.870, 882, 891, 146 A.L.R. 81; American Communications Asso. v. Douds, 339 U.S. 382, 402, 94 L.Ed. 925, 945, 70 S.Ct.674; National Asso. for the Advancement of Colored People v. Alabama, 357 U.S. 449, 2 L.Ed.2d. 1488, 78 S.Ct. 1163, supra; Smith v. California, 361 U.S. 147, 4 L.Ed.2d. 205, 80 S.Ct. 215. "It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute [an] effective ... restraint on freedom of association. . . . This Court has recognized the vital relationship between freedom to associate and privacy in one's associations.... Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." National Asso. for the Advancement of Colored People v. Alabama, 357 U.S., at 462." [Brackets original.]

[Bates v. Little Rock, 361 U.S. 516; 80 S.Ct. 412, 4 L.Ed.2d. 480 (1960)]

#### **United States v. Gross (Apr. 6, 1960)**

"One of things government has burden of proving in criminal case is venue, and without the proof of such essential part of government's case there can be no conviction."

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"Motion for acquittal made at conclusion of all the evidence properly raises question of venue in criminal case."

"Evidence of failure to deny statements of others is admissible only when no other explanation is equally consistent with silence."

"There was no necessary inconsistency between defendant's denial of receipt of payments at his trial on charges of attempting to evade income taxes by failure to disclose receipt of such payments and his earlier assertion before congressional committee that testimony concerning such payments would tend to incriminate him, and therefore it was reversible error to permit cross-examination which accomplished same result as if defendant had been asked whether he had asserted his constitutional privilege before committee; and it was immaterial that first references to committee hearings had been brought out by defendant's cross-examination of government witnesses and that direct examination of defendant had brought out defendant's assertion that he had first heard of labor difficulties in connection with which payments were allegedly made when he listened to testimony at committee hearings."

[United States v. Gross, 276 F.2d. 816 (1960)]

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#### **Jack Cole Co. v. Alfred T. McFarland (June 6, 1960)**

"It cannot be denied that the Legislature can name any privilege" a taxable privilege and tax it by means other than an income tax, but the Legislature cannot name something to be a taxable privilege unless it is first a privilege."

**"Realizing and receiving income is not a privilege that can be taxed."** p. 455. [Bold added.]

"Since the right to receive income or earnings is a right belonging to every person, this right cannot be taxed as privilege." p. 456.

[Jack Cole Co. v. Alfred T. McFarland, 337 S.W.2d. 453 (1960)]

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#### **Shelton v. Tucker (Dec. 12, 1960)**

"State statute compelling every teacher as a condition of employment in state-supported school or college, to file annually an affidavit listing without limitation every organization to which he has belonged or regularly contributed within the preceding five years, was unconstitutional as to teachers, who were hired on a year-to-year basis, who were not covered by a civil service system and who had no job security beyond the end of each school year."

"The state has the right to investigate competence and fitness of those whom it hires to teach in its schools."

"There is no requirement in federal Constitution that a teacher's classroom conduct be the sole basis for determining his fitness."

"To compel a teacher to disclose his every associational tie is to impair teacher's right of free association."

"Even though governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved."

[Shelton v. Tucker, 364 U.S. 479, 81 S.Ct. 247 (1960)]

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#### **Mapp v. Ohio (June 19, 1961)**

"Rule excluding illegally seized evidence is of constitutional origin."

"All evidence obtained by searches and seizures in violation of the Constitution is constitutionally inadmissible in state courts."

"Evidence obtained by unconstitutional search was inadmissible in state prosecution, and vitiated conviction, under the Fourteenth Amendment, overruling Wolf v. Colorado . . . ."

"The Fourth Amendment's right of privacy is enforceable against the states through the due process clause."

"The rule requiring exclusion of a coerced confession overrides relevant rules of evidence, regardless of the incidence of such conduct by police, slight or frequent."

"The right to privacy embodied in Fourth Amendment is enforceable against states in same manner and to like effect as other basic rights secured by the due process clause."

[Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684 (1961)]

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#### **Ayn Rand on "Rights", 1964**

A "right" is a moral principle defining and sanctioning a man's freedom of action in a social context. There is only one fundamental right (all others are its consequences or corollaries): a man's right to his own life. Life is a process of self-sustaining and self-generated action; the right to life means the right to engage in self-sustaining and self-generated action--which means; the freedom to take all the actions required by the nature of a rational being for the support, the furtherance,

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the fulfillment and the enjoyment of his own life. (Such is the meaning of the right to life, liberty, and the pursuit of happiness.)

[Ayn Rand, *The Virtue of Selfishness* [1964]; SOURCE: [http://aynrandlexicon.com/lexicon/individual\\_rights.html](http://aynrandlexicon.com/lexicon/individual_rights.html)]

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**Bowie v. City of Columbia (June 22, 1964)**

"The basic principle that a criminal statute must give fair warning of the conduct that it makes a crime has often been recognized by this Court. As was said in *United States v. Harris*, 347 U.S. 612, 617, 98 L.Ed. 989, 996, 74 S.Ct. 808.

"The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute; the underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed."

"Thus we have struck down a state criminal statute under the Due Process Clause where it was not "sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties." *Connally v. General Const. Co.*, 296 U.S. 385, 391, 70 L.Ed. 322, 328, 46 S.Ct. 126. We have recognized in such cases that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law," *ibid.*, and that **"No one may be required at peril of life, liberty, or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids."** *Lanzetta v. New Jersey*, 306 U.S. 451, 453, 83 L.Ed. 888, 890, 59 S.Ct. 618." [Bold added.]

[*Bowie v. Columbia*, 378 U.S. 347, 84 S.Ct. 1697, 12 L.Ed.2d. 894 (1964)]

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**United States v. Seeger (Mar. 8, 1965)**

"Certiorari was granted to review cases involving exemption claims of conscientious objectors and raising basic question of constitutionality of section defining term "religious training and belief as "an individual's belief in relation to a Supreme Being involving duties superior to those arising from any human relation" because of their importance in administration of the Universal Military Training and Service Act." p. 163.

"Congress in using expression "Supreme Being" rather than the designation "God" in statute defining term "religious training and belief of persons claiming exemption from combatant training and service in the armed forces as conscientious objectors merely clarifies meaning of religious training and belief so as to embrace all religions and to exclude essentially political, sociological, or philosophical views." p. 163.

"Test of belief "in a relation to a Supreme Being" within statute relating to exemption of conscientious objectors from combatant training and service in armed forces is whether a given belief that is sincere and meaningful occupies a place in life of its possessor parallel to that filled by orthodox belief in God of one who clearly qualifies for the exemption." p. 163.

"Where sincere and meaningful beliefs in a Supreme Being and in God have parallel positions in the lives of their respective holders who claim exemption as conscientious objectors from combatant training and service in the armed forces, court cannot say that one is "in relation to a Supreme Being" and the other is not." p. 163.

"Language defining "religious training and belief as used in statute exempting conscientious objectors from military service as "belief in relation to a Supreme Being" excludes those persons who, disavowing religious belief, decided on basis of essentially political, sociological or economic considerations that war is wrong and that they will have no part of it." p. 163.

"Statute relating to exemption of conscientious objectors from combatant training and service and defining "religious training and belief as belief "in relation to a Supreme Being" excludes those whose opposition to war stems from a merely personal moral code." p. 163.

"To be entitled to exemption from combatant military training and service as a conscientious objector it is necessary only to have a conviction based upon religious training and belief, and this would include all sincere religious beliefs which are based upon a power or being, or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent." p. 163.

"The test for a conscientious objector to military service might be stated as a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption." p. 163.

"Test for exemption from combatant military training and service as a conscientious objector is essentially an objective one, namely, does claimed belief occupy the same place in life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption, and the claim of registrant that his belief is an essential part of a religious faith must be given great weight." p. 163.

"Validity of what one claiming exemption from combatant military training and service believes cannot be questioned in



determining whether he is entitled to exemption as a conscientious objector, and task of local boards and courts is to decide whether beliefs professed by registrant are sincerely held and whether they are, in his own scheme of things, religious." p. 163.

"While truth of a belief of person claiming exemption from combatant training and service in armed forces is not open to question, there is the significant question of whether belief is truly held, which is a question of fact." p. 163.

"Congress by using words "merely personal" in statute denying conscientious objector exemption to those whose beliefs are based on a merely personal moral code restricts exemption to a moral code which is not only personal but which is sole basis for registrant's belief and is in no way related to a Supreme Being." p. 163.

"Statute exempting conscientious objectors from combatant military training and service does not distinguish between externally and internally derived beliefs." p. 163.

"Registrant who professed "religious belief and "religious faith", who did not disavow any belief "in a relation to a Supreme Being" and whose sincerity in opposition to war in any form was not questioned, was entitled to exemption from combatant training and service as a conscientious objector." p. 163.

"Congress does not intend that registrant, to be entitled to exemption from military service as conscientious objector, clearly demonstrates what his beliefs are with regard to the usual understanding of the term "Supreme Being"." p. 163.

"Registrant who had demonstrated that his opposition to war was related to a Supreme Being was entitled to exemption from military service as a conscientious objector." p. 163.

"Registrant who acknowledged some power manifest in nature, the supreme expression that helps man in ordering his life, came within statutory test relating to whether one is entitled to exemption from combatant training and service as a conscientious objector based on religious training and belief defined as "belief in a relation to a Supreme Being"." p. 163.

"Chief Justice Hughes, in his opinion in *United States v. Macintosh*, 283 U.S. 605, 75 L.Ed. 1302, 51 S.Ct.570 (1931), enunciated the rationale behind the long recognition of conscientious objection to participation in war accorded by Congress in our various conscription laws when he declared that "in the form of conscience, duty to a moral power higher than the State has always been maintained." At 633, 75 L.Ed. at 1315 (dissenting opinion). In a similar vein Harlan Fiske Stone, later Chief Justice, drew from the Nation's past when he declared that "both morals and sound policy require that the state should not violate the conscience of the individual. All our history gives confirmation to the view that liberty' of conscience has a moral and social value which makes it worthy of preservation at the hands of the state. So deep in its significance and vital, indeed, is it to the integrity of man's moral and spiritual nature that nothing short of the self-preservation of the state should warrant its violation; and it may well be questioned whether the state which preserves its life by a settled policy of violation of the conscience of the individual will not in fact ultimately lose it by the process." Stone, *The Conscientious Objector*, 21 Col Univ Q 253, 269 (1919)." p. 169.

"Indeed, the consensus of the witnesses appearing before the congressional committees was that individual belief--rather than membership in a church or sect--determined the duties that God imposed upon a person in his everyday conduct; and that "there is a higher loyalty than loyalty to this country, loyalty to God." *Id.*, at 29-31. See also the proposals which were made to the House Military Affairs Committee but rejected. *Id.*, at 21-23, 82-83, 85. Thus, while shifting the test from membership in such a church to one's individual belief the Congress nevertheless continued its historic practice of excusing from armed service those who believed that they owed an obligation, superior to that due the state, of not participating in war in any form." p. 172.

"In spite of the elusive nature of the inquiry, we are not without certain guidelines. In amending the 1940 Act, Congress adopted almost intact the language of Chief Justice Hughes in *United States v. Macintosh*, *supra*:

"The essence of religion is belief in a relation to *God* involving duties superior to those arising from any human relation." At 633-634, 75 L.Ed. at 1315 (Emphasis supplied)." p. 175.

"The battle for religious liberty has been fought and won with respect to religious beliefs and practices, which are not in conflict with good order, upon the very ground of the supremacy of conscience within its proper field." At 634, 75 L.Ed. at 1314." p. 176.

"Moreover, it must be remembered that in resolving these exemption problems one deals with the beliefs of different individuals who will articulate them in a multitude of ways. In such an intensely personal area, of course, the claim of the registrant that his belief is an essential part of a religious faith must be given great weight. Recognition of this was implicit in this language, cited by the Berman court from *State v. Amana Society*, 132 Iowa 304, 109 N.W. 894 (1906): ""Surely a scheme of life designed to obviate [man's inhumanity to man], and by removing temptations, and all the allurements of ambition and avarice, to nurture the virtues of unselfishness, patience, love, and service, ought not to be denounced as not pertaining to religion *when its devotees regard it as an essential tenet of their religious faith.*" 132 Iowa at 315, 109 N.W. at 898, cited in *Berman v. United States*, 156 F.2d. 377, 381. (Emphasis by the Court of Appeals.)"

"The validity of what he believes cannot be questioned. Some theologians, and indeed some examiners, might be tempted to question the existence of the registrant's "Supreme Being" or the truth of his concepts. But these are inquiries foreclosed to Government. As Mr. Justice Douglas stated in *United States v. Ballard*, 322 U.S. 78, 86, 88 L.Ed. 1148, 1154, 64 S.Ct.882 (1944): "Men may believe what they cannot prove. They may not be put to the proof of their religious

doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others." Local boards and courts in this sense are not free to reject beliefs because they consider them "incomprehensible." Their task is to decide whether the beliefs professed by a registrant are sincerely held and whether they are, in his own scheme of things, religious." p. 184.

"But we hasten to emphasize that while the "truth" of a belief is not open to question, there remains the significant question whether it is "truly held." This is the threshold question of sincerity which must be resolved in every case." p. 185.

[United States v. Seeger, 380 U.S. 163; 85 S.Ct. 850, 13 L.Ed.2d. 733 (1965)]

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**Giaccio v. State of Pennsylvania (Jan. 19, 1966)**

"Both liberty and property are specifically protected by Fourteenth Amendment against any state deprivation which does not meet standards of due process, and such protection is not to be avoided by simple label that state chooses to fasten upon its conduct or its statute."

"Law fails to meet requirements of due process clause if it is so vague and standardless that it leaves public uncertain as to conduct it prohibits or leaves judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case."

"One of basic purposes of due process clause is to protect person against having government impose burdens upon him except in accordance with valid laws of the land."

"Implicit in constitutional safeguard protecting person against government imposed burdens except in accordance with valid laws of the land is premise that law must be one that carries understandable meaning with legal standards that courts must enforce."

"In the present case it is enough for me that Pennsylvania allows a jury to punish a defendant after finding him not guilty. That, I think, violates the most rudimentary concept of due process of law."

[Giaccio v. State of Pennsylvania, 382 U.S. 399, 86 S.Ct. 518 (1966)]

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**Harper v. Virginia State Board of Elections (Mar. 24, 1966)**

"Right to vote in federal elections is conferred by Federal Constitution."

"Unlike a poll tax, ability to read and write has some relation to standards designed to promote intelligent use of ballot."

"State violates Equal Protection Clause whenever it makes affluence of voter or payment of any fee an electoral standard."

"Voter qualifications have no relation to wealth nor to paying or not paying poll tax or any other tax."

"Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in electoral process, and to introduce wealth or payment of fee as measure of qualifications is to introduce capricious or irrelevant factor; degree of discrimination is irrelevant."

[Harper v. Virginia State Board of Elections, 383 U.S. 663, 86 S.Ct. 1079 (1966)]

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**Brookhart v. Janis (Apr. 18, 1966)**

"The question of a waiver of a federally guaranteed constitutional right is, of course, a federal question controlled by federal law. There is a presumption against the waiver of constitutional rights, see, e. g., Glasser v. United States, 315 U.S. 60, 70-71, 86 L.Ed. 680, 699, 62 S.Ct. 457, and for a waiver to be effective it must be clearly established that there was "an intentional relinquishment or abandonment of a known right or privilege." Johnson v. Zerbst, 304 U.S. 458, 464, 82 L.Ed. 1461, 1466, 58 S.Ct. 1019, 146 A.L.R. 357."

[Brookhart v. Janis, 384 U.S. 1, 86 S.Ct. 1245, 16 L.Ed.2d. 314 (1966)]

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**Miranda v. State of Arizona (June 13, 1966)**

"Coercion can be mental as well as physical and blood of accused is not the only hallmark of unconstitutional inquisition."

"Constitutional foundation underlying privilege against self-incrimination is the respect a government, state or federal, must accord to dignity and integrity of its citizens."

"Government seeking to punish individual must produce evidence against him by its own independent labors, rather than by cruel, simple expedient of compelling it from his own mouth."

"Fifth Amendment provision that individual cannot be compelled to be witness against himself cannot be abridged."

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***Sovereignty and Freedom Points and Authorities***

"Where rights secured by Constitution are involved, there can be no rule making or legislation which would abrogate them."

"Mere fact that interrogated defendant signed statement which contained typed in clause stating that he had full knowledge of his legal rights did not approach knowing and intelligent waiver required to relinquish constitutional rights to counsel and privilege against self-incrimination."

[Miranda v. State of Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966)]

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**Wolff v. Selective Service Local Board No. 16 (Jan. 30, 1967)**

"It has been held repeatedly that the mere threat of the imposition of unconstitutional sanctions will cause immediate and irreparable injury to the free exercise of rights as fragile and sensitive to suppression as the freedoms of speech and assembly and the right to vote. Baggett v. Bullitt, 377 U.S. 360, 84 S.Ct. 1316, 12 L.Ed.2d. 377 (1964); NAACP v. Button, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d. 405 (1963); Smith v. People of State of California, 361 U.S. 147, 80 S.Ct. 215, 4 L.Ed.2d. 205 (1959). Since it is the mere threat of unconstitutional sanctions which precipitates the injury, the courts must intervene at once to vindicate the threatened liberties."

"When there is nothing to be gained from the exhaustion of administrative remedies and the harm from the continued existence of the administrative ruling is great, the courts have not been reluctant to discard this doctrine. See McCulloch v. Sociedad Nacional, 372 U.S. 10, 83 S.Ct. 671, 9 L.Ed.2d. 547 (1963); Leedom v. Kyne, 358 U.S. 184, 79 S.Ct. 180, 3 L.Ed.2d. 210 (1958); Lichter v. United States, 334 U.S. 742, 68 S.Ct. 1294, 92 L.Ed. 1694 (1948); Glover v. United States, 286 F.2d. 84 (8th Cir. 1961); Bullard Co. v. N. L. R. B., 253 F.Supp. 391 (D.D.C.1966)."

[Wolff v. Selective Service Local Board No. 16, 372 F.2d. 817 (1967)]

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**Hartman v. Hollingsworth (Nov. 1, 1967)**

"When a corporation has been wound up and dissolved and following the statutory scheme therefor, has surrendered its franchise, it ceases to exist; and according to the principles of the common law, a corporation which has been legally dissolved is dead and no longer enjoys an existence for any purpose; the necessary effect of such death is not different from the death of a natural person."

[Hartman v. Hollingsworth, 255 Cal.App.2d. 579 (1967)]

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**Gentry v. Howard (Apr. 30, 1968)**

"Violation of rights which stem solely from relationship of a citizen to his state or a right derived solely from state law is not protected by the Federal Constitution or the federal statutes. The right to become a candidate for state office is an incident to state citizenship rather than national citizenship. Snowden v. Hughes, 321 U.S. 1, 64 S.Ct. 397, 88 L.Ed. 497."

[Gentry v. Howard, 288 F.Supp. 495 (1968)]

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**Terry v. State of Ohio (June 10, 1968)**

"Fourth Amendment is made applicable to states by Fourteenth Amendment."

"Right of personal security belongs as much to citizen on streets as to homeowner closeted in his study to dispose of his secret affairs."

"No right is held more sacred, or is more carefully guarded, by common law, than right of every individual to possession and control of his own person, free from all restraint or interference unless by clear and unquestionable authority of law."

"Constitution forbids not all searches and seizures but unreasonable searches and seizures."

"Defendant was entitled to protection of Fourth Amendment as he walked down city street."

"Major thrust of rule excluding evidence seized in violation of Fourth Amendment is deterrent to discourage lawless police conduct, but it also serves function as imperative of judicial integrity since courts will not be made party to lawless invasions of constitutional rights of citizens by permitting unhindered governmental use of fruits of such invasion."

"Fourth Amendment governs seizures less than arrests."

"There is "seizure" whenever police officer accosts individual and restrains his freedom to walk away, and "search" when officer makes careful exploration of outer surfaces of person's clothing in attempt to find weapons."

"Fourth Amendment governs all intrusions by agents of public upon personal security."

"Scope of search must be strictly tied to and justified by circumstances which rendered its initiation permissible."

"Officer "seized" defendant and subjected him to "search" when he took hold of him and patted down the outer surface of his clothing."

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***Sovereignty and Freedom Points and Authorities***

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"Not all personal intercourse between policemen and citizens involves seizure, and there is seizure only when officer, by means of physical force or show of authority, has in some way restrained citizen's liberty."

"There is no ready test for determining reasonableness of search and seizure other than by balancing need to search or seize against invasion which search or seizure entails."

"Intrusions upon constitutionally guaranteed rights must be based on more than inarticulate hunches, and simple good faith on part of officer is not enough."

"Police officer may in appropriate circumstances and in appropriate manner approach person for purpose of investigating possible criminal behavior even though there is no probable cause to make arrest."

"Revolver seized from defendant in stop and frisk was properly admitted in prosecution for carrying concealed weapon where at time officer seized defendant and searched him officer had reasonable grounds to believe that defendant was armed and dangerous and search was restricted to what was appropriate to discovery of particular items he sought."

"Where police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that person with whom he is dealing may be armed and presently dangerous; where in course of investigating his behavior he identifies himself as policeman and makes reasonable inquiries; and where nothing in initial stages of encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled to conduct carefully limited search of outer clothing in attempt to discover weapons which might be used to assault him."

[Terry v. State of Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968)]

#### **Petersen v. Clark (May 28, 1968)**

"Congress cannot dilute or abrogate existing constitutional guarantees in guise of exercising its authority to vest, withhold, or restrict judicial power of inferior courts."

"Due process is offended by administrative order which demands compliance or term of imprisonment, and Congress cannot make selective service induction orders unreviewable."

"When statute is attacked as violative of First Amendment, plaintiff may raise hypotheticals or situations other than [sic] his own to illustrate statute's unconstitutionality."

"Judicial review cannot be conditioned on risk of incurring substantial penalty or complying with invalid order."

"Statute prohibiting judicial review of selective service orders, except as defense in criminal prosecution, violated due process as requiring registrant to submit to induction order or subject himself to criminal prosecution, even though habeas corpus might be available."

[Petersen v. Clark, 285 F.Supp. 700 (1968)]

#### **Jones v. Alfred H. Mayer Co. (June 17, 1968)**

"**Fact that Civil Rights Act of 1866 lay partially dormant for many years did not diminish its force. 42 U.S.C.A. §§1981, 1982.**" [Bold added.]

[Footnote # 78] "The conclusion of the majority in *Hodges* rested upon a concept of congressional power under the Thirteenth Amendment irreconcilable with the position taken by every member of this Court in the *Civil Rights Cases* and incompatible with the history and purpose of the Amendment itself. Insofar as *Hodges* is inconsistent with our holding today, it is hereby overruled." [End footnote # 78, quoting *Civil Rights Cases*, 109 U.S. 3, 22, 3 S.Ct. 18, 29.]

[Jones v. Alfred H. Mayer Co., 392 U.S. 409, 88 S.Ct. 2186 (1968)]

#### **Street v. New York (Apr. 21, 1969)**

"Appellant testified that during the afternoon of June 6, 1966, he was listening to the radio in his Brooklyn apartment. He heard a news report that civil rights leader James Meredith had been shot by a sniper in Mississippi. Saying to himself, "They didn't protect him," appellant, himself a Negro, took from his drawer a neatly folded, 48-star American flag which he formerly had displayed on national holidays. Appellant left his apartment and carried the still-folded flag to the nearby intersection of St. James Place and Lafayette Avenue. Appellant stood on the northeast corner of the intersection, lit the flag with a match, dropped the flag on the pavement when it began to burn.

"Soon thereafter, a police officer halted his patrol car and found the burning flag. The officer testified that he then crossed to the northwest corner of the intersection, where he found appellant "talking out loud" to a small group of persons. The officer estimated that there were some 30 persons on the corner near the flag and five to 10 on the corner with appellant. The officer testified that as he approached within 20 or 15 feet of appellant, he heard appellant say, "We don't need no damn flag," and that when he asked appellant whether he had burned the flag appellant replied: "Yes; that is my flag; I burned it. If they let that happen to Meredith we don't need an American flag." Appellant admitted making the

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latter response, but he denied that he said anything else and asserted that he always had remained on the corner with the flag.

"No particular form of words or phrases is essential for validity of state statute to be drawn in question on ground that it is repugnant to Constitution of United States, but only that claim of invalidity and ground therefor be brought to attention of state court with fair precision and in due time, and, if record as a whole shows either expressly or by clear intendment that this was done, claim is to be regarded as having been adequately presented."

"When single-count indictment or information charges commission of crime by virtue of having done both a constitutionally protected act and one which may be unprotected, and guilty verdict ensues without elucidation, there is an unacceptable danger that trier of fact will have regarded two acts as intertwined and have rested conviction on both together."

"Supreme Court could not properly take opinion of New York Court of Appeals as obviating its duty to examine record for itself to ascertain whether defendant's words at time he was burning flag could have been sole cause of his conviction for violating state statute prohibiting mutilating or publicly speaking contemptuous words about the flag or whether conviction could have been based on both his words and his burning of the flag."

"Fourteenth Amendment prohibits state from imposing criminal punishment for public advocacy of peaceful change in our institutions."

"Defendant's words, spoken after setting fire to American flag, "We don't need no damn flag" amounted only to somewhat excited public advocacy of idea that United States should abandon, at least temporarily, one of its national symbols and words were not punishable on theory of governmental interest in deterring defendant from vocally inciting others to commit unlawful acts."

"New York statute making it misdemeanor publicly to mutilate or cast contempt upon, either by words or acts, any flag of United States did not purport to punish only those defiant or contemptuous words amounting to incitement and, in absence of evidence that state courts regarded statute as so limited, any conviction based upon words spoken by defendant, even if they might be found incitive when considered together with his simultaneous burning of the flag, could not be upheld on that basis."

"Defendant's remarks "We don't need no damn flag" did not constitute "fighting words" which were likely to provoke average person to retaliation and thereby cause a breach of the peace and therefore conviction of defendant for such words could not be justified on ground of possible tendency of his words to provoke violent retaliation."

"Under Constitution, public expression of ideas may not be prohibited merely because ideas are themselves offensive to some of their hearers."

"Freedom" to differ is not limited, under the Constitution, to things that do not matter much, but the test of substance is the right to differ as to things which touch the heart of the existing order."

"No official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion, or force citizens to confess by word or act their faith therein."

"Constitutionally guaranteed freedom to be intellectually diverse and even contrary and right to differ as to things that touch heart of existing order encompass the freedom to express publicly one's opinions about the flag, including those opinions which are defiant or contemptuous."

"Words spoken by defendant, after setting fire to American flag on street corner, "We don't need no damn flag" could not constitutionally be punished and where it appeared that he may have been punished therefor when convicted of violating New York statute making it misdemeanor publicly to mutilate or cast contempt upon, either by words or act, any flag of the United States, his conviction could not be permitted to stand."

"In *West Virginia State Board of Educ. v. Barnette*, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943), this Court held that to require unwilling school-children to salute the flag would violate rights of free expression assured by the Fourteenth Amendment."

"We have no doubt that the constitutionally guaranteed "freedom to be intellectually \* \* \* diverse or even contrary," and the "right to differ as to things that touch the heart of the existing order," encompass the freedom to express publicly one's opinions about our flag, including those opinions which are defiant or contemptuous."

"Mr. Chief Justice WARREN, dissenting."

"The defense counsel believed that appellant's act, not his words, was at issue is further demonstrated by counsel's pre-emption argument. The federal statute to which counsel referred, 56 Stat. 377, c. 435, 36 U.S.C. §173 et seq., concerns the manner in which the flag is to be displayed and in §4(j), 56 Stat. 380, 36 U.S.C. §176(j), mandates that the flag, when no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning""

"I do not believe that the *Stromberg* line of cases allows us to avoid deciding whether flag burning is protected by the First Amendment. This case does not fit the *Stromberg* mold."

"Miss Stromberg was one of the supervisors of a children's summer camp. She directed a daily ceremony during which the children raised the Soviet flag and recited a pledge of allegiance "to the worker's red flag." A California statute made it a criminal offense for any person to display a red flag (1) as a symbol of opposition to organized government or (2) as an



invitation to anarchistic action or (3) as an aid to propaganda of a seditious character."

"Terminiello was charged with disorderly conduct. The jury was allowed to convict if it found that Terminiello's speech either stirred the public to anger or constituted "fighting words." Since only the latter may be constitutionally prohibited, the Court reversed. It was possible that the jury found that Terminiello's speech merely stirred the public to anger yet convicted him. Terminiello could have been convicted for constitutionally protected conduct; he was therefore entitled to a reversal."

[Street v. New York, 394 U.S. 576, 89 S.Ct. 1354 (1969)]

#### **Davis v. Mississippi (Apr. 22, 1969)**

"Trustworthiness of fingerprint evidence does not except it from the proscriptions of the Fourth and Fourteenth Amendments."

"There is no exception from the rule that illegally seized evidence is inadmissible at trial, however relevant and trustworthy the seized evidence may be as an item of proof."

"Rule excluding illegally seized evidence was fashioned as sanction to redress and deter overreaching governmental conduct prohibited by the Fourth Amendment."

"The Fourth Amendment was meant to prevent wholesale intrusions upon the personal security of our citizenry, whether these intrusions be termed "arrests" or "investigatory detentions".

"While police have right to request citizens to answer voluntarily questions concerning unsolved crimes they have no right to compel them to answer."

"Detentions for sole purpose of obtaining fingerprints are subject to constraints of Fourth Amendment"

[Davis v. Mississippi, 394 U.S. 721, 89 S.Ct. 1394 (1969)]

#### **Brandenburg v. Ohio (June 9, 1969)**

"These later decisions have fashioned the principle that the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. As we said in Noto v. United States, 367 U.S. 290, 297-298, 6 L.Ed.2d. 836, 841, 81 S.Ct. 1517 (1961), "the mere abstract teaching . . . of the moral propriety or even moral necessity for a resort of force and violence, is not the same as preparing a group for violent action and steeling it to such action." See also Herndon v. Lowry, 310 U.S. 242, 259-261, 81 L.Ed. 1066, 1075, 1076, 57 S.Ct.732 (1937); Bond v. Floyd, 385 U.S. 116, 134, L.Ed.2d. 235, 246, 87 S.Ct.339 (1966). A statute which fails to draw this distinction impermissibly intrudes upon the freedoms guaranteed by the First and Fourteenth Amendments." "It sweeps within its condemnation speech which our Constitution has immunized from governmental control." [Cites omitted.]

[Brandenburg v. Ohio, 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed.2d. 430 (1969)]

#### **Frain v. Baron (Dec. 10, 1969)**

"School authorities have burden of justifying particular restriction on student expression and student is free to select his form of expression so long as he does not materially infringe rights of other students or disrupt school activities."

"Fear of disorder is not a proper ground for limiting peaceful exercise of First Amendment rights."

"Pedagogical opinions or appeals to courtesy are inadequate grounds for coercive responses to First Amendment expressions."

"Fact that others had joined plaintiffs in refusing to leave school rooms during daily pledge of allegiance as condition for exercising constitutional right not to participate in pledge would not be ground for impeding students' protests."

"First Amendment protects successful dissent as well as ineffective protest."

"The Pledge of Allegiance was written by Frances Bellamy, a Baptist minister, to be used at the Chicago World's Fair Grounds in October, 1892, on the four hundredth anniversary of the discovery of America. Its present form, as set forth in Regulations of the New York Commissioner of Education (Art. XVI, §150, 1 5) and in the United States Code (36 U.S.C. §172) is:

"I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all."

"The words "under God" were added in 1954 (Pub.L. 83-297). The Corporation Counsel has recognized in an earlier case that anyone may be excused from repeating these two words. See Matter of Superintendent of Schools v. Seymour Jacobs, a Regular Teacher of French, Report of Bethuel L. Webster as Trial Examiner, p. 5 (1968)."

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"Plaintiffs Mary Frain and Susan Keller are twelve-year old white girls attending Junior High School 217Q, in an accelerated class which does three years' work in two years.

"Plaintiff Raymond Miller is a black boy, a senior at Jamaica High School.

"All three plaintiffs refused to recite the Pledge of Allegiance, because of a belief that the words "with liberty' and justice for all" are not true in America today. One is an atheist, who also objected to the words "under God."

"They refused to stand during the Pledge, because that would constitute participation in what they considered a lie. They also refused to leave the room, and stand in the hall outside their homerooms until the conclusion of the ceremony, because they considered exclusion from the room to be a punishment for their exercise of constitutional rights."

"*Barnette* established the right of students to refrain from participation in a legislatively mandated flag ceremony. Rejecting compulsory participation as a proper vehicle for instilling patriotism, Mr. Justice Jackson stated (319 U.S. at 642, 63 S.Ct. at 1187):

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."

"Also consistent with *Tinker* is the decision in *Matter of Superintendent of Schools v. Jacobs*, *supra*, which upheld the right of a public school teacher to remain seated and not participate in the Pledge of Allegiance. The teacher who raised the issue expressed sentiments like the plaintiffs' in this case, that liberty' and justice do not yet exist for all Americans. The learned Trial Examiner, Bethuel M. Webster, former President of the Association of the Bar of the City of New York, stated that:

"the Board is required under *Shelton* [*Shelton v. Tucker*, 364 U.S. 479 [81 S.Ct. 247, 5 L.Ed.2d. 231] (1960)] and other cases to adopt means for promoting student patriotism that do not impair the personal liberties of teachers." Report, at p. 11." [Brackets original.]

"In *Street v. New York*, 394 U.S. 576, 89 S.Ct. 1354, 1366, 22 L.Ed.2d. 572 (1969), Mr. Justice Harlan, one of the dissenters in *Tinker*, stated that the First Amendment provides "freedom to express publicly one's opinions about our flag, including those opinions which are defiant or contemptuous." "Pedagogical opinions, or appeals to courtesy, are also inadequate grounds for coercive responses to First Amendment expressions."

"Certainly the fact that others have joined the plaintiffs in sitting out the Pledge is no justification for impeding plaintiffs' protests. The First Amendment protects successful dissent as well as ineffective protests."

"The policy of the New York City Board of Education is a sincere attempt to prevent disorders which may develop as the reaction of infuriated members of the majority to the silent dissent expressed by plaintiffs. The flaw in the policy is that the constitution does not recognize fears of a disorderly reaction as ground for restricting peaceful expression of views. As the court said in *Tinker*:

"Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots." (393 U.S. at 513, 89 S.Ct. at 740)."

[*Frain v. Baron*, 307 F.Supp. 27 (1969)]

### **Lynch v. Household Finance Corp. (Mar. 23, 1970)**

"Rights in property are basic civil rights. 28 U.S.C.A. §1343(3); 42 U.S.C.A. §1983; U.S.C.A.Const. Amend. 14."

This court has never adopted the distinction between personal liberties and proprietary rights as a guide to the contours of §1343(3) jurisdiction. Today we expressly reject that distinction.

"Neither the words of §1343(3) nor the legislative history of that provision distinguishes between personal and property rights." & In fact, the Congress that enacted the predecessor of §§1983 and 1343(3) seems clearly to have intended to provide a federal judicial form for the redress of wrongful deprivations of property by persons acting under color of state law.

"This Court has traced the origin of §1983 and its jurisdictional counterpart to the Civil Rights Act of 1866, 14 Stat. 27. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 162-163, 90 S.Ct. 1598, 1611-1612, 26 L.Ed.2d. 142; *Monroe v. Pape*, 365 U.S. 167, 171, 183-185, 81 S.Ct. 473, 475, 481-483, 5 L.Ed.2d. 492. That Act guaranteed "broad and sweeping . . . protection" to basic civil rights. *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 237, 90 S.Ct. 400, 404, 24 L.Ed.2d. 386. Acquisition, enjoyment, and alienation of property were among" those rights. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 432, 88 S.Ct. 2186, 2199, 20 L.Ed.2d. 1189.

"The Fourteenth Amendment vindicated for all persons the rights established by the Act of 1866. *Monroe*, *supra*, 365 U.S., at 171, 81 S.Ct., at 475; *Hague*, *supra*, 307 U.S. at 509-510, 59 S.Ct. at 961-962. "It cannot be doubted that among" the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own and dispose of property, Equality in the enjoyment of property rights was regarded by the framers of that Amendment as an essential pre-condition to the realization of other basic civil rights and liberties which the Amendment was intended to guarantee." *Shelley v. Kraemer*, 334 U.S. 1, 10, 68 S.Ct. 836, 841, 92 L.Ed. 1161. See also,

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Buchanan v. Warley, 245 U.S. 60, 74-79, 38 S.Ct. 16, 18-20, 62 L.Ed. 149; H. Flack, The Adoption of the Fourteenth Amendment 75-78, 81, 90-97 (1908); J. TenBroek, The Antislavery Origins of the Fourteenth Amendment (1951)."

"Such difficulties indicate that the dichotomy between personal liberties and property rights is a false one. Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth, a "personal" right, whether the "property" in question be a welfare check, a home, or a savings account. In fact a fundamental interdependence exists between the person's right to liberty and the personal right in property. Neither could have meaning without the other. That rights in property are basic civil rights has long been recognized. J. Locke, Of Civil Government 82-85 (1924); J. Adams, A Defence of the Constitutions of Government of the United States of America, in F. Coker, Democracy, Liberty, and Property 121-132 (1942); 1 W. Blackstone, Commentaries, 138-140. Congress recognized these rights in 1871 when it enacted the predecessor of §§1983 and 1343(3). We do no more than reaffirm the judgment of Congress today."

[Lynch v. Household Finance Corp., 405 U.S. 538 (1970)]

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**Walz v. Tax Commission of City of New York (May 4, 1970)**

"Under First Amendment, neither governmentally established religion nor governmental interference with religion will be tolerated, but, short of those expressly proscribed governmental acts, there is room for a benevolent neutrality permitting religious exercise to exist without sponsorship and without interference."

"Each value judgment under religious clauses of First Amendment must turn on whether particular acts in question are intended to establish or interfere with religious beliefs and practices or have the effect of doing so."

"Churches have right to take strong positions on public issues, including vigorous advocacy of legal or constitutional positions."

"Religion clauses of First Amendment seek to mark boundaries to avoid excessive entanglement between government and religion."

"Limits of permissible state accommodation to religion are not coextensive with noninterference mandate of free exercise clause of First Amendment."

"New York statute implementing New York Constitution authorizing exemptions from taxation and exempting from real property tax the realty owned by association organized exclusively for religious purposes and used exclusively for carrying out such purposes is not unconstitutional as an attempt to establish, sponsor or support religion or as an interference with free exercise of religion."

"Test of whether effect of real property tax exemption of church property used exclusively for church purposes is excessive governmental entanglement with religion is one of degree and, since either taxation or exemption occasions some degree of involvement with religion, questions are whether involvement is excessive and whether it is a continuing one calling for official and continuing surveillance leading to an impermissible degree of entanglement."

"Grant of tax exemption to churches is not sponsorship of religion since government does not transfer part of its revenue to churches, but simply abstains from demanding that church support the state."

"There is no genuine nexus between tax exemption and establishment of religion, since exemption creates only minimal and remote involvement between church and state, it restricts fiscal relationship between church and state and it tends to complement and reinforce desired separation, insulating each from the other."

**"No one acquires a vested or protected right in violation of Constitution by long use, even when that span of time covers our entire national existence and predates it."**

"In process of interpreting Constitution, an essential part of adjudication is to draw distinctions, including fine ones."

[Bold added.]

[Walz v. Tax Commission of City of New York, 397 U.S. 664, 90 S.Ct. 1409 (1970)]

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**Black's Law Dictionary: Right of Property**

**"RIGHT OF PROPERTY.** The mere right of property in land; the abstract right which remains to the owner after he has lost the right of possession, and to recover which the writ of right was given. United with possession, and the right of possession, this right constitutes a complete title to lands, tenements, and hereditaments."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1489]

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**Black's Law Dictionary: Property**

**"PROPERTY.** That which is peculiar or proper to any person; that which belongs exclusively to one; in the strict legal sense, an aggregate of rights which are guaranteed and protected by the government. [Cite omitted.] The term is said to

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extend to every species of valuable right and interest. [Cite omitted.] More specifically, ownership; the unrestricted and exclusive right to a thing; the right to dispose of a thing in every legal way, to possess it, to use it, and to exclude every one else from interfering with it. Mackeld. Rom. Law, §265. That dominion or indefinite right of use or disposition which one may lawfully exercise over particular things or subjects. ... The highest right a man can have to anything; being used for that right which one has to lands or tenements, goods or chattels, which no way depends on another man's courtesy."

"The word is also commonly used to denote everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate. It extends to every species of valuable right and interest, and includes real and personal property, easements, franchises, and incorporeal hereditaments."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1382]

#### **Black's Law Dictionary: Property Tax**

"**Property tax.** In English law, this is understood to be an income tax payable in respect to landed property. In America, it is a tax imposed on property, whether real or personal, as distinguished from poll taxes, and taxes on successions, transfers, and occupations, and from license taxes." [Cites omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1383]

#### **Black's Law Dictionary: Coerce**

"**COERCE.** Compelled to compliance; constrained to obedience, or submission in a vigorous or forcible manner. Fluharty v. Fluharty, 8 W.W.Harr. 487, 193 A. 838, 840."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 324]

#### **Black's Law Dictionary: Coercion**

"**COERCION.** Compulsion; constraint; compelling by force or arms. [Cites omitted.]

"It may be actual, direct, or positive, as where physical force is used to compel act against one's will, or implied, legal or constructive, as where one party is constrained by subjugation to other to do what his free will would refuse. [Cite omitted.] It may be actual or threatened exercise of power possessed, or supposedly possessed." [Cite omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 324]

#### **16 Am.Jur.2d., Constitutional Law, §205**

##### **"Waiver; of constitutional right.**

"With certain exceptions, an individual may waive constitutional provisions intended for his benefit, especially where no question of public policy or public morals is involved. Such waiver may be in writing or by conduct amounting to an estoppel; or by the failure to make timely assertion of the right; but it must be voluntary. In this connection, it has been noted that as originally established by the United States Supreme Court, waiver of constitutional rights was a consensual concept, depending on "intentional relinquishment or abandonment of a known right." Later opinions of that court transposed "waiver" terminology to cases involving procedural default or forfeiture," so that a defendant who failed to claim constitutional protections at appropriate junctures in the trial process was often said to have "waived" those rights. While later Supreme Court decisions indicate that the strict standard originally established will no longer govern all cases involving procedural default or forfeiture, more recently, the Supreme Court appears to have come full circle by holding that a failure of a habeas corpus petitioner to make timely objection as required by state law constituted a waiver. Still, courts indulge every reasonable presumption against waiver of fundamental constitutional rights, and very strong proof is necessary to convince the court that constitutional right has been waived. Moreover, where the ultimate effect of sustaining a claim of waiver might be an imposition on the freedom of speech and press, the Supreme Court of the United States is unwilling to find waiver in circumstances which fall short of being clear and compelling. When a constitutional right is vested in a party and there is doubt as to whether he has waived it, such doubt should be resolved in his favor. Whether an individual waives a federal constitutional right is not a question of fact, but an issue of federal law.

"It seems that constitutional provisions intended to protect property may in all instances be waived. Even some of the constitutional rights intended to secure personal liberty are subjects of waiver. Indeed, it has been said that the doctrine of waiver is applicable to all rights or privileges to which a person is legally entitled by constitutional guaranty, provided that such rights and privileges rest in the individual and are intended for his sole benefit.

"It has been broadly stated that in civil actions, privileges which rise to the dignity of constitutional or statutory rights

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may be waived.

"One who has waived a constitutional right is estopped from thereafter claiming its benefit. But there can be no justification for denying the right to withdraw a waiver."

[16 Am.Jur.2d., Constitutional Law, §205]

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#### **Brady v. United States (May 4, 1970)**

"Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences."

[Brady v. United States, 397 U.S. 742, 90 S.Ct. 1463 (1970)]

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#### **Dunn v. Blumstein (Mar. 21, 1972)**

"Durational residence laws penalize those persons who have traveled from one place to another to establish new residence during qualifying period."

"To decide whether law violates equal protection clause, court looks to character of classification in question, individual interests affected by classification, and governmental interests asserted in support of classification."

"State must show substantial and compelling reason for imposing durational residence requirements on voters."

"By denying some citizens the right to vote, durational residence law deprived such citizens of fundamental political right which is preservative of all rights."

"Equal right to vote is not absolute and states have power to impose voter qualifications, and to regulate access to franchise in other ways."

"Before right to vote can be restricted, purpose of restriction and assertedly overriding interests served by it must meet close constitutional scrutiny."

"Durational residence requirement directly impinges on exercise of right to travel."

"Durational residence laws are unconstitutional unless state can demonstrate that such laws are necessary to promote compelling governmental interest."

"Period of 30 days' voters' residence would be ample for state to complete whatever administrative task may be needed to prevent fraud **and insure** purity of ballot box."

"State may not conclusively presume nonresidence from failure to satisfy waiting period requirements of durational residency laws."

""[F]reedom to travel throughout the United States has long been recognized as a basic right under the Constitution." United States v. Guest, 383 U.S. 745, 758, 16 L.Ed.2d. 239, 249, 86 S.Ct. 1170 (1966)."

"And it is clear that the freedom to travel includes the 'freedom' to enter and abide in any State in the Union,...."

.. we concluded that since the right to travel was a constitutionally protected right, "any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a *compelling* governmental interest, is unconstitutional.""

"The right to travel is an *unconditional* personal right," a right whose exercise may not be conditioned. Shapiro v.

Thompson, 394 U.S., at 643, 89 S.Ct., at 1331 (Stewart, J., concurring) (emphasis added)...." [Cites omitted.]

[Dunn v. Blumstein, 405 U.S. 330; 92 S.Ct. 995, 31 L.Ed.2d. 274 (1972)]

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#### **United States v. Falk (Apr. 19, 1973)**

"And, just as discrimination on the basis of religion or race is forbidden by the Constitution, so is discrimination on basis of exercise of protected First Amendment activities, whether done as individual or, as in this case, as member of a group unpopular with the government."

[United States v. Falk, 479 F.2d. 617 (1973)]

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#### **Almeida-Sanchez v. United States (June 21, 1973)**

"It is clear, of course, that no Act of Congress can authorize a violation of the Constitution. But under familiar principles of constitutional adjudication, our duty is to construe the statute, if possible, in a manner consistent with the Fourth Amendment."

[Almeida-Sanchez v. United States, 413 U.S. 266, 93 S.Ct. 2535, 37 L.Ed.2d. 596 (1973)]

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#### **Sherar v. Cullen (July 3, 1973)**

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"There should be no sanctions or penalty imposed on one because of his exercise of constitutional rights. 26 U.S.C.A. (I.R.C.1954) §7402(b); U.S.C.A. Const. Amends. 4, 5."  
 [Sherar v. Cullen, 481 F.2d. 945 (1973)]

**Wolff v. McDonnell (June 26, 1974)**

"Some kind of hearing is required at some time before a person is finally deprived of his liberty, even when the liberty itself is a statutory creation of the state."

"Confrontation and cross-examination are essential in criminal trials or where a person may lose his job, but are not rights universally applicable to all hearings."

"Sixth Amendment reaches only to protect the attorney-client relationship from intrusion in criminal setting."

"There is no iron curtain drawn between the Constitution and the prisons of this country. Prisoners have been held to enjoy substantial religious freedom under the First and Fourteenth Amendments. [Cites omitted.] They retain right of access to the courts. [Cites omitted.] Prisoners are protected under the Equal Protection Clause of the Fourteenth Amendment from invidious discrimination based on race. [Cites omitted.] Prisoners may also claim the protections of the Due Process Clause. They may not be deprived of life, liberty, or property without due process of law."

"This analysis as to liberty parallels the accepted due process analysis as to property. The Court has consistently held that some kind of hearing is required at some time before a person is finally deprived of his property interests. Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 168, 71 S.Ct. 624, 646, 95 L.Ed. 817 (1951) (Frankfurter, J., concurring). The requirement for some kind of a hearing applies to the taking of private property, Grannis v. Ordean, 234 U.S. 385, 34 S.Ct. 779, 58 L.Ed. 1363 (1914)...."

"We think a person's liberty is equally protected, even when the liberty itself is a statutory creation of the State. The touchstone of due process is protection of the individual against arbitrary action of government, Dent v. West Virginia, 129 U.S. 114, 123, 9 S.Ct. 231, 233, 32 L.Ed. 623 (1889)."

[Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d. 935 (1974)]

**United States v. Miller (Sept. 13, 1974)**

"Trial court has broad zone of discretion in determining admissibility of documents such as business records and its ruling with respect thereto should be disturbed only when that discretion has been abused."

"Bank Secrecy Act, requiring banks to microfilm all checks passing through them, did not violate defendant depositor's right to be free from unreasonable searches and seizures."

"Subpoenas duces tecum requiring bank presidents to appear and produce records of defendant's bank accounts constituted unlawful invasion of defendant's privacy and evidence obtained as result of such subpoenas should have been suppressed where they were issued by the United States Attorney rather than by court, no return was made upon subpoenas to the court and the subpoenas were issued for date when grand jury was not in session."

"Government may not circumvent protection against compulsory production of a person's private papers to establish a criminal charge against him by first requiring bank to copy all the depositor's personal checks and then, by improper invocation of legal process, require bank to allow inspection and reproduction of copies of the checks."

"Fact that bank officials cooperated fully and without objection in producing copies of depositor's checks when required to do so by means of faulty subpoenas duces tecum did not permit introduction of copies obtained from the bank officials in criminal prosecution."

[United States v. Miller, 500 F.2d. 751 (1974)]

**Maness v. Meyers (Jan. 15, 1975)**

"Persons who make private determinations of the law and refuse to obey a court order generally risk criminal contempt even if the order is ultimately ruled incorrect."

"Fifth Amendment privilege against self-incrimination is broadly construed to assure that an individual is not compelled to produce evidence' which later may be used against him as an accused in a criminal action."

"Fifth Amendment privilege against self-incrimination does not merely encompass evidence which may lead to criminal conviction but includes information which would furnish a link in the chain of evidence that could lead to prosecution, as well as evidence which an individual reasonably believes could be used against him in a criminal prosecution."

"Constitutional privilege against compulsory self-incrimination can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory."

"A witness who has been granted formal immunity may be compelled to testify over a Fifth Amendment objection."

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"Constitutional privilege against compulsory self-incrimination is not a self-executing mechanism; it can be affirmatively waived or lost by not asserting it in a timely fashion."

"This method of achieving precompliance review is particularly appropriate where the Fifth Amendment privilege against self-incrimination is involved. The privilege has ancient roots, see, e.g., *Brown v. Walker*, 161 U.S. 591, 596-597, 16 S.Ct.644, 646-647, 40 L.Ed. 819 (1896); *Miranda v. Arizona*, 384 U.S. 436, 458-463, 86 S.Ct. 1602, 1619-1622, 16 L.Ed.2d. 694 (1966); see especially *id.*, at 458 n. 27, 86 S.Ct., at 1619. This court has always broadly construed its protection to assure that an individual is not compelled to produce evidence which later may be used against him as an accused in a criminal action. *Counselman v. Hitchcock*, 142 U.S. 547, 562, 12 S.Ct. 195, 198, 35 L.Ed. 1110 (1892); *Arndstein v. McCarthy*, 254 U.S. 71, 72-73, 41 S.Ct. 26, 27, 65 L.Ed. 138 (1920). The protection does not merely encompass evidence which may lead to criminal conviction, but includes information which would furnish a link in the chain of evidence that could lead to prosecution, as well as evidence which an individual reasonable believes could be used against him in a criminal prosecution. *Hoffman v. United States*, 341 U.S. 479, 486, 71 S.Ct. 814, 818, 95 L.Ed. 1118 (1951)."

"In *Kastigar v. United States*, 406 U.S. 441, 92 S.Ct. 1653, 32 L.Ed.2d. 212 (1972), we recently reaffirmed the principle that the privilege against self-incrimination can be asserted "in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory." *Id.*, at 444, 92 S.Ct., at 1656; *Lefkowitz v. Turley*, 414 U.S. 70, 77, 94 S.Ct. 316, 322, 38 L.Ed.2d. 274 (1973); *Murphy v. Waterfront Comm'n*, 378 U.S. 52, 94 S.Ct. 1594, 1611, 12 L.Ed.2d. 678 (1964) (White, J., concurring); *McCarthy v. Arndstein*, 266 U.S. 34, 40, 45 S.Ct. 16, 17, 69 L.Ed. 158 (1924); *United States v. Saline Bank*, 1 Pet. 100, 7 L.Ed. 69 (1828); cf. *Gardner v. Broderick*, 392 U.S. 273, 88 S.Ct. 1913, 20 L.Ed.2d. 1082 (1968)."

"The privilege against compelled self-incrimination would be drained of its meaning if counsel, being lawfully present, as here, could be penalized for advising his client in good faith to assert it. The assertion of a testimonial privilege, as of many other rights, often depends upon legal advice from someone who is trained and skilled in the subject matter, and who may offer a more objective opinion. A layman may not be aware of the precise scope, the nuances, and boundaries of his Fifth Amendment privilege. It is not a self-executing mechanism; it can be affirmatively waived, or lost by not asserting it in a timely fashion. If performance of a lawyer's duty to advise a client that a privilege is available exposes a lawyer to the threat of contempt for giving honest advice it is hardly debatable that some advocates may lose their zeal for forthrightness and independence.

"There is a crucial distinction between citing a recalcitrant witness for contempt, *United States v. Ryan*, *supra* [402 U.S. 530, 91 S.Ct. 1580; 29 L.Ed.2d. 85 (1971)], and citing the witness' lawyer for contempt based only on advice given in good faith to assert the privilege against self-incrimination." [Maness v. Meyers, 419 U.S. 449, 42 L.Ed.2d. 574, 95 S.Ct. 584 (1975)]

### **Smith v. Smith (Mar. 14, 1975)**

"There are occasional situations in which Supreme Court opinions have so eroded an older case, without explicitly overruling it, as to warrant subordinate court in pursuing what it conceives to be clearly defined new lead from Supreme Court to conclusion inconsistent with older Supreme Court case."

"Violation of free exercise clause of First Amendment is predicated on coercion."

"Right of individuals to freely practice their religious beliefs does not encompass right to use government to that end."

"Very purpose of religion clauses of First Amendment was to insure that sensitive issues of individual's religious beliefs would be beyond majority control."

**"This court must, of course, follow the decisions of the Supreme Court**, but much has been written by the Court concerning the "establishment of religion" since the decision on *Zorach*; and, "there are occasional situations in which subsequent Supreme Court opinions have so eroded an older case, without explicitly overruling it, as to warrant a subordinate court in pursuing what it conceives to be a clearly defined new lead from the Supreme Court to a conclusion inconsistent with an older Supreme Court case." [Bold added.]

"In the face of establishment clause challenges the court has upheld Sunday Closing Laws, *McGowan v. Maryland*, 366 U.S. 420, 81 S.Ct. 1101, 6 L.Ed.2d. 393 (1961); the loaning of books on secular subjects to students attending sectarian schools, *Board of Education v. Allen*, 392 U.S. 236, 88 S.Ct. 1923, 20 L.Ed.2d. 1060 (1968);...." [Smith v. Smith, 391 F.Supp. 443 (1975)]

### **Colonial Pipeline Company v. Traigle (Apr. 28, 1975)**

""The thrust of the [amended] statute is to tax not the interstate business done in Louisiana by a foreign corporation, but the doing of business in Louisiana in a corporate form, including each and every act, power, right, privilege or

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immunity exercised or enjoyed in this state, as an incident to or by virtue of the powers and privileges acquired by the nature of such organizations ...." *Id.*, at 97. Accordingly, the court concluded that amended §601 applied the franchise tax to foreign corporations doing only an interstate business in Louisiana not as a tax upon "the general privilege of doing interstate business but simply [as a tax upon] the corporation's privilege of enjoying in a corporate capacity the ownership or use of its capital, plant or other property in this state, the corporation's privilege of exercising and continuing its corporate character in the State of Louisiana, and the corporation's use of its corporate form to do business in the State." *Id.*, at 100. Upon that premise, the court validated the levy as a constitutional exaction for privileges enjoyed by corporations in Louisiana and for benefits furnished by the State to enterprises carrying on business, interstate or local, in the corporate form, whether as domestic or foreign corporations. The court reasoned:...

"The fact that the corporate form of doing business is inextricably interwoven in a foreign corporation's doing interstate business in the State, does not in our view detract from the fact that the local incident taxed is the *form of doing business* rather than the business done by that corporation."

"The statute does not discriminate between foreign and local corporations, being applicable, as it is, to both."

"The corporation paid all ad valorem taxes assessed against its property in Mississippi. In addition to these taxes, however, Mississippi imposed a "franchise or excise tax" upon all corporations "doing business" within the State."

"This conclusion is even more compelled in the instant case since appellant voluntarily qualified under Louisiana law and therefore enjoys the same rights and privileges as a domestic corporation."

"A tax is [an unconstitutional] direct burden, if laid upon the operation or act of interstate commerce." [Cite omitted.] The 1970 amendment however repealed that unconstitutional basis for the tax, and made §601 constitutional by limiting its application to operating incidences of activities within Louisiana for which the State affords privileges and protections that constitutionally entitle Louisiana to exact a fairly apportioned and nondiscriminatory tax. *Spector* expressly recognized: "The incidence of the tax provides the answer. . . . The State is not precluded from imposing taxes upon other activities or aspects of this business which, unlike the privilege of doing interstate business, are subject to the sovereign power of the State." 340 U.S., at 608-609, 71 S.Ct., at 512." [Brackets within the quote are original.]

"It is, rather, a fairly apportioned and nondiscriminatory means of requiring appellant to pay its just share of the cost of state government upon which appellant necessarily relies and by which it is furnished protection and benefits." [*Colonial Pipeline Company v. Traigle*, 421 U.S. 100, 95 S.Ct. 1538, 44 L.Ed.2d. (1975)]

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#### **Faretta v. California (June 30, 1975)**

"The U.S. Courts of Appeals have repeatedly held that the right of self-representation is protected by the Bill of Rights. In *United States v. Plattner*, 330 F.2d. 271, the Court of Appeals for the Second Circuit emphasized that the Sixth Amendment grants the accused the rights of confrontation, of compulsory process for witnesses in his favor, and of assistance of counsel as minimum procedural requirements in federal criminal prosecutions. The right to the assistance of counsel, the court concluded, was intended to supplement the other rights of the defendant, and not to impair "the absolute and primary right to conduct one's defense in propria persona." *Id.*, at 274."

"The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense. It is the accused, not counsel, who must be "informed of the nature and cause of the accusation," who must be "confronted with the witnesses against him," and who must be accorded "compulsory process for obtaining witnesses in his favor.""

[*Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d. 562 (1975)]

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#### **Baxley v. Rutland (Mar. 10, 1976)**

"Powers of Alabama Attorney General are as broad as the common law unless restricted or modified by statute."

"State has no standing as parent of its citizens to attack acts of Congress as violative of provision of the Constitution of the United States when the constitutional provisions are intended as protections for private persons."

"The United States is the ultimate *parens patriae* of every American citizen."

[*Baxley v. Rutland*, 409 F.Supp. 1249 (1976)]

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#### **United States v. Kelley (Nov. 15, 1976)**

"Expression of political belief is not a defense to supplying false information on withholding exemption certificates. 26 U.S.C.A. (I.R.C.1954) §7205."

[*United States v. Kelley*, 539 F.2d. 1199 (1976)]

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**G.M. Leasing Corp. v. United States (Jan. 12, 1977)**

"Indeed, one of the primary evils intended to be eliminated by the Fourth Amendment was the massive intrusion on privacy undertaken in the collection of taxes pursuant to general warrants and writs of assistance. As Madison argued, urging the adoption of a Bill of Rights to restrain the Federal Government:

The General Government has a right to pass all laws which shall be necessary to collect its revenue; the means for enforcing the collection are within the direction of the Legislature: may not general warrants be considered necessary for this purpose, as well as for some purposes which it was supposed at the framing of their constitutions the State Governments from exercising this power, there is like reason for restraining the Federal Government." 1 Annals of Congress 438 (1834 ed).

The respondents [United States] urge that the history of the common law in England and the laws in several States prior to the adoption of the Bill of Rights support the view that the Fourth Amendment was not intended to cover intrusions into privacy in the enforcement of the tax laws. We do not find in the cited materials anything approaching the clear evidence that would be required to create so great an exception to the Fourth Amendment's protections against warrantless intrusions into privacy."

"We do not find in Boyd any direct holding that the warrant protections of the Fourth Amendment do not apply to invasions of privacy in furtherance of tax collection."

[G.M. Leasing Corp. v. United States, 429 U.S. 338, 50 L.Ed.2d. 530; 97 S.Ct. 619 (1977)]

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**People v. Miner (Jan. 25, 1977)**

"A commissioner of the municipal court could accept the plea of nolo contendere of a defendant to a misdemeanor violation of the Vehicle Code and to an infraction of the Code, notwithstanding that the defendant did not stipulate that the commissioner could accept his plea. No stipulation was necessary in view of Gov. Code, §72401, which provides that a commissioner may, with respect to any misdemeanor violation of the Vehicle Code, arraign the defendant and take pleas and set cases for trial; Pen. Code, §19d, which extends all provisions of law relating to misdemeanors to infractions; and Gov. Code, §72401, subd. (c), which provides that the traffic referee may have the same jurisdiction and powers with respect to any infraction as a judge of the court."

"Pen. Code, §19d, which provides that "all provisions of law relating to misdemeanors shall apply to infractions," compels the application to an infraction matter of the rule that a guilty or nolo contendere plea is invalid in a misdemeanor matter unless there is an explicit "on-the-record" waiver of a defendant's constitutional rights."

[People v. Miner, 68 Cal.App.3d. Supp. 1, 137 Cal.Rptr. 149 (1977).]

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**Stevens v. Berger (Mar. 3, 1977)**

"Before a belief put forward as religious may be elevated to constitutional status, there must be some reasonable possibility that the conviction is sincerely held and is based upon what can be characterized as theological, rather than secular, e. g., purely social, political or moral views."

"Governmental questioning of truth or falsity of religious beliefs themselves is proscribed by First Amendment."

"Religious belief can appear preposterous to every other member of human race yet merit protections of the Bill of Rights."

"When an individual seeks to act on a religious belief and that action poses a threat or inconvenience to other citizens or to some important aspect of public law and policy, requirement of ordered society may demand that courts make a limited inquiry into bona fides of belief."

"Neither trappings of robes, nor temples of stone, nor a fixed liturgy, nor an extensive literature or history is required to meet the text of beliefs cognizable under Constitution as religious, and one person's religious beliefs held for one day are presumptively entitled to the same protection as views of millions which have been shared for thousands of years."

"Evidence in action for injunctive and declaratory relief by welfare recipients whose assistance was discontinued because they refused to supply social security numbers for their children as required by regulation established the sincerity of the belief of parents that were their children to obtain these numbers their spiritual well-being and chance to enter Heaven would be seriously jeopardized."

"Evidence in action by welfare recipients, challenging on ground of religious belief requirement of welfare officials that social security numbers for their children be furnished, established that the belief of plaintiff parents that were their children to obtain the numbers their spiritual well-being and chance to enter Heaven would be seriously jeopardized were religious in foundation."

"Gain to the subordinating interest provided by challenged governmental means must outweigh incurred loss of

protected rights before an infringement of those protected rights will be countenanced."

"Once bona fide First Amendment issue is joined, burden that must be shouldered by government to defend a regulation with impact on religious actions is a heavy one, and basic standards is that a compelling state interest must be demonstrated."

"Notwithstanding fact that use of social security numbers, combined with computers, was an important tool in efforts to combat instances of welfare fraud, parents, who were recipients of welfare aid, could not be compelled against their sincerely held religious belief to furnish social security numbers for their children as a condition to continued receipt of assistance."

"The Federal Privacy Act provides that:

"It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number."

"Plaintiffs do believe that, were their children to obtain these numbers, their spiritual well-being and chance to enter Heaven would be seriously jeopardized; since the children would not be able to shed these numbers when they reach adulthood, a decision by the parents to comply would effectively foreclose the children from deciding the question anew for themselves in the future."

[*Stevens v. Berger*, 428 F.Supp. 896 (1977)]

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#### **United States v. Chadwick, (June 21, 1977)**

"Despite contention that only homes, offices and private communications implicate interests which lie at the core of the Fourth Amendment, the protection of the warrant clause is not limited to dwellings and other specifically designated locales."

"The Fourth Amendment protects people, not places, and more particularly, it protects people from unreasonable government intrusions into their legitimate expectations of privacy."

"Footlocker's mobility did not justify dispensing with the protections of the warrant clause by analogy to the "automobile exception" once agents had seized it and had safely transferred it to federal building under their exclusive control."

"Where no exigency is shown to support the need for immediate search, warrant clause places the line on warrantless search of property seized at time of arrest at point where the property to be searched comes under the exclusive dominion of police authority."

"Although the searches and seizures which deeply concerned the colonists, and which were foremost in the minds of the Framers, were those involving invasions of the home, it would be a mistake to conclude, as the Government contends, that the Warrant Clause was therefore intended to guard only against intrusions into the home. First, the Warrant Clause does not in terms distinguish between searches conducted in private homes and other searches. There is also a strong historical connection between the Warrant Clause and the initial clause of the Fourth Amendment, which draws no distinctions among "persons, houses, papers, and effects" in safeguarding against unreasonable searches and seizures. " [Cite omitted.]

"Moreover, if there is little evidence that the Framers intended the Warrant Clause to operate outside the home, there is no evidence at all that they intended to exclude from protection of the Clause all searches occurring outside the home."

"Just as the Fourth Amendment "protects people, not places," the protections a judicial warrant offers against erroneous governmental intrusions are effective whether applied in or out of the home. Accordingly, we have held warrantless searches unreasonable, and therefore unconstitutional, in a variety of settings. A century ago, Mr. Justice Field, speaking for the Court, included within the reach of the Warrant Clause printed matter traveling through the mails within the United States:

""Letters and sealed packages of this kind in the mail are as fully guarded from examination and inspection, except as to their outward form and weight, as if they were retained by the parties forwarding them in their own domiciles. The constitutional guaranty of the right of the people to be secure in their papers against unreasonable searches and seizures extends to their papers, thus closed against inspection, wherever they may be. Whilst in the mail, they can only be opened and examined under like warrant, issued upon similar oath or affirmation, particularly describing the thing to be seized, as is required when papers are subjected to search in one's own household." *Ex parte Jackson*, 96 U.S. 727, 733, 24 L.Ed. 877 (1878)."

"These cases illustrate the applicability of the Warrant Clause beyond the narrow limits suggested by the Government. They also reflect the settled constitutional principle, discussed earlier, that a fundamental purpose of the Fourth Amendment is to safeguard individuals from unreasonable government invasions of legitimate privacy interests, and not simply those interests found inside the four walls of the home."

"Mr. Justice BRENNAN, concurring.

"I fully join THE CHIEF JUSTICE's thorough opinion for the Court. I write only to comment upon two points made by my Brother BLACKMUN's dissent.

"First, I agree wholeheartedly with my Brother BLACKMUN that it is "unfortunate" that the Government in this case

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"sought . . . to vindicate an extreme view of the Fourth Amendment." *Post*, at 2486. It is unfortunate, in my view, not because this argument somehow "distract[ed]" the Court from other more meritorious arguments made by the Government--these arguments are addressed and convincingly rejected in the Court's opinion--but because **it is deeply distressing that the Department of Justice, whose mission is to protect the constitutional liberties of the people of the United States, should even appear to be seeking to subvert them by extreme and dubious legal arguments.** It is gratifying that the Court today unanimously rejects the Government's position." [Brackets original; bold added.] [United States v. Chadwick, 433 U.S. 527, 97 S.Ct. 2476 (1977)]

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### **Callahan v. Woods (Oct. 5, 1981)**

"Parents may exercise constitutional rights on behalf of their children; hence, father, on behalf of minor daughter, could properly assert that requirement that obtaining a social security number to obtain Aid to Families with Dependent Children on behalf of daughter contravened his sincere religious beliefs."

"A First Amendment inquiry into sincerity with which a proffered belief is held addresses the sincerity with which claimant holds the religious belief itself."

"If father's current objection to social security numbers and his refusal to obtain one for daughter, on whose behalf he sought aid to families with dependent children benefits, had nothing to do with the reason proffered and if his claims about the "mark of the beast" were fictitious trappings for long-standing secular concerns, trial court would be obliged to find him insincere and his claims entitled to no special privilege under First Amendment."

"Where it is found that allegedly religious belief is sincerely held, presence of long-standing secular objections does not refute the finding of sincerity, for free exercise purposes."

"For free exercise purposes, coincidence of religious and secular claims does not extinguish the weight appropriately accorded the religious one."

"Religious duties need not contradict personal values or preferences in order to be protected under the free exercise clause."

"In applying the free exercise clause, courts may not inquire into the truth, validity or reasonableness of a claimant's religious beliefs."

"Although courts do not inquire into truth of the religious belief, it is incumbent on the court to insure that a free exercise claim is granted only when the threatened belief is religious in nature."

"Father's interpretation of social security numbers as tools of the Antichrist and his related refusal to obtain a number for daughter so that she could obtain aid to families with dependent children benefits was religious in nature and closely tied to a theistic belief, father was a member of Baptist Church, his ascription of diabolical status to social security numbers was derived from New Testament's Book of Revelation, and fact that his interpretation of scripture might differ from those of other church members could not invalidate his free exercise right; understanding of subject passage addressed spiritual and not merely worldly concerns."

"Since father's views regarding social security numbers as the "mark of the beast" were theological in nature and plainly religious within meaning of free exercise clause and since father, who refused to obtain a number for his daughter so that she could obtain aid to families with dependent children benefits, sincerely held his views, the government was required to show a compelling state interest in making social security numbers a prerequisite for benefits and trial court was to decide if that interest could be satisfied by some less restrictive means."

"Correct standard for free exercise purposes was not whether father's opposition to social security numbers as the "mark of the beast" had always been religious but, rather, whether they were religious in the context of the life as he now lived it."

"If judicial inquiry into the truth of one's religious beliefs violates free exercise clause, an inquiry into one's reasons for adopting those beliefs is similarly intrusive."

"So long as one's faith is religiously based at time it is asserted, it does not matter, for free exercise clause purposes, whether that faith derives from revelation, study, upbringing, gradual evolution or some source that appears entirely incomprehensible and constitutional protection cannot be denied simply because early experience has left one particularly open to current religious beliefs."

"But a coincidence of religious and secular claims in no way extinguishes the weight appropriately accorded the religious one."

"The devout Seventh-Day Adventist may enjoy his Saturday leisure; the Orthodox Jew or Mohammedan may dislike the taste of pork. Such personal considerations are irrelevant to an analysis of the claimants' free exercise rights, so long as their religious motivation requires them to keep the Sabbath and avoid pork products. Religious duties need not contradict personal values or preferences in order to be protected."

"Nor can the courts easily distinguish between beliefs springing from religious and secular origin. A secular experience can stimulate a spiritual response; lives are not so compartmentalized that one can readily keep the two separate. It may well be that Callahan first developed an aversion to numbers when he felt their dehumanizing effect in prison. If later

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study or inspiration has provided him with an additional, theological objection to numbering people, then his present belief developed out of secular and religious elements that cannot be disentangled. In any event, constitutional protection cannot be denied simply because earlier experience has left him particularly open to his current religious belief."  
[Callahan v. Woods, 658 F.2d. 679 (1981)]

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**NAACP v. Claiborne Hardware Co. (July 2, 1982)**

"As we so recently acknowledged in *Citizens Against Rent Control/Coalition for Fair Housing v. Berkeley*, 454 U.S. 290, 294, 70 L.Ed.2d. 492, 102 S.Ct.434, "the practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process." We recognized that "by collective effort individuals can make their views known, when, individually, their voices would be faint or lost." *Ibid.* In emphasizing "the importance of freedom of association in guaranteeing the right of people to make their voices heard on public issues," *id.*, at 295, we noted the words of Justice Harlan, writing for the Court in *NAACP v. Alabama*, 357 U.S. 449, 460, 2 L.Ed.2d. 1488, 78 S.Ct. 1163:

""Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly."

"The Chief Justice stated for the Court in *Citizens Against Rent Control*: "There are, of course, some activities, legal if engaged in by one, yet illegal if performed in concert with others, but political expression is not one of them." 454 U.S., at 296, 70 L.Ed.2d. 492, 102 S.Ct.434."

[NAACP v. Claiborne Hardware Co., 458 U.S. 886, 102 S.Ct. 3409, 73 L.Ed.2d. 1215 (1982)]

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**Bowers v. DeVito (Aug. 20, 1982)**

"Section 1983 imposes liability on anyone who under color of state law "subjects ... any citizen ... or other person ... to the deprivation of any rights, privileges, or immunities secured by the Constitution ...," and thus applies only if there is a deprivation of a constitutional right. [Cites omitted.] There is a constitutional right not to be murdered by a state officer, for the state violates the Fourteenth Amendment when its officer, acting under color of state law, deprives a person of life without due process of law. [Cite omitted.] But there is no constitutional right to be protected by the state against being murdered by criminals or madmen. It is monstrous if the state fails to protect its residents against such predators but it does not violate the due process clause of the Fourteenth Amendment or, we suppose, any other provision of the Constitution. The Constitution is a charter of negative liberties; it tells the state to let people alone; it does not require the federal government or the state to provide services, even so elementary a service as maintaining law and order."

[Bowers v. DeVito, 686 F.2d. 616 (1982)]

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**United States v. Verkuilen (Oct. 6, 1982)**

"Where defendant failed to make colorable claim that he was involved in activities for which he could be criminally prosecuted and that such activities would be revealed if he supplied data on his income tax form, defendant's blanket assertion of Fifth Amendment' privilege on his income tax return was ineffective invocation of that privilege."

"Evidence of other crimes, wrongs or acts is admissible to prove intent, knowledge, or a motive, if such acts have substantial relevance to issues other than general criminal character."

[United States v. Verkuilen, 690 F.2d. 648 (1982)]

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**Rutherford v. United States (Apr. 11, 1983)**

"The Fourteenth Amendments' restrictions on the powers of the states do not apply to the federal government. The analogous limitations on federal action are embodied in the Fifth Amendment."

"Foremost is whether the substantive aspects of the due process clause actually does create in taxpayers a liberty interest in freedom from abusive behavior of the kind, degree and effect as that attributed to Agent Kuntz."

"If the district court should find that such an interest does exist, Kuntz' claim of qualified immunity will come into play. Resolution of that claim will turn in large part on an assessment of the quality of the underlying substantive interests: under the Supreme Court's recent reformulation of the doctrine, qualified immunity attaches unless Kuntz' "conduct violated clearly established constitutional rights of which a reasonable person should have known," *Harlow v. Fitzgerald*, - - U.S. ---, 102 S.Ct. 2727, 2738-39 and n. 32, 73 L.Ed.2d. 396 (1982); see *Saldana v. Garza*, 684 F.2d. 1159, 1163 nn. 14 & 15 (5th Cir.1982); *Barker v. Norman*, 651 F.2d. 1107, 1122-25 (5th Cir.1981).

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"Decision of these issues in the Rutherfords' favor would lead the district court to the *Bivens* issue. The Supreme Court counseled in *Carlson v. Green*, 466 U.S. 14, 100 S.Ct. 1468, 1471, 64 L.Ed.2d. 15 (1980) that an action in constitutional tort may be defeated "when defendants demonstrate 'special factors counseling hesitation in the absence of affirmative action by Congress' ... [or] when defendants show that Congress has provided an alternative remedy which it explicitly declared to be a *substitute* for recovery directly under the Constitution and viewed as equally effective." (emphasis in original) (citations omitted). The district court may wish to consider in this connection the several suggestions, albeit in dicta, that abuse in tax collection might lay the foundation for a *Bivens* action. See *Laing v. United States*, 423 U.S. 161, 96 S.Ct. 473, 497 n. 14, 46 L.Ed.2d. 416 (J. Blackmun, dissenting); *Capozzoli v. Tracey*, 663 F.2d. 654, 656 n. 1 (5th Cir.1981); *Granger v. Marek*, 583 F.2d. 781, 787 (6th Cir.1978) (J. Merritt, dissenting); .... ' [Brackets original, cites omitted.]"

[*Rutherford v. United States*, 702 F.2d. 580 (1983)]

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### **Texas v. Brown (Apr. 19, 1983)**

"Because the "plain view" doctrine generally is invoked in conjunction with other Fourth Amendment principles, such as those relating to warrants, probable cause, and search incident to arrest, we rehearse briefly these better understood principles of Fourth Amendment law. That Amendment secures the persons, houses, papers, and effects of the people against unreasonable searches and seizures, and requires the existence of probable cause before a warrant shall issue. Our cases hold that procedure by way of a warrant is preferred, although in a wide range of diverse situations we have recognized flexible common-sense exceptions to this requirement. See, e.g., [cite omitted] (hot pursuit); [cite omitted] (exigent circumstances); [cite omitted] (automobile search); [cites omitted] (search of surrounding area incident to arrest); [cite omitted] (search at border or "functional equivalent"); [cite omitted] (consent). We have also held to be permissible intrusions less severe than full-scale searches or seizures without the necessity of a warrant. See, e.g., [cite omitted] (stop and frisk); [cite omitted] (seizure for questioning); [cite omitted] (roadblock). One frequently mentioned "exception to the warrant requirement," [cite omitted] is the so-called "plain view" doctrine, relied upon by the State in this case."

"We have said previously that "the permissibility of a particular law enforcement practice is judged by balancing its intrusion on . . . Fourth Amendment interests against its promotion of legitimate governmental interests." *Delaware v. Prouse*, 440 U.S., at 654, 99 S.Ct., at 1396. In light of the private and governmental interests just outlined, our decisions have come to reflect the rule that if, while lawfully engaged in an activity in a particular place, police officers perceive a suspicious object, they may seize it immediately. [Cites omitted.] This rule merely reflects an application of the Fourth Amendment's central requirement of reasonableness to the law governing seizures of property."

"Likewise, the fact that Maples "changed [his] position" and "bent down at an angle so [he] could see what was inside" Brown's car, App. 16, is irrelevant to Fourth Amendment analysis. The general public could peer into the interior of Brown's automobile from any number of angles; there is no reason Maples should be precluded from observing as an officer what would be entirely visible to him as a private citizen." [Brackets original.]

[*Texas v. Brown*, 460 U.S. 730, 103 S.Ct. 1535, 75 L.Ed.2d. 502 (1983)]

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### **United States v. Place (June 20, 1983)**

"The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." (Emphasis added.) Although in the context of personal property, and particularly containers, the Fourth Amendment challenge is typically to the subsequent search of the container rather than to its initial seizure by the authorities," our cases reveal some general principles regarding seizures. In the ordinary case, the Court has viewed a seizure of personal property as *per se* unreasonable within the meaning of the Fourth Amendment unless it is accomplished pursuant to a judicial warrant issued upon probable cause and particularly describing the item to be seized."

"In this case, the Government asks us to recognize the reasonableness under the Fourth Amendment of warrantless seizures of personal luggage from the custody of the owner on the basis of less than probable cause, for the purpose of pursuing a limited course of investigation, short of opening the luggage, that would quickly confirm or dispel the authorities suspicion. Specifically, we are asked to apply the principles of *Terry v. Ohio*, *supra*, to permit such seizures on the basis of reasonable, articulable suspicion, premised on objective facts, that the luggage contains contraband or evidence of a crime. In our view, such application is appropriate."

"In *Terry*, we described the governmental interests supporting the initial seizure of the person as "effective crime prevention and detection; it is this interest which underlies the recognition that a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest.""

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"In sum, we conclude that when an officer's observations lead him reasonably to believe that a traveler is carrying luggage that contains narcotics, the principles of *Terry* and its progeny would permit the officer to detain the luggage briefly to investigate the circumstances that aroused his suspicion, provided that the investigative detention is properly limited in scope."

"The Fourth Amendment "protects people from unreasonable government intrusions into their legitimate expectations of privacy." *United States v. Chadwick*, 433 U.S., at 7, 97 S.Ct., at 2481. We have affirmed that a person possesses a privacy interest in the contents of personal luggage that is protected by the Fourth Amendment."

"Therefore, we conclude that the particular course of investigation that the agents intended to pursue here--exposure of respondent's luggage, which was located in a public place, to a trained canine--did not constitute a "search" within the meaning of the Fourth Amendment."

"As we observed in *Terry*, "[t]he manner in which the seizure ... [was] conducted is of course, as vital a part of the inquiry as whether [it was] warranted at all.""

"Although the 90-minute detention of respondent's luggage is sufficient to render the seizure unreasonable, the violation was exacerbated by the failure of the agents to accurately inform respondent of the place to which they were transporting his luggage, of the length of time he might be dispossessed, and of what arrangements would be made for return of the luggage if the investigation dispelled the suspicion. In short, we hold that the detention of respondent's luggage in this case went beyond the narrow authority possessed by police to detain briefly luggage reasonably suspected to contain narcotics."

"As noted *supra*, at 2642, *Terry* and the cases that followed it authorize a brief "investigative" stop of an individual based on reasonable suspicion and a limited search for weapons if the officer reasonably suspects that the individual is armed and presently dangerous. The purpose of this brief stop is to determine [the individual's] identity or to maintain the status quo momentarily while obtaining more information...." *Adams v. Williams*, 407 U.S., at 146, 92 S.Ct., at 1923. Anything more than a brief stop "must be based on consent or probable cause." *United States v. Brignoni-Ponce*, *supra*, 422 U.S., at 882, 95 S.Ct., at 2580. During the course of this stop, "the suspect must not be moved or asked to move more than a short distance; physical searches are permitted only to the extent necessary to protect the police officers involved during the encounter; and, most importantly, the suspect must be free to leave after a short time and to decline to answer the questions put to him." *Kolender v. Lawson*, 461 U.S., at 365, 103 S.Ct., at 1861 (BRENNAN, J., concurring)."

"The Fourth Amendment protects "effects" as well as people from unreasonable searches and seizures. In this regard, Justice STEVENS pointed out in *Texas v. Brown*, 460 U.S. 730, 103 S.Ct. 1535, 75 L.Ed.2d. 502 (1983), that "[t]he [Fourth] Amendment protects two different interests of the citizen--the interest in retaining possession of property and the interest in maintaining personal privacy." *Id.*, at 747, 103 S.Ct., at 1546 (opinion concurring in judgment). "A seizure threatens the former, a search the latter." *Ibid.* Even if an item is not searched, therefore, its seizure implicates a protected Fourth Amendment interest. For this reason, seizures of property must be based on probable cause."

"The officers did not develop probable cause to arrest respondent during their encounter with him. See 660 F.2d, at 50. Therefore, they had to let him go. But despite the absence of probable cause to arrest respondent, the officers seized his luggage and deprived him of possession. Respondent, therefore, was subjected not only to an invasion of his personal security and privacy, but also to an independent dispossession of his personal effects based simply on reasonable suspicion. It is difficult to understand how this intrusion is not more severe than a brief stop for questioning or even a limited, on-the-spot patdown search for weapons." [Brackets original.]

[*United States v. Place*, 462 U.S. 696, 103 S.Ct. 2637, 77 L.Ed.2d. 110 (1983)]

### **United States V. Hylton (Aug. 1, 1983)**

"The district court did conclude that Hylton's motivations in filing the criminal complaints were "questionable." Nevertheless, the district court went on to conclude that even if Hylton enjoyed the trouble her complaints may have caused the IRS agents, her conduct still was constitutionally protected since her complaints were not frivolous, in fact, were factually accurate. We find no error in the district court's actions in this regard.

"The district court concluded that "there were no triable issues of fact" with respect to any contention that Hylton's criminal trespass complaints were frivolous and this conclusion is unarguably supported by the record. The County Attorney who filed the complaints testified that he filed the complaints since the complaints alleged violations of the Texas criminal trespass statute. The record adequately indicates that Hylton's complaint was filed upon accurate factual allegations that did constitute a basis for a criminal trespass complaint. Once again, the district court did not circumvent the jury's finding on good faith, the district court concluded only that the complaints were nonfraudulent, even if Hylton took pleasure in the annoyance her complaints may have caused the IRS agents. Thus, we find no error in the district court's conclusion that the complaints were nonfraudulent."

"As the United States Supreme Court has held, the right to petition for redress of grievances is "among the most precious of the liberties safeguarded by the bill of rights." [Cite omitted.] Inseparable from the guaranteed rights

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entrenched in the first amendment, the right to petition for redress of grievances occupies a "preferred place" in our system of representative government, and enjoys a "sanctity and a sanction not permitting dubious intrusions." *Thomas v. Collins*, 323 U.S. 516, 65 S.Ct. 315, 322, 89 L.Ed. 430 (1945). Indeed, "[i]t was not by accident or coincidence that that [sic] rights to freedom in speech and press were coupled in a single guarantee with the rights of the people peaceable to assemble and to petition for redress of grievances." *Id.* at 323. Moreover, the Supreme Court has held expressly that the first amendment right to petition protects the individuals right to file an action with a "reasonable basis" in a state tribunal. [Cite omitted.] Thus, we are presented with the issue of whether Hylton may be convicted of violating 26 U.S.C. §7212(a) for filing a factually accurate, nonfraudulent criminal complaint against federal agents with the appropriate local law enforcement officials.

"Having thoroughly reviewed the record and the district court's holding, we have concluded that Hylton's actions represent a legitimate and protected exercise of her right to petition for the redress of grievances. The record clearly reveals that Hylton placed a high value upon her right to personal privacy and genuinely attempted to protect her rights through the orderly pursuit of justice--the filing of citizen complaints with a reasonable basis. Although we do not condone the Hyltons' continued opposition to this Nation's tax laws, we likewise cannot condone the imposition of criminal sanction for Hylton's exercise of her constitutional right.

We emphasize that we do not find the provisions of 26 U.S.C. §7212(a) to be in violation of the first amendment in all cases. Certainly, the Government may seek criminal sanction against those who illegally impede the due administration of this Nation's tax laws. Moreover, were it demonstrated that Hylton's complaints were frivolous and based upon contrived allegations, a totally different result might follow."

"This Court affirms the district court's holding that Hylton's conduct constitutes legitimate exercise of her constitutional right to petition for redress of grievances."

"Of course, whether the IRS agents conduct was privileged or immunized as a matter of federal law is an issue to be determined in the criminal trespass proceeding against the IRS agents. However, the fact that the agents may have a valid defense does not vitiate Hylton's right to petition for a redress of grievances in a nonfraudulent complaint." Footnote 7, p. 1111. [Brackets original.]

[*United States v. Hylton*, 710 F.2d. 1106 (1983)]

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#### **United States v. Doe (Feb. 28, 1984)**

"**Decision:** Fifth Amendment' privilege against self-incrimination held applicable to act of producing business records but not to content of such records."

.. that under the Fifth Amendment there are certain documents no person ought to be compelled to produce at the government's request."

"A subpoena that demands production of documents does not compel oral testimony, nor does it ordinarily compel one to restate, repeat, or affirm the truth of the contents of the documents sought."

.. respondent was entitled to assert his Fifth Amendment privilege against compelled self-incrimination rather than produce the records."

[*United States v. Doe*, 465 U.S. 605, 104 S.Ct. 1237, L.Ed.2d. 552 (1984)]

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#### **United States v. Jacobsen (Apr. 2, 1984)**

"A "search" occurs when an expectation of privacy that society is prepared to consider reasonable is infringed."

"A "seizure" of property occurs when there is some meaningful interference with an individual's possessory interest in that property."

"Fourth Amendment's protection against unreasonable searches and seizures proscribes only governmental action; it is wholly inapplicable to search or seizure, even an unreasonable one, effected by private individual not acting as an agent of the Government or with participation or knowledge of any governmental official."

The first Clause of the Fourth Amendment provides that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...." This text protects two types of expectations, one involving "searches," the other "seizures." A "search" occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. "A "seizure" of property occurs when there is some meaningful interference with an individual's possessory interest in that property. This Court has also consistently construed this protection as proscribing only governmental action; it is wholly inapplicable "to a search or seizure, even an unreasonable one, effected by private individual not acting as an agent of the Government or with participation or knowledge of any governmental official." *Walter v. United States*, 447 U.S. 649, 662, 100 S.Ct. 2395, 2404, 65 L.Ed.2d. 410 (1980) (BLACKMUN, J., dissenting)."

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[United States v. Jacobsen, 466 U.S. 109, 104 S.Ct. 1652, 80 L.Ed.2d. 85 (1984)]

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**Callahan v. Woods (Oct. 5, 1984)**

"The government must shoulder heavy burden to defend a regulation affecting religious actions."

"In determining whether a neutrally based statute violates the free exercise clause, the Court of Appeals considers magnitude of statute's impact upon exercise of religious belief, existence of compelling state interest justifying burden imposed upon exercise of religious belief, and the extent to which recognition of exemption from statute would impede objectives sought to be advanced by state."

"A substantial burden upon exercise of religious beliefs is justified only by a showing that the requirement is the least restrictive means of achieving some compelling government interest."

[Callahan v. Woods, 736 F.2d. 1269 (1984)]

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**United States v. Rendahl (Nov. 1, 1984)**

"To support assertion of Fifth Amendment privilege, witnesses had to show that their testimony would support conviction under federal criminal statute or furnish link in chain of evidence needed to prosecute them for federal crime."

"Privilege against self-incrimination is validly invoked only where there are substantial hazards of self-incrimination that are real and appreciable, not merely imaginary and unsubstantial."

[United States v. Rendahl, 746 F.2d. 553 (9th Cir. 1984)]

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**Voss v. Bergsgaard (Sept. 30, 1985)**

"The Fourth Amendment requires that a search warrant describe the things to be seized with sufficient particularity to prevent a "general, exploratory rummaging in a person's belongings." *Coolidge v. New Hampshire*, 403 U.S. 443, 467, 91 S.Ct. 2022, 2038, 29 L.Ed.2d. 564 (1971). This requirement "makes general searches ... impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant, *Stanford v. Texas*, 379 U.S. 476, 485, 85 S.Ct. 506, 512, 13 L.Ed.2d. 431 (1965), (quoting *Marron v. United States*, 275 U.S. 192, 196, 48 S.Ct. 74, 76 72 L.Ed. 231 (1927))."

"As the Supreme Court held in *Stanford v. Texas*, 379 U.S. 476, 485, 85 S.Ct. 506, 511, 13 L.Ed.2d. 431 (1965):

"the constitutional requirement that warrants must particularly describe the "things to be seized" is to be accorded the most scrupulous exactitude when the "things are books and the basis for their seizure is the ideas they contain.""

[Voss v. Bergsgaard, 774 F.2d. 402 (1985)]

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**People of Territory of Guam v. Fegurur (Sept. 29, 1986)**

**"It is an unconstitutional deprivation of due process for the government to penalize a person merely because he has exercised a protected statutory or constitutional right.** *United States v. Goodwin*, 457 U.S. 368, 372, 102 S.Ct. 2485, 2488, 73 L.Ed.2d. 74 (1982). For example, the Supreme Court has held that a sentence imposed after a successful appeal and reconviction may be struck down where its severity appears vindictive. *North Carolina v. Pearce*, 395 U.S. 711, 723-26, 89 S.Ct. 2072, 2079-81, 23 L.Ed.2d. 656 (1969)." [Bold added.]

[People of Territory of Guam v. Fegurur, 800 F.2d. 1470 (9th Cir. 1986)]

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**United States v. Studley (Feb. 26, 1986)**

"Any illegality in Government's handling of application for arrest warrant did not require reversal of conviction."

"Defect in defendant's arrest did not deprive district court of personal jurisdiction over her."

"Despite defendant's contention that she was an absolute, freeborn and natural individual, she was a "person" under the Internal Revenue code and thus subject to prosecution for willful failure to file tax returns."

"Congress had authority and had exercised its authority to establish criminal sanction for failure to file income tax returns."

"Defendant's Fifth Amendment' rights were not violated by Government's use of evidence obtained by civil process, even if Internal Revenue Service special agent sought records for criminal investigation, so long as recommendation of prosecution had not been made."

"Even if evidence obtained by civil process should have been suppressed, its admission was harmless because ample other evidence was admitted to show that defendant's gross income was greater than statutory minimum that triggers

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requirement to file return."

[United States v. Studley, 783 F.2d. 934 (9th Cir. 1986)]

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**United States v. Murphy (Feb. 10, 1987)**

"Due process requires that penal statutes define criminal offenses with sufficient clarity that an ordinary person can understand what conduct is prohibited. *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S.Ct. 1855, 75 L.Ed.2d. 903 (1983)."

[United States v. Murphy, 809 F.2d. 1427 (9th Cir. 1987)]

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**Leahy v. District of Columbia (Dec. 1, 1987)**

"In dismissing First Amendment free exercise clause challenge to District of Columbia's requirement that applicants for driver's licenses provide their social security number, district court incorrectly applied an erroneous standard, as to whether social security number requirement was a "reasonable means of promoting a legitimate public interest"; proper inquiry was the "least restrictive means/compelling interest" inquiry as to whether social security number requirement was the least restrictive means of achieving the concededly vital public safety objective at stake."

"Under the applicable "least restrictive means/compelling interest" inquiry, District of Columbia failed to show that requiring a driver's- license applicant who had religious objections to undue use of social security numbers to provide his social security numbers in order to obtain a driver's license was the least restrictive means of achieving the concededly vital public safety objective at stake in respect to issuance of a driver's license, necessitating remand of applicant's free exercise challenge to the social security number requirement."

[Leahy v. District of Columbia, 833 F.2d. 1046 (D.C. Cir. 1987)]

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**Estate of Fisher v. C.I.R. (June 6, 1990)**

"As noted, the Supreme Court has long recognized that the real danger of self-incrimination may exist even when it is not readily apparent from the implications of the questions asked or the circumstances surrounding the inquiry, *Hoffman*, 341 U.S. at 486, 71 S.Ct. at 818. In such case a witness has the burden of establishing the existence of the danger of self-incrimination, but the witness is not "required to prove the hazard [of self-incrimination] in the sense in which a claim is usually required to be established in court." *Id.* at 486-87, 71 S.Ct. at 818. That is, the claimant must show a reasonable possibility that his own testimony will incriminate him, not establish it by a preponderance of the evidence."

"Given the practical difficulties faced by a witness directed to comply with a discovery order--who believes that he would be turning over incriminatory information to agents of the government--judicial intervention is not only necessary but also clearly appropriate. Although the decision whether to engage *in camera* review rests in the sound discretion of the district court, *see Zolin*, 109 S.Ct. 2631, the court must ensure that a witness' right against self-incrimination is adequately protected, whether by *in camera* review or by grant of use immunity. *See United States v. Gravatt*, 868 F.2d. 585, 590-91 (3d Cir.1989)."

[Estate of Fisher v. C.I.R., 905 F.2d. 645 (2nd Cir.1990)]

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**United States v. Argomaniz (March 11, 1991)**

"Fifth Amendment' privilege against self-incrimination may be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory, and may be invoked by 'taxpayer in response to request for information in Internal Revenue Service (IRS) investigation."

"To invoke Fifth Amendment privilege against self-incrimination in order to avoid compliance with Internal Revenue Service (IRS) summons, taxpayer must provide more than mere speculative, generalized allegations of possible tax-related prosecution; rather, taxpayer must be faced with substantial and real hazards of self-incrimination."

"Taxpayer can have legitimate fear of possible tax-related prosecution, so as to be entitled to invoke Fifth Amendment privilege against self-incrimination in response to Internal Revenue Service (IRS) summons, even though IRS investigation remains in civil stage."

"It is role of district court, not taxpayer, to evaluate taxpayer's claims of self-incrimination, and to determine whether taxpayer has legitimate fear of criminal prosecution sufficient to support invocation of Fifth Amendment privilege to avoid compliance with Internal Revenue Service (IRS) summons."

"In evaluating validity of taxpayer's invocation of Fifth Amendment privilege against self-incrimination, district court must make particularized inquiry, deciding, in connection with each specific area that questioning party wishes to explore, whether or not privilege is well-founded."

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"Remand was necessary to allow district court to conduct in camera proceeding, on question-by-question basis, to determine actual extent to which taxpayer could rely on Fifth Amendment privilege against self-incrimination to avoid compliance with Internal Revenue Service (IRS) summons."

"Contents of voluntarily prepared business records are not protected by Fifth Amendment privilege against self-incrimination."

"Blanket refusal to produce records or to testify will not support Fifth Amendment claim."

[United States v. Argomaniz, 925 F.2d. 1349 (11th Cir. 1991)]

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#### **Interstate Cigar Co. v. United States (Sept. 16, 1994)**

"Compensation is not required under Fifth Amendment where property is held by government through exercise of power to protect health, safety and welfare of public. U.S.C.A. Const.Amend. 5"

"Good faith purchaser of goods from one who obtained them by fraud nevertheless obtains good title; if purchaser does not act in good faith, it receives void title and cannot prevail over defrauded seller."

"Burden of establishing value of seized property rest on claimant; sovereign pays only for what it takes, not for lost opportunities."

[Interstate Cigar Co. v. United States, 32 Fed.Cl. 66 (1994)]

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#### **8 Federal Procedures, Proceedings in Forma Pauperis, §20:602**

... **And the simultaneous rebirth of federal common law** If some believed that *Erie* had laid federal common law to rest, the Supreme Court did not think so. On the same day that it decided *Erie*, the court expressly applied federal common law in another case. The lower federal courts soon recognized that notwithstanding the *Erie* decision, there exists certain fields where legal relations are governed by a federal common law, which is a body of decisional law developed by the federal courts untrammelled by state court decisions."

[8 Federal Procedures, Proceedings in Forma Pauperis, §20:602]

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#### **8 Federal Procedures, Proceedings in Forma Pauperis, §20:610**

**"Property rights** Under the federal system, property ownership is not governed by federal common law but rather by state law. This is particularly true with respect to real property, for even during the era of *Swift v. Tyson*, an exception was carved out for the local law of real property."

[8 Federal Procedures, Proceedings in Forma Pauperis, §20:610]

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## 4.4 Ownership as the Origin of the Right to Define<sup>47</sup>

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### 4.4.1 Introduction

Throughout this site, we emphasize the importance of PRIVATE property ownership as a defense against government corruption. The government uses exactly the same tactic of ownership of PUBLIC property as the origin of ALL of their CIVIL legislative authority, in fact, as we prove in:

*Proof that “Publici Juris”/Public Rights Include the Entire Civil Code, SEDM*  
<https://sedm.org/proof-that-publici-juris-includes-the-entire-civil-code/>

But EXACTLY how is that ownership expressed in your relations with others from a LEGAL perspective? That is the subject of this article.

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### 4.4.2 Ownership

Ownership implies at LEAST the two following aspects of legal rights over the thing owned:

1. The right to LAWFULLY CONTROL any and all others who want to USE or BENEFIT from the thing owned.
2. The right to EXCLUDE any and all others from the use of the thing owned.

The two aspects of ownership above are the essence of what the Constitution identifies as the power to “make needful rules and regulations” for PUBLIC property in Article 4, Section 3, Clause 2:

*U.S. Constitution*  
*Article 4: States Relations*  
*Section 3: Admission of New States; Property of United States*  
**Clause 2. Property of the United States**

***The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property** belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.*

The above constitutional provision is deceptive, because it does not directly address what “other Property” is. In fact, it can be ANYTHING: civil statutory rights, privileges, chattel property, contracts, franchises, buildings, etc. If they spelled all these things out as “property” in the above constitutional provision, they would have to admit that ALL CIVIL STATUTES they enact are PROPERTY and PRIVILEGES owned by them and granted to you with legal strings attached that become HUGE shackles around your legs. We exhaustively prove this in:

*Government Instituted Slavery Using Franchises, Form #05.030*  
<https://sedm.org/Forms/05-MemLaw/Franchises.pdf>

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### 4.4.3 YOUR rights as the OWNER of Private Property

But what about YOUR EQUAL right to “make needful rules and regulations respecting YOUR absolutely owned PRIVATE property”? The U.S. government has been described by the courts as “[a government of delegated powers](#)”. Those powers come from YOU and can come from NO OTHER SOURCE without creating a literal pagan god in violation of the First Amendment. We prove this in [Socialism: The New American Civil Religion, Form #05.016](#). Because they are a government of delegated powers, you have that SAME power as they do to “make all needful rules respecting YOUR property” as well, and even to regulate and control THEM in the use of that PRIVATE property. This, is the MAIN way you can DEFEND yourself from their

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<sup>47</sup> Source: *Ownership as the Origin of the Right to Define*, SEDM; <https://sedm.org/ownership-as-the-origin-of-the-right-to-define/>.

corruption and covetousness, in fact.

Contracts, franchises, licenses, or even “quasi-contracts” such as the civil statutory code (see [Why Statutory Civil Law is Law for Government and Not Private Persons, Form #05.037](#)) are an example of such “needful rules”. All these legal mechanisms contain a DEFINITIONS section. The PURPOSE of the DEFINITIONS section is:

1. To literally CREATE the “res” that is the object of rights. Remember that RIGHTS are PROPERTY. See:
 

*Authorities on Rights as Property*, SEDM  
<https://sedm.org/authorities-on-rights-as-property/>
2. To CREATE a [CIVIL Status \(see the Litigation->Civil Status menu\)](#) as a “fiction of law” that in effect REPRESENTS the “res”. Recall that the CREATOR is always the OWNER, as we prove in:
 

*Hierarchy of Sovereignty: The Power to Create is the Power to Tax*, Family Guardian Fellowship  
<https://famguardian.org/Subjects/Taxes/Remedies/PowerToCreate.htm>
3. To identify the privileges/rights and corresponding obligations of all the fictional PERSONS who USE or BENEFIT from the "res" or property being created and regulated. These people, in effect, volunteer to become AGENTS of the property owner when handling the "res" or property under the terms of the contract, franchise, or agreement regulating the use of the property. They must all VOLUNTEER for the role of STEWARD or CUSTODIAN over the property temporarily granted or loaned or else UNCONSTITUTIONAL [slavery](#) is the result in violation of the Thirteenth Amendment.
4. To firmly fix the relations of all fictional PERSONS handling the property so that control and beneficial use of the property by the Owner is respected and protected.
5. To sometimes create or at least recognize a specific organization to manage the property created by the contract, trust, franchise, or license. In a governmental sense, that organization is always a corporation. All governments are corporations that manage a collection of community/public property. Agents of this corporation manage the property and corresponding privileges/rights of the corporation. In a governmental sense, these AGENTS are called "[public officers](#)". A "[public office](#)", in fact, is LEGALLY DEFINED as someone IN CHARGE (exercising stewardship) over PUBLIC property. WITHOUT public property, there can in fact BE no public officers!
6. To identify those who are not parties to the contract, franchise, or license granting the property and how they are permitted to interact with the property through the agents managing the property. In a governmental sense, these parties are nonresident or stateless. An example of such a party is a nonresident alien in the Internal Revenue Code.

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#### 4.4.4 **Ownership and COMMERCE with others**

The OWNER is the person OFFERING the property to others for SALE as the “Merchant” under U.C.C. §2-104(1). The person BUYING or RENTING the property granted by the OWNER is the “Buyer” under U.C.C. §2-103(1)(a). The Merchant always writes ALL the rules or conditions under which the Buyer may use the property granted. The only choice the Buyer has is to accept those terms in order to gain temporary custody of the property sought. The Buyer has a qualified interest in the property of the Owner which is often temporary and revocable at the whim of the absolute owner of the property.

So we can see that:

1. The OWNER is the one who is the ORIGIN of the CONTRACT, FRANCHISE, or LICENSE regulating the use of the property and the DEFINITIONS that are within it.
2. The CREATOR is always the OWNER, just like the Bible identifies God as the CREATOR, and also the OWNER of the ENTIRE Heavens and the Earth and all people ON the Earth.
3. The ACT of DEFINING terms is an act of CREATION. That power of being a CREATOR of anything can come ONLY from OWNERSHIP itself.
4. OWNERSHIP and THE RIGHT TO DEFINE always travel TOGETHER and are INSEPARABLE. In that sense, they are similar to the duality of OWNERSHIP and RESPONSIBILITY. You cannot OWN a thing without being RESPONSIBLE for the damage that it causes to others.

The above considerations are VERY important. They are also VERY subtle aspects of freedom that few, in our observation, truly understand. But without understanding these things, you can NEVER be free because your power to defend yourself from

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 Litigation Tool 10.018, Rev. 11-21-2018



government abuse comes MAINLY through your ownership of PRIVATE property and your use of it to prevent or control the government from injuring you.

#### 4.4.5 Practical Application

The concepts in this short article have very broad application to every aspect of the CIVIL and COMMON law. Understanding them can provide a VERY potent weapon to defend yourself from bureaucrats who want to exercise their power to “regulate” every aspect of your life. Why? Because here is what happens to those who are “governed” and “regulated” through the civil statutory code:

*“To be governed is to be watched over, inspected, spied on, directed, legislated, regimented, closed in, indoctrinated, preached at, controlled, assessed, evaluated, censored, commanded; all by creatures that have neither the right, nor wisdom, nor virtue . . .*

*To be governed means that at every move, operation, or transaction one is noted, registered, entered in a census, taxed, stamped, priced, assessed, patented, licensed, authorized, recommended, admonished, prevented, reformed, set right, corrected. Government means to be subjected to tribute, trained, ransomed, exploited, monopolized, extorted, pressured, mystified, robbed; all in the name of public utility and the general good.*

*Then, at the first sign of resistance or word of complaint, one is repressed, fined, despised, vexed, pursued, hustled, beaten up, garroted, imprisoned, shot, machine-gunned, judged, sentenced, deported, sacrificed, sold, betrayed, and to cap it all, ridiculed, mocked, outraged, and dishonored. That is government, that is its justice and its morality! . . . O human personality! How can it be that you have cowered in such subjection for sixty centuries?”*

*[Pierre-Joseph Proudhon (born A. D. 1809 - died A. D. 1865)]*

Every dispute with covetous tyrants who want to “govern” you as described above WITHOUT your consent ALWAYS begins with a dispute about THEIR power to write definitions and associate you with the thing defined, now doesn’t it? Below is an example:

*Policy Document: IRS Fraud and Deception About the Statutory Word “Person”, Form #08.023*  
<https://sedm.org/Forms/08-PolicyDocs/IRSPerson.pdf>

In order for them to PROVE they have the POWER to write a definition and associate you with the CIVIL STATUS in the definition, THEY have the burden of proof that:

1. THEY have an ownership interest in the THING or “res” that is the SUBJECT of the definition.
  2. They LAWFULLY acquired that ownership interest.
  3. You CONSENTED to PROCURE a “benefit” of that ownership interest.
  4. That there IS, IN FACT, a “benefit” of using the “res” or thing granted or loaned.
- The U.S. Supreme Court PROVED this is the government's burden of proof in asserting jurisdiction when they held:

*“The compensation which the owners of property, not having any special rights or privileges from the government in connection with it, may demand for its use, or for their own services in union with it, forms no element of consideration in prescribing regulations for that purpose.*

[. . .]

*“It is only where some right or privilege [which are GOVERNMENT PROPERTY] is conferred by the government or municipality upon the owner, which he can use in connection with his property, or by means of which the use of his property is rendered more valuable to him, or he thereby enjoys an advantage over others, that the compensation to be received by him becomes a legitimate matter of regulation. Submission to the regulation of compensation in such cases is an implied condition of the grant, and the State, in exercising its power of prescribing the compensation, only determines the conditions upon which its concession shall be enjoyed. When the privilege ends, the power of regulation ceases.”*

[. . .]

*The State in such cases exercises no greater right than an individual may exercise over the use of his own property when leased or loaned to others. The conditions upon which the privilege shall be enjoyed being stated*

*or implied in the legislation authorizing its grant, no right is, of course, impaired by their enforcement. The recipient of the privilege, in effect, stipulates to comply with the conditions. It matters not how limited the privilege conferred, its acceptance implies an assent to the regulation of its use and the compensation for it.*  
[\[Munn v. Illinois, 94 U.S. 113 \(1877\)\]](#)

If the government can't demonstrate they gave you PROPERTY that belonged to them and continues to belong to them after you receive it or stewardship over it, that you voluntarily accepted and thereby "benefitted" from it, then their power to REGULATE your conduct in CONNECTION with the property ceases. And if there is no authority to CIVILLY regulate, then there is NO JURISDICTION to enforce and the enforcement action must be judicially enjoined with no discretion on the part of the judge to do otherwise.

The above burden of proof is a VERY difficult one to meet. In fact, we prove the OPPOSITE of the above is true in the context of EVERYTHING the government does from a CIVIL perspective in the following memorandum on our site:

*Why the Government is the Only Real Beneficiary of All Government Franchises*, Form #05.051\*\* (Member Subscriptions)  
<https://sedm.org/product/why-the-government-is-the-only-real-beneficiary-of-all-government-franchises-form-05-051/>

Intuitively, we can realize the analysis in the above memorandum is true just from the perspective that:

1. Governments don't CREATE, PRODUCE, or MANUFACTURE anything physical of value. That's what private industry is for.
2. Governments can only regulate or protect their OWN PUBLIC property, not PRIVATE property.
3. The only way they can acquire ANY property is to deceive OTHERS into giving it to them without compensation.
4. It is an abuse of the taxing power to TRANSFER wealth between PRIVATE individuals.
5. Money paid to the government in the form of "taxes" can ONLY be spent on government and never on PRIVATE interests. See [Loan Assoc. v. Topeka, 87 U.S. \(20 Wall.\) 655 \(1874\)](#).

Another way of saying the above is that "GOVERNMENT" is an "["eleemosynary trust"](#) that may NEVER be operated "for profit" and may never impair the right of private property without the consent of the owner. According to the Declaration of Independence, the main "benefit" of the constitutional trust indenture (public trust) is the right of PRIVATE property ("that to SECURE these rights [which are PRIVATE PROPERTY], governments are instituted among men, deriving their JUST powers from the CONSENT of the governed). The "trust" is the constitution, in fact. Public officers serving on behalf of the PUBLIC trust have as their MAIN job the protection of PRIVATE property, in fact:

*"As expressed otherwise, the powers delegated to a public officer are held in trust for the people and are to be exercised in behalf of the government or of all citizens who may need the intervention of the officer. [1] Furthermore, the view has been expressed that all public officers, within whatever branch and whatever level of government, and whatever be their private vocations, are trustees of the people, and accordingly labor under every disability and prohibition imposed by law upon trustees relative to the making of personal financial gain from a discharge of their trusts. [2] That is, a public officer occupies a fiduciary relationship to the political entity on whose behalf he or she serves. [3] and owes a fiduciary duty to the public. [4] It has been said that the fiduciary responsibilities of a public officer cannot be less than those of a private individual. [5] Furthermore, it has been stated that any enterprise undertaken by the public official which tends to weaken public confidence and undermine the sense of security for individual rights is against public policy. [6]"*  
 [63C Am.Jur.2d, Public Officers and Employees, §247]

FOOTNOTES:

[1] *State ex rel. Nagle v. Sullivan*, 98 Mont. 425, 40 P.2d. 995, 99 A.L.R. 321; *Jersey City v. Hague*, 18 N.J. 584, 115 A.2d. 8.

[2] *Georgia Dep't of Human Resources v. Sistrunk*, 249 Ga. 543, 291 S.E.2d. 524. *A public official is held in public trust. Madlener v. Finley (1st Dist)*, 161 Ill.App.3d. 796, 113 Ill.Dec. 712, 515 N.E.2d. 697, app gr 117 Ill.Dec. 226, 520 N.E.2d. 387 and *revd on other grounds* 128 Ill.2d. 147, 131 Ill.Dec. 145, 538 N.E.2d. 520.

[3] *Chicago Park Dist. v. Kenroy, Inc.*, 78 Ill.2d. 555, 37 Ill.Dec. 291, 402 N.E.2d. 181, *appeal after remand (1st Dist)* 107 Ill.App.3d. 222, 63 Ill.Dec.134, 437 N.E.2d. 783.

[4] *United States v. Holzer* (CA7 Ill) 816 F.2d. 304 and vacated, remanded on other grounds 484 U.S. 807, 98 L.Ed.2d. 18, 108 S.Ct. 53, on remand (CA7 Ill) 840 F.2d. 1343, cert den 486 U.S. 1035, 100 L.Ed.2d. 608, 108 S.Ct. 2022 and (criticized on other grounds by *United States v. Osser* (CA3 Pa) 864 F.2d. 1056) and (superseded by statute on other grounds as stated in *United States v Little* (CA5 Miss) 889 F.2d. 1367) and (among conflicting authorities on other grounds noted in *United States v. Boylan* (CA1 Mass), 898 F.2d. 230, 29 Fed.Rules.Evid.Serv. 1223).

[5] *Chicago ex rel. Cohen v. Keane*, 64 Ill.2d. 559, 2 Ill.Dec. 285, 357 N.E.2d. 452, later proceeding (1st Dist) 105 Ill.App.3d. 298, 61 Ill.Dec. 172, 434 N.E.2d. 325.

[6] *Indiana State Ethics Comm'n v. Nelson* (Ind App), 656 N.E.2d. 1172, reh gr (Ind App) 659 N.E.2d. 260, reh den (Jan 24, 1996) and transfer den (May 28, 1996).

When a public officer gets greedy and wants to abuse the power to tax to take away or convert PRIVATE property to PUBLIC property without your consent, then they are violating their fiduciary duty and doing so usually because of the LOVE of money. According to the Bible, the LOVE of money is the root of ALL evil!

*"For the love of money is a root of all kinds of evil, for which some have strayed from the faith in their greediness, and pierced themselves through with many sorrows."*  
[1 [Tim. 6:10](#), Bible, NKJV]

When government IS operated for profit or with the goal of STEALING or CONVERTING as much PRIVATE property to PUBLIC property as they can, then the PUBLIC TRUST becomes a SHAM TRUST that is ENDLESSLY corrupted as exhaustively proven in:

1. *De Facto Government Scam*, Form #05.043
43. <https://sedm.org/Forms/05-MemLaw/DeFactoGov.pdf>
2. *Government Corruption*, Form #11.401
44. <https://sedm.org/home/government-corruption/>

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#### 4.4.6 Conclusions

Some readers might be inclined to say of this article:

*"Well, you may be right about this, but the chance to address these issues at an administrative level will be scarce, and litigation may be necessary to directly confront this issue directly. Clerks are jerks who don't study the law, so any kind of discussion of this will fall on deaf ears and get a dear in the headlight response from the jerk clerks. It may not be worth the effort to TURN into a REAL remedy, unless you are ALREADY litigating or the target of a criminal prosecution. I don't think there is any way to solve all of these problems without lengthy litigation (possibly not even with) which is in and of itself new problems that are time and resource sinks.*

*I do not agree with the premise of your approach. I just think it's likely to lead to issues that would wind up leading to necessary litigation where it otherwise may not be needed.*

*Part of living an enjoyable life is not picking fights just for fun. I get that it's your ministry to decipher the mess and guide people through but there are ADMINISTRATIVE remedies available (the 1040NR) without having to create your own which they likely can't even entertain or won't without litigation. Administrative handling is so much more palatable to me. I'm not afraid of a fight but I'd rather live my life than constantly be "fighting city hall".*

*But filing a 1040NR as a nonresident alien doesn't accept that office in the sense that all your income is subject to tax by virtue of filling that office in an in personam sense. It connects a small donation and establishes a record of little or no tax due and recovers the erroneously withheld amounts. Nonresident status is subject matter as I'm sure you know where citizen or resident is in personam.*

We respond to this retort by saying:

*Absolutely. The 1040NR solves MOST of the problems you point out of AVOIDING the office of "citizen" or "resident", but doesn't solve ALL of them. The BIGGER problem is operating in an ENTIRELY private capacity with no ability to civilly regulate or control, either directly through an office or indirectly by DINKING with your property to coerce you into doing something.*

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*The premise is to directly challenge the literal source of their authority. That source is the ability to write definitions and attach you to the offices that those definitions create. What other fight is there? Everything else is beating around the bush, literally.*

*AUTHOR=person writing definitions. AUTHOR-ITY. How much more direct can one get than THAT?*

*If you are already in court because they won't ADMINISTRATIVELY refund STOLEN private property criminally "laundered" by legally ignorant withholding agents or employers who won't read or follow REAL law, then this is a valid approach to take in front of the most informed audience possible: A judge and full-time legal professionals, instead of clerks. If you aren't willing to fight for your rights in this setting, the ONLY place that matters, then do you REALLY deserve those rights? Only what you have to fight for will you truly value ANYWAY.*

*The approach is also useful if you are the unjust target of criminal prosecution for failure to perform or incorrectly performing the duties of the CIVIL public office that attach to using government property. Such prosecutions we call "quasi-criminal", because they DEPEND on a PREDICATE civil status such as "taxpayer" or "person" that is voluntary and which one can't volunteer for as a NONRESIDENT party without criminally impersonating a public officer in violation of [18 U.S.C. § 912](#).*

*The FAKE/DE FACTO CIVIL offices and fooling you into volunteering for them or tolerating them as a leash around your neck are where all the trouble starts. The UNLAWFUL and even (sometimes) UNCONSTITUTIONAL creation of these public offices attached to public property is where ALL the attention should be focused, instead of bending over a LITTLE and tolerating the slavery that they implement as described in:*

[Challenge to Income Tax Enforcement Authority Within Constitutional States of the Union, Form #05.052](#)  
<https://sedm.org/Forms/05-Memlaw/ChallengeToIRSEnforcementAuth.pdf>

More on the subject of this article dealing with ownership, definitions, and the affect of both on commerce between you and the government in:

[Path to Freedom, Form #09.015, Sections 5.4-5.8](#)  
<https://sedm.org/Forms/09-Procs/PathToFreedom.pdf>



4.5 Authorities on Rights as Property<sup>48</sup>





The subject of rights as property is a very important one. It is one upon which most of the injustice in government is built so it is worth spending lots of time to learn more about. This article summarizes all the authorities we can find relating to rights as property.

Why is the concept of rights as property the origin of evil relating to freedom and sovereignty? The answer is found in the following authorities, indicating that the main source of government control over your life is the process of granting or loaning you government property with legal strings attached:

*“The rich rules over the poor,  
And **the borrower [of money or property] is servant to the lender.**”  
[Prov. 22:7, Bible, NKJV]*

**“The State in such cases exercises no greater right than an individual may exercise over the use of his own property when leased or loaned to others. The conditions upon which the privilege shall be enjoyed being stated or implied in the legislation authorizing its grant, no right is, of course, impaired by their enforcement. The recipient of the privilege, in effect, stipulates to comply with the conditions. It matters not how limited the privilege conferred, its acceptance implies an assent to the regulation of its use and the compensation for it.”**  
[Munn v. Illinois, 94 U.S. 113 (1876)]

#### **Curses of Disobedience [to God’s Laws]**

**“The alien [Washington, D.C. is legislatively “alien” in relation to states of the Union] who is among you shall rise higher and higher above you, and you shall come down lower and lower [malicious destruction of EQUAL PROTECTION and EQUAL TREATMENT by abusing FRANCHISES]. He shall lend to you [Federal Reserve counterfeiting franchise], but you shall not lend to him; he shall be the head, and you shall be the tail.**

**“Moreover all these curses shall come upon you and pursue and overtake you, until you are destroyed, because you did not obey the voice of the Lord your God, to keep His commandments and His statutes which He commanded you. And they shall be upon you for a sign and a wonder, and on your descendants forever.**

*“Because you did not serve [ONLY] the Lord your God with joy and gladness of heart, for the abundance of everything, therefore you shall serve your [covetous thieving lawyer] enemies, whom the Lord will send against you, in hunger, in thirst, in nakedness, and in need of everything; and He will put a yoke of iron [franchise codes] on your neck until He has destroyed you. The Lord will bring a nation against you from afar [the District of CRIMINALS], from the end of the earth, as swift as the eagle flies [the American Eagle], a nation whose language [LEGALESE] you will not understand, a nation of fierce [coercive and fascist] countenance, which does not respect the elderly [assassinates them by denying them healthcare through bureaucratic delays on an Obamacare waiting list] nor show favor to the young [destroying their ability to learn in the public FOOL system]. And they shall eat the increase of your livestock and the produce of your land [with “trade or business” franchise taxes], until you [and all your property] are destroyed [or STOLEN/CONFISCATED]; they shall not leave you grain or new wine or oil, or the increase of your cattle or the offspring of your flocks, until they have destroyed you.  
[Deut. 28:43-51, Bible, NKJV]*

The evil resulting from the above authorities is exhaustively described in:

*How Scoundrels Corrupted Our Republican Form of Government*, Family Guardian Fellowship  
<https://famguardian.org/Subjects/Taxes/Evidence/HowScCorruptOurRepubGovt.htm>

This subject, in turn, is built on the laws of property. We summarize these laws and repeat the major headings below on the following page:

*Hot Issues: Laws of Property*, SEDM  
<https://sedm.org/laws-of-property/>

If you would like to read a detailed debate of the content of this page between SEDM Admin and one of our most experienced Members, visit the following page:

<sup>48</sup> Source: *Enumeration of Inalienable Rights*, Form #10.002, Section 11; <https://sedm.org/Forms/10-Emancipation/EnumRights.pdf>

*Debate of "Authorities on Rights as Property" Page*, SEDM  
<https://sedm.org/debate-of-rights-as-property-page/>

#### 4.5.1 Introduction and Definitions

1. These definitions are necessary because politicians often conflate “rights” and “privileges” so as to entice people to adopt socialist progressive wealth redistribution. It is therefore especially important to be clear in your language when trying to distinguish rights (PRIVATE rights) from privileges (PUBLIC rights) so that the ignorant masses are not further enticed into socialism. See:

*Socialism: The New American Civil Religion*, Form #05.016  
<https://sedm.org/Forms/05-MemLaw/SocialismCivilReligion.pdf>

2. For the purposes of this website:
  - 2.1. “rights” are private and some but not all are found in the Constitution.
  - 2.2. In relation to government, “privileges” are always PUBLIC and are found only in civil statutes. By “civil statutes”, we mean anything OTHER than what is in the criminal code. A privilege is simply a distribution of PUBLIC property with CIVIL legal strings attached. Also called “public rights”, “benefits”, “entitlements”, etc.
3. The CREATOR of a right or privilege is always the GRANTOR and the OWNER of the right or privilege.
  - 3.1. God (the Creator mentioned in the Declaration of Independence) is the Creator of PRIVATE rights and therefore PRIVATE property. He is therefore the OWNER of these rights and the party to whom all those exercising such rights owe obedience and allegiance.
  - 3.2. The Legislature is the Creator of PUBLIC statutory privileges. The act of creation happens in the DEFINITIONS section of statutes and the PRIVILEGES are then attached and assigned to the fictions of law thus created. There cannot be a public right or privilege WITHOUT an office to assign or attach it to.
4. The [Bill of Rights \(the first eight amendments to the Constitution\)](#) RECOGNIZES but does not CREATE Private rights. THE CREATOR creates Private rights. He is the ONLY one who CAN. As the CREATOR, He is also the ABSOLUTE OWNER of Private rights. This is clarified below:

*“Men are endowed by their Creator with certain unalienable rights,- ‘life, liberty, and the pursuit of happiness;’ and to ‘secure,’ not grant or create, these rights, governments are instituted. That property [or income] which a man has honestly acquired he retains full control of, subject to these limitations: First, that he shall not use it to his neighbor’s injury, and that does not mean that he must use it for his neighbor’s benefit [e.g. SOCIAL SECURITY, Medicare, and every other public “benefit”]; second, that if he devotes it to a public use, he gives to the public a right to control that use; and third, that whenever the public needs require, the public may take it upon payment of due compensation.”*  
 [Budd v. People of State of New York, [143 U.S. 517](#) (1892)]

5. Alienation of rights:
  - 5.1. In relation to government, “rights” (private rights) are unalienable, which means they can’t be given away, sold, or transferred, even with consent. God is the owner of these rights, not the government, so government can’t SELL these rights or make them into a privilege. See:
 

*Enumeration of Inalienable Rights*, Form #10.002  
<https://sedm.org/Forms/10-Emancipation/EnumRights.pdf>
  - 5.2. In a private context between private humans, private rights are transferable through consent or contract, and therefore ARE alienable.
6. Rights and privileges ALWAYS must have a grantor. Those granting rights (private rights) or privileges (public rights) cannot grant these rights or privileges against anyone OTHER than themselves.
  - 6.1. This is because if they granted rights against anyone ELSE, they would be either stealing property or services (slavery in violation of the Thirteenth Amendment) from the third party they granted rights against.
  - 6.2. There is therefore an IMPLIED conclusive presumption that if a grantor grants rights against a third party, that third party must be acting as an AGENT or officer of the grantor when properly executing or enforcing those rights. For instance, if the government grants a remedy or obligation by statute against a “driver” in the vehicle code, all “drivers” must be agents and officers of the government grantor, and not the human being VOLUNTARILY filling the said office of “driver”.
  - 6.3. Because rights or privileges granted against apparent third-parties are always ultimately against AGENTS and OFFICERS of the grantor, then ultimately, the LIABLE party for those EXERCISING such rights or privileges is the grantor, and NOT the third party. VERY IMPORTANT!
  - 6.4. The fictional public OFFICES established to IMPLEMENT the grant of privileges are, by default, PROPERTY of the grantor and the RESPONSIBILITY and liability of the grantor. Ownership and responsibility ALWAYS go together. For instance, if such an officer in the official and lawful exercise of their delegated duties injures

someone, the actions of the OFFICER are the exclusive liability of government grantor. If they were acting OUTSIDE their delegated authority, they personally become liable for the damages done.

- 6.5. Those who apply for the position and office of “driver” with the Department of Transportation are an example of people filling a government-granted office created by statute, for instance. The application creates a CONSENSUAL connection between an otherwise PRIVATE human and the PUBLIC office he or she fills. Upon being accepted, they are OFFICERS of the government grantor responsible for the RIGHTS and OBLIGATIONS attached to the “driver” office. This is because the legal definition of a “public officer” is someone in charge of the PROPERTY of the public, which property is, as a minimum, the privileges and obligations attached to the office.
- 6.6. The only way for the government to avoid liability for the damages of the “driver” against third party is to:
  - 6.6.1. Claim that the “driver” was not legislatively authorized to injure others and thus, was acting OUTSIDE their delegated authority and was therefore PERSONALLY liable for those damages. This also makes sense logically, because no contract that results in criminal consequences or damaging behavior is enforceable in court anyway, and the driver licensing is, for all intents and purposes, a franchise contract between the government (public) grantor and an otherwise PRIVATE human. .OR
  - 6.6.2. Expressly state in the granting legislation that the officer instead of the office is the liable party for all damages they inflict on third parties who are not mentioned in the grant.
45. Judges won't tell you that's how the vehicle code works, but that is the only way it logically CAN work without bankrupting the government in connection with traffic accidents executed by public officers called “drivers”.
- 6.7. More on the subject of the law of agency at:

*A Treatise on the Law of Agency in Contract and Tort*, George L Reinhard

<https://archive.org/details/atreatiseonlaw00reingooq>

7. STATUTORY “[Citizen](#)” is a “[civil status](#)” and is always a privilege and always voluntary.
  - 7.1. You don't HAVE to be a “citizen”. That would be a violation of due process and a taking of property without due process. The property taken in violation of due process from those involuntarily filling the office of citizen would be the obligations attached to the office by civil statutes.
  - 7.2. If you choose NOT to be a “citizen”, you default to being a “national” by virtue of birth or naturalization. A person who does this is called a “[nonresident](#)” (Form #05.020) or “[an idiot](#)” in classical terminology.
  - 7.3. A STATUTORY “citizen” and a CONSTITUTIONAL “citizen” are NOT the same thing and are often mutually exclusive. You can be one without being the OTHER, especially as someone born in a constitutional state. See:
 

*Citizenship Status v. Tax Status*, Form #10.011

<https://sedm.org/Forms/10-Emancipation/CitizenshipStatusVTaxStatus/CitizenshipVTaxStatus.htm>
  - 7.4. The reason that that STATUTORY “citizen” and a CONSTITUTIONAL “citizen” are not the same is that they have a different creator and therefore owner. STATUTORY “citizen” is a creation of the legislature and a government granted privilege, whereas CONSTITUTIONAL “citizen” is a creation of “the State” rather than the government. See the following for details on the differences between these two:
 

*Why You are a Political Citizen but Civil Non-Citizen, National, and Nonresident Alien*, Form #05.006

<https://sedm.org/Forms/05-MemLaw/WhyANational.pdf>
  - 7.5. The government and “the State” are two completely different legal entities. The government is called the “body corporate” and “the State” is called the “body politic”. The government is a creation and property and franchise of “the State” that works for “the State”. See *Poindexter v. Greenhow*, 114 U.S. 270 (1885) for a description of the differences between the government and “the State” by the U.S. Supreme Court.
8. The [Bill of Rights](#) pertains to CONSTITUTIONAL PERSONS, not only or just to “citizens” as consenting members of the political community. Anyone who tries to limit RIGHTS in their application to only CIVIL STATUTORY CLUB MEMBERS called “citizens” is:
  - 8.1. Trying to turn “[justice](#)” into a “[privilege](#)“. Justice can NEVER be a [privilege](#) and when it is, it becomes INJUSTICE. See:
 

*What is “Justice”?*, Form #05.050, Section 5.3

<https://sedm.org/Forms/05-MemLaw/WhatIsJustice.pdf>
  - 8.2. Attempting to turn PRIVATE property into PUBLIC property usually without your consent.
  - 8.3. Trying to convert the society to SOCIALISM.
9. All rights (private rights) implicate corresponding obligations on the part of someone else. The “property” represented by these rights HAS to come from SOMEWHERE and SOMEONE. They don't grow on trees or just magically APPEAR out of thin air, contrary to what many socialists believe. Property is like math equations: They have to BALANCE! In fact, the very purpose that the Social Security Number was invented for is to ENSURE that the equation always balances and that you never draw out of the welfare state system MORE than you actually put in!

- 9.1. If the party with the obligation is the government, it's a PRIVATE right.
- 9.2. If the BOTH parties involved are private, then it is purely private contracting. The contract itself is property, and the consideration it conveys is also property.
- 9.3. If the grantor of the right (the Merchant) is private and the obligor (the Buyer) is the government entering the commercial marketplace competitively for goods, then the government is acting in a PRIVATE capacity under the Clearfield Doctrine of the U.S. Supreme Court.
10. All privileges (public rights) are granted by government using statutes (legislation) instead of the Constitution. In this capacity, the government is acting as a Merchant and you as the Buyer under the U.C.C. They implicate corresponding obligations on your part.
  - 10.1. If the obligation imposed is on a non-consenting private party (the Buyer, and also a member of the general public), the property which constitutes the obligation is STOLEN from the VICTIM with the involuntary obligation. In that sense, the government granted right represents a violation of due process against someone else under the Fifth Amendment. This very situation is the very HEART of just about EVERYTHING the Democrat party does to entice and bribe voters with OTHER peoples money that is stole to buy votes!
  - 10.2. If the privilege is not available to ALL people, but only applies to a class of people such as "citizens", "benefit recipients", or "taxpayers", then it's class legislation and a voluntary franchise. The Pollock v. Farmers Loan and Trust, 157 U.S. 429 (1895) case of the U.S. Supreme Court which declared income tax unconstitutional held that government may not engage in such DISCRIMINATORY activities towards anyone and denounced it as "class legislation". That's because when they do this, the government is really just selling property at that point in the capacity of a private business. Or in other words, they are essentially acting as a [de facto government \(Form #05.043\)](#). Governments are NOT supposed to enter the commercial marketplace and compete with private companies, or grant themselves a monopoly (such as money system or Social Security) because it impairs choice and competition and violates the Sherman Antitrust Act.
  - 10.3. The Public Rights Doctrine of the U.S. Supreme Court regulates the adjudication of disputes relating to privileges (public rights). See: [Murray's Lessee v. Hoboken Land & Improvement Co, 59 U.S. \(18 How.\) 272 \(1856\)](#), [Ex parte Bakelite Corp., 279 U.S. 438, 451 \(1929\)](#), [Old Colony Trust Co. v. Commissioner, 279 U.S. 716 \(1929\)](#).
  - 10.4. All STATUTORY obligations are CIVIL in nature and not CRIMINAL. There are TWO types of law in federal court: Civil and Criminal, corresponding with the Federal Rules of CIVIL Procedure and the Federal Rules of CRIMINAL Procedure respectively. Even contract issues are litigated as CIVIL matters in Federal Court. See: [Lawfully Avoiding Government Obligations Course, Form #12.040](#)  
<https://sedm.org/LibertyU/AvoidGovernmentObligations.pdf>
11. Temporary and revocable grants or loans of public property from the government are called "bailments". All such grants are privileges subject to civil statutory regulation under Article 4, Section 3, Clause 2 of the Constitution. The ability to tax and regulate, in fact, derives almost exclusively from these bailments. In that sense, taxation is simply government charging "rent" on the use or "benefit" of its property. They are in the property rental business, just like car rental businesses. Examples of such bailments include:
  - 11.1. Any kind of "status" you claim to which legal rights attach under a franchise. Remember: All "rights" are property"! This includes:
    - 11.1.1. "taxpayer" (I.R.C. "trade or business" franchise).
    - 11.1.2. "citizen" or "resident" (civil law protection franchise").
    - 11.1.3. "driver" (vehicle code of your state).
    - 11.1.4. "spouse" (family code of your state, which is a voluntary franchise).
  - 11.2. A Social Security Card. 20 C.F.R. §422.103(d) says the card and the number belong to the U.S. government.
  - 11.3. A "Taxpayer Identification Number" (TIN) issued under the authority of 26 U.S.C. §6109. All "taxpayers" are public officers in the U.S. government. Per 26 C.F.R. §301.6109-1, use of the number provides prima facie evidence that the user is engaged in official government business called a "trade or business", which is defined in 26 U.S.C. §7701(a)(26) as "the functions of a public office" (in the U.S. and not state government).
  - 11.4. Any kind of license. Most licenses say on the back or in the statutes regulating them that they are property of the government and must be returned upon request. This includes:
    - 11.4.1. Driver's licenses.
    - 11.4.2. Contracting licenses.
  - 11.5. A USA Passport. The passport indicates on page 6, note 2 that it is property of the U.S. government and must be returned upon request. So does 22 C.F.R. §51.7.
  - 11.6. Any kind of government ID, including state Resident ID cards. Nearly all such ID say they belong to the government. This includes Common Access Cards (CACs) used in the U.S. military.
  - 11.7. A vehicle license plate. Attaching it to the car makes a portion of the vehicle public property.

### 11.8. Stock in a public corporation. All stockholders in corporations are regarded by the courts as GOVERNMENT CONTRACTORS!

*“The court held that the first company's charter was a contract between it and the state, within the protection of the constitution of the United States, and that the charter to the last company was therefore null and void., Mr. Justice DAVIS, delivering the opinion of the court, said that, **if anything was settled by an unbroken chain of decisions in the federal courts, it was that an act of incorporation was a contract between the state and the stockholders, a departure from which now would involve dangers to society that cannot be foreseen, would shock the sense of justice of the country, unhinge its business interests, and weaken, if not destroy, that respect which has always been felt for the judicial department of the government.**”*  
 [New Orleans Gas Co. v. Louisiana Light Co., 115 U.S. 650 (1885)]

#### 4.5.2 Rights are property

*“Property. That which is peculiar or proper to any person; that which **belongs exclusively to one**. In the strict legal sense, **an aggregate of rights which are guaranteed and protected by the government**. *Fulton Light, Heat & Power Co. v. State*, 65 Misc.Rep. 263, 121 N.Y.S. 536. The term is said to extend to every species of valuable right and interest. More specifically, ownership; the unrestricted and exclusive right to a thing; the right to dispose of a thing in every legal way, to possess it, to use it, and to exclude everyone else from interfering with it. That dominion or indefinite right of use or disposition which one may lawfully exercise over particular things or subjects. The exclusive right of possessing, enjoying, and disposing of a thing. The highest right a man can have to anything; being used to refer to that right which one has to lands or tenements, goods or chattels, which no way depends on another man's courtesy.*

*The word is also commonly used to denote everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal, everything that has an exchangeable value or which goes to make up wealth or estate. **It extends to every species of valuable right and interest, and includes real and personal property, easements, franchises, and incorporeal hereditaments, and includes every invasion of one's property rights by actionable wrong.** *Labberton v. General Cas. Co. of America*, 53 Wash.2d. 180, 332 P.2d. 250, 252, 254.*

*Property embraces everything which is or may be the subject of ownership, whether a legal ownership. or whether beneficial, or a private ownership. *Davis v. Davis. TexCiv-App.*, 495 S.W.2d. 607. 611. Term includes not only ownership and possession but also the right of use and enjoyment for lawful purposes. *Hoffmann v. Kinealy, Mo.*, 389 S.W.2d. 745, 752. Property, within constitutional protection, denotes group of rights inhering in citizen's relation to physical thing, as right to possess, use and dispose of it. *Cereghino v. State By and Through State Highway Commission*, 230 Or. 439, 370 P.2d. 694, 697.  
 [Black's Law Dictionary, Fifth Edition, p. 1095]*

More at:

*Sovereignty Forms and Instructions Online*, Form #10.004, Cites by Topic: “property”  
<https://famguardian.org/TaxFreedom/CitesByTopic/property.htm>

#### 4.5.3 Anything that CONVEYS rights is property

*“Were the Contract a **negotiable instrument**, a **property** right would come into existence either on the date on which payment was due or on the date of execution. The court finds, however, that the Contract was not a **negotiable instrument**. It was, rather, a conditional promise to pay certain unfixed amounts upon demand but only after certain other dates, events, or payments.*

*A **negotiable instrument** must be an unconditional promise to pay a fixed amount upon demand or at a definite time to order or bearer. Va. Code Ann. § 8.3-104, repealed by Acts 1992, c. 693 (stating that negotiable instruments covered by this title must be signed, unconditional promises payable on demand or a definite time to order or to bearer); Va. Code Ann. § 8.3A-104(a)(2) (“‘negotiable instrument’ means an unconditional promise or order to pay a fixed amount of money”). 11 HN20 “  
 [Armstrong v. United States, 7 F.Supp.2d. 758 (1998)]*



**4.5.4 Contracts convey rights and are therefore property**

*“A contract is property, and, like any other property, may be taken under condemnation proceedings for public use.”*

*[Kreegan v. State, 305 Kan. 1158 (2017)]*

More at:

*Sovereignty Forms and Instructions Online*, Form #10.004, Cites by Topic: “contracts”

<https://famguardian.org/TaxFreedom/CitesByTopic/contracts.htm>

**4.5.5 All franchises are contracts, and therefore property**

*“It is generally conceded that a franchise is the subject of a contract between the grantor and the grantee, and that it does in fact constitute a contract when the requisite element of a consideration is present.[1]\_ Conversely, a franchise granted without consideration is not a contract binding upon the state, franchisee, or pseudo-franchisee.[2]\_ “*

*[36 American Jurisprudence 2d, Franchises, §6: As a Contract (1999)]*

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FOOTNOTES:

1. *Larson v. South Dakota*, 278 U.S. 429, 73 L.Ed. 441, 49 S.Ct. 196; *Grand Trunk Western R. Co. v. South Bend*, 227 U.S. 544, 57 L.Ed. 633, 33 S.Ct. 303; *Blair v. Chicago*, 201 U.S. 400, 50 L.Ed. 801, 26 S.Ct. 427; *Arkansas-Missouri Power Co. v. Brown*, 176 Ark. 774, 4 S.W.2d. 15, 58 A.L.R. 534; *Chicago General R. Co. v. Chicago*, 176 Ill. 253, 52 N.E. 880; *Louisville v. Louisville Home Tel. Co.*, 149 Ky. 234, 148 S.W. 13; *State ex rel. Kansas City v. East Fifth Street R. Co.*, 140 Mo. 539, 41 S.W. 955; *Baker v. Montana Petroleum Co.*, 99 Mont. 465, 44 P.2d. 735; *Re Board of Fire Comrs.* 27 N.J. 192, 142 A.2d. 85; *Chrysler Light & P. Co. v. Belfield*, 58 N.D. 33, 224 N.W. 871, 63 A.L.R. 1337; *Franklin County v. Public Utilities Com.*, 107 Ohio.St. 442, 140 N.E. 87, 30 A.L.R. 429; *State ex rel. Daniel v. Broad River Power Co.*, 157 S.C. 1, 153 S.E. 537; *Rutland Electric Light Co. v. Marble City Electric Light Co.*, 65 Vt. 377, 26 A. 635; *Virginia-Western Power Co. v. Commonwealth*, 125 Va. 469, 99 S.E. 723, 9 A.L.R. 1148, cert den 251 U.S. 557, 64 L.Ed. 413, 40 S.Ct. 179, disapproved on other grounds *Victoria v. Victoria Ice, Light & Power Co.* 134 Va. 134, 114 S.E. 92, 28 A.L.R. 562, and disapproved on other grounds *Richmond v. Virginia Ry. & Power Co.*, 141 Va. 69, 126 S.E. 353.

2. *Pennsylvania R. Co. v. Bowers*, 124 Pa. 183, 16 A. 836.

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36 Am Jur 2d Franchises from Public Entities § 1  
§ 1 Definitions

*“A franchise constitutes a private property right. [5] Similarly stated, a “franchise” is the special privilege awarded by government to a person or corporation and conveys a valuable property right. [6] To be a “franchise,” the right possessed must be such as cannot be exercised without the express permission of the sovereign power. [7] It is a privilege conferred by the government on an individual or a corporation to do that which does not belong to the citizens of the country generally by common right. [8] “*  
*[36 Am.Jur.2d, Franchises from Public Entities §1]*

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FOOTNOTES:

5. [Central Waterworks, Inc. v. Town of Century](#), 754 So.2d. 814 (Fla. Dist. Ct. App. 1st Dist. 2000).

*A governmental franchise is deemed to be privately owned, with all of the rights attaching to the ownership of the property in general, and is subject to taxation the same as any other estate in real property. In re South Bay Expressway, L.P.*, 434 B.R. 589 (Bankr. S.D. Cal. 2010) (applying California law).

6. *Montana-Dakota Utilities Co. v. City of Billings*, 2003 MT 332, 318 Mont. 407, 80 P.3d 1247 (2003) (holding modified on other grounds by, *Havre Daily News, LLC v. City of Havre*, 2006 MT 215, 333 Mont. 331, 142 P.3d. 864 (2006)); *South Carolina Elec. & Gas Co. v. Town of Awendaw*, 359 S.C. 29, 596 S.E.2d. 482 (2004).

A governmental “franchise” constitutes a special privilege granted by the government to particular individuals or companies to be exploited for private profits; such franchisees seek permission to use public streets or rights-of-way in order to do business with a municipality’s residents and are willing to pay a fee for this privilege. *South Carolina Elec. & Gas Co. v. Town of Awendaw*, 359 S.C. 29, 596 S.E.2d. 482 (2004).

7. *Rural Water Sewer and Solid Waste Management, Dist. No. 1, Logan County, Oklahoma v. City of Guthrie*, 2010 OK 51, 2010 WL 2600181 (Okla. 2010).

8. *New Orleans Gas-light Co. v. Louisiana Light & Heat Producing & Manufacturing Co.*, 115 U.S. 650, 6 S.Ct. 252, 29 L.Ed. 516 (1885); *City of Groton v. Yankee Gas Services Co.*, 224 Conn. 675, 620 A.2d. 771 (1993); *Artesian Water Co. v. State, Dept. of Highways and Transp.*, 330 A.2d. 432 (Del. Super. Ct. 1974), judgment modified on other grounds, 330 A.2d 441 (Del. 1974); *City of Poplar Bluff v. Poplar Bluff Loan & Bldg. Ass’n*, 369 S.W.2d. 764 (Mo. Ct. App. 1963); *Dunmar Inv. Co. v. Northern Natural Gas Co.*, 185 Neb. 400, 176 N.W.2d. 4 (1970); *Petition of South Lakewood Water Co.*, 61 N.J. 230, 294 A.2d. 13 (1972); *Shaw v. City of Asheville*, 269 N.C. 90, 152 S.E.2d. 139 (1967); *Rural Water Sewer and Solid Waste Management, Dist. No. 1, Logan County, Oklahoma v. City of Guthrie*, 2010 OK 51, 2010 WL 2600181 (Okla. 2010); *Borough of Scottdale v. National Cable Television, Corp.*, 28 Pa.Comm. 387, 368 A.2d. 1323 (1977), order aff’d, 476 Pa. 47, 381 A.2d 859 (1977); *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 547 S.E.2d. 862 (2001); *State/Operating Contractors ABS Emissions, Inc. v. Operating Contractors/State*, 985 S.W.2d. 646 (Tex. App. Austin 1999); *Tri-County Elec. Ass’n, Inc. v. City of Gillette*, 584 P.2d. 995 (Wyo. 1978).

#### 4.5.6 Civil statuses (Form #13.008) convey and enforce PUBLIC rights and are therefore PUBLIC property

“In *Udny v. Udny*, (1869) L.R. 1 H.L. Sc. 441, the point decided was one of inheritance, depending upon the question whether the domicile of the father was in England or in Scotland, he being in either alternative a British subject. Lord Chancellor Hatherley said: “The question of naturalization and of allegiance is distinct from that of domicil.” p. 452. Lord Westbury, in the passage relied on by the counsel for the United States, began by saying: “The law of England, and of almost all civilized countries, ascribes to each individual at his birth two distinct legal states or conditions: one, by virtue of which he becomes the subject of some particular country, binding him by the tie of natural allegiance, and which may be called his political status; another, by virtue of which he has ascribed to him the character of a citizen of some particular country, and as such is possessed of certain municipal rights, and subject to certain obligations, which latter character is the civil status or condition of the individual, and may be quite different from his political status.” And then, while maintaining that the civil status is universally governed by the single principle of domicil, domicilium, the criterion established by international law for the purpose of determining civil status, and the basis on which “the personal rights of the party, that is to say, the law which determines his majority or minority, his marriage, succession, testacy or intestacy, 657\*657 must depend;” he yet distinctly recognized that a man’s political status, his country, patria, and his “nationality, that is, natural allegiance,” “may depend on different laws in different countries.” pp. 457, 460. He evidently used the word “citizen,” not as equivalent to “subject,” but rather to “inhabitant;” and had no thought of impeaching the established rule that all persons born under British dominion are natural-born subjects.”

[United States v. Wong Kim Ark, 169 U.S. 649 (1898)]

“§ 29. Status

It may be laid down that the status- or, as it is sometimes called, civil status, in contradistinction to political status – of a person depends largely, although not universally, upon domicil. The older jurists, whose opinions are fully collected by Story I and Burge, maintained, with few exceptions, the principle of the ubiquity of status, conferred by the lex domicilii with little qualification. Lord Westbury, in *Udny v. Udny*, thus states the doctrine broadly: “The civil status is governed by one single principle, namely, that of domicil, which is the criterion established by law for the purpose of determining civil status. For it is on this basis that the personal rights of the party – that is to say, the law which determines his majority and minority, his marriage, succession, testacy, or intestacy-must depend.” Gray, C. J., in the late Massachusetts case of *Ross v. Ross*, speaking with special reference to capacity to inherit, says: “It is a general principle that the status or condition of a person, the relation in which he stands to another person, and by which he is qualified or made capable to take certain rights in that other’s property, is fixed by the law of the domicil; and that this status and capacity are to be recognized and upheld in every other State, so far as they are not inconsistent with its own laws and policy.”

[*A Treatise on the Law of Domicil, National, Quasi-National, and Municipal*, M.W. Jacobs, Little, Brown, and Company, 1887, p. 89]

More at:

1. *Sovereignty Forms and Instructions Online*, Form #10.004, Cites by Topic: “civil status”  
<https://famguardian.org/TaxFreedom/CitesByTopic/CivilStatus.htm>
2. *Civil Status (Important!)-SEDM-SEDM Litigation->Civil Status* menu item.  
<https://sedm.org/litigation-main/civil-status/>
3. *Your Exclusive Right to Declare or Establish Your Civil Status*, Form #13.008  
<https://sedm.org/Forms/13-SelfFamilyChurchGovnce/RightToDeclStatus.pdf>

#### 4.5.7 **The Constitution conveys mainly PRIVATE rights, which are PRIVATE property in the case of the Bill of Rights**

The Constitution is a trust indenture. All trusts ARE property and CONVEY property. The CREATOR and therefore OWNER of the trust is called the GRANTOR. In the Constitution, that CREATOR is called “We the People”, “the State”, or “the body politic” by the courts.

For legal purposes, “the State” is synonymous with the group of people called “citizens“. It excludes EVERYONE else. These people are MEMBERS of the political community who make rules ONLY to govern THEMSELVES. Those rules come in the form of statutes. Those who are NOT “members” of this political community, therefore, are not subject to CIVIL STATUTORY rules that can only pertain or be enforced against CLUB MEMBERS. See:

*Why Domicile and Becoming a “Taxpayer” Require Your Consent*, Form #05.002  
<https://sedm.org/Forms/05-MemLaw/Domicile.pdf>

Those who are NOT called “citizens” or not “club members” are called “persons” in the Constitution. Anything that applies to PERSONS in the Constitution protects and controls EVERYONE. The entire Bill of Rights fits in this category: It applies to PERSONS and is not limited ONLY to “citizens”.

*“In United States v. Cruikshank, 92 U.S. 542, 549, Mr. Chief Justice Waite, delivering the opinion of the court, said: “Citizens are the members of the political community to which they belong. They are the people who compose the community, and who, in their associated capacity, have established or submitted themselves to the dominion of a government for the promotion of their general welfare and the protection of their individual as well as their collective rights.” There is no attempt in this definition, which was entirely [\*\*381], sufficient for the argument, to exclude those members of the State who are citizens in the sense of participation in civil rights, though not in the exercise of political functions.”*  
*[Boyd v. Nebraska, 143 U.S. 135 (1892)]*

#### **Rights Of Persons**

*No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.*  
*[Fifth Amendment Annotated]*

#### 4.5.8 **Those who OFFER property to you are a Merchant (Seller) under UCC. §2-104(1)**

[§ 2-104. Definitions: “Merchant”; “Between Merchants”; “Financing Agency”.](#)

*(1) “Merchant” means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.*  
*[U.C.C. §2-104(1)]*

[§ 2-103. Definitions and Index of Definitions.](#)

(d) “**Seller**” means a person who sells or [contracts](#) to sell [goods](#).  
[[U.C.C. §2-103\(1\)\(d\)](#)]

#### 4.5.9 **The person RECEIVING the property is the Buyer under U.C.C. §2-103(1)(a)**

[§ 2-103. Definitions and Index of Definitions.](#)

(a) “**Buyer**” means a person who buys or [contracts](#) to buy [goods](#).  
[[U.C.C. §2-103\(1\)\(a\)](#)]

#### 4.5.10 **The MERCHANT always prescribes ALL the terms of the offer and can withhold the property if those terms are not met. The withholding of the property is an exercise of the “right to exclude” aspect of ownership**

“We have repeatedly held that, as to property reserved by its owner for private use, **“the right to exclude [others is] one of the most essential sticks in the bundle of rights that are commonly characterized as property.”** [Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 433 \(1982\)](#), quoting [Kaiser Aetna v. United States, 444 U.S. 164, 176 \(1979\)](#).“  
[[Nollan v. California Coastal Comm’n, 483 U.S. 825 \(1987\)](#)]

“**In this case, we hold that the “right to exclude,” so universally held to be a fundamental element of the property right,<sup>[11]</sup> falls within this category of interests that the Government cannot take without compensation.**”  
[[Kaiser Aetna v. United States, 444 U.S. 164 \(1979\)](#)]

FOOTNOTES:

[11] See, e. g., [United States v. Pueblo of San Ildefonso, 206 Ct.Cl. 649, 669-670, 513 F.2d. 1383, 1394 \(1975\)](#); [United States v. Lutz, 295 F.2d. 736, 740 \(CA5 1961\)](#). As stated by Mr. Justice Brandeis, “[a]n essential element of individual property is the legal right to exclude others from enjoying it.” [International News Service v. Associated Press, 248 U.S. 215, 250 \(1918\)](#) (dissenting opinion).

#### 4.5.11 **You should always strive to be the Merchant in every business transaction to give yourself the upper hand**

“For the Lord your God will bless you just as He promised you; **you shall lend to many nations, but you shall not borrow**; you shall reign over many nations, but they shall not reign over you.”  
[[Deut. 15:6](#), Bible, NKJV]

“The Lord will open to you His good treasure, the heavens, to give the rain to your land in its season, and to bless all the work of your hand. **You shall lend to many nations, but you shall not borrow.**”  
[[Deut. 28:12](#), Bible, NKJV]

“**You shall not charge interest to your brother**—interest on money or food or anything that is lent out at interest.”  
[[Deut. 23:19](#), Bible, NKJV]

“To a foreigner you may charge interest, but to your brother you shall not charge interest, that the Lord your God may bless you in all to which you set your hand in the land which you are entering to possess.”  
[[Deut. 23:20](#), Bible, NKJV]

#### 4.5.12 **You should NEVER allow the GOVERNMENT to act as a Merchant in relation to you**

“**You shall make no covenant [contract or franchise] with them [foreigners, pagans], nor with their [pagan government] gods [laws or judges].** They shall not dwell in your land [and you shall not dwell in theirs by becoming a “resident” or domiciliary in the process of contracting with them], lest they make you sin against Me [God]. For if you serve their [government] gods [under [contract or agreement or franchise](#)], it will surely be a snare to you.”  
[[Exodus 23:32-33](#), Bible, NKJV]

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*"I [God] brought you up from Egypt [slavery] and brought you to the land of which I swore to your fathers; and I said, 'I will never break My covenant with you. And **you shall make no covenant [contract or franchise or agreement of ANY kind] with the inhabitants of this [corrupt pagan] land; you shall tear down their [man/government worshipping socialist] altars.**' But you have not obeyed Me. Why have you done this?"*

*"Therefore I also said, **'I will not drive them out before you; but they will become as thorns [terrorists and persecutors] in your side and their gods will be a snare [slavery!] to you.'**"*

*So it was, when the Angel of the LORD spoke these words to all the children of Israel, that the people lifted up their voices and wept.  
[Judges 2:1-4, Bible, NKJV]*

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*"We can hardly find a denial of due process in these circumstances, particularly since it is even doubtful that appellee's burdens under the program outweigh his benefits. It is hardly lack of due process for the Government to regulate that which it subsidizes."  
[Wickard v. Filburn, 317 U.S. 111, 63 S.Ct. 82 (1942)]*

*"In the context of state taxation, the Due Process Clause limits States to imposing only taxes that "bea[r] fiscal relation to protection, opportunities and benefits given by the state." Wisconsin v. J. C. Penney Co. , 311 U.S. 435, 444, 61 S.Ct. 246, 85 L.Ed. 267 (1940). The power to tax is, of course, "essential to the very existence of government," McCulloch v. Maryland , 4 Wheat. 316, 428, 4 L.Ed. 579 (1819), but the legitimacy of that power requires drawing a line between taxation and mere unjustified "confiscation." Miller Brothers Co. v. Maryland , 347 U.S. 340, 342, 74 S.Ct. 535, 98 L.Ed. 744 (1954). **That boundary turns on "[t]he simple but controlling question ... whether the state has given anything for which it can ask return."** Wisconsin , 311 U.S. at 444, 61 S.Ct. 246."  
[North Carolina Dept. of Revenue v. Kimberley Rice Kaestner 1992 Family Trust, 139 S. Ct. 2213, 2219-20 (2019)]*

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### **Here is what happens when you do:**

*"People of all races, genders, political beliefs, sexual orientations, and nearly all religions are welcome here. All are treated equally under **REAL "law"**. The only way to remain truly free and equal under the civil law is to avoid seeking government civil services, benefits, property, **special or civil status**, exemptions, privileges, or special treatment. All such pursuits of government services or property require **individual and lawful consent to a franchise** and the surrender of **inalienable constitutional rights AND EQUALITY** in the process, and should therefore be AVOIDED. The rights and equality given up are the "cost" of procuring the "benefit" or property from the government, in fact. Nothing in life is truly "free". Anyone who claims that such "benefits" or property should be free and cost them nothing is a thief who wants to use the government as a means to STEAL on his or her behalf. All **just rights** spring from responsibilities/obligations under the **laws of a higher power**. If that higher power is God, you can be **truly and objectively free**. If it is government, you are **guaranteed to be a slave** because they can lawfully set the cost of their property as high as they want as a Merchant under the U.C.C. **If you want it really bad from people with a monopoly, then you will pay dearly for the privilege.** There are NO constitutional limits on the price government can charge for their monopoly services or property. Those who want no responsibilities can have no **real/PRIVATE rights**, but only privileges dispensed to wards of the state which are disguised to LOOK like unalienable rights. Obligations and rights are two sides of the same coin, just like self-ownership and personal responsibility. For the biblical version of this paragraph, read **1 Sam. 8:10-22**. For the reason God answered Samuel by telling him to allow the people to have a king, read **Deut. 28:43-51**, which is God's curse upon those who allow a king above them. **Click Here** (<https://famguardian.org/Subjects/Taxes/Evidence/HowScCorruptOurRepubGovt.htm>) for a detailed description of the legal, moral, and spiritual consequences of violating this paragraph."  
[SEDM Opening Page, <http://sedm.org>]*

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#### **4.5.13 The CREATOR of a civil statutory privilege/right/franchise is ALWAYS the owner and the Merchant granting or selling PUBLIC property**

An act of CREATION is a legislative act in the context of government. The courts assign many different names to that act:

1. "Creation of"
2. "Creature of"
3. "Chartered by"

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4. “Enacted by”
5. “Power of visitation and control” (control and ownership are synonymous)
6. “Power to destroy” or “death doing stroke” (that goes WITH the power to create)
7. “Life giving principle”
8. “Remedy is exclusive” (right to exclude is an aspect of absolute ownership of the thing that is legislatively created)

Below are some authorities on this subject:

*“What is a Constitution? It is the form of government, delineated by the mighty hand of the people, in which certain first principles of fundamental laws are established. The Constitution is certain and fixed; it contains the permanent will of the people, and is the supreme law of the land; it is paramount to the power of the Legislature, and can be revoked or altered only by the authority that made it. **The life-giving principle and the death-doing stroke must proceed from the same hand.**”*

[[VanHome’s Lessee v. Dorrance, 2 U.S. 304 \(1795\)](#)]

*“The power to tax is the power to destroy.”*

[*John Marshal, U.S. Supreme Court Justice (M’Culloch v. Maryland, 4 Wheat. 316, 431)*]

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“These general rules are well settled:

**(1) That the United States, when it creates rights in individuals against itself, is under no obligation to provide a remedy through the courts.** *United States ex rel. Dunlap v. Black, 128 U.S. 40; Ex parte Atocha, 17 Wall. 439; Gordon v. United States, 7 Wall. 188, 195; De Groot v. United States, 5 Wall. 419, 431-433; Comegys v. Vasse, 1 Pet. 193, 212.*

**(2) That, where a statute creates a right and provides a special remedy, that remedy is exclusive.** *Wilder Manufacturing Co. v. Corn Products Co., 236 U.S. 165, 174-175; Arnson v. Murphy, 109 U.S. 238; Barnet v. National Bank, 98 U.S. 555, 558; Farmers’ & Mechanics’ National Bank v. Dearing, 91 U.S. 29, 35. Still, the fact that the right and the remedy are thus intertwined might not, if the provision stood alone, require us to hold that the remedy expressly given excludes a right of review by the Court of Claims, where the decision of the special tribunal involved no disputed question of fact and the denial of compensation was rested wholly upon the construction of the act. See *Medbury v. United States, 173 U.S. 492, 198; Parish v. MacVeagh, 214 U.S. 124; McLean v. United States, 226 U.S. 374; United States v. Laughlin, 249 U.S. 440.* “*

[[United States v. Babcock, 250 U.S. 328 \(1919\)](#)]

*“If the time shall ever arrive when, for an object appealing, however strongly, to our sympathies, the dignity of the States shall bow to the dictation of Congress by conforming their legislation thereto, **when the power and majesty and honor of those who created shall become subordinate to the thing of their creation, I but feebly utter my apprehensions when I express my firm conviction that we shall see ‘the beginning of the end.’**”*

[*Steward Machine Co. v. Davis, 301 U.S. 548 (1937)*]

**“A State does not owe its origin to the Government of the United States, in the highest or in any of its branches. It was in existence before it. It derives its authority from the same pure and sacred source as itself: The voluntary and deliberate choice of the people...A State is altogether exempt from the jurisdiction of the Courts of the United States, or from any other exterior authority, unless in the special instances when the general Government has power derived from the Constitution itself.”**

[*Chisholm v. Georgia, 2 Dall. (U.S.) 419 (Dall.) (1794)*]

**“The great principle is this: because the constitution will not permit a state to destroy, it will not permit a law involving the power to destroy.** In order to show that the case turned entirely on that point, let us suppose that the court had arrived to the conclusion that the bank [The Bank of the United States located in the state of Maryland] was an authorised instrument of government; but that it was not the intention of the constitution to prohibit the states from interfering with those instruments: would it not have been necessary to have decided that the Maryland act was constitutional? Of what importance was it that the bank was an authorized means of power, other than this, that it afforded a key to the meaning of the constitution? If the bank was a legitimate and proper instrument of power, then the constitution intended to protect it. If not, then no protection was intended. The question, whether it was a necessary and proper means, was auxiliary to the great question, whether the constitution intended to shelter it; and when the court arrived to the conclusion that such protection was intended, they interfered not in behalf of the bank, but in behalf of the sanctuary to which it had fled. **They decided against the tax; because the subject had been placed beyond the power of the states, by the constitution. They decided, not on account of the subject, but on account of the power that protected it; they decided that a prohibition against destruction was a prohibition against a law involving the power of destruction.**”

[*Providence Bank v. Billings, 29 U.S. 514 (1830)*]

“Woe to him who strives with his Maker! Let the potsherd strive with the potsherds of the earth! Shall the clay say to him who forms it, ‘What are you making?’ Or shall your handiwork say, ‘He has no hands?’ Who to him who says to his father, ‘What are you begetting?’ Or to the woman, ‘What have you brought forth?’”  
[Isaiah 45:9-10, Bible, NKJV]

“While an individual may lawfully refuse to answer incriminating questions unless protected by an immunity statute, **a corporation is a creature of the State**, and there is a reserved **right in the legislature to investigate its contracts and find out whether it has exceeded its powers**.

There is a clear distinction between an individual and a corporation, and **the latter, being a creature of the State, has not the constitutional right to refuse to submit its books and papers for an examination at the suit of the State; and an officer of a corporation which is charged with criminal violation of a statute cannot plead the criminality of the corporation as a refusal to produce its books**.

Franchises of a corporation chartered by a State are, so far as they involve questions of interstate commerce, exercised in subordination to the power of Congress to regulate such commerce; and while Congress may not have general visitatorial power over state corporations, its powers in vindication of its own laws are the same as if the corporation had been created by an act of Congress.  
[Hale v. Henkel, 201 U.S. 43 (1906)]

See also:

*Hierarchy of Sovereignty: The Power to Create is the Power to Tax*, Family Guardian Fellowship  
<https://famguardian.org/Subjects/Taxes/Remedies/PowerToCreate.htm>

More at:

*Sovereignty Forms and Instructions Online*, Form #10.004, Cites by Topic: “rights”  
<https://famguardian.org/TaxFreedom/CitesByTopic/rights.htm>

**4.5.14 A statutory civil right (which is PUBLIC PROPERTY) exercised against a fiction of law (straw man, Form #05.042) such as a “person” is a right exercised against the GRANTOR/CREATOR of the OFFICE, and not the human(s) FILLING the office**

This is an outgrowth of the law of agency. Thus, a civil statute used as a remedy in court against someone else is a remedy against the GOVERNMENT GRANTOR/CREATOR of the right, and not the OFFICER filling the office to which the PUBLIC right attaches. The CREATOR is the OWNER, and the OWNER of the right is the person legally RESPONSIBLE for its effect on others.

*PUBLICI JURIS*. Lat. Of public right. The word “public” in this sense means pertaining to the people, or affecting the community at large; that which concerns a multitude of people; and the word “right,” as so used, means a well-founded claim; an interest; concern; advantage; benefit. *State v. Lyon*, 63 Okl. 285, 165 P. 419, 420.

**This term, as applied to a thing or right, means that it is open to or exercisable by all persons. It designates things which are owned by “the public:” that is, the entire state or community, and not by any private person. When a thing is common property, so that any one can make use of it who likes, it is said to be publici juris; as in the case of light, air, and public water. Sweet.**

[*Black’s Law Dictionary, Fourth Edition, p. 1397*]

They use Latin in the definition to disguise the term “public right” because they are trying to pull a fast one on the mainstream populace. Whenever a court or a legal dictionary uses Latin, guaranteed they are trying to deceive or mislead you to disguise their LACK of lawful authority.

Notice the phrase in the above “owned by the public”, and by that they mean PUBLIC property. The word “benefit” also betrays a privilege as well. “Common property” implies COLLECTIVE control and ownership, rather than PERSONAL ownership.

They use the phrase “it is open to or exercisable by all persons”, but they can ONLY mean all human beings consensually

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domiciled in the forum and EXCLUDING those who are NOT. In other words, VOLUNTARY CLUB MEMBERS. Otherwise, involuntary servitude and a Fifth Amendment taking of property would be the result. See:

*Why Domicile and Becoming a "Taxpayer" Require Your Consent*, Form #05.002  
 PDF: <https://sedm.org/Forms/FormIndex.htm>  
 HTML: <https://famguardian.org/Subjects/Taxes/Remedies/DomicileBasisForTaxation.htm>

STATUTORY persons always require a domicile within the CIVIL jurisdiction of a geographical region. That domicile must be **CONSENSUAL (Form #05.003)**. If you don't consent to a **domicile (Form #05.002)** in the forum or venue, the only CIVIL protection you have is the CONSTITUTION and the COMMON LAW and **STATUTORY CIVIL law (Form #05.037)** DOES NOT and CANNOT APPLY. See:

*Why Statutory Civil Law is Law for Government and Not Private Persons*, Form #05.037  
<https://sedm.org/Forms/FormIndex.htm>

The definition of "PUBLIC RIGHT/PUBLICI JURIS" is therefore **deceptive and equivocates (Form #05.014)**, because the TWO contexts for "**persons**" are not identified or qualified and are MUTUALLY exclusive:

1. CONSTITUTIONAL "persons": Human beings protected by the Bill of Rights and the common law and NOT statutory civil law.
2. STATUTORY "persons": **Fictional creations of Congress ("Straw men", Form #05.042)** which only have the limited subset of CONSTITUTIONAL rights entirely defined and controlled by Congress.

You CANNOT be a CONSTITUTIONAL "**person**" and a STATUTORY "**person**" at the SAME time:

1. Either you have **CONSTITUTIONAL rights (Form #10.002)** in a given context, or you have **STATUTORY privileges (Form #05.030)**.
2. If you claim STATUTORY privileges, you SURRENDER CONSTITUTIONAL rights.

*"The words "privileges" and "immunities," like the greater part of the legal phraseology of this country, have been carried over from the law of Great Britain, and recur constantly either as such or in equivalent expressions from the time of Magna Charta. For all practical purposes they are synonymous in meaning, and originally signified a peculiar right or private law conceded to particular persons or places **whereby a certain individual or class of individuals was exempted from the rigor of the common law.** Privilege or immunity is conferred upon any person when he is invested with a legal claim to the exercise of special or peculiar rights, authorizing him to enjoy some particular advantage or exemption."*

[*The Privileges and Immunities of State Citizenship*, Roger Howell, PhD, 1918, pp. 9-10; SOURCE: [http://famguardian.org/Publications/ThePrivAndImmOfStateCit/The\\_privileges\\_and\\_immunities\\_of\\_state\\_c.pdf](http://famguardian.org/Publications/ThePrivAndImmOfStateCit/The_privileges_and_immunities_of_state_c.pdf)]

FOOTNOTES:

See *Magill v. Browne*, Fed.Cas. No. 8952, 16 Fed.Cas. 408; 6 *Words and Phrases*, 5583, 5584; A J. Lien, "Privileges and Immunities of Citizens of the United States," in *Columbia University Studies in History, Economics, and Public Law*, vol. 54, p. 31.

They are therefore DELIBERATELY deceiving you at the very entry point of asserting PUBLIC CIVIL jurisdiction. They want you to UNKNOWINGLY surrender CONSTITUTIONAL rights by FALSELY believing that CONSTITUTIONAL "persons" and STATUTORY "persons" are equivalent, even though they are MUTUALLY exclusive and non-overlapping.

More at:

1. *Proof that "Publici Juris"/Public Rights Include the Entire Civil Code*, SEDM <https://sedm.org/proof-that-publici-juris-includes-the-entire-civil-code/>
2. *Enumeration of Inalienable Rights*, Form #10.002, Section 10.2: The "Publici Juris" or "Public Rights" Scam <https://sedm.org/Forms/10-Emancipation/EnumRights.pdf>
3. *Sovereignty Forms and Instructions Online*, Form #10.004, Cites by Topic: "public office" <https://famguardian.org/TaxFreedom/CitesByTopic/PublicOffice.htm>

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4. *Why Statutory Civil Law is Law for Government and Not Private Persons*, Form #05.037 (PDF)  
<https://sedm.org/Forms/05-MemLaw/StatLawGovt.pdf>
5. *Proof That There Is a "Straw Man"*, Form #05.042 (PDF)  
<https://sedm.org/Forms/05-MemLaw/StrawMan.pdf>

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**4.5.15 If you use a civil statutory fictional office for private gain, the creator of the office is the owner of all income and property attached to the office through the use of the franchise mark, the Social Security Number or Taxpayer Identification Number**

They must reward you with a portion of the PUBLIC property attached to the office to induce you to volunteer for the office to begin with. Thus, a "[trade or business](#)" partnership is established between you, the PRIVATE and them the PUBLIC to remit the "kickback". This is called a "[return](#)".

*"The term 'trade or business' includes the performance of the functions of a public office."  
[26 U.S.C. § 7701(a)(26)]*

More at:

1. *Sovereignty Forms and Instructions Online*, Form #10.004, Cites by Topic: "trade or business"  
<https://famguardian.org/TaxFreedom/CitesByTopic/TradeOrBusiness.htm>
2. *About SSNs and TINs on Government Forms and Correspondence*, Form #05.012 (PDF)  
<https://sedm.org/Forms/05-MemLaw/AboutSSNsAndTINs.pdf>
3. *About SSNs and TINs on Government Forms and Correspondence*, Form #07.004 (HTML)  
<https://sedm.org/Forms/04-Tax/1-Procedure/AboutSSNs/AboutSSNs.htm>

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**4.5.16 How to DESTROY all private property and private rights and make us all public servants whether we want to be or not**

"With respect to the words general welfare, I have always regarded them as qualified by the detail of powers connected with them. To take them in a literal and unlimited sense would be a metamorphosis of the Constitution into a character which there is a host of proofs was not contemplated by its creator."

**"If Congress can employ money indefinitely to the general welfare, and are the sole and supreme judges of the general welfare, they may take the care of religion into their own hands; they may appoint teachers in every State, county and parish and pay them out of their public treasury; they may take into their own hands the education of children, establishing in like manner schools throughout the Union; they may assume the provision of the poor; they may undertake the regulation of all roads other than post-roads; in short, every thing, from the highest object of state legislation down to the most minute object of police, would be thrown under the power of Congress.... Were the power of Congress to be established in the latitude contended for, it would subvert the very foundations, and transmute the very nature of the limited Government established by the people of America."**

"If Congress can do whatever in their discretion can be done by money, and will promote the general welfare, the government is no longer a limited one possessing enumerated powers, but an indefinite one subject to particular exceptions."

[James Madison. House of Representatives, February 7, 1792, On the Cod Fishery Bill, granting Bounties]

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**"For the love of money [and even government "benefits", which are payments] is the root of all evil: which while some coveted after, they have erred from the faith, and pierced themselves through with many sorrows. But thou, O man of God, flee these things; and follow after righteousness, godliness, faith, love, patience, meekness. Fight the good fight of faith, lay hold on eternal life, whereunto thou art also called, and hast professed a good profession before many witnesses."**

[1 [Timothy 6:5-12](#), Bible, NKJV]

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"A tax, in the general understanding of the term and as used in the constitution, signifies an exaction for the support of the government. The word has never thought to connote the expropriation of money from one group for the benefit of another."

[U.S. v. Butler, 297 U.S. 1 (1936)]

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**“To lay with one hand the power of government on the property of the citizen, and with the other to bestow it on favored individuals.. is none the less robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms.”**  
 [Loan Association v. Topeka, 20 Wall. 655 (1874)]

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#### **4.6 Franchises and Privileges: Loans of government property with conditions which cause a surrender of sovereignty**

For further details on the subject of this section, see:

1. *Government Franchises Course*, Form #12.012  
<https://sedm.org/Forms/FormIndex.htm>
2. *Government Instituted Slavery Using Franchises*, Form #05.030  
<https://sedm.org/Forms/FormIndex.htm>

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#### **Webster’s Dictionary: Privilege (2003)**

privilege \ˈpriv-lij, ˈpri-və-\ noun

[Middle English, from Anglo-French, from Latin privilegium law for or against a private person, from privus private + leg-, lex law] 12th century: a right or immunity granted as a peculiar benefit, advantage, or favor: prerogative especially: such a **right or immunity attached specifically to a position or an office.** [Emphasis added]

[Mish, F. C. (2003). Preface. Merriam-Websters collegiate dictionary. (Eleventh ed.). Springfield, MA: Merriam-Webster, Inc.]

[NOTE: A public office is a CREATION and property of its GRANTOR, loaned with conditons to those who temporarily fill it. It can be taken away from the holder at any time if the conditions of the loan are violated. One of those conditions is an mandatory oath. ALL those participating in privileges are public officers of the government]

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#### **63C American Jurisprudence 2d, Public Officers and Employees, §247 (1999)**

“As expressed otherwise, the powers delegated to a public officer are held in trust for the people and are to be exercised in behalf of the government or of all citizens who may need the intervention of the officer. <sup>49</sup> **Furthermore, the view has been expressed that all public officers, within whatever branch and whatever level of government, and whatever be their private vocations, are trustees of the people, and accordingly labor under every disability and prohibition imposed by law upon trustees relative to the making of personal financial gain from a discharge of their trusts.** <sup>50</sup> **That is, a public officer occupies a fiduciary relationship to the political entity on whose behalf he or she serves.** <sup>51</sup> **and owes a fiduciary duty to the public.** <sup>52</sup> **It has been said that the fiduciary responsibilities of a public officer cannot be less than those of a private individual.** <sup>53</sup> **Furthermore, it has been stated that any enterprise undertaken by the public official which tends to weaken public confidence and undermine the sense of security for**

<sup>49</sup> State ex rel. Nagle v. Sullivan, 98 Mont. 425, 40 P.2d. 995, 99 A.L.R. 321; Jersey City v. Hague, 18 N.J. 584, 115 A.2d. 8.

<sup>50</sup> Georgia Dep’t of Human Resources v. Sistrunk, 249 Ga. 543, 291 S.E.2d. 524. A public official is held in public trust. Madlener v. Finley (1st Dist), 161 Ill.App.3d. 796, 113 Ill.Dec. 712, 515 N.E.2d. 697, app gr 117 Ill.Dec. 226, 520 N.E.2d. 387 and revd on other grounds 128 Ill.2d. 147, 131 Ill.Dec. 145, 538 N.E.2d. 520.

<sup>51</sup> Chicago Park Dist. v. Kenroy, Inc., 78 Ill.2d. 555, 37 Ill.Dec. 291, 402 N.E.2d. 181, appeal after remand (1st Dist) 107 Ill.App.3d. 222, 63 Ill.Dec. 134, 437 N.E.2d. 783.

<sup>52</sup> United States v. Holzer (CA7 Ill), 816 F.2d. 304 and vacated, remanded on other grounds 484 U.S. 807, 98 L.Ed.2d. 18, 108 S.Ct. 53, on remand (CA7 Ill) 840 F.2d. 1343, cert den 486 U.S. 1035, 100 L.Ed.2d. 608, 108 S.Ct. 2022 and (criticized on other grounds by United States v. Osser (CA3 Pa) 864 F.2d. 1056) and (superseded by statute on other grounds as stated in United States v. Little (CA5 Miss) 889 F.2d. 1367) and (among conflicting authorities on other grounds noted in United States v. Boylan (CA1 Mass), 898 F.2d. 230, 29 Fed.Rules.Evid.Serv. 1223).

<sup>53</sup> Chicago ex rel. Cohen v. Keane, 64 Ill.2d. 559, 2 Ill.Dec. 285, 357 N.E.2d. 452, later proceeding (1st Dist) 105 Ill.App.3d. 298, 61 Ill.Dec. 172, 434 N.E.2d. 325.

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**individual [PRIVATE] rights is against public policy.**<sup>54</sup> [Emphasis added]  
[63C American Jurisprudence 2d, Public Officers and Employees, §247 (1999)]

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**Will v. Michigan Dept. of State Police, 491 U.S. 58, 109 S.Ct. 2304 (U.S.Mich.,1989)**

**“The reason why States are “bodies politic and corporate” is simple: just as a corporation is an entity that can act only through its agents, “[t]he State is a political corporate body, can act only through agents, and can command only by laws.” Poindexter v. Greenhow, supra, 114 U.S., at 288, 5 S.Ct. at 912-913. See also Black’s Law Dictionary 159 (5th ed. 1979) (“[B]ody politic or corporate”: “A social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good”). As a “body politic and corporate,” a State falls squarely within the Dictionary Act’s definition of a “person.”** [Emphasis added]  
[Will v. Michigan Dept. of State Police, 491 U.S. 58, 109 S.Ct. 2304 (U.S.Mich.,1989)]

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**Readings on the History and System of the Common Law, Second Edition, Roscoe Pound, 1925, p. 543**

“How, then, are purely equitable obligations created? For the most part, either by the acts of third persons or by equity alone. **But how can one person impose an obligation upon another? By giving property to the latter on the terms of his assuming an obligation in respect to it. At law there are only two means by which the object of the donor could be at all accomplished, consistently with the entire ownership of the property passing to the donee, namely: first, by imposing a real obligation upon the property; secondly, by subjecting the title of the donee to a condition subsequent.** The first of these the law does not permit; the second is entirely inadequate. Equity, however, can secure most of the objects of the doner, and yet avoid the mischiefs of real obligations by imposing upon the donee (and upon all persons to whom the property shall afterwards come without value or with notice) **a personal obligation with respect to the property; and accordingly this is what equity does.** It is in this way that all trusts are created, and all equitable charges made (i.e., equitable hypothecations or liens created) by testators in their wills. In this way, also, most trusts are created by acts inter vivos, except in those cases in which the trustee incurs a legal as well as an equitable obligation. **In short, as property is the subject of every equitable obligation, so the owner of property is the only person whose act or acts can be the means of creating an obligation in respect to that property. Moreover, the owner of property can create an obligation in respect to it in only two ways: first, by incurring the obligation himself, in which case he commonly also incurs a legal obligation; secondly, by imposing the obligation upon some third person; and this he does in the way just explained.**” [Emphasis added]

[Readings on the History and System of the Common Law, Second Edition, Roscoe Pound, 1925, p. 543]

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**Prov. 22:7, New King James Version**

“The rich rules over the poor,  
And the borrower is servant to the lender.”  
[Prov. 22:7, Bible, NKJV]

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**U.S. Constitution, Article 4, Section 3, Clause 2**

United States Constitution  
Article 4, Section 3, Clause 2

The Congress shall have Power to dispose of and **make all needful Rules and Regulations respecting the Territory or other Property** belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

[Constitution of the United States of America, Article 4, Section 3, Clause 2]

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**U.S. v. Babcock (1919)**

**“These general rules are well settled: (1) That the United States, when it creates rights in individuals against itself [a “public right”, which is a euphemism for a “franchise” to help the court disguise the nature of the transaction], is**

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<sup>54</sup> Indiana State Ethics Comm’n v. Nelson (Ind App), 656 N.E.2d. 1172, reh gr (Ind App) 659 N.E.2d. 260, reh den (Jan 24, 1996) and transfer den (May 28, 1996).

**under no obligation to provide a remedy through the courts.** [United States ex rel. Dunlap v. Black, 128 U.S. 40, 9 Sup.Ct. 12, 32 L.Ed. 354](#); [Ex parte Atocha, 17 Wall. 439, 21 L.Ed. 696](#); [Gordon v. United States, 7 Wall. 188, 195, 19 L.Ed. 35](#); [De Groot v. United States, 5 Wall. 419, 431, 433, 18 L.Ed. 700](#); [Comegys v. Vasse, 1 Pet. 193, 212, 7 L.Ed. 108](#). (2) That where a statute creates a right and provides a special remedy, that remedy is exclusive. [Wilder Manufacturing Co. v. Corn Products Co., 236 U.S. 165, 174, 175, 35 Sup.Ct. 398, 59 L.Ed. 520, Ann.Cas. 1916A, 118](#); [Arnson v. Murphy, 109 U.S. 238, 3 Sup.Ct. 184, 27 L.Ed. 920](#); [Barnet v. National Bank, 98 U.S. 555, 558, 25 L.Ed. 212](#); [Farmers' & Mechanics' National Bank v. Dearing, 91 U.S. 29, 35, 23 L.Ed. 196](#). Still the fact that the right and the remedy are thus intertwined might not, if the provision stood alone, require U.S. to hold that the remedy expressly given excludes a right of review by the Court of Claims, where the decision of the special tribunal involved no disputed question of fact and the denial of compensation was rested wholly upon the construction of the act. See [Medbury v. United States, 173 U.S. 492, 198, 19 Sup.Ct. 503, 43 L.Ed. 779](#); [Parish v. MacVeagh, 214 U.S. 124, 29 Sup.Ct. 556, 53 L.Ed. 936](#); [McLean v. United States, 226 U.S. 374, 33 Sup.Ct. 122, 57 L.Ed. 260](#); [United States v. Laughlin \(No. 200\), 249 U.S. 440, 39 Sup.Ct. 340, 63 L.Ed. 696](#). decided April 14, 1919. [Emphasis added]  
[U.S. v. Babcock, 250 U.S. 328, 39 S.Ct. 464 (1919) ]

### **American Jurisprudence 2d, Franchises, §1: Definitions (1999)**

"In a legal or narrower sense, the term "franchise" is more often used to designate a right or privilege conferred by law,<sup>55</sup> and the view taken in a number of cases is that to be a franchise, the right possessed must be such as cannot be exercised without the express permission of the sovereign power<sup>56</sup> –that is, a privilege or immunity of a public nature which cannot be legally exercised without legislative grant.<sup>57</sup> It is a privilege conferred by government on an individual or a corporation to do that "which does not belong to the citizens of the country generally by common right."<sup>58</sup> For example, a right to lay rail or pipes, or to string wires or poles along a public street, is not an ordinary use which everyone may make of the streets, but is a special privilege, or franchise, to be granted for the accomplishment of public objects<sup>59</sup> which,

<sup>55</sup> *People ex rel. Fitz Henry v. Union Gas & E. Co.* 254 Ill. 395, 98 N.E. 768; *State ex rel. Bradford v. Western Irrigating Canal Co.* 40 Kan 96, 19 P. 349; *Milbau v. Sharp*, 27 N.Y. 611; *State ex rel. Williamson v. Garrison (Okla)*, 348 P.2d. 859; *Ex parte Polite*, 97 Tex Crim 320, 260 S.W. 1048.

The term "franchise" is generic, covering all the rights granted by the state. *Atlantic & G. R. Co. v. Georgia*, 98 U.S. 359, 25 L.Ed. 185.

A franchise is a contract with a sovereign authority by which the grantee is licensed to conduct a business of a quasi-governmental nature within a particular area. *West Coast Disposal Service, Inc. v. Smith (Fla App)*, 143 So.2d. 352.

<sup>56</sup> The term "franchise" is generic, covering all the rights granted by the state. *Atlantic & G. R. Co. v. Georgia*, 98 U.S. 359, 25 L.Ed. 185.

A franchise is a contract with a sovereign authority by which the grantee is licensed to conduct a business of a quasi-governmental nature within a particular area. *West Coast Disposal Service, Inc. v. Smith (Fla App)*, 143 So.2d. 352.

<sup>57</sup> *State v. Real Estate Bank*, 5 Ark. 595; *Brooks v. State*, 3 Boyce (Del) 1, 79 A. 790; *Belleville v. Citizens' Horse R. Co.*, 152 Ill. 171, 38 N.E. 584; *State ex rel. Clapp v. Minnesota Thresher Mfg. Co.* 40 Minn 213, 41 N.W. 1020.

<sup>58</sup> *New Orleans Gaslight Co. v. Louisiana Light & H. P. & Mfg. Co.*, 115 U.S. 650, 29 L.Ed. 516, 6 S.Ct. 252; *People's Pass. R. Co. v. Memphis City R. Co.*, 10 Wall (US) 38, 19 L.Ed. 844; *Bank of Augusta v. Earle*, 13 Pet (U.S.) 519, 10 L.Ed. 274; *Bank of California v. San Francisco*, 142 Cal. 276, 75 P. 832; *Higgins v. Downward*, 8 Houst (Del) 227, 14 A. 720, 32 A. 133; *State ex rel. Watkins v. Fernandez*, 106 Fla. 779, 143 So. 638, 86 A.L.R. 240; *Lasher v. People*, 183 Ill. 226, 55 N.E. 663; *Inland Waterways Co. v. Louisville*, 227 Ky. 376, 13 S.W.2d. 283; *Lawrence v. Morgan's L. & T. R. & S. S. Co.*, 39 La. Ann. 427, 2 So. 69; *Johnson v. Consolidated Gas E. L. & P. Co.*, 187 Md. 454, 50 A.2d. 918, 170 A.L.R. 709; *Stoughton v. Baker*, 4 Mass 522; *Poplar Bluff v. Poplar Bluff Loan & Bldg. Asso.*, (Mo App) 369 S.W.2d. 764; *Madden v. Queens County Jockey Club*, 296 N.Y. 249, 72 N.E.2d. 697, 1 A.L.R.2d. 1160, cert den 332 U.S. 761, 92 L.Ed. 346, 68 S.Ct. 63; *Shaw v. Asheville*, 269 N.C. 90, 152 S.E.2d. 139; *Victory Cab Co. v. Charlotte*, 234 N.C. 572, 68 S.E.2d. 433; *Henry v. Bartlesville Gas & Oil Co.*, 33 Okla 473, 126 P. 725; *Elliott v. Eugene*, 135 Or. 108, 294 P. 358; *State ex rel. Daniel v. Broad River Power Co.* 157 S.C. 1, 153 S.E. 537; *State v. Scougal*, 3 S.D. 55, 51 N.W. 858; *Utah Light & Traction Co. v. Public Serv. Com.*, 101 Utah 99, 118 P.2d. 683.

A franchise represents the right and privilege of doing that which does not belong to citizens generally, irrespective of whether net profit accruing from the exercise of the right and privilege is retained by the franchise holder or is passed on to a state school or to political subdivisions of the state. *State ex rel. Williamson v. Garrison (Okla)*, 348 P.2d. 859.

Where all persons, including corporations, are prohibited from transacting a banking business unless authorized by law, the claim of a banking corporation to exercise the right to do a banking business is a claim to a franchise. The right of banking under such a restraining act is a privilege or immunity by grant of the legislature, and the exercise of the right is the assertion of a grant from the legislature to exercise that privilege, and consequently it is the usurpation of a franchise unless it can be shown that the privilege has been granted by the legislature. *People ex rel. Atty. Gen. v. Utica Ins. Co.*, 15 Johns (NY) 358.

<sup>59</sup> *New Orleans Gaslight Co. v. Louisiana Light & H. P. & Mfg. Co.*, 115 U.S. 650, 29 L.Ed. 516, 6 S.Ct. 252; *People's Pass. R. Co. v. Memphis City R. Co.*, 10 Wall (US) 38, 19 L.Ed. 844; *Bank of Augusta v. Earle*, 13 Pet (U.S.) 519, 10 L.Ed. 274; *Bank of California v. San Francisco*, 142 Cal. 276, 75 P. 832; *Higgins v. Downward*, 8 Houst (Del) 227, 14 A. 720, 32 A. 133; *State ex rel. Watkins v. Fernandez*, 106 Fla. 779, 143 So. 638, 86 A.L.R. 240; *Lasher v. People*, 183 Ill. 226, 55 N.E. 663; *Inland Waterways Co. v. Louisville*, 227 Ky. 376, 13 S.W.2d. 283; *Lawrence v. Morgan's L. & T. R. & S. S. Co.*, 39 La. Ann. 427, 2 So. 69; *Johnson v. Consolidated Gas E. L. & P. Co.*, 187 Md. 454, 50 A.2d. 918, 170 A.L.R. 709; *Stoughton v. Baker*, 4 Mass 522; *Poplar Bluff v. Poplar Bluff Loan & Bldg. Asso.* (Mo App) 369 S.W.2d. 764; *Madden v. Queens County Jockey Club*, 296 N.Y. 249, 72 N.E.2d. 697, 1 A.L.R.2d. 1160, cert den 332 U.S. 761, 92 L.Ed. 346, 68 S.Ct. 63; *Shaw v. Asheville*, 269 N.C. 90, 152 S.E.2d. 139; *Victory Cab Co. v. Charlotte*, 234 N.C. 572,

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except for the grant, would be a trespass.<sup>60</sup> **In this connection, the term "franchise" has sometimes been construed as meaning a grant of a right to use public property, or at least the property over which the granting authority has control.**<sup>61</sup> [Emphasis added]  
[American Jurisprudence 2d, Franchises, §1: Definitions (1999)]

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### **U.S. v. Union Pac. R. Co. (1878)**

“The proposition is that **the United States, as the grantor of the franchises of the company [a corporation, in this case], the author of its charter, and the donor of lands, rights, and privileges of immense value, and as parens patriae, is a trustee, invested with power to enforce the proper use of the property and franchises granted for the benefit of the public.**” [Emphasis added]  
[U.S. v. Union Pac. R. Co., 98 U.S. 569 (1878)]

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### **Black’s Law Dictionary: Parens Patriae**

PARENS PATRIAE. Father of his country; parent of the country. In England, **the king**. In the United States, the state, as a sovereign-**referring to the sovereign power of guardianship over persons under disability**; In re Turner, 94 Kan. 115, 145 P. 871, 872, Ann.Cas.1916E, 1022; such as minors, and insane and incompetent persons; McIntosh v. Dill, 86 Okl. 1, 205 P. 917, 925. [Emphasis added]  
[Black’s Law Dictionary, Sixth Edition, p. 1269]

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### **20 C.F.R. §422.103(d)**

Title 20: Employees' Benefits

[PART 422—ORGANIZATION AND PROCEDURES](#)

[Subpart B—General Procedures](#)

[§422.103 Social security numbers.](#)

(d) Social security number cards.

A person who is assigned a social security number will receive a social security number card from SSA within a reasonable time after the number has been assigned. (See §422.104 regarding the assignment of social security number cards to aliens.) **Social security number cards are the property of SSA and must be returned upon request.** [Emphasis added]  
[20 C.F.R. §422.103(d)]

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### **A Treatise on the Law of Non-Residents and Foreign Corporations as Administered in The State and Federal Courts of the United States, Conrad Reno, 1892, p. vi**

68 S.E.2d. 433; Henry v. Bartlesville Gas & Oil Co., 33 Okla 473, 126 P. 725; Elliott v. Eugene, 135 Or. 108, 294 P. 358; State ex rel. Daniel v. Broad River Power Co. 157 S.C. 1, 153 S.E. 537; State v. Scougal, 3 S.D. 55, 51 N.W. 858; Utah Light & Traction Co. v. Public Serv. Com., 101 Utah 99, 118 P.2d. 683.

A franchise represents the right and privilege of doing that which does not belong to citizens generally, irrespective of whether net profit accruing from the exercise of the right and privilege is retained by the franchise holder or is passed on to a state school or to political subdivisions of the state. State ex rel. Williamson v. Garrison (Okla), 348 P.2d. 859.

Where all persons, including corporations, are prohibited from transacting a banking business unless authorized by law, the claim of a banking corporation to exercise the right to do a banking business is a claim to a franchise. The right of banking under such a restraining act is a privilege or immunity by grant of the legislature, and the exercise of the right is the assertion of a grant from the legislature to exercise that privilege, and consequently it is the usurpation of a franchise unless it can be shown that the privilege has been granted by the legislature. People ex rel. Atty. Gen. v. Utica Ins. Co., 15 Johns (NY) 358.

<sup>60</sup> People ex rel. Foley v. Stapleton, 98 Colo. 354, 56 P.2d. 931; People ex rel. Central Hudson Gas & E. Co. v. State Tax Com. 247 N.Y. 281, 160 N.E. 371, 57 A.L.R. 374; People v. State Tax Comrs. 174 N.Y. 417, 67 N.E. 69, affd 199 U.S. 1, 50 L.Ed. 65, 25 S.Ct. 705.

<sup>61</sup> Young v. Morehead, 314 Ky. 4, 233 S.W.2d. 978, holding that a contract to sell and deliver gas to a city into its distribution system at its corporate limits was not a franchise within the meaning of a constitutional provision requiring municipalities to advertise the sale of franchises and sell them to the highest bidder.

A contract between a county and a private corporation to construct a water transmission line to supply water to a county park, and giving the corporation the power to distribute water on its own lands, does not constitute a franchise. Brandon v. County of Pinellas (Fla App), 141 So.2d. 278.

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“There is one principle which permeates the law of "NonResidents and Foreign Corporations," so far as it treats of the relation of debtor and creditor. That principle is that, **when debtor and creditor are residents of different states, the situs of the debt is the creditor's residence and not the debtor's residence ; the creditor's state has jurisdiction over the debt and the debtor's state has not. The result is that the creditor's state has the power to tax the debt or to discharge it by operation of law; but the debtor's state has not this power, because it has not jurisdiction of the debt.** Among discharges by operation of law may be mentioned discharges under state limitation laws, and discharges under state garnishee laws. In these cases, when the debtor and creditor are citizens of different states, the better view is that the creditor's state has the power and the debtor's state has not the power to discharge the debt. So, in the case of discharges under state insolvent laws, it is ,well settled that the debtor's state has no jurisdiction over a debt due to a non-resident creditor, and that therefore a discharge is void as against a non-resident and nonconsenting creditor.” [Emphasis added] [A Treatise on the Law of Non-Residents and Foreign Corporations as Administered in The State and Federal Courts of the United States, Conrad Reno, 1892, p. vi]

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### **Munn v. Illinois (1876)**

“The compensation which the owners of property, not having any special rights or privileges from the government in connection with it, may demand for its use, or for their own services in union with it, forms no element of consideration in prescribing regulations for that purpose.

[. . .]

**“It is only where some right or privilege [which are GOVERNMENT PROPERTY] is conferred by the government or municipality upon the owner, which he can use in connection with his property, or by means of which the use of his property is rendered more valuable to him, or he thereby enjoys an advantage over others, that the compensation to be received by him becomes a legitimate matter of regulation. Submission to the regulation of compensation in such cases is an implied condition of the grant, and the State, in exercising its power of prescribing the compensation, only determines the conditions upon which its concession shall be enjoyed. When the privilege ends, the power of regulation ceases.”** [Emphasis added] [Munn v. Illinois, 94 U.S. 113 (1876) ]

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### **36 American Jurisprudence 2d, Franchises, §6**

“It is generally conceded that a franchise is the subject of a contract between the grantor and the grantee, and that it does in fact constitute a contract when the requisite element of a consideration is present.<sup>62</sup> Conversely, a franchise granted without consideration is not a contract binding upon the state, franchisee, or pseudo-franchisee.<sup>63</sup> “ [36 American Jurisprudence 2d, Franchises, §6: As a Contract (1999)]

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## **4.7 Grants/loans by the government of property to destroy rights and equality are biblical USURY and tyranny**

For a video dramatization how loans of property are the origin of ALL of Satan’s authority, see:

*Devil's Advocate: Lawyers*, SEDM  
<https://sedm.org/what-we-are-up-against/>

<sup>62</sup> Larson v. South Dakota, 278 U.S. 429, 73 L.Ed. 441, 49 S.Ct. 196; Grand Trunk Western R. Co. v. South Bend, 227 U.S. 544, 57 L.Ed. 633, 33 S.Ct. 303; Blair v. Chicago, 201 U.S. 400, 50 L.Ed. 801, 26 S.Ct. 427; Arkansas-Missouri Power Co. v. Brown, 176 Ark. 774, 4 S.W.2d. 15, 58 A.L.R. 534; Chicago General R. Co. v. Chicago, 176 Ill. 253, 52 N.E. 880; Louisville v. Louisville Home Tel. Co., 149 Ky. 234, 148 S.W. 13; State ex rel. Kansas City v. East Fifth Street R. Co. 140 Mo. 539, 41 S.W. 955; Baker v. Montana Petroleum Co., 99 Mont. 465, 44 P.2d. 735; Re Board of Fire Comrs. 27 N.J. 192, 142 A.2d. 85; Chrysler Light & P. Co. v. Belfield, 58 N.D. 33, 224 N.W. 871, 63 A.L.R. 1337; Franklin County v. Public Utilities Com., 107 Ohio.St. 442, 140 N.E. 87, 30 A.L.R. 429; State ex rel. Daniel v. Broad River Power Co. 157 S.C. 1, 153 S.E. 537; Rutland Electric Light Co. v. Marble City Electric Light Co., 65 Vt. 377, 26 A. 635; Virginia-Western Power Co. v. Commonwealth, 125 Va. 469, 99 S.E. 723, 9 A.L.R. 1148, cert den 251 U.S. 557, 64 L.Ed. 413, 40 S.Ct. 179, disapproved on other grounds Victoria v. Victoria Ice, Light & Power Co. 134 Va. 134, 114 S.E. 92, 28 A.L.R. 562, and disapproved on other grounds Richmond v. Virginia Ry. & Power Co. 141 Va. 69, 126 S.E. 353.

<sup>63</sup> Pennsylvania R. Co. v. Bowers, 124 Pa. 183, 16 A. 836.

**Luke 6:27-36**

## Love Your Enemies

“But I say to you who hear: Love your enemies, do good to those who hate you, bless those who curse you, and pray for those who spitefully use you. To him who strikes you on the one cheek, offer the other also. And from him who takes away your cloak, do not withhold your tunic either. Give to everyone who asks of you. And from him who takes away your goods do not ask them back. And just as you want men to do to you, you also do to them likewise.

“But if you love those who love you, what credit is that to you? For even sinners love those who love them. And if you do good to those who do good to you, what credit is that to you? For even sinners do the same. **And if you lend to those from whom you hope to receive back, what credit is that to you? For even sinners lend to sinners to receive as much back. But love your enemies, do good, and lend, hoping for nothing in return; and your reward will be great, and you will be sons of the Most High. For He is kind to the unthankful and evil. Therefore be merciful, just as your Father also is merciful.**” [Emphasis added]  
 [Luke 6:27-36, Bible, NKJV]

**Lev. 25:35-43****Lending to the Poor**

**If one of your brethren becomes poor [desperate], and falls into poverty among you, then you shall help him, like a stranger or a sojourner [transient foreigner and/or non-resident non-person, Form #05.020], that he may live with you. Take no usury or interest from him; but fear your God, that your brother may live with you. You shall not lend him your money for usury, nor lend him your food at a profit.** I am the Lord your God, who brought you out of the land of Egypt, to give you the land of Canaan and to be your God.

**The Law Concerning Slavery**

**And if one of your brethren who dwells by you becomes poor, and sells himself to you, you shall not compel him to serve as a slave.** As a hired servant and a sojourner he shall be with you, and shall serve you until the Year of Jubilee. And then he shall depart from you—he and his children with him—and shall return to his own family. He shall return to the possession of his fathers. **For they are My servants [Form #13.007], whom I brought out of the land of Egypt; they shall not be sold as slaves.** You shall not rule over him with rigor, but you shall fear your God.” [Emphasis added]  
 [Lev. 25:35-43, Bible, NKJV]

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**4.8 God’s law FORBIDS Christians from contracting with governments or, by implication, borrowing their property or consenting to their secular civil statutes**

The scriptures in this section come from the following link:

*Commandments About Relationship of Believers to the World*, SEDM  
<https://sedm.org/home/commandments-about-relationship-of-believers-to-the-world/>

These scriptures are the origin of the constitutional notion of “separation between church and state”. The Bible says in 1 Cor. 6:19 that YOUR BODY is a temple and a church. TRUE separation of church and state means separating your body, which is God’s property, from the control of the state:

*“Or do you not know that your body is the temple of the Holy Spirit who is in you, whom you have from God, and you are not your own? For you were bought at a price; therefore glorify God in your body [g]and in your spirit, which are God’s.”*  
 [1 Cor. 6:19-20, Bible, NKJV]

The above type of separation is also the origin of the separation between PUBLIC and PRIVATE, as documented in the following:

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*Separation Between Public and Private Course*, Form #12.025  
<https://sedm.org/Forms/FormIndex.htm>

A so-called “government” that does not entirely respect and protect the above type of separation between public and private is, according to the Declaration of Independence, NO GOVERNMENT AT ALL, but a terrorist de facto government, as documented in:

*De Facto Government Scam*, Form #05.043  
<https://sedm.org/Forms/FormIndex.htm>

For more information on all the implications of this separation from a theological perspective, see:

1. *Delegation of Authority Order from God to Christians*, Form #13.007  
<https://sedm.org/Forms/FormIndex.htm>
2. *Non-Resident Non-Person Position*, Form #05.020  
<https://sedm.org/Forms/FormIndex.htm>

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#### **Judges 2:1-4, Bible, New King James Version**

*“I [God] brought you up from Egypt [government slavery to a civil ruler who claimed to be a deity] and brought you to the land of which I swore to your fathers; and I said, ‘I will never break My covenant with you. And **you shall make no covenant [contract or franchise or agreement of ANY kind] with the inhabitants of this [corrupt pagan] land; you shall tear down their [man/government worshipping socialist] altars.** ‘ But you have not obeyed Me. Why have you done this?*

*“Therefore I also said, ‘I will not drive them out before you; but they will become as thorns [terrorists and persecutors] in your side and their gods will be a snare [slavery!] to you.’”*

*“So it was, when the Angel of the LORD spoke these words to all the children of Israel, that the people lifted up their voices and wept”. [Emphasis added]  
 [/Judges 2:1-4, Bible, NKJV]*

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#### **James 4:4, Bible, New King James Version**

*“Do you not know that friendship with the world is enmity with God? **Whoever therefore wants to be a friend [“citizen”, “resident”, “taxpayer”, “inhabitant”, or “subject” under a king or political ruler] of the world [for any man-made kingdom other than God’s Kingdom] makes himself an enemy of God.** ” [Emphasis added]  
 [/James 4:4, Bible, NKJV]*

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#### **Exodus 23:32-33, Bible, New King James Version**

*“You shall make no covenant [contract or franchise] with them [foreigners, pagans], nor with their [pagan government] gods [laws or judges]. They shall not dwell in your land [and you shall not dwell in theirs by becoming a “resident” in the process of contracting with them], lest they make you sin against Me [God]. For if you serve their gods [under contract or agreement or franchise], it will surely be a snare to you.”  
 [/Exodus 23:32-33, Bible, NKJV]*

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#### **James 1:27, Bible, New King James Version**

*“Pure and undefiled religion before God and the Father is this: to visit orphans and widows in their trouble, and to **keep oneself unspotted from the world [the obligations and concerns of the world].** ” [Emphasis added]  
 [/James 1:27, Bible, NKJV]*

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#### **Exodus 20:3, Bible, New King James Version**

*“You shall have no other gods [including political rulers, governments, or Earthly laws] before Me [or My*

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[commandments](#)].” [Emphasis added]  
[[Exodus 20:3](#), Bible, NKJV]

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#### **1 Sam. 4:4-8, Bible, New King James Version**

“Then all the elders of Israel gathered together and came to Samuel [the priest in a Theocracy] at Ramah, and said to him, ‘Look, you [the priest within a theocracy] are old, and your sons do not walk in your ways. **Now make us a king [or political ruler] to judge us like all the nations [and be OVER them]**’.

“But the thing displeased Samuel when they said, ‘**Give us a king [or political ruler] to judge us.**’ So Samuel prayed to the Lord. **And the Lord said to Samuel, ‘Heed the voice of the people in all that they say to you; for they have rejected Me [God], that I should not reign over them.** According to all the works which they have done since the day that I brought them up out of Egypt, even to this day—with which they have forsaken Me [God as their ONLY King, Lawgiver, and Judge] and [served other gods](#)—so they are doing to you also [government or political rulers becoming the object of idolatry].” [Emphasis added]  
[[1 Sam. 8:4-8](#), Bible, NKJV]

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#### **Ezekial 20:10-20, Bible, New King James Version**

“Do not walk in the [statutes of your fathers](#) [the heathens], nor observe their judgments, nor defile yourselves with their [pagan government] idols. I am the LORD your God: Walk in *My statutes*, keep My judgments, and do them; hallow My Sabbaths, and they will be a sign between Me and you, that you may know that I am the LORD your God.” [Emphasis added]  
[[Ezekial 20:10-20](#), Bible, NKJV]

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#### **1 Sam. 15:22-23, Bible, New King James Version**

“Has the LORD as great delight in burnt offerings and sacrifices,  
As in obeying the voice of the LORD?  
**Behold, to obey is better than sacrifice,  
And to heed than the fat of rams.  
For rebellion is as the sin of witchcraft,  
And stubbornness is as iniquity and idolatry.  
Because you have rejected [the Word \[and Law\] of the LORD](#),  
He also has rejected you from being king [and sovereign over your government and your public servants].”**  
[[1 Sam. 15:22-23](#), Bible, NKJV]

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#### **Heb. 8:10, Bible, New King James Version**

“For this is [the covenant that I will make with the house of Israel after those days](#), says the LORD: **I will put [My laws](#) in their mind and write them on their hearts; and I will be their God, and they shall be My people.”**  
[[Heb. 8:10](#), Bible, NKJV]

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#### **Romans 7:4-6, Bible, New King James Version**

“Therefore, my brethren, you also have become dead to the law [man’s law] through the body of Christ [[by shifting your legal domicile to the God’s Kingdom](#)], that you may be married to another—to Him who was raised from the dead, that we should bear fruit [as [agents, fiduciaries, and trustees](#)] to God. For when we were in the flesh, the sinful passions which were aroused by the law were at work in our members to bear fruit to death. But now we have been delivered from the law, having died to what we were held by, so that we should serve in the newness of the Spirit [and newness of the law, God’s law] and not in the oldness of the letter.” [Emphasis added]  
[[Rom. 7:4-6](#), Bible, NKJV]

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#### **Psalms 9:17, Bible, New King James Version**

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*“The wicked shall be turned into hell, And all the nations [and peoples] that forget [or disobey] God [or His commandments].”*

*[Psalm 9:17, Bible, NKJV]*

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#### **Philippians 1:27, Bible, New King James Version**

*“Above all, you must live as citizens of heaven [INSTEAD of citizens of earth. [You can only be a citizen of ONE place at a time because you can only have a domicile in one place at a time](#)], conducting yourselves in a manner worthy of the Good News about Christ. Then, whether I come and see you again or only hear about you, I will know that you are standing together with one spirit and one purpose, fighting together for the faith, which is the Good News.” [Emphasis added]*

*[Philippians 1:27, Bible, NLT]*

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#### **1 Sam. 12:12-19, Bible, New King James Version**

*“And when you saw that Nahash king of the Ammonites came against you, you said to me, ‘No, but a king shall reign over us, when the Lord your God was your king. [. . .]’*

*And all the people said to Samuel, “Pray for your servants to the Lord your God, that we may not die; for we have added to all our sins the evil of asking a king [for political ruler above us] for ourselves.” [Emphasis added]*

*[1 Sam. 12:12, 19, Bible, NKJV]*

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#### **Mark 3:35, Bible, New King James Version**

*“For whoever **does the will of God** is My brother and My sister and mother.”*

*[Jesus, in [Mark 3:35](#), NKJV]*

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#### **Eph. 5:11, Bible, New King James Version**

*“And have no fellowship [or association] with the [unfruitful works of \[government\] darkness](#), but rather reprove [rebuke and expose] them.” [Emphasis added]*

*[Eph. 5:11, Bible, NKJV]*

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#### **Gal. 5:18, Bible, New King James Version**

*“But if you are led by the Spirit, you are not under the law [[man’s law](#)].”*

*[Gal. 5:18, Bible, NKJV]*

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#### **Psalm 94:20-23, Bible, New King James Version**

*“Shall the [throne of iniquity \[the U.S. Congress and the federal judiciary\]](#), which devises evil by [[obfuscating the](#)] law [to expand their jurisdiction and consolidate all economic power in their hands by taking it away from the states], have fellowship with You? They gather together against the life of the righteous, and condemn innocent blood [of “nontaxpayers” and [persons outside their jurisdiction](#), which is an act of extortion and racketeering]. But the Lord has been my defense, and my God the rock of my refuge. He has brought on them their own iniquity, and shall cut them off in their own wickedness; **the Lord our God [and those who obey Him and His word] shall cut them off** [from power and from receiving illegal bribes cleverly disguised by an obfuscated law as legitimate “[taxes](#)“].” [Emphasis added]*

*[Psalm 94:20-23, Bible, NKJV. QUESTION FOR DOUBTERS: Who else BUT Congress and the judiciary can devise “evil by law”?]*

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#### **2 Corinthians 6:17-18, Bible, New King James Version**

*“Come out from among them [the unbelievers and [government idolaters](#)]*

*And be separate, says the Lord.*

*Do not touch [[or contract with](#)] what is unclean,*

*And I will receive you.*

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*I will be a Father to you,  
And you shall be my sons and daughters,  
Says the Lord Almighty.* ” [Emphasis added]  
[\[2 Corinthians 6:17-18, Bible, NKJV\]](#)

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**2 Tim. 2:19, Bible, New King James Version**

“Nevertheless, God’s solid foundation stands firm, sealed with this inscription: ‘The Lord knows those who are His, and, ‘Everyone who confesses the name of the Lord [must turn away from \[not associate with or subsidize\] wickedness \[wherever it is found, and especially in government\].](#)’ ”  
[\[2 Tim. 2:19, Bible, NKJV\]](#)

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**Deut. 28:1-4, Bible, New King James Version**

*And it shall come to pass, if thou shalt hearken diligently unto the voice of the LORD thy God, to observe and to do all [his commandments](#) which I command thee this day, that the LORD thy God will set thee on high above all nations of the earth [SOVEREIGN!]:*  
*And all these blessings shall come on thee, and overtake thee, if thou shalt hearken unto the voice of the LORD thy God. Blessed shalt thou be in the city, and blessed shalt thou be in the field.*  
*Blessed shall be the fruit of thy body, and the fruit of thy ground, and the fruit of thy cattle, the increase of thy kine, and the flocks of thy sheep.*  
*Blessed shall be thy basket and thy store.*  
*Blessed shalt thou be when thou comest in, and blessed shalt thou be when thou goest out.*  
*The LORD shall cause thine enemies that rise up against thee to be smitten before thy face: they shall come out against thee one way, and flee before thee seven ways.*  
*The LORD shall command the blessing upon thee in thy storehouses, and in all that thou settest thine hand unto; and he shall bless thee in the land which the LORD thy God giveth thee.*  
*The LORD shall establish thee an holy [sanctified] people unto himself, as he hath sworn unto thee, if thou shalt keep the commandments of the LORD thy God, and walk in his ways.*  
*And all people of the earth shall see that thou art called by the name of the LORD; and they shall be afraid of thee.*  
*And the LORD shall make thee plenteous in goods, in the fruit of thy body, and in the fruit of thy cattle, and in the fruit of thy ground, in the land which the LORD sware unto thy fathers to give thee.*  
*The LORD shall open unto thee his good treasure, the heaven to give the rain unto thy land in his season, and to bless all the work of thine hand: and thou shalt lend unto many nations, and thou shalt not borrow.*  
*And the LORD shall make thee the head, and not the tail; and thou shalt be above only, and thou shalt not be beneath [SOVEREIGN!]; if that thou hearken unto the commandments of the LORD thy God, which I command thee this day, to observe and to do them:*  
*And thou shalt not go aside from any of the words which I command thee this day, to the right hand, or to the left, to go after other [government/political] gods to serve them.”* [Emphasis added]  
[\[Deut. 28:1-14, Bible, NKJV\]](#)

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**4.9 Origin of the authority to regulate or control property**

For further information on the subject of this section, see:

<p><i>Government Instituted Slavery Using Franchises</i>, Form #05.030, Sections 3.8, 4.4, and 5 <a href="https://sedm.org/Forms/FormIndex.htm">https://sedm.org/Forms/FormIndex.htm</a></p>
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**Budd v. People of State of New York (1892)**

“Men are endowed by their Creator with certain unalienable rights, - 'life, liberty, and the pursuit of happiness;' and to 'secure, not grant or create, these rights, governments are instituted. **That property [or income] which a man has honestly acquired he retains full control of, subject to these limitations: First, that he shall not use it to his neighbor's injury, and that does not mean that he must use it for his neighbor's benefit [e.g. SOCIAL SECURITY, Medicare, and every other public “benefit”]; second, that if he devotes it to a**

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**public use, he gives to the public a right to control that use; and third, that whenever the public needs require, the public may take it upon payment of due compensation.”**

[Budd v. People of State of New York, [143 U.S. 517](#) (1892)]

#### **Munn v. Illinois (1876)**

**“When Sir Matthew Hale, and the sages of the law in his day, spoke of property as affected by a public interest, and ceasing from that cause to be juris privati solely, that is, ceasing to be held merely in private right, they referred to**

**[1] property dedicated [DONATED] by the owner to public uses, or**

**[2] to property the use of which was granted by the government [e.g. Social Security Card], or**

**[3] in connection with which special privileges were conferred [licenses].**

**Unless the property was thus dedicated [by one of the above three mechanisms], or some right bestowed by the government was held with the property, either by specific grant or by prescription of so long a time as to imply a grant originally, the property was not affected by any public interest so as to be taken out of the category of property held in private right.”** [Emphasis added]

[Munn v. Illinois, 94 U.S. 113, 139-140 (1876)]

#### **Bouvier’s Maxims of Law, 1856**

“Cujus est commodum ejus debet esse incommodum.

He who receives the benefit should also bear the disadvantage.”

“Que sentit commodum, sentire debet et onus.

He who derives a benefit from a thing, ought to feel the disadvantages attending it. 2 Bouv. Inst. n. 1433.”

[Bouvier’s Maxims of Law, 1856;

SOURCE: <http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviertsMaxims.htm>]

#### **Wickard v. Filburn (1942)**

“We can hardly find a denial of due process in these circumstances, particularly since it is even doubtful that appellee’s burdens under the program outweigh his benefits. It is hardly lack of due process for the Government to regulate that which it subsidizes.”

[Wickard v. Filburn, 317 U.S. 111, 63 S.Ct. 82 (1942)]

#### **4.10 Origin of the authority and right to AVOID receiving government property or “benefits” or the alleged “obligations” that arise from said receipt**

For legally admissible proof that the GOVERNMENT and not any single human is the net beneficiary and benefit recipient of everything it does under the alleged authority of law, see:

*Why the Government is the Only Real Beneficiary of All Government Franchises*, Form #05.051

<https://sedm.org/Forms/FormIndex.htm>

#### **Bouvier’s Maxims of Law, 1856**

Cujus est commodum ejus debet esse incommodum. He who receives the benefit should also bear the disadvantage.

Que sentit commodum, sentire debet et onus.

He who derives a benefit from a thing, ought to feel the disadvantages attending it. 2 Bouv. Inst. n. 1433.

Hominum caus jus constitutum est.

Law is established for the benefit of man.

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Injuria propria non cadet in beneficium facientis.  
One's own wrong shall not benefit the person doing it.

Privatum incommodum publico bono peusatur.  
Private inconvenience is made up for by public benefit.  
[Bouvier's Maxims of Law, 1856; SOURCE:  
<http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviersMaxims.htm>]

### **License Tax Cases (1886)**

“Thus, Congress having power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes, may, without doubt, provide for **granting** coasting **licenses**, licenses to pilots, licenses to trade with the Indians, and any other **licenses** necessary or proper for the exercise of that great and extensive power; and the same observation is applicable to every other power of Congress, to the exercise of which the granting of licenses may be incident. All such licenses confer authority, and give rights to the licensee.

But very different considerations apply to the **internal commerce** or **domestic trade** of the **States**. Over this commerce and trade Congress has **no power of regulation nor any direct control**. This power belongs **exclusively** to the States. **No interference by Congress with the business of citizens transacted within a State is warranted by the Constitution, except such as is strictly incidental to the exercise of powers clearly granted to the legislature**. The power to authorize a business within a State is plainly repugnant to the exclusive power of the State over the same subject. It is true that the power of Congress to tax is a very extensive power. It is given in the Constitution, with only one exception and only two qualifications. Congress cannot tax exports, and it must impose direct taxes by the rule of apportionment, and indirect taxes by the rule of uniformity. Thus limited, and thus only, it reaches every subject, and may be exercised at discretion. But, it reaches only existing subjects. **Congress cannot authorize a trade or business within a State in order to tax it.** [Emphasis added]

[License Tax Cases, [72 U.S. 462](#), 18 L.Ed. 497, 5 Wall. 462, 2 A.F.T.R. 2224 (1866)]

### **Flemming v. Nestor (1960)**

“We must conclude that a person covered by the Act [Social Security Act] has not such a right in benefit payments... This is not to say, however, that Congress may exercise its power to modify the statutory scheme free of all constitutional restraint.”

[Flemming v. Nestor, 363 U.S. 603 (1960)]

### **United States Railroad Retirement Board v. Fritz (1980)**

“...railroad benefits, like social security benefits, are not contractual and may be altered or even eliminated at any time.”

[United States Railroad Retirement Board v. Fritz, 449 U.S. 166 (1980)  
36 American

### **36 American Jurisprudence 2d, Franchises, §6: As a Contract (1999)**

“It is generally conceded that a franchise is the subject of a contract between the grantor and the grantee, and that it does in fact constitute a contract when the requisite element of a consideration is present.<sup>64</sup> **Conversely, a franchise granted**

<sup>64</sup> Larson v. South Dakota, 278 U.S. 429, 73 L.Ed. 441, 49 S.Ct. 196; Grand Trunk Western R. Co. v. South Bend, 227 U.S. 544, 57 L.Ed. 633, 33 S.Ct. 303; Blair v. Chicago, 201 U.S. 400, 50 L.Ed. 801, 26 S.Ct. 427; Arkansas-Missouri Power Co. v. Brown, 176 Ark. 774, 4 S.W.2d. 15, 58 A.L.R. 534; Chicago General R. Co. v. Chicago, 176 Ill. 253, 52 N.E. 880; Louisville v. Louisville Home Tel. Co., 149 Ky. 234, 148 S.W. 13; State ex rel. Kansas City v. East Fifth Street R. Co. 140 Mo. 539, 41 S.W. 955; Baker v. Montana Petroleum Co., 99 Mont. 465, 44 P.2d. 735; Re Board of Fire Comrs. 27 N.J. 192, 142 A.2d. 85; Chrysler Light & P. Co. v. Belfield, 58 N.D. 33, 224 N.W. 871, 63 A.L.R. 1337; Franklin County v. Public Utilities Com., 107 Ohio.St. 442, 140 N.E. 87, 30 A.L.R. 429; State ex rel. Daniel v. Broad River Power Co. 157 S.C. 1, 153 S.E. 537; Rutland Electric Light Co. v. Marble City Electric Light Co., 65 Vt. 377, 26 A. 635; Virginia-Western Power Co. v. Commonwealth, 125 Va. 469, 99 S.E. 723, 9 A.L.R. 1148, cert den 251 U.S. 557, 64 L.Ed. 413, 40 S.Ct. 179, disapproved on other grounds Victoria v. Victoria Ice, Light & Power Co. 134 Va. 134, 114 S.E. 92, 28 A.L.R. 562, and disapproved on other grounds Richmond v. Virginia Ry. & Power Co. 141 Va. 69, 126 S.E. 353.

**without consideration is not a contract binding upon the state, franchisee, or pseudo-franchisee.**<sup>65</sup> [Emphasis added]  
[36 American Jurisprudence 2d, Franchises, §6: As a Contract (1999)]

#### **4.11 How constitutional or common law rights are surrendered or rendered ineffectual**

For further details on the subject of this section, see:

*Unalienable Rights Course*, Form #12.038  
<https://sedm.org/Forms/FormIndex.htm>

#### **Downes v. Bidwell (1901)**

“Indeed, the practical interpretation put by Congress upon the Constitution has been long continued and uniform to the effect [182 U.S. 244, 279] that **the Constitution is applicable to territories acquired by purchase or conquest, only when and so far as Congress shall so direct. Notwithstanding its duty to 'guarantee to every state in this Union a republican form of government' (art. 4, 4), by which we understand, according to the definition of Webster, 'a government in which the supreme power resides in the whole body of the people, and is exercised by representatives elected by them, Congress did not hesitate, in the original organization of the territories of Louisiana, Florida, the Northwest Territory, and its subdivisions of Ohio, Indiana, Michigan, Illinois, and Wisconsin and still more recently in the case of Alaska, to establish a form of government bearing a much greater analogy to a British Crown colony than a republican state of America,** and to vest the legislative power either in a governor and council, or a governor and judges, to be appointed by the President. It was not until they had attained a certain population that power was given them to organize a legislature by vote of the people. In all these cases, as well as in territories subsequently organized west of the Mississippi, Congress thought it necessary either to extend to Constitution and laws of the United States over them, or to declare that the inhabitants should be entitled to enjoy the right of trial by jury, of bail, and of the privilege of the writ of habeas corpus, as well as other privileges of the bill of rights.” [Emphasis added]  
[Downes v. Bidwell, [182 U.S. 244](#) (1901)]

#### **The Privileges and Immunities of State Citizenship, Roger Howell, PhD, 1918, pp. 9-10**

"The words "privileges" and "immunities," like the greater part of the legal phraseology of this country, have been carried over from the law of Great Britain, and recur constantly either as such or in equivalent expressions from the time of Magna Charta. For all practical purposes they are synonymous in meaning, and originally signified a peculiar right or private law conceded to particular persons or places **whereby a certain individual or class of individuals was exempted from the rigor of the common law.** Privilege or immunity is conferred upon any person when he is invested with a legal claim to the exercise of special or peculiar rights, authorizing him to enjoy some particular advantage or exemption." [Emphasis added]

[The Privileges and Immunities of State Citizenship, Roger Howell, PhD, 1918, pp. 9-10;

SOURCE:

[http://famguardian.org/Publications/ThePrivAndImmOfStateCit/The\\_privileges\\_and\\_immunities\\_of\\_state\\_c.pdf](http://famguardian.org/Publications/ThePrivAndImmOfStateCit/The_privileges_and_immunities_of_state_c.pdf)]

#### **Ashwander v. Tennessee Valley Authority (1936)**

The Court developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision. They are:

[. . .]

6. The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits. FN7 Great Falls Mfg. Co. v. Attorney General, 124 U.S. 581, 8 S.Ct. 631, 31 L.Ed. 527; Wall v. Parrot Silver & Copper Co., 244 U.S. 407, 411, 412, 37 S.Ct. 609, 61 L.Ed. 1229; St. Louis Malleable Casting Co. v. Prendergast Construction Co., 260 U.S. 469, 43 S.Ct. 178, 67 L.Ed. 351.

FN7 Compare Electric Co. v. Dow, 166 U.S. 489, 17 S.Ct. 645, 41 L.Ed. 1088; Pierce v. Somerset Ry., 171 U.S. 641, 648, 19 S.Ct. 64, 43 L.Ed. 316; Leonard v. Vicksburg, etc., R. Co., 198 U.S. 416, 422, 25 S.Ct. 750, 49 L.Ed. 1108.

<sup>65</sup> Pennsylvania R. Co. v. Bowers, 124 Pa. 183, 16 A. 836.

[Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 56 S.Ct. 466 (1936)]

See:

*Why Statutory Civil Law is Law for Government and Not Private Persons*, Form #05.037  
<http://sedm.org/Forms/FormIndex.htm>

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#### **Rutan v. Republican Party of Illinois (1990)**

**“The restrictions that the Constitution places upon the government in its capacity as lawmaker, i.e., as the regulator of private conduct, are not the same as the restrictions that it places upon the government in its capacity as employer. We have recognized this in many contexts, with respect to many different constitutional guarantees.**

Private citizens perhaps cannot be prevented from wearing long hair, but policemen can. *Kelley v. Johnson*, [425 U.S. 238, 247](#) (1976). Private citizens cannot have their property searched without probable cause, but in many circumstances government employees can. *O'Connor v. Ortega*, [480 U.S. 709, 723](#) (1987) (plurality opinion); *id.*, at 732 (SCALIA, J., concurring in judgment). Private citizens cannot be punished for refusing to provide the government information that may incriminate them, but government employees can be dismissed when the incriminating information that they refuse to provide relates to the performance of their job. *Gardner v. Broderick*, [497 U.S. 62, 95] [392 U.S. 273, 277](#)-278 (1968). With regard to freedom of speech in particular: Private citizens cannot be punished for speech of merely private concern, but government employees can be fired for that reason. *Connick v. Myers*, [461 U.S. 138, 147](#) (1983). Private citizens cannot be punished for partisan political activity, but federal and state employees can be dismissed and otherwise punished for that reason. *Public Workers v. Mitchell*, [330 U.S. 75, 101](#) (1947); *Civil Service Comm’n v. Letter Carriers*, [413 U.S. 548, 556](#) (1973); *Broadrick v. Oklahoma*, [413 U.S. 601, 616](#) -617 (1973).” [Emphasis added]

[*Rutan v. Republican Party of Illinois*, [497 U.S. 62](#) (1990)]

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#### **4.12 Origin of government “obligations” (public rights)**

For more on the subject of this section, see:

1. *Lawfully Avoiding Government Obligations Course*, Form #12.040  
<https://sedm.org/Forms/FormIndex.htm>
2. Proof of Claim: Your Main Defense Against Government Greed and Corruption, Form #09.073  
<https://sedm.org/Forms/FormIndex.htm>

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#### **California Civil Code, Section 22.2**

Civil Code - CIV

##### DEFINITIONS AND SOURCES OF LAW

(Heading added by Stats. 1951, Ch. 655, in conjunction with Sections 22, 22.1, and 22.2 )

22.2. The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, is the rule of decision in all the courts of this State. (Added by Stats. 1951, Ch. 655.)

[California Civil Code, §22.2]

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#### **California Civil Code, Section 1427: Definition of “Obligations”**

Civil Code - CIV

##### DIVISION 3. OBLIGATIONS [1427 - 3272.9]

( Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14. )

PART 1. OBLIGATIONS IN GENERAL [1427 - 1543] ( Part 1 enacted 1872. ) TITLE 1. DEFINITION OF OBLIGATIONS [1427 - [1428.]] ( Title 1 enacted 1872.)

1427. An obligation is a legal duty, by which a person is bound to do or not to do a certain thing.

(Enacted 1872.)

[California Civil Code, §1427]

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#### **California Civil Code, Section 1428: How “obligations” are created**

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#### ***Sovereignty and Freedom Points and Authorities***

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Civil Code – CIV

DIVISION 3. OBLIGATIONS [1427 - 3272.9]

( Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14. )

PART 1. OBLIGATIONS IN GENERAL [1427 - 1543] ( Part 1 enacted 1872. )

TITLE 1. DEFINITION OF OBLIGATIONS [1427 - [1428.]] (Title 1 enacted 1872.)

[1428.] Section Fourteen Hundred and Twenty-eight. An obligation arises either from:

One — The contract of the parties; or,

Two — The operation of law. An obligation arising from operation of law may be enforced in the manner provided by law, or by civil action or proceeding.

(Amended by Code Amendments 1873-74, Ch. 612.)

[California Civil Code, §1428]

### **California Civil Code, Section 1708: Obligations imposed by REAL “law”**

Civil Code – CIV

DIVISION 3. OBLIGATIONS [1427 - 3272.9]

( Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14. )

PART 3. OBLIGATIONS IMPOSED BY LAW [1708 - 1725]

( Part 3 enacted 1872. )

1708. Every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his or her rights.

(Amended by Stats. 2002, Ch. 664, Sec. 38.5. Effective January 1, 2003.)

[California Civil Code, §1708]

### **Proof of Claim: Your Main Defense Against Government Greed and Corruption, Form #09.073, Section 2.2**

Article I is labeled the "**Declaration of Rights**" and contains 32 sections. The first section **declares**:

*"All people are by nature free and independent and have **inalienable rights**. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."*

**Nowhere** in the entire California Constitution is there any right delegated to legislators to enact any statute against the inalienable rights of people as guaranteed in Article I.

**It is your right to challenge the presumption of obligation in the form of licenses, tickets, franchises, fines, taxation, etc.**

Section **22.2** of the California Civil Code (“CCC”) shows that the **common law** shall be the rule of decision in all the courts of this State. CCC sections **1427** and **1428** establish that **obligations** are **legal duties** arising either from **contract of the parties**, or **the operation of law**.

CCC section **1708** states that the obligations imposed by operation of law are only to abstain from injuring the person or property of another, or infringing upon any of his or her rights. See for yourself below:

**Copied on October 11, 2017, from the following link:**

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=22.2.&lawCode=CIV](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=22.2.&lawCode=CIV)

*Civil Code - CIV*

*DEFINITIONS AND SOURCES OF LAW*

*(Heading added by Stats. 1951, Ch. 655, in conjunction with Sections 22, 22.1, and 22.2)*

*22.2. The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, is the rule of decision in all the courts of this State. (Added by Stats. 1951, Ch. 655.)*

***Sovereignty and Freedom Points and Authorities***

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Civil Code - CIV

DIVISION 3. OBLIGATIONS [1427 - 3272.9]

(Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.)

PART 1. OBLIGATIONS IN GENERAL [1427 - 1543] (Part 1 enacted 1872.)

TITLE 1.

DEFINITION OF OBLIGATIONS [1427 - [1428.]] (Title 1 enacted 1872.)

1427. An obligation is a legal duty, by which a person is bound to do or not to do a certain thing.

(Enacted 1872.)

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Civil Code – CIV

DIVISION 3. OBLIGATIONS [1427 - 3272.9]

(Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.)

PART 1. OBLIGATIONS IN GENERAL [1427 - 1543] (Part 1 enacted 1872.)

TITLE 1. DEFINITION OF OBLIGATIONS [1427 - [1428.]] (Title 1 enacted 1872.)  
[1428.] Section Fourteen Hundred and Twenty-eight. An obligation arises either from:

One — The contract of the parties; or,

Two — The operation of law. An obligation arising from operation of law may be enforced in the manner provided by law, or by civil action or proceeding.

(Amended by Code Amendments 1873-74, Ch. 612.)

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Civil Code – CIV

DIVISION 3. OBLIGATIONS [1427 - 3272.9]

(Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.)

PART 3. OBLIGATIONS IMPOSED BY LAW [1708 - 1725]

(Part 3 enacted 1872.)

1708. Every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his or her rights.

(Amended by Stats. 2002, Ch. 664, Sec. 38.5. Effective January 1, 2003.)

THUS, there are only two ways to incur an obligation:

- (1) Bound by contract:
  - a) - private (which may be set under common law, or civil law); or
  - b) - public (encompassing the whole body of civil law).
- (2) Bound by operation of law (without contract) upon injury of person or property of another, or infringing upon any of his or her rights.

By notifying a public servant that you retain your rights, you engage their fiduciary duty to act in accordance to the constitutional protections against government interference with your life.

Since no legislator is granted the right to enact statutes against your inalienable rights, there can be NO statute conferring authority upon any public servant to compel performance upon or from you, as such would be a trespass against your inalienable rights.

Such trespass is actionable in either

- a) a common law court of record which guarantees a trial by jury for any matter where damages may exceed \$20 or
- b) administrative courts governed by civil law.



In either case, the injured party must present a verified<sup>66</sup> claim.

**Know the rules of valid claims.** No smoking gun = no proof; No harm or foul = no valid claim; No harm, loss or injury = no valid claim. No contract = no breach of any contract = no valid claim. If there is no verifiable claim of harm, loss or injury, there can be no common law or civil crime, nor civil violation.

**Know the elements of valid contract.**

**Contract:** An agreement between *two* or more *parties* to perform or to refrain from some act now or in the *future*. A legally enforceable agreement.<sup>67</sup>

[*Proof of Claim: Your Main Defense Against Government Greed and Corruption*, Form #09.073, Section 2.2; SOURCE: <https://sedm.org/Forms/FormIndex.htm>]

#### 4.13 **How government transitions from a PROTECTOR of unalienable rights to a PREDATOR and THIEF of those rights**

*"In every government on earth is some trace of human weakness, some germ of corruption and degeneracy, which cunning will discover, and wickedness insensibly open, cultivate and improve."*  
 [Thomas Jefferson: Notes on Virginia Q.XIV, 1782. ME 2:207; SOURCE: <https://famguardian.org/Subjects/Politics/ThomasJefferson/jeffcont.htm>]

For more on the subject of this section, see:

1. *De Facto Government Scam*, Form #05.043  
<https://sedm.org/Forms/FormIndex.htm>
2. *Government Corruption: Causes and Remedies Course*, Form #11.412  
<https://sedm.org/Forms/FormIndex.htm>
3. *Government Corruption*, Form #11.401  
<https://sedm.org/home/government-corruption/>

#### **Downes v. Bidwell (1901)**

In view of the adjudications of this court, I cannot assent to the proposition, whether it be announced in express words or by implication, that the National Government is a government of or by the States in union, and that the prohibitions and limitations of the Constitution are addressed only to the States. That is but another form of saying that like the government created by the Articles of Confederation, the present government is a mere league of States, held together by compact between themselves; whereas, as this court has often declared, it is a government created by the People of the United States, with enumerated powers, and supreme over States and individuals, with respect to certain objects, throughout the entire territory over which its jurisdiction extends. If the National Government is, in any sense, a compact, it is a compact between the People of the United States among themselves as constituting in the aggregate the political community by whom the National Government was established. **The Constitution speaks not simply to the States in their organized capacities, but to all peoples, whether of States or territories, who are subject to the authority of the United States.** [Martin v. Hunter, 1 Wheat. 304, 327.](#)

**In the opinion to which I am referring it is also said that the "practical interpretation put by Congress upon the Constitution has been long continued and uniform to the effect that the Constitution is applicable to territories acquired by purchase or conquest only when and so far as Congress shall so direct;" that while all power of government may be abused, the same may be said of the power of the Government "under the Constitution as well as outside of it;" that "if it once be conceded that we are at liberty to acquire foreign territory, a presumption arises that 379\*379 our power with respect to such territories is the same power which other nations have been accustomed to exercise with respect to territories acquired by them;" that "the liberality of Congress in legislating the Constitution into all our contiguous territories has undoubtedly fostered the impression that it went there by its**

<sup>66</sup> Verification. Confirmation of correctness, truth, or authenticity, by affidavit, oath, or deposition. [Sheeley v. Justice of Santa Clara, 215 Cal.App.2d. 47, 48. (Black's Law 5th) [Emphasis added]]

<sup>67</sup> Contracts: Basic Principles 430x, Talor S. Klett, CPA, J.D.; SOURCE: <http://www.shsu.edu/klett/CONTRACTS%20BASIC%20PRINCIPLES%20ch%2010%20new.htm>

own force, but there is nothing in the Constitution itself, and little in the interpretation put upon it, to confirm that impression;" that as the States could only delegate to Congress such powers as they themselves possessed, and as they had no power to acquire new territory, and therefore none to delegate in that connection, the logical inference is that "if Congress had power to acquire new territory, which is conceded, that power was not hampered by the constitutional provisions;" that if "we assume that the territorial clause of the Constitution was not intended to be restricted to such territory as the United States then possessed, there is nothing in the Constitution to indicate that the power of Congress in dealing with them was intended to be restricted by any of the other provisions;" and that "the executive and legislative departments of the Government have for more than a century interpreted this silence as precluding the idea that the Constitution attached to these territories as soon as acquired."

These are words of weighty import. They involve consequences of the most momentous character. I take leave to say that if the principles thus announced should ever receive the sanction of a majority of this court, a radical and mischievous change in our system of government will be the result. We will, in that event, pass from the era of constitutional liberty guarded and protected by a written constitution into an era of legislative absolutism.

Although from the foundation of the Government this court has held steadily to the view that the Government of the United States was one of enumerated powers, and that no one of its branches, nor all of its branches combined, could constitutionally exercise powers not granted, or which were not necessarily implied from those expressly granted, [Martin v. Hunter, 1 Wheat. 304, 326, 331](#), we are now informed that Congress possesses powers outside of the Constitution, and may deal with new territory, <sup>380</sup><sup>380</sup> acquired by treaty or conquest, in the same manner as other nations have been accustomed to act with respect to territories acquired by them. In my opinion, Congress has no existence and can exercise no authority outside of the Constitution. Still less is it true that Congress can deal with new territories just as other nations have done or may do with their new territories. This nation is under the control of a written constitution, the supreme law of the land and the only source of the powers which our Government, or any branch or officer of it, may exert at any time or at any place. Monarchical and despotic governments, unrestrained by written constitutions, may do with newly acquired territories what this Government may not do consistently with our fundamental law. To say otherwise is to concede that Congress may, by action taken outside of the Constitution, engraft upon our republican institutions a colonial system such as exists under monarchical governments. Surely such a result was never contemplated by the fathers of the Constitution. If that instrument had contained a word suggesting the possibility of a result of that character it would never have been adopted by the People of the United States. The idea that this country may acquire territories anywhere upon the earth, by conquest or treaty, and hold them as mere colonies or provinces — the people inhabiting them to enjoy only such rights as Congress chooses to accord to them — is wholly inconsistent with the spirit and genius as well as with the words of the Constitution.

The idea prevails with some — indeed, it found expression in arguments at the bar — that we have in this country substantially or practically two national governments; one, to be maintained under the Constitution, with all its restrictions; the other to be maintained by Congress outside and independently of that instrument, by exercising such powers as other nations of the earth are accustomed to exercise. It is one thing to give such a latitudinarian construction to the Constitution as will bring the exercise of power by Congress, upon a particular occasion or upon a particular subject, within its provisions. It is quite a different thing to say that Congress may, if it so elects, proceed outside of the Constitution. The glory of our American system <sup>381</sup><sup>381</sup> of government is that it was created by a written constitution which protects the people against the exercise of arbitrary, unlimited power, and the limits of which instrument may not be passed by the government it created, or by any branch of it, or even by the people who ordained it, except by amendment or change of its provisions. "To what purpose," Chief Justice Marshall said in [Marbury v. Madison, 1 Cranch, 137, 176](#), "are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation."

The wise men who framed the Constitution, and the patriotic people who adopted it, were unwilling to depend for their safety upon what, in the opinion referred to, is described as "certain principles of natural justice inherent in Anglo-Saxon character which need no expression in constitutions or statutes to give them effect or to secure dependencies against legislation manifestly hostile to their real interests." They proceeded upon the theory — the wisdom of which experience has vindicated — that the only safe guaranty against governmental oppression was to withhold or restrict the power to oppress. They well remembered that Anglo-Saxons across the ocean had attempted, in defiance of law and justice, to trample upon the rights of Anglo-Saxons on this continent and had sought, by military force, to establish a government that could at will destroy the privileges that inhere in liberty. They believed that the establishment here of a government that could administer public affairs according to its will unrestrained by any fundamental law and without regard to the inherent rights of freemen, would be ruinous to the liberties of the people by exposing them to the oppressions of arbitrary power. Hence, the Constitution enumerates the powers which Congress and the other Departments may

**exercise — leaving unimpaired, to the States or the People, the powers not delegated to the National Government nor prohibited to the States. That instrument so expressly declares in 382\*382 the Tenth Article of Amendment. It will be an evil day for American liberty if the theory of a government outside of the supreme law of the land finds lodgment in our constitutional jurisprudence. No higher duty rests upon this court than to exert its full authority to prevent all violation of the principles of the Constitution.**

**Again, it is said that Congress has assumed, in its past history, that the Constitution goes into territories acquired by purchase or conquest only when and as it shall so direct, and we are informed of the liberality of Congress in legislating the Constitution into all our contiguous territories. This is a view of the Constitution that may well cause surprise, if not alarm. Congress, as I have observed, has no existence except by virtue of the Constitution. It is the creature of the Constitution. It has no powers which that instrument has not granted, expressly or by necessary implication. I confess that I cannot grasp the thought that Congress which lives and moves and has its being in the Constitution and is consequently the mere creature of that instrument, can, at its pleasure, legislate or exclude its creator from territories which were acquired only by authority of the Constitution.**

By the express words of the Constitution, every Senator and Representative is bound, by oath or affirmation, to regard it as the supreme law of the land. When the Constitutional Convention was in session there was much discussion as to the phraseology of the clause defining the supremacy of the Constitution, laws and treaties of the United States. At one stage of the proceedings the Convention adopted the following clause: "This Constitution, and the laws of the United States made in pursuance thereof, and all the treaties made under the authority of the United States, shall be the supreme law of the several States and of their citizens and inhabitants, and the judges of the several States shall be bound thereby in their decisions, anything in the constitutions or laws of the several States to the contrary notwithstanding." This clause was amended, on motion of Mr. Madison, by inserting after the words "all treaties made" the words "or which shall be made." If the clause, so amended, had been inserted in the Constitution as finally adopted, perhaps 383\*383 there would have been some justification for saying that the Constitution, laws and treaties of the United States constituted the supreme law only in the States, and that outside of the States the will of Congress was supreme. **But the framers of the Constitution saw the danger of such a provision, and put into that instrument in place of the above clause the following: "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding." Meigs's Growth of the Constitution, 284, 287. That the Convention struck out the words "the supreme law of the several States" and inserted "the supreme law of the land," is a fact of no little significance. The "land" referred to manifestly embraced all the peoples and all the territory, whether within or without the States, over which the United States could exercise jurisdiction or authority.**

Further, it is admitted that some of the provisions of the Constitution do apply to Porto Rico and may be invoked as limiting or restricting the authority of Congress, or for the protection of the people of that island. And it is said that there is a clear distinction between such prohibitions "as go to the very root of the power of Congress to act at all, irrespective of time or place, and such as are operative only 'throughout the United States' or among the several States." In the enforcement of this suggestion it is said in one of the opinions just delivered: "Thus, when the Constitution declares that 'no bill of attainder or ex post facto law shall be passed, and that 'no title of nobility shall be granted by the United States, it goes to the competency of Congress to pass a bill of that description." I cannot accept this reasoning as consistent with the Constitution or with sound rules of interpretation. The express prohibition upon the passage by Congress of bills of attainder, or of ex post facto laws, or the granting of titles of nobility, goes no more directly to the root of the power of Congress than does the express prohibition against the imposition by Congress of any 384\*384 duty, impost or excise that is not uniform throughout the United States. **The opposite theory, I take leave to say, is quite as extraordinary as that which assumes that Congress may exercise powers outside of the Constitution, and may, in its discretion, legislate that instrument into or out of a domestic territory of the United States.**

In the opinion to which I have referred it is suggested that conditions may arise when the annexation of distant possessions may be desirable. "If," says that opinion, "those possessions are inhabited by alien races, differing from us in religion, customs, laws, methods of taxation and modes of thought, the administration of government and justice, according to Anglo-Saxon principles, may for a time be impossible; and the question at once arises whether large concessions ought not to be made for a time, that ultimately our own theories may be carried out, and the blessings of a free government under the Constitution extended to them. We decline to hold that there is anything in the Constitution to forbid such action." In my judgment, the Constitution does not sustain any such theory of our governmental system. Whether a particular race will or will not assimilate with our people, and whether they can or cannot with safety to our institutions be brought within the operation of the Constitution, is a matter to be thought of when it is proposed to acquire their territory by treaty. A mistake in the acquisition of territory, although such acquisition seemed at the time to be necessary, cannot be made the ground for violating the Constitution or refusing to give full effect to its provisions. **The Constitution is not to be obeyed or disobeyed as the circumstances of a particular crisis in our history may suggest the one or the other course to be**

**pursued. The People have decreed that it shall be the supreme law of the land at all times. When the acquisition of territory becomes complete, by cession, the Constitution necessarily becomes the supreme law of such new territory, and no power exists in any Department of the Government to make "concessions" that are inconsistent with its provisions. The authority to make such concessions implies the existence in Congress of power to declare that constitutional provisions may be ignored under special or <sup>385</sup>\*<sup>385</sup> embarrassing circumstances. No such dispensing power exists in any branch of our Government. The Constitution is supreme over every foot of territory, wherever situated, under the jurisdiction of the United States, and its full operation cannot be stayed by any branch of the Government in order to meet what some may suppose to be extraordinary emergencies.** If the Constitution is in force in any territory, it is in force there for every purpose embraced by the objects for which the Government was ordained. Its authority cannot be displaced by concessions, even if it be true, as asserted in argument in some of these cases, that if the tariff act took effect in the Philippines of its own force, the inhabitants of Mandanao, who live on imported rice, would starve, because the import duty is many fold more than the ordinary cost of the grain to them. **The meaning of the Constitution cannot depend upon accidental circumstances arising out of the products of other countries or of this country. We cannot violate the Constitution in order to serve particular interests in our own or in foreign lands. Even this court, with its tremendous power, must heed the mandate of the Constitution.** No one in official station, to whatever department of the Government he belongs, can disobey its commands without violating the obligation of the oath he has taken. By whomsoever and wherever power is exercised in the name and under the authority of the United States, or of any branch of its Government, the validity or invalidity of that which is done must be determined by the Constitution. In *DeLima v. Bidwell*, just decided, we have held that upon the ratification of the treaty with Spain, Porto Rico ceased to be a foreign country and became a domestic territory of the United States. We have said in that case that from 1803 to the present time there was not a shred of authority, except a dictum in one case, "for holding that a district ceded to and in possession of the United States remains for any purpose a foreign territory;" that territory so acquired cannot be "domestic for one purpose and foreign for another;" and that any judgment to the contrary would be "pure judicial legislation," for which there was no warrant in the Constitution or in the powers conferred upon this court. Although, as we have just decided, <sup>386</sup>\*<sup>386</sup> Porto Rico ceased, after the ratification of the treaty with Spain, to be a foreign country within the meaning of the tariff act, and became a domestic country — "a territory of the United States" — it is said that if Congress so wills it may be controlled and governed outside of the Constitution and by the exertion of the powers which other nations have been accustomed to exercise with respect to territories acquired by them; in other words, we may solve the question of the power of Congress under the Constitution, by referring to the powers that may be exercised by other nations. I cannot assent to this view. **I reject altogether the theory that Congress, in its discretion, can exclude the Constitution from a domestic territory of the United States, acquired, and which could only have been acquired, in virtue of the Constitution.** I cannot agree that it is a domestic territory of the United States for the purpose of preventing the application of the tariff act imposing duties upon imports from foreign countries, but not a part of the United States for the purpose of enforcing the constitutional requirement that all duties, imposts and excises imposed by Congress "shall be uniform throughout the United States." **How Porto Rico can be a domestic territory of the United States, as distinctly held in *DeLima v. Bidwell*, and yet, as is now held, not embraced by the words "throughout the United States," is more than I can understand.**

We heard much in argument about the "expanding future of our country." It was said that the United States is to become what is called a "world power;" and that if this Government intends to keep abreast of the times and be equal to the great destiny that awaits the American people, it must be allowed to exert all the power that other nations are accustomed to exercise. **My answer is, that the fathers never intended that the authority and influence of this nation should be exerted otherwise than in accordance with the Constitution. If our Government needs more power than is conferred upon it by the Constitution, that instrument provides the mode in which it may be amended and additional power thereby obtained. The People of the United States who ordained the Constitution never supposed that a change could be made in our system of government <sup>387</sup>\*<sup>387</sup> by mere judicial interpretation. They never contemplated any such juggling with the words of the Constitution as would authorize the courts to hold that the words "throughout the United States," in the taxing clause of the Constitution, do not embrace a domestic "territory of the United States" having a civil government established by the authority of the United States. This is a distinction which I am unable to make, and which I do not think ought to be made when we are endeavoring to ascertain the meaning of a great instrument of government.**" [Emphasis added]

[Downes v. Bidwell, [182 U.S. 244](#) (1901), Justice Harlan, Dissenting]

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**4.14 “Benefits”: ALLEGED but not ACTUAL public rights/property that CANNOT form lawful “consideration” in forming a lawful contract or civil statutory obligation**

Keep in mind that the only lawful method of creating a legally enforceable civil or statutory obligation under the common law is by contract or consent in some form and not mere “acquiescence” or “sub silentio”. A contract, in turn, is only valid if it involves MUTUAL consideration and MUTUAL obligation. Without BOTH elements, then the contract is unenforceable. An alleged contract or compact in which ONLY ONE of the two sides has an obligation to deliver REAL, TANGIBLE consideration is no contract at all, but a mere THEFT disguised as government benevolence.

In reality, governments have no legal obligation to deliver the main consideration that made the other party willing to consent to being with. Thus, in practice the term “benefit” functions as the equivalent of a lottery ticket in which there is usually a VERY limited possibility that you might win the lotto and collect SOMETHING in return for your contributions. All governments throughout history that have managed to escape legal accountability for PAYING the consideration that would render the contract enforceable against the other party ALWAYS turn the “benefit” into a Ponzi Scheme. That Ponzi Scheme is described BY GOD in:

*Social Security: Mark of the Beast*, Form #11.407  
<http://famguardian.org/Publications/SocialSecurity/TOC.htm>

We’re sure you’ve seen signs at your local zoo which say:

*“Don’t Feed the Animals”.*

If God describes the GOVERNMENT above as such an “animal” or “Beast”, you shouldn’t feed IT either! If you DO make the huge mistake of feeding it, it will NEVER leave you alone until it has ultimately consumed ALL YOUR FLESH.

More evidence useful in learning more about the subject of the following subsections can be found at:

1. *Sovereignty Forms and Instructions Online*, Form #10.005, Cites by Topic: “Benefit”  
<https://famguardian.org/TaxFreedom/CitesByTopic/Benefit.htm>
2. *Federal Enforcement Authority Within States of the Union*, Form #05.032  
<https://sedm.org/Forms/FormIndex.htm>
3. *Challenge to Income Tax Enforcement Authority Within Constitutional States of the Union*, Form #05.052  
<https://sedm.org/Forms/FormIndex.htm>
4. *Why the Federal Income Tax is a Privilege Tax Upon Government Property*, Form #04.404  
<https://sedm.org/Forms/FormIndex.htm>
5. *Test for Federal Tax Professionals*, Form #03.009  
<https://sedm.org/Forms/FormIndex.htm>
6. *Federal Jurisdiction*, Form #05.018  
<https://sedm.org/Forms/FormIndex.htm>

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**4.14.1 [5 U.S.C. §552a\(a\)\(12\)-Records maintained on individuals](#)**

[TITLE 5 > PART I > CHAPTER 5 > SUBCHAPTER II > §552a](#)  
[§552a. Records maintained on individuals](#)

(a) Definitions.— For purposes of this section—

(12) the term “**Federal benefit program**” means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals;. . .



**4.14.2 Black's Law Dictionary, Sixth Edition, p. 158**

**Benefit.** Advantage; profit; fruit; privilege; gain; interest. **The receiving** as the exchange for promise some performance or forbearance which promisor was not previously entitled to receive. *Graphic Arts Finishers, Inc. v. Boston Redevelopment Authority*, 357 Mass. 49, 255 N.E.2d. 793, 795. Benefits are something to advantage of, or profit to, recipient. *Cheltenham Tp. v. Cheltenham Tp. Police Dept.*, 11 Pa.Cmwlt. 348, 312 A.2d. 835, 838.

Financial assistance received in time of sickness, disability, unemployment, etc. either from insurance or public programs such as social security.

**Contracts.** When it is said that a valuable consideration for a promise may consist of a benefit to the promisor, "benefit" means that the promisor has, in return for his promise, acquired some legal right to which he would not otherwise have been entitled. *Woolum v. Sizemore*, 267 Ky. 384, 102 S.W.2d. 323, 324. "Benefits" of contract are advantages which result to either party from performance by other. *DeCarlo v. Geryco, Inc.* 46 N.C. App. 15, 264 S.E.2d. 370, 375.

**Eminent domain.** It is a rule that, in assessing damages for private property taken or injured for public use, "special benefits" may be set off against the amount of damage found, but not "general benefits." Within the meaning of this rule, general benefits are such as accrue to the community at large, to the vicinage, or to all property similarly situated with reference to the work or improvement in question; while special benefits are such as accrue directly and solely to the owner of the land in question and not to others.

As respects eminent domain law, "general benefits" are those which arise from the fulfillment of the public object which justified the taking, while "special benefits" are those which arise from the particular relation of the land in question to the public improvement. *Morehead v. State Dept. of Roads*, 195 Neb. 31, 236 N.W.2d. 623, 627.  
[Black's Law Dictionary, Sixth Edition, p. 158]

**4.14.3 Family Guardian Website Opening Page (Bottom)**

People of all races, genders, political beliefs, sexual orientations, and nearly all religions are welcome here. All are treated equally under REAL "law". The only way to remain truly free and equal under the civil law is to avoid seeking government civil services, benefits, property, special or civil status, exemptions, privileges, or special treatment. All such pursuits of government services or property require individual and lawful consent to a franchise and the surrender of inalienable constitutional rights AND EQUALITY in the process, and should therefore be AVOIDED. The rights and equality given up are the "cost" of procuring the "benefit" or property from the government, in fact. Nothing in life is truly "free". Anyone who claims that such "benefits" or property should be free and cost them nothing is a thief who wants to use the government as a means to STEAL on his or her behalf. All just rights spring from responsibilities/obligations under the laws of a higher power. If that higher power is God, you can be truly and objectively free. If it is government, you are guaranteed to be a slave because they can lawfully set the cost of their property as high as they want as a Merchant under the U.C.C. If you want it really bad from people with a monopoly, then you will pay dearly for the privilege. There are NO constitutional limits on the price government can charge for their monopoly services or property. Those who want no responsibilities can have no real/PRIVATE rights, but only privileges dispensed to wards of the state which are disguised to LOOK like unalienable rights. Obligations and rights are two sides of the same coin, just like self-ownership and personal responsibility. For the biblical version of this paragraph, read 1 Sam. 8:10-22. For the reason God answered Samuel by telling him to allow the people to have a king, read Deut. 28:43-51, which is God's curse upon those who allow a king above them. Click Here (<https://famguardian.org/Subjects/Taxes/Evidence/HowSeCorruptOurRepubGovt.htm>) for a detailed description of the legal, moral, and spiritual consequences of violating this paragraph.

[Family Guardian Website, Opening Page (bottom); <https://famguardian.org>]

**4.14.4 Maxims of Law on "Benefit"**

"Cujus est commodum ejus debet esse incommodum. He who receives the benefit should also bear the disadvantage."

Hominum caus jus constitutum est. Law is established for the benefit of man.

Injuria propria non cadet in beneficium facientis. One's own wrong shall not benefit the person doing it.

***Sovereignty and Freedom Points and Authorities***

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Invito beneficium non datur. No one is obliged to accept a benefit against his consent. Dig. 50, 17, 69. But if he does not dissent he will be considered as assenting. Vide Assent.

Potest quis renunciare pro se, et suis, juri quod pro se introductum est. A man may relinquish, for himself and his heirs, a right which was introduced for his own benefit. See 1 Bouv. Inst. n. 83.

Privatum incommodum publico bono peusatur. Private inconvenience is made up for by public benefit.

Privilegium est beneficium personale et extinguitur cum person. A privilege is a personal benefit and dies with the person. 3 Buls. 8.

Que sentit commodum, sentire debet et onus. He who derives a benefit from a thing, ought to feel the disadvantages attending it. 2 Bouv. Inst. n. 1433.

Quilibet potest renunciare juri pro se inducto. Any one may renounce a law introduced for his own benefit. To this rule there are some exceptions. See 1 Bouv. Inst. n. 83.

[Bouvier's Maxims of Law, 1856; <https://famguardian.org/Publications/BouvierMaximsOfLaw/BouviereMaxims.htm>]

#### **4.14.5 Who Gets to Decide if It's a "Benefit"?**

SEDM Member Agreement, Form #01.001

"10. I regard any attempt by any judge or government officer to associate ANY civil statutory status, legal status, or public right with me or others in the context of my EXCLUSIVELY PRIVATE interactions with the Ministry or any government as:

10.1 A criminal act of identity theft. See: Government Identity Theft, Form #05.046; <http://sedm.org/Forms/FormIndex.htm>.

10.2 An attempt by a corrupted government to compel me to contract with them by making me party to a "social compact" that I want nothing to do with.

10.3 A direct interference with my unalienable right to PRIVATELY contract or NOT contract as I see fit.

10.4 An attempt to offer me "protection" that I define as an INJURY and NOT protection.

10.5 THEFT of my property and rights to property.

10.6 An act of international terrorism.

10.7 The legal equivalent of outlawing PRIVATE property and PRIVATE rights. All governments are established to PROTECT private property, not outlaw its exercise or possession by associating public statuses with it without the express consent of the owner in EACH SPECIFIC case. The ability to regulate EXCLUSIVELY PRIVATE rights is repugnant to the Constitution and I define this relationship as EXCLUSIVELY PRIVATE and therefore entirely beyond control, taxation, regulation, or protection by any government.

Such civil statuses include, but are not limited to STATUTORY "citizen", "resident", "person", "individual", "taxpayer", "U.S. citizen", "citizen of the United States", etc. The reasons are documented in Your Exclusive Right to Declare or Establish Your Civil Status, Form #13.008; <http://sedm.org/Forms/FormIndex.htm>. The common law and equity ALONE administered by a jury of disinterested peers who shall judge the law AND the facts is the only vehicle available to resolve disputes among and between parties to this agreement. All government judges, all of whom have a criminal conflict of interest, are hereby FIRED entirely from any participation in such a dispute."

[SEDM Member Agreement, Form #01.001; SOURCE: <https://sedm.org/participate/member-agreement/>]

#### **4.14.6 Separation Between Public and Private Course, Form #12.025**

1. Does the government allege that I am in receipt, custody, or stewardship over any government/public property?

2. If the answer to question 1 is YES, then please itemize such property.

3. If the answer to question 1 is NO, then:

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1. BY WHAT authority does the government claim a right to control, use, or STEAL my property or labor under [Article 4, Section 3, Clause 2](#) of the Constitution? (relating to the right to “make needful rules” for PUBLIC property).

2. Why don't I have the right to control or regulate YOU the government because you are attempting to use or control or “benefit” from my absolutely owned private property? ALL are equal under REAL law, and what you can do to ME I can do to YOU!

4. Does the government claim as the source of its enforcement authority the following:

*“A matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.”*  
[\[5 U.S.C. §553\(a\)\(2\)\]](#)

5. Does the government claim that I am in receipt of a “benefit” of any kind?

6. Does the government allege that Social Security is a “benefit” or conveys a public property right?

7. Does the government allege that I specifically am eligible for Social Security as a “benefit”?

*(See Form #06.001 proving that Social Security may NOT lawfully be offered in the EXCLUSIVE jurisdiction of a state of the Union and that if it is, the separation of powers is violated)*  
<https://sedm.org/Forms/06-AvoidingFranch/SSNotEligible.pdf>

8. Is the government aware that Social Security is not a CONTRACT and conveys no ABSOLUTE PRIVATE RIGHT to receive a “benefit”?

*“We must conclude that a person covered by the Act has not such a right in benefit payments... This is not to say, however, that Congress may exercise its power to modify the statutory scheme free of all constitutional restraint.”*  
*[Flemming v. Nestor, 363 U.S. 603 (1960)]*

9. Admit that the only place the national government can proceed “free of all constitutional restraint” based on the previous question is one of the following:

9.1. On federal territory where the constitution does not apply.

9.2. Abroad, where the constitution ALSO does not apply.

9.3. Among its own CONSENTING statutory “employees” under [5 U.S.C. §2105](#). Anything one consents (Form #05.003) to cannot form the basis for an injury, whether under the constitution or the common law or otherwise.

10. By what authority can or does the government claim that a so-called “benefit” it has no obligation to PAY can create a reciprocal obligation AGAINST ME to PAY FOR? Isn't the basis of all contracts RECIPROCAL obligation and RECIPROCAL benefit?

11. Does the government assert that I am party to a CONTRACT of any kind with them that might waive any part of my sovereignty or any PRIVATE property right on my part?

12. If the answer to question 11 is YES, please produce the contract that is SIGNED by someone in the government. Parole or verbal contracts by the government are forbidden ([Clark v. U.S., 95 U.S. 539 \(1877\)](#)).

13. Does the government have scientific evidence that there is a quantifiable NET economic “benefit” provable in a court of law to those “doing business” with them as STATUTORY “persons”, “citizens”, “residents”, or “taxpayers”?

–[The Government “Benefits” Scam, Form #05.040](#)  
<https://sedm.org/Forms/FormIndex.htm>

–[Why the Government is the Only Real Beneficiary of All Government Franchises, Form #05.051](#)  
<https://sedm.org/Forms/FormIndex.htm>

14. If the answer to question 13 above is NO, then by what authority does the government claim that it provided “consideration” that might form a valid contract and a civil statutory obligation of any kind against me? See:

Lawfully Avoiding Government Obligations Course, Form #12.040

<https://sedm.org/Forms/FormIndex.htm>

[Separation Between Public and Private Course, Form #12.025; <https://sedm.org/LibertyU/SeparatingPublicPrivate.pdf>]

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**4.14.7 Walters v. Thrasher, 381 So. 2d 557, 561 (La. Ct. App. 1980)**

"Even benefits cannot be forced upon a person without his consent."

[Walters v. Thrasher, 381 So.2d. 557, 561 (La.Ct.App. 1980)]

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**4.14.8 Boyd v. Metropolitan Life Ins. Co., 636 F.3d 138, 143 (4th Cir. 2011)**

"As the Secretary of Labor has aptly noted, '[insofar as, pursuant to Kennedy, no person can be forced to accept a benefit against his or her will, a person's right of refusal to accept benefits otherwise payable to him or her is self-executing and requires no express incorporation by a plan in order to make the refusal permissible.'"

[Boyd v. Metropolitan Life Ins. Co., 636 F.3d. 138, 143 (4th Cir. 2011)]

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**4.14.9 Cianci v. JEM Enterprises, Civil Action No. 16419-NC, at \*0 (Del. Ch. Aug. 22, 2000)**

"[I]t is axiomatic that a party cannot both accept the benefits which accrue under a contract on the one hand and shirk its disadvantages on the other."

[Cianci v. JEM Enterprises, Civil Action No. 16419-NC, at \*0 (Del. Ch. Aug. 22, 2000)]

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**4.14.10 Barnes v. City of Atlanta, 275 Ga. App. 385, 393 (Ga. Ct. App. 2005)**

"The trial court's reasoning is consistent with the principle that a party may not be forced to pay for benefits which have been imposed on him or her with no opportunity to refuse."

[Barnes v. City of Atlanta, 275 Ga.App. 385, 393 (Ga.Ct.App. 2005)]

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**4.14.11 Reese v. Industrial Commission, 55 Ohio App. 76, 79 (Ohio Ct. App. 1936)**

"One cannot claim benefits without assuming obligations."

[Reese v. Industrial Commission, 55 Ohio.App. 76, 79 (Ohio.Ct.App. 1936)]

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**4.14.12 Missler v. Pan Amer. Airways, 50 Misc.2d. 197, 199 (N.Y.Sup.Ct. 1966)**

"As defendant succinctly notes, no one needs authorization to seek to establish a benefit for another, since the other need not accept the benefit. "

[Missler v. Pan Amer. Airways, 50 Misc.2d. 197, 199 (N.Y.Sup.Ct. 1966)]

[EDITORIAL: The employer is first of all doing what they believe is required by law, and at worst seeking to establish a benefit for you. Technically, they do not need your authorization since you need not accept the benefit. In reality, I recognize that you are being forcibly separated from money that rightfully belongs to you. In theory you can be made whole by resolving this matter with the employer and getting a refund plus interest]

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**4.14.13 [Tax Form Attachment, Form #04.201, Section 4: DEFINITION OF KEY "WORDS OF ART" ON ALL ATTACHED GOVERNMENT FORMS \(OFFSITE LINK\) - SEDM](#)**

*"Benefit: Advantage; profit; fruit; gain; interest associated with a specific transaction which conveys a right or property interest which:*

- I. *Is not dispensed by an administrative agency of any state or federal government, but by a private individual.*

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2. Does not require the recipient to be an officer, agent, employee, or “personnel” within any government.
3. Is not called a “tax” or collected by the Internal Revenue Service, but is clearly identified as “private business activity beyond the core purposes of government”.
4. Does not confer upon the grantor any form of sovereign, official, or judicial immunity.
5. Is legally enforceable in *OTHER* than a franchise court or administrative agency. That is, may be heard in equity within a true, Article III constitutional court and *NOT* a legislative franchise court.
6. True constitutional courts are provided in which to litigate disputes arising under the benefit and those with said disputes are not required to exhaust administrative remedies with an executive branch agency *BEFORE* they may litigate. These constitutional courts are required to produce evidence that they are constitutional courts with *OTHER* than strictly legislative franchise powers when challenged by the recipients of said benefits.
7. The specific value of the consideration can be quantified at any time.
8. Monies paid in by the recipient to subsidize the program are entirely refundable if the benefits they pay for have not been received or employed either partially or in full.
9. A person who dies and never collects a benefit is refunded *ALL* of the monies they paid in.
10. Participation in the program is not also attached to any other government program. For instance, being a recipient of “social insurance” does not also make the recipient liable for unrelated or other federal taxes.
11. The term “benefit” must be defined in the franchise agreement that dispenses it, and its definition may not be left to the subjective whims of any judge or jury.
12. If the “benefit” is financial, then it is paid in lawful money rather than Federal Reserve Notes, which are non interest bearing promissory notes that are not lawful money and are backed by nothing.
13. The franchise must expressly state that participation is voluntary and that no one can be prosecuted or punished for failure to participate.
14. The identifying numbers, if any, that administer the program may not be used for identification and may not be shared with or used by any nongovernmental entity other than the recipient him or her self.
15. May not be heard by any judge, jurist, or prosecutor who is a recipient or beneficiary of the same benefit, because this would cause a conflict of interest in violation of 18 U.S.C. §208, 28 U.S.C. §144, and 28 U.S.C. §455.
16. During any litigation that involving the “benefit”, both the grantor and the grantee share equal obligation to prove that equally valuable consideration was provided to the other party. Note that Federal Reserve Notes do not constitute lawful money or therefore consideration.

Anything offered by the government that does not meet *ALL* of the above criteria is herein defined as an *INJURY* and a *TORT*. Compelled participation is stipulated by both parties as being slavery in criminal violation of 18 U.S.C. §1583, 42 U.S.C. §1994, and the Thirteenth Amendment.

Receipt of the attached government application constitutes consent by the recipient of the application to use the above definition of “benefit” in any disputes that might arise over this transaction. Government recipient and its agents, employees, and assigns forfeit their right as private individuals acting in any government office to define the term “benefit” and agree to use *ONLY* the above definition.

[Tax Form Attachment, Form #04.201, Section 4; SOURCE: <http://sedm.org/Forms/04-Tax/2-Withholding/TaxFormAtt.pdf>]



#### 4.14.14 **Socialism: The New American Civil Religion, Form #05.016, Section 5.1: Quotes from the Founding Fathers and Congress on "General Welfare"**

*"With respect to the words general welfare, I have always regarded them as qualified by the detail of powers connected with them. To take them in a literal and unlimited sense would be a metamorphosis of the Constitution into a character which there is a host of proofs was not contemplated by its creator."*

***"If Congress can employ money indefinitely to the general welfare, and are the sole and supreme judges of the general welfare, they may take the care of religion into their own hands; they may appoint teachers in every State, county and parish and pay them out of their public treasury; they may take into their own hands the education of children, establishing in like manner schools throughout the Union; they may assume the provision of the poor; they may undertake the regulation of all roads other than post-roads; in short, every thing, from the highest object of state legislation down to the most minute object of police, would be thrown under the power of Congress.... Were the power of Congress to be established in the latitude contended for, it would subvert the very foundations, and transmute the very nature of the limited Government established by the people of America."***

*"If Congress can do whatever in their discretion can be done by money, and will promote the general welfare, the government is no longer a limited one possessing enumerated powers, but an indefinite one subject to particular exceptions."*  
[James Madison. House of Representatives, February 7, 1792, On the Cod Fishery Bill, granting Bounties]

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*It has been urged and echoed, that the power "to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare of the United States," amounts to an unlimited commission to exercise every power which may be alleged to be necessary for the common defense or general welfare. No stronger proof could be given of the distress under which these writers labor for objections, than their stooping to such a misconstruction. Had no other enumeration or definition of the powers of the Congress been found in the Constitution, than the general expressions just cited, the authors of the objection might have had some color for it... For what purpose could the enumeration of particular powers be inserted, if these and all others were meant to be included in the preceding general power? Nothing is more natural nor common than first to use a general phrase, and then to explain and qualify it by a recital of particulars... But what would have been thought of that assembly, if, attaching themselves to these general expressions, and disregarding the specifications which ascertain and limit their import, they had exercised an unlimited power of providing for the common defense and general welfare? (Federalists #41)*  
[Federalist #41. Saturday, January 19, 1788, James Madison]

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*Congress has not unlimited powers to provide for the general welfare, but only those specifically enumerated.*

*They are not to do anything they please to provide for the general welfare, but only to lay taxes for that purpose. To consider the latter phrase not as describing the purpose of the first, but as giving a distinct and independent power to do any act they please which may be good for the Union, would render all the preceding and subsequent enumerations of power completely useless. It would reduce the whole instrument to a single phrase, that of instituting a Congress with power to do whatever would be for the good of the United States; and as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they please.... Certainly no such universal power was meant to be given them. It was intended to lace them up straightly within the enumerated powers and those without which, as means, these powers could not be carried into effect.*

*That of instituting a Congress with power to do whatever would be for the good of the United States; and, as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they please.*

[Thomas Jefferson: Opinion on National Bank, 1791. ME 3:148;

SOURCE: <http://famguardian.org/Subjects/Politics/ThomasJefferson/jeff1020.htm> and <http://thefederalistpapers.org/founders/jefferson/thomas-jefferson-opinion-on-national-bank-1791/>]

*Mr. GILES. The present section of the bill (he continued) appears to contain a direct bounty on occupations; and if that be its object, it is the first attempt as yet made by this government to exercise such authority; -- and its constitutionality struck him in a doubtful point of view; for in no part of the Constitution could he, in express terms, find a power given to Congress to grant bounties on occupations: the power is neither {427} directly granted, nor (by any reasonable construction that he could give) annexed to any other specified in the Constitution.*

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*[On the Cod Fishery Bill, granting Bounties. House of Representatives, February 3, 1792]*

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## 5 ATTITUDE AND RESPONSIBILITY OF INDIVIDUALS

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### Code Of Professional Responsibility

"EC 7-35 All litigants and lawyers should have access to tribunals on an equal basis. Generally, in adversary proceedings a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which he presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party. For example, a lawyer should not communicate with a tribunal by a writing unless a copy thereof is promptly delivered to opposing counsel or to the adverse party if he is not represented by a lawyer. Ordinarily an oral communication by a lawyer with a judge or hearing officer should be made only upon adequate notice to opposing counsel, or, if there is none, to the opposing party. A lawyer should not condone or lend himself to private importunities by another with a judge or hearing officer on behalf of himself or his client."

[Black's Law Dictionary, Revised Fourth Edition, 1968, Code Of Professional Responsibility, p. LVII]

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### Constitution for the United States of America, Article IV, Section 2, clause 1 (Sept. 17, 1787)

"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

[Constitution for the United States of America, Article IV, Section 2, clause 1]

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### Pierce v. United States (Mar. 1, 1869)

"We have no officers in this government from the President down to the most subordinate agent, who does not hold office under the law, with prescribed duties and limited authority. And while some of these, as the President, the Legislature and the Judiciary, exercise powers in some sense left to the more general definitions necessarily incident to fundamental law found in the Constitution, the larger portion of them are the creation of statutory law, with duties and powers prescribed and limited by that law."

"Every citizen of the United States is supposed to know the law,...."

[Pierce v. United States, 7 Wall (74 U.S. 169) 666 (1869)]

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### Poindexter v. Greenhow (Apr. 20, 1885)

.. the cases are numerous where the tax laws of a State, which in their general and proper application are perfectly valid, have been held to become void in particular cases, either as unconstitutional regulations of commerce, or as violations of contracts prohibited by the Constitution, or because in some other way they operate to deprive the party complaining of a right secured to him by the Constitution of the United States."

"In cases of detinue the action is purely defensive on the part of the plaintiff. Its object is merely to resist an attempted wrong and to restore the *status in quo* as it was when the right to be vindicated was invaded. It is analogous to the preventive remedy of injunction in equity when that jurisdiction is invoked...."

"Property taken unlawfully by a public officer may be recovered in detinue."

"A court of equity will always enjoin the collection of a tax where it is clear that in making the collection the officer is a simple naked trespasser. His character of officer and his function as collector give him no immunities where the character of trespasser is fixed on him clearly and without doubt."

"A defendant sued as a wrongdoer, who seeks to substitute the State in his place, or to justify by the authority of the State, or to defend on the ground that the State has adopted his act and exonerated him, cannot rest on the bare assertion of his defense. He is bound to establish it. **The State is a political corporate body, can act only through agents, and can command only by laws.** It is necessary, therefore, for such a defendant, in order to complete his defense, to produce a law of the State which constitutes his commission as its agent, and a warrant for his act. This the defendant in the present case undertook to do. He relied on the Act of January 26, 1882, requiring him to collect taxes in gold, silver, United States treasury notes, national bank currency, and nothing else, and thus forbidding his receipt of coupons in lieu of money. That it is true, is a legislative Act of the government of Virginia, but it is not a law of the State of Virginia. The State has passed no such law, for it cannot; and what it cannot do, it certainly, in contemplation of law, has not done. The Constitution of the United States and its own contract, both irrevocable by any act on its part, are the law of Virginia; and that law made it the duty of the defendant to receive the coupons tendered in payment of taxes, and declared every step to enforce the tax, thereafter taken, to be without warrant of law, and therefore a wrong. He stands,

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then, stripped of his official character, and, confessing a personal violation of the plaintiff's rights, for which he must personally answer, he is without defense." [Bold added.]

"In the discussion of such questions the distinction between the government of a State and the State itself is important and should be observed. In common speech and common apprehension they are usually regarded as identical; and as ordinarily the acts of the government are the acts of the State, because within the limits of its delegation? of power, the government of the State is generally confounded with the State itself, and often the former is meant when the latter is mentioned. The State itself is an ideal person, intangible, invisible, immutable. The government is an agent, and, within the sphere of the agency, a perfect representative; but outside of that it is a lawless usurpation. The Constitution of the State is the limit of the authority of its government, and both government and State are subject to the supremacy of the Constitution of the United States and of the laws made in pursuance thereof. So that, while it is true in respect to the government of a State, as was said in *Langford v. U.S.*, 101 U.S., 341 [Bk. 25, L.Ed. 1010], that the maxim that the King can do no wrong has no place in our system of government; yet it is also true, in respect to the State itself, that whatever wrong is attempted in its name is imputable to its government and not to the State, for, as it can speak and act only by law, whatever it does say and do must be lawful. That which, therefore, is unlawful because made so by the supreme law, the Constitution of the United States, is not the word or deed of the State, but is the mere wrong and trespass of those individual persons who falsely spread and act in its name. It was upon the ground of this important distinction that this court proceeded in the case of *Texas v. White*, 7 Wall., 700 [74 U.S., bk. 19, L.Ed. 227], when it adjudged that the acts of secession which constituted the civil war of 1861 were the unlawful acts of usurping State governments and not the acts of the States themselves, inasmuch as "the Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States" ; and that consequently the war itself was not a war of the United States against States, but a war of the United States against unlawful and usurping governments, representing not the States, but a rebellion against the United States. This is, in substance, what was said by *Chief Justice Chase*, delivering the opinion of the court in *Thorington v. Smith*, 8 Wall., 1, 9 [75 U.S., bk. 19, L.Ed. 361, 363], when he declared, speaking of the Confederate Government, that "it was regarded as simply the military representative of the insurrection against the authority of the United States." The same distinction was declared and enforced in *Williams v. Bruffy*, 96 U.S., 176, 192 [Bl. 24, L.Ed. 716, 720], and in *Horn v. Lockhart*, 17 Wall., 570 [84 U.S., bk. 21, L.Ed. 657], both of which were referred to and approved in *Keith v. Clark*, 97 U.S., 454, 465 [Bk. 24, L.Ed. 1071, 1075]."

"This distinction is essential to the idea of constitutional government. To deny it or blot it out obliterates the line of demarcation that separates constitutional government from absolutism, free self-government based on the sovereignty of the people, from that despotism, whether of the one or the many, which enables the agent of the State to declare and decree that he is the State--to say "*L'Etat, c'est moi.*" Of what avail are written constitutions, whose bills of right for the security of individual liberty have been written, too often, which the blood of martyrs shed upon the battle field and the scaffold, if their limitations and restraints upon power may be overpassed with impunity by the very agencies created and appointed to guard, defend and enforce them; and that, too, with the sacred authority of law, not only compelling obedience, but entitled to respect? And how else can these principles of individual liberty and right be maintained, if, when violated, the judicial tribunals are forbidden to visit penalties upon individual offenders, who are the instruments of wrong, whenever they interpose the shield of the State? The doctrine is not to be tolerated. The whole frame and scheme of the political institutions of this country, State and Federal, protest against it. Their continued existence is not compatible with it. It is the doctrine of absolutism, pure, simple and naked; and of communism, which is its twin; the double progeny of the same evil birth."

".. the subsequent Act of January 26, 1882, and all other like Acts which deny the obligation of that contract and forbid its performance, are not the Acts of the State of Virginia. The true and real Commonwealth which contracted the obligation is incapable in law of doing anything in derogation of it. Whatever having that effect, if operative, has been attempted or done, is the work of its government acting without authority, in violation of its fundamental law, and must be looked upon, in all courts of justice, as if it were not and never had been. The argument, therefore, which seeks to defeat the present action, for the reason that it is a suit against the State of Virginia, because the nominal defendant is merely its officer and agent, acting in its behalf, in its name and for its interest, and amenable only to it, falls to the ground, because its chief postulate fails. The State of Virginia has done none of these things with which defense charges her." [Brackets original.]

[*Pointexter v. Greenhow*, 114 U.S. 270; 5 S.Ct. 903 (1885)]

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### **Trice v. Comstock (Mar. 24, 1903)**

"The principle, "He who comes into equity must do so with clean hands," repels a complainant only when his iniquity consists of wrongful conduct in the acts or transactions which raise the equity he seeks to enforce."

[*Trice v. Comstock*, 121 F. 620 (1903)]

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**In re Johnson's Estate (July 10, 1903)**

"An alien has no right to raise the question whether a statute is violative of Const. U.S. art. 4, §2, declaring that the citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states."

"Const. U.S. art. 4, §2, declaring that the citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states, affords no protection to aliens or citizens of the United States who are citizens of a territory." [In re Johnson's Estate, 139 Cal. 532, 73 P. 424 (1903)]

**United States v. Johnson et al. (Feb. 26, 1947)**

"The privilege against self-incrimination is neither accorded to the passive resistant, nor the person who is ignorant of his rights, nor to one indifferent thereto. It is a fighting clause. **Its benefits can be retained only by sustained combat.** It cannot be claimed by attorney or solicitor. **It is valid only when insisted upon by a belligerent claimant in person.**"

[Bold added.]

[United States v. Johnson et al., 76 F.Supp. 538 (1947)]

**Federal Crop Insurance Corporation v. Merrill (Nov. 10, 1947)**

"Whatever the form in which government functions, anyone entering into an arrangement with the government takes the risk of having accurately ascertained that he who purports to act for the government stays within the bounds of his authority."

[Federal Crop Insurance Corporation v. Merrill, 332 U.S. 380 (1947)]

**American Communications Ass'n v. Douds (May 8, 1950)**

"While the Governments, State and Federal, have expansive powers to curtail action, and some small powers to curtail speech or writing, I think neither has any power, on any pretext, directly or indirectly to attempt foreclosure of any line of thought. Our forefathers found the evils of free thinking more to be endured than the evils of inquest or suppression. They gave the status of almost absolute individual rights to the outward means of expressing belief. I cannot believe that they left open a way for legislation to embarrass or impede the mere intellectual processes by which those expressions of belief are examined and formulated. This is not only because individual thinking presents no danger to society, but because thoughtful, bold and independent minds are essential to wise and considered self-government.

"Progress generally begins in skepticism about accepted truths. Intellectual freedom means the right to re-examine much that has been long taken for granted. A free man must be a reasoning man, and he must dare to doubt what a legislative or electoral majority may most passionately assert. The danger that citizens will think wrongly is serious, but less dangerous than atrophy from not thinking at all. Our Constitution relies on our electorate's complete ideological freedom to nourish independent and responsible intelligence and preserve our democracy from that submissiveness, timidity and herd-mindedness of the masses which would foster a tyranny of mediocrity. The priceless heritage of our society is the unrestricted constitutional right of each member to think as he will. Thought control is a copyright of totalitarianism, and we have no claim to it. **It is not the function of our Government to keep the citizen from falling into error; it is the function of the citizen to keep the Government from falling into error.** We could justify any censorship only when the censors are better shielded against error than the censored. [Bold added.]

"The idea that a Constitution should protect individual nonconformity is essentially American and is the last thing in the world that Communists will tolerate. Nothing exceeds the bitterness of their demands for freedom for themselves in this country except the bitterness of their intolerance of freedom for others where they are in power. An exaction of some profession of belief or nonbelief is precisely what the Communists would enact--each individual must adopt the ideas that are common to the ruling group. Their whole philosophy is to minimize man as an individual and to increase the power of man acting in the mass. If any single characteristic distinguishes our democracy from Communism it is our recognition of the individual as a personality rather than as a soulless part in the jigsaw puzzle that is the collectivist state." [Minority opinion of Mr. Justice Tom Jackson.] substance,

[American Communications Ass'n v. Douds, 339 U.S. 382, 70 S.Ct. 674 (1950)]

**Laird v. Tatum (June 26, 1972)**

"Those who already walk submissively will say there is no cause for alarm. But submissiveness is not our heritage. The First Amendment was designed to allow rebellion to remain as our Heritage. The Constitution was designed to keep

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government off the backs of the people. The Bill of Rights was added to keep the precincts of belief and expression, of the press, of political and social activities free from surveillance. The Bill of Rights was designed to keep agents of government and official eavesdroppers away from Assemblies of People. The aim was to allow men to be free and independent and to assert their rights against government."

[Laird v. Tatum, 408 U.S. 1; 92 S.Ct. 2318 (1972)]

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**Butz v. Economou (June 29, 1978)**

"Our system of jurisprudence rests on the assumption that all individuals, whatever their position in government, are subject to federal law:

"No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it." *United States v. Lee*, 106 U.S. 220, 1 S.Ct. 240, 260, 27 L.Ed. 171 [(1882)]."

[Butz v. Economou, 438 U.S. 478, 98 S.Ct. 2894 (1978)]

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**Davis v. Passman (June 5, 1979)**

"Our system of jurisprudence rests on the assumption that all individuals, whatever their position in government, are subject to federal law and that no person is so high that he is above the law." [Headnote 28.]

"As *Butz v. Economou* stated only last Term:

"Our system of jurisprudence rests on the assumption that all individuals, whatever their position in government, are subject to federal law:

"No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it." *United States v. Lee*, 106 U.S. [196,] 220, 1 S.Ct. 240, 260, 27 L.Ed. 171 [(1882)]." 438 U.S., at 506, 98 S.Ct., at 2910-2911."

[Davis v. Passman, 442 U.S. 228; 99 S.Ct. 2264 (1979)]

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**Hale Contracting v. United New Mexico Bank (Oct. 4, 1990)**

"Additionally, honesty is inconsistent with willful ignorance of the facts and circumstances available to the creditor, and thus the facts and circumstances that reasonable investigation would have disclosed may be relevant. While "honesty" may require no more than a pure heart, it is questionable that a pure heart can co-exist with closed eyes. It is not honest to close one's eyes so as to maintain an empty head."

[Hale Contracting v. United New Mexico Bank, 799 P.2d. 581 (1990)]

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## 6 CONSTRUCTION AND INTERPRETATION OF LAW

For details on how the construction and interpretation of law is ABUSED to deceive and enslave and STEAL from people under the color, but without the actual authority of law, see:

*Legal Deception, Propaganda, and Fraud*, Form #05.014  
<https://sedm.org/Forms/FormIndex.htm>

### 6.1 Basic Considerations

#### **Black's Law Dictionary: Construction**

"CONSTRUCTION. The process, or the art, of determining the sense, real meaning, or proper explanation of obscure or ambiguous terms or provisions in a statute, written instrument, or oral agreement, or the application of such subject to the case in question, by reasoning in the light derived from extraneous connected circumstances or laws or writings bearing upon the same or a connected matter, or by seeking and applying the probable aim and purpose of the provision."

"Drawing conclusions respecting subjects that lie beyond the direct expression of the term."

"The process of bringing together and correlating a number of independent entities, so as to form a definite entity."

"The creation of something new, as distinguished from the repair or improvement of something already existing."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 386]

#### **Black's Law Dictionary: Contemporanea Expositio**

"CONTEMPORANEA EXPOSITIO. Lat. Contemporaneous exposition, or construction; a construction drawn from the *time* when, and the circumstances under which, the subject-matter to be construed, as a statute or custom, originated."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 390]

#### **Black's Law Dictionary: Loquendum Ut Vulgus; Sentiendum Ut Docti**

"LOQUENDUM UT VULGUS; SENTIENDUM UT DOCTI. We must speak as the common people; we must think as the learned. 7 Coke, 11b.

"This maxim expresses the rule that, when words are used in a technical sense, they must be understood technically; otherwise, when they may be supposed to be used in their ordinary acceptance."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1093]

#### **Black's Law Dictionary: Authority**

"AUTHORITY. Permission. Control over, jurisdiction. Often synonymous with power. The power delegated by a principal to his agent. The lawful delegation of power by one person to another. Power of agent to affect legal relations of principal by acts done in accordance with principal's manifestations of consent to agent."

"**Apparent authority.** That which, though not actually granted, the principal knowingly permits the agent to exercise, or which he holds him out as possessing."

"**Express authority.** That given explicitly, either in writing or orally."

"**General authority.** That which authorizes the agent to do everything connected with a particular business. It empowers him to bind his principal by all acts within the scope of his employment; and it cannot be limited by any private direction not known to the party dealing with him.

"**Implied authority.** Actual authority circumstantially proved. That which the principal intends his agent to possess, and which is implied from the principal's conduct. It includes only such acts as are incident and necessary to the exercise of the authority expressly granted.

"**Limited authority.** Such authority as the agent has when he is bound by precise instructions."

"**Special authority.** That which is confined to an individual transaction. Such an authority does not bind the principal, unless it is strictly pursued.

"**Unlimited authority.** That possessed by an agent when he is left to pursue his own discretion." [All cites omitted.]

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Emphasis added]

[Black's Law Dictionary, Revised Fourth Edition, 1968, pp. 168-169]

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**Black's Law Dictionary: Enumerated**

"**ENUMERATED.** This term is often used in law as equivalent to "mentioned specifically," "designated," or "expressly named or granted"; as in speaking of "enumerated" governmental powers, items of property, or articles in a tariff schedule." [Cite omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 629]

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**Black's Law Dictionary: Ejusdem Generis**

"EJUSDEM GENERIS. Of the same kind, class, or nature.

"In the construction of laws, wills, and other instruments, the "ejusdem generis rule" is, that where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned. [Cites omitted.] The rule, however, does not necessarily require that the general provision be limited in its scope to the identical things specifically named. Nor does it apply when the context manifests a contrary intention.

"The maxim "ejusdem generis," is only an illustration of the broader maxim, "noscitur a sociis." [Cite omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 608]

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**Black's Law Dictionary: Autology**

"**TAUTOLOGY.** Describing the same thing twice in one sentence in equivalent terms; a fault in rhetoric. It differs from repetition or iteration, which is repeating the same sentence in the same or equivalent terms; the latter is *sometimes* either excusable or necessary in an argument or address; the former (tautology) never. Wharton."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1628]

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**Black's Law Dictionary: Color**

"**COLOR.** An appearance, semblance, or *simulacrum*, as distinguished from that which is real. *A prima facie* or apparent right. Hence, a deceptive appearance; a plausible, assumed exterior, concealing a lack of reality; a disguise or pretext. Railroad Co. v. Allfree, 64 Iowa 500, 20 N.W. 779; Broughton v. Haywood, 61 N.C. 383; Wilt v. Bueter, 186 Ind. 98, 111 N.E. 926, 929."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 331]

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**Black's Law Dictionary: Color of Authority**

"**COLOR OF AUTHORITY.** That semblance or presumption of authority sustaining the acts of a public officer which is derived from his apparent title to the office or from a writ or other process in his hands apparently valid and regular. State v. Oates, 86 Wis. 634, 57 N.W. 296, 39 Am.St.Rep. 912."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 331]

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**Black's Law Dictionary: Color of Law**

"**COLOR OF LAW.** The appearance or semblance, without the substance, of legal right. State v. Brechler, 185 Wis. 599, 202 N.W. 144, 148."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 331]

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**Black's Law Dictionary: Color of Office**

"**COLOR OF OFFICE.** An act unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and color. Plow. 64. Day v. National Bond & Investment Co., Mo.App., 99 S.W.2d. 117, 119.

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"A claim or assumption of right to do an act by virtue of an office, made by a person who is legally destitute of any such right. *Feller v. Gates*, 40 Or. 543, 67 P. 416, 56 L.R.A. 630 91 Am.St.Rep. 492; *Citizens' Bank of Colquitt v. American Surety Co. of New York*, 174 Ga. 852, 164 S.E. 817; *Pontiac Trust Co. v. Newell*, 266 Mich. 490, 254 N.W. 178, 181."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 331]

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**Black's Law Dictionary: Colorable**

"COLORABLE.. That which has or gives color. That which is in appearance only, and not in reality, what it purports to be. Counterfeit, feigned, having the appearance of truth. *Ellis v. Jones*, 73 Colo. 516, 216 P. 257, 258."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 332]

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**Black's Law Dictionary: Colorable Alteration**

"COLORABLE ALTERATION. One which makes no real or substantial change, but is introduced only as a subterfuge or means of evading the patent or copyright law."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 332]

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**1 U.S.C. §1**

"In determining the meaning of any Act of Congress, unless the context indicates otherwise -- words importing the singular include and apply to several persons, parties or things; words importing the plural include the singular...."

[1 U.S.C. §1]

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**1 U.S.C. §204(a)****"United States Code**

"The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, establish prima facie the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included: *Provided, however*, That whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States."

[1 U.S.C. §204(a)]

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**1 U.S.C. §204, n 2****"2. United States Code as prima facie evidence**

"Code embodies only prima facie statement of statutory law. *United States ex rel. Kessler v. Mercur Corp.* (1936, CA2 NY) 83 F.2d. 178, 36-2 U.S.T.C. 19350, 17 A.F.T.R. 940, cert den (1936) 299 U.S. 576, 81 L.Ed. 424, 57 S.Ct.40.

"United States Code is not enacted as statute, nor can it be construed as such, it being only prima facie statement of statute law; statutes collected in it do not change their meaning nor acquire any new force by their inclusion; if construction is necessary, recourse must be had to original statutes. *Murrell v. Western Union Tel. Co.* (1947, CA5 Fla 160 F.2d. 787).

"Official source for United States laws is Statutes at Large and United States Code is only prima facie evidence of such laws. *Royer's Inc. v. United States* (1959, CA3 Pa) 265 F.2d. 615, 59-1 U.S.T.C. 1 9371, 3 A.F.T.R.2d. 1137.

"Unless Congress affirmatively enacts title of United States Code into law, title is only "prima facie" evidence of law.

*Preston v. Heckler* (1984, CA9 Alaska) 734 F.2d. 1359, 34 CCH EPD 134433, later proceeding (1984, DC Alaska) 596 F.Supp. 1158.

"Congress' failure to enact title as positive law has only evidentiary significance and does not render underlying enactment invalid or unenforceable. *Ryan v. Bilby* (1985, CA9 Ariz) 764 F.2d. 1325, 85-2 U.S.T.C. 1 9860, 40 F.R.Serv.2d. 239, 54 A.F.T.R.2d. 84-6367.

"In construing provision of title that has been enacted into positive law, court may neither permit nor require proof of underlying original statutes; however, where title has not been enacted into positive law, title is only prima facie or rebuttable evidence of law, and if construction is necessary, recourse may be had to original statutes themselves. *United States v. Zuger* (1984, DC Conn) 602 F.Supp. 889, affd without op (1985, CA2 Conn) 755 F.2d. 915, cert den and app dismd (1985) 474 U.S. 805, 88 L.Ed.2d. 32, 106 S.Ct.38."

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[1 U.S.C. §204, n 2]

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### 1 U.S.C. §204, n 6

#### **"6. --Where Code title has been enacted into positive law**

"Contention that Internal Revenue Code (26 U.S.C.S. §§1 et seq.) is not positive law and therefore District Court has no jurisdiction, is rejected where challenged code sections have not been identified, nor has single instance been cited wherein any portion of Title 26 differs from Internal Revenue Code as passed and amended. *United States v. Wodtke* (1985, ND Iowa) 627 F.Supp. 1034, 86-2 U.S.T.C. 1 9669, 57 A.F.T.R.2d. 86- 1334, affd (1988, CA8 Iowa) 871 F.2d. 1092."

[1 U.S.C.S. §204, n 6]

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### Black's Law Dictionary: Positive

**"POSITIVE LAW.** Law actually and specifically enacted or adopted by proper authority for the government of an organized jural society.

"A `law, in the sense in which that term is employed in jurisprudence, is enforced by a sovereign political authority. It is thus distinguished not only from all rules which, like the principles of morality and the so-called laws of honor and of fashion, are enforced by an indeterminate authority, but also from all rules enforced by a determinate authority which is either, on the one hand, superhuman, or, on the other hand, politically subordinate. In order to emphasize the fact that `laws, in the strict sense described as *positive* laws." *Holl.Jur.* 37."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1324]

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### Black's Law Dictionary: Positive Law

**"Positive law.** Law actually and specifically enacted or adopted by proper authority for the government of an organized jural society."

[Black's Law Dictionary, Sixth Edition, 1990, p. 1162]

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### Title 1, Positive Law Citation

#### **"Positive Law; Citation.**

"This title has been made positive law by section 1 of Act July 30, 1947, c. 388, 61 Stat. 633, which provided in part that: "Title 1 of the United States Code, entitled `General Provisions', is codified and enacted into positive law and may be cited as `1 U.S.C. §

#### **"Repeals**

"Section 2 of Act July 30, 1947, c. 388, 61 Stat. 633, repealed the sections or parts thereof of the Statutes at Large or Revised Statutes covering provisions codified in this Act, insofar as such provisions appeared in Title 1, U.S.Code, 1940 edition, with a proviso that **"any rights or liabilities now existing under such repealed sections or parts thereof shall not be affected by such repeal."** [Bold added.]

[1 U.S.C., General Provisions]

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### Title 3, Positive Law Citation

#### **"Positive Law; Citation**

"This title has been made positive law by section 1 of Act June 25, 1948, c. 644, 62 Stat. 672, which provided in part that: "Title 3 of the United States Code, entitled `The President', is codified and enacted into positive law and may be cited as 3 U.S.C. §

#### **"Savings Clause**

"Section 2 of Act June 25, 1948, c. 644, 62 Stat. 672, provided that: "The provisions of title 3, `The President', set out in section 1 of this Act, shall be construed as a continuation of existing law and no loss of rights, interruption of jurisdiction, nor prejudice to matters pending on the effective date of this Act shall result from its enactment."

#### **"Repeals**

"Section 2 of Act June 25, 1948, c. 644, 62 Stat. 672, repealed the sections or parts thereof of the Revised Statutes or Statutes at Large enumerated in the schedule attached thereto, with a provision that **"any rights or liabilities now existing under such sections or parts thereof shall not be affected by this repeal."** [Bold added.]

[3 U.S.C., The President]

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**Title 4, Positive Law Citation****"Positive Law; Citation**

"This title has been made positive law by section 1 of Act July 30, 1947, c. 389, 61 Stat. 641, which provided in part that: "Title 4 of the United States Code, entitled 'Flag and seal, Seat of Government, and the States', is codified and enacted into positive law and may be cited as `4 U.S.C. §

**"Repeals**

"Section 2 of Act July 30, 1947, c. 389, 61 Stat. 641, repealed the sections or parts thereof of the Statutes at Large or Revised Statutes covering provisions codified in this Act, insofar as such provisions appeared in former Title 4, and provided that **any rights or liabilities now existing under such repealed sections or parts thereof shall not be affected by the repeal.**" [Bold added.]  
[4 U.S.C., Flag and seal, Seat of Government, and the States]

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**Black's Law Dictionary: Separate**

"**SEPARATE**, *adj.* Individual; distinct; particular; disconnected. Generally used in law as opposed to "joint," though the more usual antithesis of the latter term is "several." Either of these words implies division, distribution, disconnection, or aloofness. *Merrill v. Pepperdine*, 9 Ind.App. 416, 36 N.E. 921."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1529]

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**Black's Law Dictionary: Limit**

"**LIMIT**, *n.* A bound; a restraint; a circumscription; a boundary. *Casler v. Connecticut Mut. L. Ins. Co.*, 22 N.Y. 429. Boundary, border or outer line of thing. *State v. Jones*, 133 Me. 387, 178 A. 719, 720. Extreme boundary. *Lane v. Lukens*, 48 Idaho 517, 283 P. 532, 533."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1076]

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**Black's Law Dictionary: Limitation**

"**LIMITATION**. Restriction or circumspection; settling an estate or property; a certain time allowed by a statute for litigation.  
"The provisions of State Constitution are not a "grant" but a "limitation" of legislative power, *Ellerbe v. David*, 193 S.C. 332, 8 S.E.2d. 518, 520; *Mulholland v. Ayers*, 109 Mont. 558, 99 P.2d. 234, 239."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1076]

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**Black's Law Dictionary: General Jurisdiction**

"**GENERAL JURISDICTION**. Such as extends to all controversies that may be brought before a court within the legal bounds of rights and remedies; as opposed to *special* or *limited* jurisdiction, which covers only a particular class of cases, or cases where the amount in controversy is below a prescribed sum, or which is subject to specific exceptions. The terms "general" and "special," applied to jurisdiction, indicate the difference between a legal authority extending to the whole of a particular subject and one limited to a part; and, when applied to the terms of court, the occasion upon which these powers can be respectively exercised."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 814]

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**Black's Law Dictionary: Limited or Special Jurisdiction**

"**LIMITED OR SPECIAL JURISDICTION**. **Jurisdiction** which is confined to particular causes, or which can be exercised only under the limitations and circumstances prescribed by the statute. *Midwest Piping & Supply Co. v. Thomas Spacing Mach. Co.*, 109 Pa.Super. 571, 167 A. 636, 638."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1077]

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**Black's Law Dictionary: Several**

"**SEVERAL**. More than two, often used to designate a number greater than one. *First Nat. Trust & Savings Bank of San*

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Diego v. Industrial Accident Commission, 2 P.2d. 347, 351, 213 Cal. 322, 78 A.L.R. 1324. Each particular, or a small number, singly taken. Nashville, C. & St. L. Ry. v. Marshall County, 161 Tenn. 236, 30 S.W.2d. 268. Separate; individual; independent; severable. In this sense the word is distinguished from "joint." Also exclusive; individual; appropriated. In this sense it is opposed to "common." Townsend v. Roof, 210 Mo.App. 293, 237 S.W. 189, 190; L. L. Satler Lumber Co. v. Exler, 239 Pa. 135, 86 A. 793, 798."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1540]

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**Black's Law Dictionary: Fundamental Law**

"FUNDAMENTAL LAW. The law which determines the constitution of government in a state, and prescribes and regulates the manner of its exercise; the organic law of a state; the constitution."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 803]

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**Black's Law Dictionary: Resolution**

"RESOLUTION. A formal expression of the opinion or will of an official body or a public assembly, adopted by vote; as a legislative resolution." [Cite omitted.]

**Legislative Practice**

"The term is usually employed to denote the adoption of a motion, the subject matter of which would not properly constitute a statute; such as a mere expression of opinion; an alteration of the rules; a vote of thanks or of censure, etc."  
[Cites omitted.]

"The chief distinction between a "resolution" and a "law" is that the former is used whenever the legislative body passing it wishes merely to express an opinion as to some given matter or thing and is only to have a temporary effect on such particular thing, while by a "law" it is intended to permanently direct and control matters applying to persons or things in general." [Cite omitted.]

"**Joint resolution.** A resolution adopted by both houses of congress or a legislature. When such a resolution has been approved by the president or passed with his approval, it has the effect of a law. 6 Op.Atty.Gen. 680.

"The distinction between a joint resolution and a concurrent resolution of congress, is that the former requires the approval of the president while the latter does not. [Cite omitted.]

"If a resolution originating in one house of the Legislature is passed by that house and is then sent to the other for its concurrence, and is passed by it, signed by the presiding officer of each house and approved by the Governor, it is a "joint resolution" as that term is used in the Constitution and the joint rules of the Legislature. Oklahoma News Co. v. Ryan, 101 Old. 151, 224 P. 969, 971."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1474]

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**California Code of Civil Procedure, §1858**

"In the construction of a statute or instrument, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all."  
[California Code of Civil Procedure, §1858]

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**California Code of Civil Procedure, §1858, note 21**

"In construing a statute, it is the duty of trial court to give significance to every word, phrase, sentence and part of an act in pursuance of the legislative purpose, and to give effect to the statute as a whole, and not render it partially or entirely void. Matter of Borba (C.A.1984) 736 F.2d. 1317."  
[California Code of Civil Procedure, §1858, note 21]

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**California Code of Civil Procedure, §1859**

"In the construction of a statute the intention of the Legislature, and in the construction of the instrument the intention of the parties, is to be pursued, if possible; and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it."  
[California Code of Civil Procedure, §1859]

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**26 U.S.C. §7806(b)**

"ARRANGEMENT AND CLASSIFICATION.--No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this title, nor shall any table of contents, table of cross references, or similar outline, analysis, or descriptive matter relating to the contents of this title be given any legal effect. The preceding sentence also applies to the sidenotes and ancillary tables contained in the various prints of this Act before its enactment into law."

[26 U.S.C. §7806(b)]

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**28 U.S.C. §3002****"Definitions**

"(2) "Court" means any court created by the Congress of the United States, excluding the United States Tax Court."

"(10) "Person" includes a natural person (including an individual Indian), a corporation, a partnership, an unincorporated association, a trust, or an estate, or any other public or private entity, including a State or local government or an Indian tribe."

"(14) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Marianas, or any territory or possession of the United States."

"(15) "United States" means--

"(A) a Federal corporation;

"(B) an agency, department, commission, board, or other entity of the United States; or

"(C) an instrumentality of the United States."

[28 U.S.C. §3002]

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**28 U.S.C. §3003****"Rules of construction**

"(a) **Terms.** For purposes of this chapter [28 U.S.C.S. §§3001 et seq.]--

"(1) the terms "includes" and "including" are not limiting;

"(2) the term "or" is not exclusive; and

"(3) the singular includes the plural."

"(c) **Effect on other laws.**--This chapter shall not be construed to supersede or modify the operation of--[...]

"(7) any Federal law authorizing, or any inherent authority of a court to provide, injunctive relief;"

[28 U.S.C. §3003]

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**Black's Law Dictionary: Class**

"CLASS. The order or rank according to which persons or things are arranged or assorted.

"Also a body of persons uncertain in number, [cite omitted]; a group of persons, things, qualities, or activities, having common characteristics or attributes. [Cite omitted.] Also grade, [cite omitted]. Also same descriptive properties." [Cite omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 315]

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**Black's Law Dictionary: Class Legislation**

"CLASS LEGISLATION. Legislation limited in operation to certain persons or classes of persons, natural or artificial, or to certain districts of territory or state, [cite omitted]. Legislation operating upon portion of particular class of persons or things.. [Cite omitted.]

"The term is applied to enactments which divide the people or subjects of legislation into classes, with reference either to the grant of privileges or the imposition of burdens, upon an arbitrary, unjust, or invidious principle, or which make arbitrary discriminations between those persons or things coming within the same class." [Cite omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 315]

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**Black's Law Dictionary: Fiction of Law**

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"**FICTION OF LAW.** Something known to be false is assumed to be true. Ryan v. Motor Credit Co., 130 N.J.Eq. 531, 23 A.2d. 607, 621."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 751]

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**Black's Law Dictionary: Fictitious**

"**FICTITIOUS.** Founded on a fiction; having the character of a fiction; pretended; counterfeit. [Cites omitted.] Feigned, imaginary, not real, false, not genuine, nonexistent. Bill alleging that amount of mortgage sought to be canceled was "fictitious" held- to allege that mortgage was without consideration. [Cite omitted.] Arbitrarily invented and set up, to accomplish an ulterior object." [Cite omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 751]

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**Black's Law Dictionary: Fiduciary**

"**FIDUCIARY.** The term is derived from the Roman law, and means (as a noun) a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires. [Cites omitted.] A person having duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking." [Cite omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 753]

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**Black's Law Dictionary: Field Work**

"**FIELD WORK.** Work in the field, specifically the task of gathering scientific data from the field. Includes the sphere of practical operation, as of an organization or enterprise; also, the place or territory where direct contacts, as with a clientele may be made or first-hand knowledge may be gained; sphere of action or place of contest, either literally or figuratively; hence, any scene of operations or opportunity for activity." [Cite omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 754]

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**Black's Law Dictionary: Toll**

"**TOLL, v.** To bar, defeat, or take away; thus, to toll the entry means to deny or take away the right of entry.

"To toll the statute of limitations means to show facts which remove its bar of the action."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1658]

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**Black's Law Dictionary: Prima Facie**

"**PRIMA FACIE.** Lat. At first sight; on the first appearance; on the face of it; so far as can be judged from the first disclosure; presumably; a fact presumed to be true unless disproved by some evidence to the contrary." [Cite omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1353]

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**Black's Law Dictionary: Presumption**

"**Presumption.** An inference in favor of a particular fact. A presumption is a rule of law, statutory or judicial, by which finding of a basic fact gives rise to existence of presumed fact, until presumption is rebutted."

"A presumption is not evidence."

"In all civil actions and proceedings not otherwise provided for by Act of Congress or by the Federal Rules of Evidence, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast. Federal Evidence Rule 301."

[Black's Law Dictionary, Sixth Edition, 1990, p. 1185]

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**Black's Law Dictionary: Conclusive Presumption**

"*Conclusive presumptions.* A conclusive presumption is one in which proof of basic fact renders the existence of the presumed fact conclusive and irrebuttable. \* \* \* Few in number and often statutory, the majority view is that a conclusive

presumption is in reality a substantive rule of law, not a rule of evidence."  
[Black's Law Dictionary, Sixth Edition, 1990, p. 1186]

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**Black's Law Dictionary: Rebuttable Presumption**

"*Rebuttable presumption*. A presumption that can be overturned upon the showing of sufficient proof. In general, all presumptions other than conclusive presumptions are rebuttable presumptions."  
[Black's Law Dictionary, Sixth Edition, 1990, p. 1186]

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**Black's Law Dictionary: Include**

"INCLUDE. (Lat. *includere*, to shut in, keep within). To confine within, hold as in an inclosure, take in, attain, shut up, contain, inclose, comprise, comprehend, embrace, involve. *Including* may, according to context, express an enlargement and have the meaning of *and* or *in addition to*, or merely specify a particular thing already included within general words theretofore used." [Cites omitted.]  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 905]

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**26 U.S.C. §7701(c)**

"Includes and Including-- The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.  
[26 U.S.C. §7701(c)]

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**California Government Code, §18**

""State" means the State of California, unless applied to the different parts of the United States. In the latter case, it includes the District of Columbia and the territories."  
[California Government Code, §18]

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**California Government Code, §8880.70**

"Any other state or local law providing any penalty, disability, restriction, or prohibition for the possession, manufacture, transportation, distribution, advertising, or sale of any lottery tickets or shares shall not apply to the tickets or shares of the California State Lottery." [Note at the bottom of the page states: "Additions or changes indicated by underline; deletions by asterisks \* \* \*"]  
[California Government Code, §8880.70]

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**Black's Law Dictionary: Compact**

"COMPACT, n. An agreement; a contract."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 351]

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**Black's Law Dictionary: Contract**

"CONTRACT. A promissory agreement between two or more persons that creates, modifies, or destroys a legal relation." [Cites omitted.]

"An agreement, upon sufficient consideration, to do or not to do a particular thing." [Cites omitted.]

"An express contract is an actual agreement of the parties, the terms of which are openly uttered or declared at the time of making it, being stated in distinct and explicit language, either orally or in writing." [Cites omitted.]

"An implied contract is one not created or evidenced by the explicit agreement of the parties, but inferred by the law, as a matter of reason and justice' from their acts or conduct, the circumstances surrounding the transaction making it a reasonable, or even a necessary, assumption that a contract existed between them by tacit understanding." [Cites omitted.]

"Implied contracts are sometimes subdivided into those "implied in fact" and those "implied in law," the former being covered by the definition just given, while the latter are obligations imposed upon a person by the law, not in pursuance of his intention and agreement, either expressed or implied, but even against his will and design, because the



circumstances between the parties are such as to render it just that the one should have a right, and the other a corresponding liability similar to those which would arise from a contract between them. This kind of obligation therefore rests on the principle that whatsoever it is certain a man ought to do that the law will suppose him to have promised to do. And hence it is said that, while the liability of a party to an express contract arises directly from the contract, it is just the reverse in the case of a contract "implied in law," the contract there being implied or arising from the liability. But obligations of this kind are not properly contracts at all, and should not be so denominated. There can be no true contract without a mutual and concurrent intention of the parties. Such obligations are more properly described as "quasi contracts." [Cites omitted.]

#### **"Quasi Contract"**

"In the civil law. A contractual relation arising out of transactions between the parties which give them mutual rights and obligations, but do not involve a specific and express convention or agreement between them. The lawful and purely voluntary acts of a man, from which there results any obligation whatever to a third person, and sometimes a reciprocal obligation between the parties." [Cites omitted.]

"Legal fiction invented by **common law** courts to permit recovery by contractual remedy of assumpsit in cases where, in fact, there is no contract, but where circumstances are such that justice warrants a recovery as though there had been a promise. It is not based on intention or consent of the parties, but is founded on considerations of justice' and equity, and on doctrine of unjust enrichment. [Cites omitted.]

"It is not in fact a contract, but an obligation which the law creates in absence of any agreement, when and because the acts of the parties or others have placed in the possession of one person money, or its equivalent, under such circumstances that in equity and good conscience he ought not to retain it. It is an implication of law.

"It is what was formerly known as the contract implied in law; it has no reference to the intentions or expressions of the parties. The obligation is imposed despite, and frequently in frustration of their intention." [Cites omitted.] [Black's Law Dictionary, Revised Fourth Edition, 1968, pp. 394-396]

#### **People v. McGuire (Oct. 1872)**

"*Nisi prius* Courts are not at liberty to set aside or disregard the decisions of this Court because it may seem to them that the decisions are unsound. Until reversed or modified by this Court, its decisions must be accepted by all inferior tribunals."

[People v. McGuire, 45 Cal. 56 (1872)]

#### **Brisenden v. Chamberlain (Dec. 28, 1892)**

"A motion to remand is now made on the grounds taken in the state court and two others: (1) That the action, being under a statute, and not at common law, is not within the jurisdiction of this court; (2) that the real defendant is the South Carolina Railway Company, a citizen of the same state as the plaintiff; (3) that D. H. Chamberlain, the receiver, is resident of the district of South Carolina, and so not entitled to remove the cause; (4) that, the petition having been filed on the same day with the answer, the defendant has submitted to the jurisdiction of the state court, and cannot remove his cause.

"The first ground may be thus stated: The second section of the act of 1887--88 permits the removal of a suit of a civil nature at law or in equity" only when original jurisdiction *has* been given to the circuit court of the United States of such suit by the first section of that act. This first section declares: "The circuit courts of the United States shall have original cognizance, concurrent with the courts of the several states, of all suits of a civil nature at common law or equity," etc. This suit, being a suit at law under Lord Campbell's Act, is not a suit at common law, but under a statute. What is meant by the phrase, "suits of a civil nature at common law?" The constitution of the United States (article 3, §2) extends the judicial power "to all cases in law or equity, \* \* \* to controversies \* \* \* between citizens of different states." The seventh amendment preserves the trial by jury in suits at common law when the value in controversy shall exceed \$20, and requires that no fact tried by a jury shall be re-examined in any court of the United States otherwise than according to the rules of the common law. The act of 1789, (1 U.S. St. at Large, p. 78) in conferring jurisdiction on the circuit courts of the United States, uses precisely the words of the act of 1887--88: "The circuit courts shall have original cognizance concurrent with the courts of the several states of all suits of a civil nature at common law or in equity," etc. The act of 1875 (18 St. p. 470) uses precisely the same language, but in the removal sections of that act the language is enlarged, and the words "any suit at law" are used. The supreme court decided that under these words a suit could be removed notwithstanding the fact that the court could not have had original cognizance of it. *Clafin v. Insurance Co.*, 110 U.S. 81, 3 Sup.Ct.Rep. 507. To reverse--or perhaps we should say to prevent--such construction in the future, the second section of the act of 1887-88 used the phraseology we have quoted.

"What, then, is the meaning of this phrase, "suits of a civil nature at common law?" Mr. Justice Story, in *Parsons v.*

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Bedford, 3 Pet. 433, says:

""This phrase `common law' is used in contradistinction to equity, and admiralty and maritime jurisdiction. By `common law' they meant what the constitution denominated in the third article `law, not merely suits which the common law recognized among its old and settled proceedings, but suits in which legal rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized, and equitable remedies were administered."

"Commenting on this, Mr. Spear, in his Law of the Federal Judiciary, (page 23) says:

""The term `law' and the phrase `common law, as thus used, then mean precisely the same thing, and both have reference to legal remedies in distinction from such remedies as are applicable to cases in equity."

"Mr. Justice Bradley, in *Gaines v. Fuentes*, 92 U.S. 23, answering the question what is meant by the phrase "suits of a civil nature at common law or equity," used in the section of the act of 1789 conferring original jurisdiction on the circuit courts, and of the word "suit," used in the subsequent section, giving the right of removal, says:

""The phrase `suits at common law, and the corresponding term `suit, used in these sections are undoubtedly of broad signification, and cannot be construed to embrace only ordinary actions at law, and ordinary suits in equity; but they must be construed to embrace all litigations between party and party which in the English system of jurisprudence, under the light of which all the various forms of procedure carried on in the ordinary courts of law and equity as distinguished from the ecclesiastical, admiralty, and military courts of the realm." "It seems manifest from these authorities that the phrase, "all suits of a civil nature at common law," does not mean and is not confined to suits which are based on rights which owe their origin to the common law as distinguished from rights created by statute. The phrase means all those suits in which the rights must be established and the remedies sought by the procedure known and prevailing in the courts of law, as distinguished from the procedure and the remedies prevailing in and administered by courts of equity,--that is, by a court and jury. This is the construction practically taken by the courts of the United States."

"It will be observed from these definitions [of residence and domicile] that both the terms involve the idea of something beyond a transient stay in a place. To be a resident one must abide in a place; have his home there. The essential distinction between "residence" and "domicile" is this: The first involves the intent to leave when the purpose for which he has taken up his abode ceases; the other has no such intent, the abiding is *animo manendi*. One may seek a place for the purposes of pleasure, of business, or of health. If his intent be to remain, it becomes his domicile; if his intent be to leave as soon as his purpose is accomplished, it is his residence. Perhaps the most satisfactory definition is that one is a resident of a place from which his departure is indefinite as to time, definite as to purpose; and for this purpose he has made the place his temporary home."

[*Brisenden v. Chamberlain*, 53 F. 307 (1892)]

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### **Black's Law Dictionary: Ammo**

"AMMO. Lat. With intention, disposition, design, will. *Quo animo*, with what intention. *Aninw cancellandi*, with intention to cancel. 1 Pow.Dev. 603. *Furandi*, with intention to steal. 4 Bl.Comm. 230; 1 Kent, Comm. 183. *Lucrandi*, with intention to gain or profit. 3 Kent, Comm. 357. *Manendi*, with intention to remain. 1 Kent., Comm. 76."

[Black's Law Dictionary, Revised Fourth Edition, 1968, pp. 113-114]

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### **Black's Law Dictionary: Description**

"**DESCRIPTION.** A delineation or account of a particular subject by the recital of its characteristic accidents and qualities"

"A written enumeration of items composing an estate, or of its condition, or of titles or documents; like an inventory, but with more particularity, and without involving the idea of an appraisalment."

"A fair portrayal of the chief features of the proposed law in words of plain meaning, so that it can be understood by the persons entitled to vote."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 532]

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### **Black's Law Dictionary: Descriptive**

"**DESCRIPTIVE.** Containing a description; severing or aiming to describe; having the quality of representing."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 532]

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### **Webster's New World Dictionary of the American Language: Descriptive**

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"**descriptive, adj.** describing; of or characterized by description"

[Webster's New World Dictionary of the American Language, College Edition, 1959, p. 397]

### **Black's Law Dictionary: Dictum**

"**DICTUM.**

#### **"In General**

"A statement, remark, or observation. *Gratis dictum*; a gratuitous or voluntary representation; one which a party is not bound to make. 2 Kent, Comm. 486. *Simplex dictum*; a mere assertion; an assertion without proof. Bract. fol. 320.

"The word is generally used as an abbreviated form of *obiter dictum*, "a remark by the way;" that is, an observation or remark made by a judge in pronouncing an opinion upon a cause, concerning some rule, principle, or application of law, case at bar, but not necessarily involved in the case or essential to its determination; any statement of the law enunciated by the court merely by way of illustration, argument, analogy, or suggestion." [Cites omitted.]

"Statements and comments in an opinion concerning some rule of law or legal proposition not necessarily involved nor essential to determination of the case in hand are obiter dicta, and lack the force of an adjudication." [Cites omitted.]

"*Dicta* are opinions of a judge which do not embody the resolution or determination of the court, and made without argument, or full consideration of the point, are not the professed deliberate determinations of the judge himself. *Obiter dicta* are such opinions uttered by the way, not upon the point or question pending, as if turning aside for the time from the main topic of the case to collateral subjects." [Cite omitted.]

[Black's Law Dictionary, Fourth Edition, 1951, p. 541]

### **Black's Law Dictionary: Employer**

"**EMPLOYER.** One who employs the services of others; one for whom employees work and who pays their wages or salaries. The correlative of "employee." *Angell v. White Eagle Oil & Refining Co.*, 169 Minn. 183, 210 N.W. 1004, 1005.

"Master" is a synonymous term. *Tennessee Valley Appliances v. Rowden*, 24 Tenn.App. 487, 146 S.W.2d. 845, 846; *Gooden v. Mitchell*, 2 Terry 301, 21 A.2d. 197, 200."

[Black's Law Dictionary, Fourth Edition, 1951, p. 618]

### **Black's Law Dictionary: Employee**

"**EMPLOYEE.** This word "is from the French, but has become somewhat naturalized in our language. Strictly and etymologically, it means `a person employed, but, in practice in the French language, it ordinarily is used to signify a person in some official employment, and as generally used with us, though perhaps not confined to any official employment, it is understood to mean some permanent employment or position." The word may be more extensive than "clerk" or "officer," and may signify any one in place, or having charge or using a function, as well as one in office. *Hopkins v. Cromwell*, 89 App.Div. 481, 85 N.Y.S. 839.

"One who works for an employer; a person working for salary or wages; applied to anyone so working, but usually only to clerks, workmen, laborers, etc., and but rarely to the higher officers of a corporation or government or to domestic servants. *Keefe v. City of Monroe*, 120 So. 106, 9 La.App. 545; *State ex rel. Gorczyca v. City of Minneapolis*, 174 Minn. 594, 219 N.W. 924.

"Generally, when person for whom services are performed has right to control and direct individual who performs services not only as to result to be accomplished by work but also as to details and means by which result is accomplished, individual subject to direction is an "employee". *Young v. Demos*, 70 Ga.App. 577, 28 S.E.2d. 891, 893.

""Servant" is synonymous with "employee". [Cites omitted.]

""Employee" must be distinguished from "independent contractor," "officer," "vice-principal," "agent," etc. The term is often specially defined by statutes; and whether one is an employee or not within a particular statute will depend upon facts and circumstances."

[Black's Law Dictionary, Fourth Edition, 1951, pp. 617-618]

### **Black's Law Dictionary: Executive Employees**

"**EXECUTIVE EMPLOYEES.** Persons whose duties include some form of managerial authority, actually directing the work of other persons. *Stranger v. Glenn L. Martin Co.*, D.C.Md., 56 F.Supp. 163, 166; persons whose duties relate to active participation in control, supervision and management of business, or who administer affairs, or who direct, manage, execute or dispense. *Steiner v. Pleasantville Constructors*, 181 Misc. 798, 46 N.Y.S.2d. 120, 123.

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"The term executive employee carries the idea of supervision of or control over ordinary employees. *Ralph Knight, Inc., v. Mantel, C.C.A.Mo.*, 135 F.2d. 514, 517."  
[Black's Law Dictionary, Fourth Edition, 1951, p. 679]

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**Black's Law Dictionary: Escheat**

"ESCHEAT. In feudal law. Escheat is an obstruction of the course of descent, and consequent determination of the tenure, by some unforeseen contingency, in which case the land naturally results back, by a kind of reversion, to the original grantor, or lord of the fee." [Cites omitted.]

"It is the casual descent, in the nature of forfeiture, of lands and tenements within his manor, to a lord, either on failure of issue of the tenant dying seised or on account of the felony of such tenant. Jacob.

"Also the land or fee itself, which thus fell back to the lord."

"In American law. Escheat signifies a reversion of property to the state in consequence of a want of any individual competent to inherit. The state is deemed to occupy the place and hold the rights of the feudal lord."

"Escheat at feudal law was the right of the lord of a fee to re-enter upon the same when it became vacant by the extinction of the blood of the tenant. This extinction might either be *per defectum sanguinis* or *per delictum tenentis*, where the course of descent was broken by the corruption of the blood of the tenant. As a fee might be holden either of the crown or from some inferior lord, the escheat was not always to the crown. The word `escheat, in this country, at the present time, merely indicates the preferable right of the state to an estate left vacant, and without there being any one in existence able to make claim thereto." 29 Am.Dec. 232, note."

[Black's Law Dictionary, Fourth Edition, 1951, p. 640]

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**Black's Law Dictionary: Enjoin**

"ENJOIN. To require; command; positively direct. To require a person, by writ of injunction from a court of equity, to perform, or to abstain or desist from, some act." [Cites omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 623]

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**Black's Law Dictionary: Entitle**

"ENTITLE. In its usual sense, to entitle is to give a right or title. *Felter v. McClure*, 135 Wash. 410, 237 P. 1010, 1011. To qualify for; to furnish with proper grounds for seeking or claiming. *Fitts v. Terminal Warehousing Corporation*, 170 Tenn. 198, 93 S.W.2d. 1265, 1267. In re *Graves*, 325 Mo. 888, 30 S.W.2d. 149, 151. In ecclesiastical law. To entitle is to give a title or ordination as a minister."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 626]

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**Black's Law Dictionary: Felony**

"FELONY. A crime of a graver or more atrocious nature than those designated as misdemeanors. [Cites omitted.]

Generally an offense punishable by death or imprisonment in penitentiary." [Cites omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 744]

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**Black's Law Dictionary: Protest**

"PROTEST. A formal declaration made by a person interested or concerned in some act about to be done, or already performed, whereby he expresses his dissent or disapproval, or affirms the act against his will. The object of such a declaration is generally to save some right which would be lost to him if his implied assent could be made out, or to exonerate himself from some responsibility which would attach to his unless he expressly negatived his assent.

"The formal statement, usually in writing, made by a person who is called upon by public authority to pay a sum of money, in which he declares that he does not concede the legality or justice of the claim or his duty to pay it, or that he disputes the amount demanded; the object being to save his right to recover or reclaim the amount, which right would be lost by his acquiescence. Thus, taxes may be paid under "protest." *Meyer v. Clark*, 2 Daly (N.Y.) 509."

[Black's Law Dictionary, Fourth Edition, 1951, p. 1387]

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**Black's Law Dictionary: Frivolous**

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**"Frivolous.** Of little weight or importance. A pleading is "frivolous" when it is clearly insufficient on its face and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass the opponent. **A claim or defense is frivolous if a proponent can present no rational argument based upon the evidence or law in support of that claim or defense.** *Liebowitz v. Aimexco Inc., Col.App., 701 P.2d. 140, 142.* Frivolous pleadings may be amended to proper form or ordered stricken, under federal and state rules of civil procedure." [Bold added.]  
[Black's Law Dictionary, Sixth Edition, 1990, p. 668]

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**Black's Law Dictionary: Infraction**

"INFRACTION. A breach, violation, or infringement; as of a law, a contract, a right or duty."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 920]

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**Black's Law Dictionary: League**

"LEAGUE. 1. A treaty of alliance between different states or parties."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1034]

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**Black's Law Dictionary: Matter**

"MATTER. Substantial facts forming basis of claim or defense; facts material to issue; substance as distinguished from form; transaction, event, occurrence; subject-matter of controversy; special proceeding."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1130]

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**Webster's New World Dictionary of the American Language: Matter**

"**matter, n.** ... 4. material of thought or expression; what is spoken or written, regarded as distinct from how it is spoken or written; content, as distinguished from manner, style, or form."  
[Webster's New World Dictionary of the American Language, College Edition, 1959, p. 907]

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**Black's Law Dictionary: Misdemeanor**

"MISDEMEANOR. Offenses lower than felonies and generally those punishable by fine or imprisonment otherwise than in penitentiary." [Cites omitted.]  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1150]

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**Black's Law Dictionary: Municipal**

"MUNICIPAL. In narrower sense, it means pertaining to a local government unit, commonly, a city or town or other governmental unit. In its broader sense, it means pertaining to the public or governmental affairs of a state or nation or of a people. [Cite omitted.] Sometimes, pertaining to a county. [Cites omitted.] ...local, particular, independent; [cite omitted]; also, pertaining to local self-government in general; [cite omitted].  
"Relating to a state or nation, particularly when considered as an entity independent of other states or nations." [Cite omitted.]  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1168]

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**Black's Law Dictionary: Municipal Government**

"MUNICIPAL GOVERNMENT. Instrumentalities of state for purpose of local government.  
"This term, in certain state constitutions, embraces the governmental affairs of counties; and includes all forms of representative municipal government;..." [All cites omitted.]  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1169]

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**Black's Law Dictionary: Municipal Law**

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***Sovereignty and Freedom Points and Authorities***



**"MUNICIPAL LAW.** Not the law of a city only but the law of the state.

"In contradistinction to international law, it is the law of an individual state or nation. It is the rule or law by which a particular district, community, or nation is governed. That which pertains solely to the citizens and inhabitants of a state, and is thus distinguished from political law, commercial law, and the law of nations. In its more modern and narrower connotation it means those laws which pertain to towns, cities and villages and their local government."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1169]

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**Black's Law Dictionary: Sever**

**"SEVER.** To separate, as one from another; to cut off from something; to divide; to part in any way, especially by violence, as by cutting, rending, etc.; as, to sever the head from the body; to cut or break open or apart; to divide into parts; to cut through; to disjoin; as, to sever the arm or leg. *Muse v. Metropolitan Life Ins. Co.*, 193 La. 605, 192 So. 72, 74, 125 A.L.R. 1075. In practice. To insist upon a plea distinct from that of other co-defendants."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1539]

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**Black's Law Dictionary: Stare Decisis**

"STARE DECISIS. Lat. To abide by, or adhere to, decided cases.

"Policy of courts to stand by precedent and not to disturb settled point. *Neff v. George*, 364 Ill. 306, 4 N.E.2d. 338, 390, 391. Doctrine that, when court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same. *Moore v. City of Albany*, 98 N.Y. 396, 410; Regardless of whether the parties and property are the same. *Horne v. Moody*, Tex.Civ.App., 146 S.W.2d. 505, 509, 510. Under doctrine a deliberate or solemn decision of court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same court, or in other courts of equal or lower rank in subsequent cases where the very point is again in controversy. *State v. Mellenberger*, 163 Or. 233, 95 P.2d. 709, 719, 720, 128 A.L.R. 1506. Doctrine is one of policy, grounded on theory that security and certainty require that accepted and established legal principle, under which rights may accrue, be recognized and followed, though later found to be not legally sound, but whether previous holding of court shall be adhered to, modified, or overruled is within court's discretion under circumstances of case before it. *Otter Tail Power Co. v. Von Bank*, 72 N.D. 497, 8 N.W.2d. 599, 607, 145 A.L.R. 1343. Under doctrine, when point of law has been settled by decision, it forms precedent which is not afterwards to be departed from, and, while it should ordinarily be strictly adhered to, there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. *McGregor v. Provident Trust Co. of Philadelphia*, 119 Fla. 718, 162 So. 323. The doctrine is a salutary one, and should not ordinarily be departed from where decision is of long standing and rights have been acquired under it, unless consideration of public policy demand it. *Colonial Trust Co. v. Flanagan*, 344 Pa. 556, 25 A.2d. 728, 729.

"The doctrine is limited to actual determinations in respect to litigated and necessarily decided questions, and is not applicable to dicta or obiter dicta. *In re Herle's Estate*, 165 Misc. 46, 300 N.Y.S. 103.

"Federal courts should in all instances follow the law of the state with respect to the construction of state statutes, and where that law has been determined by the courts of last resort, their decisions are "stare decisis" and must be followed, irrespective of federal courts' opinions concerning what the law ought to be, but with respect to the pronouncement of other state courts, federal courts are not so bound and may conclude that the decision does not truly express the state law. *Kehaya v. Axton*, D.C.N.Y., 32 F.Supp. 266, 268."

[Black's Law Dictionary, Revised Fourth Edition, 1968, pp. 1577-1578]

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**Black's Law Dictionary: Yield**

**"YIELD.** In the law of real property. To perform a service due by a tenant to his lord. Hence the usual form of reservation of a rent in a lease begins with the words "yielding and paying." Sweet."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1791]

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**Black's Law Dictionary: Tort**

"TORT (from Lat. torquere, to twist, tortus, twisted, wrested aside). A private or civil wrong or injury. A wrong independent of contract. 1 Hill, Torts 1. A violation of a duty imposed by general law or otherwise upon all persons occupying the relation to each other which is involved in a given transaction. [Cites omitted.] There must always be a violation of some duty owing to plaintiff, and generally such duty must arise by operation of law and not by mere agreement of the parties. [Cites omitted.]

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"Three elements of every tort action are: Existence of legal duty from defendant to plaintiff, breach of duty, and damage as proximate result. [Cites omitted.]

"A legal wrong committed upon the person or property independent of contract. It may be either (1) a direct invasion of some legal right of the individual; (2) the infraction of some public duty by which special damage accrues to the individual; (3) the violation of some private obligation by which like damage accrues to the individual. In the former case, no special damage is necessary to entitle the party to recover. In the two latter cases, such damage is necessary. [Cites omitted.] A violation of a right in rem which plaintiff has as against all persons with whom he comes in contact or the violation of a right which is created by law and not by any act of parties." [Cites omitted.] [Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1660]

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**Black's Law Dictionary: Treaty**

"**TREATY.** An agreement, league, or contract between two or more nations or sovereigns, formally signed by commissioners properly authorized, and solemnly ratified by the several sovereigns or the supreme power of each state." [Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1673]

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**Black's Law Dictionary: Union**

"**UNION.** A league; a federation; an unincorporated association of persons for a common purpose; as, a trade or labor union. *Hughes v. State*, 109 Ark. 403, 160 S.W. 209. A joinder of separate entities. *State ex rel. Dawson v. Dinwiddie*, 186 Old. 63, 95 P.2d. 867, 869."

"A popular term in America for the United States; also, in Great Britain, for the consolidated governments of England and Scotland, or for the political tie between Great Britain and Ireland." [Black's Law Dictionary, Fourth Edition, 1951, p. 1702]

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**Black's Law Dictionary: United Kingdom of Great Britain and Ireland**

"**UNITED KINGDOM OF GREAT BRITAIN AND IRELAND.** The official title of the kingdom composed of England, Scotland, Ireland, and Wales, and including the colonies and possessions beyond the seas, under the act of January 1, 1801, effecting the union between [sic] Ireland and Great Britain." [Black's Law Dictionary, Fourth Edition, 1951, p. 1703]

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**Black's Law Dictionary: United States**

"**UNITED STATES.** This term has several meanings. It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in family of nations, it may designate territory over which sovereignty of United States extends, or it may be collective name of the states which are united by and under the Constitution. *Hooven & Allison Co. v. Evatt*, U.S. Ohio, 65 S.Ct. 870, 880, 324 U.S. 652, 89 L.Ed. 1252." [Black's Law Dictionary, Fourth Edition, 1951, p. 1703]

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**Black's Law Dictionary: Vested**

"**VESTED.** Fixed; accrued; settled; absolute. *Orthwein v. Germain. Life Ins. Co. of City of New York*, 261 Mo. 650, 170 S.W. 885, 888. Having the character or giving the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent." [Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1734]

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**Black's Law Dictionary: Vested Rights**

"**VESTED RIGHTS.** In constitutional law. Rights which have so completely and definitely accrued to or settled in a person that they are not subject to be defeated or canceled by the act of any other private person, and which it is right and equitable that the government should recognize and protect, as being lawful in themselves, and settled according to the then current rules of law, and of which the individual could not be deprived arbitrarily without injustice, or of which he could not justly be deprived otherwise than by the established methods of procedure and for the public welfare." [ \* \* \* ] "A right complete and consummated, and of such character that it cannot be divested without the consent of the person to whom it belongs, and fixed or established, and no longer open to controversy. [Cites omitted.]

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[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1735]

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**California Civil Code, §3515**

"He who consents to an act is not wronged by it."

[California Civil Code, §3515]

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**California Civil Code, §3518**

"He who has fraudulently dispossessed himself of a thing may be treated as if he still had possession."

[California Civil Code, §3518]

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**California Civil Code, §3525**

"Between rights otherwise equal, the earliest is preferred."

[California Civil Code, §3525]

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**California Civil Code, §3527**

"The law helps the vigilant, before those who sleep on their rights."

[California Civil Code, §3527]

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**California Civil Code, §3539**

"Time does not confirm a void act."

[California Civil Code, §3539]

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**California Penal Code §228**

"Any **citizen of this State** who shall fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this State or out of it, or who shall act as second, or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit, or to enjoy the right of suffrage, and shall be declared so disqualified in the judgment, upon conviction."

[California Penal Code §228]

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**California Penal Code §232**

"Any **person** who fights a duel, or sends or accepts a challenge to fight a duel, either within this state or out of it, or who shall act as a second, or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit, or to enjoy the right of suffrage."

[California Penal Code §232]

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**UCC, §1207**

"A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest" or the like are sufficient."

[Uniform Commercial Code, §1207]

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**UCC Art. 1, §1-201 (29) party**

""Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this Act."

""Party". New. Mention of a party includes, of course, a person acting through an agent. However, where an agent comes into opposition or contrast to his principal, particular account is taken of that situation."

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[Uniform Commercial Code Art. 1, §1-201 (29) party]

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**Black's Law Dictionary: Person**

**"Person.** In general usage, a human being (i.e. a natural person), though by statute term may include labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers. See e.g. National Labor Relations Act, §2(1), 29 U.S.C.A. §152; Uniform Partnership Act, §2.

"Scope and delineation of term is necessary for determining those to whom Fourteenth Amendment of Constitution affords protection since this Amendment expressly applies to "person"."

[Black's Law Dictionary, Sixth Edition, 1990, p. 1142]

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**Black's Law Dictionary: Individual**

**"Individual.** As a noun, this term denotes a single person as distinguished from a group or class, and also, very commonly, **a private or natural person as distinguished from a partnership, corporation, or association...."**

[Black's Law Dictionary, Sixth Edition, 1990, p. 773]

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**Black's Law Dictionary: Things**

**"Things.** The objects of dominion or property as **contra-distinguished from "persons."** *Gayer v. Whelan*, 138 P.2d. 763, 768. ... Such permanent objects, **not being persons**, as are sensible, or perceptible through the senses."

[Black's Law Dictionary, Sixth Edition, 1990, p. 1478]

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**Belfast Sav. Bank v. Stowe (Jan. 19, 1899)**

.. a supposed rule of common law, the maxim, "Cessante ratione legis, cessant ipsa lex," broadly construed, applies. This maxim, as interpreted by Groom, lays down the following broad principle: **"Reason is the soul of the law, and, when the reason of any particular law ceases, so does the law itself."** [Bold added.]

[*Belfast Sav. Bank v. Stowe*, 92 F. 100 (1899)]

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**Holt v. Indiana Manufacturing Co. (Jan. 15, 1900)**

"A suit to enjoin state taxes as illegal because levied in effect on patents or patent rights is not one "arising under the patent laws," of which the circuit court of the United States can take jurisdiction under R.S. Rev.Stat. §629, cl. 9."

[*Holt v. Indiana Manufacturing Co.*, 176 U.S. 68, 20 S.Ct. 272, 44 L.Ed. 374 (1900)]

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**Fairbank v. United States (Apr. 15, 1901)**

"Mr. Justice Brewer delivered the opinion of the court:

"The constitutionality of an act of Congress is a matter always requiring the most careful consideration. The presumptions are in favor of constitutionality, and before a court is justified in holding that the legislative power has been exercised beyond the limits granted, or in conflict with restrictions imposed by the fundamental law, the excess or conflict should be clear. And yet, when clear, if written constitutions are to be regarded as of value, the duty of the court is plain to uphold the Constitution, although in so doing the legislative enactment falls. The reasoning in support of this was, in the early history of this court, forcibly declared by Chief Justice Marshall in *Marbury v. Madison*, 1 Cranch, 137, 177, 2 L.Ed. 60, 73, and nothing can be said to add to the strength of his reasoning. His language is worthy of quotation:

"The Constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.

"If the former part of the alternative be true, then a legislative act contrary to the Constitution is not law; if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

"Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be that an act of the legislature repugnant to the constitution is void.

"This theory is essentially attached to a written constitution, and is consequently to be considered, by this court, as one of the fundamental principles of our society...."

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"It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.

"So if a law be in opposition to the Constitution, if both the law and the Constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the Constitution, or conformably to the Constitution, disregarding the law, the court must determine which of these conflicting rules governs the case. This is the very essence of judicial duty.

"If, then, the courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which the both apply.

"The particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the Constitution is void, and that courts as well as other departments are bound by that instrument."

"This judicial duty of upholding the provisions of the Constitution as against any legislation conflicting therewith has become now an accepted fact in the judicial life of this nation. That in the enforcement of this rule the decisions, national and state, are not all in harmony is not strange. Conflicts between constitutions and statutes have been easily found by some courts. It has been said, and not inappropriately, that in certain states the courts have been strenuous as to the letter of the state Constitution, and have enforced compliance with it under circumstances in which a full recognition of the spirit of the Constitution and the general power of legislation would have justified a different conclusion. We do not care to enter into any discussion of these varied decisions. We proceed upon the rule, often expressed in this court, that an act of Congress is to be accepted as constitutional unless on examination it clearly appears to be in conflict with provisions of the Federal Constitution."

[Fairbank v. United States, 181 U.S. 283; 21 S.Ct. 648 (1901)]

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### **Black v. State (Feb. 18, 1902)**

"It is uniformity of rule, and not uniformity of subject, which the constitution requires. Subjects may be classified, and if the classification be reasonable and founded on rational grounds, it will be sustained. ... As said by the supreme court of the United States in Magoun v. Bank, supra, concerning such taxes; "An inheritance tax is not one on property, but on the succession. The right to take property by devise or descent is the creature of the law, and not a natural right,--a privilege,--and therefore the authority which confers it may impose conditions upon it. From these provisions it is deduced that the states may tax the privilege, discriminate between relatives, and between these and strangers, and grant exemptions, and are not precluded from this power by the provisions of the respective state constitutions requiring uniformity and equality of taxation."

"It is really not a matter of great importance in this case to decide whether an inheritance tax is subject to the constitutional provision that the rule of taxation shall be uniform. Considering the clause without undue refinement of reasoning, it is difficult to see why it does not apply to an inheritance or succession tax. It is true such a tax is called an "excise" in the decisions. An excise is a duty levied on articles of sale or manufacture, upon licenses to pursue certain trades or deal in certain commodities, upon official privileges, etc. Cooley, Tax'n (2d Ed.) p. 4. But when such duty is levied upon a trade, occupation, or privilege as a means of producing revenue alone, and not in the exercise of the police power, it is, to all intents and purposes, an exercise of the taxing power, and no good reason is perceived why such taxation is not included within the taxation referred to in the constitution in the clause quoted. The argument against this position is that the words immediately following this clause, namely, "and taxes shall be levied upon such property as the legislature shall prescribe," indicate that it is a taxation of property alone which the section covers."

"The doctrine which I take issue with is a relic of feudalism, which not only cannot, in the nature of things, have any legitimate place in our constitutional system, but, in our judgment, is plainly rejected by the language of our state constitution, not only in the declaration of inherent rights to which we have referred, but by another to which we will now call attention. The old idea of our English ancestry was that landed estates were not the subject of absolute private ownership; that the private possessor merely held such an estate under a species of tenure, requiring personal fealty to the "lord paramount" as a condition thereof; that upon the death of such possessor, if the property was permitted to pass on to his successor, such permission was by the grace of the paramount proprietor, and that the process of transmission involved, in theory at least, a resumption of full title by the paramount proprietor and a bestowal again of the qualified title upon the successor, imposing upon him as an incident of his right the burden of fealty to the lord paramount the same as that carried by the former private possessor. The law neither made a will for the deceased proprietor in case of his dying intestate, nor executed one if he died testate, as a mere agent or intermediary to assist in the transmission of the property. What was done in the name of the law was done as the sovereign exercise of proprietary right of property. Under such a system no natural or absolute right of property, with power to transmit it as an incident there, could be

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### ***Sovereignty and Freedom Points and Authorities***



recognized. Sovereign authority, in dealing with the question of succession, as regards landed estates, in theory, dealt with public rights. Our separation from all governmental connection with that system, and its necessary incidents, involved a radical change as regards the power of arbitrary sovereign interference with those things that are deemed necessary to life, liberty and the pursuit of happiness, other than by reasonable regulations. Fealty to sovereign power, under our system, springs from citizenship, not from the ownership of property. There is no basis left for a public proprietary right in private property. The supposed sovereign paramount right to property, and notion that the possessor thereof was a mere conditional lessee, with no absolute right to have the same pass on to the a private successor under some reasonable regulation, is one of those relics of the past intended to be abrogated by our constitutional system, as is evidenced by the care that was taken to declare in our state constitution that all lands shall deemed allodial. Our own declaration on the subject, found in section 4, art. 1, is similar to those in state constitutions generally. That is inconsistent with the theory that the state, upon the death of the owner of property, acts by proprietary right of control in any sense in passing the title thereto along to a private successor. It is consistent only with absolute ownership of property, the ownership indicated in the ordinary muniments of title by language to the effect, expressed or implied, that the grantee is to hold the title thereto to himself, his heirs and assigns forever,--an absolute ownership, having as a necessary incident, the power, express or implied, under proper regulations, to name a successor, with the right of kindred to have such power exist, leaving for sovereign authority, as its legitimate function in case of intestacy, to make a will, so to speak, distributing the property of the deceased along the lines of his presumed intention as embodied in the statutes, providing for a continuance of private ownership in such cases. *Hammett v. City of Philadelphia*, 65 Pa. 146, 153, 3 Am.Rep. 615."

[*Black v. State*, 113 Wis. 205, 89 N.W. 522 (1902)]

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#### **School District No. 94 v. Gautier (Sept. 10, 1903)**

This case originated in the probate court, and is a case within the jurisdiction of a justice of the peace. The district court allowed plaintiffs attorney \$15 as attorney's fees, and taxed this sum as costs. The motion to retax costs calls in question the correctness of this ruling. Section 1, c. 51, p. 268, Sess. Laws 1895 (Wilson's St. 1903, §6915), is as follows: "In all cases within the jurisdiction of a justice of the peace, where any action is brought by any laborer of any kind, clerk, servant, nurse or other person for compensation claimed due for personal services performed, if a recovery be had in such action, the plaintiff shall in addition to the amount due, be entitled to recover as part of the costs, a judgment against the defendant for an attorney's fee of not less than two dollars and fifty cents, and not more than fifteen dollars, to be fixed by the court, for the use and benefit of plaintiffs attorney, together with costs." It was under this provision that the trial court taxed an attorney's fee of \$15 in favor of plaintiffs attorney. We think this was error. This statute is specific as to what classes of persons are entitled to its benefits, and courts cannot by implication extend it to embrace others not within its meaning. The statute is intended to favor laborers, servants, clerks, nurses, and others who perform manual labor<sup>o</sup> & 1106 or menial service. It does not include professional services, mental labors, or contractors. School teaching is a profession dependent upon mental, moral, and educational qualities; and a school teacher is neither a laborer, clerk, servant, nurse, or other person, within the meaning of this statute. The court erred in overruling the motion to retax costs."

[*School District No. 94 v. Gautier*, 13 Old. 194, 73 P. 954, 957 (1903)]

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#### **American Banana Co. v. United Fruit Co. (Apr. 26, 1909)**

.. a construction of any statute as intended to be confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power. "All legislation is prima facie territorial." Ex parte Blain, L. R. 12 Ch. Div. 522, 528; *State v. Carter*, 27 N. J. L. 499; *People v. Merrill*, 2 Park. Crim. Rep. 590, 596. Words having universal scope, such as "every contract in restraint of trade," "every person who shall monopolize," etc., will be taken, as a matter of course, to mean only everyone subject to such legislation, not all that the legislator subsequently may be able to catch." [*American Banana Co. v. United Fruit Co.*, 213 U.S. 347, 29 S.Ct. 511 (1909)]

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#### **United States v. Delaware & Hudson Co. (May 3, 1909)**

"It is elementary when the constitutionality of a statute is assailed, if the statute be reasonably susceptible of two interpretations, by one of which it would be unconstitutional and by the other valid, it is our plain duty to adopt that construction which will save the statute from constitutional infirmity. [Cite omitted.] And unless this rule be considered as meaning that our duty is to first decide that a statute is unconstitutional, and then proceed to hold that such ruling was unnecessary because the statute is susceptible of a meaning which causes it not to be repugnant to the Constitution, the rule plainly must mean that where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter."

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[United States v. Delaware & Hudson Co., 213 U.S. 366, 29 S.Ct. 527 (1909)]

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**Southern Pac. Co. v. United States (July 6, 1909)**

"A law must be complete in all its terms when it leaves the Legislature."  
[Southern Pac. Co. L United States, 171 F. 360 (1909)]

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**696. 30 Opn. Atty. Gen. (Nov. 16, 1914)**

**FEDERAL RESERVE BOARD--TREASURY DEPARTMENT.**

The moneys received by the Federal Reserve Board under section 10 of the act of December 23, 1913 being thus, in my opinion, public moneys and consequently subject to audit by one of the auditors of the Treasury Department, the question is then directly presented under which paragraph of the act of July 31, 1894, *supra*, the audit is to be made. This involves the further question on which you have asked my opinion, namely, whether the Federal Reserve Board is an independent board, commission, or Government establishment, or whether it is a bureau, office, or division or otherwise a part of the Treasury Department.

"That the Federal Reserve Board is a "board" or "establishment" of the Government within the meaning and intent of those words as used in the fifth paragraph of section 7 of the act of July 31, 1894, is plain from the provisions of the Federal reserve act and the explanation of the status of the board contained in the reports accompanying the original bills in Congress. This conclusion is sustained by reason and analogy, when reference is had to the considerable number of boards or establishments of far less general or national scope which have been so esteemed and uniformly treated. (See Report of Joint Commission to Inquire into Executive Departments, October 9, 1893. House Reports, 1st sess., 53d Cong., Report No. 88.)

"Consideration of the history of the Federal reserve bank act, of the general scheme of the whole act, of the functions to be performed by the Federal Reserve Board, and of the method of their performance, leads me to the clear opinion that the board is an independent board or Government establishment.

"The Federal Reserve Board is not merely a supervisory, but is a distinctly administrative board with extensive powers."

"Page 18. "The only factor of centralization which has been provided in the committee's plan is found in the Federal Reserve Board, which is to be a strictly Government organization created for the purpose of inspecting existing banking institutions and of regulating relationships between Federal reserve banks and between them and the Government itself."

"The Federal Reserve Board, consisting of the Secretary of the Treasury and six members appointed by the President of the United States and confirmed by the Senate for terms of six years, are given the following powers:" (Here follows an enumeration of powers)"

[30 Opinions of the Attorney General 308 (1914)]

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**Dodge v. Brady (Feb. 21, 1916)**

"Mr. William D. Guthrie argued.... Had the first Congress deliberated at length upon the choice of a provision which would be more effective than any other to prevent an abuse of the taxing power, it could not have selected one more appropriate than "due process of law." The phrase "due process of law," or its equivalent, "the law of the land," long antedated the establishment of our political institutions. It embodied then, as now, the most fundamental and far-reaching maxim of constitutional law and political justice, and it represented the broadest and most comprehensive guaranty of personal and property rights. In fact, there are no words in our language which signify or mean more in respect of the rights and liberties of the individual."

"The prohibition against the deprivation of property without due process of law cannot mean one thing under the 5th Amendment' and another thing under the 14th Amendment."

"Any provision of an act of Congress imposing an unequal and discriminatory tax by means of unreasonable and arbitrary selection among those of the class taxed would conflict with the provisions of U.S. Const. 5th Amendment, by depriving the individual of property without due process of law, or taking private property for public use without just compensation."

"The grant of power to tax in and of itself implies the limitation that a tax must necessarily be a common burden, equally imposed upon all of the same class, owning the same kinds of property, having the same kind of income, doing the same acts, or exercising the same privileges." [Cites omitted.]

[Dodge v. Brady, 240 U.S. 122, 36 S.Ct. 277, 60 L.Ed. 560 (1916)]

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**United States v. Jin Fuey Moy (June 5, 1916)**

"A statute must be so construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon that score."

[United States v. Jin Fuey Moy, 241 U.S. 394, 36 S.Ct. 658 (1916)]

**Gould v. Gould (Nov. 19, 1917)**

"In construing statutes levying taxes, it is the established rule not to extend their provisions by implication beyond the clear import of the language used, or enlarge their operations to embrace matters not specifically pointed out, and in case of doubt they are construed most strongly against the government and in favor of the citizen."

"The use of the word itself in the definition of "income" causes some obscurity, but we are unable to assert that alimony paid to a divorced wife under a decree of court falls fairly within any of the terms employed."

"In Audubon v. Shufeldt, 181 U.S. 575, 577, 578, 21 Sup.Ct. 735, 736 (45 L.Ed. 1009), we said:

"Alimony does not arise from any business transaction, but from the relation of marriage. It is not founded on a contract, express or implied, but on the natural and legal duty of the husband to support the wife."

[Gould v. Gould, 245 U.S. 151, 38 S.Ct. 53, 62 L.Ed. 211 (1917)]

**United States v. Standard Brewery (Jan. 5, 1920)**

"Administrative rulings cannot add to the terms of an act of Congress and make conduct criminal which such laws leave untouched. [Cites omitted.]

"Furthermore, we must remember, in considering an act of Congress, that a construction which might render it unconstitutional is to be avoided. We said in United States v. Jin Fuey Moy, 241 U.S. 394, 401, 36 Sup.Ct. 658 (60 L.Ed. 1061, Ann.Cas. 1917D, 854):

"A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score."

[United States v. Standard Brewery, 251 U.S. 210, 40 S.Ct. 139 (1920)]

**72d Congress, June 30, 1932**

"TITLE I--FURLOUGH OF FEDERAL EMPLOYEES" "SEC. 104. When used in this title--

"(a) The terms "officer" and "employee" mean any person rendering services in or under any branch or service of the United States Government or the government of the District of Columbia, but do not include (1) officers whose compensation may not, under the Constitution, be diminished during their continuance in office; (2) Senators, Representatives in Congress, Delegates, and Resident Commissioners; (3) officers and employees on the rolls of the Senate and House of Representatives; (4) carriers in the Rural Mail Delivery Service; (5) officers and members of the Police Department of the District of Columbia, of the Fire Department of the District of Columbia, of the United States Park Police in the District of Columbia, and of the White House Police; (6) teachers in the public school of the District of Columbia; (7) public officials and employees whose compensation is derived from assessments on banks and/or is not paid from the Federal Treasury; (8) the enlisted personnel of the Army, Navy, Coast Guard, and Marine Corps; (9) postmasters and postal employees of post offices of the first, second, and third classes whose salary or allowances are based on gross postal receipts, and postmasters of the fourth class; (10) any person in respect of any office, position, or employment the amount of compensation of which is expressly fixed by international agreement; and (11) any person in respect of any office, position, or employment in effect on the date of the enactment of this Act, if such compensation may not lawfully be reduced.

"(b) The term "compensation" means any salary, pay, wage, allowance (except allowances for subsistence, quarters, heat, light, and travel), or other emolument paid for services rendered in any civilian or noncivilian office, position, or employment; and includes the retired pay of judges, and the retired pay of all commissioned and other personnel of the Coast and Geodetic Survey, the Lighthouse Service, and the Public Health Service, and the retired pay of all commissioned and other personnel (except enlisted) of the Army, Navy, Marine Corps, and Coast Guard; but does not include the active or retired pay of the enlisted personnel of the Army, Navy, Marine Corps, or Coast Guard; and does not include payments out of any retirement, disability, or relief fund made up wholly or in part of contributions of employees." [United States Statutes at Large, 72d Congress, Sess. I., Chapter 314, June 30, 1932]

**Gold Reserve Act of 1934 (Jan. 30, 1934)*****Sovereignty and Freedom Points and Authorities***

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"SEC. 15. As used in this Act the term "United States" means the Government of the United States; the term "the continental United States means the States of the United States, the District of Columbia, and the Territory of Alaska; the term "currency of the United States" means currency which is legal tender in the United States, and includes United States notes, Treasury notes of 1890, gold certificates, silver certificates, Federal Reserve notes, and circulating notes of Federal Reserve banks and national banking associations; and the term "person" means any individual, partnership, association, or corporation, including the Federal Reserve Board, Federal Reserve banks, and Federal Reserve agents." [Bold added.]

[United States Statutes at Large, Vol. 48, Ch. 6, Sec. 15, p. 344 of the 73d Congress, Session II]

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### **Erie R. Co. v. Tompkins (Apr. 25, 1938)**

"Where application of the doctrine of Swift v. Tyson, by which Federal courts exercising jurisdiction on ground of diversity of citizenship need not in matters of general jurisprudence apply the unwritten law of the state as declared by its highest court but are free to exercise an independent judgment as to what the common law of a state is or should be, introduced grave discrimination by non-citizens against citizens and prevented uniformity in the administration of the law of a state and thereby invaded rights which were reserved by the constitution to the several states, abandonment of the doctrine was required."

"In federal courts, except in matters governed by Federal Constitution or by acts of Congress, law to be applied in any case is law of the state."

"There is no federal general common law and Congress has no power to declare substantive rules of common law applicable in a state whether they be local or general in nature, be they commercial law or a part of the law of torts " [Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817 (1938)]

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### **C.I.R. v. Trustees of L. Inv. Ass'n. (Sept. 26, 1938)**

"And by statutory definition the term "taxpayer" includes any person, trust or estate subject to a tax imposed by the revenue act. ... Since the statutory definition of "taxpayer" is exclusive, the federal courts do not have the power to create nonstatutory taxpayers for the purpose of applying the provisions of the Revenue Acts..."

[C.I.R. v. Trustees of L. Inv. Ass'n., 100 F.2d. 18 (1939)]

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### **State of Minnesota v. United States (Jan. 3, 1939)**

"A proceeding against property in which the United States has an interest is a suit against the United States."

"Where the United States held Indian allotted lands in trust for the allottees, proceeding to condemn right of way for highway across the allotted lands could not be maintained by state without consent of the United States."

"The exemption of the United States from being sued without its consent extends to a suit by a state."

"Authorization' to condemn property in which the United States has an interest confers by implication permission to sue the United States."

"Congress may determine, not only whether the United States may be sued, but in what courts the suit may be brought."

"Where jurisdiction of suit against the United States has not been conferred by Congress, no officer of the United States has power to give to any court jurisdiction of a suit against the United States."

"Federal statute, providing that lands allotted in severalty to Indians may be condemned for any public purpose under the laws of the state where located in the same manner as lands owned in fee may be condemned, did not authorize the maintenance in state court, of proceeding to condemn right of way for highway over allotted lands to which United States held fee in trust for allottees."

[State of Minnesota v. United States, 305 U.S. 382, 59 S.Ct. 292 (1939)]

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### **United States v. Cooper Corp. (Mar. 31, 1941)**

"It is not the function of a court to ingraft on a statute additions which it thinks the legislature logically might or should have made."

"The connotation of a term used in one section of a statute may often be clarified by reference to its use in other sections of the same statute."

"The United States is not a "corporation.""

"It may be assumed, in the absence of any indication to the contrary, that the term "person," when used in different sections of a statute, was employed throughout the statute in the same, and not in different, senses."

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"The scheme and structure of legislation is important in determining its purpose and intent."

[United States v. Cooper Corp., 312 U.S. 600, 85 L.Ed. 1071 (1941)]

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**Hammond-Knowlton v. United States (June 24, 1941)**

"Generally, the courts should conservatively interpret statutes relaxing the government's immunity from liability for acts of its officers."

"The contention that action to recover overpayment of federal estate tax could not be maintained against collector because the overpayment resulted from commissioner's disallowance of credit claimed by taxpayer presented an error of so serious a character that it could be first raised on appeal."

[Hammond-Knowlton v. United States, 121 F.2d. 192 (1941)]

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**Stark v. Wickard (Feb. 28, 1944)**

"When Congress passes an Act empowering administrative agencies to carry on governmental activities, the power of those agencies is circumscribed by the authority granted. This permits the courts to participate in law enforcement entrusted to administrative bodies only to the extent necessary to protect justiciable individual rights against administrative action fairly beyond the granted powers. The responsibility of determining the limits of statutory grants of authority in such instances is a judicial function entrusted to the courts by Congress by the statutes establishing courts and marking their jurisdiction. Cf. United States v. Morgan, 307 U.S. 183, 190, 191, 59 S.Ct. 795, 799, 83 L.Ed. 1211. This is very far from assuming that the courts are charged more than administrators or legislators with the protection of the rights of the people. Congress and the Executive supervise the acts of administrative agents. The powers of departments, boards and administrative agencies are subject to expansion, contraction or abolition at the will of the legislative and executive branches of the government. These branches have the resources and personnel to examine into the working of the various establishments to determine the necessary changes of function or management. But under Article III, Congress established courts to adjudicate cases and controversies as to claims of infringement of individual rights whether by unlawful action of private persons or by the exertion of unauthorized administrative power."

[Stark v. Wickard, 321 U.S. 288, 64 S.Ct. 559 (1944)]

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**People v. One 1941 Ford 8 Stake Truck, Engine No. 99T370053, License No. P. 8410 (June 5, 1945)**

"Where statute is susceptible of two interpretations, one of which would satisfy constitutional guaranty, if possible, the court will uphold the legislation."

[People v. One 1941 Ford 8 Stake Truck, Engine No. 99T370053, License No. P. 8410, 159 P.2d. 895 (1944)]

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**Whittier v. Whittier (June 18, 1946)**

"The use of particular forms of words is not essential to a judgment. The sufficiency of a writing claimed to be a judgment is to be tested by its substance rather than its form. If it corresponds with the definition of a judgment and appears to have been intended by the court as the determination of the rights of the parties and shows in intelligible language the relief granted, the absence of language commonly deemed especially appropriate to formal judgments is not fatal."

[Whittier v. Whittier, 23 N.W.2d. 435 (1946)]

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**United States v. Interstate Commerce Commission (June 28, 1948)**

"The principle that no person may sue himself applies to the government even if nominal plaintiff is a party who is subrogated to the rights of the government."

"The United States always acts in a sovereign capacity, since it does not have separate governmental and proprietary capacities."

"Federal Courts may deal only with actual cases and controversies."

"Suit by the United States against the United States to set aside an order of the Interstate Commerce Commission in which suit both pleadings were signed by the same assistant Attorney General, was dismissed under the rule that no one may sue himself and as failing to present a controversy."

[United States v. Interstate Commerce Commission, 78 F.Supp. 580 (1948)]

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**Latham v. Santa Clara County Hospital (May 21, 1951)**

"The Legislature is presumed to know the decisions of the courts construing the statute which it is amending. (23 Cal.Jur. pp. 795-796)."

[Latham v. Santa Clara County Hospital, 104 Cal.App.2d. 336, 231 P.2d. 513 (1951)]

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**Panella v. United States (Nov. 9, 1954)**

"The Government may not be sued without its consent."

"In construing language of Tort Claims Act, court should, on the one hand, give full scope to Government's relinquishment of its historic immunity from suit, and, on the other hand, avoid narrowing the provisions which set forth situations in which Congress has seen fit to retain that immunity."

"Traditionally, of course, the Government may not be sued without its consent, and the present Tort Claims Act represents "the culmination of a long effort to mitigate unjust consequences of sovereign immunity from suit". See *Feres v. United States*, 340 U.S. 135, at page 139, 71 S.Ct. 153, at page 156, 95 L.Ed. 152."

[Panella v. United States, 216 F.2d. 622 (1954)]

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**Yarborough v. United States (Feb. 14, 1956)**

"Rule that criminal statutes are to be strictly construed does not mean that they should be construed so as to defeat manifest intention of Congress."

"What questions shall be asked of jurors on voir dire is a matter within sound discretion of trial judge."

[Yarborough v., United States, 230 F.2d. 56 (1956)]

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**Pepper v. Board of Directors (July 7, 1958)**

"It is the function of the courts to construe and apply the law as it is enacted and not to add thereto nor detract therefrom" (Pacific Coast etc. Bank v. Roberts, 16 Cal.2d. 800, 805 [108 P.2d. 439]; In re Miller, 31 Cal.2d. 191, 199 [187 P.2d. 722]; Kirkwood V. Bank of America, 43 Cal.2d. 333, 341 [273 P.2d. 532]) and "the better and more modern rule of construction is to construe a legislative enactment in accordance with the ordinary meaning of the language used and to assume that the Legislature knew what it was saying and meant what it said." (Pacific Gas & E. Co. v. Shasta Dam etc. Dist., 135 Cal.App.2d. 463, 468 [287 P.2d. 841].)"

[Pepper v. Board of Directors, 162 Cal.App.2d. 1; 327 P.2d. 928 (1958)]

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**Cooper v. Aaron (Sept. 29, 1958)**

"It is the province and duty of the judicial department to say what the law is."

"The federal judiciary is supreme in the exposition of the law of the Federal Constitution; this principle is a permanent and indispensable feature of the United States."

"The requirement in Article 6, clause 3, of the Federal Constitution that every state legislator and executive and judicial officer take an oath to support this Constitution reflects the framers' anxiety to preserve the Constitution in full force, in all its powers, and to guard against resistance to or evasion of its authority, on the part of a state."

"No state legislator or executive or judicial officer can war against the Federal Constitution without violating his oath, taken under Article 6 clause 3 thereof, to support it; if the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the Constitution itself becomes a solemn mockery."

"Article 6 of the Constitution makes the Constitution the "supreme Law of the Land" In 1803, Chief Justice Marshall, speaking for a unanimous Court, referring to the Constitution as "the fundamental and paramount law of the nation," declared in the notable case of *Marbury v. Madison*, (US) 1 Cranch 137, 177, 2 L.Ed.2d. 60, 73, that "It is emphatically the province and duty of the judicial department to say what the law is." This decision declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system."

[Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401, 3 L.Ed.2d. 5 (1958)]

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**United States v. Hover (June 15, 1959)**

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"Every law requires some interpretation if only an examination of meaning of its words and an examination of factual situation at hand to determine whether the law is applicable to such facts."

"Presumption of correctness which attends determination of Commissioner of Internal Revenue may be rebutted by showing that such determination is arbitrary or erroneous."

"In action by night club owner against United States for refund of amount paid pursuant to cabaret tax deficiency assessment," owner did not have to produce evidence to overcome presumption of correctness attending determination of Commissioner of Internal Revenue adverse to owner after owner had succeeded in showing that assessment had been based on an erroneous view of the law, and owner was not required to show what correct tax should have been."

[United States v. Hover, 268 F.2d. 657 (1959)]

### **Auto Equity Sales Inc. v. Superior Court (Mar. 22, 1962)**

"Under the doctrine of *stare decisis*, all tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction. Otherwise, the doctrine of *stare decisis* makes no sense. The decisions of this court are binding upon and must be followed by all the state courts of California. Decisions of every division of the District courts of Appeal are binding upon all the justice and municipal courts and upon all the superior courts of this state, and this is so whether or not the superior court is acting as a trial or appellate court. Courts exercising inferior jurisdiction must accept the law declared by courts of superior jurisdiction. It is not their function to attempt to overrule decisions of a higher court. (People v. McGuire, 45 Cal. 56, 57-58; Latham v. Santa Clara County Hospital, 104 Cal.App.2d. 336, 340, 231, P.2d. 513; Globe Indemnity Co. v. Lakin, 62 Cal.App.2d. 891, 894, 145 P.2d. 633.)

This rule requiring a court exercising inferior jurisdiction to follow the decisions of a court exercising a higher jurisdiction has particular application to the appellate departments of the superior court. ... It would create chaos in our legal system if these courts were not bound by higher court decisions."

[Auto Equity Sales Inc. v. Superior Court, 57 C.2d. 450, 20 Cal.Rptr. 321, 369 P.2d. 937 (1962)]

### **United States v. New England Coal and Coke Company (June 4, 1963)**

"In matters of statutory construction, duty of court is to give effect to intent of Congress, and in doing so first reference is to literal meaning of words employed."

"Unless contrary appears, it is presumed that statutory words were used in their ordinary sense."

"Extrinsic aids such as legislative history and accepted interpretation of similar language in related legislation are helpful in interpreting ambiguous statutory language."

"Administrative interpretations by agency entrusted with enforcement of statute are persuasive in construing a statute but power to issue regulations is not power to change the law, and it is for courts, to which task of statutory construction is ultimately entrusted, to determine whether or not administrative interpretations are consistent with intent of Congress and words of statute."

[United States v. New England Coal and Coke Company, 318 F.2d. 138 (1963)]

### **Morris v. Oney (July 3, 1963)**

"Statutes are not presumed to alter the common law except to the extent that they expressly so provide. "The Civil Code was not designed to embody the whole law of private and civil relations, rights, and duties; it is incomplete and partial; and except in those instances where its language clearly and unequivocally discloses an intention to depart from, alter, or abrogate the common-law rule concerning a particular subject matter, a section of the code purporting to embody such doctrine or rule will be construed in the light of common-law decisions on the same subject." (*Estate of Elizalde*, 182 Cal. 427, 433 [188 P. 560].) The rule is stated as follows in 45 California Jurisprudence 2d section 116, page 625:

"Statutes must be given a reasonable and common sense construction in accordance with the apparent purpose and intention of the lawmakers--one that is practical rather than technical, and that will lead to a wise policy rather than to mischief or absurdity." The court should consider the consequences that might flow from a particular interpretation (*Estate of Ryan*, 21 Cal.2d. 498, 513 [133 P.2d. 626]), and where the language is susceptible of two different constructions general phrasing must yield to an intent which is apparent from

the act itself. (*Pritchard v. Sully-Miller Contracting Co.*, 178 Cal.App.2d. 246, 256 [2 Cal.Rptr. 830]; *Farnsworth v. Nevada-Cal Management*, 188 Cal.App. 726, 730, 732 [248 P. 681, 251 P. 241].)

[Morris v. Oney, 217 Cal.App.2d. 864; 32 Cal.Rptr. 88 (1963)]

### **Belli v. Roberts Brothers Furs (Feb. 21, 1966)**

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"In determining what the Legislature meant by the deletion of one word in a statute and the insertion of another, the court must construe ordinary words as having the meaning ordinarily attributed to them, but if it appears that an ordinary word has been used to convey some special or technical meaning, then the court must give such word or words the meaning intended."

[Belli v. Roberts Brothers Furs, 240 Cal.App.2d. 284, 49 Cal.Rptr. 625 (1966)]

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**Moore v. City Council (Sept. 16, 1966)**

"The courts will not presume that the Legislature, in enacting a statute, indulged in an idle act, but that they intended the statute to have some effect."

"Every word, phrase or provision in a statute is presumed to have a meaning and to perform a useful function."

"In statutory construction, an absurd and unjust result will never be ascribed to the Legislature, nor will it be presumed that it used inconsistent provisions on the same subject."

[Moore v. City Council, 244 Cal.App.2d. 892; 53 Cal.Rptr. 603 (1966)]

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**Hartford Accident & Indemnity Co. v. Town of Saltillo, Miss. (Feb. 8, 1974)**

"Suit against a federal official in his official capacity is a suit against the United States.

[Hartford Accident & Indemnity Co. v. Town of Saltillo, Miss., 371 F.Supp. 331 (1974)]

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**United States v. Critzer (June 14, 1974)**

"It is settled that when the law is vague or highly debatable, a defendant--actually or imputedly--lacks the requisite intent to violate it."

[United States v. Critzer, 498 F.2d. 1160 (1974)]

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**Hartman v. C.I.R. (Dec. 15, 1975)**

"When section 6020(b) is lifted out of the Code and read literally, as petitioner has done, its scope is broad and its meaning and purpose hazy. But the Internal Revenue Code cannot be so read, for each section is not a self-contained whole, but rather a building block of a complex, interrelated statute. Based on its location in chapter 61 and the lack of any cross-references (other than to the word "return"), section 6020(b) is not to be read as a prerequisite to the Commissioner's proceeding under section 6201(a)(1) (ch. 63)."

[Hartman v. C.I.R., 65 T.C. 542 (1975)]

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**Atkins v. United States (May 18, 1977)**

**"It is not presumed that the common law is changed by passage of a statute which gives no indication that it proposes such a change."**

"Refusal of judges to hear and decide a case with the result that the doors of the courts would be closed to the parties because there were no other judges qualified to hear the case could amount to a denial of due process."

"Access to the courts to secure and establish important rights should be made available to all citizens at all times particularly where the complaining parties are asserting claims under the Constitution."

**"A cardinal principle of statutory interpretation is that, in the absence of a clearly expressed intent to the contrary, the revision or recodification of a statute indicates approval of court interpretations of the statute made prior to reenactment. Also, it is not presumed that the common law is changed by the passage of a statute which gives no indication that it proposes such a change."** [Bold added.]

[Atkins v. United States, 556 F.2d. 1028 (1977)]

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**Mailloux v. Mailloux (May 31, 1977)**

"Privileges of national citizenship are those springing from Constitution and laws of United States."

"The privileges of national citizenship have been construed' to include the right of access to federal courts via diversity jurisdiction."

"SNEED, Circuit Judge (dissenting):"

"To grasp the setting in which arises the issue these cases present, it is helpful to trace briefly the evolution of the

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legislation governing the jurisdiction of the District Court of Guam. To do this it is necessary to recall that the Territory of Guam was acquired by the United States under the Treaty of Paris ending the Spanish-American War in 1898. From then until 1950, complete authority over Guam was given to the Department of the Navy by Executive Order No. 108-A of December 23, 1898. The naval governors, among other exercises of powers, created courts and acted as judges. In 1950, realizing the progress the people of Guam had made toward self-government under the naval governors, Congress enacted the Organic Act of Guam of August 1, 1950, 64 Stat. 384, which established a civil government on the island. In this manner, Guam became an organized, unincorporated territory."

Footnote 2. "Incorporated territories are those to which the Constitution has been extended fully by Congress.

Unincorporated territories are not entitled to Constitutional guarantees in the absence of affirmative congressional action." [*Mailloux v. Mailloux*, 554 F.2d. 976 (1977)]

#### **Churchill v. S.A.D. No. 49 Teachers Ass'n. (Nov. 18, 1977)**

"There are exceptions to the doctrine of primary jurisdiction excusing the non-exhaustion of administrative remedies, and one of the exceptions is, where the questions involved are questions of law only which the courts must ultimately decide." "Also, where the administrative agency is not empowered to grant the relief sought and it would be futile to complete the administrative appeal process, such are special circumstances dispensing with the exhaustion of the administrative remedy prior to turning to the courts for relief."

"In our interpretation of the Municipal Public Employees Labor Relations Law we must consider two long established principles of statutory construction: 1) The general rule is that the statutes in derogation of the common law must be strictly construed and not extended by implication. [Cites omitted.] 2) public bodies or officers may exercise only that power which is conferred upon them by law. The source of that authority must be found in the enabling statute either expressly or by necessary inference as an incidence essential to the full exercise of the powers specifically granted." [*Churchill v. S.A.D. No. 49 Teachers Ass'n.*, 380 A.2d. 186 (1977)]

#### **United States v. Mobil Corp. (Dec. 18, 1981)**

"In sum, the summons provisions of the revenue laws came into existence during the Civil War. The records and returns and records examination provisions first appeared during World War I and for a brief period were combined in a single section of the revenue laws. The records and returns provision was dropped from the revenue laws for three years and then added because it was needed to control tax evasion. At no point has Congress explicitly indicated that the requirement that taxpayers "keep records" grants the IRS authority to examine records, although the 1939 Codification of the Internal Revenue Laws placed one of §6001's predecessors in a part of the Code related to "Discovery of tax liability." "No clear picture of congressional intent is presented by the legislative history of these provisions. We are left then with the current structure of the code and the remarks of Senator Haskell. At the same time, it ought to be noted that the records maintenance provision has never existed without a summons provision, and the summons provisions were continued after the record keeping provisions were adopted.

"D. Summary. In summary, this review of §6001, its language, the authority construing it, and its relationship to other Code provisions, even while falling substantially short of demonstrating congressional purpose with certainty, provides some support for Mobil's contention that the IRS cannot rely upon §6001 as a grant of a right of inspection; that it must look to other sources, such as its administrative summons procedures, in order to inspect records required to be kept by §6001. Regardless, the exercise demonstrates that so interpreting §6001 is permissible, at the least, if indeed it is not more plausible than any other."

"The argument that acceptance of the IRS reading of §6001 would frustrate this general congressional purpose behind Sections 7602-10 is compelling. More specifically, the IRS construction would reduce the effectiveness of a carefully constructed set of protections for taxpayers. We know that in order to issue a summons entitling it to examine books and records under Code Section 7602(2), not only may the IRS not seek the records solely for a criminal purpose, *LaSalle, supra*, it must meet four other tests of its "good faith" which are set forth in *U.S. v. Powell* [64-2 U.S.T.C. 1 9858], 379 U.S. 48, 57-8 (1964), which were recently summarized by the First Circuit as follows:

"[T]he IRS must show (1) that the investigation will be conducted pursuant to a legitimate purpose; (2) that the inquiry may be relevant to the purpose; (3) that the information sought is not already in the possession of the IRS; and (4) that the administrative steps required by the Internal Revenue Code have been followed. *U.S. v. Freedom Church* [80-1 U.S.T.C. 1 9132], 613 F.2d. 316, 319 (1st Cir. 1979)."

"*Is a Right of Unilateral Inspection Under Section 6001 Consistent with the Fourth Amendment?* It is a well established principle that if the selection of one of alternative constructions of a statute would involve serious constitutional difficulties, that is reason to reject that construction in favor of another. *U.S. v. Clark* [80-2 U.S.T.C. 1 9779], 445 U.S. 23,

27 (1980). I conclude that the IRS reading of Section 6001 would raise a serious question under the fourth amendment 439 at least since the decision of the Supreme Court in *Marshall v. Barlow's*, 436 U.S. 307 (1978). *Barlow's* primary focus was upon the question of whether OSHA inspectors could constitutionally inspect the working areas of a business without a warrant or its equivalent. The court observed:

"[A warrant] provides assurances from a neutral officer that the inspection is reasonable under the Constitution, is authorized by statute, and is pursuant to an administrative plan containing specific neutral criteria. Also, a warrant would then and there advise the owner of the scope and objects of the search, beyond which limits the inspector is not allowed to proceed. *Id.* at 323. [Brackets original.]

"At this point the court noted:

*"Delineating the scope of a search with some care is particularly important where documents are involved.*

Section 8(c) of the Act, 29 U.S. C. §657(c)...."

"In describing the scope of the warrantless inspection authorized by the statute, §8(a) does not expressly include any records among those items or things that may be examined, and §8(c) merely provides that the employer is to "make available" his pertinent records and to make periodic reports."

"Section 6001 and the regulations enacted pursuant to it, the IRS would be entitled to a warrantless inspection of a less than well-defined group of records including ones related to income tax liability which individual taxpayers are required to keep by the IRS. Treas. Reg. Section 1.6001-1(a). That the scope of the present demand is happily now limited to records which Mobil is required to keep under Treas. Reg. Section 31.6001-1, provides no support for the IRS broadly claimed right to unilaterally determine the scope of its inspection rights and to subject taxpayers who refuse its request to criminal and civil liability.

"That is, if the court adopted the IRS reading of Section 6001, it would be giving to the IRS authority to inspect a wide variety of records without the judicial supervision arguably required under the fourth amendment by the *Barlow's* court. This is not to say the IRS must obtain a probable cause determination from a detached and neutral judicial officer before conducting an inspection of records, but a strong argument can be made that it must obtain "a warrant or its equivalent", 436 U.S. at 325. The summons procedure meets this requirement.

*"Conclusion.* The IRS does not have authority under Section 6001 to unilaterally inspect Mobil's records concerning its employees' tax withholding (i.e. W-4 Forms and microfiche copies of salary checks and stubs for each payment of compensation). The court reaches this conclusion because (1) it appears that Congress intended to authorize such inspections of documents required to be maintained by Section 6001 only by resort to other statutorily created procedural schemes such as the summons procedures. At the least there is no compelling history to the contrary, and giving §6001 an IRS reading would frustrate the intent of Congress in its 1976 amendment to the procedures for issue of an administrative summons; and (2) a serious constitutional question is presented by a reading of Section 6001 to authorize inspections of taxpayer records without an administrative warrant or its equivalent. See *United States v. Mississippi Power & Light Co.*, 638 F.2d. 899 *cert. denied -- U.S. --* (1981)."

[United States v. Mobil Corp., (82-1, U.S.T.C. 9242) (1981)]

#### **American Fed. of State, et. al. v. Olson (Aug. 22, 1983)**

"It is well-settled that public officials have only such authority" as is expressly given them by the constitution and statutes together with those powers and duties which are necessarily implied from the express grant of authority."

[American Fed. of State, et. al. v. Olson, 338 N.W.2d. 97 (1983)]

#### **Umpleby v. State (Mar. 29, 1984)**

"The law regarding the authority of public officers has been established for some time. "In general, the powers and duties of officers are prescribed by the Constitution or by statute, or both, and they are measured by the terms and necessary implication of the grant, and must be executed in the manner directed...." *Kopplin v. Burleigh County*, 47 N.W.2d. 137, 140 (N.D.1951)"[citing 43 Am.Jur.2d *Public Officers & Employees* §263 (1972)]; *Brink v. Curless*, 209 N.W.2d. 758, 767 (N.D.1973); *Madrid Lumber Co. v. Boone County*, 121 N.W.2d. 523, 525 (Iowa 1963); *South Dakota Employers Protective Assn v. Poage*, 65 S.D. 198, 272 N.W. 806, 809 (1937). Persons transacting business or dealing with public offices are charged with knowledge of the officers' authority. *Cf. Feiler v. Wanner*, 340 N.W.2d. 168, 171 n. 2 (N.D.1983); *Roeders v. City of Washburn*, 298 N.W.2d. 779, 782 (N.D.1980)(parties dealing with municipalities are charged with notice of the extent of that authority); *Madrid, supra*, at 527 (party bound at its peril to take cognizance of all statutory limitations upon authority of county); *Consolidated Chemical Laboratories, Inc., v. Cass County*, 141 Neb. 486, 3 N.W.2d. 920, 922 (Neb. 1942) (merchant dealing with counties and county officers must note and respect their powers and duties.) Further, 20 *C.J.S. Counties* §174, p. 1007, states:

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"One who contracts with a county is bound to recognize the statutory limitations of its power, and persons dealing with officers or agents of counties are bound to ascertain the limits of their authority or power as fixed by statutory or organic law, and are chargeable with knowledge of such limits.""

[Umpleby v. State, 347 N.W.2d. 156 (N.D. 1984)]

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**United States v. Zuger (June 18, 1984)**

"Federal legislation takes effect according to its terms when Congress properly approves a bill and the President either signs it, fails to object within ten days, or vetoes it but Congress overrides the veto; this, and only this, is legislation or statutory law."

""Codification" of existing legislation is directed towards the proper and commendable goal of collecting the multitude of congressional enactments in force and organizing them in a readily accessible manner."

"Acts of Congress do not take effect or gain force by virtue of their codification into the United States Code; rather, they are simply organized in a comprehensive way under the rubric of appropriate titles, for ready reference."

"The enactment into "positive" law of a title of the United States Code does not make or unmake the efficacy or force of a duly enacted law; instead, congressional enactment of a title of the Code, as such, into positive law is relevant only to the question of whether the contents of that Code title itself, as such, are to be deemed to constitute full and faithful reflections of the law in force as Congress has enacted it."

"Whenever a title of the United States Code, as such, is enacted into positive law, the text of that title constitutes legal evidence of the laws contained in that title; in construing a provision of such a title, a court may neither permit nor require proof of the underlying original statutes."

"Where a title of the United States Code, as such, has not been enacted into positive law, then the title is only *prima facie* or rebuttable evidence of the law; if construction of a provision to such a title is necessary, recourse may be had to the original statutes themselves."

"Failure of Congress to enact a title as such and in such form into "positive" law in no way impugns the validity, effect, enforceability, or constitutionality of the laws as contained and set forth in the title."

"Prosecution for willful and knowing failure to file income tax returns was not rendered null and void by fact that Internal Revenue Code of 1954 was not enacted into "positive" law, since failure of Congress to enact title of United States Code containing the Internal Revenue Code in no way impugned the validity, effect, enforceability, or constitutionality of the laws as contained and set forth in that title."

"Fact that the Federal Constitution did not explicitly refer to nor create an Internal Revenue Service did not preclude congressional delegation of tax-collecting authority to the Service or the prosecution of taxpayer for willful and knowing failure to file income tax returns."

"Fact that district judge's salary was paid by the United States neither dictated nor suggested the need for recusal in prosecution of taxpayer for willful and knowing failure to file income tax returns."

"Alleged lack of "equitable jurisdiction" by federal district court did not preclude prosecution of taxpayer for willful and knowing failure to file income tax returns."

"Prosecution of taxpayer for willful and knowing failure to file income tax returns was not stayed pending the resolution of pro se taxpayer's appeal from the denial of three documents treated by the federal district court as motions to dismiss directed to the jurisdiction and authority of the court to act in the matter."

"A necessary corollary to this transparently semantic argument is that a majority vote of the respective houses of Congress on a resolution reported out by the appropriate committee or committees does not make law. Such a notion, anathema to any rational legislative process, is totally inconsistent with the process contemplated by the constitution. Instead, a piece of legislation takes effect according to its terms when Congress properly approves a bill and the President either signs it, fails to object within ten days, or vetoes it but Congress overrides the veto. This, and only this, is legislation or statutory law."

"Where a title has not undergone the mystical-sounding ritual of "enactment into positive law," recourse to the numerous volumes of the statutes at large or other records of congressional proceedings is available in case a question arises as to the accuracy of the version of the law as reflected in the Code vis-a-vis the law enacted by Congress. Where a title has, however, been enacted into positive law, the Code title itself is deemed to constitute conclusive evidence of the law; recourse to other sources is unnecessary and precluded."

"In construing a provision of such a title, a court may neither permit nor require proof of the underlying original statutes. Where, however, a title, as such, has not been enacted into positive law, **then the title is only *prima facie*** or rebuttable evidence of the law. If construction of a provision to such a title is necessary, recourse may be had to the original statutes themselves."

[United States v. Zuger, 602 F.Supp. 889 (D.Conn. 1984)]

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**United States v. Karo (Sept. 18, 1984)**

"A "search" occurs "when an expectation of privacy that society is prepared to consider reasonable is infringed." *United States v. Jacobsen*, 466 U.S. 109, 104 S.Ct. 1652, 80 L.Ed.2d. 85 (1984)."

"A "seizure" of property occurs when "there is some meaningful interference with an individual's possessory interest in that property." *Ibid.*"

[*United States v. Karo*, 468 U.S. 705; 82 L.Ed.2d. 530 (1984)]

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**United States v. House (June 7, 1985)**

"The Sixteenth Amendment, granting Congress power to lay and collect income taxes, was validly ratified and is a part of United States Constitution despite minor variations in text of the amendment as contained in resolutions of the various states ratifying it, of which the Secretary of State was aware when he certified the amendment as having been ratified, absent showing that minor variations in capitalization, punctuation and wording of the various state resolutions were materially different in purpose or effect from the language of the congressional joint resolution purposing the amendment, and in light of fact that the amendment has been recognized and acted upon since 1913."

"Defendants have not shown the Court any evidence that a resolution containing the word "levy" means anything different from a resolution containing the word "lay." Neither have they shown any significance deriving from the addition of the letter "s" to the word "source" or the deletion of the letter "s" from the word "incomes." Defendants have not shown that the meaning of the amendment was altered in any way by the omission of a comma or the failure to capitalize a word.

"Defendants have merely pointed to technical variances which may be of some historical interest, but which have no substantive effect on the meaning of the sixteenth amendment."

"The sixteenth amendment and the tax laws passed pursuant to it have been followed by the courts for over half a century. They represent the recognized law of the land."

[*United States v. House*, 617 F.Supp. 237 (W.D. Mich. 1985)]

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**Ryan v. Bilby (July 3, 1985)**

"Internal Revenue Code §7402(a) authorizing district court to "render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws," empowers district court to void common-law liens imposed by taxpayers on property of government officials assigned to collect delinquent taxes."

"Congress' failure to enact title into positive law has only evidentiary significance, and does not render underlying enactment invalid or unenforceable."

"Fact that Congress had never enacted Title 26 of United States Code into positive law did not render provisions of Internal Revenue Code invalid or unenforceable, and government officials did not violate taxpayer's rights by enforcing Code against him."

"Judge, magistrates, and prosecutor involved in taxpayer's prosecution for failure to file returns" were absolutely immune from taxpayer's subsequent civil suit seeking damages against them."

"Prosecutor enjoys absolute immunity from civil damages liability when he acts in quasi-judicial capacity."

"Internal Revenue agents are absolutely immune from civil damages liability to taxpayers alleging common-law torts 669"

"Internal Revenue agents are immune from liability for constitutional torts insofar as their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known."

[*Ryan v. Bilby*, 764 F.2d. 1325 (9th Cir. 1985)]

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**People v. Long (Dec. 5, 1985)**

"The fundamental rule of statutory construction is ascertaining the Legislature's intent so as to effectuate the purpose of the law. (*Select Base Materials v. Board of Equal.*, 51 Cal.2d. 640, 645, 335 P.2d. 672.) A court first turns to the words of the statute itself, giving significance to every word, phrase, sentence and part of an act in furtherance of the legislative purpose, if possible. (*People v. Black*, 32 Cal.3d. 1, 5, 184 Cal.Rptr. 454, 648 P.2d. 104.) A construction which renders any part of a statute surplusage should be avoided. (*People v. Gilbert*, 1 Cal.3d. 475, 480, 82 Cal.Rptr. 462 P.2d. 580.) The statutory language must be construed in context and the various parts of a statute "must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole." (*People v. Black, supra*, 32 Cal.3d. 1, 5, 184 Cal.Rptr. 454, 648 P.2d. 104.) The legislative history as well as the historical circumstances of a statute's

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enactment may be considered in ascertaining the Legislature's intent. (*Ibid.*)"

"However, it is also axiomatic that all provisions of the Penal Code "are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice." (§4)."

[People v. Long, 220 Cal.Rptr. 312 (Cal.App. 4 Dist. 1985)]

#### **Berkshire Hathaway Inc. v. United States (Sept. 30, 1986)**

"Internal Revenue Code is "positive law," and the expressed will of the legislature, as reflected in specific language of the code, controls its interpretation."

"This language reinforces the court's belief that it would be unfair to penalize plaintiff under a rule which, if it existed at all, would have to be gleaned from the Code based on abstract notions of tax policy and structural consistency."

[Berkshire Hathaway Inc. v. United States, 8 Cl.Ct. 780 (1985)]

#### **Olson v. Paine, Webber, Jackson & Curtis, Inc. (Nov. 21, 1986)**

"Ordinarily, lower court has no authority to reject doctrine' developed by higher one; if, however, events subsequent to last decision by higher court approving doctrine, especially later decisions by that court and statutory changes, make it almost certain that higher court would repudiate doctrine if given a chance to do so, lower court is not required to adhere to doctrine."

"But we take seriously Judge Hand's warning against a lower court's "embrac[ing] the exhilarating opportunity of anticipating a doctrine which may be in the womb of time, but whose birth is distant." *Spector Motor Service, Inc. v. Walsh, supra*, 139 F.2d. at 823 (dissenting opinion)." [Brackets original.]

"We do not think it realistic "to assume that our elected representatives, like other citizens, know the law," *Cannon v. University of Chicago*, 441 U.S. 677, 696-97...."

[Olson v. Paine, Webber, Jackson & Curtis, Inc., 806 F.2d. 731 (7th Cir. 1986)]

#### **Colby v. J.C. Penny Co., Inc. (Feb. 10, 1987)**

The distinction essential to understanding the doctrine [of stare decisis] is between the persuasiveness and the authority of a previous decision. Any decision may have persuasive force, and invite--indeed compel--the careful and respectful attention of a court confronted with a similar case. But unless the earlier decision is authoritative, the court that decides the later case does not discharge its judicial responsibilities adequately by merely citing the earlier decision and following it without so much as indicating agreement with it, let alone analyzing its merits."

"That would be a proper application of *stare decisis* only if the decision were authoritative, which is to say, had weight independent of its persuasive power. Whether a decision is authoritative depends on a variety of factors, of which the most important is the relationship between the court that decided it and the court to which it is cited later as a precedent. The simplest relationship is hierarchical: the decisions of a superior court in a unitary system bind the inferior courts. The most complex relationship is between a court and its own previous decisions. A court must give considerable weight to those decisions unless and until they have been overruled or undermined by the decisions of a higher court, or other supervening developments, such as a statutory overruling. But it is not absolutely bound by them, and must give fair consideration to any substantial argument that a litigant makes for overruling a previous decision.

"One can hardly speak of *stare decisis* at all with regard to parallel court systems. We are bound to follow a decision of the Supreme Court unless we are powerfully convinced that the Supreme Court would overrule it at the first opportunity. *Olson v. Paine, Webber, Jackson & Curtis, Inc.*, 806 F.2d. 731 (7th Cir. 1986). In cases where the rule of decision is the law of some state, we owe the same deference to the highest court of that state. *Erie R.R. v. Tompkins*, 304 U.S. 64, 78-80,... We have an intermediate obligation to our sister federal courts of appeals. Bearing in mind the interest in maintaining a reasonable uniformity of federal law and in sparing the Supreme Court the burden of taking cases merely to resolve conflicts between circuits, we give most respectful consideration to the decisions of the other courts of appeals and follow them whenever we can."

[Colby v. J.C. Penny Co., Inc., 811 F.2d. 1119 (7th Cir. 1987)]

#### **United States v. Heller (Sept. 29, 1987)**

"It is settled that when the law is vague or highly debatable, a defendant-actually or imputedly -lacks the requisite intent to violate it." *United States v. Critzer*, 498 F.2d. 1160 (4th Cir.1974), *cited with approval in United States v. Garber*, 607 F.2d. 92, 98-99 (5th Cir.1979) (en bane)." \* \* \* "*James v. United States*, 366 U.S. 213, 81 S.Ct. 1052, 6 L.Ed.2d. 246

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(1961), was construed by our *Garber* decision and the Fourth Circuits' decision in *Critzer* as holding that the requisite element of intent could not be proved when the law was uncertain or cast in doubt by prior court decisions. The Former Fifth Circuit adopted this reasoning in *United States v. McClain*, 593 F.2d. 658, (5th Cir.), ... in which we held that willfulness could not be proved when the area of conduct was not proscribed in reasonably certain terms, and in *United States v. Garber*, in which we remanded a case where the trial judge had denied a defendant the opportunity to present a legal uncertainty defense."

[*United States v. Heller*, 830 F.2d. 150 (11th Cir. 1987)]

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**United States Ex Rel. Shore v. O'Leary (Nov. 9, 1987)**

"Lower court owes deference to higher court and ordinarily has no authority to reject doctrine developed by higher court."  
 "One foundation block of our judicial system is the principle of stare decisis which demands adherence to precedents. Decisions are made in accord with previous authoritative decisions in similar cases emanating from one's own circuit and from the Supreme Court. A lower court owes deference to those above it; ordinarily it has no authority to reject a doctrine developed by a higher court. See, e.g., *Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.*, 460 U.S. 533, 535, 103 S.Ct. 1343, 1344, 75 L.Ed.2d. 260 (1983) (per curiam); *Perri v. Director, Dept. of Corrections of Ill.*, 817 F.2d. 448, 451 n. 4 (7th Cir.1987)."

[*United States Ex Rel. Shore v. O'Leary*, 833 F.2d. 663 (7th Cir. 1987)]

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**Goodyear Atomic Corp. v. Miller (May 23, 1988)**

**"Supreme Court generally presumes that Congress is knowledgeable about existing law pertinent to legislation it enacts."** [Bold added.]

"We generally presume that Congress is knowledgeable about existing law pertinent to the legislation it enacts."

[*Goodyear Atomic Corp. v. Miller*, 486 U.S. 172, 108 S.Ct. 1704 (1988)]

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**Miller v. United States (Feb. 8, 1989)**

"In light of lack of evidence that Supreme Court was harboring intentions to find Sixteenth Amendment had been invalidly enacted, Courts of Appeals and district courts were unable to disregard prior case law upholding Amendment's validity."

"One such limitation stems from the bedrock principle of stare decisis: lower courts are bound by the precedential authority of cases rendered by higher courts. *U.S. Ex Rel. Shore v. O'Leary*, 833 F.2d. 663, 667 (7th Cir.1987). This limitation on judicial power is one of the cornerstones of the legal structure in that it serves broader societal interests such as the orderly and predictable application of legal rules. This doctrine prevents us from disregarding the Supreme Court's opinions upholding the constitutionality of the sixteenth amendment. The Court's decisions are binding on us and the district court absent strong evidence that the Court will overrule its own cases. *Colby v. J.C. Penny Co.*, 811 F.2d. 1119, 1123 (7th Cir.1987)"

[*Miller v. United States*, 868 F.2d. 236 (7th Cir. 1989)]

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**Ewing v. United States (Apr. 19, 1989)**

**"It should be noted that these cases are nonetheless persuasive for being old. Indeed, it often happens that those closer in time to the enactment of a statute or the handing down of a precedent know best what it really stands for. Frequently changes in social and political beliefs cause later courts to put glosses on statutes and precedents which do not really belong there.** Regarding the present issue, it is worth observing that no case located anywhere near in time to *Rosenman* hints at the liberalized standard for "payment" that the government urges today; it did not begin to emerge, in cases which were not squarely on point, until the 1960's, and not until 1980, in *Ford*, do we find it baldly stated that "an examination of taxpayer intent [that is, intent expressed other than by a written agreement] has been an important factor in determining whether a remittance is 'payment' of tax." *Ford, supra*, at 360. But note, as analyzed *supra*, *Ford* misstates the holdings of prior cases. And not that *Ford's* statement of the applicable standard is merely *dicta* and not even precedent in the Fifth Circuit, isasmuch as *Mercantile National Bank* is still the law there." p. 269.

"It may be correct to say that *Rosenman* stands for the proposition that no tax can ever be collected before formally assessed, except when accompanied by a return; as will be seen shortly, there is an interpretation of the language consistent with that. Nonetheless, let us assume *arguendo* that it is possible to have a collection before assessment, even in a case where assessment is formally required. It cannot be the case that any remittance of money at all constitutes collection, for the taxpayer won in *Rosenman*. Now we get to the language the loose interpretations are based on. "[T]he

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taxpayer did not discharge what he deemed a liability nor pay one that was asserted." *Id.* at 662, 65 S.Ct. at 538. Can this be taken to mean that any time a taxpayer remits money, he is "deeming" it to be due to a "liability," unless he does it kicking and screaming ("This payment is made under protest and duress, and solely for the purpose of avoiding penalties and interest, since it is contended by the executors that not all of this sum is legally or lawfully due," *id.* at 660, 65 S.Ct. at 537)? It would seem that some courts urge this interpretation.

*See, e.g., Ford v. United States, supra*; "[The] *per se* rule, however, contradicts a concept basic to our taxing system, the concept of voluntariness. Ideally our taxing system is a voluntary one, dependent for compliance in large part upon a sense of civic duty: The system has been described as one of 'self-assessment'." *Ford* at 360."

"It should be borne in mind that *Rosenman* was written by the great Supreme Court Justice Felix Frankfurter. If he had meant to draw a distinction between those who remit money under protest, taking care to specify they do not really believe they owe it all, and those who fail to say so out loud, he would have found the words to say so more clearly. He would not have let such an important distinction lie in the single phrase, "what he deemed a liability," without further explication. ... The key here is that something, other than the mere remittance of money, must happen to define the amount of the obligation."

"The Court believes the correct standard for "defining" the amount of a tax obligation consists of: (1) a tax return or equivalent filled out by taxpayer when he is remitting at his own initiative; or (2) either an assessment made by the IRS, or a written acknowledgement by the taxpayer of amount owed, when proceedings are initiated by the government; that is, by government agents informing the taxpayer that they believe he owes additional taxes. Of course, whether the initial payment is based on the taxpayer's own calculations on his return, or the government's calculation upon assessment, it is still possible for the taxpayer to claim a refund within the statutory period if he believes the initial payment to have been wrong; to that extent, it is not final. But the point is that until one of these calculations has been made, there is no tax "payment" in the first place."

"It is well known among tax attorneys that to make inquiry of the IRS concerning a deficiency notice frequently results in a refusal to explain how the deficiency was calculated and can bring thinly veiled threats that failure to remit promptly will result in interest, penalties, or even criminal prosecution. It would not be something to be wondered at if many taxpayers sent in checks pursuant to deficiency notices without having the slightest idea whether they owed the amount remitted, let alone "acquiesced" in it. Under those conditions, ignorance cannot be equated with acquiescence. In view of all this, something more than the mere remittance of money must be required before a taxpayer can be said to have "voluntarily" paid, or "acquiesced" in the amount of his obligation, or that the amount of indebtedness has been "defined;" to say that money paid under duress in regard to an arbitrarily named figure, to escape worse consequences, constitutes "collection" of an obligation fairly "defined," does violence to the plain English meanings of the words "collection" and "define." Justice Frankfurter would not have approved." [Brackets original, bold added.]

[*Ewing v. United States*, 711 F.Supp. 265 (W.D.N.C. 1989)]

### **United States v. Kim (Sept. 11, 1989)**

"Elements of tax evasion are willfulness, existence of tax deficiency, and affirmative act constituting evasion or attempted evasion of tax."

"Constitutionality of statute setting forth mandatory presumption depends on rationality of connection between facts proved and ultimate fact presumed."

"Mandatory presumption in statute will be regarded as irrational unless it can at least be said with substantial assurance that presumed fact is more likely than not to flow from proved fact on which it is made to depend."

"For purposes of §7201 evidence of willfulness must generally show voluntary, intentional violation of known legal duty. Such evidence is ordinarily circumstantial, since direct proof is often unavailable. *United States v. Schafer*, 580 F.2d. 774, 781 (5th Cir.) [...]. Circumstantial evidence in this context may consist of, among other things, failure to report substantial amount of income, *United States v. Schechter*, 475 F.2d. 1099, 1101 (5th Cir.) [...], a consistent pattern of underreporting large amounts of income, *Holland v. United States*, 348 U.S. 121, 139, [...], the spending of large amounts of cash that cannot be reconciled with amount of reported income, *United States v. Daniels*, 617 F.2d. 146, 150 (5th Cir.1980), or "any conduct, the likely effect of which would be to mislead or to conceal." *Spies v. United States*, 317 U.S. 492, 499 [...]."

"A criminal defendant is entitled to have the jury instructed on a theory of the defense for which there is any foundation in the evidence. *Perez v. United States*, 297 F.2d. 12, 15-16 (5th Cir.1961). The judge need not instruct the jury with the very words proposed by the defendant, but is only required to instruct in such a way that adequately and fairly presents the theory of the defense. *United States v. Barham*, 595 F.2d. 231, 245 (5th Cir.), [cites omitted]."

"[T]he instructions must be sufficiently precise and specific to enable the jury to recognize and understand the defense theory, test it against the evidence presented at trial, and then make a definitive decision whether, based on that evidence and in light of the defense theory, the defendant is guilty or not guilty." [Brackets original.]

[*United States v. Kim*, 884 F.2d. 189 (5th Cir. 1989)]

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**Native Village of Venetie I.R.A. Council v. Alaska (Nov. 6, 1990)**

"In addition Congress's intention to create a tribal cause of action under the Act can be inferred from Congress's understanding of the law at the time the Act was enacted. The intention of Congress can be gleaned, at least in part, by reference to prior law, as Congress is presumed to be knowledgeable about existing law pertinent to any new legislation it enacts. [Cite omitted.] Thus, Congress can be presumed to know that statutes passed for the benefit of Indian tribes will be liberally construed in favor of such tribes. [Cites omitted.] Congress can also be presumed to know that the federal courts routinely resolve questions of tribal sovereignty as they are implicated by various acts of Congress. [Cites omitted.] If Congress did not seek to have such principles applied to the interpretation of the Indian Child Welfare Act, we presume that it would have said so. Thus we must conclude that the villages may seek determination of their rights under the Act in federal court."

[Native Village of Venetie I.R.A. Council v. Alaska, 918 F.2d. 797 (9th Cir. 1990)]

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**Tabb Lakes, Ltd. v. United States (Nov. 24, 1993)**

"Taking of private property for public use requires payment of compensation under Constitution."

"Taking of private property for public use may be effected by inverse condemnation."

"Inverse condemnation should be distinguished from eminent domain; "eminent domain" refers to legal proceeding in which government asserts its authority to condemn property, whereas "inverse condemnation" is shorthand description of manner in which landowner recovers just compensation for taking of his property when condemnation proceedings have not been instituted."

"Where government's activities have already worked taking of all use of property, no subsequent action by government can relieve it of duty to provide compensation for period during which taking was effective."

"Army Corps of Engineers' order to cease and desist from filling wetlands without permit, which delayed residential development of land containing wetlands, was not "regulatory taking" of property for which compensation was required; government-caused delay was not extraordinary or in bad faith and, even if ability to sell property was affected by order, order merely delayed development."

"Taking by regulatory action is recognized only if such action goes too far."

"Governmental interference as part of preliminary decision making does not amount to "taking" under Fifth Amendment.""

"As matter of law, possibility of obtaining permit to develop wetland areas precluded cease and desist order of Army Corps of Engineers, itself, from constituting "taking"; property owner was not precluded from development, but was precluded from development without permit."

"Mistake by Army Corps of Engineers in requiring property owner to submit to permit process in order to fill in wetlands did not require compensation for taking be paid to property owner; although mistake might give rise to due process claim, it did not give rise to taking claim under Fifth Amendment."

"Claimant must concede validity of government action which is basis of taking claim to bring suit under Tucker Act."

"Assertion of jurisdiction by Army Corps of Engineers respecting wetlands on private property was, prima facie, within its authority and could not be considered "ultra vires." Federal Water Pollution and Control Act Amendments of 1972...."

"Due process clause of Constitution is not money-mandating provision."

"Compensation for taking is always measured from time taking occurs."

[Tabb Lakes, Ltd. v. United States, 10 F.3d. 796 (Fed.Cir. 1993)]

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**United States v. Aguilar (Apr. 19, 1994)**

"To reject reasonable construction of statute is incompatible with rule of lenity."

"In interpreting federal statute, Court of Appeals seeks to determine intent of Congress."

"Primary indication of Congressional intent is language of statute."

"Court of Appeals refers to legislative history as aid to statutory interpretation only if statutory language is unclear."

"Statutes must be construed, if fairly possible, to avoid constitutional problems."

"Where legal impossibility exists, there can be no violation of a statute."

"Making false and misleading statements to FBI is not "obstruction of justice" under "omnibus clause" in statutory prohibition against influencing officer or juror, even though FBI investigation may result in producing evidence presented to grand jury; that provision requires a pending judicial proceeding."

[United States v. Aguilar, 21 F.3d. 1475 (9th Cir. 1994)]

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**Buxkemper v. Secretary of Health and Human Services (Oct. 4, 1994)**

"If statute is plain and unequivocal on its face, there is no need to resort to legislative history underlying statute."

"In construing statute, courts should attempt not to interpret provision such that it renders other provisions of same statute inconsistent, meaningless, or superfluous."

"Meaning of statutory language depends on context, and statute should be read as a whole."

"Common sense requires that same words used twice in same act should have same meaning."

[Buxkemper v. Secretary of Health and Human Services, 32 Fed.Cl. 213 (1994)]

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**Beard v. Secretary of the Dept. of Health and Human Serv. (Dec. 22, 1994)**

"Court of Appeals reviews questions of statutory construction de novo."

[Beard v. Secretary of the Dept. of Health and Human Serv., 43 F.3d. 659 (9th Cir. 1994)]

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**Black's Law Dictionary: Assume**

"ASSUME. To pretend. To undertake; engage; promise.

To take to or upon one's self. ... Also taking up, receiving, adopting, taking to oneself, or to put on deceitfully, take appearance of, affect, or outwardly seem. ... To take on, become bound as another is bound, or put oneself in place of another as to an obligation or liability." [All cites omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 157]

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**Black's Law Dictionary: Assumption**

"ASSUMPTION. The act of conceding or taking for granted. Gordon v. Schellhorn, 95 N.J.Eq. 563, 123 A. 549, 552.

"The term is substantially synonymous with "inference," "probability," and "presumption," Ohio Bldg. Safety Vault Co. v. Industrial Board of Illinois, 277 Ill. 96, 115 N.E. 149, 154."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 157]

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**Black's Law Dictionary: De Facto**

"DE FACTO. In fact, in deed, actually. This phrase is used to characterize an officer, a government, a past action, or a state of affairs which must be accepted for all practical purposes, but is illegal or illegitimate. In this sense it is the contrary of *de jure*, which means rightful, legitimate, just, or constitutional. Thus, an officer, king, or government *de facto* is one who is in actual possession of the office or supreme power, but by usurpation, or without lawful title; while an officer, king, or governor *de jure* is one who has just claim and rightful title to the office or power, but has never had plenary possession of it, or is not in actual possession. 4 Bl.Comm. 77, 78."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 479]

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**Black's Law Dictionary: De Jure**

"DE JURE. Of right; legitimate; lawful; by right and just title. In this sense it is the contrary of *de facto*, (which see.) It may also be contrasted with *de gratia*, in which case it means "as a matter of right," as *de gratia* means "by grace or favor." Again it may be contrasted with *de a?quitate*; here meaning "by law," as the latter means "by equity" See Government."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 481]

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**Black's Law Dictionary: Among**

"AMONG. Mingled with or in the same group or class. Dwight Mfg. Co. v. Word, 200 Ala. 221, 75 So. 979, 983; Genung v. Best, 100 N.J.Eq. 250, 135 A. 514, 516. Intermingled with. Eddings v. Southern Dairies, D.C.S.C., 42 F.Supp. 664, 666."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 108]

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**Black's Law Dictionary: Occasion**

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"OCCASION, n. That which provides an opportunity for the causal agency to act. *Weinberg v. Richardson*, 291 Ill. App. 618, 10 N.E.2d. 893. Meaning not only particular time but carrying idea of opportunity, necessity, or need, or even cause in a limited sense, under G. L. c. 4, §6, subd. 3. *Commonwealth v. Tsouprakakis*, 267 Mass. 496, 166 N.E. 855, 856. Condition of affairs; juncture entailing need; exigency; or juncture affording ground or reason for something. *Ridout v. State*, 161 Tenn. 248, 30 S.W.2d. 255, 259, 71 A.L.R. 830."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1229]

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**Black's Law Dictionary: Construe**

"CONSTRUE. To put together; to arrange or marshal the words of an instrument. To ascertain the meaning of language by a process of arrangement and inference. See Construction."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 387]

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**16 Am.Jur.2d., §256**

"The general rule is that an unconstitutional statute, whether federal or state, though having the form and name of law, is in reality no law, but is wholly void, and ineffective for any purpose; since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it, an unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted. No repeal of such an enactment is necessary.

"Such an unconstitutional law is void, the general principles follow that it imposes no duties, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection, and justifies no acts performed under it. A contract which rests on an unconstitutional statute creates no obligation to be impaired by subsequent legislation.

"No one is bound to obey an unconstitutional law and no courts are bound to enforce it. Persons convicted and fined under a statute subsequently held unconstitutional may recover the fines paid.

"A void act cannot be legally consistent with a valid one. An unconstitutional law cannot operate to supersede any existing valid law. Indeed, insofar as a statute runs counter to the fundamental law of the land, it is superseded thereby. Since an unconstitutional statute cannot repeal or in any way affect an existing one, if a repealing statute is unconstitutional, the statute which it attempts to repeal remains in full force and effect. And where a clause repealing a prior law is inserted in an act, which act is unconstitutional and void, the provision for the repeal of the prior law will usually fall with it and will not be permitted to operate as repealing such prior law.

"The general principles stated above apply to the constitutions as well as to the laws of the several states insofar as they are repugnant to the Constitution and laws of the United States. Moreover, a construction of a statute which brings it in conflict with a constitution will nullify it as effectually as if it had, in express terms, been enacted in conflict therewith."  
[16 Am.Jur.2d., §256]

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**Black's Law Dictionary: Lien**

"LIEN. A charge or security or incumbrance upon property."

"A "claim" is generally a liability in personam but capable of embracing both a personal liability and a lien on property, while a lien is a liability in rem.

"A lien is a charge imposed upon specific property, whereas an assignment, unless in some way qualified, is properly the transfer of one's whole interest in an estate, or chattel, or other thing.

"A "lien" is not a property in or right to the thing itself, but constitutes a charge or security thereon.

"Lien *by operation of law*. Where the law itself, without the stipulation of the parties, raises a lien, as an implication or legal consequence from the relation of the parties or the circumstances of their dealings. Liens of this species may arise either under the rules of common law or of equity or under a statute. In the first case they are called "commonlaw liens;" in the second, "equitable liens;" in the third, "statutory liens."" [All cites omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1072]

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**6.2 Expressio Unius Est Exclusio Alterius**

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**Black's Law Dictionary: Inclusio Unius Est Exclusio Alterius**

"**Inclusio unius est exclusio alterius** [Pronunciation symbols omitted.] The inclusion of one is the exclusion of another.

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The certain designation of one person is an absolute exclusion of all others. *Burgin v. Forbes*, 293 Ky. 456, 169 S.W.2d 321, 325. This doctrine decrees that where law expressly describes particular situation to which it shall apply, an irrefutable inference must be drawn that what is omitted or excluded was intended to be omitted or excluded. *Kevin McC v. Mary A*, 123 Misc.2d. 148, 473 N.Y.S.2d. 116, 118."

[Black's Law Dictionary, Sixth Edition, p. 763]

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**Words and Phrases: *Inclusio Unius Est Exclusio Alterius***

***"INCLUSIO UNIUS EST EXCLUSIO ALTERIUS***

"Maxim, "*Inclusio unius est exclusio alterius*," expresses rule of construction and serves only as aid in discovering legislative intent where such intent is not otherwise manifest. *Garrison v. City of Shreveport*, 154 So. 622, 179 La. 605.

"Under the maxim of "*Inclusio unius est exclusio alterius*" , where a statute enumerates and specifies the subjects or things upon which it is to operate, it is to be construed as excluding from its effect all those not expressly mentioned, or, under a general clause, those not of like kind or classification as those enumerated. *State ex rel. Whall v. Saenger Theatres Corporation*, 200 So. 442, 446, 190 Miss. 391."

[Words and Phrases: *Inclusion Unius Est Exclusio Alterius*, Vol. 20A, p. 161]

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**Black's Law Dictionary: *Expressio Unius Est Exclusio Alterius***

"***Expressio unius est exclusio alterius*** [Pronunciation symbols omitted.] A maxim of statutory interpretation meaning that the expression of one thing is the exclusion of another. *Burgin v. Forbes*, 293 Ky. 456, 169 S.W.2d 321, 325; *Newblock v. Bowles*, 170 Okl. 487, 40 P.2d. 1097, 1100. Mention of one thing implies exclusion of another. When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred."

[Black's Law Dictionary, Sixth Edition, 1990, p. 581]

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**Black's Law Dictionary: *Expressio Unius Personae Est Exclusio Alterius***

"***Expressio unius personae est exclusio alterius*** [Pronunciation symbols omitted.] The mention of one person is the exclusion of another."

[Black's Law Dictionary, Sixth Edition, 1990, p. 581]

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**Page v. Allen (June 1868)**

"What shall be the test of want of constitutional sanction is a question of more or less difficulty in all cases involving it. It is usual, on the part of those who insist on the constitutionality of any given statute, to claim that it must be regarded as constitutional, unless expressly prohibited by some provision in the constitution. In other words, in construing the constitution of the state, whatever is not expressly denied to the legislative power is possessed by it. The opposite of this rule, I may remark, is the rule of construction of the federal constitution. I assent to this, but not that the inhibitions of the constitution must be always express. They are equally effective, and not less to be regarded, when they arise by implication, and this is the case when the legislative provision is repugnant to some provision of the constitution: [cites omitted]. To illustrate this idea: the executive power of the state, under the constitution, is lodged in a governor; and the legislative, in a senate and house of representatives. It would be manifestly repugnant to these provisions of the constitution if an act of assembly should provide for the election of two executives, or two senates and houses of representatives, at the same election; yet it would be unconstitutional only by implication, there being no express prohibition on the subject. So, in regard to qualification for office. An act which should require a residence in the state for ten years, instead of three, or an age of fifty years, or freehold estate, in order to be eligible to the office of representative, would be void for repugnancy, because differing from the qualification expressed in the constitution, and would be so only by necessary implication,--necessary to keep legislation within the paramount rules of the constitution. The expression of one then in the constitution is necessarily the exclusion of things not expressed. This I regard as especially true of constitutional provisions declaratory in their nature. The remark of Lord Bacon, "that, as exceptions strengthen the force of a general law, so enumeration weakens, as to things not enumerated," expresses a principle of common law applicable to the constitution, which is always to be understood in its plain, untechnical sense: *Commonwealth v. Clark*, 7 Watts & S. 127."

"For the orderly exercise of the right resulting from these qualifications, it is admitted that the legislature must prescribe necessary regulations as to the places, mode, and manner, and whatever else may be required, to insure its full and free

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exercise. But this duty and right inherently imply that such regulations are to be subordinate to the enjoyment of the right, the exercise of which is regulated. The right must not be impaired by the regulation. It must be regulation purely, not destruction. If this were not an immutable principle, elements essential to the right itself might be invaded, frittered away, or entirely excised under the name or pretense of regulation, and thus would the natural order of things be subverted by making the principal subordinate to the accessory. To [sic] state is to prove this position. As a corollary of this, no constitutional qualification of an elector can in the least be abridged, added to, or altered by legislation or the pretense of legislation. Any such action would necessarily be absolutely void and of no effect. We hold, therefore, what, indeed, was not expressly denied, that no regulation can be valid which would have the effect to increase the district or state residence prior to the time of an offer to exercise the right of an elector, or which would impose other additional taxation or assessments than those provided in the constitution."

[Page v. Allen, 58 Pa. 338; 98 Am.Dec. 272 (1868)]

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**Whitehead v. Cape Henry Syndicate (June 14, 1906)**

"While the maxim "Expressio unius est exclusio alterius," is not of universal application, yet, as Broom says in his Legal Maxims, "No maxim of the law is of more general or uniform application, and it is never more applicable than in the construction and interpretation of statutes."

[Whitehead v. Cape Henry Syndicate, 105 Va. 463; 54 S.E. 306 (1906)]

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**Ramsey v. Leeper (Apr. 17, 1933)**

"In case of conflict between statutes, one enacted last in point of time must prevail."

"... the familiar rule of construction: "Expressio unius est exclusio alterius" (the mention of one thing implies the exclusion of another)."

[Ramsey v. Leeper, 168 Old. 43; 31 P2d. 852 (1933)]

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**Little v. Town of Conway (Nov. 2, 1933)**

"'Expressio unius est exclusio alterius', means that when certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred."

[Little v. Town of Conway, 171 S.C. 27, 171 S.E. 447 (1933)]

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**Newblock v. Bowles (Feb. 5, 1935)**

"It is a well-settled rule of statutory and constitutional construction that, where duties, authorities, or qualifications of public officers are definitely defined; all others are excluded. The maxim "Expressio unius est exclusio alterius"-the expression of one thing is the exclusion of another...."

[Newblock v. Bowles, 170 Okl. 487, 40 P.2d. 1097 (1935)]

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**Saslaw v. Weiss (Apr. 27, 1938)**

.. the maxim "expressio unius est exclusio alterius," which, freely translated, means the express mention of one thing implies the exclusion of another,...."

[Saslaw v. Weiss, 133 Ohio.St. 496; 14 N.E.2d. 930 (1938)]

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**Bloemer v. Turner (Dec. 5, 1939)**

"The maxim "expressio unius est exclusio alterius," which means that the enumeration of particular things excludes the idea of something else not mentioned, is a primary rule of statutory construction."

"The cardinal principle of judicial construction is to save and not to destroy."

[Bloemer v. Turner, 281 Ky. 832, 137 S.W.2d. 387 (1939)]

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**State ex rel. Whall v. Saenger Theatres Corporation (Feb. 10, 1941)**

"Under the maxim of "Inclusio unius est exclusio alterius", where a statute enumerates and specifies the subjects or



things upon which it is to operate, it is to be construed as excluding from its effects all those not expressly mentioned, or, under a general clause, those not of like kind or classification as those enumerated."  
 [State ex rel. Whall v. Saenger Theatres Corporation, 190 Miss 391, 200 So. 442 (1941)]

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**Ex parte Ramirez (Feb. 14, 1942)**

"Where a statute defining an offense designates one class of persons as subject to its penalties, all other persons are deemed to be exempt under the principle of "expressio unius est exclusio alterius"."  
 [Ex parte Ramirez, 49 Cal.App.2d. 709, 122 P.2d. 361 (1942)]

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**Branson v. Branson (Feb. 17, 1942)**

"The maxim, "expressio unius est exclusio alterius" , is an aid to determining legislative intent, rather than absolute rule of universal application, and is not to be applied to defeat apparent intention of legislature."  
 [Branson v. Branson, 190 Old. 347, 123 P.2d. 643 (1942)]

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**Commonwealth ex rel. Maurer v. Witkin (Mar. 27, 1942)**

"As Chief Justice Thompson, speaking for this Court, said in Page v. Allen, 58 Pa. 338, 346, 98 Am.Dec. 272: "The expression of one thing in the constitution, is necessarily the exclusion of things not expressed.""

"It is a principle of interpretation that the mention of one thing in a law implies the exclusion of the things not mentioned ("expressio unius est exclusio alterius")." Commonwealth ex rel. Maurer v. Witkin, 344 Pa. 191, 25 A.2d. 317 (1942)]

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**Miller v. Commonwealth (Sept. 9, 1942)**

"Where a particular construction of a statute will result in an absurdity, some other reasonable construction which will not produce the absurdity will be made."

"Where a statutory construction has been long continued by public officials and acted upon by the people, the legislature is presumed to be cognizant of the construction and in the absence of legislation evincing a dissent, the courts will adopt that construction."

"The maxim "expressio unius est exclusio alterius" is especially applicable in the construction and interpretation of statutes."  
 [Miller v. Commonwealth, 180 Va. 36, 21 S.E.2d. 721 (1942)]

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**Burgin v. Forbes (Mar. 2, 1943)**

"The construction of statute concerning division fences between adjoining landowners is governed by maxim "inclusio unius est exclusio alterius" meaning the inclusion of one thing is the exclusion of another, or the maxim "expressio unius est exclusio alterius" meaning the expression of one thing is the exclusion of another."

[Burgin v. Forbes, 293 Ky. 456, 169 S.W.2d. 321 (1943)]

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**Ideal Farms Drainage Dist. v. Certain Lands (May 9, 1944)**

"The rule of statutory construction, "expressio unius est exclusio alterius", means that statute enumerating things on which it is to operate or forbidding certain things must be construed as excluding from its operation all things not expressly mentioned therein."

[Ideal Farms Drainage Dist. v. Certain Lands, 154 Fla. 554, 19 So.2d. 234 (1944)]

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**People v. One 1941 Ford 8 Stake Truck, Engine No. 99T370053, License No. P. 8410 (Sept. 26, 1944)**

"Under maxim "Expressio unius est exclusio alterius," if statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded, and where statute enumerates " persons to be affected by its provisions there is an implied exclusion of others."

[People v. One 1941 Ford 8 Stake Truck, Engine No. 99T370053, License No. P. 8410, 159 P.2d. 895 (1944)]

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**Hackney v. Southwest Hotels (June 17, 1946)**

"Statutes in derogation of the common law are to be strictly construed."

"The phrase "expressio unius est exclusio alterius" means that the expression of one thing is the exclusion of the other."

[Hackney v. Southwest Hotels, 210 Ark. 234, 195 S.W.2d. 55 (1946)]

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**State ex rel. Jensen v. Sestric (Dec. 21, 1948)**

.. the maxim "expressio unius est exclusio alterius", meaning the expression of one thing is the exclusion of another."

"Court is not authorized" to indulge in judicial legislation even though it is done under the guise of liberal construction."

[State ex rel. Jensen v. Sestric, 216 S.W.2d. 152 (1948)]

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**6.3 Interpreting Tax Law**

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**73 Am.Jur.2d., Statutes, §1**

"A statute is an act of the legislature as an organized body; it is the written will of the legislature, expressed according to the form necessary to constitute it a law of the state, and rendered authentic by certain prescribed forms and solemnities. Sometimes, the term is more broadly defined to include administrative regulations or any enactment, from whatever source originating, to which the state gives the force of law."

[73 Am.Jur.2d., Statutes, §1. Definitions]

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**73 Am.Jur.2d., Statutes, §3, Resolutions as distinguished from statutes.**

"While some constitutions provide to the contrary, the general rule is that a joint or concurrent resolution adopted by the legislature is not a statute, does not have the force or effect of law, and cannot be used for any purpose for which an exercise of legislative power is necessary."

[73 Am.Jur.2d., Statutes, §3]

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**73 Am.Jur.2d., Statutes, §4, Generally.**

"In determining whether a law is general or special, statewide or local, public or private, the courts will look to its substance and practical operation, rather than to its title, form, and phraseology. The fact that a statute is expressed in general terms is not conclusive that it is a general, rather than a special or local, law."

[73 Am.Jur.2d., Statutes, §4.]

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**1 U.S.C.S. §204, n 1****"Generally**

"Reviser's notes are authoritative in interpreting the United States Code. United States v. National City Lines, Inc., (1949) U.S. 78, 93 L.Ed. 1226, 69 S.Ct.955; Acron Invest., Inc. v. Federal Sav. & Loan Ins. Corp. (1966, CA9 Cal) 363 F.2d. 236, cert den (1966) 385 U.S. 970, 17 L.Ed.2d. 434, 87 S.Ct.506.

"United States Code of Laws is not re-enactment of statutes included within it. United States ex rel. Boyd v. McMurtry (1933, WD Ky) 5 F.Supp. 515, 13 A.F.T.R. 143."

[1 U.S.C.S. §204, n 1]

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**Black's Law Dictionary: Domestic**

"DOMESTIC, *adj.* Pertaining, belonging, or relating to a home, a domicile, or to the place of birth, origin, creation, or transaction."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 571]

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**California Government Code, §54951**

"As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency."

[California Government Code, §54951]

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**5 U.S.C. §551****"Definitions**

"For the purpose of this subchapter--

"(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include--

"(A) the Congress;

"(B) the courts of the United States;

"(C) the governments of the territories or possessions of the United States;

"(D) the government of the District of Columbia [...]."

"(F) courts martial and military commissions;

"(G) military authority exercised in the field in time of war or in occupied territory;"

[5 U.S.C. §551]

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**26 U.S.C. §7701(a)(4)**

"**Domestic.**--The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State."

[26 U.S.C. §7701(a)(4)]

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**15 U.S.C. §261**

"As used in sections 261 to 264 of this title, the term "interstate or foreign commerce" means commerce between a State, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States and any place outside thereof."

[15 U.S.C. §261]

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**27 C.F.R. §170.23 -- Miscellaneous Regulations Relating to Liquor**

"**Meaning of terms.** ... The terms "include" "includes" and "including" do not exclude things not enumerated which are in the same general class."

[27 C.F.R. §170.23--Miscellaneous Regulations Relating to Liquor]

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**26 U.S.C. §7701(a)(9)**

"United States.--The term "United States" when used in a geographical sense includes only the States and the District of Columbia."

[26 U.S.C. §7701(a)(9)]

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**18 U.S.C. §5**

"The term "United States", as used in this title in a territorial sense, includes all places and waters, continental or insular, subject to the jurisdiction of the United States, except the Canal Zone."

[18 U.S.C. §5]

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**26 U.S.C. §7701(a)(10)**

"State.--The term "State" shall be construed to include the District of Columbia, where such construction is necessary to

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carry out provisions of this title."  
[26 U.S.C. §7701(a)(10)]

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### **3 U.S.C. §21**

"(a) "State" includes the District of Columbia."  
[3 U.S.C. §21]

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### **42 U.S.C. §1973bb-1**

"As used in this subchapter, the term "State" includes the District of Columbia."  
[42 U.S.C. §1973bb-1]

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### **Rule 54(a) & (c); Federal Rules of Criminal Procedure**

"(a) **Courts.** These rules apply to all criminal proceedings in the United States District Courts; in the District Court of Guam; in the District Court of the Virgin Islands; and (except as otherwise provided in the Canal Zone Code) in the United States District Court for the District of the Canal Zone; in the United States Courts of Appeals; and the Supreme Court of the United States; except that all offenses shall continue to be prosecuted in the District Court of Guam and in the District Court of the Virgin Islands by information as heretofore except such as may be required by local law to be prosecuted by indictment by grand jury."

"(c) **Application of terms.** As used in these rules the following terms have the designated meanings.

"Act of Congress" includes any act of Congress locally applicable to and in force in the District of Columbia, in Puerto Rico, in a territory or in an insular possession."

"State" includes District of Columbia, Puerto Rico, territory and insular possession."

[Rule 54(a) & (c); Federal Rules of Criminal Procedure]

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### **26 U.S.C. §7701(a)(11)**

"(A) **Secretary of the Treasury.**--The term "Secretary of the Treasury" means the Secretary of the Treasury, personally, and shall not include any delegate of his."

"(B) **Secretary.**--The term "Secretary" means the Secretary of the Treasury or his delegate."

[26 U.S.C. §7701(a)(11)]

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### **26 U.S.C. §7701(a)(12)**

"**Delegate.**--

"(A) **In general.**--The term "or his delegate"--

"(i) when used with reference to the Secretary of the Treasury, means any officer, employee, or agency of the Treasury Department duly authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in the context;...."

[26 U.S.C. §7701(a)(12)]

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### **26 U.S.C. §7701(a)(14)**

"**Taxpayer.**--The term "taxpayer means any person subject to any internal revenue tax."

[26 U.S.C. §7701(a)(14)]

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### **26 U.S.C. §7701(a)(30)**

"**United States person.**--The term "United States person" means--

"(A) a citizen or resident of the United States,

"(B) a domestic partnership,

"(C) a domestic corporation, and

"(D) any estate or trust (other than a foreign estate or foreign trust, within the meaning of section 7701(a)(31)).

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### ***Sovereignty and Freedom Points and Authorities***

[26 U.S.C. §7701(a)(30)]

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**26 U.S.C. §7701(a)(31)**

**"Foreign estate or trust.--**The terms "foreign estate" and "foreign trust" mean an estate or trust, as the case may be, the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A."

[26 U.S.C. §7701(a)(31)]

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**28 U.S.C. §1603**

**"Definitions** For purposes of this chapter [28 U.S.C.S. §§1602 et seq.]--

"(a) A "foreign state", except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

"(b) An "agency or instrumentality of a foreign state" means any entity--

"(1) which is a separate legal person, corporate or otherwise, and

"(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

"(3) which is neither a citizen of a State of the United States as defined in section 1332(c) and (d) of this title nor created under the laws of any third country.

"(c) The "United States" includes all territory and waters, continental or insular, subject to the jurisdiction of the United States."

[28 U.S.C. §1603]

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**28 U.S.C. §1746**

"(1) If executed **without** the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

"(2) If executed **within** the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)". [Bold added.]

[28 U.S.C. §1746]

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**Black's Law Dictionary: Internal**

"INTERNAL. Relating to the interior; comprised within boundary lines; of interior concern or interest; domestic, as opposed to foreign."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 952]

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**Black's Law Dictionary: Revenue**

"REVENUE. Return, yield, as of land, profit, that which returns or comes back from an investment, the annual or periodical rents, profits, interest or issues of any species of property, real or personal, income. [Cite omitted.]

"Also the income of an individual or private corporation. [Cite omitted.]

"As applied to the income of a government, a broad and general term, including all public moneys which the state collects and receives, from whatever source and in whatever manner. [Cites omitted.] The income which a state collects and receives into its treasury, and is appropriated for the payment of its expenses." [Cite omitted.]

**"Revenue Bills**

"Those that levy taxes in the strict sense of the word. *Hart v. Board of Com'rs of Burke County*, 192 N.C. 161, 134 S.E. 403, 404.

**"Revenue Law**

"Any law which provides for the assessment and collection of a tax to defray the expenses of the government. Such legislation is commonly referred to under the general term "revenue measures," and those measures include all the laws by which the government provides means for meeting its expenditures." [Cites omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1482]

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**Black's Law Dictionary: Internal Revenue**

"INTERNAL REVENUE. In the legislation and fiscal administration of the United States, revenue raised by the imposition of taxes and excises on domestic products or manufactures, and on domestic business and occupations, inheritance taxes, and stamp taxes; as broadly distinguished from "customs duties," i. e., duties or taxes on foreign commerce or on goods imported. Rev.St. U.S. tit. 35, §3140 et seq."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 952]

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**Black's Law Dictionary: General Law**

"GENERAL LAW. A law that affects the community at large. A general law as contradistinguished from one that is special or local, is a law that embraces a class of subjects or places, and does not omit any subject or place naturally belonging to such class. [Cites omitted.]

"A law, framed in general terms, restricted to no locality, and operating equally upon all of a group of objects, which, having regard to the purposes of the legislation, are distinguished by characteristics sufficiently marked and important to make them a class by themselves, is not a special or local law, but a general law. [Cites omitted.]  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 814]

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**Black's Law Dictionary: Adjective Law**

"ADJECTIVE LAW. The aggregate of rules of procedure or practice. As opposed to that body of law which the courts are established to administer, (called "substantive law,") it means the rules according to which the substantive law is administered. That part of the law which provides a method for enforcing or maintaining rights, or obtaining redress for their invasion." [Cite omitted.]  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 62]

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**Words and Phrases: Geographical****"GEOGRAPHICAL**

"The term "geographical" is defined as of, or pertaining to, geography, and "geography" is defined as relating to towns, countries, and subdivisions thereof, mountains, valleys, rivers, etc., names of which suggest fixed locations. Registration of trade-mark "Avon" held properly denied on ground term was merely "geographical". Trade-Mark Act 1905, §5, 15 U.S.C.A. §85. In re California Perfume Co., Cust. & Pat.App., 56 F.2d. 885, 886."  
[Words and Phrases: Geographical, Vol. 18, p. 478]

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**66 C.J.S.****"NON.****"English Prefix**

"A prefix which denotes mere negation or absence of the thing or quality to which it is applied. The prefix "non" has been compared with the prefix "un," the former being a more negative term than the latter."  
[66 Corpus Juris Secundum, Non]

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**Black's Law Dictionary: Noscitur A Sois**

"*Noscitur a sociis*. It is known from its associates. The meaning of a word is or may be known from the accompanying words. Under the doctrine of "*noscitur a sociis*", **the meaning of questionable or doubtful words or phrases in a statute may be ascertained by reference to the meaning of other words or phrases associated with it.** Wong Kam Wo v. Dulles, C.A.Hawaii, 236 F.2d. 622, 626." [Bold added.]  
[Black's Law Dictionary, Sixth Edition, 1990, p. 1060]

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**Black's Law Dictionary: Chattel**

"CHATTEL. An article of personal property; any species of property not amounting to a freehold or fee in land. A thing personal and movable. Things which in law are deemed personal property, they are divisible into chattels real and chattels

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personal.

"The term "chattels" is a more comprehensive one than "goods," as it includes animate as well as inanimate property. In a devise, however, they may be of the same import." [All cites omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 299]

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### **26 C.F.R. §601.106 (Apr. 1, 1996)**

"(1) *Rule I.* An exaction by the U.S. Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment' to the U.S. Constitution. Accordingly, an Appeals representative in his or her conclusions of fact or application of the law, shall hew to the law and the recognized standards of legal construction. It shall be his or her duty to determine the correct amount of the tax, with strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination as between taxpayers."

[26 C.F.R. Ch. I (4-1-96 Edition), §601.106]

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### **People v. Fisher (1840)**

"When the fundamental law has not limited, either in terms or by necessary implication, the general powers conferred upon the Legislature we cannot declare a limitation, under the notion of having discovered something in the spirit of the Constitution upon a subject which is not even mentioned in the instrument."

[People v. Fisher, 24 (Wend) 215, 14 N.Y. 587 (1840)]

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### **Swift v. Tyson (Jan. 1842)**

[The following four paragraphs is the case summary supplied by the publisher and is not part of the official court report.]

"Action in the Circuit Court of New York on a bill of exchange accepted in New York, instituted by the holder, a citizen of the State of Maine. The acceptance and indorsement of the bill were admitted, and the defense was rested on allegations that the bill had been received in payment of a pre-existing debt, and that the acceptance had been given for lands which the acceptor had purchased from the drawer of the bill, to which lands the drawer had no title; and that the quality of the lands had been misrepresented, and the purchaser imposed upon by the fraud of the drawer, and those who were co-owners of the land and co-operators in the sale. The bill accepted had been received *bona fide*, and before it was due.

"There is no doubt that a *bona fide* holder of a negotiable instrument for a valuable consideration, without any notice of the facts which implicate its validity as between the antecedent parties, if he takes it under an indorsement made before the same becomes due, holds the title unaffected by those facts, and may recover thereon, although, as between the antecedent parties, the transaction may be without any legal validity.

"The holder of negotiable paper, before it is due, is not bound to prove that he is a *bona fide* holder for a valuable consideration, without notice; for the law will presume that in the absence of all rebutting proof, and therefore it is incumbent on a defendant to establish by way of defense satisfactory proofs of the contrary, and thus to overcome the *prima facie* title of the plaintiff.

"The 34th section of the Judiciary Act of 1789, which declares "That the laws of the several States, except where the Constitution, treaties, or statutes of the United States shall otherwise recognize or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States, in cases where they apply," has uniformly been supposed by the Supreme Court to be limited in its application to State laws strictly local: that is to say, to the positive statutes of the State, and the construction thereof adopted by the local, and to rights and titles to things having a permanent locality, such as the rights and titles to real estate, and other matters immovable and intraterritorial in their nature and character. The section does not extend to contracts or other instruments of a commercial nature; the true interpretation and effect whereof are to be sought, not in the decisions of the local tribunals, but in the general principles and doctrines of commercial jurisprudence." [End of the case summary.]

"There is no doubt that a *bona fide* holder of a negotiable instrument for a valuable consideration, without any notice of facts, which impeach its validity as between the antecedent parties, if he takes it under an indorsement made before the same becomes due, holds the title unaffected by these facts, and may recover thereon, although as between the antecedent parties to the transaction may be without any legal validity.

This is a doctrine so long and so well established, and so essential to the security of negotiable paper, that it is laid up among the fundamentals of law, and requires no authority or reasoning to be now brought in its support. As little doubt is there, that the holder of any negotiable paper, before it is due, is not bound to prove that he is a *bona fide* holder for a valuable consideration, without notice; for the law will presume that in the absence of all rebutting proofs, and therefore it is incumbent upon the defendant to establish by way of defense satisfactory proofs of the contrary, and thus to overcome the *prima facie*

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title of the plaintiff."

"But, admitting the doctrine to be fully settled in New York, it remains to be considered, whether it is obligatory upon this court, if it differs from the principles established in the general commercial law. It is observable that the courts of New York do not found their decisions upon this point upon any local statute, or positive, fixed, or ancient local usage; but they deduce the doctrine from the general principles of commercial law. It is, however, contended, that the 34th section of the Judiciary Act of 1789 (ch. 20) furnishes a rule obligatory upon this court to follow the decisions of the State tribunals, in all cases to which they apply. That section provides "that the laws of the several States, except where the Constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States, in cases where they apply." In order to maintain the argument, it is essential, therefore, to hold, that the word "laws," in this section includes within the scope of its meaning the decisions of the local tribunals. In the ordinary use of language it will hardly be contended that the decisions of courts constitute laws. They are, at most, only evidence of what the laws are, and are not of themselves laws. They are often re-examined, reversed, and qualified by the courts themselves, whenever they are found to be either defective or ill-founded, or otherwise incorrect. The laws of a State are more usually understood to mean the rules and enactments promulgated by the legislative authority thereof, or long established local customs having the force of laws. In all the various cases, which have hitherto come before us for decision, this court have [sic] uniformly supposed that the true interpretation of the 34th section limited its application to State laws strictly local, that is to say, to the positive statutes of the State, and the construction thereof adopted by the local tribunals, and to rights and titles to things having a permanent locality, such as the rights and titles to real estate, and other matters immovable and intraterritorial in their nature and character. It never has been supposed by us that the section did apply, or was designed to apply, to questions of a more general nature, not all dependent upon local statutes or local usages of a fixed and permanent operation, as, for example, to the construction of ordinary contracts or other written instruments, and especially to questions of general commercial law, where the State tribunals are called upon to perform the like functions as ourselves, that is, to ascertain upon general reasoning and legal analogies, what is the true exposition of the contract or instrument, or what is the just rule furnished by the principles of commercial law to govern the case. And we have not now the slightest difficulty in holding, that this section, upon its true intent and construction, is strictly limited to local statutes and local usages of the character before stated, and does not extend to contracts and other instruments of a commercial nature, the true interpretation and effect whereof are to be sought, not in the decisions of the local tribunals, but in the general principles and doctrines of commercial jurisprudence. Undoubtedly, the decisions of the local tribunals upon such subjects are entitled to, and will receive, the most deliberate attention and respect of this court; but they cannot furnish positive rules, or conclusive authority, by which our own judgments are to be bound up and governed."

And why upon principle should not a pre-existing debt be deemed such a valuable consideration? It is for the benefit and convenience of the commercial world to give as wide an extent as practicable to the credit and circulation of negotiable paper, that it may pass not only as security for new purchases and advances, made upon the transfer thereof, but also in payment of and as security for pre-existing debts. The creditor is thereby enabled to realize or to secure his debt, and thus may safely give a prolonged credit, or forbear from taking any legal steps to enforce his rights. The debtor also has the advantage of making his negotiable securities of equivalent value to cash."

"Be this as it may, we entertain no doubt that a *bona fide* holder for a pre-existing debt of a negotiable instrument is not affected by any equities between the antecedent parties, where he has received the same before it become due, without notice of any such equities. We are all, therefore, of the opinion that the question on this point, propounded by the Circuit Court for our consideration, ought to be answered in the negative; and we shall accordingly direct it so to be certified to the Circuit Court."

[Swift v. Tyson, 41 U.S. 1, 16 Pet 1, 10 L.Ed. 865 (1842). [Overruled by Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1195 (1938).]

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### **United States v. Wigglesworth (Oct. 1842)**

"In the first place, it is, as I conceive, a general rule in the interpretation of all statutes, levying taxes or duties upon subjects or citizens, not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operation so as to embrace matters, not specifically pointed out, although standing upon a close analogy. In case, therefore, of doubt, such statutes are construed most strongly against the government, and in favor of the subjects or citizens, because burdens are not to be imposed nor presumed to be imposed beyond what the statutes expressly and clearly import. Revenue statutes are in no just sense either remedial laws or laws founded upon any permanent public policy, and, therefore, are not to be liberally construed."

[United States v. Wigglesworth, 28 Fed.Cas. page 595, (Case No. 16,690); 2 Story 369 (1842)]

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### **Opn. Atty. Gen. (Aug. 23, 1854)**

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**RESOLUTIONS OF CONGRESS.**

"Joint resolutions of Congress are not distinguishable from bills, and, if approved by the President, or if duly passed without the approval of the President, they have all the effect of law."

"But separate resolutions of either House of Congress, except in matters appertaining to their own parliamentary rights, have no legal effects to constrain the action of the President or of the Heads of Departments."

"The act of a Head of Department is, in effect, an act of the President. Now, the Constitution provides for co-ordinate powers acting in different and respective spheres of co-operation. The executive power is vested in the President, whilst all legislative powers are vested in Congress. It is for Congress to pass laws; but it cannot pass any law, which, in effect, coerces the discretion of the President, except with his approbation, unless by concurrent vote of two-thirds of both Houses, upon his previous refusal to sign a bill. And the Constitution expressly provides that orders and resolutions, and other votes of the two Houses, in order to have the effect of law, shall, in like manner, be presented to the President for his approval, and if not approved by him shall become law only by subsequent concurrence in vote of two-thirds of the Senate and House of Representatives."

"In a word, the authority of each Head of Department is a parcel of the executive power of the President. To coerce the Head of Department is to coerce the President. This can be accomplished in no other way than by a law, constitutional in its nature, enacted in accordance with the forms of the Constitution.

"Of course, no separate resolution of either House can coerce a Head of Department, unless in some particular in which a law, duly enacted, has subjected him to the direct action of each; and in such case it is to be intended, that, by approving the law, the President has consented to the exercise of such co-erciveness on the part of either House."

"It does not help the case, constitutionally speaking, if there should happen to be a resolution of the same substance, or even of the same identical words, passed by each House; for such separate resolutions have not the form nor the responsibilities of enactment, according to the rules of the two Houses, nor do they possess the conditions of a law according to the Constitution."

"Indeed, it seems little better than a mere truism to say, that a separate resolution of either House of Congress is not a law.

"Whenever a general act is passed, like that for the payment of half-pay to certain officers of the Virginia line, that is to say, a law embracing a defined class of cases, and assigning to a Head of Department the executive duty of ascertaining the particular cases of the class, and applying the law to them, in such case the terms of the law constitute a rule for his government. It is incumbent on him, as on every other citizen, to obey the law. To obey it, in him, is to execute it according to its provisions, as conscientiously construed by him in his best judgment, or if he doubt, then as he may be advised by the Attorney General. To do otherwise, that is, on the one hand to refuse to apply the law to cases to which it is justly applicable, or on the other to apply it to cases to which it is not justly applicable, is to disobey, not to obey,--to violate, not to execute,--the constitutional will of the legislative department of the Government."

"But the Constitution has not given to either branch of the legislature the power, by separate resolution of its own, to construe, judicially, a general law, or to apply it executively to a given case. And its resolutions have obligatory force only so far as regards itself or things dependent on its own separate constitutional power.

"Any other view of the subject would result in the absurd conclusion that a separate resolution of either House could repeal or modify an act of Congress. For, as the Supreme Court well say [sic], in one of the cases before cited, a Head of Department "must exercise his judgment in *expounding* the acts and resolution of Congress, under which he is, from time to time, required to act." That exposition of the law, conscientiously made by him, and with the aid of the law officer of the Government, is the law of the case. If the question be one of judicial resort, the exposition of the statute by the Supreme Court will constitute the law. But, if it be a mere executive question, then the exposition of the particular Secretary, or of the Attorney General, is just as much the law, and, as such, binding on the conscience of the Head of Department, as any other part of the statute, which may happen to be of unquestionable import, and so not to require exposition. In fine, it becomes the law; that is, the authorized construction of the legal intendment of the act of Congress. That ascertained legal intendment of a statute cannot be authoritatively changed by a separate resolution of either or of both Houses; but only by a new act of Congress.

"The conclusive test of the whole doctrine is, to inquire whether the Supreme Court of the United States would adjudge that the report of a committee, or a resolution of either House, has the effect of repealing, modifying, or conclusively construing an act of Congress. It is perfectly clear that they would not. (*Albridge v. Williams*, iii Howard, 9.)"

"It is not readily perceivable why the Executive should act against his conscience to prevent the reproach of "a disagreement between the Executive and the two Houses of Congress," when the thing done by the former is a complete legal act within his constitutional competency, and the thing done by the latter is a mere expression of opinion, not possessed of any obligatory force by the Constitution. The obvious way of determining any such disagreement, and removing "the reproach upon the justice of the Government," is for Congress to pass a declaratory law in the forms of the Constitution."

"For, as we have seen, a report of a committee, or a separate resolution of either House, is not itself the law, nor an

authoritative exposition of the law. The opinion of either House, or of its committees, should be regarded with all possible deference in matters of pure discretion, but cannot justify the violation of an act of Congress."

"Now, there is [an] obvious difference between the report of a committee, which is the opinion of a majority of the members of the committee only, and a resolution of either House, which is the opinion of a majority of the members of that House."

"Most assuredly it cannot be sound constitutional doctrine, that a declaratory resolution of either House, construing a general law, is obligatory against the judgment of the Executive, and that it is the duty of the Executive to yield its judgment in all such cases to the mere opinion of the Senate or of the House of Representatives. Such an assumption is contrary, as I have show, to the plain letter and clear spirit of the Constitution.

"If it be said that, although a Head of Department be not absolutely bound in law to yield up his own judgment, yet that, in the language of the opinion under consideration, it is his duty so to do, out of deference to both or either of the Houses, or to prevent the public reproach of disagreement between the legislative and executive branches of the government, or for any other possible consideration of mere expediency, I reply that the whole weight of the argument of expediency is the other way; for the adoption of such a rule would inevitably tend to the disorganization of the Government.

"In the first place, the President is not bound to yield up his own judgment, even to the most unequivocally expressed opinion of the two Houses, in the form of a bill passed through all the solemnities of constitutional enactment. But, if the hypothesis under consideration be maintainable, a separate resolution of either House will constrain the Executive, when a bill, solemnly passed to be enacted, would not. Of course this idea would afford easy means of striking the veto power and the rights of minorities out of the Constitution, and conferring on a bare majority of the two Houses that legislative omnipotence, which it was one of the great objects of the Constitution to guard against and avoid.

"According to the letter of the Constitution, resolutions of the two Houses, even a joint resolution, when submitted to the President and disapproved by him, do not acquire the force of law until passed anew by a concurrent vote of two-thirds of each House."

"In the second place, the hypothesis puts an end to all the forms of legislative scrutiny on the part of Congress. A declaratory law, especially if it involve the expenditure of the public treasure, has forms of legislation to go through to insure due consideration."

"In this way, instead of the revenues of the Government being subject only to the disposition of Congress in the form of a law constitutionally enacted, they will be transferred to the control of an accidental majority, expressing its will by a resolution, passed, it may be, out of time, and under circumstances, in which a law, duly and truly representing the will of Congress, could not have passed. And thus, all those checks and guards against the inconsiderate appropriation of the public treasure, so carefully devised by the founders of the Government, will be struck out of the Constitution."

**"But, after all, is not our first duty that of humble submission to the Constitution? Of what avail are arguments of expediency against the positive injunctions of the Constitution?"**

"A mere vote of either or of both Houses of Congress, declaring its opinion of the proper construction of a general law, has, be it repeated, in itself, no constitutional force or obligation as law. It is opinion merely, and to be dealt with as such, receiving more or less of deference, like other mere opinions, according to the circumstances."

[6 Opinions of the Attorney General 680 (1854), Resolutions of Congress]

#### **Hartranft v. Wiegmann (May 2, 1887)**

"But, if the question were one of doubt, the doubt would be resolved in favor of the importer, "as duties are never imposed on the citizen upon vague or doubtful interpretations." *Powers v. Barney*, 5 Blatchf. 202; *U.S. v. Isham*, 17 Wall. 496, 504; *Gurr v. Scudds*, 11 Exch. 190, 191; *Adams v. Bancroft*, 3 Sum. 384."

[*Hartranft v. Wiegmann*, 121 U.S. 609, 7 S.Ct. 1240; 30 L.Ed. 1012 (1887)]

#### **American Net & Twine Co. v. Worthington (Nov. 9, 1891)**

"We think the intention of congress that these goods should be classified as "gilling twine" is plain; but, were the question one of doubt, we should still feel obliged to resolve that doubt in favor of the importer, since the intention of congress to impose a higher duty should be expressed in clear and unambiguous language."

[*American Net & Twine Co. v. Worthington*, 141 U.S. 468, 12 S.Ct. 55, 35 L.Ed. 821 (1891)]

#### **Rector, Etc., Of Holy Trinity Church v. United States (Feb. 29, 1892)**

"In construing a doubtful statute the court will consider the evil which it was designed to remedy, and for this purpose will

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look into contemporaneous events, including the situation as it existed, and as it was pressed upon the attention of the legislative body, while the act was under consideration."

"It being historically true that the American people are a religious people, as shown by the religious objects expressed by the original grants and charters of the colonies, and the recognition of religion in the most solemn acts of their history, as well as in the constitutions of the states and the nation, the courts, in construing statutes, should not impute to any legislature a purpose of action against religion."

"It is a familiar rule that a thing may be within the letter of the statute and yet not within its spirit nor within the intention of its makers. This has been often asserted, and the Reports are full of cases illustrating its application. This is not the substitution of the will of the judge for that of the legislator; for frequently words of general meaning are used in a statute, words broad enough to include an act in question, and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act."

"All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character. The reason of the law in such cases should prevail over its letter. The common sense of man approves the judgment mentioned by Puffendorf, that the Bolognian law which enacted 'that whoever drew blood in the streets should be punished with the utmost severity, did not extend to the surgeon who opened the vein of a person that fell down in the street in a fit. The same common sense accepts the ruling, cited by Plowden, that the statute of 1 Edw. II., which enacts that a prisoner who breaks prison shall be guilty of felony, does not extend to a prisoner who breaks out when the prison is on fire, 'for he is not to be hanged because he would not stay to be burnt.'" [Quoting *U.S. v. Kirby*, 7 Wall. 482, 486.]

"In the case of *U.S. v. Fisher*, 2 Cranch, 358, 386, Chief Justice MARSHALL said: "... Where the intent is plain, nothing is left to construction. Where the mind labors to discover the design of the legislature, it seizes everything from which aid can be derived; and in such case the title claims a degree of notice, and will have its due share of consideration." And in the case of *U.S. v. Palmer*, 3 Wheat. 610, 631, the same judge applied the doctrine in this way: "The words of the section are in terms of unlimited extent. The words 'any person or persons' are broad enough to comprehend every human being. But general words must not only be limited to cases within the jurisdiction of the state, but also to those objects to which the legislature intended to apply them. Did the legislature intend to apply these words to the subjects of a foreign power, who in a foreign ship may commit murder or robbery on the high seas? The title of an act cannot control its words, but may furnish some aid in showing what was in the mind of the legislature. The title of this act is, 'An act for the punishment of certain crimes against the United States.' It would seem that offenses against the United States, not offenses against the human race, were the crimes which the legislature intended by this law to punish."

"It will be seen that words as general as those used in the first section of this act were by that decision limited, and the intent of congress with respect to the act was gathered partially, at least, from its title. Now, the title of this act is, 'An act to prohibit the importation and migration of foreigners and aliens under contract or agreement to perform labor in the United States, its territories, and the District of Columbia. Obviously the thought expressed in this reaches only to the work of the manual laborer, as distinguished from that of the professional man.' No one reading such a title would suppose that congress had in its mind any purpose of staying the coming into this country of ministers of the gospel, or, indeed, of any class whose toil is that of the brain. The common understanding of the terms "labor" and "laborers" does not include preaching and preachers, and it is to be assumed that words and phrases are used in their ordinary meaning. So whatever of light is thrown upon the statute by the language of the title indicates an exclusion from its penal provisions of all contracts for the employment of ministers, rectors, and pastors."

"It was never suggested that we had in this country a surplus of brain toilers, and, least of all, that the market for the services of Christian ministers was depressed by foreign competition."

"Especially would the committee have otherwise recommended amendments, substituting for the expression, 'labor and service, whenever it occurs in the body of the bill, the words 'manual labor' or 'manual services, as sufficiently broad to accomplish the purposes of the bill, and that such amendments would remove objections which a sharp and perhaps unfriendly criticism may urge to the proposed legislation. The committee, however, believing that the bill in its present form will be construed as including only those whose labor or service is manual in character, and being very desirous that the bill become a law before the adjournment, have reported the bill without change."

**"Even the constitution of the United States, which is supposed to have little touch upon the private life of the individual,** contains in the first amendment a declaration common to the constitutions of all the states, as follows:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof," etc.,--and also provides in article 1, §7, (a provision common to many constitutions) that the executive shall have 10 days (Sundays excepted) within which to determine whether he will approve or veto a bill. [Bold added.]

"There is no dissonance in these declarations. There is a universal language pervading them all, having one meaning. They affirm and reaffirm that this is a religious nation. These are not individual sayings, declarations of private persons. They

are organic utterances. They speak the voice of the entire people."

[Rector, Etc., Of Holy Trinity Church v. United States, 143 U.S. 457, 12 S.Ct. 511 (1892)]

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**McMahon v. Lundin (Apr. 20, 1894)**

"The statute is clear and plain, and its policy is wise and just. It must be construed exactly as it reads. He who in good faith sells and furnishes seed from which a crop may be raised, and properly files a note taken for the same, should be and is entitled to priority of lien over all other persons. We see nothing in the suggestion that the obligation of a contract is impaired if it be declared that a lien arising by virtue of a seed-grain note has priority over a lien upon the same property acquired by means of the provisions of a previously executed chattel mortgage. The power of the legislature to provide for first liens of this character ought not to be doubted. Again, a mortgage upon a crop not yet planted or sown attaches only to such interest as the mortgagor has in the crop when it comes into being. Simmons v. Anderson, 44 Minn. 487, 47 N.W. 52."

[McMahon v. Lundin, 57 Minn. 84 (1894)]

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**Benziger v. United States (Jan. 4, 1904)**

"This revision of the statute should be liberally construed in favor of the importer, and if there were any fair doubt as to the true construction of the provision in question, the courts should resolve the doubt in his favor."

[Benziger v. United States, 192 U.S. 38, 24 S.Ct. 189, 48 L.Ed. 331 (1904)]

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**Spreckels Sugar Refining Co. v. McClain (Feb. 23, 1904)**

"The contention of the government is that the tax is not a direct tax, but only an excise imposed by Congress under its power to lay and collect excises which shall be uniform throughout the United States. Art. 1, §8. Clearly the tax is not imposed upon gross annual receipts as property, but only in respect of the carrying on or doing the business of refining sugar. It cannot be otherwise regarded because of the fact that the amount of the tax is measured by the amount of the gross annual receipts. The tax is defined in the act as "a special excise tax," and, therefore, it must be assumed, for what it is worth, that Congress had no purpose to exceed its powers under the Constitution, but only to exercise the authority granted to it of laying and collecting excises."

**"Keeping in mind the well-settled rule that the citizen is exempt from taxation unless the same is imposed by clear and unequivocal language, and that where the construction of a tax law is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid...."** [Bold added.]

[Spreckels Sugar Refining Co. v. McClain, 192 U.S. 397 (1904)]

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**S. H. Hawes & Co. et al. v. Wm. R. Trigg Co. et al. (Sept. 9, 1909)**

"A holding as to the status of a corporation and as to the constitutionality of a statute, in a former suit to which the parties to the present suit were parties, is res judicata."

"Where the United States government voluntarily submitted its rights under a contract to the determination of the state courts, the theory that a sovereign cannot be sued without its consent has no application."

**An act of Congress governs all persons under the jurisdiction of the enacting power; whereas, a "joint resolution" is merely a rule for the guidance of the agents and servants of the government."**

"The difference between an act of Congress and a joint resolution is that the former governs all persons under the jurisdiction of the enacting power, while the latter is but a rule for the guidance of the agents and servants of the sovereign."

"In any view to be taken of this contract and of the joint resolution of Congress, pursuant to which the contract was entered into, the lien stipulated for is contractual only and not a statutory lien."

"In United States v. Canal Bank, Fed.Cas. No. 14,715, 25 Fed.Cas. 278, the opinion says: "It has long been settled, by the solemn adjudication of the Supreme Court, that the United States do not possess any general right of priority or privilege' over private creditors for the satisfaction of the debts due to them, founded upon any general prerogative belonging to the government in its sovereign capacity; but that **all the priority or privilege which the government is at liberty to assert is or must be founded upon some statute, passed by Congress in virtue of its constitutional authority.** This was expressly so held in United States v. Fisher, 2 Cranch, 358-396, 2 L.Ed. 304, and the doctrine has ever since been strictly adhered to."

[Cites omitted; bold added.]

[S. H. Hawes & Co. et al. v. Wm. R. Trigg Co. et al., 65 S.E. 538 (1909)]

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**Montello Salt Co., v. Utah (May 29, 1911)**

"It is the participle of the word "include", which means, as defined by the Century Dictionary, (1) "to confine within something; hold as in an inclosure; inclose; contain."

"The supreme court of the state ... also considered that the word "including" was used as a word of enlargement... With this we cannot concur."

[Montello Salt Co. v. Utah, 221 U.S. 452, 31 S.Ct. 706 (1911)]

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**Miller v. Gearin (May 5, 1919)**

"Where an income tax law is doubtful, doubts should be resolved in favor of the taxpayer against the government."

"Statutes levying taxes should be construed, in case of doubt, against the government and in favor of the citizen."

"The lessor acquired nothing in 1916 save the possession of that which for many years had been her own. The possession so acquired was not income. It was not a gain, but was a loss."

"We do not consider the question here involved a doubtful one; but, if there is doubt, it should be resolved in favor of the taxpayer. In Gould v. Gould, 245 U.S. 151, 38 Sup.Ct. 53, 62 L.Ed. 211, it was said:

"In the interpretation of statutes levying taxes, it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen."

[Miller v. Gearin, 258 F. 225 (1919)]

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**United States v. Phellis (Nov. 21, 1921)**

"In applying the provisions of the Sixteenth Amendment' and the income tax laws enacted thereunder, matters of substance are to be regarded and forms are to be disregarded."

[United States v. Phellis, 257 U.S. 156 (1921)]

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**Monroe Cider Vinegar & Fruit Co. v. Riordan (Feb. 22, 1922)**

"It is a familiar rule of statutory construction that the legislative body is not presumed to use meaningless language, or, putting the rule another way, that in ascertaining the legislative intent due consideration and weight should be given to the words and phrases of a statute."

"It is a recognized rule of interpretation that--

"In case of doubt or uncertainty, acts in pari materia passed either before or after, and whether repealed or still in force may be referred to in order to discern the intent of the Legislature in the use of particular terms, or in the enactment of particular provisions." p. 631.

"Of course, in considering the list of taxable subjects, it must be remembered the Legislature is constantly making changes, and that caution must be exercised in appropriately assigning the weight to be given to such legislation in construing the previous statute."

[Monroe Cider Vinegar & Fruit Co. v. Riordan, 280 F. 624 (1922)]

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**Shwab v. Doyle (May 1, 1922)**

"But, granting the contention of the defendant has plausibility, it is to be remembered that we are dealing with a tax measure, and whatever doubts exist must be resolved against it."

[Shwab v. Doyle, 258 U.S. 529, 42 S.Ct. 391 (1922)]

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**Cox v. Hart (Dec. 11, 1922)**

"A statute is not made retroactive merely because it draws on antecedent facts for its operation."

[Cox v. Hart, 260 U.S. 427; 43 S.Ct. 154 (1922)]

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**United States v. Merriam (Nov. 12, 1923)**

"But in statutes levying taxes the literal meaning of the words employed is most important for such statutes are not to

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be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the government and in favor of the taxpayer. *Gould v. Gould*, 245 U.S. 151, 153, 38 Sup.Ct. 53, 62 L.Ed. 211. The rule is stated by Lord Cairns in *Partington v. Attorney General*, L. R. 4 H. L. 100, 122:

"If the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible in any statute what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute."

[*United States v. Merriam*, 263 U.S. 179, 44 S.Ct. 69 (1923)]

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#### **Panama Railroad Co. v. Johnson (Apr. 7, 1924)**

"Generally, where existing legislation on a particular subject has been systematically revised and restated in a comprehensive general statute, subsequent enactments touching that subject are to be construed and applied in harmony with the general statute, save as they clearly manifest a different purpose."

"A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts on that score."

"In this connection it is well to recall that the Constitution, by §1 of article 3, declares that the judicial power of the United States shall be vested in one Supreme Court "and in such inferior courts as the Congress may from time to time ordain and establish," and, by §8 of article 1, empowers the Congress to make all laws which shall be necessary and proper for carrying into execution the several powers vested in the government of the United States. Mention should also be made of the enactment by the first Congress, now embodied in §§24 & 256 of the Judicial Code, whereby the district courts are given exclusive original jurisdiction "of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it."

"But, as this Court often has held, "a statute must be construed, if fairly possible, so as to avoid not only the conclusion that is unconstitutional but also grave doubts upon that score." *United States v. Jin Fuey Moy*, 241 U.S. 394, 401, 60 L.Ed. 1061, 1064, 36 Sup.Ct.Rep. 658, Ann.Cas. 1917D, 854; *United States ex rel. Atty. Gen. v. Delaware & H. Co.*, 213 U.S. 366, 407, 408, 53 L.Ed. 836, 848, 849, 29 Sup.Ct.Rep. 527; *Baender v. Barnett*, 255 U.S. 224, 65 L.Ed. 597, 41 Sup.Ct.Rep. 271."

[*Panama Railroad Co. v. Johnson*, 264 U.S. 375 (1924)]

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#### **Irwin v. Gavit (Apr. 27, 1925)**

"Mr. Justice SUTHERLAND (dissenting)... The taxpayer is entitled to the rigor of the law. There is no latitude in a taxing statute; you must adhere to the very words. *United States v. Merriam*, supra, pages 187, 188 (44 S.Ct. 69)."

[*Irwin v. Gavit*, 268 U.S. 161, 45 S.Ct. 475 (1925)]

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#### **Edwards v. Cuba R. Co. (June 8, 1925)**

"The Sixteenth Amendment, like other laws authorizing or imposing taxes, is to be taken as written, and is not to be extended beyond the meaning clearly indicated by the language used."

[*Edwards v. Cuba R. Co.*, 268 U.S. 628, 45 S.Ct. 614 (1925)]

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#### **Botany Worsted Mills v. United States (Jan. 2, 1929)**

"We think that Congress intended by the statute to prescribe the exclusive method by which tax cases could be compromised, requiring therefore the concurrence of the Commissioner and the Secretary, and prescribing the formality with which, as a matter of public concern, it should be attested in the files of the Commissioner's office; and did not intend to intrust the final settlement of such matters to the informal action of subordinate officials of the Bureau. **When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode.** *Raleigh & G. R. Co. v. Reid*, 13 Wall. 269, 270, note, 20 L.Ed. 570; *Scott v. Ford*, 52 Or. 288, 296, 97 Pac. 99." [Bold added.]

[*Botany Worsted Mills v. United States*, 278 U.S. 282 (1929)]

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#### **Reinecke v. Northern Trust Co. (Jan. 2, 1929)**

"In the light of the general purpose of the statute and the language of section 401 explicitly imposing the tax on net

estates of decedents, we think it at least doubtful whether the trusts or interests in a trust intended to be reached by the phrase in section 402 (c) "to take effect in possession or enjoyment at or after his death." include any others than those passing from the possession, enjoyment or control of the donor at his death and so taxable as transfers at death under section 401. That doubt must be resolved in favor of the taxpayer."

[*Reinecke v. Northern Trust Co.*, 278 U.S. 339, 49 S.Ct. 123 (1929)]

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**Miller v. Standard Nut Margarine Co. (Feb. 15, 1932)**

"Notwithstanding the Federal statute declaring that no suit for the purpose of restraining the collection of any tax shall be maintained in any court, **a suit may be maintained to enjoin collection where complainant shows that in addition to the illegality of the exaction there exist special and extraordinary circumstances sufficient to bring the case within some acknowledged head of equity jurisprudence.**" p. 423.

"When a law is passed, certified, signed, and filed, it must, as to form, be conclusive." p. 502; 426. [Supporting citations omitted.]

"**Being a revenue law, it must be construed most favorably in behalf of the taxpayer.**" p. 502; 426. [Supporting citations omitted.]

"It is elementary that tax laws are to be interpreted liberally in favor of taxpayers and that **words defining things to be taxed may not be extended beyond their clear import. Doubts must be resolved against the Government and in favor of taxpayers.**" p. 508; 429.

[*Miller L Standard Nut Margarine Co.*, 284 U.S. 498, 52 S.Ct. 260, 76 L.Ed. 422 (1932)]

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**In re California Perfume Co. (Mar. 28, 1932)**

"'Geographical' is defined as 'of or pertaining to geography.' Geography relates to towns, countries, and subdivisions thereof, mountains, valleys, rivers, etc., the names of which suggest fixed locations. Webster's New International Dictionary (1932)."

In re *California Perfume Co.*, 56 F.2d. 885 (1932)]

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**Moran v. La Guardia (Apr. 14, 1936)**

"Concurrent resolution of Legislature cannot modify or repeal statutory enactment, but to repeal or modify a statute requires a legislative act of equal dignity and import, and concurrent resolution of the two houses is not a 'statute.'"

"Concurrent resolution of Legislature, unlike a statute, is binding only on members and officers of legislative body, and resembles statute neither in its mode of passage nor in its consequences."

"To hold that statute may be terminated or repealed by some act other than repealing statute, court must at least find clearly expressed provision to that effect embodied in law thus to be terminated."

"Joint resolution of Legislature repealing act permitting city to reduce salaries of employees *held* not to constitute action by the Legislature and could not result in repeal of such act which declared that temporary emergency existed requiring its enactment, and that its provisions were to apply "until the legislature shall find their further operation unnecessary"."

"At first the Legislature passed a bill to repeal this law, which was vetoed by the Governor. Next the Legislature sought to accomplish the same result by means of a joint resolution."

"A concurrent resolution of the Legislature is not effective to modify or repeal a statutory enactment. [Cite omitted.] To repeal or modify a statute requires a legislative act of equal dignity and import. Nothing less than another statute will suffice. A concurrent resolution of the two Houses is not a statute. [Cite omitted.] A concurrent resolution, unlike a statute, is binding only on the members and officers of the legislative body. It resembles a statute neither in its mode of passage nor in its consequences. The form of a bill is lacking, and readings are not required. It does not have to lie on the desks of members of the Legislature for three legislative days. N.Y.Const. art. 3, §15. But more important, its adoption is complete without the concurrent action of the Governor, or, lacking this, passage by a two-thirds vote of each House of the Legislature over his veto. Thus a joint resolution may be adopted by a mere majority of the Legislature without action by the Governor or notice to the public, whereas the enactment of a statute requires action by three distinct bodies and at least three days' notice to the public. As has been well said; "In the exercise of this vast power [of the Legislature] according to the fundamental idea and constitution of parliament the concurrence of the three distinct bodies of which it is composed, each acting by itself and independent of the others, is necessary. No two of them acting together, much less alone, can make a law.'" [Brackets original.]

"In *Koenig v. Flynn*, [cite omitted] it was held that action by the Legislature meant action by both Houses and the Governor. The language involved was "Shall be prescribed in each State by the Legislature thereof." U.S.Const. art. 1, §4."

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"Not only reason, but authority demonstrate that the joint resolution upon which is based the application of petitioner does not constitute action by the Legislature and cannot result in the repeal of the so-called economy bill."

[Moran v. La Guardia, 270 N.Y. 450, 1 N.E.2d. (1936)]

**White v. Aronson (Nov. 8, 1937)**

"Where there is a reasonable doubt as to the meaning of a taxing act it should be construed most favorably to the taxpayer." [Bold added.]

[White v. Aronson, 302 U.S. 16, 58 S.Ct. 95 (1937)]

**Hassett v. Welch (Feb. 28, 1938)**

"In view of other settled rules of statutory construction, which teach that a law is presumed, in the absence of clear expression to the contrary, to operate prospectively; that if **doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer**, we feel bound to hold that the Joint Resolution' of 1931 and section 803(a) of the Act of 1932 apply only to transfers with reservation of life income made subsequent to the dates of their adoption respectively." [Bold added.]

[Hassett v. Welch, 303 U.S. 303, 58 S.Ct. 559; 82 L.Ed. 858 (1938)]

**Allen v. Regents of University System of Ga. (May 23, 1938)**

"The prompt collection of revenue is essential to good government. Summary proceedings are a matter of right. The Government has been sedulous to maintain a system of corrective justice." Any departure from the principle of "pay first and litigate later" threatens an essential safeguard to the orderly functioning of government." Allen v. Regents of University System of Ga., 304 U.S. 439; 82 L.Ed. 1448 (1938).

**County of Los Angeles v. Jones (May 22, 1939)**

"The language presented for interpretation by this proceeding is subject to the rule of strict construction. (*East Bay Municipal Utility Dist. v. Garrison*, 191 Cal. 680, 688 [218 Pac. 43]; *Mulvill v. City of San Diego*, 183 Cal. 734 [192 Pac. 702]; *Merced County v. Helm*, 102 Cal. 159 [36 Pac. 399]; *Creighton v. Manson*, 27 Cal. 614, 629; 23 Cal.Jur., pp. 805, 806, 24 Cal.Jur., pp. 22, 28, and cases cited.) The rule of interpretation is stated in *Merced County v. Helm*, *supra*, p. 165, as follows: [3] 'Any attempt on the part of the state, or of the county as one of the subdivisions of the state, to take the property of an individual for public purposes by way of taxation, must find an express statutory warrant, and all laws having this object are to be construed strictly in favor of the individual as against the state . . . the proceeding is *in invitum*, and no presumption is to be indulged in favor of the right to take property or of any intention that is not distinctly expressed in the statute under which it is sought to be taken ... (Citing cases.) A tax can never be extended by construction to things not named or described in the statute as the subject of taxation.

[County of Los Angeles v. Jones, 13 Cal.2d. 554 (1939)]

**Durkee Famous Foods v. Harrison (June 1, 1943)**

"Meaning of a law must first be sought in language employed, and if that is plain courts must enforce law as written, provided it is within constitutional authority of legislative body which passed it."

"In construing tax statutes, literal meaning of words employed is most important, since such statutes are not to be extended by implication beyond clear import of language used."

"In construing a revenue statute, any doubt must be resolved against government and in favor of taxpayer."

"**Laws are made by legislative branch of government, and both courts and administrative agencies are without authority to enlarge their scope.**" [Bold added.]

"This clear and unambiguous language calls for the application of another rule, long recognized by the courts but too often, we fear, honored only by lip service. In *United States v. Standard Brewery*, 251 U.S. 210, 217, 40 S.Ct. 139, 140, 64 L.Ed. 229, the court said: "Nothing is better settled than that in the construction of a law its meaning must first be sought in the language employed. If that be plain, it is the duty of the courts to enforce the law as written, provided it be within the constitutional authority of the legislative body which passed it." Again, in *United States v. Merriam*, 263 U.S. 179, 187, 44 S.Ct. 69, 71, 68 L.Ed. 240, 29 A.L.R. 1547, the court said: "But in statutes levying taxes the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the

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language used. Again, in *United States v. Missouri P.R. Co.*, 178 U.S. 269, 277, 49 S.Ct. 133, 136, 73 L.Ed. 322, the court said: "We are therefore bound by the words employed and are not at liberty to conjure up conditions to raise doubts in order that resort may be had to construction. \* \* \* Construction may not be substituted for legislation."

"Another rule often overlooked in construing a revenue statute is that in a doubtful situation the taxpayer is entitled to the benefit of the doubt. As was said by the court in *United States v. Merriam*, supra, 263 U.S. at page 188, 44 S.Ct. at page 71, 68 L.Ed. 240, 29 A.L.R. 1547: "If the words are doubtful, the doubt must be resolved against the government and in favor of the taxpayer.""

[*Durkee Famous Foods v. Harrison*, 136 F.2d. 303 (1943)]

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### **Hooven & Allison Co. v. Evatt (Apr. 9, 1945)**

"The term "United States" may be used in any one of several senses. It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in the family of nations. It may designate the territory over which the sovereignty of the United States extends, or it may be the collective name of the states which are united by and under the Constitution."

"The dependencies, acquired by cession as the result of war with Spain, are territories belonging to, but not a part of, the Union of states under the Constitution."

"The United States may acquire territory by conquest or by treaty and may govern it through the exercise of constitutional power to dispose of and make all needful rules and regulations respecting territory belonging to the United States."

In exercising constitutional power to make all needful rules respecting territory belonging to the United States, Congress is not subject to the same constitutional limitations as when it is legislating for the United States, and, generally, guaranties of Constitution, save as they are limitations on exercise of executive and legislative power or when exerted for or over insular possessions, extend to them only as Congress, in the exercise of its legislative power over territory belonging to the United States, has made those guaranties applicable."

.. Congress retains plenary power over the territorial government until such time as the Philippines are made independent."

[*Hooven & Allison Co. v. Evatt*, 324 U.S. 652, 65 S.Ct. 870 (1945). [Ad valorem tax rule overruled by *Limbach v. Hooven*, 466 U.S. 353 (1984).]]

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### **Pettus v. State (Oct. 14, 1946)**

"Generally, definition is simply substitution of phraseology...."

[*Pettus v. State*, 200 Miss. 397; 27 So.2d. 536 (1946)]

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### **Black's Law Dictionary: Of**

"OF. A term denoting that from which anything proceeds; indicating origin, source, descent, and the like; as, he is of a race of kings; he is of noble blood. *Stone v. Riggs*, 43 Oki. 209, 142 P. 298, 299. Associated with or connected with, usually in some causal relation, efficient, material, formal, or final. *Harlan v. Industrial Accident Commission*, 194 Cal. 352, 228 P. 654, 657.

"The word has been held equivalent to after, 10 L.J.Q.B. 10; at, or belonging to, *Davis v. State*, 38 Ohio.St. 506; in possession of, *Bell County v. Hines*, Tex.Civ.App., 219 S.W. 556, 557; *Stokes v. Great Southern Lumber Co.*, D.C.Miss., 21 F.2d. 185, 186; manufactured by, 2 Bing. N.C. 668; by, *Hannum v. Kingsley*, 107 Mass. 355; residing at, *Porter v. Miller*, 3 Wend. (N.Y.) 329; 8 A. & E. 232; from, *State v. Wong Fong*, 75 Mont. 81, 241 P. 1072, 1074; in, *Kellogg v. Ford*, 70 Or. 213, 139 P. 751, 752."

[*Black's Law Dictionary*, Revised Fourth Edition, 1968, p. 1232]

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### **Foley Bros. v. Filardo (Mar. 7, 1949)**

"The Federal Eight Hour Law did not apply to contract between United States and a private contractor for construction work in a foreign country."

"Legislation of Congress, unless a contrary intent appears, is meant to apply only within territorial jurisdiction of the United States."

"An intention to regulate labor conditions which are primary concern of a foreign country should not be attributed to Congress by its enactment of the Federal Eight Hour Law in absence of a clearly expressed purpose."

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"The term "every contract" , as used in provision of Federal Eight Hour Law requiring every contract to which United States is a party to contain provision that no laborer or mechanic doing work contemplated by the contract in the employ of contractor or any subcontractor, shall be required to work more than eight hours in any one calendar day, would not be construed as including contracts for work to be performed in foreign countries, in view of legislative history of the law."

"Administrative interpretations of Federal Eight Hour Law, although not specifically directed at the precise problem tend to support contention that law is inapplicable to a contract for construction of public works in a foreign country over which United States has no direct legislative control."

[Foley Bros. v. Filardo, 69 S.Ct. 575 (1949)]

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#### **United States v. National City Lines (May 31, 1949)**

"Revisor's notes appended to sections of the Judicial Code should be regarded as authoritative in interpreting meaning of the code."

[United States v. National City Lines, 337 U.S. 78, 69 S.Ct. 955, 93 L.Ed. 1226 (1949)]

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#### **United States v. Minker (1956)**

"Where administrative action may result in loss of both property and life, or of all that makes life worth living, **any doubt as to extent of power delegated to administrative officials is to be resolved in citizen's favor, and court must be especially sensitive to citizen's rights where proceeding is non judicial.**"

[United States v. Minker, 350 U.S. 179; 76 S.Ct. 281 (1956)]

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#### **Green v. Teets (Apr. 5, 1957)**

"A state Supreme Court has final say on the construction and meaning of state statutes and constitutions."

"Where California courts had construed California Constitution and statutes, such interpretation would not be disturbed in absence of a clear and convincing showing of a violation of appellant's rights under the Federal Constitution."

[Green v. Teets, 244 F.2d. 401 (1957)]

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#### **City of Burbank v. Metropolitan Water District (Apr. 28, 1960)**

"The term "property," when used in taxing statutes, normally connotes property subject to taxation; and the term "levy" carries the same implication."

[City of Burbank v. Metropolitan Water District, 180 Cal.App.2d. 451, 4 Cal.Rptr. 757 (1960)]

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#### **Eisenberg v. Commercial Union Assurance Company (Dec. 19, 1960)**

""(d) The word 'States', as used in this section [Title 28 §1332 as amended in 1958] includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico."

"It is to be noted that the statute differentiates between States of the United States and foreign states by the use of a capital S for the word when applied to a State of the United States." [Brackets original.]

[Eisenberg v. Commercial Union Assurance Company, 189 F.Supp. 500 (1960)]

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#### **Richardson v. United States (Sept. 19, 1961)**

"A direct tax on principal without **apportionment** is unconstitutional. U.S.C.A.Const. art. 1, §2, cl. 3; art. 1, §9, cl. 4; U.S.C.A.Const. Amend. 16."

"Question of taxability of accrued interest, as income, is for Congress to determine, and involves no constitutional issue. 26 U.S.C.A. (LR.C.1939) §22(a)."

"If a direct tax was actually one on principal without apportionment, it would be unconstitutional, even if labeled as a tax on income. U.S.C.A.Const. art. 1, §2, cl. 3; art. 1, §9, cl. 4."

"This constitutional limitation upon direct taxation was modified by the Sixteenth Amendment insofar as taxation of income was concerned, but the amendment was restricted to income, leaving in effect the limitation upon direct taxation of principal. Eisner v. Macomber, supra, 252 U.S. 189, 205-206, 40 S.Ct. 189."

"The Sixteenth Amendment did not define the word "income." The Supreme Court in Eisner v. Macomber approved the following definition, "Income may be defined as the gain derived from capital, from labor, or from both combined,"

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provided it be understood to include profit gained through a sale or conversion of capital assets, pointing out the fundamental conception clearly set forth by the wording of the Amendment which gave Congress the power to collect taxes "on incomes, from whatever source derived." 252 U.S. at pages 207-208, 40 S.Ct. at pages 193, 64 L.Ed. 521; Taft v. Bowers, supra, 278 U.S. 470, 481, 49 S.Ct. 199, 73 L.Ed. 460." [Richardson v. United States, 294 F.2d. 593 (1961)]

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**United States v. Community TV, Inc. (Mar. 12, 1964)**

**"Without question, a taxing statute must describe with some certainty the transaction, service, or object to be taxed, and in the typical situation it is construed against the Government."** p. 800. [Bold added.] [United States v. Community TV, Inc., 327 F.2d. 797 (1964)]

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**Acron Investments, Inc. v. Federal Savings & L. Ins. Corp. (June 30, 1966)**

"And the reviser's notes are authoritative in interpreting the Code." [Acron Investments, Inc. v. Federal Savings & L. Ins. Corp., 363 F.2d. 236 (1966)]

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**Newport News Fire Fighters Association v. City of Newport News, Va. (Sept. 23, 1969)**

"Under Virginia law, resolutions of the legislature are not laws and are to be distinguished from statutes."  
 "Joint resolution of Virginia senate was not a state "statute" of general and statewide application and statute providing for convening of three judge court was not applicable."  
 "In most jurisdictions, including Virginia, resolutions of the legislatures are not laws and are to be distinguished from statutes. [Cites omitted.] "Legislative resolutions are not law," Boyer-Campbell Col. v. Fry, supra, and a resolution "of the Legislature is not effective to modify or repeal a statutory enactment." Moran v. La Guardia," supra."  
 "If the Virginia General Assembly had wished to give general and statewide legal impetus to the provisions of Senate Joint Resolution No. 12, it had ample means and opportunity at its disposal to do so by enacting it as a statute. The Constitution of Virginia, §50, under which the Legislature operates, required that "No law shall be enacted except by bill," and that before passage it must follow the prescribed procedure. Short of this, the resolution expresses only the opinion of that legislative body."  
 "Since the Senate Joint Resolution does not have the standing of a state statute, there are no Commonwealth connotations which would require the Commonwealth of Virginia to be represented by its Attorney in the City of Newport News." [Newport News Fire Fight. Ass'n v. City of Newport News, Va., 307 F.Supp. 1113 (1969)]

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**Stubbs, Overbeck & Associates v. United States (June 25, 1971)**

"A revenue ruling does not have force and effect of law; a ruling is merely opinion of a lawyer in an agency and must be accepted as such; it may be helpful in interpreting a statute, but it is not binding on the Secretary or the courts; it does not have effect of a regulation or a Treasury decision."

"Presumption of correctness of determination by the Commissioner of Internal Revenue is not evidence; once the presumption is overcome by plaintiff's evidence, it disappears and is no longer in the case; when this occurs, the court is required to base its decision of preponderance of all the credible evidence in the case."

An employee may receive economic benefits from his employer that are not subject to withholding provisions of the code."

"Per diem payments paid by engineering firm as a living allowance to employees located at a jobsite remote to the firm's regular place of business were not "wages" within income tax withholding statute providing that the term "wages" means all remunerations for services performed by an employee for his employer."

"The government argues that Revenue Ruling 59-371, 1959-2 Cum.Bull. 236, has the force and effect of law. We do not agree. A ruling is merely the opinion of a lawyer in the agency and must be accepted as such. It may be helpful in interpreting a statute, but it is not binding on the Secretary or the courts. It does not have the effect of a regulation or a Treasury Decision. Helvering v. New York Trust Co., 292 U.S. 455, 54 S.Ct. 806, 78 L.Ed. 1361 (1934); Biddle v. Commissioner of Internal Revenue, 302, U.S. 573, 58 S.Ct. 379, 82 L.Ed. 431 (1938); Sims v. United States, 4 Cir. 1958, 252 F.2d. 434, aff'd 359 U.S. 108, 79 S.Ct. 641, 3 L.Ed.2d. 667 (1959); Bartels v. Birmingham, 332 U.S. 126, 67 S.Ct. 1547, 91 L.Ed. 1947 (1947), and United States v. Bennett, 5 Cir. 1951, 186 F.2d. 407. In the case last cited, Chief Judge Hutcheson stated that such a ruling had:

\* \* \* [N]o more binding or legal force than the opinion of any other lawyer, \* \* \*. [Id. at 410.]

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"The government strongly urges that the well established rule that a determination by the Commissioner is presumed to be correct must govern this case. It contends that the plaintiff failed to overcome this presumption with its evidence. This presumption is not evidence. *Wiget v. Becker*, 8 Cir. 1936, 84 F.2d. 706; and *Mertens*, Law of Federal Income Taxation, Vol, 9, Section 5071. Furthermore, once the presumption is overcome by the plaintiff's evidence, it disappears and is no longer in the case. When this occurs, the court is required to base its decision on the preponderance of all of the credible evidence in the case. [cites omitted.]"

"It should be noted that Section 3401(a) does not provide that *all* payments made to an employee are wages. In order to be wages, the payments must be made "for services performed." It is clear that any payment to an employee which is an economic gain to him must be included in his taxable" income. But we are not concerned with what constitutes taxable income to the employee. The problem here is whether the employees' living allowance payments were wages and by reason thereof the withholding requirement was imposed on the employer." Whether or not payments are taxable to, or deductible by, the employee is immaterial with regard to whether they are subject to withholding [sic] by the employer. That is a matter between the employee and the government. An employee may receive economic benefits from his employer that are not subject to the withholding provisions of the Code."

[*Stubbs, Overbeck & Associates v. United States*, 445 F.2d. 1142 (C.A.5 1971)]

### **Hodgson v. Hamilton Municipal Court (July 31, 1972)**

"Congressional intent, with regard to Consumer Credit Protection Act provision limiting garnishment of earnings of any work week to only 25% of disposable earnings or, if less, to 30 times the federal minimum hourly wage, is to require that any provision of state law requiring larger amount to be garnished than federal law permits in such provision be considered preempted by federal law. Consumer Credit Protection Act, §303, 15 U.S.C.A. §1673."

"State law under which, though it could only be done once in 30-day period, 70% to 100% of disposable earnings of one work week could be taken by garnishment, violated Consumer Credit Protection Act provision limiting garnishment earnings of any work week to only 25% of disposable earnings or, if less, 30 times the federal minimum hourly wage, and thus to that extent was preempted by such provision, notwithstanding contention that state law could be construed so as to avoid garnishment of more than 25% of weekly disposable earnings."

"Federal preemption of state statutory garnishment formula to extent that it conflicted with Consumer Credit Protection Act provision limiting garnishment of earnings within any work week to only 25% of disposable earnings or, if less, to 30 times the federal minimum hourly wage would not nullify state statutory provisions to effect that only one garnishment per 30-day period could be filed."

"Bare question of whether state law is preempted by federal law is for federal and not state courts."

"Absolute equality is not mandated by Fourteenth Amendment."

"Consumer Credit Protection Act provision limiting garnishment of earnings within any work week to only 25 % of disposable earnings or, if less, to 30 times the federal minimum hourly wage and provision that no court shall enforce any order or process in violation of such limitation apply directly to garnishments of disposable earnings of Ohio employees, whether paid on weekly, biweekly, or semi-monthly basis."

"Garnishment procedures should never operate so as to deprive employee of more than 25 % of his disposable earnings paid for any one pay period."

"Anti-Injunction Statute did not preclude issuance of injunction restraining enforcement of state law which was contrary to Consumer Credit Protection Act provision limiting garnishment of earnings of any work week to only 25% of disposable earnings or, if less, to 30 times the federal minimum hourly wage."

"Better rule is that Anti-Injunction Statute does not bar injunctive suits brought by United States Government agencies and officers who seek to enforce federal laws."

"State court judges are not immune from injunctive power of federal court if actions of such judges are in contravention of law or exceed their constitutional authority."

[*Hodgson v. Hamilton Municipal Court*, 349 F.Supp. 1125 (1972)]

### **Busse v. C.I.R. (June 1, 1973)**

"Departure from letter of the law is justified when adherence to letter would cause an absurdity so gross as to shock general moral or common sense and when it is plain that Congress intended that letter of statute was not to prevail."

"Best indication of intent of Congress, with regard to statute which is not ambiguous, is literal wording of statute."

"Courts have no power, just as Commissioner of Internal Revenue has no power in his capacity as an administrative official, to rewrite legislative enactments to give effect to their ideas of policy and fitness or the desirability of symmetry in statutes."

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"Nevertheless, the Commissioner seeks to avoid the consequences of strict construction by invoking the judicially developed rule which 'justifies "a departure from the letter of the law" when adherence to the letter would cause an absurdity "so gross as to shock general moral or common sense" and when it is plain that Congress intended "that letter of the statute is not to prevail." Crooks v. Harrelson, 282 U.S. 55, 60, 51 S.Ct. 49, 50, 75 L.Ed. 156 (1930)."

"Courts have no power (just as the Commissioner has no power in his capacity as an administrative official) "to rewrite legislative enactments to give effect to" their "ideas of policy and fitness or the desirability of symmetry in statutes." United States v. Shirah, 4 Cir., 253 F.2d. 798, 800 (1958). The powers of repeal and amendment are uniquely legislative in their nature. See Lang v. Commissioner, 289 U.S. 109, 113, 53 S.Ct. 534, 77 L.Ed. 1066 (1933); [cites omitted]. We find additional support for our position in the opinion of the Eighth Circuit in Helvering v. Rebsamen Motors, Inc., 128 F.2d. 584, 587-588 (1942):

"It is not our understanding that a taxing statute is only to be read literally when a literal reading favors the Government.  
\* \* \*

"One may honestly and reasonably believe that in drafting a taxing act Congress uses the language which most nearly expresses the legislative intent, and that if the language used fails properly to express that intent, corrections should be made by Congressional action and not by Treasury regulations or by judicial construction. This is not to say that the language of such an act should not be accorded its full meaning or should be given an unduly restricted interpretation or one which will defeat a clearly apparent Congressional purpose. It seems to us, however, that neither the taxing authorities nor the courts are justified in virtually amending a taxing act because they are of the opinion that Congress may have had or should have had a different intention than that which was expressed in the act. There would seem to be nothing unreasonable in a rule of construction which requires legislative bodies, in enacting taxing statutes, to use language of sufficient clarity to be understood by an ordinarily intelligent taxpayer as well as by those who are required to administer and to interpret the statutes."

[Busse v. C.I.R., 479 F.2d. 1147 (1973)]

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#### **Greyhound Corp. v. United States (Apr. 11, 1974)**

"Title to act may not be employed to limit plain language of text but can be very useful tool in resolving ambiguity."

"In determining purpose and coverage of taxing statute of doubtful meaning, court should turn to legislative history to determine congressional intent."

"Resort may be had to explanatory legislative history, no matter how clear the statutory words may appear on superficial examination."

"The construction of a statute by those charged with its execution should be followed unless there are compelling indications that is wrong. Lewis v. Martin, 397 U.S. 552, 90 S.Ct. 1282, 25 L.Ed.2d. 561 (1970); United States v. Radio Television News Directors Ass'n., 395 U.S. 367, 89 S.Ct. 1794, 23 L.Ed.2d. 371 (1969); Zemel v. Rusk, 381 U.S. 1, 85 S.Ct. 1271, 14 L.Ed.2d. 179 (1965)."

**"Here, it is proper to invoke the well known rule of construction that in cases of doubt, a taxing statute must be construed most strongly in favor of the taxpayer and against the government. Tax statutes are not to be extended by implication beyond clear import of language used and, in case of doubt, are construed most strongly against government.** Hecht v. Malley, 265 U.S. 144, 44 S.Ct. 462, 68 L.Ed. 949 (1924); Gould v. Gould, 245 U.S. 151, 38 S.Ct. 53, 62 L.Ed. 211 (1917)."

"In construing a revenue act, we presume that the legislative authority uses words in their ordinary sense and with the meanings commonly attributable to them. Commissioner v. Plestcheeff, 100 F.2d. 62 (C.A.9 1938). **Where the statute does not define the words used, they must be accepted in their ordinary everyday meaning.** Herring Magic v. United States, 258 F.2d. 197 (C.A.9 1958)." [Bold added.]  
[Greyhound Corp. v. United States, 495 F.2d. 863 (1974)]

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#### **Tax Analysts and Advocates v. Schultz (June 7, 1974)**

**"No administrative practice, no matter how long standing, can override a clearly applicable decision by Supreme Court."**

"The Court concludes that no statutory provision confers absolute and unfettered discretion with which the defendants would have this Court endow the Treasury Department and Internal Revenue Service in connection with the administration and interpretation of the Internal Revenue Code." [Bold added.]

[Tax Analysts and Advocates v. Schultz, 376 F.Supp. 889 (1974)]

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#### **Albigese v. Jersey City (Aug. 7, 1974)**

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"It is a recognized tenet of municipal law that the term "ordinance" encompasses matters legislative in character, while the term "resolution" refers to matters administrative or procedural in nature."

"Amendment or reenactment of legislation required initially to be enacted by ordinance must be accomplished by the same means and may not be done by resolution."

"Unquestionably, the ordinance before us represents an exercise of legislative power. Thus, its enactment by ordinance and not by resolution was required. Amendment or reenactment of legislation required initially to be enacted by ordinance must be accomplished by the same means and may not be done by resolution."

"Hence, the municipality's extension of the rent stabilization ordinance by resolution is invalid."  
[*Albigese v. Jersey City*, 324 A.2d. 577 (1974)]

#### **Palmore v. Superior Court of District of Columbia (July 9, 1975)**

"Statutes should be interpreted to avoid difficult constitutional questions."

"Statutory construction is, at best, an imperfect science." "Generalities about statutory construction are not rules of law but merely axioms of experience."

"Congress may not exercise its power, whether explicitly or implicitly derived from the Constitution, in a manner inconsistent with the limitations on government power contained elsewhere in the document."

"Congressional silence, when contrasted with extended Constitutional debates over other proposals, yields conclusion that Congress did not intend statute to have constitutionally-suspect effect."

"If local courts of District of Columbia withhold effective remedies, the federal courts have the power and duty to provide it."

[*Palmore v. Superior Court of District of Columbia*, 515 F.2d. 1294 (1975)]

#### **United States v. Cotroni (Dec. 22, 1975)**

"Unless contrary intent appears, federal statutes apply only within territorial jurisdiction of United States."

"Our holding in *Toscanino* comports with the canon of construction which teaches that, unless a contrary intent appears, federal statutes apply only within the territorial jurisdiction of the United States. *Foley Brothers v. Filardo*, 336 U.S. 281, 285, 69 S.Ct. 575, 93 L.Ed. 680 (1949); *Air-Line Stewards and Stewardesses Association International v. Trans World Airlines, Inc.*, 273 F.2d. 69, 70 (2d Cir. 1959) (per curiam), *cert. denied*, 362 U.S. 988, 80 S.Ct. 1075, 4 L.Ed.2d. 1021 (1960)."

[*United States v. Cotroni*, 527 F.2d. 708 (1975)]

#### **United States v. Levy (June 21, 1976)**

"When enacting §7206(1) Congress undoubtedly knew that the Secretary of the Treasury is empowered to prescribe all needful rules and regulations for the enforcement of the internal revenue laws, so long as they carry into effect the will of Congress as expressed by the statutes. Such regulations have the force of law. The Secretary, however, does not have the power to make law, *Dixon v. United States, supra*."

"The Supreme Court, as most properly it should have, has repeatedly warned that men of common intelligence cannot be required to guess at the meaning of a penal enactment."

"That a taxpayer, at the ad hoc discretion of a government officer, agent or employee, without any supporting statute or regulation, may be required to give a statement, of whatever kind, and thereafter be declared a felon in connection with such a statement is at war with the Constitutional due process required of all criminal prosecutions. Whatever else it may have intended, we find ourselves unpersuaded that Congress intended that."

"From the standpoint of the strict construction required of criminal statutes, we cannot hold that 26 U.S.C. §7602 requires a person to answer questions and sign a statement under the penalties of perjury rather than testifying under oath."

"We do not believe that Congress intended a conviction of felony to be founded upon any and all forms which any revenue agent, officer, or employee, in his own discretion, might choose ad hoc to use in the interrogation of a taxpayer. Due process requires that the taxpayer have notice, by statute or by appropriate regulation duly promulgated thereunder, of the uses to which forms may be put before he may be prosecuted for a felony in connection therewith."

[*United States v. Levy*, 533 F.2d. 969 (1976)]

#### **United States v. Pomponio (Oct. 12, 1976)**

"In *Bishop* we held that the term "willfully" has the same meaning in the misdemeanor and felony sections of the Revenue Code, and that it requires more than a showing of careless disregard for the truth. We did not, however, hold that the term requires proof of any motive other than an intentional violation of a known legal duty. We explained the meaning of willfulness in §77206 and related statutes:

"The Court, in fact, has recognized that the word 'willfully' in these statutes generally connotes a voluntary, intentional violation of a known legal duty. It has formulated the requirement of willfulness as 'bad faith or evil intent, [cite omitted], or 'evil motive and want of justification in view of all the financial circumstances of the taxpayer, [cite omitted], or knowledge that the taxpayer 'should have reported more income than he did.'"

Our references to other formulations of the standard did not modify the standard set forth in the first sentence of the quoted paragraph. On the contrary, as the other Courts of Appeals that have considered the question have recognized, willfulness in this context simply means a voluntary, intentional violation of a known legal duty."

[*United States v. Pomponio*, 429 U.S. 10, 97 S.Ct. 22 (1976)]

#### **Continental Equities, Inc. v. C.I.R. (Apr. 25, 1977)**

"The Tax Reform Act of 1969 did not grant the tax court jurisdiction over equitable claims; it does not follow from the fact that the tax court is now an Article I "legislative court" that it possesses or was intended to possess the full judicial power that is vested in "constitutional courts" created by Congress under Article III,- which it had not possessed before." "A taxpayer challenging the validity of a treasury regulation faces a difficult task. Since Congress has expressly delegated rule making authority to the Secretary of the Treasury, 26 U.S.C.A. §7805(a) (1967); *United States v. Cartwright*, 411 U.S. 546, 550, 93 S.Ct. 1713, 1716, 36 L.Ed.2d. 528, 533 (1973), treasury regulations are valid legislative rules if they are "(a) within the granted power, (b) issued pursuant to proper procedure, and (c) reasonable." 1 K. Davis, *Administrative Law Treatise* §5.03, p. 299 (1958) & §29.01-1, p. 654 (Supp.1976); *Yellow Freight System, Inc. v. United States*, 538 F.2d. 790, 796 (5th Cir. 1976)."

[*Continental Equities, Inc. v. C.I.R.*, 551 F.2d. 74 (1977)]

#### **United States v. Keller (May 22, 1978)**

"Law of nations permits exercise of criminal jurisdiction by nation under five general principles: territorial, wherein jurisdiction is based on place where offense is committed; national, wherein jurisdiction is based on nationality or national character of offender; protective, wherein jurisdiction is based on whether national interest is injured; universal, which amounts to physical custody of offender; and passive personal, wherein jurisdiction is based on nationality or national character of victim."

"For purpose of this case we believe the key language in Paragraph (1) to be ". . . any vessel *belonging* in whole or in part to . . . any citizen . . . [of the United States]." We know of no case which interprets the term "belonging" within the framework of this legislation. Furthermore, the legislative history of this provision is sketchy. We will therefore accept this term in its common usage, which we take it to be as denoting ownership. Black's Law Dictionary, Fourth Ed., p. 198. Thus, if the GREAT MYSTERY was owned totally or partially by any citizen of the United States, the vessel is subject to the operation of 18 U.S.C. §7(1).

"Ownership is a mixed question of law and fact, and at this stage of the proceedings, to be determined by the Court." "Defendants nevertheless challenge the Coast Guard's actions claiming that a warrant was required for the boarding and search, because "no Act of Congress can authorize a violation of the Constitution." (*Almeida v. United States*, 413 U.S. 266, 272, 93 S.Ct. 2535, 2539, 37 L.Ed.2d. 596 (1972)), a statement which cannot be quarreled with, but which we consider misapplied to the circumstances of this case."

[*United States v. Keller*, 451 F.Supp. 631 (1978)]

#### **Falcone v. I.R.S. (Oct. 30, 1979)**

"Since the Freedom of Information Act sets policy for broad agency disclosure of records and documents which affect the public, enumerated exemptions are narrowly construed?"

[*Falcone v. Internal Revenue Serv.*, 479 F.Supp. 985 (1979)]

#### **United States v. Clark (Feb. 26, 1980)**

"The United States Supreme Court will not pass on the constitutionality of an Act of Congress if a construction of the statute is fairly possible by which the question may be avoided."

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"The views of some congressmen after the construction of the statute adopted years before by another Congress have very little if any significance in statutory construction."

[*United States v. Clark*, [80-2 U.S.T.C. T 9779], 445 U.S. 23, 27 (1980)]

#### **United States v. Home (Aug. 22, 1983)**

"Rules contained in Internal Revenue Manual, even if they were codified in Code of Federal Regulations, did not have force and effect of law, and therefore, district court, in Government's action to collect assessment, correctly precluded defendant from introducing evidence concerning these provisions."

"Defendant's acknowledged failure to file administrative claim, which was prerequisite to bringing suit in district court, was entirely proper ground for district court's dismissal of his counterclaim for refund of amount paid by him in partial satisfaction of assessment."

[*United States v. Horne*, 714 F.2d. 206 (1983)]

#### **Limbach v. Hooven & Allison Co. (Apr. 18, 1984)**

"Supreme Court's decision in *Michelin Tire Corp. v. Wages*, which specifically abandoned the concept that the import-export clause constituted a broad prohibition against all forms of state taxation that fell on imports, changed the focus of import-export clause cases from whether the goods have lost their status as imports to whether the tax sought to be imposed is an "impost or duty"; thus, prior decision in *Hooven & Allison Co. L. Evatt*, U.S. 652, 65 S.Ct. 870, 89 L.Ed. 1252, which held unconstitutional Ohio's application of a nondiscriminatory ad valorem personal property tax to imported fibers still in their original packages, does not retain validity and is overruled to extent that it espoused original-package doctrine."

[*Limbach v. Hooven & Allison Co.*, 466 U.S. 353, 104 S.Ct. 1837, 80 L.Ed.2d. 356 (1984)]

#### **United States v. Wodtke (Dec. 26, 1985)**

"If construction of section of United States Code, which has not been enacted into positive law, is necessary, recourse must be had to original statutes themselves."

"Internal Revenue Code [26 U.S.C.A. §1 et seq.] is a positive law; therefore district court had jurisdiction over action to reduce tax assessments to judgment."

"Validity of enactment of constitutional amendment is not a justiciable issue but is a political question upon which courts cannot rule."

"Sixteenth Amendment [U.S.C.A. Const. Amend. 16] is constitutional."

"Taxpayer has burden of proving assessment is in error and proving his or her correct tax liability."

"If construction of a section of the United States Code which has not been enacted into positive law is necessary, recourse must be had to the original statutes themselves. [Cite omitted.] Under §204, the United States Code cannot prevail over the statutes at large if the two are inconsistent."

"The validity of the enactment of a constitutional amendment is not a justiciable issue. It is a political question upon which the courts cannot rule."

"The validity of the Sixteenth Amendment was first upheld nearly seventy years ago in *Brushaber v. Union Pacific Railroad Co.*, 240 U.S. 1, 36 S.Ct. 236, 60 L.Ed. 493 (1916). Recent decisions have been no different. [Cites omitted.] The defendants' argument that the Sixteenth Amendment is a nullity is rejected."

"Section 6502(a) provides for a six-year period for tax collection. However, the six-year period is extended if the Government commences suit to reduce the liability to judgment within that period."

[*United States v. Wodtke*, 627 F.Supp. 1034 (1985)]

#### **Maisano v. Welcher (July 30, 1991)**

"Court proceedings were not required before levy by Internal Revenue Service (IRS) to collect deficiency."

"This court has held that the IRS is authorized to collect taxes by either levy or court proceeding. *Maisano*, 908 F.2d. at 409 (citing 26 U.S.C. §6502(a); *Todd v. United States*, 849 F.2d. 365, 369 (9th Cir.1988); *Stonecipher v. Bray*, 653 F.2d. 398, 403 (9th Cir.1981) cert. denied, 454 U.S. 1145, 102 S.Ct. 1006, 71 L.Ed.2d. 297 (1982))."

"The Maisanos' first claim rests on an attempt to limit the scope of section 6331 by narrowly defining "assets subject to levy" to include only certain "narrow exceptions" (i.e. wages of government employees) mentioned in the provisions of section 6331 itself. However, their reading ignores the first sentence of section 6331(a), which gives the statute its broad

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scope and clearly states that it applies to *all* property of *any* person liable to the IRS."

"Section 6502 gives the IRS the option to collect its assessments by *either a levy or a court proceeding*, and this court has held that taxpayers do not have the right to a hearing prior to collection efforts by the IRS. *See Maisano*, 908 F.2d. at 409. Section 6322 merely specifies the length of time that either a lien or a judgment shall remain valid."

"In order to establish an invasion of privacy, the plaintiff must have exhibited an actual, subjective expectation of privacy in the area entered. *Smith v. Maryland*, 442 U.S. 735, 740 99 S.Ct. 2577, 2580, 61 L.Ed.2d. 220 (1979). In addition, this expectation must be one that society is prepared to accept as reasonable and therefore legitimate."

[*Maisano v. Welcher*, 940 F.2d. 499 (9th Cir. 1991)]

### **Security Bank Minnesota v. C.I.R. (May 21, 1993)**

"The Supreme Court has noted that "the true meaning of a single section of a statute in a setting as complex as that of the revenue acts, however precise its language, cannot be ascertained if it be considered apart from related sections, or if the mind be isolated from the history of the income tax legislation of which it is an integral part." *Helvering v. Morgan's Inc.*, 293 U.S. 121, 126, 55 S.Ct. 60, 62, 79 L.Ed. 232 (1934). According to the Court, the construing court's duty is "to find that interpretation which can most fairly be said to be embedded in the statute, in the sense of being most harmonious with its scheme and with the general purposes that Congress manifested." *Commissioner v. Engle*, 464 U.S. 206, 216, 104 S.Ct. 597, 604, 78 L.Ed.2d. 420 (1984); (quoting *NLRB v. Lion Oil Co.*, 352 U.S. 282, 297, 77 S.Ct. 330, 338, 1 L.Ed.2d. 331 (1957) (Frankfurter, J., concurring in part and dissenting in part)). The circumstances of the enactment of particular legislation may be particularly relevant to this inquiry. *Watt v. Alaska*, 451 U.S. 259, 266, 101 S.Ct. 1673, 1677, 68 L.Ed.2d. 80 (1981). Finally, when there is a reasonable doubt about the meaning of revenue statute, the doubt is resolved in favor of those taxed. *Miller v. Standard Nut Margarine Co.*, 284 U.S. 498, 508, 52 S.Ct. 260, 262, 76 L.Ed. 422 (1932); *Burnet v. Niagara Falls Brewing Co.*, 282 U.S. 648, 654, 51 S.Ct. 262, 264, 75 L.Ed. 594 (1931); *Crooks v. Harrelson*, 282 U.S. 55, 51 S.Ct. 49, 75 L.Ed. 156 (1930); *Smietanka v. First Trust & Sav. Bank*, 257 U.S. 602, 606, 42 S.Ct. 223, 224, 66 L.Ed. 391 (1922)."

[*Security Bank Minnesota v. C.I.R.*, 994 F.2d. 432 (8th Cir. 1993)]

### **Kane v. United States (Dec. 29, 1994)**

"Interpretation of Internal Revenue Code is a question of law which is review de novo."

"Our review of the decision turns on the proper interpretation of the Internal Revenue Code, a question of law which we review *de novo*. *Quaker State Oil Ref. Corp. v. United States*, 994 F.2d. 824, 826-27 (Fed.Cir.1993)."

[*Kane v. United States*, 43 F.3d. 1446 (Fed.Cir. 1994)]

### **Black's Law Dictionary: Conversion**

"CONVERSION. Equity. The exchange of property from real to personal or from personal to real, which takes place under some circumstances in the consideration of the law, such as, to give effect to directions in a will or settlement, or to stipulations in a contract, although no such change has actually taken place, [cites omitted]; and by which exchange the property so dealt with becomes invested with the properties and attributes of that into which it is supposed to have been converted; [cite omitted]."

An unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of the owner's rights."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 402]

### **26 U.S.C. §3121(b)(7)**

#### **"(b) Employment**

"For purposes of this chapter, the term "employment" means any service, of whatever nature, performed (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee for an American employer (as defined in subsection (h)), or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233 of the Social Security Act; **except that such term shall not include--**

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"(1) service performed by foreign agricultural workers

"(2) domestic service . . . performed by a student ..." "(3)(A) service performed by a child under the age of 18 in the employ of his father or mother;

"(4) service performed by an individual on or in connection with an American vessel, or on or in connection with an aircraft not an American aircraft ..."

"(5) service performed in the employ of the United States or any instrumentality of the United States, if such service--

"(6) service performed in the employ of the United States or any instrumentality of the United States, if such service is performed--..." "

"(7) **service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby**, except that this paragraph shall not apply in the case of--

"(A) service which, under subsection (j), constitutes covered transportation service,

"(B) service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, performed by an officer or employee thereof (including a member of the legislature of any such Government or political subdivision), and, for purposes of this title with respect to the taxes imposed by this chapter--

"(i) any person whose service as such an officer or employee is not covered by a retirement system established by a law of the United States shall not, with respect to such service, be regarded as an employee of the United States or any agency or instrumentality thereof, and

"(ii) the remuneration for service described in clause (i)(including fees paid to a public official) shall be deemed to have been paid by the Government of Guam or the Government of American Samoa or by a political subdivision thereof or an instrumentality of any one or more of the foregoing which is wholly owned thereby, whichever is appropriate,

"(C) service performed in the employ of the District of Columbia ..."

"(D) service performed in the employ of the Government of Guam ..."

"(E) service included under an agreement entered into pursuant to section 218 of the Social Security Act, or

"(F) service in the employ of a state (other than the District of Columbia, Guam, or American Samoa), ..."

"(8)(A) service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order ..."

"(B) service performed in the employ of a church or qualified church-controlled organization ..."

"(9) service performed by an individual as an employee or employee representative as defined in section 3231; ..." [Bold added.]

[26 U.S.C. §3121]

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## **26 U.S.C. §3306**

### **"(c) Employment**

"For purposes of this chapter, the term "employment" means any service performed ..., **except--**

"(1) agricultural labor ..."

"(2) domestic service in a private home ..."

"(3) service not in the course of the employer's trade or business . . .

"(4) service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft ..."

"(5) service performed by an individual in the employ of his son, daughter, or spouse and service performed by a child under the age of 21 in the employ of his father or mother;

"(6) service performed in the employ of the United States Government or of an instrumentality of the United States which is--

"(A) wholly or partially owned by the United States, or

"(B) exempt from the tax imposed by section 3301 by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption;

"(7) service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 3301;

"(8) service performed in the employ of a religious, charitable, educational, or other organization described in section

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501(c)(3) which is exempt from income tax under section 501(a); ..." [Bold added.]  
[26 U.S.C. §3306]

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**Black's Law Dictionary: Apportion**

"**APPORTION.** To divide and distribute proportionally. School Dist. No. 3, Platte County, v. School Dist. No. 2, Platte County, 29 Wyo. 80, 210 P. 562."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 128]

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**Black's Law Dictionary: Apportionment**

"**APPORTIONMENT.** The division, partition, or distribution of a subject-matter in proportionate parts. Hunt v. Callighan, 32 Ariz. 235, 257 P. 648, 649. The division of rights or liabilities among several persons entitled or liable to them in accordance with their respective interests. Valley Nat. Bank of Phoenix v. Apache County, 57 Ariz. 459, 114 P.2d. 883, 886."

"Taxes

"The apportionment of a tax consists in a selection of the subjects to be taxed, and in laying down the rule by which to measure the contribution which each of these subjects shall make to the tax. Barfield v. Gleason, 111 Ky. 491, 63 S.W. 964."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 129]

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**Black's Law Dictionary: Taxable**

"**TAXABLE.** Subject to taxation; liable to be assessed, along with others, for a share in a tax. Mississippi State Tax Commission v. Brown, 188 Miss. 483, 195 So. 465, 469, 127 A.L.R. 919. Something of value, subject to assessment, and to be levied upon and sold for taxes. Williams v. School Dist. No. 32 in County of Fremont, 56 Wyo. 1, 102 P.2d. 48, 52."

"Applied to costs in an action, the word means proper to be taxed or charged up; legally chargeable or assessable."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1630]

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**Black's Law Dictionary: Taxable Year**

"**TAXABLE YEAR.** This term in internal revenue statutes has different significations, according to its use. Waterman S. S. Corporation v. United States, Ct.Cl., 32 F.Supp. 880, 882; but when used in ordinarily accepted meaning, refers to annual accounting period of taxpayer? American-Hawaiian S. S. Co. v. U.S., Ct.Cl., 46 F.2d. 592, 598."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1631]

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**7 THE BINDING NATURE OF REGULATIONS**

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**United States Statutes at Large, Session I, Chapter 45, page 297 of the Thirty-seventh Congress (Aug. 5, 1861)**

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"SEC. 12. *And be it further enacted*, That the Secretary of the Treasury shall establish regulations suitable and necessary for carrying this act into effect; which **regulations shall be binding on each assessor** and his assistants in the performance of the duties enjoined by or under this act, and shall also frame instructions for the said assessors and their assistants; pursuant to which instructions the said assessors shall, on the first day of March next, direct and cause the several assistant assessors in the district to inquire after and concerning all lands, lots of ground, with their improvements, buildings, and dwelling-houses, made liable to taxation under this act by reference as well to any lists of assessment or collection taken under the laws of the respective States, as to any other records or documents, and by all other lawful ways and means, and to value and enumerate the said objects of taxation in the manner prescribed by this act, and in conformity with the regulations and instructions above mentioned." [Bold added.]

[United States Statutes at Large, Session I, Chapter 45, p. 297 of the Thirty-seventh Congress, Aug. 5, 1861]

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**Boske v. Comingore (Jan. 8, 1900)**

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"Congress has a large discretion as to the means to be employed in the execution of a power conferred upon it, and is not restricted to "those alone without which the power would be nugatory;" for, "all means which are appropriate, which are plainly adapted" to the end authorized to be attained, "which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional." "Where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the Government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department and to tread on legislative ground." *McCulloch v. Maryland*, 4 Wheat. 316, 415, 421, 423, 4 L.Ed. 579, 603, 605. In the more recent case of *Logan v. United States*, 144 U.S. 263, 283, 293, 36 L.Ed. 429, 435, 439, 12 Sup.Ct.Rep. 617, 622, 626, this court, referring to the above constitutional provision, said that "in the exercise of this general power of legislation, Congress may use any means, appearing to it most eligible and appropriate, which are adapted to the end to be accomplished, and are consistent with the letter and the spirit of the Constitution.""

"Can it be said that to invest the Secretary of the Treasury with authority to prescribe regulations not inconsistent with law for the conduct of the business of his department, and to provide for the custody, use, and preservation of the records, papers, and property appertaining to it, was not a means appropriate and plainly adapted to the successful administration of the affairs of that Department? Manifestly not."

[*Boske v. Comingore*, 177 U.S. 459 (1900)]

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**Matter of Application of Stork (Feb. 24, 1914)**

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"When the calling or profession or business is attended with danger or requires a certain degree of scientific knowledge upon which others must rely, then legislation properly steps in and imposes conditions upon its exercise." (*Minneapolis etc. Railroad Co. v. Beckwith*, 129 U.S. 29, [32 L.Ed. 585, 9 Sup. Ct.Rep. 207].)"

[*Matter of Application of Stork*, 167 Cal. 294 (1914)]

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**C.I.R. v. Van Vorst (June 24, 1932)**

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"Department regulations cannot invade field of legislation, but must be confined within limits of congressional enactment."

"Validity of Treasury Department regulation or tax imposed thereunder must be determined by statutory provisions, interpreted in light of Constitution."

"Sections of Revenue Act, defining "dividend" and "gross income," must be construed in light of constitutional income x945-971 provision."

"It is well settled that department regulations may not invade the field of legislation but must be confined within the limits of congressional enactment. [ \* \* \* ] A regulation to be valid must be reasonable and must be consistent with law."

"In *Utah Power & Light Co. v. United States*, 243 U.S. 389, 410, 37 S.Ct. 387, 392, 61 L.Ed. 791, this expression appears: **"If any of the regulations go beyond what Congress can authorize, or beyond what it has authorized, those regulations are void and may be disregarded; but not so of such as are thought merely to be illiberal, inequitable, and not conducive to the best results."**

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"In *Eisner v. Macomber*, 252 U.S. 189, 207, 40 S.Ct. 189, 193, 64 L.Ed. 521, 9 A.L.R. 1570, referring to the Sixteenth Amendment, the Supreme Court said: "Income may be defined as the gain derived from capital, from labor, or from both combined, provided it be understood to include profit gained through a sale or conversion of capital assets.

"Referring to this definition, in *Taft v. Bowers*, 278 U.S. 470, 481, 49 S.Ct. 199, 201, 73 L.Ed. 460, 64 A.L.R. 362, the court said: "The 'gain derived from capital, within the definition, is 'not a gain accruing to capital, nor a growth or increment of value in the investment, but a gain, a profit, something of exchangeable value proceeding from the property, severed' from the capital however invested, and coming in, that is, received or drawn by the claimant for his separate use, benefit and disposal.' *United States v. Phellis*, 257 U.S. 156, 169, 42 S.Ct. 63, 65 (66 L.Ed. 180)."

"In so far as the section of the statute relating to "gross income" has any bearing on the question here involved, it reads: "The term 'gross income' includes gains, profits, and income derived from \* \* \* sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property." [Bold added.] [*Commissioner of Internal Revenue v. Van Vorst*, 59 F.2d. 677 (1932)]

### **Panama Refining Co. v. Ryan (Jan. 7, 1935)**

"Constitution forbids Congress to abdicate or transfer its essential legislative functions, but does not deny to Congress necessary resources of flexibility and practicality which will enable it to perform its function in laying down policies and establishing standards while leaving to selected instrumentalities making of subordinate rules within prescribed limits and determination of facts to which policy as declared by Legislature is to apply (const. art. 1, §1, and §8, par. 18).

"Regulations of executive officers pursuant to power conferred by Congress for administering laws governing their departments become binding rules of conduct, but are valid only as subordinate rules and when found to be within framework of policy which Legislature has sufficiently defined."

.. President, if allowed to act without showing compliance with such prerequisites as might be specified in act, would be invested with uncontrolled legislative power (National Industrial Recovery Act §9 (c), 15 U.S.C.A. §709 (C); Executive Order No. 6199 [15 U.S.C.A. §709 note]; (Const. art. 1, §1, and §8, par. 18)."

"The validity of the provision was challenged as a delegation to the President of legislative power. The Court reviewed the early acts to which we have referred, as well as later statutes considered to be analogous. While sustaining the provision, the Court emphatically declared that the principle that "congress cannot delegate legislative power to the president" is "universally recognized as vital to the integrity and maintenance of the system of government ordained by the constitution."

"So, also, from the beginning of the government, the Congress has conferred upon executive officers the power to make regulations--"not for the government of their departments, but for administering the laws which did govern." *United States v. Grimaud*, 220 U.S. 506, 517, 31 S.Ct. 480, 483, 55 L.Ed. 563. Such regulations become, indeed, binding rules of conduct, but they are valid only as subordinate rules and when found to be within the framework of the policy which the Legislature has sufficiently defined."

"Thus, in every case in which the question has been raised, the Court has recognized that there are limits of delegation which there is no constitutional authority to transcend."

"To hold that he [the president] is free to select as he chooses from the many and various objects generally described in the first section, and then to act without making any finding with respect to any object that he does select, and the circumstances properly related to that object, would be in effect to make the conditions inoperative and to invest him with an uncontrolled legislative power."

"To repeat, we are concerned with the question of the delegation of legislative power. If the citizen is to be punished for the crime of violating a legislative order of the executive officer, or of a board or commission, due process of law requires that it shall appear that the order is within the authority of the officer, board, or commission, and, if that authority depends on determinations of fact, those determinations must be shown. [ \* \* \* ] When, therefore, such an administrative agency is required as a condition precedent to an order, to make a finding of facts, the validity of the order must rest upon the needed finding. If it is lacking, the order is ineffective."

[*Panama Refining Co. v. Ryan*, 293 U.S. 388; 55 S.Ct. 241 (1935)]

### **Manhattan General Equipment Co. v. C.I.R. (Feb. 3, 1936)**

"The power of an administrative officer or board to administer a federal statute and to prescribe rules and regulations to that end is not the power to make law, no such power can be delegated by Congress, but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute. A regulation which does not do this, but operates to create a rule out of harmony with the statute, is a mere nullity. *Lynch v. Tilden Produce Co.*, 265 U.S. 315, 320-322, 44 S.Ct. 488, 68 L.Ed. 1034; *Miller v. United States*, 294 U.S. 435, 439, 440, 55 S.Ct. 440, 79 L.Ed. 977, and cases cited.

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And not only must a regulation, in order to be valid, be consistent with the statute, but it must be reasonable. International R. Co. v. Davidson, 257 U.S. 506, 514, 42 S.Ct. 179, 66 L.Ed. 341."

[Manhattan General Equipment Co. v. Commissioner of Internal Revenue, 297 U.S. 129, 56 S.Ct. 397 (1936)]

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#### **Trading Associates Corporation v. Magruder (Jan. 8, 1940)**

"Regulations of an administrative body, such as regulations of the Commissioner of Internal Revenue, are not controlling on a court, if they are not in conformity with a proper interpretation of the law which they purport to construe. "

"That interpretation of a section of the internal revenue law imposing a surtax on personal holding companies but excepting from its operation "regular dealers in stocks and securities," would appear to inflict some hardship upon a particular taxpayer, would not render such interpretation invalid since such question relates to the character or policy of the law itself and to other features of it rather than to the particular part involved."

"It is axiomatic that regulations of an administrative body do not control, if they are not in conformity with a proper interpretation of the law which they purport to construe. In other words, such regulations are not to be given the force of law unless they really carry out the intent of the legislative body, as expressed in the law itself."

[Trading Associates Corporation v. Magruder, 30 F.Supp. 968 (1940)]

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#### **Bridges v. Wixon (June 18, 1945)**

"Detention of an alien under an invalid order of deportation is established where deportation is ordered for reasons not specified by Congress. Immigration Act of 1918, §§1-3, as amended, 8 U.S.C.A. §137 (c, 3-g)."

"Under Regulations of the Immigration and Naturalization Service rules that statements to be used in evidence shall be in writing, that officer shall ask person interrogated to sign the statement, that interrogation shall be under oath or affirmation after warning, and that a recorded statement may be received in evidence only if its maker is unavailable or refuses to testify or testifies contrary to the statement, investigating officer must obtain statement under oath and seek to have it signed, and only such a recorded statement may be used as evidence when the maker gives contradictory evidence."

"The Regulations of Immigration and Naturalization Service relating to evidence were designed to afford due process of law to the alien, who may insist upon an observance thereof."

"The more liberal the practice in admitting testimony in administrative proceedings, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended."

"The rules are designed to protect the interests of the alien and to afford him due process of law. It is the action of the deciding body, not the recommendation of the inspector, which determines whether the alien will be deported."

[Bridges v. Wixon, 326 U.S. 135, 65 S.Ct. 1443 (1945)]

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#### **United States v. O'Dell (Mar. 10, 1947)**

"A "levy" requires that property be brought into legal custody through seizure, actual or constructive, levy being an absolute appropriation in law of the property levied on, and mere notice is insufficient."

"The method for accomplishing a levy on a bank account is the issuing of warrants of distraint, the making of the bank a party, and the serving with notice of levy, copy of the warrants of distraint, and notice of lien."

"It would seem to require not much exposition to demonstrate that when the sovereign establishes any priority in its favor, and imposes certain conditions upon the enforcement of that right, it is required to comply with the conditions which it has laid down."

[United States v. O'Dell, 160 F.2d. 304 (1947)]

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#### **Bartles v. Birmingham (June 23, 1947)**

"The interpretive ruling on the Regulations, referred to in this paragraph, do not have the force and effect of Treasury Decisions. We are of the opinion that such administrative action goes beyond routine and exceeds the statutory power of the Commissioner. Social Security Board v. Nierotko, 327 U.S. 358."

[Bartles, et al. v. Birmingham, 332 U.S. 126, 91 L.Ed. 1947 (1947)]

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#### **Rodney Milling Co. v. United States (Feb. 2, 1948)**

"In addition, the Commissioner, of course, has general authority to make regulations and those regulations have force

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and effect of law if they are reasonable and come within the law in respect to which they are issued. [Cites omitted.] However, a regulation which does more than seek to carry out the intent of Congress and thereby alter or amend the law is without force and effect. *Manhattan General Equipment Co. v. Commissioner*, 297 U.S. 129, 56 S.Ct. 397, 80 L.Ed. 528." [*Rodney Milling Co. v. United States*, 75 F.Supp. 707 (1948)]

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**C.I.R. v. South Texas Lumber Co. (Mar. 29, 1948)**

**"Treasury regulations must be sustained unless unreasonable and plainly inconsistent with the revenue statutes; and constitute contemporaneous constructions by those charged with administration of these statutes which should not be overruled except for weighty reasons."**

**"Where an income tax statute prescribing the permissible method of accounting by taxpayers provides that it shall be under regulations prescribed by the Commissioner of Internal Revenue, administrative interpretations of such provision and the regulations under it should not be overruled by the courts unless clearly contrary to the will of Congress."** [Bold added.]

[*Commissioner of Internal Revenue v. South Texas Lumber Co.*, 333 U.S. 496, 68 S.Ct. 695, 92 L.Ed. 831 (1948)]

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**Irrgang v. Fates (Nov. 21, 1950)**

"Where a statute uses words and terms without specifically defining their meaning, such words and terms will be considered to have their ordinary or settled meaning."

"State law determines legal rights and when such rights become vested, federal law taxes such rights."

"The Court is not bound to follow the provisions of the Treasury Departments rulings and regulations unless such are in conformity with the laws enacted by Congress. *Commissioner of Internal Revenue v. Van Vorst*, 9 Cir., 59 F.2d. 677. In that case it was held 59 F.2d. text 679: "(1) It is well settled that department regulations may not invade the field of legislation but must be confined within the limits of congressional enactment. In *International Ry. Co. v. Davidson*, 257 U.S. 506, 514, 42 S.Ct. 179, 182, 66 L.Ed. 341, the court said: 'Section 161 does not confer upon the Secretary any legislative power. *Morrill v. Jones*, 106 U.S. 466, 1 S.Ct. 423, 27 L.Ed. 267; *United States v. George*, 228 U.S. 14, 33 S.Ct. 412, 57 L.Ed. 712. A regulation to be valid must be reasonable and must be consistent with law \* \* \*."

[*Irrgang v. Fahs*, 94 F.Supp. 206 (1950)]

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**C.I.R. v. Landers Corp. (Feb. 11, 1954)**

"We cannot give to the Regulations a construction which will violate the language of the statute. *Commissioner of Internal Revenue v. Netcher*, 7 Cir., 43 F.2d. 484, 487, certiorari denied, 323 U.S. 759, 65 S.Ct. 92, 89 L.Ed. 607; *Busey v. Deshler Hotel Co.*, 6 Cir., 130 F.2d. 187, 190, 142 A.L.R. 563. The Regulations can not exempt from the operation of a statute what is actually included by its terms. *Manhattan General Equipment Co. v. Commissioner*, 297 U.S. 129, 56 S.Ct. 397, 80 L.Ed. 528."

[*C.I.R. v. Landers Corp.*, 210 F.2d. 188 (1954)]

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**United States ex rel. Accardi v. Shaughnessy (Mar. 15, 1954)**

"Regulations, prescribing procedures to be followed in processing alien's application for suspension of deportation, have force and effect of law."

"In short, as long as the regulations remain operative, the Attorney General denies himself the right to sidestep the Board or dictate its decision in any manner."

[*United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 98 L.Ed. 681, 74 S.Ct. 499 (1954)]

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**Fidelity-Philadelphia Trust Co. v. United States (June 23, 1954)**

"The regulation implements the statute and cannot vitiate or change the statute. If possible, it must be interpreted consistently with Congressional mandate, but, if in derogation of the statute, it must be declared void as beyond the power of the Commissioner to so regulate."

[*Fidelity-Philadelphia Trust Co. v. United States*, 122 F.Supp. 551 (1954)]

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**Shaughnessy v. United States (May 23, 1955)**

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"But regulations properly promulgated by the Attorney General do provide for hearings, and as we held in the prior *Accardi Case* those regulations have the effect of law."

[*Shaughnessy v. United States*, 349 U.S. 280, 75 S.Ct. 746, 99 L.Ed. 1074 (1955)]

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**Service v. Dulles (June 17, 1957)**

"Regulations validly prescribed by a government administrator are binding upon him as well as the citizen, even though the administrative action to which the regulations pertain is discretionary in nature."

"Indeed, at no time during any of the administrative proceedings in this case was there any suggestion that the Regulations were not applicable to the entire proceedings and binding upon all parties to the case."

[*Service v. Dulles*, 354 U.S. 363, 1 L.Ed.2d. 1403, 77 S.Ct. 1152 (1957)]

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**Coleman v. Brucker (June 19, 1958)**

"And in *Service v. Dulles*, 1957, 354 U.S. 363, 372, 77 S.Ct. 1152, 1157, 1 L.Ed.2d. 1403, the Court sustained *Service's* contention "that the Secretary's action is subject to attack under the principles established by this Court's decision in *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 [74 S.Ct. 499, 98 L.Ed. 681], namely, that regulations validly prescribed by a government administrator are binding upon him as well as the citizen, and that this principle holds even when the administrative action under review is discretionary in nature." [Brackets original.]

[*Coleman v. Brucker*, 257 F.2d. 661 (1958)]

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**United States v. Massey Motors (Feb. 26, 1959)**

"Commissioner's regulations could not change law."

"There is much - to be said for the proposition that taxpayers have a right to rely on the clearly announced construction placed on the laws by the administrative officials whose duty is to write the regulations and apply them administratively."

[*United States v. Massey Motors*, 264 F.2d. 552 (1959)]

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**Vitarelli v. Seaton (June 1, 1959)**

"An executive agency must be rigorously held to the standards by which it professes its action to be judged; accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed."

[*Vitarelli v. Seaton*, 359 U.S. 535, 3 L.Ed.2d. 1012, 79 S.Ct. 968 (1959)]

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**Turner v. United States (Sept. 29, 1959)**

"Certainly the construction placed upon the statute by the Commissioner is entitled to great consideration, yet, if it appears to the court that the regulation is repugnant to the provisions of the statute, the court is not required to adopt it."

[*Turner v. United States*, 178 F.Supp. 239 (1959)]

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**United States v. Eddy Brothers, Inc. (June 27, 1961)**

"Revenue rulings are entitled to consideration but are accorded less weight than treasury regulations. *Farmers Cooperative Co. v. Birmingham*, D.C.N.D.Iowa, 86 F.Supp. 201, 229, and cases there cited. The statutes are the primary authority for determining rights and liabilities. A regulation or ruling which creates a rule out of harmony with a statute is a nullity. *Manhattan General Equipment Co. v. Commissioner*, 297 U.S. 129, 134-135, 56 S.Ct. 397, 80 L.Ed. 528; *Northern Natural Gas Co. v. O'Malley*, 8 Cir., 277 F.2d. 128, 134."

[*United States v. Eddy Brothers, Inc.*, 291 F.2d. 529 (1961)]

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**Yellin v. United States (June 17, 1963)**

"It has been long settled, of course, that rules of Congress and its committees are judicially cognizable. *Christoffel v. United States*, 338 U.S. 84, 93 L.Ed. 1826, 69 S.Ct. 1447; *United States v. Smith*, 286 U.S. 6, 76 L.Ed. 954, 52 S.Ct. 475;

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United States v. Bailin, 144 U.S. 1, 36 L.Ed. 321, 12 S.Ct.507. And a legislative committee has been held to observance of its rules, Christoffel v. United States (US) supra, just as, more frequently, executive agencies have been."

.. if it is the witness who is being protected, the most logical person to have the right to enforce those protections is the witness himself."

[Yellin v. United States, 374 U.S. 109, 10 L.Ed.2d. 778, 83 S.Ct. 1828 (1963)]

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#### **Abbott, Proctor & Paine v. United States (Apr. 16, 1965)**

"Treasury regulations represent contemporaneous construction of revenue statutes by those charged with their administration and, consequently, will be given considerable weight by courts, but courts are not bound by such construction when it stretches meaning of statutory provision beyond what Congress intended."

[Abbott, Proctor & Paine v. United States, 344 F.2d. 333 (1965)]

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#### **Dixon v. United States (May 3, 1965)**

"Congress, not the Commissioner, prescribes the tax laws, and Commissioner's rulings have only such force as Congress chooses to give them. 26 U.S.C.A. (I.R.C.1954) §7805(b)."

"Commissioner's acquiescence in erroneous Tax Court decision, published as a ruling cannot in and of itself bar United States from collecting a tax otherwise lawfully due."

"Power of administrative officer or board to administer federal statute and to prescribe rules and regulations to that end is not the power to make law, but power to adopt regulations to carry into effect will of Congress as expressed by statute."

"An administrative regulation which does not carry into effect will of Congress as expressed by statute but operates to create a rule out of harmony with statute is a mere nullity."

"Arguments questioning policy of empowering Commissioner to correct mistakes of law retroactively when taxpayer acts to his detriment in reliance on Commissioner's acquiescence in erroneous Tax Court decision are more appropriately addressed to Congress than the courts."

[Dixon v. United States, 381 U.S. 68, 85 S.Ct. 1301 (1965)]

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#### **Neel v. United States (Dec. 12, 1966)**

"Though treasury regulations are entitled to consideration and respect and may often be persuasive in resolving ambiguities, regulations which are inconsistent with the statutes on which they are based are invalid."

"The power of an administrative officer or board to administer a federal statute and to prescribe rules and regulations to that end is not the power to make law--for no such power can be delegated by Congress--but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute. A regulation which does not do this but operates to create a rule out of harmony with the statute is a mere nullity. And not only must a regulation, in order to be valid, be consistent with the statute, but it must be reasonable." This principle is no more than a reflection of the fact that Congress, not the Commissioner, prescribes the tax laws. Commissioner's rulings have only such force as Congress chooses to give them, and Congress has not given them the force of law."

[Neel v. United States, 266 F.Supp. 7 (1966)]

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#### **Lipp v. United States (Oct. 13, 1967)**

"An executive department of the Federal Government must comply with its own regulations."

[Lipp v. United States, 181 Ct.Cl. 355 (1967)]

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#### **Hammond v. Lenfest (June 10, 1968)**

"We recognize, of course, that on this appeal we are dealing with Department of Defense regulations rather than a statute. We reach the same result, however, because a validly promulgated regulation binds the government as much as the individuals subject to the regulation; and, this is no less so because the governmental action is essentially discretionary in nature."

[Hammond v. Lenfest, 398 F.2d. 705 (1968)]

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#### **Weyerhaeuser Co. v. United States (June 14, 1968)**

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"Treasury regulations are as binding on government as they are on taxpayer."  
"However "Treasury regulations must be sustained unless unreasonable and plainly inconsistent with revenue statutes",  
Commissioner of Internal Revenue v. South Texas Lumber Co., 333 U.S. 496, 501, 68 S.Ct. 695, 698, 92 L.Ed. 831 (1948),  
and "Treasury regulations are as binding on the government as they are on taxpayer." McCord v. Granger, 201 F.2d. 103,  
106 (3rd Cir. 1952)."  
[Weyerhaeuser Co. v. United States, 395 F.2d. 1005 (1968)]

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**United States ex rel. Mankiewicz v. Ray (July 16, 1968)**

.. it appears to us that the interests of justice' would be best served by sending the case back to the Department of the Navy with directions that the application of the appellant for discharge as a conscientious objector be processed and determined in accordance with the procedures laid down in Department of Defense Directive 1300.6 issued May 10, 1968...."  
[United States ex rel. Mankiewicz v. Ray, 399 F.2d. 900 (1968)]

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**Hamlin v. United States (Mar. 15, 1968)**

"The Secretary of the Army is bound by his own regulations."  
[Hamlin v. United States, 391 F.2d. 941 (1968)]

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**Smith v. Resor (Jan. 13, 1969)**

"Although the courts have declined to review the merits of decision made within the area of discretion delegated' to administrative agencies they have insisted that where the agencies have laid down their own procedures and regulations, those procedures and regulations cannot be ignored by the agencies themselves even where discretionary decisions are involved." p. 145.

"Again, in Yellin v. United States, 374 U.S. 109, 83 S.Ct. 1828, 10 L.Ed.2d. 778 (1963) the Supreme Court reversed a conviction for contempt of Congress because the House Un-American Activities Committee had failed to follow its own rules."

"This clear precept, that an agency must follow the regulations it promulgates, has been applied to the Army as well."

"Accordingly, a federal court may properly examine the decision to call a reservist for active duty in order to determine if the reservist's procedural rights under the applicable statutes and military procedures and regulations were violated in a manner which caused substantial prejudice to the reservist. **This does not involve any undue interference with the proper and efficient operation of our military forces because we require only that the Army carry out the procedures and regulations it created itself.** A leading scholar on the subject of administrative procedures has noted that judicial review may serve the salutary function of putting "some pressure on the military authorities to watch their own procedures." L. Jaffe, Judicial Control of Administrative Action 369 (1965)." p. 147. [Bold added.]

[Smith v. Resor, 406 F.2d. 141 (1969)]

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**Petroleum Heat and Power, Co. v. United States (Jan. 24, 1969)**

"Treasury regulations have the effect of law."

"Plaintiff acted in complete accord with the regulations, and any dissatisfaction on the Government's part with plaintiff's treatment of income **for the period** in question is attributable to the lack of clarity in and omissions from the Government's own regulations. A taxpayer cannot be expected to intuit an unexpressed desire of the Internal Revenue Service that would seemingly contradict written revenue regulations which taxpayer is obliged to follow. The Commissioner is bound by its own regulations as much as is the taxpayer."

[Petroleum Heat and Power, Co. v. United States, 405 F.2d. 1300 (1969)]

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**United States ex rel. Brooks v. Clifford (Mar. 20, 1969)**

"It suffices for present purposes that regulations have in fact been promulgated. Such regulations once issued must be followed scrupulously."

[United States ex rel. Brooks v. Clifford, 409 F.2d. 700 (1969)]

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**Bingler v. Johnson (Apr. 23, 1969)**

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"The regulation here in question represents an effort by the Commissioner to supply the definitions that Congress omitted. And it is fundamental, of course, that as "contemporaneous constructions by those charged with administration of" the Code, the Regulations "must be sustained unless unreasonable and plainly inconsistent with the revenue statutes," and "should not be overruled except for weighty reasons." *Commissioner v. South Texas Lumber Co.*, 333 U.S. 496, 501, 92 L.Ed. 831, 836, 68 S.Ct.695. In this respect our statement last Term in *United States v. Correll*, 389 U.S. 299, 19 L.Ed.2d. 537, 88 S.Ct. 445, bears emphasis:

""[W]e do not sit as a committee of revision to perfect the administration of the tax Laws. Congress has delegated to the Commissioner, not to the courts, the task of prescribing all 'needful rules and regulations for the enforcement' of the Internal Revenue Code. 26 U.S.C. §7805(a). In this area of limitless factual variations, 'it is the province of Congress and the Commissioner, not the courts, to make the appropriate adjustments'." *Id.*, at 306-307, 19 L.Ed.2d. at 543."

[*Bingler v. Johnson*, 394 U.S. 741, 89 S.Ct. 1439; 22 L.Ed.2d. 695 (1969)]

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#### **United States v. Heffner (Jan. 6, 1970)**

"Government agency must scrupulously observe rules or procedures which it has established and when it fails to do so its action cannot stand and courts will strike it down."

An agency of the Government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down. This doctrine was announced in *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 74 S.Ct. 499, 98 L.Ed. 681 (1954)."

"These cases are consistent with the doctrine's purpose to prevent the arbitrariness which is inherently characteristic of an agency's violation of its own procedures. As the Second Circuit said in *Hammond v. Lenfest*, 398 F.2d. at 715, cited with approval in *United States ex rel. Brooks v. Clifford*, 409 F.2d. at 706, departures from an agency's procedures "cannot be reconciled with the fundamental principle that ours is a government of laws, not men." ... The document purports to establish certain procedures which Special Agents are "required" to follow. Undoubtedly, a failure to comply is a rare event within the Intelligence Division--a fact which highlights the apparently inadvertent failure to give the warnings here. Furthermore, a reversal here would not only have the salutary effect of encouraging IRS agents to observe their own procedures, *L. Jaffe, Judicial Control of Administrative Action* 369 (1965), cited with approval in *Smith v. Resor*, 406 F.2d. at 146, but would assist the IRS in fulfilling its own important purpose in requiring that the warnings be given. For the announcement of the instructions was coupled with the justification that they would insure "uniformity in protecting the Constitutional rights of all persons."

[*United States v. Heffner*, 420 F.2d. 809 (1970)]

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#### **McMartin Industries, Inc. v. Viral (Apr. 26, 1971)**

"The trial court correctly noted that the regulation must be sustained unless unreasonable and plainly inconsistent with the revenue statutes, see, *Commissioner of Internal Revenue v. South Texas Lumber Co.*, 333 U.S. 496, 501, 68 S.Ct. 695, 92 L.Ed. 831 (1948); *Harper Oil Company v. United States*, 425 F.2d. 1335, 1343 (10th Cir. 1970), and that the court's role in cases of this sort begins and ends with assuring that the Commissioner's regulations fall within his authority to implement the congressional mandate in some reasonable manner. See *United States v. Correll*, 389 U.S. 299, 307, 88 S.Ct. 445, 19 L.Ed.2d. 537 (1967); *Rhodes Refrigeration, Inc. v. United States*, 435 U.S. 1280 (9th Cir. 1970). It also noted that Revenue Rulings are entitled to weight in the interpretative process. See, *United States v. Hall*, 398 F.2d. 383, 387 (8th Cir. 1968). But it found that the regulation could not be given effect because it unduly limited the exemption granted by Congress, and that the Revenue Ruling was without basis in fact or law. It reached its conclusions by carefully examining the language and the legislative history of sections 4141 and 4143(a)."

[*McMartin Industries, Inc. v. Vinal*, 441 F.2d. 1274 (1971)]

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#### **H. Wetter Manufacturing Company v. United States (Apr. 13, 1972)**

"Express words of the Internal Revenue Code must control when they conflict with a regulation, and the Secretary may not broaden or narrow the specific provisions of the Code."

"A court may not enforce a treasury regulation which is plainly inconsistent with revenue statute."

"Like other extrinsic aids to construction of a statute, the use of legislative history is to solve, not to create, an ambiguity."

"Where the provisions of an act are unambiguous, and its direction specific, the Secretary of the Treasury has no power to amend the statute by regulation."

"Because Congress has delegated to the Secretary of the Treasury only the power to issue regulations for the enforcement of the revenue laws, and because this power is limited to carrying into effect the will of the Congress as



expressed by the statutes, the express words of the Code must control when they conflict with a regulation. The Secretary may not broaden or narrow the specific provisions of the revenue laws. In 1967, this Court approved the observation of the Eighth Circuit that "[t]he Commissioner has no more power to add to the Act what he thinks Congress may have overlooked than he has to supply what Congress has deliberately omitted." *General Electric Co. v. Burton*, 372 F.2d. 108, 111 (6th Cir. 1967). A court may not enforce a regulation which is plainly inconsistent with the revenue statute. *Commissioner of Internal Revenue v. South Texas Lumber Co.*, 333 U.S. 496, 501, 68 S.Ct. 695, 92 L.Ed. 831 (1948); *Commissioner of Internal Revenue v. Netcher*, 143 F.2d. 484, 487 (7th Cir. 1944)."  
[*H. Wetter Manufacturing Company v. United States*, 458 F.2d. 1033 (1972)]

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### **Berends v. Butz (March 20, 1973)**

"Federal district court had jurisdiction, under statute relating to acts to compel an officer of the United States to perform his duty, of farmers' class action in the nature of mandamus to compel Secretary of Agriculture and certain subordinate officials of the United States Department of Agriculture, Farmers Home Administration, to perform administrative duties owed plaintiffs with respect to emergency loan program."

"Validly issued regulations of an administrative agency have force and effect of statutes."

"Failure of an administrative agency to follow its own established procedures constitutes a violation of procedural due process."

"Under applicable regulations, Secretary of Agriculture had no absolute authority to halt emergency loan program in areas designated by him as emergency loan areas."

"It is not role of courts to pass upon necessity or soundness of a duly promulgated law; likewise, an administrator should not engage in such practice."

**"The doctrine of sovereign immunity, raised by defendants, is inapplicable since plaintiffs contend that the defendants' action were beyond the scope of their authority or they were acting unconstitutionally."** [Bold added.]

"Shall is mandatory language. The only sensible reading of these statutes requires the Secretary to apply emergency loan benefits to all loans qualifying under these provisions."

"Not only was the administrative action taken in excess of statutory authority, but it also was in violation of the duly promulgated regulations set up by the Department of Agriculture. Validly issued regulations of an administrative agency have the force and effect of statutes. *See, Sheridan-Wyoming Coal Co. v. Krug*, 84 U.S.App.D.C. 288, 172 F.2d. 282 (1949). The failure of an administrative agency to follow its own established procedures constitutes a violation of procedural due process. *Vitarelli v. Seaton*, 359 U.S. 535, 79 S.Ct. 968, 3 L.Ed.2d. 1012 (1959); *Service v. Dulles*, 354 U.S. 363, 77 S.Ct. 1152, 1 L.Ed.2d. 1403 (1957); *Accardi v. Shaughnessy*, 347 U.S. 260, 74 S.Ct. 499, 98 L.Ed. 681 (1954). As stated in *United States v. Heffner*, 420 F.2d. 809, 812 (4th Cir. 1970):

An agency of the government must scrupulously observe rules, regulations, or procedures which it has established.

When it fails to do so, its action cannot stand and courts will strike it down."

"However, under the applicable regulations the Secretary has no absolute authority to halt the emergency loan program in those areas designated as emergency loan areas. The language of the regulation is clear that emergency loans *will* be made available in the counties so designated. The language in the regulations is mandatory and the Secretary is directed to consider applications for emergency loans in designated areas. The refusal to consider applications for emergency loans in designated areas is a violation of the Department's regulations."

"The rights of individuals in so important a matter as procuring emergency relief to help restore damage caused by a natural disaster should not be at the mercy of the whims of an administrator. The unilateral termination of the program without notice to the Minnesota farmers offends all traditional notions of fair play. **The people have a right to expect better treatment from their government.** [Bold added.] "The failure to give notice prior to the termination of the loan program is also in violation of the Administrative Procedure Act, 5 U.S.C. §551 et seq. As stated by Judge, now Chief Justice Burger in *Gonzalez v. Freeman*, *supra*: The command of the Administrative Procedure Act is not a mere formality. Those who are called upon by the government for countless variety of goods and services are entitled to have notice of the standards and procedures which regulate these relationships. 334 F.2d. at 578."

"Inherent in these provisions is the concept that the public is entitled to be informed as to the procedures and practices of a governmental agency, so as to be able to govern their actions accordingly."

[*Berends v. Butz*, 357 F.Supp. 143 (1973)]

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### **United States v. Coleman (May 7, 1973)**

"Under the general principle that an agency is to be held to the terms of its regulations, *Service v. Dulles*, 1957, 354 U.S. 363, 77 S.Ct. 1152, 1 L.Ed.2d. 1403; *Vitarelli v. Seaton*, 1959, 359 U.S. 535, 79 S.Ct. 968, 3 L.Ed.2d. 1012, the

judgement cannot stand."

[United States v. Coleman, 478 F.2d. 1371 (1973)]

**United States v. Fukushima (Feb. 26, 1974)**

"To reiterate, not even under any of the authorities cited by the defendant can this court conclude that the failure on the part of the special agent to use the magic word "criminal" in stating the purpose of his investigation is a "substantial" deviation from the IRS procedures so as to permit this court to find that a constitutional right of the defendant has been encroached upon thereby. This court does not agree with *Heffner* or *Leahey*, or the circuit court in *Bembridge*, that the IRS publication of investigative procedures raises those procedures to the stature of constitutional rights under the due process clause of the Fifth Amendment. Moreover, even if it felt otherwise, this court believes that it would be constrained by the consistent opinions of the Ninth Circuit, as indicated by *Robson*, to hold that the IRS published procedures did not in the slightest erode or in any manner circumscribe the viability of the law on IRS non-custodial warnings, as set forth in *Robson*."

[United States v. Fukushima, 373 F.Supp. 212 (1974)]

**United States v. Ginsburg (Mar. 5, 1974)**

"Due process clause proscribes inconsistent and unequal treatment generated by a governmental agency's violation of its own regulations"

"Treasury regulation requiring financial institutions to report to Federal Reserve bank the name of any person or organization involved in a currency transaction of \$10,000 or more is specific and concise and is not so vague as to virtually guarantee unequal treatment."

"Under the Bank Secrecy Act, delegation of duty of initial review to another agency cannot serve to preempt the delegating agency from receiving the same information. 12 U.S.C.A. §1829b, 31 U.S.C.A. §§1051-1122."

"Federal Reserve bank did not abuse its power in transmitting to Secretary of Treasury, who initially issued regulation requiring banks to report persons involved in cash transactions of \$10,000 or more, banking form required by the regulation nor did Secretary abuse his power in making interdepartmental transfer of the information to the Internal Revenue Service. Trading with the Enemy Act, §5(b)(1), 50 U.S.C.A. App. §5(b)(1)."

"Even if transmission of banking form in which taxpayers involvement in cash transaction of \$10,000 was reported and which led to investigation of taxpayers from Federal Reserve bank to Internal Revenue Service was unauthorized, where there was no evidence that Government resorted to coercion, fraud, trickery or deceit in obtaining the information, the transfer would not require application of exclusionary rule to the information."

"Where divulgence of information that taxpayers had engaged in currency transaction involving \$10,000 was not coerced from the taxpayers, taxpayers had no standing to challenge bank's disclosure, pursuant to Treasury Department regulation, of that information from its own records to the Department of the Treasury."

"To qualify as an "aggrieved person" within the meaning of Rule 41(e), F.R.Crim.P., a defendant must be the victim of the search and seizure, "one against whom the search was directed, as distinguished from one who claims prejudice only through the use of evidence gathered as a consequence of a search directed at someone else." *United States v. Masterson*, supra at 613. Since the divulgence of the potentially incriminating evidence was not coerced from the defendants in the case-at-bar, they have no standing to nullify the receipt of the disclosure from a party with whom they have no protected confidential relationship."

[United States v. Ginsburg, 376 F.Supp. 714 (1974)]

**California Bankers Association, The v. Shultz (Apr. 1, 1974)**

"These appeals present questions concerning the constitutionality of the so-called Bank Secrecy Act of 1970, and the implementing regulations promulgated thereunder by the Secretary of the Treasury. ... Under the Act, the Secretary of the Treasury is authorized to prescribe by regulation certain recordkeeping and reporting requirements for banks and other financial institutions in this country. Because it has a bearing on our treatment of some of the issues raised by the parties, we think it important to note that the Act's civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary; if the Secretary were to do nothing, the Act itself would impose no penalties on anyone." p. 820.

"Incorporated banks, like other organizations, have no privilege against self-incrimination."

"Neither incorporated nor unincorporated associations can plead an unqualified right to conduct their affairs in secret."

"Plaintiffs in the federal courts must allege some threatened or actual injury resulting from a putatively illegal action"

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before a federal court may assume jurisdiction; there must be a personal stake in the outcome such as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."

"The bank plaintiffs, being corporations, have no constitutional privilege against compulsory self-incrimination by virtue of the Fifth Amendment. *Hale v. Henkel*, 201 U.S. 43, 74-75, 50 L.Ed. 652, 26 S.Ct. 370."

"Because it has a bearing on our treatment of some of the issues raised by the parties, we think it important to note that the Act's civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary; if the Secretary were to do nothing, the Act itself would impose no penalties on anyone."

"Section 241 of the Act, 31 U.S.C. § 1121 [31 U.S.C.S. § 1121], authorizes the Secretary to prescribe regulations requiring **residents and citizens of the United States**, as well as **nonresidents in the United States and doing business therein**, to maintain records and file reports with respect to their transactions and relationships with foreign financial agencies.

Pursuant to this authority, the regulations require each person **subject to the jurisdiction of the United States** to make a report on yearly tax returns of any "financial interest in, or signature or other authority over, a bank, securities or other financial account in a foreign country." 31 C.F.R. § 103.24." [Brackets original; bold added.]

[*California Bankers Association, The v. Shultz*, 416 U.S. 21, 39 L.Ed.2d. 812, 94 S.Ct. 1494 (1974)]

#### **Commonwealth ex rel. Hancock v. Paxton (Dec. 6, 1974)**

"If Constitution is threatened by an item of legislation, the Attorney General may rise to the defense of the Constitution by bringing a suit and is not required to wait until someone else sues."

"Sections 91 and 93 of the Kentucky Constitution, providing for the office of Attorney General, state that his duties shall be such as may be prescribed by law, which suggests that his duties are solely statutory. However, he of course has the same duty as all other public officers of the state, embraced in the constitutional oath of office under Section 228 of the Constitution, of supporting the Constitution, and he is possessed of all *common law* powers and duties of the office except as modified by the Constitution or statutes."

.. the Attorney General is "the chief law officer of the commonwealth" and "shall commence all actions or enter his appearance in all cases \* \* \* in which the Commonwealth has an interest \* \* \*". At common law, he had the power to institute, conduct and maintain suits and proceedings for the enforcement of the laws of the state, the preservation of order, and the protection of public rights. 7 Am.Jur. 2d, Attorney General, sec. 6, p. 7."

.. under the democratic form of government now prevailing the people are the king, Ky.Const. sec. 4, so the Attorney General's duties are to that sovereign rather than to the machinery of government."

"They overlook the duty of the Attorney General to uphold the *Constitution*, which surely embraces the power to protect it from attacks in the form of legislation as well as from attacks by way of lawsuits by other persons against state officers or agencies. We think that if the Constitution is threatened by an item of legislation, the Attorney General may rise to the defense of the Constitution by bringing a suit, and is not required to wait until someone else sues."

.. the Attorney General's primary obligation is to the Commonwealth, the body politic, rather than to its officers, departments, commissions, or agencies."

[*Commonwealth ex rel. Hancock v. Paxton*, Ky., 516 S.W.2d. 865 (1974)]

#### **United States v. Sourapas (Mar. 27, 1975)**

"Corporation has no Fifth Amendment protection against self-incrimination and neither corporation, corporate officer or any other person can prevent production for examination of relevant corporate records. U.S.C.A.Const. Amend. 5."

"The trial court as a basis for suppressing the evidence relied upon *United States v. Leahey*, 434 F.2d. 7 (1st Cir. 1970) and *United States v. Heffner*, 420 F.2d. 809 (4th Cir. 1969). Said cases point out that an individual has fifth amendment protection against self-incrimination. They acknowledge that the warning required by the IRS regulations where the individual is not taken into custody goes beyond the requirements of *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d. 694 (1966), but hold that the IRS is bound by its own regulations under the facts presented in such cases. The reasoning of the cases just cited supports the trial court's determination upon the record before us, that any information obtained from Sourapas' personal records or answers to questions should be suppressed by reason of Saetta's failure to comply with the regulations."

[*United States v. Sourapas*, 515 F.2d. 295 (1975)]

#### **VanderMolen v. Stetson (Nov. 16, 1977)**

"It is, of course, a fundamental tenet of our legal system that the Government must follow its own regulations. Actions by

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an agency of the executive branch in violation of its own regulations are illegal and void. *Vitarelli v. Seaton*, 359 U.S. 535, 79 S.Ct. 968, 3 L.Ed.2d. 1012 (1959); *Service v. Dulles*, 354 U.S. 363, 77 S.Ct. 1152, 1 L.Ed.2d. 1403 (1957); *Accardi v. Shaughnessy*, 347 U.S. 260, 74 S.Ct. 499, 98 L.Ed. 681 (1954)."  
[*VanderMolen v. Stetson*, 571 F.2d. 517 (1977)]

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#### **Maine v. Thiboutot (June 25, 1980)**

"*Greenwood v. Peacock*, 384 U.S. 808, 829-830, 86 S.Ct. 1800, 1913, 16 L.Ed.2d. 944 (1966), observed that under §1983 state "officers may be made to respond in damages not only for violations of rights conferred by federal equal civil rights laws, but for violations of other federal constitutional and statutory rights as well."

"42 U.S.C. §1988 (emphasis added): "In *any action* or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C. 1681 et seq.], or in any civil action or proceeding, by or on behalf of the United States of America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code, or title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

"Once again, given our holding in Part II, *supra*, the plain language provides an answer. The statute states that fees are available in *any* §1983 action. Since we hold that this statutory action is properly brought under §1983, and since §1988 makes no exception for statutory §1983 actions, §1988 plainly applies to this suit."

"As we have said above, *Martinez v. California*, 444 U.S. 277, 100 S.Ct. 553, 62 L.Ed.2d. 481 (1980), held that §1983 actions may be brought in state courts." [Brackets original.]

[*Maine v. Thiboutot*, 448 U.S. 1, 100 S.Ct. 2502, 65 L.Ed.2d. 555 (1980)]

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#### **Lansons, Inc. v. C.I.R. (July 30, 1980)**

"Treasury regulations are as binding upon tax officials as they are upon taxpayers, and tax officials are required to abide by regulations reasonably based on the statute. *Mutual Savings Life Insurance Co. v. United States*, 488 F.2d. 1142, 1145 (5th Cir. 1974); *Brafman v. United States*, 384 F.2d. 863, 866 (5th Cir. 1967)."

[*Lansons, Inc. v. C.I.R.*, 622 F.2d. 774 (1980)]

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#### **Rowell v. Andrus (Oct. 6, 1980)**

"Under Administrative Procedure Act, "required publication" of substantive rules of general applicability is not satisfied by publication of general notice of proposed rule making; rather, "required publication" refers to specific mandate requiring publication of substantive rules as actually adopted by agency".

"The plain language of 5 U.S.C. §552(a)(1)(D) requires each agency to publish in the Federal Register "substantive rules of general applicability *adopted* as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency." (Emphasis added). Section 553(d) provides, with certain exceptions, not relevant here, that "[t]he required publication or service of a substantive rule shall be made not less than 30 days before its effective date ..." [Brackets original.]

"We are convinced that the "required publication" under §553(d) is not satisfied by the publication of "general notice of proposed rule making" required by §553(b). Rather §553(d) refers to the specific mandate of §552(a)(1)(D) requiring publication of substantive rules as actually *adopted* by an agency. See *Kollet v. Harris*, 619 F.2d. 134, 144-45 & n.15 (1st Cir.); *United States v. Gavrilovic*, 551 F.2d. 1099, 1103-04 & n.9 (8th Cir.); *Sannon v. United States*, 460 F.Supp. 458, 467 (S.D.Fla.); ... [additional cites omitted]."

[*Rowell v. Andrus*, 631 F.2d. 699 (1980)]

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#### **United States v. Mississippi Power & Light Co. (Mar. 6, 1981)**

"For regulation to have force and effect of law, promulgation of regulation must satisfy procedural requirements imposed by Congress and regulation must be within contemplation of some congressionally delegated' authority."

[*United States v. Mississippi Power Light Co.*, 638 F.2d. 899 (1981)]

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#### **Conn. Light and Power Co. v. Nuclear Reg. Com'n (Mar. 16, 1982)**

"An agency is bound by its own regulations and commits procedural error if it fails to abide by them. *Panhandle Eastern Pipe Line Co. v. FERC*, 613 F.2d. 1120, 1135 & n.84 (D.C.Cir.1979), *cert. denied*, 449 U.S. 889, 101 S.Ct. 247, 66

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L.Ec.2d 115 (1980)."  
 [Conn. Light and Power Co. v. Nuclear Reg. Com'n, 673 F.2d. 525 (1982)]

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**International House v. National Labor Relations Board (Apr. 9, 1982)**

"The very essence of due process is the requirement of notice and an opportunity to be heard."

"When administrative bodies promulgate rules or regulations to serve as guidelines, these guidelines should be followed; failure to follow such guidelines tends to cause unjust discrimination and deny adequate notice contrary to fundamental concepts of fair play and due process."

"The application of due process "to NLRB proceedings, like other administrative proceedings, is not novel." *Alaska Roughnecks and Drillers Association v. NLRB*, 555 F.2d. 732, 735 (9th Cir. 1977), *cert. denied*, 434 U.S. 1069, 98 S.Ct. 1250, 55 L.Ed.2d. 771 (1978). The very essence of due process is the requirement of notice and an opportunity to be heard:

*"The fundamental requisite of due process of law is the opportunity to be heard." Grannis v. Ordean, 234 U.S. 385, 394, 34 S.Ct. 779, 783, 58 L.Ed. 1363 (1914). The hearing must be "at a meaningful time and in a meaningful manner." Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d. 62 (1965)."*

"As the Ninth Circuit stated in *NLRB v. Welcome American Fertilizer Co.*:

*"When administrative bodies promulgate rules or regulations to serve as guidelines, these guidelines should be followed. Failure to follow such guidelines tends to cause unjust discrimination and deny adequate notice contrary to fundamental concepts of fair play and due process.*

443 F.2d. 19, 20 (9th Cir. 1971)."

[International House v. National Labor Relations Board, 676 F.2d. 906 (1982)]

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**Rockefeller v. United States (Dec. 10, 1982)**

"The authority of the Secretary of Treasury to administer the internal revenue statutes and to prescribe rules and regulations to that end is beyond question. 26 U.S.C. §7805(a). However, that power is limited to adoption of *reasonable* regulations which will effectuate the will of Congress as expressed by the statute. *Manhattan General Equipment Co. v. Commissioner of Internal Revenue*, 297 U.S. 129, 56 S.Ct. 395, 80 L.Ed. 528 (1936)."

[Rockefeller v. United States, 572 F.Supp. 9 (1982)]

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**United States v. \$200,000 in United States Currency (July 10, 1984)**

"Rule" or "regulation" is product of administrative legislation. 5 U.S.C.A. §551."

"For agency statement or requirement to be considered a valid "rule," three conditions must be satisfied: "rule" must be within agency's granted power, it must be issued pursuant to proper administrative procedures and it must be reasonable as matter of due process. 5 U.S.C.A. §551; U.S.C.A. Const. Amend. 5."

"Interpretative rule," within exemption from publication requirements of Administrative Procedure Act, is statement as to what administrative officer thinks statute or regulation means."

"Substantive rules are issued by agency pursuant to statutory authority which have force and effect of law."

"Where rule has substantial impact on class of persons to whom it is directed, agency must provide adequate statement of basis and purpose of rule, and must respond in reasoned manner to comments received. 5 U.S.C.A. §553."

"Notice required by Administrative Procedure Act must be sufficient to fairly apprise interested parties of issues involved, and such notice must afford interested parties reasonable opportunity to participate in rule-making process."

"A "rule" or "a "regulation" is the product of administrative legislation. A rule is analogous to a statute in that courts are bound by rules in the same way that courts are bound by statutes; this is because a rule is promulgated pursuant to agency authority delegated by Congress. Section 551 of the Administrative Procedure Act ("APA"), 5 U.S.C., defined a "rule" as follows:

"(4) 'rule' means the whole or part of an agency statement of general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy...."

"The APA requires that rules be published in the Federal Register absent an explicit exemption provided by the Act. 5 U.S.C. §553."

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***Sovereignty and Freedom Points and Authorities***



[*United States v. \$200,000 in United States Currency*, 590 F.Supp. 866 (1984)]

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**First Federal Sav. and Loan Ass'n v. Goldman (July 29, 1986)**

"Generally, regulation or procedure is binding upon agency when it has force and effect of law."

"Regulation has force and effect of law when it is promulgated by agency pursuant to mandate or delegation of authority by Congress and involves individual rights or obligations, while interpretative rules, general statements of policy, or rules of agency organization, procedure or practice are not binding upon the agency."

"Internal revenue manual was not promulgated pursuant to any mandate or delegation of authority by Congress so that procedures set forth in manual did not have effect of rule of law and therefore were not binding on Internal Revenue Service so that manual conveyed no rights to taxpayers and taxpayers could not allege noncompliance with those procedures to invalidate tax levies."

[*First Federal Sav. and Loan Ass'n v. Goldman*, 644 F.Supp. 101 (W.D.Pa. 1986)]

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**Montilla v. I.N.S. (Feb. 12, 1991)**

"Notion of fair play animating the Fifth Amendment precludes agency from promulgating regulation affecting individual liberty or interest and then with impunity ignoring or disregarding regulation as it sees fit."

"Due process clause and Immigration and Nationality Act afford alien the right to counsel of his choice at his own expense in deportation proceeding."

"Rule that failure of administrative agency to follow its own established procedures is reversible error is not limited to procedures attaining status of formal regulations."

"Alien claiming that Immigration and Naturalization Service (INS) has failed to adhere to its own regulations regarding right to counsel in deportation hearing is not required to make showing of prejudice before he is entitled to relief; all that need be shown is that subject regulations were for alien's benefit and that INS failed to adhere to them."

"Violation of agency regulation governing individual interest requires reversal irrespective of whether new hearing would produce same results."

The seeds of the *Accardi* doctrine are found in the long-settled principle that the rules promulgated by a federal agency, which regulate the rights and interests of others, are controlling upon the agency. *Columbia Broadcasting System, Inc. v. United States*, 316 U.S. 407, 422. 62 S.Ct. 1194, 1202, 86 L.Ed. 1563 (1942) (agency regulations on which individuals are entitled to rely bind agency)."

"The doctrine has been applied in other contexts, for example, in *Service v. Dulles*, 354 U.S. 363; 77 S.Ct. 1152, 1 L.Ed.2d. 1403 (1957) and *Vitarelli v. Seaton*, 359 U.S. 535, 79 S.Ct. 968, 3 L.Ed.2d. 1012 (1959), to vacate the discharges of government employees, and in *Yellin v. United States*, 374 U.S. 109, 83 S.Ct. 1828, 10 L.Ed.2d. 778 (1963), to overturn a criminal contempt conviction. This Circuit and other circuits have also used it. See, e.g., *Smith v. Resor*, 406 F.2d. 141, 145 (2d Cir.1969); *United States v. Leahey*, 434 F.2d. 7, 9-11 (1st Cir.1970); *United States v. Heffner*, 420 F.2d. 809, 812 (4th Cir.1969); *Geiger v. Brown*, 419 F.2d. 714, 718 (D.C.Cir.1969); *Pacific Molasses Co. v. FTC*, 356 F.2d. 386, 389-90 (5th Cir.1966).

"The *Accardi* doctrine is premised on fundamental notions of fair play underlying the concept of due process. See *International House v. NLRB*, 676 F.2d. 906, 912 (2d Cir.1982); *Massachusetts Fair Share v. Law Enforcement Assistance Administration*, 758 F.2d. 708, 711 (D.C.Cir.1985); K. Llewellyn, *The Bramble Bush* 43 (1951); Note, *Violations by Agencies of Their Own Regulations*, 87 Harv.L.Rev. 629 630 (1974). Its ambit is not limited to rules attaining the status of formal regulations. As the Supreme Court noted "[w]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required," and even though the procedural requirement has not yet been published in the federal register."

"Despite the existence of the long-settled *Accardi* rule, the government invites us to subject the instant petition to harmless error analysis, as the Ninth Circuit did in *United States v. Calderon-Medina*, 591 F.2d. 529 (9th Cir.1979). In that case, as in this, an alien challenged the validity of a deportation order claiming that the agency failed to adhere to its own regulations in reaching its decision. The court modified the *Accardi* analysis, ruling that an agency's violation of its own regulation does not invalidate a deportation proceeding unless (a) "the regulation serves a purpose of benefit to the alien," and (b) "the violation prejudiced interests of the alien which were protected by the regulation." *Id.* at 531.

"This holding followed the Supreme Court's decision in *Morton* where the Court said that before an individual may claim reversible error from an agency's failure to comply with its own procedures, he must show that the procedures "affect" his rights."

"The *Accardi* doctrine is still alive and well, and by applying this judicially-evolved rule ensuring fairness in

administrative proceedings, we may avoid deciding the case on constitutional grounds, as urged by the parties. Such approach carefully adheres to a fundamental rule of judicial restraint, namely, if a case can be decided on nonconstitutional grounds, it should be. See *Jean v. Nelson*, 472 U.S. 846, 854, 105 S.Ct. 2992, 2996, 86 L.Ed.2d. 664 (1985); *Ashwander v. TVA*, 297 U.S. 288, 347, 56 S.Ct. 466, 483, 80 L.Ed. 688 (1936) (Brandeis, J., concurring)."

"For these reasons, we hold that an alien claiming the INS has failed to adhere to its own regulations regarding the right to counsel in a deportation hearing is not required to make a showing of prejudice before he is entitled to relief. All that need be shown is that the subject regulations were for the alien's benefit and that the INS failed to adhere to them." [Brackets original.]

[*Montilla v. I.N.S.*, 926 F.2d. 162 (1991)]

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**Cottage Sav. Ass'n. v. C.I.R. (Apr. 17, 1991)**

"Because Congress has delegated to the Commissioner the power to promulgate "all needful rules and regulations for the enforcement of [the Internal Revenue Code]," 26 U.S.C. §7805(a), we must defer to his regulatory interpretations of tax code so long as they are reasonable, see *National Muffler Dealers Assn., Inc., v. United States*, 440 U.S. 472, 476-77, 99 S.Ct. 1304, 1306-1307, 59 L.Ed.2d. 519 (1979)." [Brackets original.]

[*Cottage Sav. Ass'n. v. C.I.R.*, 499 U.S. 554, 111 S.Ct. 1503, 113 L.Ed.2d. 589 (1991)]

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**Curley v. United States (Mar. 25, 1992)**

"Plaintiff relies heavily on the Internal Revenue Manual ("IRM") in her argument that the assessment is procedurally invalid. However, the Internal Revenue Manual does not have the force and effect of law. *United States v. New York Telephone Co.*, 644 F.2d. 953, 959 n.10 (2d Cir.1981). Since the IRM is not law, any alleged failure to adhere to its provisions will not necessarily result in an invalid assessment."

"However, failure to adhere to agency regulations may amount to a denial of due process if the regulations are required by the Constitution or a statute. See *Arzanipour v. Immigration & Naturalization Service*, 866 F.2d. 743, 746 (5th Cir.1989).... To invalidate an assessment, the government's action must also substantially prejudice the complaining party. *Calderon-Ontiveros v. Immigration & Naturalization Service*, 809 F.2d. 1050 (5th Cir. 1986)."

[*Curley v. United States*, 791 F.Supp. 52 (1992)]

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**Flamingo Fishing Corp. v. United States (Dec. 9, 1994)**

"Agency regulation should be upheld if court can conclude that it implements congressional mandate in some reasonable manner."

"Where Secretary of the Treasury promulgated regulation under his general authority to prescribe all needful rules and regulations, court owed interpretation less deference than regulation issued under specific grant of authority to define statutory term or prescribe method of executing statutory provision. 26 U.S.C.A. §7805(a)."

"In determining validity of regulation implementing statute, court looks to plain language of statute, its origin, and its purpose."

[*Flamingo Fishing Corp. v. United States*, 32 Fed.Cl. 377 (1994)]

## 8 TAXATION IN AMERICA

For a complete treatment of the FRAUD of income taxation in States of the Union, please refer to:

1. Taxation Page, Family Guardian Fellowship  
<https://famguardian.org/Subjects/Taxes/taxes.htm>
2. *Great IRS Hoax*, Form #11.302  
<https://sedm.org/Forms/FormIndex.htm>

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### 8.1 The Fundamental Nature of Taxes

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#### Black's Law DictionaryL General Taxes

"GENERAL TAXES. Those imposed by and paid to state as a state which return taxpayer no special benefit other than the protection afforded him and his property by government, and promotion of schemes which have for their benefit the welfare of all. [Cites omitted.] A tax, imposed solely or primarily for purpose of raising revenue and merely granting person taxed right to conduct business or profession." [Cite omitted.]  
[Black's Law Dictionary, Fourth Edition, 1951, p. 814]

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#### 18 U.S.C. §3283, History Notes

"Revenue" is the product or fruit of taxation. It matters not in what form the power of taxation may be exercised or to what subjects it may be applied, its exercise is intended to provide means for the support of the Government, and the means provided are necessarily to be regarded as the internal revenue.  
[18 U.S.C. §3283, History Notes]

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#### Black's Law Dictionary: Tribute

"TRIBUTE. A contribution which is raised by a prince or sovereign from his subjects to sustain the expenses of the state.

"A sum of money paid by an inferior sovereign or state to a superior potentate, to secure the friendship or protection of the latter."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1676]

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#### Black's Law Dictionary: Tax

"TAX, v. To impose a tax; to enact or declare that a pecuniary contribution shall be made by the persons liable, for the support of government. Spoken of an individual, to be taxed is to be included in an assessment made for purposes of taxation."

"**Direct tax.** One which is demanded from the very persons who, it is intended or desired, should pay it. Indirect taxes are those which are demanded from one person, in the expectation and intention that he shall indemnify himself at the expense of another. Mill, Pol. Econ. Taxes are divided into "direct," under which designation would be included those which are assessed upon the property, person, business, income, etc., of those who are to pay them, and "indirect," or those which are levied on commodities before they reach the consumer, and are paid by those upon whom they ultimately fall, not as taxes, but as part of the market price of the commodity. Cooley, Tax'n.

"Historical evidence shows that personal property, contracts, occupations, and the like, have never been regarded as the subjects of direct tax. The phrase is understood to be limited to taxes on land and its appurtenances, and on polls. *Veazie Bank v. Fenno*, 8 Wall. 533, 19 L.Ed. 482; *Railroad Co. v. Morrow*, 87 Tenn. 406, 11 S.W. 348, 2 L.R.A. 853; *People v. Knight*, 174 N.Y. 475, 67 N.E. 65, 63 L.R.A. 87."

"**Indirect taxes** are those demanded in the first instance from one person in the expectation and intention that he shall indemnify himself at the expense of another. "Ordinarily all taxes paid primarily by persons who can shift the burden upon some one else, or who are under no legal compulsion to pay them, are considered indirect taxes." *Pollock v. Farmers' L. & T. Co.*, 15 S.Ct. 673, 157 U.S. 429, 39 L.Ed. 759; *Thomasson v. State*, 15 Ind. 451; *Foster & Creighton Co. v. Graham*, 154 Term. 412, 285 S.W. 570, 572, 47 A.L.R. 971."

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[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1628]

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**Bouvier's Law Dictionary: Tax**

"**TAX.** A pecuniary burden imposed for the support of the government."

"A tax is a demand of sovereignty...."

"Taxes are not "debts"; Perry v. Washburn, 20 Cal. 318; McKeesport v. Fidler, 147 Pa. 532, 23 Atl. 799; City Council of Charleston v. Phosphate Co., 34 S.C. 541, 13 S.E. 845;...."

"Liability to pay taxes arises from no contractual relation and cannot be enforced by common law proceedings, unless a statute so provides; Schmuck v. Hartman, 222 Pa. 190, 70 Atl. 1091."

"No matter how equitable a tax may be, it is void unless legally assessed; Joyner v. School Dist. Number Three, 3 Cush. (Mass.) 567."

[Bouvier's Law Dictionary, Vol. II, Third Revision, Eighth Edition, 1914, p. 3220]

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**Black's Law Dictionary: Excise**

"**EXCISE.** An inland imposition, paid sometimes upon the consumption of the commodity, and frequently upon the retail sale.

"An excise has been defined as meaning tribute, custom, tax, tollage, or assessment, a fixed absolute and direct charge laid on merchandise, products, or commodities without any regard to amount of property belonging to those on whom it may fall, or to any supposed relation between money expended for a public object and a special benefit occasioned to those by whom the charge is to be paid.

"An excise is an impost for a license to pursue certain callings or to deal in special commodities or to exercise particular franchises. ... any tax not falling within classification of poll or property tax,...; any tax which is not directly on property or the rents or incomes from real estate,...; duties laid on manufacture, sale, or consumption of commodities, or upon certain callings or occupations,...; every form of charge imposed by public authority on performance of act, enjoyment of privilege, or engagement in occupation,...; every form of taxation which is not laid directly on persons or property.

...public charges on subjects other than manufacture and sale of commodities, such as licenses to pursue particular callings, franchises of corporations and particularly the franchise of corporate existence, and inheritance or succession of estates.

...something cut off from price paid on sale of goods as contribution to government,...; tax imposed on performance of act, engagement in occupation, or enjoyment of privilege,...; tax laid on manufacture, sale, or consumption of commodities or upon licenses to pursue certain occupations or upon corporate privileges.

"An "excise tax" is often used as synonymous with "privilege" or "license tax".

"The terms excise tax and privilege tax are synonymous."

**"Tax and Excise Distinguished"**

"A tax imposed directly by Legislature without assessment and measured by amount of business done, income previously received, or by extent to which privilege may have been enjoyed or exercised by the taxpayer, irrespective of nature or value of his assets or his investments in business, is excise tax while assessed tax on valuation of property is property tax.

"A "property tax" is a visitational tax and is the taking of part of taxpayer's wealth, represented by property he owns for need of government, and is not an "excise tax" for privilege of owning property for period of fiscal year.'

"A tax directly on property is a property tax; but a tax is an excise tax where it is not a tax on property as such, but on certain kinds of property, having reference to their origin and their intended use.

"An excise tax is an inland impost on articles of manufacture or sale, and also upon licenses to pursue certain trades, or to deal in certain commodities, and property tax is a tax which is not a capitation tax or a direct tax on land or personalty.

[Compare with definition two paragraphs above.]

"As usually used, "franchise tax" is tax on intangible values inhering to business and added value given to tangible property, being "ad valorem" as distinguished from "excise" or "privilege" tax."

"Income tax is a "property tax" and not an "excise tax."

"The words "tax" and "excise," although often used as synonymous, are to be considered as having entirely distinct and separate significations, under Const.Mass. c. 1, §1, art. 4. The former is a charge apportioned either among the whole people of the state or those residing within certain districts, municipalities, or sections. It is required to be imposed, so that, if levied for the public charges of government, it shall be shared according to the estate, real and personal, which each person may possess; or, if raised to defray the cost of some local improvement of a public nature, it shall be borne by those who will receive some special and peculiar benefit or advantage which an expenditure of money for a public object may cause to those on whom the tax is assessed. An excise, on the other hand, is of a direct charge laid on merchandise,

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products, or commodities, without any regard to the amount of property belonging to those on whom it may fall, or to any supposed relation between money expended for a public object and a special benefit occasioned to those by whom the charge is to be paid." [All cites omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, pp. 672-673]

### **Bouvier's Law Dictionary: Income Tax**

#### *"Income Tax."*

"In order to invoke the powers of a court of equity to restrain the collection of illegal taxes, the case must be brought within the well recognized foundations of equitable jurisdiction [ \* \* \* ] and it must clearly appear not only that the tax is illegal, but that the property owner has no adequate remedy at law, and that there are special circumstances bringing the case under some recognized head of equity jurisdiction...." [Cites omitted.]

"Taxes become a lien on property only by statute...."

"Taxes illegally assessed and paid may always be recovered back, if the collector understands from the payor that the taxes are regarded as illegal and that suit will be instituted to compel the refunding of them; *Erskine v. Van Arsdale*, 15 Wall. (U. S.) 75 21 L.Ed. 63, a case of internal revenue taxes."

"Where a state officer receives money for a tax paid under duress with notice of its illegality, he has no right to it and the name of the state does not protect him from suit; *Atchison, T. & S. F. R. Co. v. O'Connor*, 223 U.S. 280, 32 Sup.Ct. 216, 56 L.Ed. 436, Ann.Cas. 1913C, 1050."

"The rule is firmly established that taxes voluntarily paid cannot be recovered back, and payments with knowledge and without compulsion are voluntary; when paid under protest or with notice of suit, a recovery may, on occasion, be had, although, generally speaking, even protest or notice will not avail if the payment be made voluntarily, with full knowledge, and without any coercion by the actual or threatened exercise of power possessed, or supposed to be possessed, over person or property, from which there is no means of immediate relief than payment; *Chesebrough v. United States*, 192 U.S. 253, 24 Sup.Ct. 262, 48 L.Ed. 432 (purchase of war revenue stamps for a deed without protest or notice)."

[*Bouvier's Law Dictionary*, Vol. II, Third Revision, Eighth Edition, 1914, pp. 3230-3238]

### **Black's Law Dictionary: Poll**

"POLL, v. In practice. To single out, one by one, of a number of persons. To examine each juror separately, after a verdict has been given, as to his concurrence in the verdict." [Cite omitted.]

[*Black's Law Dictionary*, Revised Fourth Edition, 1968, p. 1319]

### **Black's Law Dictionary: Poll**

"POLL, n. A head; an individual person; a register of persons. In the law of elections, a list or register of heads or individuals who may vote in an election; the aggregate of those who actually cast their votes at the election, excluding those who stay away." [Cite omitted.]

[*Black's Law Dictionary*, Revised Fourth Edition, 1968, p. 1319]

### **38 Cal.Jur.3d., Income taxes, §7**

#### **"In general**

"The personal income tax is imposed on the entire taxable' income of every resident of the state and on the entire taxable income of every nonresident that is derived from sources within the state.

"The "taxable income" on which the personal income tax is imposed may be computed by calculating "gross income," as defined by the statute, minus all allowable deductions other than the standard deduction."

[38 Cal.Jur.3d., Income taxes, §7]

### **Black's Law Dictionary: Taxpayer**

"**Taxpayer.** A person chargeable with a tax; one from whom government demands a pecuniary contribution towards its support."

[*Black's Law Dictionary*, Revised Fourth Edition, 1968, p. 1630]

### **38 Cal.Jur.3d., Income taxes, §5**

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**"Taxpayers**

"The personal Income Tax Law imposes an income tax on individuals and on estates and trusts. The word "individual" as here used applies only to natural persons. However, such a person may be taxed either in a natural capacity or in a special capacity such as that of a partner or fiduciary.

"The personal income tax is levied not only on residents of the state, to the extent of their entire taxable income, but also on nonresidents, to the extent of taxable income derived from sources within the state. And the tax applies to the entire taxable income of an estate, if the decedent was a resident, and to the entire taxable income of a trust, if the fiduciary of beneficiary is a resident. A "resident" is any individual who is in the state for other than a temporary or transitory purpose, or any individual domiciled in this state who is outside the state for a temporary or transitory purpose. A "nonresident" is any individual other than a resident."

[38 Cal.Jur.3d., Income taxes, §5]

**Ballentine's Law Dictionary: Income Tax**

"**income tax.** A tax based on income, gross or net. Usually regarded as an excise rather than a property tax.

"Income tax laws do not profess to embody perfect economic theory. They ignore some things that either a theorist or a businessman would take into account in determining the pecuniary condition of the taxpayer [Cite omitted.]"

[Ballentine's Law Dictionary, Third Edition, 1969, p. 601]

**Black's Law Dictionary: Income Tax**

"INCOME TAX. A tax relating to the product or income from property or from business pursuits; a tax on the yearly' profits arising from property, professions, trades, or offices; a tax on a person's income, emoluments, profits, and the like, or the excess thereof over a certain amount."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 906]

**Ballentine's Law Dictionary: Income**

"**income.** A word having different meanings, dependent upon the connection in which it is used and the result intended to be accomplished. *Equitable Trust Co. v. Prentice*, 250 N.Y. 1, 164 N.E. 723, 63 A.L.R. 263. For tax purposes, the gain derived from capital, from labor, or from both combined (*Eisner v. Macomber*, 252 U.S. 189, 64 L.Ed. 521, 40 S.Ct. 189, 9 A.L.R. 1570), including profit gained through a sale or conversion of capital assets. *Doyle Case*, 247 U.S. 183, 62 L.Ed. 1054, 38 S.Ct.467. In reference to a life tenant, something produced by capital and severed" from capital, leaving the property or principal intact. [Cites omitted.] Ordinarily, but not necessarily, cash or money; sometimes taking the form of property. [Cites omitted.] In the usual signification, net, rather than gross, income. 33 Am.J.1<sup>st</sup>.Life Ext §284. Profits earned rather than a fixed annuity.

[Ballentine's Law Dictionary, Third Edition, 1969, p. 601]

**Black's Law Dictionary: Income**

"INCOME. The return in money from one's business, labor, or capital invested; gains, profits, or private revenue."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 906]

**Bouvier's Law Dictionary: Income**

"**INCOME.** The gain which proceeds from property, labor, or business. It is applied particularly to individuals. The income of the state or government is usually called revenue. The word is sometimes considered synonymous with "profits," the gain as between receipts and payments...."

[Bouvier's Law Dictionary, Vol. II, Third Revision, Eighth Edition, 1914, income, p. 1527]

**Black's Law Dictionary: Earned Income**

"**EARNED INCOME.** Implies some labor, management or supervision in production thereof, not income derived merely from ownership of property."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 598]

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**Black's Law Dictionary: Earnings**

"EARNINGS. That which is earned; money earned; the price of services performed; reward; the reward of labor or the price of personal services performed, the reward for personal services, whether in money or chattels, the fruit or reward of labor; the fruits of the proper skill, experience, and industry; the gains of a person derived from his services or labor without the aid of capital; money or property gained or merited by labor, service, or the performance of something; that which is gained or merited by labor, services, or performances. *Saltzman v. City of Council Bluffs*, 214 Iowa 1033, 243 N.W. 161, 162. "Income" is synonymous with "earnings." *State ex rel. Froedtert Grain and Malting Co. v. Tax Commission of Wisconsin*, 221 Wis. 225, 265 N.W. 672, 673, 104 A.L.R. 1478.

"This term is used to denote a larger class of credits than would be included in the term "wages." *Somers v. Keliher*, 115 Mass. 165; *Jenks v. Dyer*, 102 Mass. 235.

"The gains of the person derived from his services or labor without the aid of capital. *Brown v. Hebard*, 20 Wis. 330, 91 Am.Dec. 408; *United Benefit Life Ins. Co. of Omaha v. Zwan*, Tex.Civ.App., 143 S.W.2d. 977, 980. Either gross or net earnings. *Springfield Coal Mining Co. v. Industrial Commission*, 291 Ill. 408, 126 N.E. 133, 22 A.L.R. 859."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 598]

**Black's Law Dictionary: Profit**

"PROFIT. The advance in the price of goods sold beyond the cost of purchase. The gain made by the sale of produce or manufactures, after deducting the value of the labor, materials, rents, and all expenses, together with the interest of the capital employed. [Cites omitted.] Gain realized from business or investment over and above expenditures. [Cites omitted.] An excess of the value of returns over the value of advances. The same as net profits." [Cite omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1376]

**Black's Law Dictionary: Assessment**

"ASSESSMENT. In a general sense, the process of ascertaining and adjusting the shares respectively to be contributed by several persons towards a common beneficial object according to the benefit received.

**"Taxation**

"The listing and valuation of property for the purpose of apportioning a tax upon it, either according to value alone or in proportion to benefit received. Also determining the share of a tax to be paid by each of many persons; or apportioning the entire tax to be levied among the different taxable" persons, establishing the proportion due from each. [Cites omitted.] It fixes the liability of the taxpayer and ascertains the facts and furnishes the data for the proper preparation of the tax rolls. [Cite omitted.]

""Assessment" and "levy" are frequently used interchangeably. [Cite omitted.] Though properly speaking it does not include the levy of taxes. [Cite omitted.] **Assessment is also popularly used as synonym for taxation in general, the authoritative imposition of a rate or duty to be paid, but in its technical signification it is only taxation for a special purpose or local improvement, local taxation, as distinguished from general taxation; taxation on principle of apportionment according to the relation between burden and benefit; whole taxes are impositions for purpose of general revenue.** [Cites omitted.]

An assessment is doubtless a tax, but the term implies something more; it implies a tax of a particular kind, predicated upon the principle of equivalents, or benefits, which are peculiar to the persons or property charged therewith, and which are said to be assessed or appraised, according to the measure or proportion of such equivalents; whereas a simple tax is imposed for the purpose of supporting the government generally, without reference to any special advantage which may be supposed to accrue to the persons taxed. **Taxes must be levied, without discrimination, equally upon all the subjects of property; whilst assessments are only levied upon lands, or some other specific property, the subjects of the supposed benefits; to repay which the assessment is levied.**" [Bold added; cite omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, pp. 149-150]

**Black's Law Dictionary: Principal**

"PRINCIPAL, *n.* The source of authority or right. A superintendent, as of a school district. [Cites omitted.] The capital sum of a debt or obligation, as distinguished from interest or other additions to it. *Christian v. Superior Court*, 122 Cal. 117, 54 P. 518. **The corpus or capital of an estate in contradistinction to the income; "income" being merely the fruit of capital.** *Carter v. Rector*, 88 Oki. 12, 210 P. 1035, 1037." [Bold added.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, pp. 1355-1356]

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**Black's Law Dictionary: Gross Income**

"GROSS INCOME. The term may mean the "gross receipts" of a business before deduction or expenditures for any purpose being equivalent to "gross proceeds" or "gross receipts" as distinguished from net income," which is that portion of the receipts which remain after paying wages and paying for materials, or, in the narrower sense, profits over and above interest on capital invested. *First Trust Co. of St. Paul v. Commonwealth Co.*, C.C.A.S.D., 98 F.2d. 27, 31, 32." [Black's Law Dictionary, Revised Fourth Edition, 1968, p. 832]

**Black's Law Dictionary: Gross**

"GROSS. Great; culpable. General. Absolute. A thing *in gross* exists in its own right, and not without diminution or deduction. [Cites omitted.] Whole; entire; total; as the gross sum, amount, weight--opposed to net." [Cite omitted.] [Black's Law Dictionary, Revised Fourth Edition, 1968, p. 832]

**26 U.S.C.S. §61(a)(1)**

"**GROSS INCOME DEFINED.** (a) GENERAL DEFINITION.--Except as otherwise provided in this subtitle, gross income means all income from whatever source' derived, including (but not limited to) the following items:

"(1) Compensation, including fees, commissions, fringe benefits, and similar items;...."

[26 U.S.C.S. §61(a)(1)]

**Black's Law Dictionary: Compensation**

"COMPENSATION. Indemnification; payment of damages; making amends; making whole; **giving an equivalent or substitute of equal value**; that which is necessary to restore an injured party to his former position; consideration or price of a privilege purchased; equivalent in money for a loss sustained; equivalent given for property taken or for an injury done to another; giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; recompense in value; recompense or reward for some loss, injury, or service, especially when it is given by statute; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or satisfaction for injury or damage of every description; that return which is given for something else." [Bold added.] [Black's Law Dictionary, Revised Fourth Edition, 1968, p. 354]

**38 Cal.Jur.3d., Income taxes, §8****"In general; definition of gross income**

"The "gross income" which constitutes the basis for determining the personal income tax means all income from whatever service derived, unless excluded by statute. Gross income includes such items as compensation for services, including fees, commissions, and similar items; gross income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; alimony and separate maintenance payments; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive shares of partnership gross income; income in respect of a decedent; and income from an interest in an estate or trust."

[38 Cal.Jur.3d., Income taxes, §8]

**Black's Law Dictionary: Except**

"**EXCEPT.** But. In re Naftzger's Estate, 24 Cal.2d. 595, 150 P.2d. 873, 875; Not including. In re Kelly's Estate, 153 Misc. 445, 274 N.Y.S. 488. Other than, In re Nelson's Estate, 152 Misc. 245, 273 N.Y.S. 268; Ingram v. State, 241 Ala. 166, 3 So.2d. 431, 432; Otherwise than, State v. White, 195 La. 1028, 197 So. 745, 747; Reserve. Adams v. Osage Tribe of Indians, C.C.A.Okla., 59 F.2d. 653, 655; Brown v. Weare, 348 Mo. 135, 152 S.W.2d. 649, 656, 136 A.L.R. 286. To exclude from an enumeration, the scope of statement or enactment, a privilege, etc.; to leave out of account or consideration. In re Garvin's Estate, 335 Pa. 542, 6 A.2d. 796, 800; Rickman v. Commonwealth, 195 Ky. 715, 243 S.W. 929.

"The expression "except for" is synonymous in many cases with "but for" and "only for." Rickman v. Commonwealth, 195 Ky. 715, 243 S.W. 929."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 665]

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**Black's Law Dictionary: Exception**

**"EXCEPTION.** Act of excepting or excluding from a number designated or from a description; that which is excepted or separated from others in a general rule or description; a person, thing, or case specified as distinct or not included; an act of excepting, omitting from mention or leaving out of consideration; and "except" means not including."

"An exception in a statute is a clause designed to reserve or exempt some individuals from the general class of persons or things to which the language of the act in general attaches. *People v. Bailey*, 103 Misc. 366, 171 N.Y.S. 394, 397."

"An "exception" exempts absolutely from the operation of the statute, while a "proviso" generally defeats operation of statute conditionally."

"The office of an "exception" in a statute is to except something from the operative effect of a statute or to qualify or restrain the generality of the substantive enactment to which it is attached, and it is not necessarily limited to the section of the statute immediately following or preceding. *Gatliff Coal Co. v. Cox*, C.C.A.Ky., 142 F.2d. 876, 882."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 667]

**Black's Law Dictionary: Exempt**

**"EXEMPT, v.** To release, discharge, waive, relieve from liability. *Davidow v. Jenks*, Sup., 48 N.Y.S. 2d 586, 588."

"To relieve, excuse, or set free from a duty or service imposed upon the general class to which the individual exempted belongs; as to exempt from militia service. *Jones v. Wells Fargo Co. Express*, 83 Misc. 508, 145 N.Y.S. 601, 602."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 681]

**Black's Law Dictionary: Exemption**

**"EXEMPTION.** Freedom from a general duty or service; immunity from a general burden, tax, or charge. [Cites omitted.]

"A privilege allowed by law to a judgment debtor, by which he may hold property to a certain amount, or certain classes of property, free from all liability to levy and sale on execution or attachment. [Cites omitted.]

"A right given by law to a debtor to retain portion of his property free from claims of creditors. [Cite omitted.]

"An "exemption" contemplated by constitutional provision forbidding exemption of property from taxation is an exemption from all taxation in any form. *Turco Paint & Varnish Co. v. Kalodner*, 320 Pa. 421, 184 A. 37, 43."

"As applied to taxation "exemption" is freedom from burden of enforced contributions to expenses and maintenance of government. [Cite omitted.]

"Credit against income tax for income tax paid to other state or country is an "exemption". [Cites omitted.]

"Deduction made in determining taxable income is an "exemption,"...." [Cite omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 681]

**26 U.S.C.S. §62(a)(1)-(13)**

**"Adjusted gross income defined.**

**"(a) General rule.**

"For purposes of this subtitle, the term "adjusted gross income" means, in the case of an individual, gross income minus the following deductions:

**"(1) Trade and business deductions."**

**"(2) Certain trade and business deductions of employees"**

**"(3) Losses from sale or exchange of property."**

**"(4) Deductions attributable to rents and royalties."**

**"(5) Certain deductions of life tenants and income**

**beneficiaries of property."**

**"(6) Pension, profit-sharing, and annuity plans of self-employed individuals."**

**"(7) Retirement savings."**

**"(8) Certain portion of lump-sum distributions from pension plans taxed under section 402(e)."**

**"(9) Penalties forfeited because of premature withdrawal of funds from time savings accounts or deposits."**

**"(10) Alimony."**

**"(11) Reforestation expenses."**

**"(12) Certain required repayments of supplemental unemployment compensation benefits."**

**"(13) Jury duty pay remitted to employer"**

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[Contents of paragraphs 1-13 are omitted.]  
[26 U.S.C.S. §62(a)(1)-(13)]

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**26 U.S.C. §63(a) & (b). Taxable income defined**

"(a) **In general.**--Except as provided in subsection (b), for purposes of this subtitle, the term "taxable income" means gross income minus the deductions allowed by this chapter (other than the standard deduction).

"(b) **Individuals who do not itemize their deductions.**--In the case of an individual who does not elect to itemize his deductions for the taxable year, for purposes of this subtitle, the term "taxable income" means adjusted gross income, minus--

"(1) the standard deduction, and

"(2) the deduction for personal exemptions provided in section 151."

[26 U.S.C. §63(a) & (b)]

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**26 U.S.C.S. §872****"Gross income.**

"(a) **General rule.** In the case of a nonresident alien individual, except where the context clearly indicates otherwise, gross income includes only--

"(1) gross income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, and

gross income which is effectively connected with the conduct of a trade or business within the United States."

[26 U.S.C.S. §872]

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**Black's Law Dictionary: Investment**

"INVESTMENT. The placing of capital or laying out of money in a way intended to secure income or profit from its employment."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 960]

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**Black's Law Dictionary: Gain**

"GAIN. Profits; winnings; increment of value. *Gray v. Darlington*, 15 Wall. 65, 21 L.Ed. 45; *Thorn v. De Breteuil*, 86 App.Div. 405, 83 N.Y.S. 849. Difference between receipts and expenditures; pecuniary gain. *Stanton v. Zercher*, 101 Wash. 383, 172 P. 559, 562; *Rooney v. City of Omaha*, 105 Neb. 447, 181 N.W. 143, 145. Difference between cost and sale price. *Weil v. State*, 237 Ala. 293, 186 So. 467, 469.

"Gain derived from capital," is a gain, profit, or something of exchangeable value proceeding from the property, severed from the capital however invested, and received or drawn by claimant for his separate use, benefit, and disposal. *Commissioner of Internal Revenue v. Simmons Gin Co.*, C.C.A.10, 43 F.2d. 327, 328."

[Black's Law Dictionary, Fourth Edition, 1951, p. 807]

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**Black's Law Dictionary: Realize**

"REALIZE. To convert any kind of property into money; but especially to receive the returns from an investment. *Weldon v. Newsom*, 67 Colo. 502, 186 P. 516, 517."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1431]

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**Black's Law Dictionary: Occupation**

"OCCUPATION TAX. A tax imposed upon an occupation or the prosecution of a business, trade, or profession; not a tax on property, or even the capital employed in the business, but an excise tax on the business itself; to be distinguished from a "license tax," which is a fee or exaction for the privilege of engaging in the business, not for its prosecution. *Adler v. Whitbeck*, 44 Ohio.St. 539, 9 N.E. 672; *Appeal of Banger*, 109 Pa. 95; *Pullman Palace Car Co. v. State*, 64 Tex. 274, 53 Am.Rep. 758."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1230]

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**Black's Law Dictionary: License**

"LICENSE. Certificate or the document itself which gives permission."

"A permission, by a competent authority to do some act which without such authorization would be illegal, or would be a trespass or a tort. [ \* \* \* ] A permit or privilege to do what otherwise would be unlawful."

"A license is a permission to do something which without such permission would have been unauthorized or prohibited."

"Authority or permission to do or carry on some trade or business which would otherwise be unlawful." [Cites omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1067]

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**Black's Law Dictionary: Franchise Tax**

"FRANCHISE TAX. A tax on the franchise of a corporation, that is, on the right and privilege of carrying on business in the character of a corporation, for the purposes for which it was created, and in the conditions which surround it." "Though the value of the franchise, for purposes of taxation, may be measured by the amount of business done, or the amount of earnings or dividends, or by the total value of the capital or stock of the corporation in excess of its tangible assets, a franchise tax is not a tax on either property, capital, stock, earnings, or dividends. In a technical sense, but on all intangible property of such a corporation, not otherwise taxed, used in state as component part of corporation's entire system."

"It is tax on intangible values inhering to business and added value given to tangible property, being "ad valorem" as distinguished from "excise" or "privilege" tax. [Cites omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 787]

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**Black's Law Dictionary: Franchise**

"FRANCHISE. A special privilege conferred by government on individual or corporation, and which does not belong to citizens of country generally of common right."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 786]

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**The Federalist Papers, No. 30 (Dec. 28, 1787)**

"The more intelligent adversaries of the new Constitution admit the force of this reasoning; but they qualify their admission by a distinction between what they call INTERNAL and EXTERNAL taxation. The former they would reserve to the State governments; the latter, which they explain into commercial imposts, or rather duties on imported articles, they declare themselves willing to concede to the federal head.

[The Federalist Papers, No. 30, *New York Packet*, Friday, December 28, 1787, by Alexander Hamilton]

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**Hylton v. United States (Feb. 1796)**

"If it can be considered as a tax neither direct within the meaning of the Constitution, nor comprehended within the term *duty, impost* or *excise*; there is no provision in the Constitution, one way or another, and then it must be left to such an operation of the power, as if the authority to lay taxes had been given generally in all instances, without saying whether they should be apportioned or uniform; and in that case, I should presume, the tax ought to be uniform; because the present Constitution was particularly intended to affect individuals, and not states, except in particular cases specified: And this is the leading distinction between the articles of Confederation and the present Constitution."

[*Hylton v. United States*, 3 U.S. 171, 3 Dall. 171, 1 L.Ed. 556 (1796)]

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**Commercial League Association of America v. People ex rel. Needles, Auditor (Sept. 1878)**

"The object of the statute, no doubt, was to prevent the corporation from making dividends of profits among the members, as do corporations organized for pecuniary profit; and while the statute might subserve a useful purpose if construed in this manner, we fail to perceive any benefit which would result if a member of the association, who happened to fill an office, should be deprived of receiving compensation for his labor as an officer. **Compensation for labor can not be regarded as profit, within the meaning of the law. The word "profit," as ordinarily used, means the gain made upon any business or investment--a different thing altogether from mere compensation for labor.**" [Bold added.]

[*Commercial League Association of America v. People ex rel. Needles, Auditor*, 90 Ill. 166 (1878)]

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**Springer v. United States (Jan. 24, 1880)**

"A warrant for the collection of taxes, authorizing the sale of property thereon, is due process of law."

"If instructions to a jury are asked in a mass, and one of them be wrong, all may be rejected."

"Direct taxes, within the meaning of the Constitution, are only capitation taxes, as expressed in that instrument, and taxes on real estate."

"*Mr. William M. Springer*, in person for plaintiff in error:

"The tax which was levied upon the plaintiff's income, gains<sup>o</sup> and profits, as set forth in the record, and by the pretended virtue of the Acts of Congress and parts of Acts therein mentioned, is a direct tax."

"(i) A tax upon salaries is a direct tax. It falls wholly upon the payer. To call it an indirect tax would do violence to the meaning of words and would simply be ridiculous. It is unnecessary to cite authorities."

"*Mr. Justice Swayne*, delivered the opinion of the court:

"The tax which was levied on the plaintiff's income, gains and profits, as set forth in the record, and by pretended virtue of the Acts of Congress and parts of Acts therein mentioned, is a *direct tax*."

"The prompt payment of taxes is always important to the public welfare. It may be vital to the existence of a government. The idea that every tax payer is entitled to the delays of litigation is unreason. If the laws here in question involved any wrong or unnecessary harshness, it was for Congress or the people who make congresses to see that the evil was corrected. The remedy does not lie with the judicial branch of the Government."

"It is important to look into the legislation of Congress touching the subject since that time. The following summary will suffice for our purpose. We shall refer to the several Acts of Congress, to be examined according to their sequence in dates. In all of them the aggregate amount required to be collected was apportioned among the several States.

"The Act of July 14, 1789, ch. 75, 1 Stat. at L., 597. This Act imposed a tax upon real estate and a capitation tax upon slaves.

"The Act of August 2, 1813, ch. 37, 3 Stat. at L. 53. By this Act the tax was imposed upon real estate and slaves, according to their respective values in money.

"The Act of January 9, 1815, ch. 21, 3 Stat. at L., 164. This Act imposed the tax upon the same descriptions of property, and in like manner as the preceding Act.

"The Act of February 27, 1815, ch. 60, 3 Stat. at L., 216, applied to the District of Columbia the provisions of the Act of January 19, 1815.

"The Act of March 5th, 1816, ch. 24, 3 Stat. at L., 255, repealed the two preceding Acts, and re-enacted their provisions to enforce the collection of the smaller amount of tax thereby prescribed.

"The Act of August 5, 1861, ch. 45, 12 Stat. at L., 294, required the tax to be levied wholly on real estate.

"The Act of June 7, 1862, ch. 98, 12 Stat. at L. 422, and the Act of February 6, 1863, ch. 21, 12 Stat. at L., 640, both relate only to the collection, in insurrectionary districts, of the direct tax imposed by the Act of August 5, 1861, and need not, therefore, be more particularly noticed.

"It will thus be seen that whenever the Government has imposed a tax which it recognized as a *direct tax*, it has never been applied to any objects but real estate and slaves. The latter application may be accounted for upon two grounds: (1) In some of the States, slaves were regarded as real estate. 1 Hurd. Slavery, 239; *Bk. v. Fenno*, 8 Wall., 533 [75 U.S., XIX., 482]; and (2) such an extension of the tax lessened the burden upon the real estate where slavery existed, while the result to the national Treasury was the same, whether the slaves were omitted or included."

In *Bk. v. Fenno [supra]*, the tax which came under consideration was one of ten per cent upon the notes of state banks paid out by other banks, state or national. The same conclusions were reached by the court as in the case of the *Ins. Co. v. Soule*, Chief Justice Chase delivered the opinion of the court. In the course of his elaborate examination of the subject he said: "It may be rightly affirmed that, in the practical construction of the Constitution by Congress, direct taxes have been limited to taxes on land and appurtenances and taxes on polls, or capitation taxes."

"In *Scholey v. Rew*, 23 Wall., 331 [90 U.S., XXIII., 99], the tax involved was a succession tax, imposed by the Acts of Congress of June, 30, 1864, 13 Stat. at L., 223, and July 13, 1866, 14 Stat. at L. 98. It was held that the tax was not a *direct tax*, and that it was constitutional and valid. In delivering the opinion of the court, *Mr. Justice Clifford*, after remarking that the tax there in question was not a direct tax, said: "Instead of that, it is plainly an excise tax or duty, authorized by section 1, article 8, of the Constitution, which vests the power in Congress to lay and collect taxes, duties, imposts and excises to pay the debts and provide for the common defense and public welfare."

"He said further: "Taxes on houses, lands and other permanent real estate have always been deemed to be direct taxes and capitation taxes, by the express words of the Constitution, are within the same category; but it has never been decided that any other legal exactions for the support of the Federal Government fall within the condition that unless laid in proportion to numbers the assessment is invalid."

.. the tax of which the plaintiff in error complains is within the category of an excise or duty." [Brackets original.]

[*Springer v. United States*, 102 U.S. 586 (1880)]

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**Pollock v. Farmers' Loan & Trust Co. (May 20, 1895)**

"As heretofore stated, the constitution divided federal taxation into two great classes,--the class of direct taxes, and the class of duties, imposts, and excises, --and prescribed two rules which qualified the grant of power as to each class.

"The power to lay direct taxes, apportioned among the several states in proportion to their representation in the popular branch of congress,--representation based on population as ascertained by the census,--was plenary and absolute, but to lay direct taxes without apportionment was forbidden. The power to lay duties, imposts, and excises was subject to the qualification that the imposition must be uniform throughout the United States."

"The words of the constitution are to be taken in their obvious sense, and to have a reasonable construction. In *Gibbons v. Ogden*, Mr. Chief Justice Marshall, with his usual felicity, said: "As men whose intentions require no concealment generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said."

"We know of no reason for holding otherwise than that the words "direct taxes," on the one hand, and "duties, imposts and excises," on the other, were used in the constitution in their natural and obvious sense. Nor, in arriving at what those terms embrace, do we perceive any ground for enlarging them beyond, or narrowing them within, their natural and obvious import at the time the constitution was framed and ratified."

"It is elementary that the same statute may be in part constitutional and in part unconstitutional, and, if the parts are wholly independent of each other, that which is constitutional may stand, while that which is unconstitutional will be rejected. And in the case before us there is no question as to the validity of this act, except sections 27 to 37, inclusive, which relate to the subject which has been under discussion; and, as to them, we think the rule laid down by Chief Justice Shaw in *Warren v. Charlestown*, 2 Gray, 84, is applicable,-that if the different parts "are so mutually connected with and dependent on each other, as conditions, considerations, or compensations for each other, as to warrant a belief that the legislature intended them as a whole, and that if all could not be carried into effect the legislature would not pass the residue independently, and some parts are unconstitutional, all the provisions which are thus dependent, conditional, or connected must fall with them.""

[*Pollock v. Farmers' Loan & Trust Co.*, 158 U.S. 601 (1895)]

**Knowlton v. Moore (May 14, 1900)**

"Direct taxes bear immediately upon persons, upon possessions and enjoyments of rights. Indirect taxes are levied upon the happening of an event or an exchange."

"Certainly, a tax placed upon an inheritance or legacy diminishes, to the extent of the tax, the value of the right to inherit or receive, but this is a burden cast upon the recipient, and not upon the power of the state to regulate. This distinction shows the inapplicability to the case in hand of the statement made by Mr. Chief Justice Marshall in *McCulloch v. Maryland*, 4 Wheat. 431, 4 L.Ed. 607, "That the power to tax involves the power to destroy." This principle is pertinent only when there is no power to tax a particular subject, and has no relation to a case where such right exists. In other words, the- power to destroy which may be the consequence of taxation is a reason why the right to tax should be confined to subjects which may be lawfully embraced therein, even although it happens that in some particular instance no great harm may be caused by the exercise of the taxing authority as to a subject which is beyond its scope. But this reasoning has no application to a lawful tax, for if it had there would be an end of all taxation; that is to say, if a lawful tax can be defeated because the power which is manifested by its imposition may when further exercised be destructive, it would follow that every lawful tax would become unlawful, and therefore no taxation whatever could be levied. Under our constitutional system both the national and the state governments, moving in their respective orbits, have a common authority to tax many and diverse objects, but this does not cause the exercise of its lawful attributes by one to be a curtailment of the powers of government of the other, for if it did there would practically be an end of the dual system of government which the Constitution established."

[*Knowlton v. Moore*, 178 U.S. 41 (1900)]

**Patton v. Brady (Mar. 17, 1902)**

"A case arises under the Constitution of the United States, of which the circuit court has original jurisdiction without diversity of citizenship, where the **plaintiffs right of recovery depends upon the unconstitutionality of an act of Congress.**" [Bold added.]

"Mr. Justice **Brewer** delivered the opinion of the court:

"The first contention of the defendant is that the circuit court did not have jurisdiction. The parties, it is true, were both

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citizens of Virginia, but the question presented in the declaration was the constitutionality of an act of Congress. The plaintiff's right of recovery was rested upon the unconstitutionality of the act, and that was the vital question. The circuit courts of the United States "have original cognizance, concurrent with the courts of the several states, of all suits of a civil nature at common law or in equity . . . arising under the Constitution or laws of the United States." 25 Stat. at L. 433, chap. 866."

"Now the gravamen of the plaintiff's complaint is that he was compelled to pay to the defendant the sum of \$3,062.28 to protect his property from unlawful seizure for illegal taxes. In such cases, having paid under protest, he can recover in an action of assumpsit the amount thus wrongfully taken from him.

"Appropriate remedy to recover back money paid under protest on account of duties or taxes erroneously or illegally assessed is an action of assumpsit for money had and received. Where the party voluntarily pays the money he is without remedy; but if he pays it by compulsion of law, or under protest, or with notice that he intends to bring suit to test the validity of the claim, he may recover it back, if the assessment was erroneous or illegal, in an action of assump sit for money had and received." *Philadelphia v. The Collector*, 5 Wall. 720, 731, *sub nom. Philadelphia v. Diehl*, 18 L.Ed. 614, 616. See also *Dooley v. United States*, 182 U.S. 222, 45 L.Ed. 1074, 21 Sup.Ct.Rep. 762."

"We pass, therefore, to consider the merits of the case, and here the first question is, What is the nature of the tax: Obviously it was intended by Congress as an excise"

"Ever since the early part of the Civil War there has been a body of legislation, gathered in the statutes under the title *Internal Revenue*, by which, upon goods intended for consumption, excises have been imposed in different forms at some time intermediate the beginning of manufacture or production and the act of consumption. Among the articles thus subjected to those excises have been liquors and tobacco, appropriately selected therefor on the ground that they are not a part of the essential food supply of the nation, but are among its comforts and luxuries."

"Turning to Blackstone, vol. 1, p. 318, we find an excise defined: "An inland imposition, paid sometimes upon the consumption of the commodity, or frequently upon the retail sale, which is the last stage before the consumption." This definition is accepted by Story in his Constitution of the United States, §953. Cooley in his work on Taxation, page 3, defines it as "an inland impost levied upon articles of manufacture or sale, and also upon licenses to pursue certain trades, or to deal in certain commodities." Bouvier and Black, respectively, in their dictionaries give the same definition. If we turn to the general dictionaries, Webster's International calls it "an inland duty or impost operating as an indirect tax on the consumer, levied upon certain specified articles, as tobacco, ale, spirits, etc., grown or manufactured in the country. It is also levied on licenses to pursue certain trades and deal in certain commodities." The definition in the Century Dictionary is substantially the same, though in addition this is quoted from Andrews on Revenue Law, §133: "Excises is a word generally used in contradistinction to imposts in its restricted sense, and is applied to internal or inland impositions, levied sometimes upon the consumption of a commodity, sometimes upon the retail sale or it, and sometimes upon the manufacture of it."

"It is true other counsel in their brief have advanced a very elaborate and ingenious argument to show that this is a direct tax upon property which must be apportioned according to population within the rule laid down in the *Income tax Cases*, but, as we have seen, it is not a tax upon property as such, but upon certain kinds of property, having reference to their origin and their intended use. It may be, as Dr. Johnson said, "a hateful tax levied upon commodities," an opinion evidently shared by Blackstone, who says, after mentioning a number of articles that had been added to the list of those excised, "a list which no friend to his country would wish to see further increased." But these are simply considerations of policy, and to be determined by the legislative branch, and not of power, to be determined by the judiciary. We conclude, therefore, that the tax which is levied by this tax is an excise, properly so called, and we proceed to consider the further propositions presented by counsel."

"Courts may not in this respect revise the action of Congress. That body determines the question of war, and it may therefore rightfully prescribe the means necessary for carrying on that war. Loan or tax is possible. It may adopt either, or divide between the two. If it determines in whole or in part on tax, that means an increase in the existing rate or perhaps in the subjects of taxation, and the judgment of Congress in respect thereto is not subject to judicial challenge. Wisely was it said by Mr. Justice Cooley in his work on Taxation, page 34:

"The legislative makes, the executive executes, and the judiciary construes, the laws.' Chief Justice Marshall, in *Wayman v. Southard*, 10 Wheat. 1, 46, 6 L.Ed. 253, 263. The legislature must therefore determine all questions of state necessity, discretion, or policy involved in ordering a tax and in apportioning it; must make all the necessary rules and regulations which are to be observed in order to produce the desired returns, and must decide upon the agencies by means of which collections shall be made. 'The judicial tribunals of the state have no concern with the policy of legislation. That is a matter resting altogether in the discretion of another coordinate branch of the government. The judicial power cannot legitimately question the policy or refuse to sanction the provisions of any law not inconsistent with the fundamental law of the state.' Chief Justice Redfield, in *Re Powers*, 25 Vt. 261, 265. . . . But so long as the legislation is not colorable merely it is confined to the enactment of what is in its nature strictly a tax law, and so long as none of the constitutional rights of the citizen are violated in the directions prescribed for enforcing the tax, the legislation is of supreme authority. Taxes may be

and often are oppressive to the persons and corporations taxed; they may appear to the judicial mind unjust and even unnecessary, but this can constitute no reason for judicial interference.""

"Counsel speaks of the power to impose an excise as an arbitrary, unrestrained power, but the Constitution, art. 1, §8 provides that "all duties, imposts, and excises shall be uniform throughout the United States." The exercise of the power is, therefore, limited by the rule of uniformity. The framers of the Constitution, the people who adopted it, thought that limitation sufficient, and courts may not add thereto. That uniformity has been adjudged to be a geographical' uniformity. In the *Head Money Cases*, 112 U.S. 580, 594, *sub nom. Edye v. Robertson*, 28 L.Ed. 798, 802, 5 Sup.Ct.Rep. 247, 252, it was said:

"The tax is uniform when it operates with the same force and effect in every place where the subject of it is found. The tax in this case, which, as far as it can be called a tax, is an excise duty on the business of bringing passengers from foreign countries into this, by ocean navigation, is uniform, and operates precisely alike in every port of the United States where such passengers can be landed. . . . Perfect uniformity and perfect equality of taxation, in all the aspects in which the human mind can view it, is a baseless dream, as this court has said more than once. *State Railroad Tax Cases*, 92 U.S. 575, 612, 23 L.Ed. 663, 673. Here there is substantial uniformity within the meaning and purpose of the Constitution."

"So also in the recent case of *Knowlton v. Moore*, 178 U.S. 41, 106, 44 L.Ed. 969, 995, 20 Sup.Ct.Rep. 747, 772.

"By the result, then, of an analysis of the history of the adoption of the Constitution, it becomes plain that the words 'uniform throughout the United States' do not signify an intrinsic, but simply a geographical uniformity. And it also results that the assertion to which we at the outset referred, that the decision in the *Head Money Cases*, holding that the word 'uniform' must be interpreted in a geographical sense, was not authoritative, because that case in reality solely involved the clause of the Constitution forbidding preferences between ports, is shown to be unsound, since the preference clause of the Constitution and the uniformity clause were, in effect, in framing the Constitution, treated, as respected their operation, as one and the same thing, and embodied the same conception."

"Geographical uniformity being, therefore, that only which is prescribed by the Constitution, the courts may not add new conditions, and the statute in question fully complies with that requirement. It is not the province of the judiciary to inquire whether the excise is reasonable in amount or in respect to the property to which it is applied. Those are matters in respect to which the legislative determination is final."

[*Patton v. Brady*, 184 U.S. 608, 22 S.Ct. 493, 46 L.Ed. 713 (1902)]

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### **Flint v. Stone Tracy Co. (Mar. 13, 1911)**

"Excises are taxes laid upon the manufacture, sale or consumption of commodities within the country, upon licenses to pursue certain occupations and upon corporate privileges; the requirement to pay such taxes involves the exercise of a privilege." p. 151.

"The thing taxed is not the mere dealing in merchandise, in which the actual transactions may be the same, whether conducted by individuals or corporations, but the tax is laid upon the privileges which exist in conducting business with the advantages which inhere in the corporate capacity of those taxed, and which are not enjoyed by private firms or individuals. These advantages are obvious, and have led to the formation of such companies in nearly all branches of trade. The continuity of the business, without interruption by death or dissolution, the transfer of property interests by the disposition of shares of stock, the advantages of business controlled and managed by corporate directors, the general absence of individual liability, these and other things inhere in the advantages of business thus conducted, which do not exist when the same business is conducted by private individuals or partnerships. **It is this distinctive privilege which is the subject of taxation**, not the mere buying or selling or handling of goods, which may be the same, whether done by corporations or individuals." pp. 161-2. [Bold added.]

"It is therefore well settled by the decisions of this court that when the sovereign authority has exercised the right to tax a legitimate subject of taxation as an exercise of a franchise or privilege, it is no objection that the measure of taxation is found in the income produced in part from property which of itself considered is nontaxable" p. 165.

"Conceding the power of Congress to tax the business activities of private corporations, including, as in this case, the privilege of carrying on business in a corporate capacity, the tax must be measured by some standard and none can be chosen which will operate with absolute justice upon all corporations. Some corporations do a large business upon a small amount of capital; others with a small business may have a large capital." p. 165.

"We must not forget that the right to select the measure and objects of taxation devolves upon the Congress, and not upon the courts, and such selections are valid unless constitutional limitations are overstepped. "It is no part of the function of a court to inquire into the reasonableness of the excise, either as respects the amount or the property upon which it is imposed." [Cites omitted.] p. 167.

"Courts cannot substitute their judgment for that of the legislature." p. 174.

[*Flint v. Stone Tracy Co.*, 220 U.S. 107, 31 S.Ct. 342, 55 L.Ed. 389 (1911)]

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### **Sovereignty and Freedom Points and Authorities**



**Stratton's Independence v. Howbert (Dec. 1, 1913)**

As has been repeatedly remarked, the corporation tax act of 1909 was not intended to be and is not, in any proper sense, an income tax law. This court had decided in the Pollock Case that the income tax law of 1894 amounted in effect to a direct tax upon property, and was invalid because not apportioned according to population as prescribed by the Constitution. The act of 1909 avoided this difficulty by imposing not an income tax, but an excise tax upon the conduct of business in a corporate capacity, measuring, however, the amount of tax by the income of the corporation, with certain qualifications prescribed by the act itself. *Flint v. Stone Tracy Co.*, 220 U.S. 107, 55 L.Ed. 389, 31 Sup.Ct.Rep. 342, Ann.Cas. 1912 B, 1312; *McCoach v. Minehill & S. H. R. Co.* 228 U.S. 295, 57 L.Ed. 842, 33 Sup.Ct.Rep. 419; *United States v. Whitridge* (decided at this term, 231 U.S. 144, 58 L.Ed. --, 34 Sup.Ct.Rep. 24." [Bold added.]

"And, however the operation shall be described, the transaction is indubitably "business" within the fair meaning of the act of 1909; and the gains derived from it are properly and strictly the income from that business; for "income" may be defined as the gain derived from capital, from labor, or from both combined." [Bold added.]

"Corporations engaged in such business share in the benefits of the Federal government, and ought as reasonably to contribute to the support of that government as corporations that conduct other kinds of profitable business.

"As to what should be deemed "income" within the meaning of §38, it of course need not be such an income as would have been taxable as such, for at that time (the 16th Amendment not having been as yet ratified) income was not taxable as such by Congress without apportionment according to population, and this tax was not so apportioned. Evidently Congress adopted the income as the measure of the tax to be imposed with respect to the doing of business in corporate form because it desired that the excise should be imposed, approximately at least, with regard to the amount of benefit presumably derived by such corporations from the current operations of the government. In *Flint v. Stone Tracy Co.*, 220 U.S. 107, 165, 55 L.Ed. 107 [sic], 31 Sup.Ct.Rep. 342, Ann.Cas. 1912 B, 1312, it was held that Congress, in exercising the right to tax a legitimate subject of taxation as a franchise or privilege, was not debarred by the Constitution from measuring the taxation by the total income, although derived in part from property which, considered by itself, was not taxable. It was reasonable that Congress should fix upon gross income, without distinction as to source, as a convenient and sufficiently accurate index of the importance of the business transacted. And from this point of view, it makes little difference that the income may arise from a business that theoretically or practically involves a wasting of capital."

[*Stratton's Independence v. Howbert*, 231 U.S. 399 (1913)]

**Brushaber v. Union Pacific Railroad Co. (Jan. 24, 1916)**

"We are of opinion, however, that the confusion is not inherent, but rather arises from the conclusion that the 16th Amendment provides for a hitherto unknown power of taxation; that is, a power to levy an income tax which, although direct, should not be subject to the regulation of **apportionment** applicable to all other direct taxes."

.. the conclusion reached in the Pollock case did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, but, on the contrary, recognized the fact that taxation on income was, in its nature, an excise, entitled to be enforced as such...."

[*Brushaber v. Union Pacific Railroad Co.*, 240 U.S. 1 (1916)]

**Stanton v. Baltic Mining Co. (Feb. 21, 1916)**

"Labor, agricultural, or horticultural organizations, mutual savings banks, etc., could be excepted from the operation of the income tax provisions of the tariff act of October 3, 1913 (38 Stat. at L. 166, chap. 16), without rendering the tax repugnant to the Federal Constitution."

"The whole purpose of U.S. Const., 16th Amend., giving Congress the power "to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration," was to exclude the source from which a taxed income was derived as the criterion by which to determine the applicability of the constitutional requirement as to apportionment of direct taxes."

.. by the previous ruling it was settled that the provisions of the 16th Amendment conferred no new power of taxation, but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged, and being placed in the category of direct taxation subject to apportionment by a consideration of the sources from which the income was derived, --that is, by testing the tax not by what it was, a tax on income, but by a mistaken theory deduced from the origin or source of the income taxed."

[*Stanton v. Baltic Mining Co.*, 240 U.S. 103, 36 S.Ct. 278 (1916)]

**Sovereignty and Freedom Points and Authorities**

**William E. Peck & Co. v. Lowe (May 20, 1918)**

"The plaintiff is a domestic corporation chiefly engaged in buying goods in the several states, shipping them to foreign countries and there selling them."

"The tax was levied under the Act of October 3, 1913, c. 16, §11, 38 Stat. 166, 172, which provided for annually subjecting every domestic corporation to the payment of a tax of a specified per centum of its "entire net income arising or accruing from all sources during the preceding calendar year." Certain fraternal and other corporations as also income from certain- enumerated sources, were specifically excepted, but none of the exceptions included the plaintiff or any part of its income. So, tested merely by the terms of the act, the tax collected from the plaintiff was rightly computed on its total net income. But as the act obviously could not impose a tax forbidden by the Constitution, we proceed to consider whether the tax, or rather the part in question, was forbidden by the constitutional provision on which the plaintiff relies."

"The Sixteenth Amendment, although referred to in argument, has no real bearing and may be put out of view. As pointed out in recent decisions, it does not extend the taxing power to new or excepted subjects, but merely removed all occasion, which otherwise might exist, for an apportionment' among the states of taxes laid on income, whether it be derived from one source or another."

[William E. Peck & Co. v. Lowe, 247 U.S. 165, 38 S.Ct. 432 (1918)]

**Doyle v. Mitchell Bros. Co. (May 20, 1918)**

"Whatever difficulty there may be about a precise and scientific definition of "Income," it imports, as used here, something entirely distinct from principal or capital either as a subject of taxation or as a measure of the tax; conveying rather the idea of gain or increase arising from corporate activities."

[Doyle v. Mitchell Bros Co., 247 U.S. 179 (1918)]

**Southern Pac. Co. v. Lowe (June 3, 1918)**

"We must reject in this case, as we have rejected in cases arising under the Corporation Excise Tax Act of 1909 [cites omitted] the broad contention submitted in behalf of the government that all receipts--everything that comes in--are income within the proper definition of the term "gross income," and that the entire proceeds of a conversion of capital assets, in whatever form and under whatever circumstances accomplished, should be treated as gross income."

[Southern Pac. Co. v. Lowe, 247 U.S. 330, 38 S.Ct. 540 (1918)]

**Eisner v. Macomber (Mar. 8, 1920)**

"Income" is the gain derived from capital, from labor, or from both combined; something of exchangeable value, proceeding from the property severed from the capital, however invested or employed, and received or drawn by the recipient for his separate use, benefit, and disposal."

"The Sixteenth Amendment must be construed in connection with the taxing clauses of the original Constitution and the effect attributed to them before the amendment was adopted. In Pollock v. Farmers' Loan & Trust Co.,...under the Act of August 27, 1894 (28 Stat. 509, 553, c. 349, §27), it was held that taxes upon rents and profits of real estate and upon returns from investments of personal property were in effect direct taxes upon the property from which such income arose, imposed by reason of ownership; and that Congress could not impose such taxes without apportioning' them among the states according to population, as required by article 1, §2, cl. 3 and section 9, cl. 4, of the original Constitution.

"Afterwards, and evidently in recognition of the limitation upon the taxing power of Congress thus determined, the Sixteenth Amendment was adopted, in words lucidly expressing the object to be accomplished:

"The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration."

"As repeatedly held, this did not extend the taxing power to new subjects, but merely removed the necessity which otherwise might exist for an apportionment among the states of taxes laid on income.

"A proper regard for its genesis, as well as its very clear language, requires also that this amendment shall not be extended by loose construction, so as to repeal or modify, except as applied to income, those provisions of the Constitution that require an apportionment according to population for direct taxes upon property, real and personal. This limitation still has an appropriate and important function, and is not to be overridden by Congress or disregarded by the courts.

"In order, therefore, that the clauses cited from article 1 of the Constitution may have proper force and effect, save only as modified by the amendment, and that the latter also may have proper effect, it becomes essential to distinguish between what is and what is not "income," as the term is there used, and to apply the distinction, as cases arise, according to truth

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and substance, without regard to form. Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully exercised.

"The fundamental relation of "capital" to "income" has been much discussed by economists, the former being likened to the tree or the land, the latter to the fruit or the crop; the former depicted as a reservoir supplied from springs, the latter as the outlet stream, to be measured by its flow during a period of time. For the present purpose we require only a clear definition of the term "income," as used in common speech, in order to determine its meaning in the amendment, and, having formed also a correct judgment as to the nature of a stock dividend, we shall find it easy to decide the matter at issue.

"After examining dictionaries in common use, we find little to add to the succinct definition adopted in two cases arising under the Corporation Tax Act of 1909, "Income may be defined as the gain derived from capital, from labor, or from both combined," provided it be understood to include profit gained through a sale or conversion of capital assets, to which it was applied in the Doyle Case.

"Brief as it is, it indicates the characteristic and distinguishing attribute of income essential for a correct solution of the present controversy. The government, although basing its argument upon the definition as quoted, placed chief emphasis upon the word "gain," which was extended to include a variety of meanings; while the significance of the next three words was either overlooked or misconceived. "*Derived--from--capital*"; "*the gain-derived-from-capital*," etc. Here we have the essential matter: *not a gain accruing to capital*; *not a growth or increment of value in the investment*; but a gain, a profit, something of exchangeable value, *proceeding from the property, severed' from the capital*, however invested or employed, and *coming in*, being "derived"--that is, *received or drawn by the recipient (the taxpayer) for his separate use, benefit and disposal--that is income derived from property*. Nothing else answers the description.

"The same fundamental conception is clearly set forth in the Sixteenth Amendment--"*incomes, from whatever source derived*"--the essential thought being expressed with a conciseness and lucidity entirely in harmony with the form and style of the Constitution." [Emphasis original; citations omitted.]

[*Eisner v. Macomber*, 252 U.S. 189 (1920)]

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### **Evans v. Gore (June 1, 1920)**

"Act Feb. 24, 1919, §213 (Comp. St. Ann. Supp. 1919, §6336ff), so far as it imposes a tax on the income of judges of the courts of the United States, including their salaries, violates Const. art. 3, §1, 1425 providing that the compensation of judges shall not be diminished during their continuance in office, and the fact that the income of other persons is likewise taxed does not validate the tax."

"Const. **Amend. 16**, authorizing Congress to collect taxes on incomes, from whatever source derived, without apportionment, among the states, **does not extend the taxing power to new or excepted subjects**, but merely removes all occasion otherwise existing for an apportionment, and hence does not authorize a tax on the salary of a federal judge, contrary to article 3, §1.

"True, the taxing power is comprehensive and acknowledges few exceptions. But that there are exceptions, besides the one we here recognize and sustain, is well settled. In *Collector v. Day*, 11 Wall. 113, 20 L.Ed. 122, **it was held that Congress could not impose an income tax in respect of the salary of a judge of a state court**; in *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, 585, 601, 652, 653, 15 Sup.Ct. 673, 39 L.Ed. 759, it was held--the full court agreeing on this point--that Congress was without power to impose such a tax in respect of interest received from bonds issued by a state or any of its counties or municipalities; and in *United States v. Railroad Co.*, 17 Wall. 322, 21 L.Ed. 597, there was a like holding as to municipal revenues derived by the city of Baltimore from its ownership of stock in a railroad company. **None of those decisions was put on any express prohibition in the Constitution, for there is none; but all recognize and gave effect to a prohibition implied from the independence of the states within their own spheres.**"

"Does the Sixteenth Amendment authorize and support this tax and the attendant diminution; that is to say, does it bring within the taxing powers subjects theretofore excepted? The court below answered in the negative; and counsel for the government say:

"It is not, in view of recent decisions, contended that this amendment rendered anything taxable as income that was not so taxable before."

"By the Constitution all direct taxes were required to be apportioned among the several states according to their population, as ascertained by a census or enumeration (Article 1, §2, cl. 3, and section 9, cl. 4) but no such requirement was imposed as to other taxes. And apart from capitation taxes, with which we now are not concerned, no rule was given for determining what taxes were direct and therefore to be apportioned, or what were indirect and not within that requirement. Controversy ensued and ultimately centered around the right classification of income from taxable real estate and from investments in taxable personal property. The matter then came before this court in *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, 15 Sup.Ct. 673, 39 L.Ed. 759; *Id.*, 158 U.S. 601, 15 Sup.Ct. 912, 39 L.Ed. 1108, and the decision when

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announced disclosed that the same differences in opinion existing elsewhere were shared by the members of the court, five, the controlling number, regarding a tax on such income as in effect a direct tax on the property from which it arose, and therefore as requiring apportionment, and four regarding it as indirect and not to be apportioned. Much of the law then under consideration had been framed according to the latter view, and because of this and the adjudged inseparability of other portions the entire law was held invalid. Afterwards, to enable Congress to reach all taxable income more conveniently and effectively than would be possible as to much of it if an apportionment among the states were essential, the Sixteenth Amendment was proposed and ratified. In other words, the purpose of the amendment was to eliminate all occasion for such an apportionment because of the source from which the income came,--a change in no wise affecting the power to tax but only the mode of exercising it."

"True, Gov. Hughes, of New York, in a message laying the amendment before the Legislature of that state for ratification or rejection, expressed some apprehension lest it might be construed as extending the taxing power to income not taxable before; but his message promptly brought forth from statesmen who participated in proposing the amendment such convincing expositions of its purpose, as here stated, that the apprehension was effectively dispelled and ratification followed."

... we again held, citing the prior cases, that the amendment "did not extend the taxing power to new subjects, but merely removed the necessity which otherwise might exist for an apportionment among the states of taxes laid on income."

"After further consideration, we adhere to that view and accordingly hold that the Sixteenth Amendment does not authorize or support the tax in question." [Bold added.]

[*Evans v. Gore*, 253 U.S. 245 (1920)]

### **Merchants' Loan & Trust Co. v. Smietanka (Mar. 28, 1921)**

"There can be no doubt that the word ["income"] must be given the same meaning and content in the Income Tax Acts of 1916 and 1917 that it had in the act of 1913. ... **there would seem to be no room to doubt that the word must be given the same meaning in all of the Income Tax Acts of Congress that was given it in the Corporation Excise Tax Act [of 1909], and that what that meaning is has now become definitely settled by decision of the Court.**"

"In determining the definition of the word "income" thus arrived at, this court has consistently refused to enter into the refinements of lexicographers and economists and has approved, in the definitions quoted, what it believed to be the COMM\* understood meaning of the term which must have been in the minds of the people when they adopted the Sixteenth Amendment to the Constitution. ... [W]e continue entirely satisfied with that definition, and, since the fund here taxed was the amount realized from the sale of the stock in 1917, less the capital investment as determined by the trustee as of March 1, 1913, it is palpable that it was a "gain or profit" "produced by" or "derived from" that investment, and that it "proceeded," and was "severed" or rendered severable, from, by the sale for cash, and thereby became that "realized gain" which has been repeatedly declared to be taxable income within the meaning of the constitutional amendment and the acts of Congress." [Cites omitted; brackets added.]

[*Merchants' Loan & Trust Co. v. Smietanka*, 255 U.S. 509 (1921)]

### **Miles v. Safe Deposit & Trust Co. (May 29, 1922)**

"The stockholders' right to take a part of new stock issued by the corporation, whose intrinsic value exceeds the issuing price, is essentially analogous to a stock dividend, and constituted no "gain," "profit," or "income" taxable without **apportionment** under the Sixteenth Amendment."

"Gains and profits **derived** through sale of capital assets, whether by a dealer or casually by a nontrader, is taxable as income, and such gain includes the profit derived from a sale of a stockholder's right to subscribe for a new issue of stock in the corporation at a fixed price."

[*Miles v. Safe Deposit & Trust Co.*, 259 U.S. 247; 42 S.Ct. 483 (1922)]

### **Sims v. Ahrens (Jan. 19, 1925)**

"License and occupation taxes, which are payable in respect to the privilege of engaging in or carrying on a particular business are not income taxes, although the amount of the tax payable by any individual may be measured by the amount of business which he transacts on his earnings therefrom. And conversely, although a person's entire income may be derived from a particular pursuit or trade, a tax on the income as such is not a license or privilege tax." Black on Income and other Federal Taxes, section 3.

"Thus a tax on sales of a particular commodity, or a tax on the dealer measured by the amount of his sales, is not an

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income tax. In the same section, the author further said:

""But a franchise tax upon corporations is not an income tax, although it may be called an excise tax. And this is so, whether the tax is laid by the state under whose laws the corporation is organized, and is exacted annually for the privilege of continuing its corporate existence, or is imposed by a different state for the privilege of doing business within its limits, or is imposed by an outside power, such as the United States, upon the franchise of transacting business in a corporate capacity. For this reason, the tax on corporations imposed by Congress in 1909, being laid specifically upon the carrying on or doing of business in a corporate or quasi corporate capacity, was adjudged not to be an income tax, although the amount of the tax in each instance was measured by the net annual income of the corporation, but an excise tax, not direct and therefore not invalid because not apportioned among the several states according to population," citing *Flint v. Stone Tracy Co.*, 220 U.S. 107, 31 S.Ct. 342, 55 L.Ed. 389, Ann.Cas. 1912B, 1312." p. 726.

"In the language of Chief Justice White interpreting *Pollock v. Farmers' Loan & Trust Co.*, supra, not quoted by Judge HART in his dissenting opinion, that I now wish to stress, because it shows that **an income tax in its essential nature is not a property tax, but an excise tax.**" p. 731.

"The celebrated case of *Pollock v. Farmers' Loan & Trust Co.* covers 339 pages of the reports. The opinions therein are models of judicial industry and thoroughness. They show that the judges gave the case the consideration its transcendent importance demanded, and are notable contributions to Anglo Saxon Jurisprudence, on the subject of income tax law. But I wish especially to call attention to the dissenting opinions of Justices White and Harlan. These are the most exhaustive, learned, forceful, and illuminating, judicial pronouncements on the particular subject of income tax to be found in all the realm of the adjudicated law. They show, conclusively, it seems to me, that under our American system--our federal, and state Constitutions and statutes--a tax on incomes cannot properly be classified as a property tax, but falls in the class of excise taxes." Note p. 731.

""An excise tax, using the term in its broad meaning as opposed to a property tax, includes taxes sometimes designated by statute or referred to as privilege taxes, license taxes, occupation taxes, and business taxes. \* \* \* Generally the term 'excise taxes' is used to distinguish such taxes from taxes on property. It is often very important to determine whether a certain tax is a property tax or an excise tax, i. e., whether (1) a property tax or (2) an occupation, license, business, privilege, or franchise tax. Not only are excise taxes governed by many rules entirely different from those which control property taxation, but also there are many constitutional provisions applicable to taxes on property but not to excise taxes. For instance, an excise tax is not within constitutional prohibitions such as those requiring taxation of property by value, uniformity, and equality of taxation. So such a tax is not objectionable as double taxation although the property itself is also taxed." *Cooley on Taxation*, vol. 1 (4th Ed.) §§45 and 46.

"After stating that it is settled that **a federal income tax is an excise tax**, he further says:

"In regard to state income taxes, the law is not so clear; generally, however, it has been held that such a tax is not a tax on property, or, at least, is not such a tax as to be included in the constitutional limitations imposed on property taxes." p. 731. [Bold added.]

[*Sims v. Ahrens*, 271 S.W. 720 (1925)]

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### **Bowers v. Kerbaugh-Empire Co. (May 3, 1926)**

"**Const. Amend. 16**, giving Congress power to levy and collect taxes on income, **did not bring any new subject within taxing power**, but removed necessity for apportionment' among states of taxes on income under article 1, §2, cl. 3, 1 and section 9, cl. 4, and obliterated distinction between taxes on income that are direct taxes and those that are not."

"Income" is gain **derived** from capital, from labor, or from both combined, including profit gained through conversion or sale of capital."

"The Sixteenth Amendment declares that Congress shall have power to levy and collect taxes on income, "from whatever source derived" without apportionment among the several states, and without regard to any census or enumeration. **It was not the purpose or effect of that amendment to bring any new subject within the taxing power.** Congress already had power to tax all incomes. But taxes on incomes from some sources had been held to be "direct taxes" within the meaning of the constitutional requirement as to apportionment. Art. 1 §2, cl. 3, and §9 cl. 4; *Pollock v. Farmers' Loan & Trust Co.*, 158 U.S. 601, 15 S.Ct. 912, 39 L.Ed. 1108. The Amendment relieved from that requirement and obliterated the distinction in that respect between taxes on income that are direct taxes and those that are not, and so put on the same basis all incomes "from whatever source derived." *Brushaber v. Union Pac. R. R.* "Income" has been taken to mean the same thing as used in the Corporation Excise Tax Act of 1909 (36 Stat. 112), in the Sixteenth Amendment, and in the various revenue acts subsequently passed. *Southern Pacific Co. v. Lowe*, *Merchants' L. & T. Co. v. Smietanka*,.... After full consideration, this court declared that income may be defined as gain derived from capital, from labor or from both combined, including profit gained through sale or conversion of capital. *Stratton's Independence v. Howbert*,... *Doyle v. Mitchell Brothers Co.*,... *Eisner v. Macomber*,.... And that definition has been adhered to and applied repeatedly. See, e. g., *Merchants' L. & T. Co. v. Smietanka*, supra,... *Goodrich v. Edwards*,... *United States v. Phellis*,... *Miles v. Safe Deposit*

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### ***Sovereignty and Freedom Points and Authorities***



Co.,"... United States v. Supplee-Biddle Co.,... Irwin v. Gavit, Edwards v. Cuba Railroad,...In determining what constitutes income substance rather than form is to be given controlling weight. Eisner v. Macomber, [Complete cites omitted; bold added.]

[Bowers v. Kerbaugh-Empire Co., 271 U.S. 170, 46 S.Ct. 449 (1926)]

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**Foster & Creighton Co. v. Graham (July 3, 1926)**

""Direct tax" is one imposed directly on **property** according to its value, and is generally spoken of as property or ad valorem tax."

"Indirect tax" is tax on some right or privilege, and is also called excise or occupation tax."

"Legislature has unlimited and unrestricted power to tax privileges, which may be exercised in any manner or mode." "Law having but one general purpose, fairly indicated by its title, is in accordance with Const. art. 2, §17."

"One subject clause required by Const. art. 2, §17, applies only to body of act, and not to caption."

"In 26 R.C.L. §209, it is also said:

""Every form of tax not imposed directly upon polls or property must constitute an excise, if it is a valid tax of any description.""

"In Bank of Commerce & Trust Co. v. Senter, 149 Tenn. 569, 260 S. W. 144, this court expressly held that the term "excise tax" was synonymous with the term "privilege tax," and that the two are often used interchangeably. It was also held in that case that the term "excise tax" is never applied to direct taxation."

[Foster & Creighton Co. v. Graham, 285 S.W. 570 (1926)]

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**Miller v. City of Milwaukee (Jan. 3, 1927)**

"State law taxing corporate dividends, in proportion to which corporate income was not assessed, obviously passed for purpose of imposing a tax on United States bonds, *held* unconstitutional."

"It is a familiar principle that conduct which in usual situations the law protects may become unlawful when part of a scheme to reach a prohibited result. If the avowed purpose or self-evident operation of a statute is to follow the bonds of the United States and to make up for its inability to reach them directly by indirectly achieving the same result, the statute must fail even if but for its purpose or special operation it would be perfectly good. Under the laws of Wisconsin the income from the United States bonds may not be the only item exempted from the income tax on corporations, but it certainly is the most conspicuous instance of exemption at the present time. A result intelligently foreseen and offering the most obvious motive for an act that will bring it about, fairly may be taken to have been a purpose of the act. On that assumption the immunity of the national bonds is too important to allow any narrowing beyond what the Acts of Congress permit. We think it would be going too far to say that they allow an intentional interference that is only prevented from being direct by the artificial distinction between a corporation and its members. A tax very well may be upheld as against any casual effect it may have upon the bonds of the United States when passed with a different intent and not aimed at them, but it becomes a more serious attack upon their immunity when they are its obvious aim. In such a case the Court must consider the public welfare rather than the artifices contrived for private convenience and must look at the facts."

""It is the relation that exists between the person sought to be taxed and specific property claimed as income to him that determines whether there shall be a tax." State ex rel. Sallie F. Moon Co. v. Wisconsin Tax Commission, 166 Wis. 287, 290, 163 N.W. 639, 640, 165 N.W. 470. Compare Paine v. City of Oshkosh (Wis.) 208 N.W. 790." [Mr. Justice Brandeis concurring.]

[Miller v. City of Milwaukee, 272 U.S. 713, 47 S.Ct. 280 (1927)]

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**Taft v. Bowers (Feb. 18, 1928)**

""Sec. 213. That for the purposes of this title (except as otherwise provided in section 233) the term 'gross income'--

""(a) Includes gains, profits, and income derived from salaries, wages, or compensation for personal service \* \* \* or gains or profits and income derived from any source whatever. The amount of all such items (except as provided in subdivision (e) of section 201) shall be included in the gross income for the taxable year' in which received by the taxpayer, unless, under methods of accounting permitted under subdivision (b) of section 212, any such amounts are to be properly accounted for as of a different period; but...."

"The only question subject to serious controversy is whether Congress had power to authorize" the exaction."

"Income is the thing which may be taxed--income from any source. The amendment does not attempt to define income or to designate how taxes may be laid thereon, or how they may be enforced."

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"Under former decisions here the settled doctrine is that the Sixteenth Amendment confers no power upon Congress to define and tax as income without apportionment something which theretofore could not have been properly regarded as income.

"Also, this court has declared: "Income may be defined as the gain derived from capital, from labor, or from both combined." provided it be understood to include profit gained through a sale or conversion of capital assets." *Eisner v. Macomber*, 252 U.S. 189, 207, 40 S.Ct. 189, 193, (64 L.Ed. 521, 9 A.L.R. 1570). The "gain derived from capital," within the definition, is "not a gain accruing to capital, nor a growth or increment of value in the investment, but a gain, a profit, something of exchangeable value proceeding from the property, severed from the capital however invested, and coming in, that is, received or drawn by the claimant for his separate use, benefit and disposal." *United States v. Phellis*, 257 U.S. 156, 169, 42 S.Ct. 63, 65 (66 L.Ed. 180)."

"In truth the stock represented only a single investment of capital--that made by the donor. And when through sale or conversion the income from that investment in the hands of the recipient subject to taxation according to the very words of the Sixteenth Amendment. By requiring the recipient of the entire increase to pay a part into the public treasury, Congress deprived her of no right and subjected her to no hardship. She accepted the gift with knowledge of the statute and, as to the property received, voluntarily assumed the position of her donor. When she sold the stock she actually got the original sum invested, plus the entire appreciation and out of the latter only was she called on to pay the tax demanded.

"The provision of the statute under consideration seems entirely appropriate for enforcing a general scheme of lawful taxation. To accept the view urged in behalf of petitioner undoubtedly would defeat, to some extent, the purpose of Congress to take part of all gain derived from capital investments. To prevent that result and insure enforcement of its proper policy, Congress had power to require that for purposes of taxation the donee should accept the position of the donor in respect of the thing received. And in so doing, it acted neither unreasonably nor arbitrarily.

"The power of Congress to require a succeeding owner, in respect of taxation, to assume the place of his predecessor is pointed out by *United States v. Phellis*, 257 U.S. 156, 169, 42 S.Ct. 63, 65 (66 L.Ed. 180):

"Where, as in this case, the dividend constitutes a distribution of profits accumulated during an extended period and bears a large proportion to the par value of the stock, if an investor happened to buy stock shortly before the dividend, paying a price enhanced by an estimate of the capital plus the surplus of the company, and after distribution of the surplus, with corresponding reduction in the intrinsic and market value of the shares, he were called upon to pay a tax upon the dividend received, it might look in his case like a tax upon his capital. But it is only apparently so. In buying at a price that reflected the accumulated profits, he of course acquired as a part of the valuable rights purchased the prospect of a dividend from the accumulations--bought `dividend on, as the phrase goes--and necessarily took subject to the burden of the income proper to be assessed against him by reason of the dividend if and when made. He simply stepped into the shoes, in this as in other respects, of the stockholder whose shares he acquired, and presumably the prospect of a dividend influenced the price paid, and was discounted by the prospect of an income tax to be paid thereon. In short, the question whether a dividend made out of company profits constitutes income of the stockholder is not affected by antecedent transfers of the stock from hand to hand."

[*Taft v. Bowers*, 278 U.S. 470, 49 S.Ct. 199 (1928)]

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### **United States v. Tyler (July 1, 1929)**

"No question is raised as to the general power of Congress under the Constitution to levy an estate tax, and none can be raised. Such a tax is not a direct tax requiring apportionment, but falls within the classification of "imposts, duties and excises" which Congress is authorized to levy by section 8, clause 1, of article 1 of that instrument. It is imposed, not on property, but on the privilege of transferring it, and is measured by the value of the interest transferred or which ceases at death."

[*United States v. Tyler*, 33 F.2d. 724 (1929)]

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### **Tyler v. United States (May 19, 1930)**

"A tax laid upon the happening of an event as distinguished from its tangible fruits, is an indirect tax...."

[*Tyler v. United States*, 281 U.S. 497, 50 S.Ct. 356 (1930)]

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### **Redfield v. Fisher (Oct. 24, 1930)**

"Five per cent. tax on net income of corporations is not tax on intangibles, but is excise levied on privilege of doing business in corporate form."

"Tax laid directly on income of property, real or personal, may be regarded as tax on property producing income."

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"For purpose of taxation, income can be considered property."

"The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. **The corporation is an artificial entity which owes its existence and charter powers to the state; but the individuals' rights to live and own property are natural rights for the enjoyment of which an excise cannot be imposed.**" [Bold added.]

[*Redfield v. Fisher*, 292 P. 813 (1930)]

**United States v. Butler (Jan. 6, 1936)**

**"An exaction, by Congress, of money from one group for benefit of another is not a "tax" within Constitution, and is not constitutional except as an integral part of regulation of a matter in which both groups are interested and in respect of which there is vested in Congress a power of legislative regulation; a "tax" both in general understanding and as used in Constitution signifying an exaction for the support of the government (Const. art. 1, §8, cl. 1)." [Bold added.]**

"When act of Congress in given case is appropriately challenged as not conforming to Constitution, court's sole power and duty is to determine whether the act is in accordance with the constitutional provisions invoked, and court will not approve or condemn any legislative policy."

"Federal Union has only the powers expressly conferred on it and those reasonably implied from powers granted, while each state has all governmental powers except such as the people, by Constitution, have conferred on United States, denied to the state, or reserved to themselves."

""General welfare" clause of Constitution does not empower Congress to legislate generally for the general welfare, but merely to tax, and appropriate the revenues so raised, for purpose of payment of nation's debts and of making provision for the nation's general welfare; the power to appropriate being as broad as the power to tax (Const. art. 1, §8, cl. 1)."

"The power of Congress to tax, expressly conferred by general welfare clause, and the power to authorize expenditures impliedly conferred by such clause, are not limited by the direct grants of legislative power found in other clauses of Constitution (Const. art. 1, §8, cl. 1)."

"Every presumption must be indulged in favor of validity of act of Congress, and person challenging its validity must show that the act cannot by any reasonable possibility fall within Congress' permitted range of discretion."

"All powers not expressly granted to United States by Constitution, or reasonably to be implied from those expressly conferred, are reserved to the states."

"Congress may not legislate for purpose of regulating agricultural production in the states, since power of such regulation is reserved to states (Const. Amend. 10)."

"Principle that attainment of prohibited ends may not be accomplished by Congress under pretext of exercising granted powers is applicable to federal power to levy taxes, and, while power of taxation may be used by Congress as means to effectuate another power also expressly granted, Congress may not tax for purposes which are within exclusive province of states (Const. art. 1, §8, cl. 1)."

"Agricultural adjustment Act, passed as emergency measure, authorizing Secretary of Agriculture to enter into adjustment agreements with farmers for reduction of acreage or production of "basic agricultural commodities," imposing so-called processing taxes and floor stock taxes, and making proceeds thereof available for payment of benefits under such agreements, *held* invalid as invading reserved powers of states by regulating agricultural production within the states and as not a valid exercise of federal taxing and spending power under general welfare clause, since act, though providing for agreements voluntary in form, was attempt to coerce through economic pressure, and, even if noncoercive, was at best a scheme for purchasing with federal funds submission to federal regulation of a subject reserved to states (Agricultural Adjustment Act, see 7 U.S.C.A. §601 et seq.; (Const. art. 1, §8, cl. 1), and (Const. Amend. 10)."

"Congress cannot validly provide for reduction of cultivated acreage and the control of production within the states; that being a field reserved to state action (Const. Amend. 10)."

"Congress, having no power to compel compliance by farmers with scheme to regulate agricultural acreage and production, may not indirectly attain its ends by raising funds through taxation and appropriating them for purchasing compliance by farmers by means of production adjustment contracts."

[*United States v. Butler*, 297 U.S. 1, 56 S.Ct. 312 (1936)]

**Corn v. Fort (June 13, 1936)**

"Term "privilege," within constitutional provision that Legislature shall have power to tax merchants, peddlers, and privileges in such manner as they may from time to time direct, refers to activity or occupation and not to character of person or entity that pursues activity or occupation; tax being upon privilege itself and not upon form in which business is

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conducted."

"Right to do business in Tennessee in corporate form is a taxable "privilege," since right of a corporation to engage intrastate business within state depends solely upon will of state which, having power to exclude entirely, has power to impose as condition the payment of a license fee."

"Act imposing privilege taxes *held* unconstitutional in so far as it undertakes to place a tax on partnerships for doing business in that form, as making arbitrary and capricious classification and denying equal protection of the laws."

"That privilege tax imposed upon corporations for right to engage in business was measured by worth of invested capital did not make it a "property tax."

"Legislature in enacting statute imposing privilege taxes on corporations for privilege of doing business within state was within its constitutional rights in measuring amount of tax by percentage on worth of capital invested by entity in state."

"Section 2 of the act is as follows:

"That for the privilege of engaging in business in corporate form in this State which is expressly hereby declared to be a privilege, there is hereby levied upon all domestic corporations an annual privilege tax, the measure of which is hereinafter set forth."

"(b) For the privilege of engaging in business in this State in corporate form, there is hereby imposed upon foreign corporations doing an intrastate business an annual privilege tax to be measured as hereinafter mentioned."

"The elements and considerations sufficient to support the validity of a franchise tax on corporations for the privilege of doing business in that form within a state are wholly absent in the case of an individual, or simple and unlimited partnerships. They hold no franchise or special privilege conferred by the sovereign not belonging to citizens generally of common right. The right of individuals to combine their activities, as partners, is independent and antecedent to governments."

"In *Home Insurance Co. v. New York*, 134 U.S. 594 10 S.Ct. 593, 595, 33 L.Ed. 1025, the court said: "No constitutional objection lies in the way of a legislative body prescribing any mode of measurement to determine the amount it will charge for the privileges it bestows." The court was dealing with a tax imposed on corporations for the privilege of doing business in the state of New York."

"The literal interpretation of a statute is finding out the true sense by making the statute its own expositor."

[*Corn v. Fort*, Term., 95 S.W.2d. 620 (1936)]

### **N.Y. Ex Rel. Cohn v. Graves (Mar. 1, 1937)**

"*Income from rents*. That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. Domicile itself affords a basis for such taxation. Enjoyment of the privileges of residence in the state and the attendant right to invoke the protection of its laws are inseparable from responsibility for sharing the costs of government. "Taxes are what we pay for civilized society . . ." See *Compañia General de Tabacos de Filipinas v. Collector of Internal Revenue*, 275 U.S. 87, 100, 72 L.Ed. 177, 183, 48 S.Ct. 100. A tax measured by the net income of residents is an equitable method of distributing the burdens of government among those who are privileged to enjoy its benefits. The tax, which is apportioned to the ability of the taxpayer to pay it, is founded upon the protection afforded by the state to the recipient of the income in his person, in his right to receive the income and in his enjoyment of it when received."

"Neither analysis of the two types of taxes, nor consideration of the bases upon which the power to impose them rests, supports the contention that a tax on income is a tax on the land which produces it. The incidence of a tax on income differs from that of a tax on property. Neither tax is dependent upon the possession by the taxpayer of the subject of the other. His income may be taxed, though he owns no property, and his property may be taxed although it produces no income. The two taxes are measured by different standards, the one by the amount of income received over a period of time, the other by the value of the property at a particular date."

"Nothing which was said or decided in *Pollock v. Farmers' Loan & T. Co.*, 157 U.S. 429, 39 L.Ed. 759, 15 S.Ct. 673, calls for a different conclusion. There the question for decision was whether a federal tax on income derived from rents of land is a direct tax requiring apportionment under Art. I, §2, cl. 3 of the Constitution. In holding that the tax was "direct," the Court did not rest its decision upon the ground that the tax was a tax on the land, or that it was subject to every limitation which the Constitution imposes on property taxes. It determined only that for purposes of apportionment there were similarities in the operation of the two kinds of tax which made it appropriate to classify both as direct, and within the constitutional command. See *Pollock v. Farmers' Loan & T. Co.*, supra, (157 U.S. pp. 580, 581, 39 L.Ed. 818, 819, 15 S.Ct. 673); *Brushaber v. Union P. R. Co.*, 240 U.S. 1, 16, 60 L.Ed. 493, 501 36 S.Ct. 236 [cites omitted]."

[*N.Y. Ex Rel. Cohn v. Graves*, 300 U.S. 309 (1937)]

**Beeland Wholesale Co. v. Kaufman (Mar. 18, 1937)**

"State may tax its citizens personally provided no Constitutional restriction is violated, but **federal government cannot tax citizens personally except in proportion to census.**" [Bold added.]  
[Beeland Wholesale Co. v. Kaufman, 174 So. 516 (1937)]

**Davis v. Boston & M. R. Co. (Apr. 14, 1937)**

"Taxation by Congress is limited to those forms of taxes described in the Constitution, and with respect to them the only limitations are that a direct tax shall be apportioned between the states and that duties, imposts, and excises shall be uniform and levied only for the purposes specified. (Const. art. 1 §8)."

"Tax imposed by Social Security Act on employers with respect to having individuals in their employ is not valid as an "excise tax" within the Constitution (Social Security Act §901 et seq., 42 U.S.C.A. §1101 et seq.; Const. art. 1, §8)."

"While the courts will not declare acts of Congress of no effect because some motive outside the powers of Congress may have actuated Congress in passing it, the provisions of an act of Congress must be reasonably adapted to some purpose within the powers vested in Congress and not with a view to accomplishing some other purpose wholly reserved to the states (Const. Amend. 10)."

"Though the court may think an act of Congress embodies a commendable social plan and are in sympathy with its purpose and intended result, if its provisions go beyond the limits of federal power and extend into the field of power reserved to the states, the court must so declare (Const. Amend. 10)."

"The general welfare of some or even of all the states in matters reserved to the states when taken together cannot be held to constitute the general welfare of the United States within constitutional provision authorizing taxes, duties, imposts, and excise taxes to pay debts and provide for the common defense or general welfare (Const. art. 1, §8)."

"... it was stipulated by all the parties that: "the only issue involved in the case, either directly or indirectly, is whether title IX of chapter 531, 49 Stat. 620 [section 901 et seq. (42 U.S.C.A. §1101 et seq.)], approved Aug. 14, 1935, is an Act of Congress within its powers under the Constitution of the United States, or in violation of the Fifth Amendment thereof; and the only way in which that issue is raised is with respect to the payments under that title IX."

"The Social Security Act contains eleven titles, each having separate objects in view, viz.: I. Old Age Assistance (section 1 et seq. [42 U.S.C.A. §301 et seq.]); II. Old Age Benefits (section 201 et seq. [42 U.S.C.A. §401 et seq.]); III. Unemployment Compensation (section 301 et seq. [42 U.S.C.A. §501 et seq.]); N. Aid to Dependent Children (section 401 et seq. [42 U.S.C.A. §601 et seq.]); V. Maternal and Child Welfare (section 501 et seq. [42 U.S.C.A. §701 et seq.]); VI. Public Health Work (section 601 et seq. [42 U.S.C.A. §801 et seq.]); VII. The Creation of a Social Security Board (section 701 et seq. [42 U.S.C.A. §901 et seq.]); VIII. Taxes with respect to Employment (section 801 et seq. [42 U.S.C.A. §1001 et seq.]); IX. Taxes for Benefit of Unemployment (section 901 et seq. [42 U.S.C.A. §1101 et seq.]); X. Grants to State in Aid of the Blind (section 1001 et seq. [42 U.S.C.A. §1201 et seq.]); XI. General Provisions relating to Definitions, Rules and Separability of the Provisions of the Act (section 1101 et seq. [42 U.S.C.A. §1301 et seq.]). On its face the entire act was passed to provide financial aid for the unfortunate, the dependent, and those incapacitated by age, or who for any reason are, temporarily, at least, unable to obtain gainful employment.

"Title IX imposes a tax on employers of eight or more, except an employer of agricultural labor, domestic servants, or where the service is performed as an officer or member of a vessel on the navigable waters of the United States; or performed by an individual in the employ of son, daughter, or spouse; or by a child under 21 years of age in the employ of his father or mother; or performed in the employ of the United States, or of an instrumentality of the United States, or performed in the employ of a state or a political subdivision thereof, or of one or more state; or services performed in behalf of any charitable organization, or any corporation, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

"It is sometimes suggested that, since the states are powerless to solve the problem presented by unemployment in an emergency such as was passed through in the last four years, therefore there must by power in the federal government to meet the situation. A similar suggestion was made in the case of *State of Kansas v. Colorado*, 206 U.S. 46, at page 89, 27 S.Ct. 655, 664, 51 L.Ed. 956:

""All legislative power must be vested in either the state or the national government; no legislative powers belong to a state government other than those which affect solely the internal affairs of that state; consequently all powers which are national in their scope must be found vested in the Congress of the United States.

""But," the court said, "the proposition that there are legislative powers affecting the nation as a whole which belong to, although not expressed in the grant of powers, is in direct conflict with the doctrine that this is a government of enumerated powers. That this is such a government clearly appears from the Constitution, independently of the Amendments, for otherwise there would be an instrument granting certain specified things made operative to grant other



and distinct things. This natural construction of the original body of the Constitution is made absolutely certain by the 10th Amendment." "

"Again the Supreme Court very aptly said in *Flint v. Stone Tracy Co.*, 220 U.S. 107, 151, 31 S.Ct. 342, 349, 55 L.Ed. 389, Ann.Cas. 1912B, 1312:

""Although there have been from time to time intimations that there might be some tax which was not a direct tax nor included under the words `duties, imposts, and excises, such a tax for more than one hundred years of national existence has as yet remained undiscovered, notwithstanding the stress of particular circumstances has invited thorough investigation into sources of revenue." *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, 557, 15 S.Ct. 673, 39 L.Ed. 759; *Thomas v. United States*, 192 U.S. 363, 370, 24 S.Ct. 305, 48 L.Ed. 481.

"Again in the case of *Carter v. Carter Coal Co.*, supra, 298 U.S. 238, at page 291, 56 S.Ct. 855, 864, 80 L.Ed. 1160, the court said:

" "The proposition, often advanced and as often discredited, that the power of the federal government inherently extends to purposes affecting the Nation as a whole with which the states severally cannot deal or cannot adequately deal, and the related notion that Congress, entirely apart from those powers delegated by the Constitution, may enact laws to promote the general welfare, have never been accepted but always definitely rejected by this court."

"And again on page 292 U.S., 56 S.Ct. 855, 864, 80 L.Ed. 1160:

""In the Framers Convention, the proposal to confer a general power akin to that just discussed was included in Mr. Randolph's resolutions, the sixth of which, among other things, declared that the National Legislature ought to enjoy the legislative rights vested in Congress by the Confederation; and `moreover to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual Legislation.' The convention, however, declined to confer upon Congress power in such general terms; instead of which it carefully limited the powers which it thought wise to intrust to Congress by specifying them, thereby denying all others not granted expressly or by necessary implication. It made no grant of authority to Congress to legislate substantively for the general welfare, *United States v. Butler*, supra, 297 U.S. 1 at page 64, 56 S.Ct. 312, 80 L.Ed. 477, 102 A.L.R. 914; and no such authority exists, save as the general welfare may be promoted by the exercise of the powers which are granted."

"It is well settled that taxation by Congress is limited to those forms of taxes described in section 8 of article 1 of the Constitution, and with respect to these the only limitations are, that a direct tax shall be apportioned between the states and that duties, imposts, and excises shall be uniform and be levied only for the purposes named therein."

"Is the tax imposed on employers under section 901 of title IX (42 U.S.C.A. §1101) an excise tax within the meaning of section 8 of article 1 of the Federal Constitution? If it is not, it is not a tax that Congress is authorized to levy. No other provisions of the Constitution than section 8 of article 1 give any powers to Congress to levy taxes and the kind of taxes it might levy are expressly defined therein as direct taxes, duties, imposts, and excise taxes, and these can only be levied to pay the debts and provide for the common defense and general welfare of the United States.

"At the time of the adoption of the Constitution the term "excise tax" was used only in connection with a tax on goods, merchandise, and commodities.

"Blackstone in his Commentaries, 1 Blackstone, p. 308, in speaking of the different forms of taxation said:

""Directly opposite in its nature to this (direct tax) is the excise duty; which is an inland imposition, paid sometimes upon the consumption of the commodity, or frequently upon the retail sale, which is the last stage before the consumption."

"Adam Smith in 1776 in his "The Wealth of Nations," said:

""The duties of excise are imposed chiefly upon goods of home produce destined for home consumption. They are imposed only upon a few sorts of goods of the more general use. \* \* \* They fall almost altogether upon what I call luxuries."

"The tax imposed by the British Act of 1777 and cited by the government in support of its contention was clearly a luxury tax on male servants. It did not apply to any servant employed for the purpose of husbandry or manufacture, or of any trade or calling by which the employer of such servant earned a profit.

"Hamilton in the *Federalist*, No. 21, speaking of excises, describes them as "Taxes on articles of consumption."

"Gallatin speaks of an excise tax as an excise on "consumable commodities."

"As defined in *Bouvier's Law Dictionary*, *Rawle's Third Revision*, p. 551, commodity is a broader term than merchandise and "may mean almost any description of articles called movable or personal estate. Labor is not a commodity. [*Rohlf v. Kasemeier*, 140 Iowa, 182, 118 N.W. 276, 23 L.R.A. (N.S.) 1285 [132 Am.St.Rep. 261, 17 Ann.Cas. 750]]. "

"In the discussions in the several state conventions, both as to the adoption of the Federal Constitution and with reference to the adoption of the respective state constitutions, it seems apparent that the understanding of the term "excise tax" was a tax laid upon articles of use or consumption, not according to their value, but an arbitrary amount fixed by the Legislature; and the term "commodity" appears to have been used in its ordinary sense as including goods, wares, merchandise, produce of the land and manufacture.

"Massachusetts in framing its Constitution in 1780, in addition to the ordinary direct taxes, authorized the Legislature to

impose "reasonable duties and excises upon any produce, goods, wares merchandise and commodities whatsoever."

"Notwithstanding the definition of the word "commodities" found in the dictionaries, the Supreme Court of Massachusetts gave to the word a broader meaning than the lexicographers in the case of *Portland Bank v. Apthorp*, 12 Mass. 252, 256:

-This last word [commodities] will perhaps embrace everything, which may be a subject of taxation, and has been applied by our legislature, from the earliest practice under the constitution, to the privilege of using particular branches of business or employment, as the business of an auctioneer, of an attorney, of a tavern keeper, of a retailer of spirituous liquors, etc.

""It must have been under this general term commodity, which signifies convenience, privilege, profit and gains, as well as goods and wares, which are only its vulgar signification, that the legislature assumed the right which has been uniformly and without complaint exercised for thirty years, of exacting a sum of money from attorneys, and barristers at law, vendue masters, tavern keepers and retailers."

""It is not necessary in the present case to determine the meaning of the word 'commodities, in reference to every possible application of it, but we are of opinion that it is not broad enough to include every occupation which one may follow, in the exercise of a natural right, without aid from the government, and without affecting the rights or interests of others in such a way as properly to call for governmental regulation. Whatever may be done by the Congress of the United States under its general power to levy excise taxes (see *Thomas v. United States*, 192 U.S. 363, 24 S.Ct. 305, 48 L.Ed. 481), we are of opinion that, under the limitation to commodities, the general court of Massachusetts cannot levy an excise tax upon the business of a husbandman or an ordinary mechanic. If this is not the necessary effect of the decision in *Gleason v. McKay* [134 Mass. 419], *ubi supra*, it certainly is intimated by the language of the court in the opinion." [Brackets original.]

"While the Federal Constitution does not contain the word "commodities" as a basis for levying excise taxes, there appears to be little, if any, difference in the limits imposed upon the interpretation of section 8 of article 1 by the Supreme Court of the United States and the interpretation placed on the constitutional provision of Massachusetts by the Massachusetts Supreme Court.

"Mr. Justice Story in his work on the Constitution, §§907, 908, says of section 8 of article 1 of the Constitution:

""Before proceeding to consider the nature and extent of the power conferred by this clause, and the reasons on which it is founded, it seems necessary to settle the grammatical construction of the clause, and to ascertain its true reading. Do the words, 'to lay and collect taxes, duties, imposts, and excises, constitute a distinct substantial power; and the words, 'to pay the debts and provide for the common defence and general welfare of the United States, constitute another distinct and substantial power? Or are the latter words connected with the former so as to constitute a qualification upon them? This has been a topic of political controversy, and has furnished abundant material for popular declamation and alarm. If the former be the true interpretation, then it is obvious that under color of the generality of the words "and provide for the common defense and general welfare, [sic] the government of the United States is, in reality, a government of general and unlimited powers, notwithstanding the subsequent enumeration of specific powers. If the latter be the true construction, then the power of taxation only is given by the clause, and it is limited to objects of a national character, 'to pay the debts and provide for the common defense and the general welfare.' §908. The former opinion has been maintained by some minds of great ingenuity and liberality of views. The latter has been the generally received sense of the nation, and seems supported by reasoning at once solid and impregnable. \* \* \* In this sense, Congress has not an unlimited power of taxation; but it is limited to specific objects,--the payment of the public debts, and providing for the common defense and general welfare. A tax, therefore, laid by Congress for neither of these objects, would be unconstitutional, as an excess of its legislative authority."

"Excise taxes were defined in *Patton v. Brady*, 184 U.S. 608, 617, 22 S.Ct. 493, 496, 46 L.Ed. 713, as:

""An inland imposition, paid sometimes upon the consumption of the commodity, or frequently upon the retail sale, which is the last stage before the consumption." And on page 618 of 184 U.S., 22 S.Ct. 493, 497, 46 L.Ed. 713: "To determine, then, what excise means, we have for our guidance, first, an enumeration of the articles that it fell on in Great Britain in 1787. We have, second, the nature of the tax as judicially determined; and we have, third, the definition of it, or the common understanding of men about it, as given by the *Encyclopedia Britannica* [sic] and the *Century Dictionary*. Taking these three sources of information and combining them, it would seem that the leading idea of excise is that it is a tax, laid without rule or principle, upon consumable articles, upon the process of their manufacture and upon licenses to sell them."

"The court in *Flint v. Stone Tracy Co.*, 220 U.S. 107, 151, 31 S.Ct. 342, 349, 55 L.Ed. 389, Ann.Cas. 1912B, 1312, adopted the definition of excise taxes found in *Cooley on Constitutional Law* (7th Ed.) p. 680:

""Excises are 'taxes laid upon the manufacture, sale, or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges, which appears to cover the entire ground.

"A somewhat broader definition of excise taxes is found in *Thomas v. United States*, 192 U.S. 363, 370, 24 S.Ct. 305, 306, 48 L.Ed. 481:

""There is no occasion to attempt to confine the words duties, imposts, and excises to the limits of precise definition. We think that they were used comprehensively to cover customs and excise duties imposed on importation, consumption, manufacture, and sale of certain commodities, and privileges, *particular business transactions, vocations, occupations, and the like.*" (Italics supplied.)

"Section 901 of title IX (42 U.S.C.A. §1101) under consideration declares the tax imposed on all employers to be an excise tax, but as the Supreme Court said in *Flint v. Stone Tracy Co.*, supra, 220 U.S. 107, at page 145, 31 S.Ct. 342, 346, 55 L.Ed. 389, Ann.Cas. 1912B, 1312:

""While the mere declaration contained in a statute that it shall be regarded as a tax of a particular character does not make it such if it is apparent that it cannot be so designated consistently with the meaning and effect of the act," although such a declaration may "be entitled to some weight."

"It was also held in *Flint v. Stone Tracy Co.*, supra, that the corporation tax imposed under the Tariff Law of 1909 was valid as an excise tax; but in *Gleason v. McKay*, 134 Mass. 419, 424, where the court was considering a tax laid on firms, copartnerships, and other associations, it was said:

""It will not be seriously contended that the privileges or rights which are taxed by this statute can be properly described as either produce, goods, wares or merchandise. Do they fairly come within the term 'commodities, in the sense in which it is used in the Constitution? Ever since the adoption of the Constitution, the Legislature in its practice, and this court in its adjudications, have given a very broad and extensive meaning to this term. It has been repeatedly held that corporate franchises enjoyed by grant from the government are commodities, and subject to an excise. So with corporate franchises granted by a foreign government, which by comity are permitted to be exercised within this Commonwealth. So where the Legislature has thought, upon considerations of public policy, that certain occupations or callings, of a public or quasi public character, should be carried on under governmental regulation, it has been usual to impose a reasonable fee for a license."

**"The defendant in the above case not being a corporation, but a common-law partnership "It enjoyed no franchise or special privilege conferred upon it by the Legislature, but was exercising a common right."** Opinion of Justices, 266 Mass. 590, 592, 593, 165 N.E. 904, 63 A.L.R. 952.

"In contrasting these two propositions, the Justices in their opinion in 247 Mass. 589, 593, 143 N.E. 808, 810, said:

**""The right to set up and maintain theatres and other places of public amusement is not natural and inherent. Working by an artisan at his trade, carrying on an ordinary business, or engaging in a common occupation or calling cannot be subjected to a license fee or excise." These plainly are not affected with a public interest"--citing *Gleason v. McKay*, supra; *O'Keeffe v. Somerville*, supra.**

"And on page 597 of 247 Mass., 143 N.E. 808, 811:

**""The rights to labor and to do ordinary business are natural, essential and inalienable, partaking of the nature both of personal liberty and of private property." [Bold added.]**

"Cases in which excise taxes have been upheld are: *Hylton v. United States*, 3 Dallas, 171, 1 L.Ed. 556; *License Tax Cases*, 5 Wall. 462, 18 L.Ed. 497; *Veazie Bank v. Fenno*, 8 Wall. 533, 19 L.Ed. 482; *Thomas v. United States*, 192 U.S. 363, 370, 24 S.Ct. 305, 48 L.Ed. 481; *Billings v. United States*, 232 U.S. 261, 34 S.Ct. 421, 58 L.Ed. 596; *Nicol v. Ames*, 173 U.S. 509, 19 S.Ct. 522, 43 L.Ed. 786; *Patton v. Brady*, 184 U.S. 608, 22 S.Ct. 493, 46 L.Ed. 713; *McCray v. United States*, 195 U.S. 27, 24 S.Ct. 769, 49 L.Ed. 78, 1 Ann.Cas. 561; *Scholey v. Rew*, 23 Wall. 331, 23 L.Ed. 99; *Knowlton v. Moore*, 178 U.S. 41, 20 S. Q. 747, 44 L.Ed. 969; see also, *Flint v. Stone Tracy Co.*, 220 U.S. 107, 31 S.Ct. 342, 55 L.Ed. 389, Ann.Cas. 1912B, 1312; *Spreckels Sugar Refining Co. v. McClain*, 192 U.S. 397 [sic], 24 S.Ct. 376, 48 L.Ed. 496; *Stratton's Independence, Limited, v. Howbert*, 231 U.S. 399, 34 S. Ct. 136, 58 L.Ed. 285; *Doyle v. Mitchell Brothers Co.*, 247 U.S. 179, 183, 38 S.Ct. 467, 62 L.Ed. 1054; *Stanton v. Baltic Mining Co.*, 240 U.S. 103, 114, 36 S.Ct. 278, 60 L.Ed. 546.

"The Child Labor Tax Case, 259 U.S. 20, 42 S.Ct. 449, 66 L.Ed. 817, 21 A.L.R. 1432; *Carter v. Carter Coal Co.*, 298 U.S. 238; 56 S.Ct. 855, 80 L.Ed. 1160; *United States v. Butler*, 297 U.S. 1, 56 S.Ct. 312, 80 L.Ed. 477, 102 A.L.R. 914; *Grosjean v. American Press Co., Inc., et al.*, 297 U.S. 233, 56 S.Ct. 444, 80 L.Ed. 660; and *Hill v. Wallace*," 259 U.S. 44, 42 S.Ct. 453, 66 L.Ed. 822, are cases where so-called excise taxes have been held not to be within the powers vested in Congress as involving matters reserved to the states.

"But nowhere do we find that an excise tax has ever been imposed in this country on the natural right to employ labor in manufacturing, or in any trade or calling for profit.

"It is urged that the tax imposed under section 901 of title IX (42 U.S.C.A. §1101) is imposed on the privilege of doing business. If Congress had so intended, we think it would have said so. Section 901 does not impose a tax on any business in which any employer may be engaged, nor on the manufacture of any goods, wares, merchandise, or commodity, but solely with respect to having in one's employ eight or more employees, the amount of the tax being based on the amount of the total pay roll."

""The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States'. Every journey to a forbidden end begins with the first step; and the real danger of such a step by the federal government in the

direction of taking over the powers of the states is that the end of the journey may find the states so despoiled of their powers, or--what may amount to the same thing--so relieved of the responsibilities which possession of the powers necessarily

enjoins, as to reduce them to little more than geographical subdivisions of the national domain. It is safe to say that if, when the Constitution was under consideration, it had been thought that any such danger lurked behind its plain words, it would never have been ratified." (Italics supplied.) *Carter v. Carter Coal Co.*, supra, 298 U.S. 238, at 295, 56 S.Ct. 855, 866, 80 L.Ed. 1160."

"It is said that a state is not obligated to pass an unemployment act, and many states have not done so. Neither were employers obligated to comply with the Child Labor Law (40 Stat. 1138, 42 Stat. 306)--they could have paid the tax or penalty--or farmers to reduce their acreage in accordance with the provisions of the Agricultural Adjustment Act (7 U.S.C.A. §601 et seq.)--they could have refused the aid--but the consequences of failure to do so were such that they could not afford to do otherwise. So in this case, if a state does not pass an unemployment compensation act complying with the requirement of Congress, or of the proper federal bureau, the entire tax assessed on employers under section 901 goes into the United States Treasury. Such a state must itself bear whatever financial burdens result to it from unemployment in its industries. No payments for unemployment assistance are made from the Federal Treasury. A state may not comply at once, but, if the act is held valid, the disadvantages resulting to the state and its employers and the consequent dissatisfaction of its employees, it is quite obvious, will sooner or later compel all the states to enact such legislation, and in such form as will receive the approval of the Social Security Board created by the act. That this amounts to coercion of the states and control by Congress of a matter clearly within the province of the states cannot be denied. If valid, it marks the end of responsible state government in any field in which the United States chooses to take control by the use of its taxing power. If the United States can take control of unemployment insurance and old age assistance by the coercive use of taxation, it can equally take control of education and local health conditions by levying a heavy tax and remitting it in the states which conform their educational system or their health laws to the dictates of a federal board. It is a significant fact that many of the acts in the states provide that the state law shall not remain in effect if title IX is declared unconstitutional, which indicates beyond a doubt that the states in self-defense consider themselves compelled by the act of Congress to enact a state law. It is plainly the duty of the courts to uphold and support the present Constitution until it has been changed in the legal way.

"While courts will not declare acts of Congress of no effect because some other motive outside the powers of Congress may have actuated Congress in passing it, though not shown on the face of the act, the provisions of an act of Congress must be reasonably adapted to some purpose within the powers vested in Congress and not with a view to accomplishing some other purpose wholly reserved to the states. *Linder v. United States*, 268 U.S. 5, 17, 45 S.Ct. 446, 448, 69 L.Ed. 819, 39 A.L.R. 229.

"As to the wisdom, as a social aim, of providing for the unfortunate, the dependent, or those permanently or temporarily unable to earn a livelihood, we are in sympathy; but, even though we may think an act of Congress embodies a commendable social plan and are in sympathy with its purpose and intended results, if its provisions go beyond the limits of federal power and extend into the field of power reserved to the states, we must so declare. *Railroad Retirement Board v. Alton R. R. Co.*, 295 U.S. 330, 347, 55 S.Ct. 758, 761, 79 L.Ed. 1468.

"However general such social needs may be in the states as sovereign units, they are not necessarily a part of the general welfare of the United States. *Schechter Poultry Corp. v. United States*, supra; *Railroad Retirement Board v. Alton R. R. Co.*, supra; *Carter v. Carter Coal Co.*, supra, 298 U.S. 238, at pages 290, 291, 56 S.Ct. 855, 863, 864, 80 L.Ed. 1160. If the dual form of our government is to be maintained as conceived by the framers of the Federal Constitution, the general welfare of some or even of all the states *in matters reserved to the states*, when taken together, cannot be held to constitute the general welfare of the United States within the meaning of section 8 of article 1 of the Constitution.

"Therefore, to provide unemployment benefits regardless of need, to persons who have worked in local employments in local trade and manufacturing within a state, not related to interstate commerce, or in any calling not related to the matters subject to the control of the Congress, is not to provide for the general welfare of the United States.

"There is no warrant for taking the property or money of an employer and transferring it to his employees without compensation, not even by taxation, *Citizens' Savings & Loan Association v. Topeka*, 20 Wall. 655, 22 L.Ed. 455, whether the purpose is a commendable one or not. Title IX, coupled with title III, is an attempt by Congress to impose a tax on employers of eight or more as a means of assuring certain employees, deprived of employment for any reason, of a certain amount of compensation during their period of unemployment, and to regulate the condition under which such employees shall be entitled to aid.

"A tax, in the general understanding of the term, and as used in the Constitution, signifies an exaction for the support of the government. The word has never been thought to connote the expropriation of money from one group for the benefit of another. \* \* \* The exaction cannot be wrested out of its setting, denominated an excise for raising revenue and legalized by ignoring its purpose as a mere instrumentality for bringing about a desired end. To do this would be to shut our eyes to what all others than we can see and understand." *United States v. Butler*, supra, 297 U.S. 1, at page 61, 56 S.Ct. 312, 317,



80 L.Ed. 477, 102 A.L.R. 914.

"If the act is carried out as planned by Congress, and a tax is imposed on every employer which is credited against a tax imposed by the state, and, under the conditions imposed by section 302 and 303 of title I[1 and section 903 of title IX (42 U.S.C.A. §§502, 503, 1103), is paid to employees found to be eligible, it amounts, in effect, to taking the property of every employer for the benefit of a certain class of employees. The entire plan, viewed as a whole, is an attempt to do indirectly what Congress cannot do directly, and to assume national control over a subject clearly within the jurisdiction of the states.

"Congress by the provisions of section 903 not only takes charge of the funds raised by the states, but has undertaken to dictate the terms of state legislation in relation to the conditions under which a person is entitled to receive unemployment compensation under a state act.

"The federal government has no power, granted or inherent, in respect to the internal affairs of the states. *Carter v. Carter Coal Co.*, supra, 298 U.S. 238, at pages 295, 56 S.Ct. 855, 856, 80 L.Ed. 1160. It has no right to say to the several states that, in order to obtain aid for the unemployed in its industries, they must enact statutes which shall provide that:

"(1) All unemployment compensation must be paid ..."

"Instances are cited of appropriations by Congress for the aid of states in caring for relief of its citizens and in aid of those unable to earn a livelihood, for flood relief in the states, for relief from drought in certain agricultural states, or to relieve losses from earthquakes, here or abroad, or from disastrous fires, and particularly to aid or relieve suffering in other countries, but no special tax was imposed for these. Here the national government is undertaking to impose its will on the several states in regard to one of the oldest and most universal problems in human life: The care of children, of old people, and in aid of the unemployed. In this country it has always been done locally or by the states. Numerous cases can be cited of appropriations made for purposes not within the connotation of the term "general welfare of the United States," but they have never been questioned, and there is no process to prevent an appropriation for such purposes by Congress, as was decided in *Massachusetts v. Mellon* (*Frothingham v. Mellon*), 262 U.S. 447, 486, 487, 43 S.Ct. 597, 600, 601, 67 L.Ed. 1078, and in *State of Florida v. Mellon*, 273 U.S. 12, 18, 47 S.Ct. 265, 266, 71 L.Ed. 511; *United States v. Butler*, supra, 297 U.S. 1, at page 73, 56 S.Ct. 312, 322, 80 L.Ed. 477, 102 A.L.R. 914. The remedy, if one is necessary, is with the people who select their representatives.

"President Cleveland, in 1887, vetoed an attempted act of Congress to aid counties in Texas injured"" by drought, saying in his veto message:

""I can find no warrant for such an appropriation in the Constitution. The lesson should be constantly enforced that, though the people should support the government, the government should not support the people."

"A unanimous court in *Schechter Poultry Corp. v. United States*, supra, 295 U.S. 495, at page 549, 55 S.Ct. 837, 851, 79 L.Ed. 1570, 97 A.L.R. 947, said that:

" "The government also makes the point that efforts to enact state legislation establishing high labor standards have been impeded by the belief that, unless similar action is taken generally, commerce will be diverted from the states adopting such standards, and that this fear of diversion has led to demands for federal legislation on the subject of wages and hours. The apparent implication is that the federal authority under the commerce clause should be deemed to extend to the establishment of rules to govern wages and hours in intrastate trade and industry generally throughout the country, thus overriding the authority of the states to deal with domestic problems arising from labor conditions in their internal commerce.

""It is not the province of the Court to consider the economic advantages or disadvantages of such a centralized system. It is sufficient to say that the Federal Constitution does not provide for it."

"As stated above, the issue is not what powers Congress ought to have to meet conditions as viewed by the executive and legislative branches of the government, but what powers are vested in Congress under the Constitution. The Supreme Court through a long series of opinions has defined those powers and the limitations upon them. If the Constitution, as construed through the years, requires amendments to meet new conditions, the way is provided therein."

"It seems to be generally agreed the regulation of employment in the states is a matter solely within their jurisdiction. This, we understand, was the basis of the court's decision in the recent minimum wage law of the state of Washington for women; **and only in matters where Congress has control, as in interstate commerce or in the District of Columbia, may Congress regulate** the wages and hours of labor." [Bold added.]

[*Davis v. Boston & M. R. Co.*, 89 F.2d. 368 (1937)]

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### **Manufacturers Trust Co. v. United States (Apr. 1, 1940)**

"A tax levied upon property because of its ownership is a direct tax, whereas one levied upon property because of its use is an excise, duty or impost."

"The *Brushaber* case, supra, is also authority for the principle that a tax levied upon property because of its ownership is direct, while one levied upon property because of its use is an excise duty or impost."

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### ***Sovereignty and Freedom Points and Authorities***

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[Manufacturers Trust Co. v. United States, 32 F.Supp. 289 (1940)]

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**Bach v. Rothensies (Jan. 17, 1941)**

"That which is not in fact the taxpayer's income cannot be made such for tax purposes by calling it "income". Revenue Act of 1934, §§42, 161, 162, 26 U.S.C.A. Int.Rev.Code, §§42 161, 162."

"That which is not in fact the taxpayer's income, cannot be made such by calling it income. Hoeper v. Commission, 284 U.S. 206, 215, 52 S.Ct. 120, 76 L.Ed. 248, 78 A.L.R. 346."

"Where a taxpayer is a beneficiary of a trust estate with the right to receive a share of the income therefrom, and he dies leaving the trust estate as a continuing taxable entity from which the taxes on his share of the accrued income may be collected on the basis of cash returns, the provisions of Section 42 relating to accrued income do not apply to his income for his life period. Applying the provision would work an inequality that is avoidable, and **it must be the policy of the law to seek an equitable application of all statutory provisions.**" [Bold added.]

[Bach v. Rothensies, 37 F.Supp. 217 (1941)]

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**Shuster v. Helvering (July 16, 1941)**

"Contracts should not be treated as "property" for income tax purposes."

"A corporation president's drafts on corporation in excess of his credit for quarterly payments, agreed to be made to him from corporation's net earnings in consideration of release of his claims against corporation, were not "advances" on such payments, but "loans", so that avails thereof were not taxable income of president for years in which paid, and credits allowed to pay them were income in years wherein made."

[Shuster v. Helvering, 121 F.2d. 643 (1941)]

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**Helvering v. Edison Bros. Stores (Feb. 3, 1943)**

"Treasury Department cannot, by interpretative regulations, make income of that which is not income within meaning of Revenue Act."

"Congress cannot, without apportionment, tax as income that which is not income within meaning of the Sixteenth Amendment."

"Congress in defining gross income in Revenue Act manifested intention to use to its fullest extent the power granted it by the Sixteenth Amendment."

"The meaning of the word "income" in the Sixteenth Amendment and in Revenue Acts adopted pursuant thereto is that given to it in common speech and everyday usage, but what is or is not income must be determined in each case according to substance without regard to form."

"The meaning of the word "income" in the language of accountancy and economics was not controlling in determining construction of Revenue Acts defining income, and of administrative regulations interpreting the Revenue Acts."

"The ruling of one administrative department of government concerning income accounting could not control that of another department made for an entirely different purpose under another act of Congress."

"A Treasury Regulation interpreting Revenue Acts of 1934 and 1936 defining "income" were valid and applicable to corporate taxpayer's sales of its stock in 1935 and 1927, notwithstanding substantially identical definition of income in prior Revenue Acts had been given a more restricted administrative interpretation."

[Helvering v. Edison Bros. Stores, 133 F.2d. 575 (1943)]

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**Helvering v. Griffiths (Mar. 1, 1943)**

"The Supreme Court does not decide whether a tax may constitutionally be laid until, finding that Congress has laid it."

"The provisions of Internal Revenue Code that "income" includes dividends and that distribution to shareholders in stock or right to acquire stock shall not be treated as "dividend" to the extent that it does not constitute income within Sixteenth Amendment, and administrative regulations thereunder, do not make stock dividends taxable as "income" in contravention of prior decision of Supreme Court that stock dividends were not income within Sixteenth Amendment."

"Under literal reading of provision of Internal Revenue Code that distribution in stock or right to acquire stock shall not be treated as dividends to the extent that it "does not constitute income", within Sixteenth Amendment, use of "does" instead of some word of futurity indicates that time of enactment or at the latest the time of receipt of dividend is critical for determining taxability."

"In construing provision of Internal Revenue Code that distribution in stock or right to acquire stock shall not be

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treated as dividend to the extent that it does not constitute income within Sixteenth Amendment, court refused to impute to Congress intent to hold meaning of the provision in suspense, in departure from usual policy of providing practical basis for timely settlement of fact questions, until termination of litigation challenging previous decision of the Supreme Court that stock dividends were not income."

"The Supreme Court can reconsider a matter only when it is again properly brought before court in a case or controversy, and if the case requires statutory basis, as a tax case does, the new case must have sufficient statutory support."

"Speculation upon political factors which may have motivated choice of language has no place in construction of acts of Congress."

"A long period of accommodations to an older decision sometimes requires Supreme Court to adhere to an unsatisfactory rule to avoid unfortunate practical results from change."

[Helvering, v. Griffiths, 318 U.S. 371, 63 S.Ct. 636 (1943)]

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### **Congressional Record for the 78' Congress (Mar. 27, 1943)**

"Historically, our Federal income-tax law goes back to a bill signed by President Lincoln on August 5, 1861. It was first announced as a war-revenue measure and even at that early date one provision of the act provided for collections by withholding at the source. The act was carried on the statute books for several years. In its early stages it was definitely an excise tax or a duty and so construed by the courts. A most informative statement in regard to the early history of the income-tax law was recently written by Mr. F. Morse Hubbard, formerly of the legislative drafting research fund of Columbia University, and a former legislative draftsman in the Treasury Department. This compilation of information concerning our income-tax law is so well written that I am making it a part of my statement and the record:

"I. THE INCOME TAX IS AN EXCISE TAX, AND INCOME IS MERELY THE BASIS FOR DETERMINING ITS AMOUNT

"The first Federal income tax law was approved by President Lincoln on August 5, 1861, a little less than 4 months after the bombardment of Fort Sumter and the President's call for 75,000 volunteers, and less than a month after the disaster at Bull Run. It was distinctly a war-revenue measure. The act of 1861 (12 Stat. 292) provided for a tax to be levied, assessed, and collected in the year 1862, the tax to be based on income for the "preceding" year, that is, the year 1861. This tax, which was due and payable on or before June 30, 1862, was levied only for that 1 year.

"In 1862, in order to meet the need for continued war revenues, Congress passed the second income-tax law. This act took effect on July 1, 1862, the day after the tax under the act of 1861 expired. The act of 1862 (12 Stat. 432) which used the word "duty" instead of "tax," provided that this duty should be levied, collected, and paid in the year 1863 and in each year thereafter until and including the year 1866 "and no longer" (sec. 92). Like the act of 1861 it provided that the tax (or duty) collected in each year should be based on the income for the "preceding" year (sec. 91). At the same time it contained a provision for withholding at the source, which will be referred to later on."

"In sustaining the Civil War income tax laws, the Supreme Court held that the tax based on income was not a direct tax but was an excise or duty and as such did not require **apportionment** among the States. *Springer v. United States* ((1880) 102 U.S. 586). This decision rendered after the income tax had been thoroughly tested for a period of 10 years, represents a deliberate determination as to the fundamental nature of the tax.

"The true character of the income tax was at the outset so firmly fixed in the minds of those charged with its administration that for 6 years the Treasury Department held that if a person died at any time between January 1 of one year and the date when his return was due in the following year the income for such period was not subject to tax, even though he may have made a return of income before his death in advance of the due date (T.D. June 9, 1865, 2 Internal Revenue Record 54). This rule was not changed until 1867, when it was held that such income was subject to the tax and should be returned by the executor or administrator (T.D. Apr. 6, 1867, 5 Internal Revenue Record 109; T.D. Jan. 1, 1868, 7 Internal Revenue Record 59). See also *Mandell v. Pierce* (C.C.D.Mass. 1868, 16 Fed.Cas.576). The change was doubtless prompted by two important considerations; first, the taxes expired by definite limitation within a very few years; and, second, persons whose tax had been withheld at the source would already have paid their tax up to the date of death. At any rate, the change did not involve any modification in the concept of the income tax as an excise tax based on income.

"After a lapse of about a quarter of a century Congress again passed an income-tax law. The act of 1894 (28 Stat. 509, 553; Aug. 27, 1894) provided for a tax to be levied, collected, and paid "from and after" January 1, 1895, "and until the 1st day of January 1900" (sec. 27). Like the Civil War acts it provided that the tax should be based on the "income received in the preceding calendar year." Although the Supreme Court held this portion of the act to be unconstitutional, it still recognized that the income tax was in essence an excise tax. The Court said that a tax on income from business, privileges, or employments, standing by itself, would be valid as an excise tax; but the tax on investment income was held to be invalid because the Court regarded a tax based on income from property as a tax on the property itself and therefore a direct tax which must be apportioned among the states (*Pollock v. Farmers' Loan and Trust Co.*, (1895), 157 U.S. 429, 158 U.S. 601). The Court said that to sustain a portion of the tax while declaring the rest invalid, "would leave the burden

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of the tax to be borne by professions, trades, employments, or vocations; and in that way what was intended as a tax on capital would remain, in substance, a tax on occupations and labor. We cannot believe that such was the intention of Congress" (158 U.S. 601, 637). So the entire portion of the act relating to income tax was declared invalid.

"There are still those who think that in this case the Court went further than necessary in treating a tax based on income from property as a tax on property itself, and that in any event the excise-tax principle should have been applied to rents and other investment income, as was done under the Civil War acts. In other words, the making and holding of investments, while perhaps not technically a business, is, at least, a kind of activity or privilege which can properly be subjected to an excise tax measured by reference to the income derived therefrom.

"That investment income may be included as a part of the basis for measuring an excise tax was recognized by Congress in the act of August 5, 1909 (36 Stat. 11, 112). This act provided "That every corporation \* \* \* shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, \* \* \* equivalent to 1 percent upon the entire net income over and above \$5,000 received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations \* \* \* subject to the tax hereby imposed; \* \* \*." Certain corporations, such as religious, charitable, and educational organizations, etc., were specifically exempted from the tax.

"The tax imposed by this act was really an income tax in that it was based on net income, but was given the correct designation of "excise tax." It was imposed with respect to carrying on or doing business; and it should be noted that the basis was net income from all sources, except dividends from other corporations subject to the tax. Such dividends were excepted not because they constituted investment income but because they represented income which had already been taxed. The sole test of taxability under this act was whether a corporation was engaged in business. If it was so engaged, then all the income (except dividends), including investment income as well as strictly business income, was used in measuring the tax. The Supreme Court held that the fact that the tax was measured by net income, and that income from nontaxable property or property not used in business was included in computing net income, did not prevent the tax from being construed as an excise tax which did not require apportionment. *Flint v. Stone Tract Co. et al.* ((1911) 220 U.S. 107."

"The sixteenth amendment authorizes the taxation of income "from whatever source derived--thus taking in investment income--"without apportionment among the several States." "The Supreme Court has held that the sixteenth amendment did not extend the taxing power of the United States to new or excepted subjects but merely removed the necessity which might otherwise exist for an apportionment among the States of taxes laid on income whether it be derived from one source or another. So the amendment made it possible to bring investment income within the scope of a general income-tax law, but did not change the character of the tax. It is still fundamentally an excise or duty with respect to the privilege of carrying on any activity or owning any property which produces income.

"The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax: it is the basis for determining the amount of tax."

"The purpose of the income tax is to raise revenue in the year of its levy. It is a method by which **some of us** make annual payments on account of the governmental expenses and the public debt of **all of us**--contributions to a common fund to preserve the blessings of liberty." [Bold added.]

[Congressional Record for the 78<sup>th</sup> Congress, Volume 89, Part 2, March 27, 1943, pp. 2579-2580]

#### **Laureldale Cemetery Association v. Matthews (May 27, 1946)**

"Reasonable compensation for labor or services rendered is not profit."

[Laureldale Cemetery Association v. Matthews, 47 A.2d. 277 (1946)]

#### **Anderson Oldsmobile, Inc. v. Hofferbert (Feb. 8, 1952)**

"The only thing that can be taxed by the Congress under 16th amendment is "income" and a tax can not be constitutionally imposed upon "gross receipts." U.S.C.A.Const. Amend. 16; 26 U.S.C.A. §§21-23."

"The applicable law is to be found principally in sections 21, 22 and 23 of 26 U.S.C.A., Internal Revenue Code. Under section 21 the net income is defined as gross income computed under section 22 less the deductions allowed by section 23. Gross income is defined by section 22 (in relevant part) as follows: "'Gross income' includes gains, profits, and income derived from \* \* \* businesses, commerce, or sales, or dealings in property, whether real or personal \* \* \* also from \* \* \* transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever." "It is to be noted that it is only profits and income from business which constitutes gross income."

[Anderson Oldsmobile, Inc. v. Hofferbert, 102 F.Supp. 902 (1952)]

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**1 U.S.C. §204, House Note**

"Title 26, Internal Revenue Code. The Internal Revenue Code of 1954 was enacted in the form of a **separate code**, by act August 16, 1954, ch. 736, 68A Stat. 1 Pub. L. 99-514, §2(a), Oct. 22, 1986, 100 Stat. 2095, provided that the Internal Revenue Title enacted August 16, 1954, as heretofore, hereby, or hereafter amended, may be cited as the "Internal Revenue Code of 1986"." [Bold added.]

[1 U.S.C. §204, House Note]

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**Oliver v. Halstead (Apr. 25, 1955)**

"There is a clear distinction between "profit" and "wages" or compensation for labor. "Compensation for labor can not be regarded as profit within the meaning of the law. The word `profit', as ordinarily used, means the gain made upon any business or investment--a different thing altogether from mere compensation for labor." Commercial League Association of America v. People ex rel. Needles, Auditor, 90 Ill. 166. "Reasonable compensation for labor or services rendered is not profit." Laureldale Cemetery Association v. Matthews, 354 Pa. 239, 47 A.2d. 277, 280."

[Oliver v. Halstead, 86 S.E.2d. 858 (1955)]

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**C.I.R. v. Minzer (June 3, 1960)**

"It is argued that the doctrine urged by the Commissioner represents an unprecedented extension of the concept of income as is found in Eisner v. Macomber, 252 U.S. 189, 40 S.Ct. 189, 190, 64 L.Ed. 521. There taxable income was characterized as "the gain derived from capital, from labor, or from both combined." We cannot see that our decision in any way expands the Eisner v. Macomber principle. On the contrary we think our determination is within it. But if the Eisner v. Macomber statement is regarded as a deterrent to the decision we have reached, **we are taken from under its interdict by a later case from the Supreme Court** where it is said that the phrase in Eisner v. Macomber "was not meant to provide a touchstone to all future gross income questions". Commissioner of Internal Revenue v. Glenshaw Glass Co., 348 U.S. 426, 75 S.Ct. 473, 477, 99 L.Ed. 483. See Commissioner of Internal Revenue v. LeBue [sic], 351 U.S. 243, 76 S.Ct. 800, 100 L.Ed. 1142."

[Commissioner Internal Revenue v. Minzer, 279 F.2d. 338 (1960)]

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**Conner v. United States (Apr. 18, 1969)**

"There must be gain before there is "income" within Sixteenth Amendment."

"Under Internal Revenue Code of 1954, if there is no gain, there is no "income." 26 U.S.C.A. (I.R.C.1954) §61(a)."

"Plainly, the amendment was not a grant of power to Congress to tax incomes, for such a power is one which Congress always had. It was adopted to meet the decision of the United States Supreme Court in Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 15 S.Ct. 673, 39 L.Ed. 759 (1895) which declared the Income Tax Act of 1894 unconstitutional on the ground that it was an unapportioned direct tax. See Bowers v. Kerbaugh-Empire Co., 271 U.S. 170, 173-174, 46 S.Ct. 449, 70 L.Ed. 886 (1926)."

"No attempt has ever been made by Congress to define with specificity the term "income" as it is used in the sixteenth amendment. In earlier taxing acts, it instead provided that "gross income" *includes* "gains, profits, and income" from various designated sources "or from any source whatsoever," leaving to administrative and judicial determination the inclusion or exclusion of certain items."

"The judiciary accepted this responsibility and in Eisner v. Macomber, 252 U.S. 189, 207, 40 S.Ct. 189, 193, 64 L.Ed. 521 (1919), the Supreme Court, referring to two cases arising under the Corporation Tax Act of 1909, endorsed the following definition of income:

"Income may be defined *as the gain* derived from capital, from labor, or from both combined, provided it be understood to include profit gained through a sale or conversion of capital assets." (Emphasis Added.)"

"The language of section 61(a) of the Internal Revenue Code of 1954, set forth above, might at first glance appear to have broadened the definition of gross income by the omission of any reference to gain. This, however, is not so, because the Supreme Court had before it the then recently enacted 1954 Code of Internal Revenue when it decided Commissioner v. Glenshaw Glass Co., *supra*. It noted that, although the definition of gross income had been simplified, "no effect on its present broad scope was intended." 348 U.S. 432, 75 S.Ct. 477. In addition, the Court in General American Investors Co. v. Commissioner of Internal Revenue, 348 U.S. 434, 75 S.Ct. 478, 99 L.Ed. 504 (1955), decided the same day as Glenshaw Glass Company, *supra*, held that "insider profits" under the Securities and Exchange Act of 1934 were includable [sic] in the recipient corporation's gross income.

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"In accordance with the legislative design to reach all gain constitutionally taxable unless specifically excluded, we conclude that the petitioner is liable for the tax \*

\*." 348 U.S. 436, 75 S.Ct. 479 (Emphasis Added.)

"The opinion in *Glenshaw Glass Company, supra*, regardless of what it said about *Eisner v. McComber, supra*, did not repudiate the concept that there must be gain before there is income within the meaning of the sixteenth amendment. 1 Mertens, section 5.02, p. 4. This is verified by the fact that in *Commissioner of Internal Revenue v. Lo Bue*, 351 U.S. 243, 76 S.Ct. 800, 100 L.Ed. 1142 (1956), a year after the decisions in *Glenshaw Glass Company, supra*, and *General American Investors v. Commissioner, supra*, it was said:

"We have repeatedly held that in defining 'gross income' as broadly as it did in §22(a) Congress intended to 'tax all gains except those specifically exempted.'" 351 U.S. 246, 76 S.Ct. 803 (Emphasis Added.)"

"To the same effect, see *Commissioner of Internal Revenue v. Minzer*, 279 F.2d. 338 (5th Cir. 1960).

"Accountants and economists may differ greatly as to what is or is not income. It is not, however, their theories that have guided the courts throughout the years. Instead, the courts have chosen to use the meaning given the term "income" by its everyday use in common speech. *Helvering v. Edison Bros. Stores*, 133 F.2d. 575 (8th Cir. 1943); 1 Mertens, *supra*, n. 5, p. 2. And the meaning of income in its everyday sense is "a gain or recurrent benefit usually measured in money that derives from capital or labor; also: the amount of such gain recovered by an individual in a given period of time." Webster's Seventh New Collegiate Dictionary, p. 425 (1965--emphasis Added). Income is nothing more nor less than realized gain. *Shuster v. Helvering*, 121 F.2d. 643 (2nd Cir. 1941). It is not synonymous with receipts. 47 C.J.S. Internal Revenue §98, p. 226."

"Whatever may constitute income, therefore, must have the essential feature of gain to the recipient. This was true when the sixteenth amendment became effective, it was true at the time of the decision in *Eisner v. McComber [sic], supra*, it was true under section 22(a) of the Internal Revenue code of 1939, and it is likewise true under section 61(a) of the Internal Revenue Code of 1954. If there is no gain, there is no income."

"Congress has taxed income, not compensation." [Bold added.]

[*Conner v. United States*, 303 F.Supp. 1187 (1969)]

#### **Bank of America National T. & S. Ass'n v. United States (May 12, 1972)**

"An income tax is a direct tax on gain or profits."

"There is consensus on certain basic principles, in addition to the rule that the United States notion of income taxes furnishes the controlling guide. All are agreed that an income tax is a direct tax on gain or profits, and that gain is a necessary ingredient of income. See *Stratton's Independence, Ltd. v. Howbert*, 231 U.S. 399, 415, 34 S.Ct. 136, 58 L.Ed. 285 (1913); *Brushaber v. Union Pacific R.* 240 U.S. 1, 36 S.Ct. 236, 60 L.Ed. 493 (1916); *Eisner v. Macomber*, 252 U.S. 189, 207, 40 S.Ct. 189, 64 L.Ed. 521 (1920); *Keasbey & Mattison Co. v. Rothensies*, 133 F.2d. 894, 897 (C.A.3), cert. denied, 320 U.S. 739, 64 S.Ct. 39, 88 L.Ed. 438 (1943). Income, including gross income, must be distinguished from gross receipts which can cover returns of capital. *Doyle v. Mitchell Bros. Co.*, 247 U.S. 179, 185, 38 S.Ct. 467, 62 L.Ed. 1054 (1918); *Allstate Ins. Co. v. United States*, 419 F.2d. 409, 414, 190 Ct.Ct. 19, 27 (1969); 1 Mertens, *law of Federal Income Taxation*, §5.10 at 35-36 (1969). Only an "income tax", not a tax which is truly on gross receipts, is creditable."

[*Bank of America National T. & S. Ass'n v. United States*, 459 F.2d. 513 (1972)]

#### **United States v. Ballard (Apr. 28, 1976)**

"Burden rests on taxpayer to disclose his receipts and claim his proper deductions."

"Gross income and not "gross receipts" is the foundation of income tax liability, for it is only earnings, profits and gains which are subject to tax...."

.. in a merchandising business gross income means gross receipts less costs of goods sold...."

"The general term "income" is not defined in the Internal Revenue Code."

[*United States v. Ballard*, 535 F.2d. 400 (1976)]

#### **United States v. Francisco (Feb. 6, 1980)**

"Willfulness under tax code requires only proof in intentional violation of known legal duty."

"In prosecution for willful failure to file income tax returns, evidence established that taxpayer's had been aware of his legal obligation and intentionally chose not to comply."

"Income tax is a direct tax."

"The cases cited by Francisco clearly establish that the income tax is a direct tax [...]." See *Brushaber v. Union Pacific*

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*Railroad Co.*, 240 U.S. 1, 19, 36 S.Ct. 236, 242, 60 L.Ed. 493 (1916) (the purpose of the Sixteenth Amendment was to take the income tax "out of the class of excises, duties and imposts and place it in the class of direct taxes")."  
[United States v. Francisco, 614 F.2d. 617 (1980)]

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**United States v. Buras (Dec. 17, 1980)**

"Failure to file income tax return does not violate statute which prohibits willful failure to file if failure resulted from good-faith misunderstanding of the law."

"Since issue whether wages constitute income was a purely legal one and since court fully considered defendant's written argument, district court acted well within its discretion in denying defendant's request for hearing on issue."

"Wages constitute income for purposes of statute under which defendant was charged with willful failure to file income tax return. 26 U.S.C.A. §7203."

"A failure to file an income tax return does not violate IRC §7203 (which prohibits willful failure to file) if failure resulted from good faith misunderstanding of the law. *United States v. Matosky*, 421 F.2d. 410, 413 (7th Cir.); *United States v. Ross*, 626 F.2d. 77, 80 (9th Cir.1980)."

"Buras contends that district court erroneously instructed the jury that wages constitute income. In addition to arguing that only gain or profit can constitute income, Buras argues that the income tax is essentially an excise tax. He argues that he can be subject to an excise tax only if he benefits from "any sort of privilege extended by a government agency." Since he is only a wage earner, he argues that he cannot be subject to an excise tax.

"Treas. Reg. §1.61-2(a)(1) clearly includes wages within the definition of income. Buras, however, argues that this regulation is invalid because it is inconsistent with the constitutional definition of income. According to Buras, income must be derived from some source. Wages cannot be taxed because the wage earner enjoys no gain from that source. Since the wage earner exchanges his labor and personal time for its equivalent in money, he derives no gain and therefore cannot be taxed.

"Appellant's argument is refuted by one of the cases he cites. In *Stratton's Independence, Ltd. v. Howbert*, 231 U.S. 399, 415, 34 S.Ct. 136, 140, 58 L.Ed. 285 (1913), the Court did define income as gain derived from labor. The Court went on to explain, however, that "the earnings of the human brain and hand when unaided by capital" are commonly treated as income. *Id.*

"As for Buras' argument that he may not be taxed because he is a wage earner, the Sixteenth Amendment is broad enough to grant Congress the power to collect income tax regardless of the source of the taxpayer's income."

[United States v. Burs, 633 F.2d. 1356 (1980)]

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**United States v. Turano (Sept. 26, 1986)**

"The prosecuting attorney incorrectly stated that the 16th Amendment had eliminated the Constitutional distinction between direct and indirect taxation. See *Eisner v. Macomber*, 252 U.S. 189, 40 S.Ct. 189, 64 L.Ed. 521 (1920) (the Sixteenth Amendment only eliminated the distinction for income taxes). Because the misstatement was not objected to, we may overturn the jury's verdict only if appellant demonstrates "plain error." See *United States v. Aitken*, 755 F.2d. at 191.

"The only taxes at issue at trial were income taxes. With regard to income taxes, the prosecutor's statement is correct. The 16th Amendment eliminated the indirect/direct distinction as applied to taxes on income. See *Eisner v. Macomber*, *supra*; *Brushaber v. Union Pacific Railroad Co.*," 240 U.S. 1, 36 S.Ct. 236, 60 L.Ed. 493 (1915)."

[United States v. Turano, 802 F.2d. 10 (1986)]

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**C.I.R. v. Fink (June 22, 1987)**

"Rules governing contributions to capital reflect general principle that shareholder may not claim immediate loss for outlays made to benefit corporation."

"Dominant shareholder who voluntarily surrenders portion of his shares to corporation, but retains control, does not sustain immediate loss deductible from taxable income; rather, surrendering shareholder must reallocate his basis in surrendered shares to shares he retains, and shareholder's loss, if any, will be recognized on disposition of remaining shares."

[Commissioner of Internal Revenue v. Fink, 483 U.S. 89; 107 S.Ct. 2729, 97 L.Ed.2d. 74 (1987)]

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**New Neighborhoods v. W.Va. Workers' Comp. Fund (Oct. 2, 1989)**

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"An excise tax is an indirect tax, one not directly imposed upon persons or property, see *In re Beaman*, 9 B.R. at 541, and is one that is "imposed on the performance of an act, the engaging in any occupation, or the enjoyment or [sic] privilege." *In re Tri-Manufacturing and Sales Co.*, 82 B.R. at 60. Several courts, in concluding that workers' compensation premiums are excise taxes within the meaning of section 507(a)(7)(E), have focused upon the definition of "excise tax" set forth in *Feiring*, namely, that an excise tax is a pecuniary obligation imposed by a government to defray expenses of an authorized undertaking, see *In re Tri-Manufacturing and Sales Co.*, and have concluded that the Congress in using the term "excise tax" intended for that category to "include all indirect taxes not otherwise included in section 507(a)(6)." [Brackets original.]  
[New Neighborhoods v. W.Va. Workers' Comp. Fund, 886 F.2d. 714 (4th Cir. 1989)]

## 8.2 Authority for Taxation

### Constitution for the United States of America, Article I, Section 2, Clause 3 (Sept. 17, 1787)

"Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service to a term of years, and excluding Indians not taxed, three-fifths of all other persons."  
[Constitution for the United States of America, Article I, Section 2, Clause 3]

### Constitution for the United States of America, Article I, Section 7 (Sept. 17, 1787)

All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

"Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it, but if he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

"Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill."  
[Constitution for the United States of America, Article I, Section 7]

### Constitution for the United States of America, Article I, Section 8 (Sept. 17, 1787)

"The Congress shall have power

"To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;" cl. 1.

"To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;" cl. 3.

"To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;" cl. 4.

"To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;" cl. 5.

"To constitute tribunals inferior to the supreme court;" cl. 9.

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;" cl. 17.

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[Constitution for the United States of America, Article I, Section 8]

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**Constitution for the United States of America, Article I, Section 9, Clause 4 (Sept. 17, 1787)**

**"No capitation, or other direct, tax shall be laid, unless in proportion to the census enumerations hereinbefore directed to be taken."** [Bold added.]

[Constitution for the United States of America, Article I, Section 9, Clause 4]

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**Constitution for the United States of America, Article I, Section 10 (Sept. 17, 1787)**

"No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility." cl. 1.

"No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of Congress. No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." cl. 2.

[Constitution for the United States of America, Article I, Section 10]

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**47B C.J.S., §1026**

**"Powers, Duties and Liabilities of Officials and Employees**

"Internal Revenue Service officials and employees can act only in accordance with applicable statutory and regulatory provisions and are immune from civil damage suits arising out of acts committed within the scope of their authority"

"Officials and employees of the Internal Revenue Service can act only in accordance with applicable statutory and regulatory provisions. The procedural steps established by Congress must be followed by such officials and employees in enforcing the Internal Revenue Code. However, an Internal Revenue Service manual does not have to be followed since it is an internal document issued to instruct IRS personnel in performing their duties and does not create any enforceable rights for taxpayer."

"Internal Revenue Service personnel have the responsibility of making a tax return where none has been made by the taxpayer, as well as verifying such returns as have been filed. However, Internal Revenue employees have no duty to answer taxpayers' questions with regard to the requirements of the Code, or to warn taxpayers not to take illegal deductions."

"Federal tax officials and employees are immune from civil damage suits arising out of acts committed within the scope of their authority. However, it has been held that IRS agents have only qualified immunity, that is, they are immune when, and only when, they act in good faith, with reason to believe that they are acting lawfully.

"Under provisions of the Code imposing criminal sanctions, damages may be awarded to a person injured' by an unlawful act of a federal officer or employee acting in connection with any revenue law of the United States. However, there is authority to the contrary.

"Generally, no direct constitutional action for damages is available against federal tax officials and employees. However, such an action has been held proper under some circumstances. Following IRS procedures does not subject an IRS agent to liability for constitutional violations absent allegations of bad faith on the part of the IRS.

"A civil action against the United States is the exclusive remedy for recovering damages for reckless or intentional disregard of Code provisions in connection with collection of federal tax with respect to a taxpayer."

"The secretary is authorized to repay any officer or employee the amount recovered against him in any court for any taxes collected by him, and to repay to such officer or employee all damages and costs recovered against him by reason of anything done in the due performance of his official duty."

[47B Corpus Juris Secundum, Powers, Duties and Liabilities of Officials and Employees §1026]

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**47B C.J.S., §1029**

**"Miscellaneous Officials and Employees**

"The courts have adjudicated the powers, duties, and liabilities of persons engaged in various capacities in the enforcement of the federal tax laws."

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"Agents of the Internal Revenue Service can perform only those functions which are authorized by law."

"Generally, agents carrying out an investigation are entitled to a qualified immunity from damage suits, but absolute immunity may not be claimed, except in limited circumstances, as where the commission of a common law tort is charged."

[47B Corpus Juris Secundum, Powers, Duties and Liabilities of Officials and Employees §1029]

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**Black's Law Dictionary: Liable**

"**LIABLE.** 1. Bound or obligated in law or equity; responsible; chargeable; answerable; compellable to make satisfaction, compensation, or restitution. [Cites omitted.] Obligated; accountable for or chargeable with." [Cite omitted.] [Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1060]

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**Black's Law Dictionary: Liability Created by Statute**

"**LIABILITY CREATED BY STATUTE.** One depending for its existence on the enactment of the statute, and not on the contract of the parties. [Cite omitted.] One which would not exist but for the statute." [Cites omitted.] [Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1059]

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**Black's Law Dictionary: Liability**

"**LIABILITY.** The word is a broad legal term. [Cite omitted.] It has been referred to as of the most comprehensive significance, including almost every character of hazard or responsibility, absolute, contingent, or likely." [Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1059]

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**Black's Law Dictionary: Bill of Attainder**

**"Bill of Attainder**

"A legislative act, directed against a designated person, pronouncing him guilty of an alleged crime, (usually treason,) without trial or conviction according to the recognized rules of procedure, and passing sentence of death and attainder upon him.

"Bills of attainder," as they are technically called, are such special acts of the legislature as inflict capital punishments upon persons supposed to be guilty of high offenses, such as treason and felony, without any conviction in the ordinary course of judicial proceedings. If an act inflicts a milder degree of punishment than death, it is called a "bill of pains and penalties," but both are included in the prohibition in the Federal constitution. *Losier v. Sherman*, 157 Kan. 153, 138 P.2d. 272, 273; *State v. Graves*, 352 Mo. 1102, 182 S.W.2d. 46, 54." [Black's Law Dictionary, Revised Fourth Edition, 1968, p. 162]

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**Black's Law Dictionary: Summary**

"**SUMMARY**, n. An abridgment; brief; compendium; also a short application to a court or judge, without the formality of a full proceeding. Wharton." [Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1604]

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**Black's Law Dictionary: Summary**

"**SUMMARY**, *adj.* Short, concise. Immediate, peremptory; off-hand; without a jury; provisional; statutory. The term used in connection with legal proceedings means a short, concise and immediate proceeding." [Cites omitted.] [Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1604]

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**Black's Law Dictionary: Proceeding**

"**PROCEEDING.** In a general sense, the form and manner of conducting juridical business before a court or judicial officer; regular and orderly progress in form of law; including all possible steps in an action from its commencement to the execution of judgment. [Cite omitted.] Sometimes, merely the record history of a case. [Cite omitted.]

"An act which is done by the authority or direction of the court, express or implied; an act necessary to be done in

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order to obtain a given end; a prescribed mode of action for carrying into effect a legal right. [Cites omitted.] All the steps or measures adopted in the prosecution or defense of an action."

**Summary proceeding.** Any proceeding by which a controversy is settled, case disposed of, or trial conducted, in a prompt and simple manner, without the aid of a jury, without presentment or indictment, or in other respects out of the regular course of the common law."

[Black's Law Dictionary, Revised Fourth Edition, 1968, pp. 1368-1369]

### **Black's Law Dictionary: Presentment**

#### **"PRESENTMENT.**

##### **"Criminal Practice**

"The written notice taken by a grand jury of any offense, from their own knowledge or observation, without any bill of indictment laid before them at the suit of the government."

##### **"Negotiable Instruments**

The production *of* a bill *of* exchange to the drawee for his acceptance, or to the drawer or acceptor for payment; or *of* a promissory note to the party liable, for payment *of* the same."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1347]

### **Cummings v. Missouri (Jan. 14, 1866)**

"We admit the propositions *of* the counsel *of* Missouri, that the States which existed previous to the adoption of the Federal Constitution possessed originally all the attributes of sovereignty; and they still retain those attributes, except as they have been surrendered by the formation of the Constitution, and the amendments thereto; that the new States, upon their admission into the Union, became invested with equal rights, and were thereafter subject only to similar restrictions, and that among the rights reserved to the States is the right of each State to determine the qualifications of office, and the conditions upon which its citizens may exercise their various callings and pursuits within its jurisdiction.

"These are general propositions, and involve principles of the highest moment. But it by no means follows that, under the form of creating a qualification or attaching a condition, the States can, in effect, inflict a punishment for a past act which was not punishable at the time it was committed."

"The oath could not, therefore, have been required as a means of ascertaining whether parties were qualified or not for their respective callings or the trusts with which they were charged. It was required in order to reach the person, not the calling. It was exacted, not from any notion that the several acts designated indicated unfitness for the callings, but because it was thought that the several acts deserved punishment, and that for many of them there was no way to inflict punishment except by depriving the parties who had committed them *of* some *of* the rights and privileges *of* the citizen.

"The disabilities created by the Constitution *of* Missouri must be regarded as penalties--they constitute punishment. We do not agree with the counsel *of* Missouri that "to punish one is to deprive him *of* life, liberty' or property, and that to take from him anything less than these is no punishment at all." The learned counsel does not use these terms--life, liberty, and property--as comprehending every right known to the law. He does not include under liberty freedom from outrage on the feelings as well as restraints on the person. He does not include under property those estates which one may acquire in professions, though they are often the source *of* the highest emoluments and honors. The deprivation of any rights, civil or political, previously enjoyed, may be punishment; the circumstances attending and the causes of the deprivation determining this fact. Disqualification from office may be punishment, as in cases of conviction upon impeachment."

"The theory upon which our political institutions rest is, that all men have certain inalienable rights--that among these are life, liberty, and the pursuit of happiness; and that in the pursuit of happiness all avocations, all honors, all positions, are alike open to everyone, and that in the protection of these rights all are equal before the law. Any deprivation or suspension of any *of* these rights for past conduct is punishment, and can be in no otherwise defined."

"A bill *of* attainder is a legislative Act, which inflicts punishment without a judicial trial

"If the punishment be less than death, the Act is termed a bill *of* pains and penalties. Within the meaning *of* the Constitution, bills *of* attainder include bills *of* pains and penalties. In these cases the legislative body, in addition to its legitimate functions, exercises the powers and office *of* judge; it assumes; in the language *of* text books, judicial magistracy; it pronounces upon the guilt of the party, without any of the forms or safeguards of trial; it determines the sufficiency *of* the proofs produced, whether conformable to the rules of evidence or otherwise; and it fixes the degree of punishment in accordance with its own notions of the enormity *of* the offense."

"These bills are generally directed against individuals by name; but they may be directed against a whole class."

""A British Act of Parliament," to cite the language of the Supreme Court of Kentucky, "might declare, that if certain individuals, or a class of individuals, failed to do a given act by a named day, they should be deemed to be, and treated as



convicted felons or traitors. Such an Act comes precisely within the definition of a bill of attainder," and the English courts would enforce it without indictment or trial by jury." *Gaines v. Buford*, 1 Dana, 510."

"The existing clauses presume the guilt of the priests and clergymen, and adjudge the deprivation of their right to preach or teach unless the presumption be first removed by their expurgatory oath--in other words, they assume the guilt and adjudge the punishment conditionally. The clauses supposed differ only in that they declare the guilt instead of assuming it. The deprivation is effected with equal certainty in the one case as it would be in the other, but not with equal directness. The purpose of the law maker in the case supposed would be openly avowed; in the case existing it is only disguised. The legal result must be the same, for what cannot be done directly cannot be done indirectly. The Constitution deals with substance, not shadows. Its inhibition was leveled at the thing, not the name. It intended that the rights of the citizen should be secure against deprivation for past conduct by legislative enactment, under any form, however disguised. If the inhibition can be evaded by the form of the enactment, its insertion in the fundamental law was a vain and futile proceeding."

"By an *ex post facto* law is meant one which imposes a punishment for an act which is not punishable at the time it was committed; or imposes additional punishment to that then prescribed; or changes the rules of evidence by which less or different testimony is sufficient to convict than was then required."

"In *Fletcher v. Peck*, 6 Cranch, 137, Mr. Chief Justice Marshall defined an *ex post facto* law to be one "which renders an act punishable in a manner in which it was not punishable when it was committed." "Such a law," said that eminent judge, "may inflict penalties on the person, or may inflict pecuniary penalties which swell the public Treasury. The Legislature is then prohibited from passing a law by which a man's estate, or any part of it, shall be seized for a crime, which was not declared by some previous law to render him liable to that punishment. Why, then, should violence be done to the natural meaning of words for the purpose of leaving to the Legislature the power of seizing for public use the estate of an individual, in the form of a law annulling the title by which he holds the estate? The court can perceive no sufficient grounds for making this distinction. This rescinding Act would have the effect of an *ex post facto* law."

"The clauses in the Missouri Constitution, which are the subject of consideration, do not, in terms, define any crimes, or declare that any punishment shall be inflicted; but they produce the same result upon the parties against whom they are directed, as though the crimes were defined and the punishment was declared."

"To make the enjoyment of a right dependent upon an impossible condition is equivalent to an absolute denial of the right under any condition, and such denial, enforced for a past act, is nothing less than punishment imposed for that act. It is a misapplication of terms to call it anything else."

"The clauses in question subvert the presumptions of innocence, and alter the rules of evidence, which heretofore, under the universally recognized principles of the common law, have been supposed to be fundamental and unchangeable. They assume that the parties are guilty; they call upon the parties to establish their innocence; and they declare that such innocence can be shown only in one way--by an inquisition, in the form of an expurgatory oath, into the consciences of the parties."

"The provision of the Federal Constitution, intended to secure the liberty of the citizen, cannot be evaded by the form in which the power of the State is exerted. If this were not so; if that which cannot be accomplished by means looking directly to the end, can be accomplished by indirect means, the inhibition may be evaded at pleasure."

"Under this form of legislation the most flagrant invasion of private rights, in periods of excitement, may be enacted; and individuals, and even whole classes, may be deprived of political and civil rights."

"A question arose in New York, soon after the Treaty of Peace of 1783, upon a statute of that State, which involved a discussion of the nature and character of these expurgatory oaths, when used as a means of inflicting punishment for past conduct. The subject was regarded as so important, and the requirement of the oath such a violation of the fundamental principles of civil liberty, and the rights of the citizen, that it engaged the attention of eminent lawyers and distinguished statesmen of the time, and among others of Alexander Hamilton. We will cite some passages of a paper left by him on the subject, in which, with his characteristic fullness and ability, he examines the oath, and demonstrates that it is not only a mode of inflicting punishment, but a mode in violation of all the constitutional guarantees, secured by the Revolution, of the rights and liberties of the people."

"Let us not forget that the Constitution declares that trial by jury, in all cases in which it has been formerly used, should remain inviolate forever, and that the Legislature should at no time erect any new jurisdiction which should not proceed according to the course of the common law. Nothing can be more repugnant to the true genius of the common law than such an inquisition as has been mentioned, into the consciences of men \* \* \*. If any oath with respect to past conduct were to be made the condition on which individuals, who have resided within the British lines, should hold their estates, we should immediately see that this proceeding would be tyrannical, and a violation of the Treaty; and yet, when the same mode is employed to devalue that right, which ought to be deemed still more sacred, many of us are so infuriated as to overlook the mischief."

[*Cummings v. Missouri*, 71 U.S. 277, 18 L.Ed. 356 (1866)]

**Hammett v. City of Philadelphia (Tan. 1870)**

"It is well remarked by Chief Justice ROBERTSON, of Kentucky, under a constitution without restraint on the legislative power of taxation: "An exact equalization of the burden of taxation is unattainable and utopian. But, still, there are well-defined limits within which the practical equality of the constitution may be preserved, and which, therefore, should be deemed impassable barriers to legislative powers. \* \* The legislature in the plenitude of its taxing power, cannot have constitutional authority to exact from one citizen, or even one county, the entire revenue of the whole commonwealth. Such an exaction, by whatever name the legislature might choose to call it, would not be a tax, but would undoubtedly be the taking of private property for public use, and which could not be done constitutionally without the consent of the owner or owners, and without retribution of the value in money." *Lexington v. McQuillan's Heirs*, 9 Dana, 513. "A legislative act," says Chief Justice BEASLEY, of New Jersey, "authorizing the building of a public bridge and directing the expenses to be assessed on A., B. and C., such persons not being in any way peculiarly benefited by such structure, would not be an act of taxation, but a condemnation of so much of the money of the person designated to a public use." *The Tide-water Company v. Carter*, 3 C.E. Green, 518. . . . It is said that the line of distinction between the right of taxation and the right of eminent domain is clear and well defined. Taxation exacts money or services from individuals, as and for their respective shares of contribution to any public burden. Private property, taken for public use by right of eminent domain is taken, not as the owner's share or contribution to a public burden, but as so much beyond his share. *The People ex rel. Griffin v. Brooklyn*, 4 Comst. 419. It has been said by Judge FIELD, of California, now on the bench of the supreme court of the United States, that "money is not that species of property which the sovereign authority can authorize to be taken in the exercise of its right of eminent domain. That right can be exercised only with reference to other property that money, for the property taken is to be the subject of compensation in money itself; and the general doctrine of the authorities of the present day is, that the compensation must be made, or a fund provided for it, in advance." *Burnett v. Sacramento*, 12 Cal. 76.

"The obligation of compensation is not immediate. It is required only that provision should be made for compensation in the future. Judge RUGGLES confines the right to exact money by virtue of the eminent domain, to the case where it is for the use of the State at large in time of war. *The People ex rel. Griffin v. Brooklyn*, 4 Comst. 419. I cannot see that there is any necessary limitation. The public necessity which gives rise to it prevents its being restrained by any limitations as to either subject or occasion. In truth it matters not whether an assessment upon an individual or a class of individuals for a general, and not a mere local purpose, be regarded as an act of confiscation--a judicial sentence or rescript, or a taking of private property for public use without compensation-- in any aspect it transcends the power of the legislature, and is void. I regard it as a forced contribution. If the sovereign breaks open the strong-box of an individual or corporation and takes out money, or, if not being paid on demand, he seizes and sells the lands or goods of the subject, it looks to me very much like a direct taking of private property for public use. It certainly cannot alter the case to call it taxation. Whenever a local assessment upon an individual is not grounded upon, and measured by, the extent of his particular benefit, it is *pro tanto*, a taking of his private property for public use without any provision for compensation. That clause in the Declaration of Rights is, indeed, the sheet-anchor of private property, the security of which against the government, as well as all others, is intended in the first section of the ninth article: "All men have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness." The dollar which the poor man has earned by the sweat of his brow--the fortune which a rich man has inherited from his ancestors--stand on the same rock, and are surrounded and protected by the same barrier. Invested for comfort and assurance against want in sickness or old age, or cherished as a provision for widow or orphan after he has gone, it is a right which it is despotism to take from him, except for the necessary purposes of government by equal and just taxation. It is none the less so if it be the act of the hydra-headed monster, a municipal majority, or that of a single autocrat. It is the solemn duty of the judiciary, under our constitution, to guard and protect this right of property, as well from indirect attacks under any specious pretext, as from open and palpable invasion. "There being," says Chief Justice MARSHALL, of Kentucky, "no express constitutional declaration or prohibition directly applicable to the powers or subject of taxation, and none which, in terms, secure equality or uniformity in the distribution of public burdens, either general or local, there is no clause to which the citizen can, with certainty, appeal for protection against an oppressive and ruinous discrimination, under color of the taxing power, unless it be that which prohibits the taking of private property for public use without compensation. \* \* This is the great conservative principle of the constitution, by which the rights of private property are to be preserved from violation under public authority; and we should feel bound to give it, as has heretofore been done, a liberal construction for the attainment of so important and valuable an object." *Cheany v. Houser*, 9 B.Mon. 341"

[*Hammett v. City of Philadelphia*, 65 Pa. 146, 153, 3 Am.Rep. 615 (1870)]

**United States v. Baltimore and Ohio Railroad Company (Apr. 7, 1873)*****Sovereignty and Freedom Points and Authorities***

"Congress did not intend, by the Internal Revenue Laws, to tax property belonging to the States or to municipal corporations."

"It does not lie within the power of Congress to tax the property of a municipal corporations."

"A tax is understood to be a charge, a pecuniary burden, for the support of Government. Of all burdens imposed upon mankind that of grinding taxation is the most cruel."

[United States v. Baltimore and Ohio Railroad Company, 84 U.S. 322, 17 Wall. 322, 21 L.Ed. 597 (1873)]

#### **United States v. Erie Railway Co. (Nov. 27, 1882)**

"WAITE, C.J. This judgment is reversed on the authority" of *Railroad Co. v. Collector*, 100 U.S. 595, and the cause is remanded with instructions to enter a judgment in favor of the United States, for the equivalent in lawful money of the United States of the tax of £9,300, with interest at the rate of 6 per cent. per annum from the several-times when the same became due and payable, according to the agreed statement of facts on which the submission was made below."

BRADLEY, J. I concur in the judgment of the court in this case, but not for the reasons given in the case of the *Michigan Cent. R. Co. v. Collector*, 100 U.S. 595. [\* \* \*] As to the interest payable on bonds, it was not a tax upon the property represented thereby. The property obtained by the proceeds of the loans represented by the bonds was taxable (if not taxed) in another form. That property consisted of the railroad tracks, or canal, and other specific property of the companies respectively. If this property was not taxed directly it was taxed indirectly by means of the duty of 2 1/2 per cent. which was laid on their gross earnings. The tax laid upon their bonds was intended to affect the owners of the bonds, and while the companies were directed to pay it, they were authorized to retain the amount from the installments due to the bondholders, whether citizens or aliens. The objection that congress had no power to tax non-resident aliens is met by the fact that the tax was not assessed against them personally, but against the *rem*, the credit, the debt due to them. **Congress has the right to tax all property within the jurisdiction of the United States**, with certain exceptions not necessary to be noted. The money due to non-resident bondholders in this case was in the United States,--in the hands of the company,--before it could be transmitted to London, or other place where the bondholders resided. While here it was liable to taxation. Congress, by the internal-revenue law, by way of tax, stopped a part of the money before its transmission, namely, 5 per cent. of it."

"There is nothing in the constitution which authorizes this court, or any other court, to disaffirm the power of congress to lay the tax. Congress is its own judge of the propriety or expediency of laying it." [Bold added.]

[United States v. Erie Railway Co., 106 U.S. 327, 1 S.Ct. 223 (1882)]

#### **Snyder v. Marks (Nov. 12, 1883)**

"... the appellant, a tobacco manufacturer...."

.. that, when he commenced the manufacture of tobacco, he gave a bond to the United States, in a penalty of \$20,000, conditioned that he would stamp all tobacco manufactured by him, as required by law, and comply with all the requirements of law relating to the manufacture of tobacco...."

"The inhibition of section 3224 applies to all assessments of taxes, made under color of their offices, by internal revenue officers charged with general jurisdiction of the subject of assessing taxes against tobacco manufacturers. [\* \* \*] In *Cheatham v. U.S.*, 92 U.S. 85, 88, and again in *State Railroad Tax Case*, Id. 575, 613, it was said by this court that the system prescribed by the United States in regard to both customs duties and internal revenue taxes, of stringent measures, not judicial, to collect them, with appeals to specified tribunals, and suits to recover back moneys illegally exacted, was a system of corrective justice intended to be complete, **and enacted under the right belonging to the government to prescribe the conditions on which it would subject itself to the judgment of the courts in the collection of its revenues**. In the exercise of that right it declares, by section 3224, that its officers shall not be enjoined from collecting a tax claimed to have been unjustly assessed, when those officers, in the course of general jurisdiction over the subject-matter in question, have made the assessment and claim that it is valid." [Bold added.]

[Snyder v. Marks, 109 U.S. 189; 3 S.Ct. 157, 27 L.Ed. 901 (1883)]

#### **Braun & Fitts v. Coyne (Jan. 30, 1899)**

"The purpose of Congress was to protect butter as it has commonly been known against outside competitors, under the guise or appearance of butter."

[Braun & Fitts v. Coyne, 125 F. 331 (1899)]

#### **Dooley v. United States (May 27, 1901)**

#### ***Sovereignty and Freedom Points and Authorities***

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"An action to recover back duties illegally exacted and paid under protest upon imports into Porto Rico [sic] from New York is within the jurisdiction of the circuit court as a court of claims, whether the exactions were tortious or not, since the importer can waive the tort and sue upon an implied contract of the United States to refund the money, and the case is founded upon an act of Congress within the meaning of the Tucker Act (24 Stat. at L. 505, chap. 359), namely a revenue law."

"Porto Rico [sic] and the United States were foreign countries with respect to each other, within the meaning of the revenue laws, while the island was in the military occupation of the United States before its cession to the United States by treaty.

"Mr. Justice **Brown** delivered the opinion of the court:

"1. The jurisdiction of the court in this case is attacked by the government upon the ground that the circuit court, as a court of claims, cannot take cognizance of actions for the recovery of duties illegally exacted."

"By an act passed March 3, 1887, to provide for the bringing of suits against the government, known as the Tucker Act (24 Stat. at L. 505, chap. 359), the court of claims was vested with jurisdiction over, "first, all claims founded upon the Constitution of the United States or any law of Congress, except for pensions, or upon any regulation of an executive department, or upon any contract, express or implied, with the government of the United States, or for damages liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty, if the United States were suable;" and by §2 the district and circuit court were given concurrent jurisdiction to a certain amount.

"The 1st section evidently contemplates four distinct classes of cases: (1) Those founded upon the Constitution or any law of Congress, with an exception of pension cases; (2) cases founded upon a regulation of an executive department; (3) cases of contract, express or implied, with the government; (4) actions for damages, liquidated or unliquidated, in cases *not sounding in tort*. The words "not sounding in tort" are in terms referable only to the fourth class of cases."

"In *New Orleans v. New York Mail S. S. Co.*, 20 Wall. 387, 393, 22 L.Ed. 354, it was said, with respect to the powers of the military government over the city of New Orleans after its conquest, that it had "the same power and rights in territory held by conquest as if the territory had belonged to a foreign country and had been subjugated in a foreign war. In such cases the conquering power has the right to displace the preexisting authority, and to assume to such extent as it may deem proper to exercise by itself of all the powers and functions of government. It may appoint all the necessary officers and clothe them with designated powers, larger or smaller, according to its pleasure. It may prescribe the revenues to be paid, and apply them to its own use or otherwise. It may do anything necessary to strengthen itself and weaken the enemy.

There is no limit to the powers that may be exerted in such cases, save those which are found in the laws and usages of war. Those principles have the sanction of all publicists who have considered the subject."

See also *Thirty Hogsheads of Sugar v. Boyle*, 9 Cranch, 191, 3 L.Ed. 701; *Fleming v. Page*, 9 How. 603, 13 L.Ed. 276; *American Ins. Co. v. 356 Bales of Cotton*, 1 Pet. 511, 7 L.Ed. 242."

[*Dooley v. United States*, 182 U.S. 222, 21 S.Ct. 762, 45 L.Ed. 1074 (1901)]

### **Schmuck v. Hartman (June 23, 1908)**

"Though no right of appeal from a judgment in favor of a taxpayer against a tax assessment is given by statute, the Supreme Court, by reason of its general jurisdiction to examine and correct all errors of the lower courts, will treat an appeal as a certiorari, and correct any error on the face of the record."

"All taxation is statutory, and, while it is the duty of every citizen to bear his just proportion of public expense, he cannot be compelled to do so except as provided by statute."

"Liability to pay taxes arises from no contractual relation between the taxable and the taxing power, and cannot be enforced by common-law proceedings, unless the statute so provides."

"The taxing authorities cannot assess a taxpayer who has neglected to make a return for a particular year after the expiration of that year."

"Taxation is purely for the Legislature. The judiciary can enforce it only as the Legislature directs it to be enforced."

[*Schmuck v. Hartman*, 222 Pa. 190; 70 A. 1091 (1908)]

### **Constitution for the United States of America, Sixteenth Amendment (Feb. 25, 1913)**

"The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among' the several States, and without regard to any census or enumeration"

[Constitution for the United States of America, Sixteenth Amendment]

### **Black's Law Dictionary: Source**

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"SOURCE. That from which any act, movement, or effect proceeds; a person or thing that originates, sets in motion, or is a primary agency in producing any course of action or result; an originator; creator; origin. A place where something is found or whence it is taken or derived. *Jackling v. State Tax Commission*, 40 N.M. 241, 58 P.2d. 1167, 1171." [Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1568]

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**Black's Law Dictionary: Derive**

"DERIVE. To receive, as from a source or origin. *Crews v. Commissioner of Internal Revenue*, C.C.A.10, 89 F.2d. 412, 416. To proceed from property, sever from capital, however invested or employed, and to come in, receive or draw by taxpayer for his separate use, benefit, and disposal. *Staples v. United States*, D.C.Pa., 21 F.Supp. 737, 739." [Black's Law Dictionary, Revised Fourth Edition, 1968, p. 530]

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**26 U.S.C. §871, Nonresident Aliens and Foreign Corporations, History Notes**

"If taxpayer's status changes during year from that of citizen or resident to that of nonresident alien, he is taxable on all income received or accrued, from whatever source, for that part of year in which he was citizen or resident, and is taxable only on that part of his income derived from sources within United States for period during which he was nonresident alien. *Lee v. Commissioner* (1927) 6 BTA 1005 (A)." Note 3, p. 336.

"Nonresident alien is individual whose residence is not within United States and who is not citizen of United States. *Lemery v. Commissioner* (1970) 54 T.C. 480 (A)." Note 5, p. 337.

"Question of residence for tax purposes is to be determined by all facts and circumstances in each case. Rev Rul 70-461, 1970-2 CB 149." Note 5, p. 337.

"Taxpayer who at all times while abroad evidenced intention to return to United States but was unable to do so because of continued ill health and inability to conclude his business transactions there, was resident alien, and fact that his reentry permit expired in meantime did not change his status from resident to nonresident alien. Rev Rul 70-461, 1970-2 CB 149." Note 6, p. 337.

"Although as general rule burden of proof is upon petitioner, in case involving alien petitioner he is presumed to be nonresident; presumption may be overcome by proof of acts and statements demonstrating intention to acquire residence in United States or by proof that stay in United States has been of such extended nature as to constitute alien United States resident. *Lemery v. Commissioner* (1970) 54 T.C. 480 (A)." Note 10, p. 338.

"1936 Amendment to predecessor statute to 26 U.S.C.S. §871(a) was intended to tax gross income from interest, dividends, rents, wages, and salaries and other fixed and determinable income of nonresident alien not engaged in trade or business in United States, but tax on capital gains of nonresident alien was to be excluded because it was found impossible to effectively collect this latter tax. *Rohmer v. Commissioner* (1946, CA2) 153 F.2d. 61, 68 USPQ 433, 46-1 U.S.T.C. T 9130, 34 AFTR 826, cert den 328 U.S. 862, 90 L.Ed. 1632, 66 S.Ct. 1367, 69 USPQ 631." Note 19, p. 340.

[26 U.S.C. §871, Nonresident Aliens and Foreign Corporations, History Notes]

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**26 U.S.C. §6321**

"If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessment penalty; together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person."

[26 U.S.C. §6321]

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**26 C.F.R. §1.6001-1**

"(a) *In general.* Except as provided in paragraph (b) of this section, any person subject to tax under subtitle A of the Code (including a qualified State individual income tax which is treated pursuant to section 6361(a) as if it were imposed by chapter 1 of subtitle A), or any person required to file a return of information with respect to income, shall keep such permanent books of account of records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information." [Bold added.]

[26 C.F.R. §1.6001-1]

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**1065. 26 U.S.C. §7851**

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"(a) **General rules.**--Except as otherwise provided in any section of this title--

"(1) **Subtitle A.**--

"(A) Chapters 1, 2, 4, and 6 of this title shall apply only with respect to taxable years beginning after December 31, 1953, and ending after the date of enactment of this title, and with respect to such taxable years, chapters 1 (except sections 143 and 144) and 2, and section 3801, of the Internal Revenue Code of 1939 are hereby repealed.

"(B) Chapters 3 and 5 of this title shall apply with respect to payments and transfers occurring after December 31, 1954, and as to such payments and transfers sections 143 and 144 and chapter 7 of the Internal Revenue Code of 1939 are hereby repealed."

"(b) **Effect of repeal of Internal Revenue Code of 1939.**--

"(1) **Existing rights and liabilities.**--The repeal of any provision of the Internal Revenue Code of 1939 shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause, before such repeal; but all rights and liabilities under such code shall continue, and may be enforced in the same manner, as if such repeal had not been made."

"(d) **Periods of limitation.**--All periods of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, hereby repealed shall not be affected thereby, but all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising, or acts done or committed, prior to said repeal, may be commenced and prosecuted within the same time as if this title had not been enacted.

"(e) **Reference to other provisions.**--For the purpose of applying the Internal Revenue Code of 1939 or the Internal Revenue Code of 1986 to any period, any reference in either such code to another provision of the Internal Revenue Code of 1939 or the Internal Revenue Code of 1986 which is not then applicable to such period shall be deemed a reference to the corresponding provision of the other code which is then applicable to such period."

[26 U.S.C. §7851]

### 26 U.S.C. §6322

"Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed (or a judgment against the taxpayer arising out of such liability) is satisfied or becomes unenforceable by reason of lapse of time."

[26 U.S.C. §6322]

### 26 U.S.C. §6323

"Sec. 6323. **Validity and priority against certain persons**

"(a) **Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors.**-- [...]"

"(b) **Protection for certain interests even though notice filed.**-- [...]"

"(c) **Protection for certain commercial transactions financing agreements, etc.**-- [...]"

"(d) **45-day period for making disbursements.**-- [...]"

"(e) **Priority of interest expenses.**-- [...]"

"(f) **Place for filing notice, form.** [...]"

"(g) **Refiling of notice.**-- [...]"

"(h) **Definitions.**-- [...]"

"(i) **Special rules.**-- [...]" [Subsections, too voluminous to quote, are all included here by reference.]

[26 U.S.C. §6323]

### 26 U.S.C. §3402

"(a) **Requirement of withholding.**--

"(1) **In general.**--Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures' prescribed by the Secretary. Any tables or procedures prescribed under this paragraph shall-- [...]"

"(b) **Percentage method of withholding.**-- [...]"

"(c) **Wage bracket withholding.**-- [...]"

"(d) **Tax paid by recipient.**-- [...]"

"(e) **Included and excluded wages.**-- [...]"

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"(f) Withholding exemptions -- [...]"

"(g) Overlapping pay periods, and payment by agent or fiduciary.-- [...]"

"(h) Alternative methods of computing amount to be withheld.-- [...]"

"(i) Changes in withholding.-- [...]"

"(j) Noncash remuneration to retail commission salesman.-- [...]"

"(k) Tips.-- [...]"

"(l) Determination and disclosure of marital status.--

"(m) Withholding allowances.-- [...]"

"(n) Employees incurring no income tax liability . [ .].

"Notwithstanding any other provision of this section, an employer shall not be required to deduct and withhold any tax under this chapter upon a payment of wages to an employee if there is in effect with respect to such payment a withholding exemption certificate (in such form and containing such other information as the Secretary may prescribe) furnished to the employer by the employee certifying that the employee-

"(1) incurred no liability for income tax imposed under subtitle A for his preceding taxable year, and

"(2) anticipates that he will incur no liability for income tax imposed under subtitle A for his current taxable year. The Secretary shall by regulations provide for the coordination of the provisions of this subsection with the provisions of subsection (f)."

[26 U.S.C. §3402]

#### **47 C.J.S., Incomes Taxable in General §98**

##### **"Nature and Necessity of Income in General**

"Generally, the income tax statutes tax all species of income from whatever source derived, which the taxpayer has received under a claim of right and without restriction as to disposition."

"While the question of what constitutes "income" within the meaning of the Sixteenth Amendment' to the Constitution cannot be concluded by any definition which congress may adopt, in general the term "income" has been taken to have the same meaning as the term as used in the Constitution, and in the various revenue acts enacted by congress, and with few exceptions, if any, it is used therein in the same sense in which it is used in common speech. Thus "income" has been defined as gain derived from capital, or labor, or both combined, and includes profit gained through a sale or conversion of capital assets. It is not limited to cash income, and may include property, rights or privileges that are merely indicia of ownership, or anything of exchangeable value proceeding from property. The gain "derived from capital" within the definition is not a gain accruing to capital, or a growth or increment of value in the investment, but a gain or profit, something of exchangeable value proceeding from the property, severed from the capital however invested, and received or drawn by the claimant for his separate use, benefit, and disposal. It is fruit born of capital, and not the potency of fruition. A mere expectancy, or contingent right to receive money or property, especially a contested one, does not constitute income."

[47 Corpus Juris Secundum, §98]

#### **47 C.J.S., Incomes Taxable in General §99 "Realization of Income in General**

"While income must be realized before it is taxable, realization need not take the form of receipt of cash or property by the taxpayer; it may occur when the last step is taken by which he obtains the fruition of an economic gain which has already accrued to him."

"The gains with which the income tax law is concerned are **only** such as have been realized; the realization of income, rather than the acquisition of the right to receive it, is the taxable event." [Bold added in last sentence.] 47 Corpus Juris Secundum, §99.

#### **26 C.F.R. §1.911-2(g)**

"United States. The term "United States" when used in a geographical sense includes any territory under the sovereignty of the United States. It includes the states, the District of Columbia, the possessions and territories of the United States, the territorial waters of the United States, the air space over the United States, and the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the United States and over which the United States has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources."

[26 C.F.R. §1.911-2(g)]

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**26 C.F.R. §1.911-2(h)**

"Foreign country. The term "foreign country" when used in a geographical sense includes any territory under the sovereignty of a government other than that of the United States. It includes the territorial waters of the foreign country (determined in accordance with the laws of the United States), the air space over the foreign country, and the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the foreign country and over which the foreign country has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources."

[26 C.F.R. §1.911-2(h)]

**26 U.S.C.S. §4612(a) (4)****"§4612. Definitions and special rules.**

"(a) Definitions. For the purposes of this subchapter--

"(1) Crude oil [...]"

"(2) Domestic crude oil [...]"

"(3) Petroleum product [...]"

"(4) United States. (A) In general. The term "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands."

"(B) United States includes continental shelf areas. The principles of section 638 shall apply for purposes of the term "United States".

"(C) United States includes foreign trade zones. The term "United States" includes any foreign trade zone of the United States."

[26 U.S.C.S. §4612(a)(4)]

**40 U.S.C.S. §212a-2(f)**

**If) Definition of United States.** As used in this section, the term "United States" means each of the several States of the United States, the District of Columbia, and territories and possessions of the United States."

[40 U.S.C.S. §212a-2(f)]

**40 U.S.C.S. §472(f)**

"(f) The term "foreign excess property" means any excess property located outside the States of the Union, The District of Columbia, Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands."

[40 U.S.C.S. §472(f)]

**49 U.S.C.S. §10102, Interstate Transportation "Definitions**

"In this part [49 U.S.C.S. §§10101 et seq.]--

"(8) State" means a State<sup>94</sup> & 93 of the United States and the District of Columbia;"

"(10) "United States" means the States of the United States and the District of Columbia."

[49 U.S.C.S. §10102]

**49 U.S.C.S. §10102, Note 19**

"As used in former Interstate Commerce Act, "state" was limited in meaning to states of federal Union, and could not be applied to foreign shipment of cotton from Texas. *Houston E. & W.T.R. Co. v. Inman, Akers & Inman* (1911) 63 Tex.Civ.App. 556, 134 S.W. 275."

[49 U.S.C.S. §10102, note 19]

**26 C.F.R. §1.1-1**

"(b) Citizens or residents of the United States liable to tax.

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In general, all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States. Pursuant to section 876, a nonresident alien individual who is a bona fide resident of Puerto Rico during the entire taxable year is, except as provided in section 933 with respect to Puerto Rican sources income, subject to taxation in the same manner as a resident alien individual. As to tax on nonresident alien individuals, see sections 871 and 877.

"(c) *Who is a citizen.* Every person born or naturalized in the United States and subject to its jurisdiction is a citizen. For other rules governing the acquisition of citizenship, see chapters 1 and 2 of title III of the Immigration and Nationality Act (8 U.S.C., 1401-1459)."  
[26 C.F.R. §1.1-1]

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### **26 C.F.R. §1.871-1**

"(a) *Classes of aliens.* \* \* \* Nonresident alien individuals are taxable only on certain income from sources within the United States and on the income described in section 864(c)(4) from sources without the United States which is effectively connected for the taxable year with the conduct of a trade or business in the United States."

"(b) *Classes of nonresident aliens--(1) In general.* For purposes of the income tax, nonresident alien individuals are divided into the following three classes:

"(i) Nonresident alien individuals who at no time during the taxable year are engaged in a trade or business in the United States."  
[26 C.F.R. §1.871-1]

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### **26 C.F.R. §1.871-4**

"**Proof of residence of aliens.** (a) *Rules of Evidence.* The following rules of evidence shall govern in determining whether or not an alien within the United States has acquired residence therein for purposes of income tax. (b) *Nonresidence presumed.* An alien by reason of his alienage, is presumed to be a nonresident alien"  
[26 C.F.R. §1.871-4]

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### **26 C.F.R. §2.1**

"SEC. 905. [Merchant Marine Act. 1936] When used in this Act--

"(a) The words *foreign commerce* or *foreign trade* mean commerce or trade between the United States, its Territories or possessions, or the District of Columbia, and a foreign country.

\* \* \* \* \*

"(c) The words *citizen of the United States* include corporation, partnership, or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (U.S.C., title 46, sec. 802), and with respect to a corporation under title VI of this Act, all directors of the corporation are citizens of the United States, and, in the case of a corporation, partnership, or association operating a vessel on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States the amount of interest required to be owned by a citizen of the United States shall be not less than 75 per centum."

[26 C.F.R. §2.1-1]

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### **26 C.F.R. §2.1-1(a)(4)**

"*Citizen* means a person who, if an individual, was born or naturalized as a citizen of the United States or, if other than an individual, meets the requirements of section 905(c) of the Act [Merchant Marine Act, 1936, as amended (46 U.S.C 27)]...."  
[26 C.F.R. §2.1-1(a)(4)]

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### **5 U.S.C. §2105(a)**

"(a) For the purpose of this title, "employee" , except as otherwise provided by this section or when specifically modified, means an officer and an individual who is---

"(1) appointed in the civil service by one of the following acting in an official capacity--

"(A) the President;

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"(B) a Member or Members of Congress, or the Congress;

"(C) a member of a uniformed service;

"(D) an individual who is an employee under this section;

"(E) the head of a Government controlled corporation; or

"(F) an adjutant general designated by the Secretary concerned under section 709(c) of title 32;

"(2) engaged in the performance of a Federal function under authority of law or an Executive act; and

"(3) subject to the supervision of an individual named by paragraph (1) of this subsection while engaged in the performance of the duties of his position."

[5 U.S.C. §2105(a)]

### **Black's Law Dictionary: Executive**

"**EXECUTIVE ACT.** "Executive" and "administrative duties are such as concern the execution of existing laws. People ex rel. Holvey v. Kapp, 355 Ill. 596, 189 N.E. 920, 923."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 679]

### **26 U.S.C. §7621(a) & (b)**

"(a) Establishment and alteration.--The President shall establish convenient internal revenue districts for the purpose of administering the internal revenue laws. The President may from time to time alter such districts.

"(b) Boundaries. --For the purpose mentioned in subsection (a), the President may subdivide any State or the District of Columbia, or may unite into one district two or more States."

[26 U.S.C. §7621(a) & (b)]

### **Edwards v. Keith (Jan. 31, 1916)**

"The phraseology of form 1040 is somewhat obscure; perhaps it means that there shall be included actual receipts (a) for services rendered in the year' for which return is made and (b) for unpaid accounts, or charges for services rendered in former years, and paid in the year for which return is made. But it matters little what it does mean; the statute and the statute alone determines what is income to be taxed. It taxes only income "derived" from many different specified sources; **one does not "derive income" by rendering services and charging for them.**" [Bold added.]

[Edwards v. Keith, 231 F. 110 (1916)]

### **Treasury Decision 2313 (Mar. 21, 1916)**

"Under the decision of the Supreme Court of the United States in the case of Brushaber v. Union Pacific Railway [sic] Co., decided January 24, 1916, it is hereby held that income accruing to nonresident aliens in the form of interest from bonds and dividends on the stock of domestic corporation is subject to the income tax imposed by the act of October 3, 1913."

"Nonresident aliens are not entitled to the specific exemption designated in paragraph C of the income-tax law, but are liable for the normal and additional tax upon the **entire net income "from all property owned, and of every business, trade, or profession carried on in the United States,"** computed upon the basis prescribed in the law." [Bold supplied.]

[Treasury Decision 2313, March 21, 1916]

### **26 R.C.L., Taxation (1920)**

"**2. Tax Defined.**--A tax is an enforced contribution of money or other property, assessed in accordance with some reasonable rule of apportionment by authority of a sovereign state on persons or property within its jurisdiction, for the purpose of defraying the public expenses. The exercise of the power of taxation consists of two distinct processes--the one relating to the levying or imposition of the taxes on persons or property; the other to the collection of the taxes levied. The first is constituted of the provisions of law which determine or work out the determination of the persons or property to be taxed, the sum or sums to be thus raised, the rate thereof and the time and manner of levying and receiving and collecting the taxes. It definitely and conclusively establishes the sum to be paid by each person taxed, or to be borne by each property specifically assessed, and creates a fixed and certain demand in favor of the state or a subordinate governmental agency, and a definite and positive obligation on the part of those taxed. The second is constituted of the provisions of law which prescribe the manner of enforcing the obligation on the part of those taxed to pay the demand thus created. It is often very important to determine whether a particular pecuniary imposition is a tax or not, because the power of taxation is restricted

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by constitutional limitations different from those applicable to other governmental powers, and the constitutionality of a statute imposing a pecuniary charge may depend on whether such charge is a tax or not.

"4. **Taxation Distinguished from Regulation.**--Some governments derive a considerable revenue from a judicious exercise of the power of regulation; but since a tax is a charge imposed for the purpose of raising revenue, a charge primarily imposed for the purpose of regulation is not a tax, and is not subject to the constitutional limitations upon the power of taxation. Thus when the legislature desires to place some limit upon the number of people who will engage in a particular occupation which if carried on without restraint as to numbers will be injurious to the public welfare, or wishes to restrict the frequency with which some act will be performed, without prohibiting it altogether, it often imposes a charge or fee upon those engaging in the occupation or performing the act. If the primary purpose of the legislature in imposing such a charge is to regulate the occupation or the act, the charge is not a tax, even if it produces revenue for the public. If, however, the primary purpose of such a charge is revenue it is a tax, and is subject to the limitations upon the power of taxation, and not to the limitations upon the power of regulation. [ \* \* \* ] Another distinction between a tax and a license fee imposed under the police power is said to be that the former is exacted by reason of the fact that the business is carried on or the property is held within the jurisdiction of the taxing power, and the latter is required as a condition precedent to the right to carry on such business or to hold such property within the jurisdiction."

"5. **Legislation Intended for Both Revenue and Regulation.**--If a legislative body which imposes a charge on an occupation, an act or a privilege has power both to regulate and to tax the subject matter, it is immaterial whether the charge was intended as a regulation or as a tax, and it may constitutionally be intended to fulfil the double function of regulating and of producing revenue."

"11. **Tax as Debt.**--It is generally considered that a tax is not a debt, and that the municipality to which the tax is payable is not a creditor of the person assessed. A debt is a sum of money due by certain and express agreement. It originates in, and is founded upon, contract express or implied. Taxes, on the other hand, do not rest upon contract, express or implied. They are obligations imposed upon citizens to pay the expenses of government. They are forced contributions, and in no way dependent upon the will or contract, express or implied, of the persons taxed. The power to tax is wholly statutory. A tax roll is not a judgment roll, and a tax thereon does not partake of the nature of a judgment, except as to its validity and amount and the manner in which it can be proven. The authority for the tax and its binding effect upon the person taxed rest upon the authority given to the taxing officers by the legislature."

"12. **Power of Taxation Inherent in Sovereignty.**--The power of taxation is inherent in a sovereign state. The right to tax is not granted by the constitution but of necessity underlies it, because government could not exist or perform its functions without it. While it may be regulated and limited by the constitution, it exists without express authority in the fundamental law as a necessary attribute of sovereignty. The provisions of the constitution which relate to the power of taxation do not operate as grants of the power of taxation to the governments thus set up, but constitute limitations upon a power which would otherwise be without limit.""

"15. **Delegation of Power of Taxation Generally.**--The power of taxation cannot be delegated' by the legislature except to municipal corporations for municipal purposes. The legislature of the state is the only authority that can levy taxes for state purposes, and administrative officers cannot be given authority to fix, reduce, increase or in any manner establish or alter the taxes to be levied for state purposes."

"16. **Delegation of Power to Local Boards.**--It is well settled that the power to levy taxes for municipal purposes may be delegated to municipal corporations by the legislature, to be exercised by them through the voters of the municipality directly, or through municipal councils elected by the people of the municipality, and this power includes the determination of the subjects on which an excise shall be levied and the amount of the excise. This is an exception to the principle that the power of taxation cannot be delegated, based upon long and unquestioned practice; but since the power when exercised for the state at large must be exercised by the legislature itself, similarly when exercised for a section of the state it must be exercised by a local legislative body, chosen by and responsible to the people of the district taxed. Accordingly the power to determine what sums shall be levied by taxation for municipal purposes can be exercised only by municipal councils elected by and responsible to the people, and cannot be delegated to a subdivision of the state having no such representative body, or to a board of local officials not elected by the people."

"17. **Power to Tax as Power to Destroy.**--One of the principles first laid down by the supreme court of the United States with respect to the power of taxation was that the power to tax involves the power to destroy, and the maxim is one that the court have frequently invoked. This principle, however, has often been misunderstood and misapplied. It is pertinent only when there is no power to tax a particular subject, and has no relation to a case where such right exists. In other words, the power to destroy, which may be the consequence of taxation, is a reason why the right to tax should be confined to subjects which may be lawfully embraced therein, even though it happens that in some particular instance no great harm may be caused by the exercise of the taxing authority as to a subject which is beyond its scope. But this reasoning has no application to a lawful tax, for if it had there would be an end of all taxation; that is to say, if a lawful tax can be defeated because the power which is manifested by its imposition may, when further exercised, be destructive, it would follow that every lawful tax would become unlawful, and therefore no taxation whatever could be levied. When a legislative body

having power to tax a certain subject matter actually imposes such a burdensome tax as effectually to destroy the right to perform the act or to use the property subject to the tax, the validity of the enactment depends upon the nature and character of the right destroyed. If so great an abuse is manifested as to destroy natural and fundamental rights which no free government could consistently violate, it is the duty of the judiciary to hold such an act unconstitutional."

"25. **Excises Classified.**--Excises are divided naturally into two classes, namely, those laid on the importation of foreign goods and those laid on domestic goods, privileges and transactions. Excises of both classes were laid by the various colonies in America, and by the states after the Declaration of Independence, but on the adoption of the United States constitution the exclusive power of laying duties on imports was vested in Congress; leaving in the states the power concurrently with Congress of laying excises on domestic transactions. The principal excises on domestic transactions which have been laid by Congress consist of the so called internal revenue taxes on the manufacture or sale of intoxicating liquors and tobacco, stamp taxes on legal instruments of various descriptions, taxes on the income of trades, professions and employments, and inheritance taxes. The principal excises imposed by the states have been on the franchises of corporations, domestic and foreign, and occupations of a more or less harmful or dangerous character; the sale of intoxicating liquor; on inheritances, and, in recent years, on automobiles."

"26. **Taxes as Leviable Only for Public Use.**--It is a well settled principle of constitutional law that no tax can be levied except for the purpose of raising money which is to be expended for the public use. The power to levy taxes is founded on the right, duty and responsibility to maintain and administer all the governmental functions of the state, and to provide for the public welfare. To justify any exercise of this power the expenditure which it is intended to meet must be for some public service, or some object which concerns the public welfare. This principle is fundamental, and underlies all government that is based on reason rather than force. To lay with one hand the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms. Nor is such a levy taxation, since a tax is an impost assessed for the purpose of raising money for the public use, and an assessment for any other purpose is not a tax."

"28. **Application of Principle to All Public Expenditures.**--The application of the principle that taxes can be levied only for the public use extends far beyond the mere denial of the right to collect a tax which has been levied for a private purpose. The right to tax depends upon the ultimate use, purpose, and object for which the fund is raised. This principle may accordingly be invoked by a taxpayer to prevent the expenditure of funds which have been or are to be raised by taxation for purposes not public. Obviously appropriations of money out of the treasury must be measured by the same test as that by which it is raised by taxation and put into the treasury. If taxes could not be imposed for a purpose, money already in the treasury could not be appropriated to that purpose. A gift of the public funds to an individual when no public purpose is directly or indirectly subserved is beyond the power of the legislature. The principle that taxes can be levied only for public purposes also makes it unlawful for the state or a municipal corporation to embark in any enterprise which may involve the expenditure of money, unless the enterprise is a public one, even if no tax has been levied, debt incurred or appropriation made, or expected to be made, for if the enterprise should prove unprofitable the debts incurred can be met only by taxation. The principle is involved in determining the validity of every debt incurred by the state or by a municipal corporation. The proposition is a very broad one, that debts contracted by public corporations must be paid, if paid at all, out of taxes which they may lawfully levy, and that all contracts creating debts to be paid in future, not limited to payment from some other source, imply an obligation to pay by taxation. It follows that in this class of cases the right to contract must be limited by the right to tax, and if in the given case no tax can lawfully be levied to pay the debt, the contract itself is void for want of authority to make it. The legislature cannot authorize the state to borrow money in order to lend it to private individuals when no public purpose is involved, for if the individuals should be unable to repay the loan the state would be obliged to raise money by taxation to pay the debt which it had incurred. The same principle prevents the state or a municipal corporation from undertaking a work even of a public character in such a way as to incur additional expense over what would be reasonably necessary, when such additional expense is incurred in order to benefit a particular class in the community. It is even held that this principle prevents a state from devoting to a use not public funds raised from sources other than taxation, since the use of such funds for a private purpose will necessarily increase the burden of taxation in order to raise the money necessary for public purposes to which these funds should have been applied.

"29. **What Constitutes Public Use.**--[ \* \* \* ] Perhaps the best test of rightful taxation is that the proceeds of the tax must be used for the support of government, or for some of the recognized objects of government, or directly to promote the welfare of the community. It may also be conceded that that is a public purpose from the attainment of which will flow some benefit or convenience to the public. In this latter case, however, the benefit or convenience must be direct and immediate from the purpose, and not collateral, remote or consequential. It must be a benefit or convenience which each citizen of the community affected may lay his own hand to in his own right, and take unto his own use at his own option, upon the same reasonable terms and conditions as any other citizen thereof. He may not be made to depend for it on the spontaneous actions of others or to receive it in uncertain degree or manner or roundabout way or hampered with discriminating distinctions and conditions. To constitute a public use, the benefit must be bestowed upon those who will

enjoy it as members of the public, and not as individuals. The promotion of the interests of individuals, either in respect to property or business, although it may result incidentally in the advancement of the public welfare, is, in its essential character, a private and not a public object. However certain and great the resulting good to the general public, it does not, by reason of its comparative importance, cease to be incidental. The incidental advantage to the public, or to the state, which results from the promotion of private interests, and the prosperity of private enterprises or business, does not justify their aid by the use of public money raised by taxation, or for which taxation may become necessary."

"30. **Consideration of Ultimate Effect of Expenditure.**--[ \* \* \* ] So also the legislature may provide for the payment of private claims against the state which are not legal but which are founded on justice and supported by moral obligation."

"31. **Comparison with Other Governmental Powers.**--The power of the government to affect the individual in his private rights of property is confined to the purposes and objects which the government was established to promote, namely, the public use, whether by exacting contributions to the general means or by sequestration of specific property. The power when exercised in one form is taxation; in the other is designated as the right of eminent domain. The two are diverse in respect to the occasion and mode of exercise, but identical in their source, to wit, the necessities of organized society, and in the end by which alone the exercise of either can be justified, to wit, mere public use of service or use. So far as it concerns the question what constitutes public use or service that will justify the exercise of those sovereign powers over private rights of property, this identity renders it unnecessary to distinguish between the two forms of exercise, as the same tests must apply to and control in each."

"34. **Relief of the Poor Generally.**--The power of the state to expend the public funds for the relief of the poor and needy is unquestioned, and indeed was one of the principal objects for which taxes were levied in many of the colonial settlements. The duty of the state to make provision for the care and maintenance of those who, through misfortune or disease, are unable to take care of themselves, has been too long recognized and established by the legislation of this country to admit of question. The indigent poor and infirm, the insane, orphaned and dependent children, and all destitute and helpless persons within its sovereignty, have ever been recognized as legitimate recipients of its bounty, and their welfare as a proper subject of its solicitude and care. [ \* \* \* ] Something more than poverty is, however, essential to charge the state with the duty of support. It is, strictly speaking, the pauper and not the poor man who has claims on public charity. It is not one who is in want merely, but one who, being in want, is unable to prevent or remove such want. There is the idea of helplessness as well as of destitution. We speak of those whom society must aid as the dependent classes, not simply because they do depend on society, but because they cannot do otherwise than thus depend. Cold and harsh as the statement may seem, it is nevertheless true, that the obligation of the state to help is limited to those who are unable to help themselves."

*"Use of District Taxed*

"51. **In General.**--It is not sufficient that a tax be levied for a public use; it must be levied for the use of the public of the district taxed. An act of the legislature authorizing-contributions to be levied for a purpose which, though it be public, is one in which the people from whom they are exacted have no interest, is not a tax law but a sentence commanding the periodical payment of a certain sum by one set of people to another in the nature of an indemnity or tribute. [ \* \* \* ] It is clear that one taxing district, whether it be state, county, municipality or district established for the particular purpose, cannot be taxed for the benefit of another district. Thus a state cannot raise money by taxation to be expended for the benefit of the people of another state. Nor can the people of one municipality be taxed for the benefit of the people of another municipality, as when a tax is levied to provide a public improvement outside the limits of the municipality and primarily for the benefit of nonresidents, or when an unorganized county is attached to an organized county for taxing purposes and is taxed for the purposes of the organized county."

"53. **Purposes for Which United States May Levy Taxes.**--[ \* \* \* ] Having power to raise money to pay the debts of the United States, it of course follows that it has power when the money is raised to appropriate it to the same object. The debts of the United States are not limited to those which are evidenced by some written obligation or to those which are otherwise of a strictly legal character. The term "debt" as used in the constitution includes those claims which rest upon a merely equitable or honorable obligation, and which would not be recoverable in a court at law if existing against an individual. Upon these principles an appropriation has been sustained to pay bounties on sugar produced before the statute granting such bounties had been repealed, but upon which no bounty had been paid at the time of such repeal. For like reasons appropriations to pay for injury to American ships and cargoes by French vessels during the Napoleonic wars have been sustained, and American shipowners have been reimbursed for insurance premiums paid against depredations by Confederate cruisers.

"54. **Limitation of Federal Taxing Power.**--Congress cannot tax exports, and it must impose direct taxes by the rule of apportionment, and indirect taxes by the rule of uniformity. Subject to these limitations its constitutional power of taxation reaches every subject and may be exercised at discretion."

"56. **Direct Taxes.**--The constitution of the United States provides that direct taxes must be apportioned among the states in accordance with population. To levy a direct tax, Congress must first fix an amount to be raised, and this sum must be divided up among the states in proportion to their respective numbers of inhabitants and assessed in each state at a rate to

be determined by dividing the total value of the property within the state subject to the tax by the amount apportioned to the state--a rate which will necessarily be very different in different states even though they have the same number of inhabitants, since the less property subject to the tax there is in the state the higher will be the rate. There is thus a sharp contrast between direct taxes, and imposts, duties and excises, which must be levied at a uniform rate throughout the United States. Direct taxes were imposed by Congress in 1798, 1813, 1815, 1816 and during the Civil War. In the earlier years the subjects of the tax were lands, improvements, dwelling houses and slaves; in 1861 the tax was levied on lands, improvements and dwelling houses. For obvious reasons direct taxes are not looked upon with favor in a majority of the states; and most of the revenue of the federal government has been raised by duties and excises. The direct tax of 1861 was assessed on the property of individuals within the several states, and not on the states themselves, and provision was made for the collection of the tax by federal officials. The statute, however, allowed the states to assume the amounts apportioned to them respectively and to collect the same in their own way through their own officers. Many of the states voluntarily assumed the burden and thus became debtors to the United States, but unless such assumption was made no liability attached to any state in its political and corporate character. [ \* \* \* ] The power of Congress, acting as a local legislature for the District of Columbia, to levy taxes, for district purposes only, in the same manner as the legislature of a state may tax the people of a state for state purposes is unquestioned, and in the exercise of this power Congress, like any state legislature unrestricted by constitutional provisions, may at its discretion wholly exempt certain classes of property from taxation, or may tax them at a lower rate than other property. An act of Congress laying a direct tax for national purposes throughout the United States in proportion to the census may comprehend the District of Columbia and the territories, although Congress is not required to extend a direct tax beyond the limits of the states. "

**"57. Duties, Imposts and Excises.**--The United States government has raised the great part of its revenues by duties, imposts and excises. Of these the most important, until recent years at least, have been the duties on imports, and the internal revenue taxes on certain articles of domestic production, such as intoxicating liquors and tobacco. The foregoing taxes have concededly fallen in the class of duties, imposts and excises, but the uncertainty as to just what was meant by "direct taxes" in the requirement that direct taxes should be apportioned among the states in proportion to population has led to much litigation over many of the other taxes levied by Congress without apportionment, the contention being made in each case that the tax in controversy was in reality a direct tax. This contention has, however, rarely been upheld by the supreme court. Among the federal taxes which have been sustained as constituting duties or excises rather than direct taxes are included a tax on carriages; a tax on the circulating notes of state banks; a tax on the devolution of real estate by will or descent; a tax on each sale of or agreement to sell any products or merchandise at an exchange or board of trade; a tax on the passing of property real or personal by will or the laws regulating intestate succession; a tax on agreements to sell shares of stock, known as "calls" by stockbrokers; a tax on tobacco prepared for consumption or sale; a stamp tax on contracts for the sale of certificates of stock; a tax on the gross receipts of companies engaged in refining sugar; a tax on the manufacture of cheese; a tax on artificially colored oleomargarine, and a tax on the doing of business in a corporate capacity measured by income." The greatest contention has, however, been over taxes on income. It was at first held that such a tax was a duty or excise, and while this principle was continued in force in respect to income from trades, professions and employments, it was subsequently held that a tax on the income of property was a direct tax on the property and would not be valid unless apportioned among the states in accordance with population. Finally, by the adoption of the sixteenth constitutional amendment taxes on income, from whatever source derived, were restored to the class of taxes which might be levied without apportionment."

**"59. Territory to Which Requirement Applicable.**--Just what constitutes the United States within the meaning of the constitutional requirement that all duties, imposts and excises shall be uniform throughout the United States is a question on which there has been much discussion, especially at the time of the acquisition of our insular possessions at the close of the Spanish war. On the one hand it is of course clear that the provision applies to the states themselves, and it is generally conceded that it applied to the whole of the contiguous area generally known as the United States even while a portion of it was divided into territories governed directly by Congress and did not constitute any part of a sovereign state. So also it has been intimated by the court that it applies to a detached territory of the United States, such as Alaska, and that Congress could not impose upon such territories special excises differing from those applicable throughout the United States generally, for the support of the home government, such as brought about the Revolution when imposed by England upon the American colonies."

**"61. Taxation of Instrumentalities of State.**--The taxing power of the federal government is impliedly limited by the fact that the constitution contemplates the perpetual maintenance of the states with their recognized powers unembarrassed and unimpaired by any action of the United States. The taxing power of the United States does not therefore extend to the means or agencies through which the states perform the functions allotted to them by the constitution. Thus Congress cannot tax the issuance of writs and other processes of the state courts or require as a condition to their validity that such papers bear a federal revenue stamp; nor can it impose a stamp tax on bonds required by a state of holders of liquor licenses, or on the official bonds of state officers, or on certificates of the sale of land for nonpayment of taxes; nor can it subject the salary of an officer of a state to an income tax. Even with respect to instruments executed by private parties, it



is held that Congress has no power to prevent the recording of such instruments, or the introduction thereof in evidence in the state courts unless they bear the federal stamp, but that such provisions apply only to the United States courts."

#### "V. TAXING POWER OF STATES

**"63. In General.--**The power of taxation of each of the states over all persons and property within its jurisdiction is an inherent and not a delegated power, and knows no limits except those imposed expressly or by plain implication in the constitution of the United States."

**"80. Private Corporations Having Charter or Franchise from United States.--**The United States has the power to establish and charter a corporation or to grant a franchise to an existing corporation in order to carry into effect the powers vested in that government by the constitution, and the corporation to which such charter or franchise has been granted is, in a sense, an agency of the United States. Corporations of this character operating within the limits of the several states fall into three classes, namely (1) national banks; (2) transcontinental railroads, which were actually chartered by Congress; (3) telegraph companies, which were chartered by the states but which were given a franchise by Congress to operate on post roads throughout the country. Corporations of all three classes are agencies of the United States. Such corporations are not, however, on that account entirely exempt from taxation by the states in which they are established."

**"114. Franchises, Licenses and Privileges.--**In most jurisdictions franchises, licenses and privileges, if subject to taxation at all, are reached by means of an excise, and are not also taxed as property, though a franchise, license or privilege which may be made the subject of sale or mortgage, which may be sold on execution and which passes as an asset to the owner's trustee in bankruptcy or to his executor or administrator is generally considered property for the purposes of taxation, even if it cannot be transferred without the consent of the legislature or of some other governmental body."

#### "IX. TAXES ON INCOME

**"116. Nature and Classification of Income Taxes.--**An income tax is a tax levied directly upon income, or upon a person in accordance with his income, or upon property in proportion to the income derived therefrom. An excise upon those engaged in a particular occupation though graded in accordance with income is a tax on the occupation and not an income tax. Such taxes may be either general or special; they may tax income from all sources, with certain definite exceptions, or they may be imposed only on income of certain specified classes, leaving income producing property of other classes to be reached by a tax on the property itself. A distinction may also be drawn between a tax on the income of property and a tax on the income of a trade, profession or employment. Income of the former class is sometimes called unearned income, and is taxed at a higher rate than income of the latter class, which is earned by the taxpayer's own labor."

**"117. Constitutionality of Income Taxes.--**That it lies within the power of a state to levy a tax on the income of persons resident within its limits unless the constitution of the state contains some specific limitation to the contrary is unquestioned. Probably almost every state legislature has the power to levy a tax on income derived from profession, trades, occupations and employments, since such a tax is undoubtedly an excise, and so not subject to the requirement of equality and uniformity found in so many of the state constitutions. The income of a business is by no means the income from the capital invested in the business or from the property used in connection with the business. It is the net result of the combined influence of the use of the capital invested, the personal labor and services of the persons carrying on the business, and their energy, ability and foresight. [\* \* \*] The power of a state to levy a tax on income is limited by the federal constitution in the same manner as is its power to levy a property tax. The subject matter of the tax must be within its jurisdiction, and the tax must not interfere with the lawful operations of the United States government or with activities the control of which is delegated to the United States by the constitution. Thus a state has no power to tax income derived from United States bonds, or from the salaries of federal office holders."

**"119. Income Taxes under Federal Constitution.--**During the Civil War Congress laid several taxes on the incomes both of individuals and corporations. In none of these statutes was there any attempt at apportionment, and under some of them the incomes of individuals from whatever source derived were made subject to the tax. [\* \* \*] In 1894 Congress again imposed a general income tax, without apportionment. It was held, however, by the supreme court of the United States that a tax on the rents or income of real estate was a direct tax and that a tax on the income derived from municipal bonds was an unconstitutional interference with the government of the states; but upon the question whether a tax on the income of personal property was a direct tax, and whether the tax was invalid on account of various exemptions, and whether the unconstitutionality of part invalidated the whole statute, the court was evenly divided. On rehearing the court sustained its earlier position, and going further held that a tax on the income of personal property was a direct tax, which to be valid must be apportioned, and that, such an essential part of the statute being unconstitutional, the entire scheme was invalid." In the foregoing decisions the court expressly refrained from commenting on so much of the statute as bore on gains and profits from business, privileges or employments, and in a case arising under a statute enacted at the time of the Spanish-American war it was held that a tax on the receipts of certain kinds of business was an excise and not a direct tax and need not be apportioned. So also a tax imposed in 1909 upon the doing of business in a corporate capacity, measured by the income from all sources, was sustained as a valid excise. In 1913 the sixteenth amendment was adopted providing that "the Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment



among the several states, and without regard to any census or enumeration. It has been held by the supreme court of the United States that this amendment conferred no new power of taxation upon Congress, but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged and being placed in the category of direct taxation subject to apportionment by a consideration of the sources from which the income was derived, that is, by testing the tax, not by what it was but by a mistaken theory deduced from the origin or source of the income taxed. The sixteenth amendment does not extend the federal taxing power to new or excepted subjects, such as exports, or interest on state or municipal bonds, or the like, but merely removes all occasion which otherwise might exist for an apportionment among" the states of taxes laid on income."

"122. **What Constitutes Net Income: Deduction.**--The word "income" appears to have been used in the reported cases as meaning gross receipts, net earnings, gains or profits," depending on the context. In constitutional and statutory provisions in regard to taxation, however, income appears to be uniformly construed as meaning net income, as opposed to gross receipts, which are also in some cases a measure of taxation. Income means the balance of gain over loss and where there is no such balance of gain there is no income which is capable of being assessed. The gross returns which an owner receives from his property do not denote his income, which means what he has for himself, what he can spend after satisfying all just outgoings in respect of the property which yields the return. The net income of a profession, employment, trade or business during a year is ascertained by deducting from the gross receipts of the year the expenses incurred in carrying on the business, such as rent, wages, cost of goods and other current expenses."

"123. **Taxation of Salaries of Public Officers, Ministers and College Professors.**--It is well settled that a state cannot tax the salary of a federal officer, and it was held before the adoption of the sixteenth amendment that the United States could not tax the salaries of state officers or the salaries of officers of municipal corporations within the several states or of any other territorial subdivision established by a state for governmental purposes. The reason for this rule was that the constitution contemplated the existence of both the United States and the states as sovereignties independent within their respective spheres, and neither could interfere with the exercise of the governmental functions of the other by taking over part of the salary of the latter's officers the amount of which has been duly established by law. A state may, however, tax income received from the United States as compensation for services by one who is not an officer of the United States, and it may tax as property money on deposit in a bank which was derived from the salary of an officer of the United States, and conversely the United States may tax income received from the state or from municipal corporations as compensation for services performed by persons who are not public officers."

"126. **Filing of Returns by Taxpayers; Deduction of Taxes Paid at Source.**--The income received by a man during the year is peculiarly a matter within his own knowledge and it is essential to the administration of an income tax that every person liable to taxation file a return of his income, set out in sufficient detail so that the taxing authorities" can see that it is computed correctly and can verify the accuracy of the statements contained therein."

"127. **When Liability to Taxation Arises.**--Liability to taxation arises, and in some sense it may be said that the taxes accrue, at the time the gains, profits, and income pass into the hands of the recipient. Return is required in every case before the day of levy, so that it is clear that the tax is due, that is, the recipient of the gains, profits, and income is liable for it before it is assessed, as the return is only to ascertain whether the liability exists, and its extent."

#### *"Tax on Franchise*

"130. **In General.**--A franchise is a special privilege conferred by government upon individuals, and which does not belong to the citizens of a country generally, of common right. The word franchise does not mean only the right to be a corporation. The word is generic, covering all the rights which may be granted by the legislature. The privilege or right to be a corporation is a franchise entirely distinct from the privilege of operating a public service and charging tolls, or from exercising eminent domain, or from erecting and maintaining structures in the public streets. Private corporations may be taxed by the state for the support of the state government. Their privileges and franchises, unless exempted in terms which amount to a contract, are legitimate subjects of taxation,--as much so as any other property of the citizen which enjoys the protection and is within the control of the sovereign power of the state. The state power to tax such franchises and privileges is independent of the federal government. And the taxation of corporate franchises and privileges rests in the discretion of the legislature of the taxing state, which may decide whether the sum to be levied be a fixed amount, and, if not, in what manner and by what means the amount shall be determined. The grant of a franchise by the state carries with it no implication that the franchise thus granted is to be exempt from taxation."

"131. **What Constitutes Taxable Corporate Franchises.**--A tax on the franchise of corporations is not limited to business corporations, but unless an express exemption is contained in the statute applies to public service corporations as well. A franchise tax which is applicable to corporations and associations having a capital divided into shares transferable by the holder to whomsoever he chooses, although such an association may be in reality a partnership or a trust, provided it acquired the right to organize in quasi corporate form from the statute law of the state of its origin. Such an association is, however, not taxable under a statute the application of which is expressly confined to corporations. The fact that a corporation has never earned or declared a dividend will not exonerate it from a franchise tax. A state may impose an

excise upon the franchise of corporations engaging in a business which every private citizen has a right to engage in freely. The privilege taxed is the right to engage in such business with the special advantages which are incident to corporate existence. A right common to every citizen such as the right to own property or to engage in business of a character not requiring regulation cannot, however, be taxed as a special franchise by first prohibiting its exercise and then permitting its enjoyment upon the payment of a certain sum of money."

"132. **Power to Tax Franchise of Domestic Corporation.**--The power of a state to tax the franchises of domestic corporations is practically without a limit. No constitutional objection prevents the legislature of a state from prescribing any mode of measurement it may choose in order to determine how much it will charge for the privilege which it bestows. If the grantee accepts the boon it must also bear the burden. A state may lawfully require as a condition of the grant of a franchise to be a corporation or to do business as such, and also for the continued exercise of such right or privilege, payment of a specific sum to the state each year or month, or a specific portion of the gross receipts or of the profits of the corporation, or of a sum to be ascertained in any convenient mode which the legislature may prescribe."  
[Ruling Case Law, Vol. 26, (26 R.C.L.), Taxation, 1920, pp. 13-165]

### **Goodrich v. Edwards (Mar. 29, 1921)**

"And the definition of "income" approved by this Court is: "**The gain derived from capital, from labor, or from both combined,**" provided it be understood to include profit gained through a sale or conversion of capital assets. ... It is thus very plain that the statute imposes the income tax on the proceeds of the sale of personal property to the extent only that *gains* are derived therefrom by the vendor...." [Bold added.]  
[Goodrich v. Edwards, 255 U.S. 527, 41 S.Ct. 390 (1921)]

### **Long v. Rasmussen (May 29, 1922)**

"The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws...."  
"The distinction between persons and things within the scope of the revenue laws and those without them is vital."  
[Long v. Rasmussen, 281 F. 236 (1922)]

### **Regal Drug Co. v. Wardell (Dec. 11, 1922)**

"The distinction between a tax and a penalty was emphasized. The function of a tax, it was said, "is to provide for the support of the government"; the function of a penalty clearly involves the "idea of punishment for infringement of the law," and that a condition of its imposition is notice and hearing. *O'Sullivan v. Felix*, 233 U.S. 318, 324, 34 Sup.Ct. 596, 58 L.Ed. 980. And even if the imposition may be considered a tax, if it have punitive purposes, it must be preceded by opportunity to contest its validity. *Central of Georgia Railway v. Wright*, 207 U.S. 127, 28 Sup.Ct. 47, 52 L.Ed. 134, 12 Ann.Cas. 463.  
"We took pains to say that "evidence of crime (section 29 tit. 2) is essential to assessment under section 35," and that we could not "concede, in the absence of language admitting of no other construction, that Congress intended that penalties for crime should be enforced through the secret findings and summary action of executive officers. The guaranties of due process of law and trial by jury are not to be forgotten or disregarded. See *Fontenot v. Accardo* (C. C. A.) 278 Fed. 871. A preliminary injunction should have been granted."  
[Regal Drug Co. v. Wardell, 260 U.S. 386, 43 S.Ct. 152 (1922)]

### **1092. Treasury Decision 3640, January 1, 1924**

"ART. 71. Exclusions from gross income.--The term "gross income" as used in the Act does not include those items of income exempted by statute or by fundamental law. The exemption of such income should not be confused with the reduction of taxable income by the application of allowable deductions." p. 769.

"ART. 92. Gross income of nonresident alien individuals.--In the case of nonresident alien individuals "gross income" means only the gross income from sources within the United States.... The items of gross income from sources without the United States and therefore not taxable to nonresident aliens or foreign corporations are described in section 217 (c) and article 323." p. 781.

"ART. 311. Definition.--A "nonresident alien individual" means an individual (a) whose residence is not within the

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United States and (b) who is not a citizen of the United States. An alien actually present in the United States who is not a mere transient or sojourner is a resident of the United States for purposes of the income tax. Whether he is a transient or not is determined by his intentions with regard to the length and nature of his stay. A mere floating intention, indefinite as to time, to return to another country is not sufficient to constitute him a transient. If he lives in the United States and has no definite intention as to his stay, he is a resident. One who comes to the United States for a definite purpose which in its nature may be promptly accomplished is a transient; but if his purpose is of such a nature that an extended stay may be necessary for its accomplishment, and to that end the alien makes his home temporarily in the United States, he becomes a resident, though it may be his intention at all times to return to his domicile abroad when the purpose for which he came has been consummated or abandoned. A foreign corporation is one which is not domestic." p. 841. [Treasury Decision 3640, January 1, 1924]

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### Lewellyn v. Frick (May 11, 1925)

"This is a suit by the executors of Henry C. Frick to recover the amount of taxes collected by duress under the supposed authority of the Revenue Act of February 24, 1919, c. 18, 40 Stat. 1057, on the ground that the Act is unconstitutional so far as it purports to tax the matters here concerned."

"By section 409 (section 6336), a personal liability is imposed upon the beneficiaries if the tax is not paid when due. The defendants in error say that if these policies are covered by the statute these sections show that the beneficiaries are taxed upon their own property, under the guise of a tax upon the transfer of his estate by Mr. Frick, and that this is taking their property without due process of law, citing Matter of Pell, 171 N.Y. 48, 63 N.E. 789, 57 L.R.A. 540, 89 Am. St. Rep. 791, and other cases. In view of their liability the objection cannot be escaped by calling the reference to their receipts a mere measure of the transfer tax. The interest of the beneficiaries is established by statutes of the states controlling the insurance and is not disputed. It also is strongly urged that the tax would be a direct tax. In view of our conclusion it is not necessary to state the position of the defendants in error more in detail."

"We do not propose to discuss the limits of the powers of Congress in cases like the present. It is enough to point out that at least there would be a very serious question to be answered before Mrs. Frick and Miss Frick could be made to pay a tax on the transfer of his estate by Mr. Frick. There would be another if the provisions for the liability of beneficiaries were held to be separable and it was proposed to make the estate pay a transfer tax for property that Mr. Frick did not transfer. Acts of Congress are to be construed if possible in such a way as to avoid grave doubts of this kind. [Cite omitted.] Not only are such doubts avoided by construing the statute as referring only to transactions taking place after it was passed, but the general principle "that laws are not to be considered as applying to cases which arose before their passage" is preserved, when to disregard it would be to impose an unexpected liability that if known might have induced those concerned to avoid it and to use their money in other ways. [Cite omitted.] This case and the following ones, [cites omitted] go far toward deciding the one now before us. They also indicate that the Revenue Act of 1924, c. 234, §302(h); 43 Stat. 253, 305, making (g) (the equivalent of (f) above) apply to past transactions, does not help but if anything hinders the Collector's construction of the present law."

[Lewellyn v. Frick, 268 U.S. 238, 45 S.Ct. 487, 69 L.Ed. 934 (1925)]

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### Frick v. Commonwealth of Pennsylvania (June 1, 1925)

"The Pennsylvania statute is a tax law, not an escheat law. This is made plain by its terms and by the opinion of the state court. The tax which it imposes is not a property tax but one laid on the transfer of property on the death of the owner. This distinction is stressed by counsel for the state. **But to impose either tax the state must have jurisdiction over the thing that is taxed, and to impose either without such jurisdiction is mere extortion and in contravention of due process of law.** Here the tax was imposed on the transfer of tangible personalty having an actual situs in the other states-- New York and Massachusetts. This property, by reason of its character and situs, was wholly under the jurisdiction of those states and in no way under the jurisdiction of Pennsylvania. True, its owner was domiciled in Pennsylvania, but this neither brought it under the jurisdiction of that state nor subtracted anything from the jurisdiction of New York and Massachusetts. In these respects the situation was the same as if the property had been immovable realty."

**"Of course, this was but the equivalent of saying that it was admissible to measure the tax by a standard which took no account of the distinction between what the state had power to tax and what it had no power to tax, and which necessarily operated to make the amount of the tax just what it would have been had the state's power included what was excluded by the Constitution. This ground, in our opinion, is not tenable. It would open the way for easily doing indirectly what is forbidden to be done directly, and would render important constitutional limitations of no avail. If Pennsylvania could tax according to such a standard, other states could. It would mean, as applied to the Frick estate, that Pennsylvania, New York, and Massachusetts could each impose a tax based on**

the value of the entire estate, although severally having jurisdiction of only parts of it. Without question each state had power to tax the transfer of so much of the estate as was under its jurisdiction, and also had some discretion in respect of the rate; but none could use that power and discretion in accomplishing an unconstitutional end, such as indirectly taxing the transfer of the part of the estate which was under the exclusive jurisdiction of others." [Cites omitted.]

"The state court cited in support of its view *Maxwell v. Bugbee*, 250 U.S. 525, 539, 40 S.Ct. 2, 63 L.Ed. 1124. The case is on the border line, as is evidenced by the dissent of four member of the court. [\* \* \*] Thus, if the entire estate had a value which put it within the class for which the rate was three per cent, the rate was to be applied to the value of the property within the state in computing the tax on its transfer, although its value separately taken would put it within the class for which the rate was 2 per cent. There was no attempt, as here, to compute the tax in respect of the part within the state on the value of the whole. **The court sustained the tax, but distinctly recognized that the state's power was subject to constitutional limitations, including the due process of law clause of the Fourteenth Amendment, and also that it would be a violation of that clause for a state to impose a tax on a thing within its jurisdiction "in such a way as to really amount to taxing that which is beyond its authority."**

"For the reasons which have been stated, it must be held that the Pennsylvania statute, in so far as it attempts to tax the transfer of tangible personalty having an actual situs in other states, contravenes the due process of law clause of the Fourteenth Amendment and is invalid.

"The next question relates to the provision which requires that, in computing the value of the estate for the purpose of fixing the amount of the tax, stocks in corporations of other states shall be included at their full value without any deduction for transfer taxes paid to those states in respect of the same stocks.

"The decedent owned many stocks in corporations of states, other than Pennsylvania, which subjected their transfer on death to a tax and prescribed means of enforcement which practically gave those states the status of lienors in possession. As those states had created the corporations issuing the stocks, they had power to impose the tax and to enforce it by such means, irrespective of the decedent's domicile, and the actual situs of the stock certificates. Pennsylvania's jurisdiction over the stocks necessarily was subordinate to that power. Therefore to bring them into the administration in that state it was essential that the tax be paid. The executors paid it out of moneys forming part of the estate in Pennsylvania and the stocks were thereby brought into the administration there. We think it plain that such value as the stocks had in excess of the tax is all that could be regarded as within the range of Pennsylvania's taxing power."

"While the federal tax is called an estate tax and the state tax is called a transfer tax, both are imposed as excises on the transfer of property from a decedent and both take effect at the instant of transfer. Thus both are laid on the same subject, and neither has priority in time over the other." [Bold added.]

[*Frick v. Commonwealth of Pennsylvania*, 268 U.S. 473, 45 S.Ct. 603, 69 L.Ed. 1058 (1925)]

### **Bente v. Bugbee (May 16, 1927)**

**"Tax" is legal imposition, exclusively of statutory origin, and liability to taxation must be read in statute, or it does not exist.**" [Bold added.]

"A tax is a legal imposition exclusively of statutory origin (37 Cyc. 724, 725), and, naturally, liability to taxation must be read in the statute, or it does not exist."

[*Bente v. Bugbee*, 137 A. 552, 103 N.J. Law. 608 (1927)]

### **Nichols v. Coolidge (May 31, 1927)**

**"The mere desire to equalize taxation cannot justify a burden on something not within congressional power."** p. 540.

"Certainly Congress may lay an excise upon the transfer of property by death reckoned upon the value of the interest which passes thereby. But **under the mere guise of reaching something within its powers Congress may not lay a charge upon what is beyond them.** Taxes are very real things and statutes imposing them are estimated by practical results." p. 541.

"The statute requires the executors to pay an excise ostensibly laid upon transfer of property by death from Mrs. Coolidge to them but reckoned upon its value plus the value of other property conveyed before the enactment in entire good faith and without contemplation of death. Is the statute, thus construed, within the power of Congress?

"Undoubtedly, Congress may require that property subsequently transferred in contemplation of death be treated as part of the estate for purposes of taxation. This is necessary to prevent evasion and give practical effect to the exercise of admitted power, but the right is limited by the necessity.

"Under the theory advanced for the United States, the arbitrary, whimsical and burdensome character of the

challenged tax is plain enough. An excise is prescribed, but the amount of it is made to depend upon past lawful transactions, not testamentary in character and beyond recall." p. 542.

"This court has recognized that a statute purporting to tax may be so arbitrary and capricious as to amount to confiscation and offend the Fifth Amendment. *Brushaber v. Union Pacific R.R.*, 240 U.S. 1, 24, 36 S.Ct. 236, 60 L.Ed. 493, L.R.A. 1917D, 414, Ann.Cas. 1917B, 713; *Barclay & Co. v. Edwards*, 267 U.S. 442, 450, 45 S.Ct. 135, 348, 69 L.Ed. 703. See, also, *Knowlton v. Moore*, 178 U.S. 41, 77, 20 S.Ct. 747, 44 L.Ed. 969. And we must conclude that section 402(c) of the statute here under consideration, in so far as it requires that there shall be included in the gross estate the value of property transferred by a decedent prior to its passage merely because the conveyance was intended to take effect in possession or enjoyment at or after his death, is arbitrary, capricious and amounts to confiscation." pp. 542-543. [Bold added.]

[*Nichols v. Coolidge*, 274 U.S. 531, 47 S.Ct. 710, 71 L.Ed. 1184 (1927)]

### **Lucas v. Earl (Mar. 17, 1930)**

"Although husband and wife had agreed that any property acquired by either should be held by them as joint tenants, husband could be taxed for income tax on whole of salary and attorney's fees earned by him under Revenue Acts 1918, 1921, §§210, 211, 212(a), 213(a), 40 Stat. 1062, 1064, 1065, 42 Stat. 233, 237, 238."

[*Lucas v. Earl*, 281 U.S. 111, 50 S.Ct. 241 (1930)]

### **Indian Motorcycle Co. v. United States (May 25, 1931)**

"Tax on articles sold by manufacturer, producer, or importer, based on percentage of sales price, *held* tax on sale alone (Revenue Act 1924, §600 [26 U.S.C.A. §§881 note, 882])." [Brackets original.]

"Instrumentalities whereby United States exercises governmental powers are exempt from state taxation, and likewise instrumentalities whereby states exert governmental powers are exempt from taxation by United States."

"Principle exempting instrumentalities of state or federal government from taxation does not extend to anything outside governmental functions."

"It is an established principle of our constitutional system of dual government that the instrumentalities, means and operations whereby the United States exercises its governmental powers are exempt from taxation by the states, and that the instrumentalities, means and operations whereby the states exert the governmental powers belonging to them are equally exempt from taxation by the United States. This principle is implied from the independence of the national and state governments within their respective spheres and from the provisions of the Constitution which look to the maintenance of the dual system. Where the principle applies it is not affected by the amount of the particular tax or the extent of the resulting interference, but is absolute.

.. the salary of an officer of the United States is immune from state taxation because the salary is the "means by which his services are procured and retained" and its taxation by a state would burden the exertion by the United States of powers belonging to the latter. And "for like reasons" it has been held that the salary of a state officer is immune from federal taxation."

"The court there held that while a state may impose a tax on a dealer "for the privilege of carrying on trade that is subject to the power of the State," she may not lay any tax on sales to the United States by which it "secures the things desired for its governmental purposes," and further: "It is immaterial that the seller and not the purchaser is required to report and make payment to the State. Sale and purchase constitute a transaction by which the tax is measured and on which the burden rests."

"We think it follows from these decisions, particularly from the one last cited, that the sale of motorcycles to a state agency, such as a municipal corporation, for use in its police service is not subject to taxation by the United States."

"Under the constitutional principle the exertion of such a function by a state or a state agency has the same immunity from federal taxation that like exertions by the United States or its agencies have from state taxation. Here the tax is laid directly on the sale to a governmental state agency of an article purchased for governmental purposes. ... Thus, the transaction falls within the class which the United States cannot tax consistently with the constitutional principle." [Cites omitted.]

[*Indian Motorcycle Co. v. United States*, 283 U.S. 570, 51 S.Ct. 601 (1931)]

### **White v. Hopkins (July 2, 1931)**

"Term "taxpayer," as defined in Revenue Act 1926, does not include other definitions in general use and commonly understood (Revenue Act 1926, §2 (a) (9), 26 U.S.C.A. §1262 (a) (9))."

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"The right to sue a tax collector to recover back taxes illegally exacted is derived from the common-law and does not depend upon statute. The rule is this. If the payment is made voluntarily, there can be no recovery. But if the payment is made under compulsion and with protest, sufficient to notify the collector that he will be sued to recover it back, he is personally liable whether he has covered the money into the treasury or not."

"There is no statute of the United States expressly giving the right to sue a tax collector to recover back taxes illegally exacted, but the common law has been greatly modified by various statutes in this respect. These statutes recognize the right and by necessary implication grant it as to suits against federal tax collectors."

"A statute will not be construed as taking away a common-law right existing at the date of its enactment, unless that result is imperatively required." *Texas & Pacific R. Co. v. Abilene Cotton Oil Co.*, 204 U.S. 426, 27 S.Ct. 350, 354, 51 L.Ed. 553, 9 Ann.Cas. 1075. "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character." *U.S. v. Kirby*, 7 Wall. 482, 486, 19 L.Ed. 278; *Lau Ow Bew v. U.S.*, 144 U.S. 47, 12 S.Ct. 517, 36 L.Ed. 340; *Jacobson v. Mass.*, 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643, 3 Ann.Cas. 765."

"The Revenue Act imposes taxes upon different classes of persons, but, except by requiring returns, does not subject any particular individual to the tax. That is left to the administrative officers." [See also 26 R.C.L. 1 127.] [*White v. Hopkins*, 51 F.2d. 159 (1931)]

### **Hoeper v. Commission (Nov. 30, 1931)**

"We have no doubt that, because of the fundamental conceptions which underlie our system, any attempt by a state to measure the tax on one person's property or income by reference to the property or income of another is contrary to due process of law as guaranteed by the Fourteenth Amendment. That which is not in fact the taxpayer's income cannot be made such by calling it income. Compare *Nichols v. Coolidge*, 274 U.S. 531, 47 S.Ct. 710, 71 L.Ed. 1184, 52 A.L.R. 1081."

"It is incorrect to say that the provision of the Wisconsin income tax statute retains or re-establishes what was formerly an incident of the marriage relation. Wisconsin has not made the property of the wife that of her husband nor has it made the income . from her property the income of her husband. Nor has it established joint ownership. The effort to tax B for A's property or income does not make B the owner of that property or income, and whether the state has power to effect such a change of ownership in a particular case is wholly irrelevant when no such effort has been made. Under the law of Wisconsin, the income of the wife does not at any moment or to any extent become the property of the husband. He never has any title to it, or controls any part of it. That income remains hers until the tax is paid, and what is left continues to be hers after that payment. The state merely levies a tax upon it. What Wisconsin has done is to tax as a joint income that which under its law is owned separately, and thus to secure a higher tax than would be the sum of the taxes on the separate incomes Court case."

[*Hoeper v. Commission*, 284 U.S. 206, 52 S.Ct. 120, 76 L.Ed. 248 (1931)]

### **Higley v. C.I.R. (Feb. 16, 1934)**

**"Liability for taxation must clearly appear from statute imposing tax."** [Bold added.]

[*Higley v. Commissioner of Internal Revenue*, 69 F.2d. 160 (1934)]

### **Social Security Act (Aug. 14, 1935)**

#### **"TITLE II-FEDERAL OLD-AGE BENEFITS**

"SEC. 210. When used in this title--

"(a) The term "wages" means all remuneration for employment including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include that part of the remuneration which, after remuneration equal to \$3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year."

"(b) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except--

"(1) Agricultural labor;' 106

"(2) Domestic service in a private home;

"(3) Casual labor not in the course of the employer's trade or business.

"(4) Service performed as an officer or member of the crew of a vessel documented under the laws of the United

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States or of any foreign country;

"(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

"(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

"(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

#### **"TITLE VIII--TAXES WITH RESPECT TO EMPLOYMENT**

"SEC. 809. The commissioner of Internal Revenue shall furnish to the Postmaster General without prepayment a suitable quantity of stamps, coupons, tickets, books, or other devices prescribed by the Commissioner under section 807 for the collection or payment of any tax imposed by this title, to be distributed to, and kept on sale by, all post offices of the first and second classes, and such post offices of the third and fourth classes as (1) are located in county seats, or (2) are certified by the Secretary of the Treasury to the Postmaster General as necessary to the proper administration of this title. The Postmaster General may require each such postmaster to furnish bond in such increased amount as he may from time to time determine, and each such postmaster shall deposit the receipts from the sale of such stamps, coupons, tickets, books, or other devices, to the credit of, and render accounts to, the Postmaster General at such times and in such form as the Postmaster General may by regulations prescribe. The Postmaster General shall at least once a month transfer to the Treasury as internal-revenue collections all receipts so deposited together with a statement of the additional expenditures in the District of Columbia and elsewhere incurred by the Post Office Department in performing the duties imposed upon said Department by this Act, and the Secretary of the Treasury is hereby authorized and directed to advance from time to time to the credit of the Post Office Department from appropriations made for the collection of the taxes imposed by this title, such sums as may be required for such additional expenditures incurred by the Post Office Department."

"Sec. 811. When used in this title--

"(a) The term "wages" means all remuneration for employment including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include that part of the remuneration which, after remuneration equal to \$3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year."

"(b) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except--

"(1) Agricultural labor;

"(2) Domestic service in a private home;

"(3) Casual labor not in the course of the employer's trade or business.

"(4) Service performed by an individual who has attained the age of sixty-five;

"(5) Service performed as an officer or member of the crew of a vessel documented under the laws of the United States or of any foreign country;

"(6) Service performed in the employ of the United States Government or of an instrumentality of the United States;

"(7) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

"(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

#### **"TITLE IX--TAX ON EMPLOYERS OF EIGHT OR MORE**

"Sec. 907. When used in this title--

"(a) The term "employer" does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were in his employ for some portion of the day (whether or not at the same moment of time) was eight or more.

"(b) The term "wages" means all remuneration for employment including the cash value of all remuneration paid in any medium other than cash.

"(c) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except--

"(1) Agricultural labor;

"(2) Domestic service in a private home;

"(3) Casual labor not in the course of the employer's trade or business.

"(4) Service performed as an officer or member of the crew of a vessel documented under the laws of the United States or of any foreign country;

"(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

"(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

"(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

"(g) The term "compensation" means cash benefits payable to individuals with respect to their unemployment."  
[United States Statutes at Large, 74TH Congress, Sess. I, Ch. 531, p. 620, August 14, 1935]

### **Staples v. United States (Dec. 31, 1937)**

""Income," within meaning of the Sixteenth Amendment and the Revenue Act, means "gain" "derived" from, and not accruing to, capital or labor or from both combined, including profit gained through sale or conversion of capital, the gain not being taxable until realized, and, in such connection, "gain" means profit or something of exchangeable value, and "derived" means proceeding from property, severed from capital, however invested or employed, and coming in, received, or drawn by taxpayer for his separate use, benefit, and disposal."

"The Sixteenth Amendment authorizes the taxation without apportionment of "incomes, from whatever source derived. Income has been defined as "the gain derived from capital, from labor, or from both combined," *Stratton's Independence v. Howbert*, 231 U.S. 399, 34 S.Ct. 136, 140, 58 L.Ed. 285...."

[*Staples v. United States*, 21 F.Supp. 737 (1937)]

### **Internal Revenue Code (1939)**

#### **"SEC. 119. INCOME FROM SOURCES WITHIN UNITED STATES.**

"(a) GROSS INCOME FROM SOURCES IN UNITED STATES.--The following items of gross income shall be treated as income from sources within the United States:

"(1) INTEREST.--Interest from the United States, any Territory, any political subdivision of a Territory, or the District of Columbia, and interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, not including-- . .

"(c) GROSS INCOME FROM SOURCES WITHOUT UNITED STATES.--The following items of gross income shall be treated as income from sources without the United States:

"(1) Interest other than that derived from sources within the United States as provided in subsection (a) (1) of this section;

"(2) Dividends other than those derived from sources within the United States as provided in subsection (a) (2) of this section;

"(3) Compensation for labor or personal services performed without the United States;

"(4) Rentals or royalties from property located without the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using without the United States, patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like properties; and

"(5) Gains," profits, and income from the sale of real property located without the United States."

#### **"SEC. 1423. SALE OF STAMPS BY POSTMASTERS.**

"(a) SUPPLY.--The Commissioner shall furnish to the Postmaster General without prepayment a suitable quantity of stamps, coupons, tickets, books, or other devices prescribed by the Commissioner under section 1420 (c) for the collection of payment of any tax imposed by this subchapter, to be distributed to, and kept on sale by, all post offices of the first and second classes, and such post offices of the third and fourth classes as (1) are located in county seats, or (2) are certified by the Secretary to the Postmaster General as necessary to the proper administration of this subchapter."

#### **"SEC. 1426. DEFINITIONS.**

"When used in this subchapter--

"(a) WAGES.--The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include that part of the remuneration which, after remuneration equal to \$3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year."

"(b) EMPLOYMENT.--The term "employment" means any service, of whatever nature, performed within the

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United States by an employee" for his employer, except--

- "(1) Agricultural labor;
- "(2) Domestic service in a private home;
- "(3) Casual labor not in the course of the employer's trade or business.
- "(4) Service performed by an individual who has attained the age of sixty-five;
- "(5) Service performed as an officer or member of the crew of a vessel documented under the laws of the United States or of any foreign country;
- "(6) Service performed in the employ of the United States Government or of an instrumentality of the United States;
- "(7) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;
- "(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."
- "(9) Service performed by an individual as an employee as defined in section 1532 (b); or
- "(10) Service performed as an employee" representative as defined in section 1532 (c)."

**"SEC. 1607. DEFINITIONS.**

"When used in this subchapter--

"(a) EMPLOYER.--The term "employer" does not include any person unless on each of some twenty days during the taxable year each day being in a different calendar week, the total number of individuals who were in his employ for some portion of the day (whether or not at the same moment of time) was eight or more.

"(b) WAGES -The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.

"(c) EMPLOYMENT.--The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except--

- "(1) Agricultural labor;
- "(2) Domestic service in a private home;
- "(3) Service performed as an officer or member of the crew of a vessel documented under the laws of the United States or of any foreign country;
- "(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;
- "(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;
- "(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;
- "(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

"(d) STATE AGENCY.--The term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State."

[United States Statutes at Large, Vol. 53, Part I, Internal Revenue Code of 1939]

**Black's Law Dictionary: Wage**

"WAGE. In old English practice. To give security for the performance of a thing. Cowell."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1750]

**Black's Law Dictionary: Labor**

"LABOR. Work; toil; service.

"Physical exertion."

"Continued exertion, of the more onerous and inferior kind, usually and chiefly consisting in protracted expenditure of muscular force. It is used in this sense in several legal phrases, such as "a count for work and labor," "wages of labor," etc., and is commonly construed as having such meaning when used in statutes giving liens to laborers, [cites omitted]; and in the Immigration Act excluding aliens coming to the United States under contract, "to perform labor." [Cites omitted.]

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"The word is sometimes construed to mean service rendered or part played in production of wealth, [cites omitted]; or superintendence or supervision of work."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1014]

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#### **Black's Law Dictionary: Laborer**

"**LABORER.** The word ordinarily denotes one who subsists by physical labor. [Cite omitted.] One who, as a means of livelihood, performs work and labor for another. [Cites omitted.] One who furnishes his personal service, of a grade commonly performed by persons working by the day. [Cite omitted.] A person without particular training employed at manual labor under a contract terminable at will." [Cites omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, pp. 1015-1016]

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#### **Black's Law Dictionary: Security**

"**SECURITY.** Protection; assurance; indemnification. The term is usually applied to an obligation, pledge, mortgage, deposit, lien, etc., given by a debtor in order to make sure the payment or performance of his debt, by furnishing the creditor with a resource to be used in case of failure in the principal obligation. The name is also sometimes given to one who becomes surety or guarantor for another. *Bissinger & Co. v. Massachusetts Bonding & Ins. Co.*, 83 Or. 288, 163 P. 592, 593."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1522]

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#### **Black's Law Dictionary: Gage**

"**GAGE, v.** In old English law, to pawn or pledge; to give as security for a payment or performance; to wage or wager."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 807]

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#### **Black's Law Dictionary: Gage**

"**GAGE, n.** In old English law, a pawn or pledge; something deposited as security for the performance of some act or the payment of money, and to be forfeited on failure or non-performance. *Glanv. lib. 10, c. 6; Britt. c. 27.*

"A mortgage is a *dead-gage* or pledge; for, whatsoever profit it yields, it redeems not itself, unless the whole amount secured is paid at the appointed time. *Cowell.*

"In France law, the contract of pledge or pawn; also the article pawned."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 807]

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#### **Black's Law Dictionary: Wager**

"**WAGER.** A contract by which two or more parties agree that a certain sum of money or other thing shall be paid or delivered to one of them or that they shall gain or lose on the happening of an uncertain event or upon the ascertainment of a fact in dispute, where the parties have no interest in the event except that arising from the possibility of such gain or loss. *H. Seay & Co. v. Moore, Tex.Com.App.*, 261 S.W. 1013, 1014; *Young v. Stephenson*, 82 Old. 239, 200 P. 225, 228, 24 A.L.R. 978; *Odle v. State*, 139 Tex.Cr.R. 288, 139 S.W.2d. 595, 597. See, also, *Bet.*

"It was said that contract giving one party or the other an option to carry out the transaction or not at pleasure is not invalid as a "wager." *Palmer v. Love*, 18 Tenn.App. 579, 80 S.W.2d. 100, 105; but if, under guise of contract of sale, real intent of both parties is merely to speculate in rise or fall of prices and property is not to be delivered, but at time fixed for delivery one party is to pay difference between contract price and market price, transaction is invalid as "wager." *Baucum & Kimball v. Garrett Mercantile Co.*, 188 La. 728, 178 So. 256, 259, 260."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1750]

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#### **Black's Law Dictionary: Wager of Law**

"**WAGER OF LAW.** In old practice. The giving of *gage* or sureties by a defendant in an action of debt that at a certain day assigned he would *make his law*; that is, would take an oath in open court that he did not owe the debt, and at the same time bring with him eleven neighbors, (called "compurgators,") who should avow upon their oaths that they believed in their consciences that he said the truth. *Glanv. lib. 1, c. 9, 12; Bract. fol. 156b; Britt. c. 27; 3 Bl.Comm. 343;*

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[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1750]

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**Black's Law Dictionary: Wagering Gain**

"WAGERING GAIN. The share of each, where individuals carrying on business in partnership make gains in wagering transactions. *Jennings v. Commissioner of Internal Revenue*, C.C.A.Tex., 110 F.2d. 945, 946."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1750]

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**Black's Law Dictionary: Wages**

"WAGES. A compensation given to a hired person for his or her services; the compensation agreed upon by a master to be paid to a servant, or any other person hired to do work or business for him. *Ciarla v. Solvay Process Co.*, 172 N.Y.S. 426, 428, 184 App.Div. 629; *Cookes v. Lymperis*, 178 Mich. 299, 144 N.W. 514, 515; *Phoenix Iron Co. v. Roanoke Bridge Co.*, 169 N.C. 512, 86 S.E. 184, 185. Every form of remuneration payable for a given period to an individual for personal services, including salaries, commissions, vacation pay, dismissal wages, bonuses and reasonable value of board, rent, housing, lodging, payments in kind, tips, and any other similar advantage received from the individual's employer or directly with respect to work for him. *Ernst v. Industrial Commission*, 246 Wis. 205, 16 N.W.2d. 867.

"In a limited sense the word "wage" means pay given for labor usually manual or mechanical at short stated intervals as distinguished from salary, but in general the word means that which is pledged or paid for work or other services; hire; pay. In its legal sense, the word "wages" means the price paid for labor, reward of labor, specified sum for a given time of service or a fixed sum for a specified piece of work. *In re Hollingsworth's Estate*, 37 Cal.App.2d. 432, 99 P.2d. 599, 600, 602.

**"Maritime Law**

"The compensation allowed to seamen for their services on board a vessel during a voyage.

**"Political Economy**

"The reward paid, whether in money or goods, to human exertion, considered as a factor in the production of wealth, for its co-operation in the process.

""Three factors contribute to the production of commodities,--nature, labor, and capital. Each must have a share of the product as its reward, and this share, if it is just, must be proportionate to the several contributions. The share of the natural agents is rent; the share of labor, *wages*; the share of capital, interest. The clerk receives a salary; the lawyer and doctor, fees; the manufacturer, profits. Salary, fees, and profits are so many forms of wages for services rendered." *De Laveleye*, Pol. Econ."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1750]

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**Department of Insurance v. Church Members R. Ass'n (Apr. 2, 1940)**

"When the right to do a thing depends upon legislative authority, and the Legislature has failed to authorize it, or has forbidden it, no amount of acquiescence, or consent, or approval of the doing of it by a ministerial officer, can create a right to do the thing which is unauthorized or forbidden."

[*Department of Insurance of Indiana v. Church Members Relief Association*, 26 N.E.2d. 51 (1940)]

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**Hirsch v. C.I.R. (Nov. 25, 1940)**

"In determining what constitutes taxable "income", substance rather than form is to be given controlling weight."

"A transaction whereby nothing of exchangeable value comes to, or is received by, the taxpayer does not give rise to, or create, taxable "income."

""Income" within the purview of the revenue act is gain derived from capital, from labor, or from both combined, and includes profit gained through a sale or conversion of capital assets."

""Income" within the preview of the Revenue Acts, has been defined to be "gain derived from capital, from labor, or from both combined," and includes "profit gained through sale or conversion of capital." *Bowers v. Kerbaugh-Empire Co.*, 271 U.S. 170, 46 S.Ct. 449, 451, 70 L.Ed. 886. "In determining the definition of the word 'income' thus arrived at, this Court has consistently refused to enter into the refinements of lexicographers or economists, and has approved, in the definitions quoted, what it believed to be the commonly understood meaning of the term which must have been in the minds of the people when they adopted the Sixteenth Amendment to the Constitution." *Merchants' L. & T. Co. v. Smietanka*, 255 U.S. 509, 41 S.Ct. 386, 389, 65 L.Ed. 751, 15 A.L.R. 1305. "The fact that after the transaction the plaintiff's balance sheet had

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improved was not sufficient to constitute 'a gain derived from capital.' If anything, it was a gain accruing to capital, and, as such, under the Eisner [252 U.S. 189, 40 S.Ct. 189, 64 L.Ed. 521, 9 A.L.R. 1570] and Phellis Cases [257 U.S. 156, 42 S.Ct. 63, 66 L.Ed. 180], was not taxable income." *Kerbaugh-Empire Co. v. Bowers*, D.C., 300 F. 938, 944, affirmed 271 U.S. 170, 46 S.Ct. 449, 70 L.Ed. 886." [Brackets original.]  
[*Hirsch v. Commissioner of Internal Revenue*, 115 F.2d. 657 (1940)]

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#### **State of California v. Anglim (March 6, 1941)**

"The operation of ports and harbors constitutes a "governmental function" as respects immunity from federal taxation of instrumentalities used by state in connection with port and harbor.

"Before immunity from federal taxation is extended to activity in which a state is engaged, it must appear that such activity is essentially and traditionally governmental in nature."

"The Court stated [*State of South Carolina v. United States*, 199 U.S. 437, 26 S.Ct. 110, 114, 50 L.Ed. 261, 4 Ann.Cas. 737]: "There is something of a conflict between the full power of the nation in respect to taxation and the exemption of the state from Federal taxation in respect to its property and a discharge of all its functions. Where and how shall the line between them be drawn?"

"The Court then concluded that the only consistent course to follow is to limit the exemption of state agencies and instrumentalities from national taxation to those which are of a strictly governmental character, and not to extend such immunity to those state activities which are of a private nature, normally carried on in private ownership." [Brackets original.]

[*State of California v. Anglim*, 37 F.Supp. 663 (1941)]

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#### **Paschal v. Blieden (Apr. 29, 1942)**

"The assessment of a tax by revenue officer is presumptively correct and his action stands as "prima facie correct" until the presumption is met and overthrown by countervailing proof."

[*Paschal v. Blieden*, 127 F.2d. 398 (1942)]

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#### **United States Statutes at Large (Oct. 14, 1942)**

"SEC. 510. **ABOLITION OF BOARD OF REVIEW AND TRANSFER OF JURISDICTION TO BOARD OF TAX APPEALS.**

"(a) Effective as of the close of business on December 31, 1942, the Board of Review, established under section 906 (b) of the Revenue Act of 1936, is hereby abolished and the jurisdiction vested in said Board of Review is hereby transferred to and vested in the Board of Tax Appeals.

"(b) Section 906 (b) of the Revenue Act of 1936 is amended to read as follows:

"(b) The Board shall have jurisdiction in proceedings under this section to review the allowance or disallowance of the Commissioner of a claim for refund, and to determine the amount of refund due any claimant with respect to such claim. The Commissioner shall make refund of any such amount determined by a decision of the Board which has become final."

"(c) All proceedings pending in the said Board of Review on December 31, 1942, shall be deemed pending in and be transferred forthwith to the Board of Tax Appeals, and shall be proceeded with and disposed of by the Board of Tax Appeals as if originally begun therein."

"(f) (1) Section 906 (c) (relating to allowance of claim for refund and nature of hearing) is amended to read as follows:

"(c) The allowance or disallowance of the Commissioner of a claim for refund under this section shall be final, unless within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) after the date of mailing by registered mail by the Commissioner of notice that a claim for refund of any such amount has been disallowed, in whole or in part, the claimant files a petition with the Board requesting a hearing on the merits of his claim, in whole or in part. Upon the filing of any such petition the claimant shall be entitled to a hearing as provided herein. Notice and opportunity to be heard shall be given to the claimant and the Commissioner. If the notice is addressed to a person outside the States of the Union and the District of Columbia, the period specified in this subsection shall be one hundred and fifty days in lieu of ninety days."

[United States Statutes at Large, 77th CONG., 2d Sess., CH. 619, §510, pp. 967-968, October 21, 1942]

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#### **Individual Income Tax Act of 1944 (May 29, 1944)**

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**""Sec. 11. NORMAL TAX ON INDIVIDUALS.**

""There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax of 3 per centum of the amount of the net income in excess of the credits against net income provided in section 25 (a). For alternative tax which may be elected if adjusted gross income is less than \$5,000, see Supplement T.""

**""Supplement T--Individuals with Adjusted Gross Income of Less than \$5,000****""Sec. 400. IMPOSITION OF TAX.**

""In lieu of the taxes imposed by sections 11 and 12, there shall be levied, collected, and paid for each taxable year upon the net income of each individual whose adjusted gross income for such year is less than \$5,000, and who has elected to pay the tax imposed by this supplement for such year, the tax shown in the following table: [...]."

**""SEC. 402. MANNER AND EFFECT OF ELECTION.**

""The election referred to in section 400 shall be exercised in the manner provided in regulations prescribed by the Commissioner with the approval of the Secretary. For cases in which election to take the standard deduction also constitutes an election to pay the tax imposed by this supplement, see section 23 (aa) (3) (D). For cases in which election to file a return without showing tax thereon constitutes an election to pay the tax imposed by this supplement, see section 51 (f)."

**""SEC. 404. CERTAIN TAXPAYERS INELIGIBLE.**

""This supplement shall not apply to a nonresident alien individual, [...]."

**"SEC. 6. REPEAL OF VICTORY TAX.**

"(A) IN GENERAL.--Subchapter D of Chapter 1 (relating to the victory tax) is repealed."

**"SEC. 8. ADJUSTED GROSS INCOME.**

"(A) IN GENERAL.--Section 22 (relating to gross income) is amended by inserting at the end thereof the following:

""(n) DEFINITION OF 'ADJUSTED GROSS INCOME'.--As used

in this chapter the term 'adjusted gross income' means the gross income minus--[...]."

[United States Statutes at Large, 78th CONG., 2d Sess., CH. 210, §11, pp. 231-235, May 29, 1944]

**26 U.S.C. §7441**

"There is hereby established, under article I of the Constitution of the United States, a court of record to be known as the United States Tax Court. The members of the Tax Court shall be the chief judge and the judges of the Tax Court." [26 U.S.C. §7441]

**26 U.S.C. §7441, Amendments (Notes)**

"The Board of Tax Appeals shall be continued as an independent agency in the Executive Branch of the Government, and shall be known as the Tax Court of the United States. The members thereof shall be known as the chief judge and the judges of the Tax Court.

"P.L. 91-172, §961 provides as follows:

"The United States Tax Court established under the amendment made by section 951 [of P.L. 91-172] is a continuation of the Tax Court of the United States as it existed prior to the date of enactment of this Act [December 30, 1969], the judges of the Tax Court of the United States immediately prior to the date of enactment of this Act shall become the judges of the United States Tax Court upon the enactment of this Act, and no loss of rights or powers, interruption or jurisdiction, or prejudice to matters pending in the Tax Court of the United States before the date of enactment of this Act shall result from the enactment of this Act [P.L. 91-172]. Effective 12-30-69." [Brackets original.] [26 U.S.C. §7441, Amendments (Notes)]

**26 U.S.C. §7443(e), Membership**

"(e) Term of office.--The term of office of any judge of the Tax Court shall expire 15 years after he takes office."

[26 U.S.C. §7443(e)]

**22 State Bar Journal 164 (1947), State Sovereignty--Fact or Fiction?**

"The federal income tax," which began so modestly in 1913, has opened everybody's pockets to official search and made the government a partner in every business."

"Sovereignty cannot go on the dole and live."

[Eustace Cullinan, of the San Francisco Bar, 22 State Bar Journal 164 (1947), State Sovereignty--Fact or Fiction?]

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**Mitsukiyo Yoshimura v. Alsup (Mar. 30, 1948)**

"We have no doubt that such coercive and fraudulent threats of internment constitute the exceptional circumstance recognized in *Hill v. Wallace*, 259 U.S. 44, 42 S.Ct. 453, 66 L.Ed. 822, where the injunction was granted because, as stated at page 66 of 259 U.S., at page 457 of 42 S.Ct., the taxing act in question "is in essence and on its face a complete regulation of Boards of Trade, with a penalty of 20 cents a bushel on all 'futures' *to coerce Boards of Trade and their members into compliance*. When this purpose is declared in the title to the bill, and is so clear from the effect of the provisions of the bill itself, it leaves no ground upon which the provisions we have been considering can be sustained as a valid exercise of the taxing power.""

[Mitsukiyo Yoshimura v. Alsup, 167 F.2d. 104 (1948)]

**United States v. Kahriger (Mar. 9, 1953)**

"It is axiomatic that the power of Congress to tax is extensive and sometimes falls with crushing effect on businesses deemed unessential or inimical to the public welfare, or where, as in dealings with narcotics, the collection of the tax also is difficult. As is well know, the constitutional restraints on taxing are few. "Congress cannot tax exports, and it must impose direct taxes by the rule of apportionment, and indirect taxes by the rule of uniformity." *License Tax Cases*, supra, 5 Wall. 471. The remedy for excessive taxation is in the hands of Congress, not the courts. [Cite omitted.] Speaking of the creation of the Bank of the United States, as an instrument for carrying out federal fiscal policies, this Court said in *McCulloch v. Maryland*, 4 Wheat. 316, 423, 4 L.Ed. 579.

"Should Congress, in the execution of its powers, adopt measures which are prohibited by the constitution; or should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not entrusted to the government; it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land."

"The difficulty of saying when the power to lay uniform taxes is curtailed, because its use brings a result beyond the direct legislative power of Congress, has given rise to diverse decisions. In that area of abstract ideas, a final definition of the line between state and federal power has baffled judges and legislators."

[United States v. Kahriger, 345 U.S. 22, 73 S.Ct. 510 (1953)]

**Internal Revenue Code of 1954: House Committee Report**

This Report was prepared by the House Committee on Ways and Means to accompany H.R. 8300 "A Bill to Revise the Internal Revenue Laws of the United States". p. 4017. "**I. Stocks situated in the United States (sec. 2104)**

"Under present law stock held by nonresident aliens is treated as property situated in the United States if it is stock of a domestic corporation regardless of where the certificates are located, and if it is stock of a foreign corporation, if the certificates are located in the United States.

"Under the bill only the first of these rules is retained: Stock is to be deemed to be situated in the United States only where it is stock in a domestic corporation." p. 4119. "**A. Nonresident aliens (sec. 2051 [2501])**

"The tax on gifts of nonresident aliens is easily avoided if the donor merely moves the property from the United States to a foreign country and makes the gift there." p. 4120. "**§1. Tax imposed**

.. imposes a tax upon **taxable income** through a rate schedule which combines the normal and surtax on individuals....

Therefore, the distinction between normal tax net income and surtax net income has been eliminated, and the tax is imposed upon "**taxable income**" as defined in section 63 of the bill." p. 4145. [Bold added.]

[Internal Revenue Code of 1954: House Committee Report; *U.S. Code Congressional and Administrative News*, Vol. 3, 83rd Cong., 2d Session, 1954, pp. 3647-4620]

**Internal Revenue Code of 1954: Senate Committee Report**

"This Report was prepared by the Senate Finance Committee to accompany H.R. 8300 "A Bill to Revise the Internal Revenue Laws of the United States". p. 4621.

"Your committee has joined with the House Committee on Ways and Means in undertaking the first comprehensive revision of the internal revenue laws since before the turn of the century and the enactment of the income tax. This revision includes a rearrangement of the provisions to place them in a more logical sequence, the deletion of obsolete material, and an attempt to express the internal revenue laws in a more understandable manner." p. 4629.

[Internal Revenue Code of 1954: Senate Committee Report; *U.S. Code Congressional and Administrative News*, Volume 3, 83rd Congress, Second Session, 1954, pp. 4621-end]

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**C.I.R. v. Glenshaw Glass Co. (Mar. 28, 1955)**

"Compensation received in a fraud or antitrust case for damages actually incurred is taxable income."

"Punitive damages cannot be considered a restoration of capital for income tax purposes."

"Simplification of definition of gross income in Internal Revenue Code of 1954 was not intended to affect the broad scope of the definition."

"Punitive damages cannot be classified, for income tax purposes, as a "gift"."

"Money received, by settlement, as exemplary damages for fraud and antitrust violations and as the punitive two-thirds portion of a treble damage antitrust suit recovery was taxable "gross income"."

"But Congress applied no limitations as to the source of taxable receipts, nor restrictive labels as to their nature. And the Court has given a liberal construction to this broad phraseology in recognition of the intention of Congress to tax all gains except those specifically exempted."

"It is urged that re-enactment of §22(a) without change since the Board of Tax Appeals held punitive damages nontaxable in *Highland Farms Corp.*, 42 B.T.A. 1314, indicates congressional satisfaction with that holding. Re-enactment--particularly without the slightest affirmative indication that Congress ever had the *Highland Farms* decision before it--is an unreliable indicium at best."

"Certainly punitive damages cannot reasonably be classified as gifts, cf. *Commissioner v. Jacobson*, 336 U.S. 28, 47-52, 69 S.Ct. 358, 368-370, 93 L.Ed. 477, nor do they come under any other exemption provision in the Code. We would do violence to the plain meaning of the statute and restrict a clear legislative attempt to bring the taxing power to bear upon all receipts constitutionally taxable were we to say that the payments in question here are not gross income." [Commissioner of Internal Revenue v. *Glenshaw Glass Co.*, 348 U.S. 426, 75 S.Ct. 473 (1955)]

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**General American Investors Co. v. C.I.R. (Mar. 28, 1955)**

"We have this day decided that the recovery of punitive damages for fraud or antitrust violation is reportable as gross income within the meaning of §22(a). *Commissioner v. Glenshaw Glass Co.*, 349 [sic] U.S. 426, 75 S.Ct. 473. The reasons which dictated that result are equally compelling here. We see no significant difference in the nature of these receipts which might make that ruling inapplicable. As in *Glenshaw*, the taxpayer realized the money in question free of any restrictions as to use. The payments in controversy were neither capital contributions nor gifts. Cf. *Texas & Pacific R. Co. v. United States*, 286 U.S. 285, 52 S.Ct. 528, 76 L.Ed. 1108. There is no indication that Congress intended to exempt them from coverage. In accordance with the legislative design to reach all gain constitutionally taxable" unless specifically excluded, we conclude that the petitioner is liable for the tax and the judgment is affirmed."

[*General American Inv. Co. Commissioner of Internal Revenue*, 348 U.S. 434, 75 S.Ct. 478 (1955)]

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**C.I.R. v. Lo Bue (May 28, 1956)**

"Where it was possible that Tax Court and Court of Appeals had given too narrow an interpretation to income tax statute defining gross income, Supreme Court granted certiorari."

"Where stock options were given by employer to employees to provide them with an incentive to promote growth of company by permitting them to participate in its success, transfer of such options was not a "gift" within gift exemption from income taxation."

"When assets are transferred by an employer to an employee to secure better services, they are "compensation" within income tax statute defining gross income, and it makes no difference if the compensation is paid in stock rather than in money."

"Where employee received very substantial economic and financial benefit, consisting of stock options, from his employer because of employer's desire to get better work from employee, this was "compensation for personal service" within income tax statute defining gross income."

"Where employer, to provide incentive to employee," transferred to him option to buy stock at substantially less than **market value, employee realized taxable gain** when he purchased the stock."

"It is possible for recipient of stock option to realize immediate taxable gain."

"Where stock options given by employer to employee as an incentive were not transferable and his right to buy stock under them was contingent upon his remaining an employee of company until they were exercised, and where options were to buy at less than market value, taxable gain to employee was to be measured at time options were exercised and not at the time they were granted."

[*Commissioner of Internal Revenue v. Lo Bue*, 351 U.S. 243, 76 S.Ct. 800 (1956)]



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**Botta v. Scanlon (Mar. 6, 1961)**

"An assessment of penalty for willful failure to collect or to pay over a tax against one who is not obligated to collect or pay over the tax would be inconsistent with equity, due process, or justice. 26 U.S.C.A. (I.R.C.1954) §§6671(b), 6672."

"Tax officials are not vested with absolute power of assessment against individuals not specified in statutes as persons liable for tax without opportunity for judicial review of status before persons' property- is seized and sold, and same is true where liability is asserted as penalty for willful act. 26 U.S.C.A. (I.R.C.1954) §§6671(b), 6672."

.. in *Adler v. Nicholas*, 10 Cir., 1948, 166 F.2d. 674, 678.... "It is equally well settled that the Revenue laws relate only to taxpayers. No procedure is prescribed for a nontaxpayer where the Government seeks to levy on property belonging to him for the collection of another's tax, and no attempt has been made to annul the ordinary rights or remedies of a non-taxpayer in such cases. If the Government sought to levy on the property of A for a tax liability owing by B, A could not and would not be required to pay the tax under protest and then institute an action to recover the amount so paid. His remedy would be to go into a court of competent jurisdiction and enjoin the Government from proceeding against his property." [Brackets original.]

"Plaintiffs may or may not be able to allege facts showing that Section 7421 is inapplicable to them. However, a reasonable construction of the taxing statutes does not include vesting any tax official with absolute power of assessment against individuals not specified in the statutes as persons liable for the tax without an opportunity for judicial review of this status before the appellation of "taxpayer is bestowed upon them and their property is seized and sold."

[Botta v. Scanlon, 288 F.2d. 504 (1961)]

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**James v. United States (May 15, 1961)**

"Embezzled funds are included in "gross income" of embezzler for federal income tax purposes in year in which they are misappropriated; *Commissioner of Internal Revenue v. Wilcox*, 327 U.S. 404, 66 S.Ct. 546, overruled."

"The starting point in all cases dealing with the question of the scope of what is included in "gross income" begins with the basic premise that the purpose of Congress was "to use the full measure of its taxing power." *Helvering v. Clifford*, 309 U.S. 331. 334. 60 S.Ct. 554. 556, 84 L.Ed. 788. And the Court has given a liberal construction to the broad phraseology of the "gross income" definition statutes in recognition of the intention of Congress to tax all gains except those specifically exempted. [Cites omitted.] The language of §22(a) of the 1939 Code, "gains or profits and income derived from any source whatever," and the more simplified language of §61(a) of the 1954 Code, "all income from whatever source derived, have been held to encompass all "accessions to wealth, clearly realized, and over which the taxpayers have complete dominion." *Commissioner of Internal Revenue v. Glenshaw Glass Co.*, 348 U.S. 426, 431, 75 S.Ct. 473, 477, 99 L.Ed. 483. A gain "constitutes taxable income when its recipient has such control over it that, as a practical matter, he derives readily realizable economic value from it." *Rutkin v. United States*, supra, 343 U.S. at page 137, 72 S.Ct. at page 575."

[James v. United States, 366 U.S. 213, 81 S.Ct. 1052 (1961)]

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**Miller v. United States (Mar. 9, 1962)**

"It is formal assessment by Commissioner which "represents director's authority to *enforce collection of taxes not yet paid*". (Emphasis added.) *United States of America v. Dubuque Packing Co.*, 8 Cir., 1956, 233 F.2d. 453, 457; *Thomas v. Mercantile Nat. Bank at Dallas*, 5 Cir., 1953, 204 F.2d. 943."

[Miller v. United States, 202 F.Supp. 650 (1962)]

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**Simmons v. United States (Aug. 28, 1962)**

"It is not motivations of donor that are legally relevant in determining whether amounts received as prizes and awards in recognition of civic achievement are includable in gross income, for income tax purposes, but crucial test is nature of the activity being rewarded."

"Prize won by a taxpayer for catching a tagged fish was not excludable from taxpayer's gross income under civic achievement exception to includability of prizes in gross income even if a civic purpose could be discerned in campaign of donor of the prize, in view of nature of the activity rewarded."

[Simmons v. United States, 308 F.2d. 160 (1962)]

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**26 U.S.C. §6103(b)*****Sovereignty and Freedom Points and Authorities***

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"(b) Definitions.--For purposes of this section--..."

"(5) State.--The term "State" means-- (A) any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and

"(B) for purposes of subsections (a)(2), (b)(4), (d)(1), (h)(4), and (p) any **municipality-- "(i) with a population in excess of 250,000** (as determined under the most recent decennial United States census data available),...." [Bold in (B) added.]

[26 U.S.C. §6103(b)]

#### 4 U.S.C. §111

"The United States consents to the taxation of pay or compensation for personal service as **an officer or employee of the United States**, a territory or possession or political subdivision thereof, the government of the District of Columbia, or an agency or instrumentality of one or more of the foregoing, by a duly constituted taxing authority having jurisdiction, if the taxation does not discriminate against the **officer or employee** because of the source of the pay or compensation." [Bold added.]

[4 U.S.C. §111]

#### 4 U.S.C.S. §111, History; Ancillary Laws and Directives

"The words "pay or" are added before "compensation" for clarity as the word "pay" is used throughout Title 5, United States Code, to refer to the remuneration, salary, wages, or compensation for the personal services of a **Federal employee**." [Bold added.]

[4 U.S.C.S. §111, History; Ancillary Laws and Directives, p. 920]

#### Dodd v. United States (Nov. 27, 1963)

"The construction of the Internal Revenue law is not to be determined by local law but is a Federal question. However, State law may control when the Federal taxing Act, by its express language or necessary implication, makes its operation dependent upon State law. For Federal tax purposes, the Federal Regulations govern. *Lyeth v. Hoey*, 1938, 305 U.S. 188, 59 S.Ct. 155, 83 L.Ed. 119."

[*Dodd v. United States*, 223 F.Supp. 785 (1963)]

#### International Business Machines Corp. v. United States (Apr. 16, 1965)

"The third principle inherent in Section 7805(b) is the Commissioner's exercise of discretion is reviewable (in a proper proceeding) for abuse, in same way as other discretionary administrative determinations. The Internal Revenue Service does not have *carte blanche*. Its choice must be a rational one, supported by relevant considerations. See *Automobile Club of Michigan v. Commissioner of Internal Revenue* and the other cases cited supra; *Lesavoy Foundation v. Commissioner of Internal Revenue*, 238 F.2d. 589 (C.A.3, 1956); *Goodstein v. Commissioner of Internal Revenue*, supra; *Lynn & Gerson, Quasi-Estoppe and Abuse of Discretion as Applied Against the United States in Federal Tax Controversies*, 19 Tax L.Rev. 487, 509 if. (1964)."

[*International Business Machines Corp. v. United States*, 343 F.2d. 914 (1965)]

#### Peoples Life Ins. Co. v. United States (Mar. 17, 1967)

"Plaintiff, an insurance company with its home office in Washington, D.C., sells life, accident, and health insurance."

"It has been held that where an employer holds contests among its salesmen to stimulate sales, with the winners receiving prizes in cash or property, the cash value of the awards constitutes additional wages to the salesmen **for Federal employment** and withholding tax purposes. Rev. Ruling 55-232, 1955-1 Cum. Bull. 115." [Bold added.]

"It should be noted in this connection that defendant does not dispute the propriety of plaintiff's deducting, in the computation of its own income tax, the convention costs as ordinary and necessary expenses in the conduct of its business. As "wages," the expenses would, of course, also be deductible. What it merely seeks to do is to shift the convention costs from the "Agency Conferences" expense category on plaintiff's books to the "wages" category, for the sole purpose, obviously, of imposing a withholding tax liability with respect thereto and a corresponding income tax liability on the employees. Thus, there is no direct question here involved of the proper amount of plaintiff's own income tax liability.

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The basic purpose of the withholding of income taxes at the source on wages, first adopted by the Current Tax Payment Act of 1943, appear to have been the establishment of a system of placing individual taxpayers on a pay-as-you-go basis, thus alleviating the burden of making large payments at one time, as well as "to guard the Treasury against deaths, disappearances, and insolvencies, and to catch the itinerants who were moving from place to place with incomes taxable in the aggregate but with whom the Treasury could not keep pace," 8A Mertens, *Law of Federal Income Taxation*, §47A.01, rather than as a device, as defendant is here using it, to determine the basic tax liability of the employee, who is not even a party to the case."

"Based on all of the facts and considerations hereinabove set forth, it is concluded that the convention expenses herein involved did not constitute "wages" or "remuneration" within the meaning of the withholding tax provisions of section 3401, and that they are, instead, to be considered as following within the provisions of section 31.3401(a)-1(b) (2), "Traveling and other expenses," and subsection 1(b) 10, "Facilities or privileges," of the regulations issued under such section."

[*Peoples Life Ins. Co. v. United States*, 373 F.2d. 924 (1967)]

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#### **National Bellas Hess, Inc. v. Department of Revenue (May 8, 1967)**

"For the test whether a particular state exaction is such as to invade the exclusive authority of Congress to regulate trade between the States, and the test for a State's compliance with the requirements of due process in this area are similar. [Cite omitted.] As to the former, the Court has held that "State taxation falling on interstate commerce \* \* \* can only be justified as designed to make such commerce bear a fair share of the cost of the local government whose protection it enjoys." [Cites omitted.] And in determining whether a state tax falls within the confines of the Due Process Clause, the Court has said that the "simple but controlling question is whether the state has given anything for which it can ask return." [Cites omitted.] The same principles have been held applicable in determining the power of a State to impose the burdens of collecting use taxes upon interstate sales. Here, too, the Constitution requires "some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax.""

"In applying these principles the Court has upheld the power of a State to impose liability upon an out-of-state seller to collect a local use tax in a variety of circumstances. Where the sales were arranged by local agents in the taxing State, we have upheld such power. [Cites omitted.] We have reached the same result where the mail order seller maintained local retail stores."

"But the Court has never held that a State may impose the duty of use tax collection and payment upon a seller whose only connection with customers in the State is by common carrier or the United States mail. Indeed, in the *Sears, Roebuck* case the Court sharply differentiated such a situation from one where the seller had local retail outlets, pointing out that "those other concerns \* \* \* are not receiving benefits from Iowa for which it has the power to exact a price."

[*National Bellas Hess, Inc. v. Department of Revenue*, 386 U.S. 753, 87 S.Ct. 1389 (1967)]

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#### **Acacia Mutual Life Ins. Co. v. United States (July 26, 1967)**

"With 65 branch offices maintained in the District of Columbia and the 33 states in which it does business, Acacia sells only life insurance and annuities."

"The Home Office located in the District of Columbia has primary responsibility for recruiting, training and supervising the Agency Force."

"It should be noted that in both *Thomas* and *Rudolph* the court considered the statute from the taxpayer's point-of-view. With the employer as taxpayer here, this Court concludes that it is the purpose of the employer that controls in determining whether payments are remuneration under §3401(a) for services performed."

[*Acacia Mutual Life Ins. Co. v. United States*, 272 F.Supp. 188 (D.C.Md. 1967)]

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#### **United States v. Empey (Jan. 7, 1969)**

"Partners are not "employees" within internal revenue statutes and regulation permitting employees of corporation or association to participate in qualified pension and profit-sharing plan under arrangement whereby any contribution by employer thereto is not taxable to employees when made but is deductible by the employer."

"Partnership" within Internal Revenue Code refers to unincorporated associations."

"Professional service corporation organized under state corporation code for practice of law was entitled to be treated as corporation for purposes of federal income tax."

[*United States v. Empey*, 406 F.2d. 157 (1969)]

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**United States v. Swarthout (Jan. 22, 1970)**

"Defendant could not be guilty of concealment to defeat collection of taxes which had not yet been assessed when alleged concealment took place, and as to which, at such time, there had been no neglect or refusal to pay after notice and demand."

"Section 6331, as the emphasized portions indicate, authorizes levy only after one "liable to pay" a tax "neglects or refuses" to do so after "notice and demand" by the government's agent. *Bershad v. Wood*, 290 F.2d. 714 (9th Cir. 1961); *Mrizek v. Long*, 187 F.Supp. 830 (N.D.II.1960); Code Commentary, J. Mertens, *Law of Federal Income Taxation* §6331:1 (1969)."

"The legislative history of section 7206 (4) indicates that this provision resulted from amendment of §3321(a) of the Int. Rev. Code of 1939. The previous provision related only to concealment of goods or commodities. It was amended in the Int.Rev.Code of 1954 to cover "offenses committed in order to avoid levy." H.R.Rep.No. 1337 in 3 U.S.C.Cong. & Ad. News, p. 4573 (1954). If in amending this sentence Congress had intended to make it an offense to conceal property before levy was authorized- (i. e. before assessment), it knew how to do so. Congress was careful to authorize prospective effect in relation to concealing to avoid assessment or collection of taxes on "goods or commodities" by making the modifying clause as to them read "for or in respect whereof any tax is *or shall be* imposed." Thus Congress could have made the critical language involved in this section (and therefore, this indictment) read "or any property upon which levy is *or shall be* authorized by section 6331."

[United States v. Swarthout, 420 F.2d. 831 (1970)]

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**Chicago Bridge and Iron Company v. Wheatley (July 13, 1970)**

"Delaware corporation was entitled to use Western Hemisphere trade corporation deduction to reduce its income x945-971 liability to Virgin Islands."

"The Virgin Islands are considered to be a "country \* \* \* in the West Indies" and a source of income "without the United States" in the administration of this special provision. Rev.Rul. 55-105, 1955-1 Cum.Bull. 94; I.T. 4067, 1951-2 Cum.Bull.55-56. In addition, section 7701(a) (4) of the 1954 Code defines a "domestic" corporation as one "created or organized in the United States or under the law of the United States or of any State or Territory." But Virgin Islands corporations are not "domestic" under the definition in section 7701(a) (4) because the term "Territory" in that section includes only incorporated territories, such as Alaska and Hawaii before they were admitted to the Union. *See* Treas. Reg. §301.7701-5 (1960). The Virgin Islands are an unincorporated territory, 48 U.S.C. §1541(a) (1964), and a Virgin Islands corporation is treated as "foreign" for purposes of the United States income tax. *See* Rev.Rul. 56-616, 1956-2 Cum.Bull. 589-90."

"Both the federal tax administrators and the Congress have recognized that implementation of the Internal Revenue Code as a separate taxing statute in the Virgin Islands requires some substitution of language. In a ruling published in 1935, the Bureau of Internal Revenue noted that in construing the taxing statute applicable in the Virgin Islands, "it will, of course, be necessary in some sections of the law to substitute the words 'Virgin Islands' for the words 'United States, in order to give the law proper effect in those islands." I.T. 2946, X1V-2 Cum.Bull. 109, 110 (1935).

"The Internal Revenue Code was enacted as the income tax law of Guam by section 31 of the Organic Act of Guam in language identical in all relevant respects to the statute that had established what has come to be called the "mirror system" of taxation in the Virgin Islands. The equivalent mirror system of taxation in Guam has been the subject of congressional and judicial interpretations that indicate the extent to which the Internal Revenue Code should be modified in its application as a separate territorial income tax. The decisions construing the original Guamanian tax statute agreed that "[t]he tax to be paid ordinarily is measured by the amount of income tax the taxpayer' would be required to pay to the United States of America if the taxpayer were residing in the continental United States," and that the literal terms of the Internal Revenue Code should be modified only by "those nonsubstantive changes in nomenclature as are necessary to avoid confusion as to the taxing jurisdiction involved.""

[Chicago Bridge and Iron Company v. Wheatley, 430 F.2d. 973, 7 V.I. 555 (3rd Cir. 1970)]

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**Black's Law Dictionary: Organic Act**

"ORGANIC ACT. An act of congress conferring powers of government upon a territory. In re Lane, 10 S.Ct. 760, 135 U.S. 443, 34, L.Ed. 219.

"A statute by which a municipal corporation is organized and created is its "organic act" and the limit of its power, so that all acts beyond the scope of the powers there granted are void. *Tharp v. Blake*, Tex.Civ.App., 171 S.W. 549, 550." [Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1250]

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**Black's Law Dictionary: Organic Law**

"ORGANIC LAW. The fundamental law, or constitution, of a state or nation, written or unwritten; that law or system of laws or principles which defines and establishes the organization of its government. *St. Louis v. Dorr*, 145 No. 466, 46 S.W. 976, 42 L.R.A. 686, 68 Am.St.Rep. 575."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1251]

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**Royster Co. v. United States (June 4, 1973)**

"The Term "wages," as used in Internal Revenue Code provisions on federal insurance contributions, federal unemployment taxes and income tax withholding, is narrower than the term "income" as used in income tax provisions relating to how an individual must treat payments to him; wages are merely one form of income."

"Where amounts paid by taxpayer to its salesmen to reimburse them for cost of meals eaten in sales territory was not attributable to any service on part of salesmen, who were not on call during their lunch break, who got free lunch whether they made any sales on day in question or not and who performed no services during the lunch hour, such payments did not constitute "wages" subject to Federal Insurance Contributions Act, Federal Unemployment Tax Act and income tax withholding."

"The government contends that in determining whether the amounts at issue in this litigation are wages, the question is whether the amounts paid are "attributable to the employment relationship." Such a sweeping theory is too broad. Carried to its logical conclusion, the government's argument might require that every payment or other economic gain flowing from an employer to an employee constituted wages upon which withholding of income and FICA tax is required and FUTA tax payable. See *Humble Oil & Refining Co. v. United States*, 194 Ct.Cl. 920, 442 F.2d. 1362 (1971). This, of course, is not the law. There are numerous instances in which the government has been of opinion that benefits flowing from the employer to the employee do not constitute wages within the purview of the statutes at issue herein. For example, in Revenue Ruling 59-227, 1959-2 C.B. 13, it was held that a lump sum payment to an employee for his relinquishment of a seniority right and the vacation of a particular position, while ordinary income to the employee, did not constitute compensation for services performed and hence withholding was not required. And, in Revenue Ruling 55-520, 1955-2 C.B. 393, payment to an employee in settlement of litigation over his employment contract, while held to be income to the employee, was held not to constitute a payment for services on which withholding was required. See also *Humble Oil & Refining Co. v. United States*, 194 Ct.Cl. 920, 442 F.2d. 1362 (1971). We cannot agree that any payment made to the employee which is "attributable to the employment relationship" constitutes wages subject to FICA, withholding and FUTA."

"We believe that the question here is whether the payments at issue were made to the employees of Royster as remuneration for services performed. Such is the literal wording of the statutes involved, and the government advances no reason to support the expanded construction contended for."

[*Royster Co. v. United States*, 479 F.2d. 387 (1973)]

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**United States v. Cutter (Mar. 11, 1974)**

"Broad discretion given tax officers, with regard to investigations, is for legitimate tax investigation and is not a license for official harassment of the citizenry. 26 U.S.C.A. (I.R.C.1954) §7602."

[*United States v. Cutter*, 374 F.Supp. 1065 (1974)]

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**Shapiro v. Secretary of State (May 15, 1974)**

"Power of the Commissioner to levy on a taxpayer's property is inoperative until failure or refusal of taxpayer to pay the required amount following deficiency notice.

26 U.S.C.A. (I.R.C.1954) §§6212(a), 6331 (a,b), 285' 1286 6861(a)."

"A taxpayer against whom a jeopardy assessment is made must generally pay the asserted deficiency prior to litigation and cannot obtain an injunction against the Commissioner from a district court; however, there is a single limited exception to the general rule in that, if equitable jurisdiction otherwise exists and if the taxpayer can show, on the basis of facts available at time of trial, that the Commissioner could not ultimately establish his claim then a district court may issue an appropriate injunction. 26 U.S.C.A. (I.R.C. 1954) §§6861(a), 7421(a)."

"Summary tax collection procedures are not violative of due process since the taxpayer has an opportunity for a subsequent hearing. 26 U.S.C.A. (I.R.C.1954) §§6331(a,b), 6861(a)."

"Internal Revenue Service cannot prevail on a deficiency assessment and, thus, injunctive relief may be appropriate, when the asserted claim is entirely excessive, arbitrary, capricious and without factual foundation. 26 U.S.C.A. (I.R.C.1954)

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§7421(a)."

"Government's burden to show good faith, so as to preclude issuance of injunction restraining collection of taxes, is not met by mere protestations of good faith and conclusory statements of tax liability. 26 U.S.C.A. (LR.C.1954) §7421(a)." [Shapiro v. Secretary of State, 499 F.2d. 527 (1974)]

**United States v. Bisceglia (Feb. 19, 1975)**

"Statutory investigative authority given to officers or employees of Treasury Department with respect to determining liability for internal revenue taxes is not limited to situations in which there is probable cause, in the traditional sense, to believe that a violation of the tax laws exists; purpose of statutes is not to accuse but to inquire."

"Substantial protection against abuse of power vested in tax collector to investigate persons who may be liable for taxes is afforded by provision that an internal revenue summons can be enforced only by the courts; once summons is challenged [sic] it must be scrutinized by court to determine if it properly seeks information relevant to legitimate investigative purpose rather than harass taxpayer," put pressure on him to settle a collateral dispute or for any other reason reflecting on good faith of particular investigation."

"Mere fact that Internal Revenue Service summons, served on bank officer during an investigation to learn identity of person or persons who deposited 400 deteriorated \$100 bills with bank within a space of a few weeks, was styled in a fictitious name was not sufficient ground for denying enforcement thereof."

"Internal Revenue Service has statutory authority to issue a "John Doe" summons to a bank or other depository to discover identity of a person who has had bank transactions suggesting the possibility of liability for unpaid taxes."

[United States v. Bisceglia, 95 S.Ct. 915 (1975)]

**Black's Law Dictionary: Fictitious**

"FICTITIOUS NAME. A counterfeit, feigned, or pretended name taken by a person, differing in some essential particular from his true name, (consisting of Christian name and patronymic,) with the implication that it is meant to deceive or mislead." [Cites omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, pp. 751-752]

**C.I.R. v. Kowalski (Nov. 28, 1977)**

"Congress, in creating the income tax, intended to use the full measure of its taxing power."

"Although Congress, in the Internal Revenue Code of 1954, simplified the definition of gross income, it did not intend thereby to narrow the scope of the concept that "Congress applied no limitations as to the source of taxable receipts, nor restrictive labels as to their nature [but intended] to tax all gains except those specifically exempted." [Insertion by the court.]

"In the absence of a specific exemption, the cash meal allowance payments provided by New Jersey for its state police troopers are included in "gross income" under the Internal Revenue Code, since they are undeniably accessions to wealth, clearly realized, and over which the trooper has complete dominion."

[Commissioner of Internal Revenue v. Kowalski, 434 U.S. 77, 98 S.Ct. 315, 54 L.Ed.2d. 252 (1977)]

**Moorman Mfg. Co. v. Bair (June 15, 1978)**

"Under the due process clause, no tax may be imposed unless there is some minimal connection between those activities and taxing state, and income attributed to state for tax purposes must be rationally related to values connected with the taxing state."

"The Due Process Clause places two restrictions on a State's power to tax income generated by the activities of an interstate business. First, no tax may be imposed, unless there is some minimal connection between those activities and the taxing State. *National Bellas Hess, Inc. v. Department of Revenue*, 386 U.S. 753, 756, 87 S.Ct. 1389, 1390, 18 L.Ed.2d. 505. This requirement was plainly satisfied here. Second, the income attributed to the State for tax purposes must be rationally related to "values connected with the taxing State.""

[*Moorman Manufacturing Co. v. Bair*, 437 U.S. 267, 98 S.Ct. 2340 (1978)]

**Lonsdale v. C.I.R. (Nov. 12, 1981)**

"On appeal from adverse judgment rendered by tax court in suit contesting deficiencies determined by Commissioner

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in taxpayers income tax payments for years 1976 and 1977, pro se arguments which were partly theological were beyond special competence or jurisdiction of Court of Appeals."

"Constitution does not forbid taxation of compensation received by taxpayers for personal services, since Constitution grants Congress power to tax incomes, from whatever source derived."

"Definition of income in Internal Revenue Code as all "accessions to wealth" is clearly within power to tax "income" granted by Sixteenth Amendment."

"It is not necessary to apportion' income tax among the several states."

"Suit contesting deficiencies determined by Commissioner in taxpayers' income tax payments for years 1976 and 1977 is not "suit at common law \* \* \* " in which taxpayers were entitled to jury trial."

[Lonsdale v. Commissioner of Internal Revenue, 661 F.2d. 71 (5th Cir. 1981)]

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### **United States v. Slater (July 8, 1982)**

"Unless the defendant can establish that he is not a citizen of the United States, the IRS possesses authority to attempt to determine his federal tax liability. "

[United States v. Slater, 545 F.Supp. 179 (1982)]

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### **In re Twisteroo Soft Pretzel Bakeries, Inc. (July 16, 1982)**

" "Tax exemptions" are items which taxpayer is entitled to excuse from operation of a tax and, as such, are to be strictly construed against taxpayer while "tax exclusions" are items which were not intended to be taxed in the first place and thus, to extent there is any doubt about meaning of statutory language, exclusionary provisions are to be construed strictly against taxing body."

"Initially, it is important to bear in mind the distinction between a tax exclusion and a tax exemption. Tax exemptions are items which the tax payer is entitled to excuse from the operation of a tax and, as such, are to be strictly construed against the tax payer. Tax exclusions, on the other hand, are items which were not intended to be taxed in the first place and, thus, to the extent there is any doubt about the meaning of the statutory language, exclusionary provisions are to be strictly construed against the taxing body. **In fact, tax laws in general (with the exception of exemption clauses) are construed in favor of the tax payer and against imposition of the tax unless the legislative intent is clear and unambiguous.**"

[In re Twisteroo Soft Pretzel Bakeries, Inc., Bkrcty., 21 B.R. 665 (1982)]

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### **Lively v. C.I.R. (May 2, 1983)**

"Tax Court did not err in upholding Commissioner of Internal Revenue's disallowance of taxpayers deductions, even though taxpayers, who filed wage and tax statements with their return, did not claim any deductions but reported their income on the line for "business income," which they calculated according to Schedule C, clearly including impermissible deductions for personal expenses."

"Taxpayers' appeal of Tax Court's decision affirming Internal Revenue Commissioner's disallowance of their deductions was frivolous, and, therefore, they were required to pay double the costs of the Commissioner."

[Lively v. Commissioner of Internal Revenue, 705 F.2d. 1017 (1983)]

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### **26 U.S.C. §874(a)**

"A nonresident alien individual shall receive the benefit of the deductions and credit allowed to him in this subtitle only by filing or causing to be filed with the Secretary a true and accurate return, in the manner prescribed in subtitle F (sec. 6001 and following, relating to procedure and administration), including therein all the information which the Secretary may deem necessary for calculation of such deductions and credits."

[26 U.S.C. §874(a)]

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### **Parker v. C.I.R. (Feb. 6, 1984)**

"Authority conferred upon Congress by Constitution "to lay and collect taxes, duties, imposts and excises" is exhaustive and embraces every conceivable power of taxation, and Sixteenth Amendment' merely eliminates requirement that direct income tax be apportioned among the states."

"Constitution as amended empowers Congress to levy income tax against any source of income, without need to apportion tax equally among states, or to classify it as excise tax applicable to specific categories of activities."

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"For taxpayer to obtain trial by jury, he must pay tax allegedly owed and sued for refund in district court, and taxpayer who elects to bring his suit in tax court has no right, statutory or constitutional, to trial by jury."

"Statutes establishing tax court are constitutional."

"Pressing need to marshal limited juridical resources justified slight variance from rule that issues not timely raised in tax court will ordinarily not be considered upon review." [Brushaber and Flint cited.]

[Parker v. Commissioner of Internal Revenue, 724 F.2d. 469 (5th Cir. 1984)]

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#### **Granzow v. C.I.R. (July 13, 1984)**

"Wages received by taxpayers constitute gross income subject to taxation."

"Where taxpayers acted in disregard of tax laws by excluding their wages from taxable income, imposition of addition to tax on taxpayers whose underpayment of tax is caused by negligence or intentional disregard of rules or regulations was proper. 26 U.S.C.A. §6653(a)."

"Party claiming exemption from income taxation bears burden of proof of entitlement."

"Tax Court's determination that taxpayer was not a tax-exempt religious organization was supported by evidence that taxpayer was located in its members' family residence, had no members other than the family, and did not conduct regular services or support typical church programs and that family members refused to provide any financial information about it."

"Taxpayer's contention that he was exempt from taxation because he had taken a vow of poverty was untimely raised where, despite having several years to do so, taxpayer did not amend his petition to incorporate facts sufficient to support the assertion until the eve of trial."

"Because abusers of tax system have no license to make irresponsible demands on courts of appeals to consider fanciful arguments put forward in bad faith, taxpayers filing frivolous' appeals would be required to pay costs and reasonable attorney fees to Internal Revenue Commissioner."

[Granzow v. Commissioner of Internal Revenue, 739 F.2d. 265 (1984)]

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#### **Johnson v. Quinn (Aug. 3, 1984)**

"As stated in Revenue Ruling 73-315, 1973-2 C.B. 225, "[T]he United States and Virgin Islands are separate and distinct taxing jurisdictions although their income tax laws arise from an identical statute applicable to each."

"Congress has provided that inhabitants of the Virgin Islands must file a return with and pay taxes to the Virgin Islands on income derived from both within and outside the Virgin Islands. [Cite omitted.] However, United States citizens not residing permanently in the Virgin Islands, but deriving some income in the Virgin Islands, must file two tax returns, one reporting and paying taxes to the Virgin Islands on Virgin Island income, and the other reporting and paying taxes to the United States on income *from all sources*. [Cite omitted.] Hence United States citizens not residing in the Virgin Islands but with Virgin Islands income would face the possibility of double taxation. To avoid that result, Congress granted a section 901 tax credit for taxes paid to the Virgin Islands for those persons with the dual tax obligation. Virgin Islands residents, however, do not face the possibility of double taxation since they pay no income tax to the United States and, therefore, have no need of the credit. Petitioners, having been taxed by a state of the United States, contend that they are entitled to a foreign tax credit for taxes paid to that state. But such a result would not only distort the purpose of the credit, it would result in petitioners being able to claim a credit where no such credit would be available to a taxpayer residing in the United States. This is precisely the type of result to be discouraged under the equality principles enunciated in the cases construing the mirror tax theory; the literal terms of the Internal Revenue Code should be modified (mirrored) only to the extent of such nonsubstantive changes in nomenclature as are necessary to avoid confusion as to the taxing jurisdiction involved."

[Johnson v. Quinn, 87-1 T.C. 87, 875 (1984)]

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#### **Wheeler v. United States (Sept. 12, 1984)**

"Internal Revenue Code provision under which plaintiff had been convicted of willfully failing to file income tax returns was not shown to be unconstitutional."

[Wheeler v. United States, 744 F.2d. 292 (2d Cir. 1984)]

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#### **Ficalora v. C.I.R. (Dec. 13, 1984)**

"Congress has constitutional authority to impose an income tax on individuals."

"Statute providing that there is hereby imposed on the taxable income of every individual a tax determined in accordance with specified tables is statutory authority to impose an income tax on individuals."

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"There is constitutional and statutory authority for imposing additions to income tax due and owing for failure to file a return and for failure to make timely payments."

"Individual could not be heard to assert that term "income," as used in taxing statutes, had no defined meaning and is unconstitutionally vague and indefinite as Internal Revenue Code specifically cites compensation for services as a concrete example of what is meant by the term income."

"Whether to impose sanctions for frivolous appeal is for the appellate court's discretion."

"Although resolution of constitutional authority to impose income tax and sanctions for filing failures were clear, sanctions would not be imposed on individual for taking appeal with regard to such issues as it was his first appeal of the issues and the court had not previously explicitly ruled on the issues."

[Ficalora v. Commissioner of Internal Revenue, 751 F.2d. 85 (2d Cir. 1984)]

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#### **Lovell v. United States (Dec. 18, 1984)**

"Statute authorizing' penalty for filing frivolous return applied where taxpayers filed separate forms 1040, claimed no income, claimed refund of all federal income and social security taxes that had been withheld during the year, did not sign returns, and wrote on signature lines "not a tax return (see attached letter)." 26 U.S.C.A. §6702(a)."

"Taxpayers were not exempt from federal taxation on ground that they were "natural individuals" who had not requested, obtained or exercised any privilege from an agency of government."

"The Constitution does not prohibit imposition of a direct tax without apportionment."

"Money received in compensation for labor is taxable."

"All individuals, natural or unnatural, must pay federal income tax on their wages, regardless of whether they received any "privileges" from the government."

[Lovell v. United States, 755 F.2d. 517 (7th Cir. 1984)]

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#### **Welch v. United States (Jan. 4, 1985)**

"Tax deductions and credits are a matter of legislative grace, and unless Congress provides for a deduction or a credit in the law, it is not allowable."

"Taxpayers who were assessed penalties for claiming "war tax" credits were not penalized for expressing their political, moral or religious beliefs on their returns, or for attaching letters to their returns stating their opposition to military spending but, rather, were penalized simply because they filed returns containing substantially incorrect selfassessments based on clearly unallowable credits."

"Noncompliance with federal tax laws is conduct that is afforded no protection under the First Amendment."

"Frivolous return provision of the Internal Revenue Code was not unconstitutionally vague."

"Section 6702 of the Internal Revenue Code of 1954, applicable with respect to returns filed after September 3, 1982, was enacted as part of the Tax Equity' and Fiscal Responsibility Act of 1982 ("TEFRA"), Pub.L. No. 97-248, 96 Stat. 324, in order to improve compliance with the federal tax laws. See, S.Rep. No. 494, 97th Cong., 2d Sess. 74, 277, reprinted in 1982 U.S.Code Cong. & Ad.News 781, 1023-25. The provision was enacted in response to the "rapid growth in deliberate defiance of the tax laws by tax protestors." As the Senate Finance Committee explained:

"[t]he committee is concerned with the rapid growth in deliberate defiance of the tax laws by tax protestors. The Internal Revenue Service had 13,600 illegal protest returns under examination as of June 30, 1981. Many of these protestors are induced to file protest returns through the criminal conduct of others. These advisors frequently emphasize the lack of any penalty when sufficient tax has been withheld from wages and encourage others to play the "audit lottery." The committee believes that an immediately assessable penalty on the filing of protest returns will help deter the filing of such returns, and will demonstrate the determination of the Congress to maintain the integrity of the income tax system."

"Moreover, even if taxpayers' attempts to reduce their taxes were treated as expressive activity protected by the First Amendment, it is clear that the necessities of maintaining a sound revenue system raise a compelling governmental interest adequate to override this fundamental right."

[Welch v. United States, 750 F.2d. 1101 (1985)]

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#### **Charczuk v. C.I.R. (Aug. 29, 1985)**

"Constitutional authority existed for imposition of income tax on individuals. U.S.C.A. Const.Amend. 16."

"Statutory authority existed for imposition of income tax on individuals. 26 U.S.C.A. §1."

"Term "income" as used in taxing statutes was not unconstitutionally vague and indefinite. 26 U.S.C.A. §61."

"Sanctions for bringing frivolous, unreasonable and vexatious proceedings would be imposed on taxpayers' and their

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counsel, who sought a redetermination of a deficiency based on their claim that the income tax itself was invalid as a matter of law. 26 U.S.C.A. §§6673, 7482(c)(4); 28 U.S.C.A. §§1912, 1927."  
[Charczuk v. C.I.R., 771 F.2d. 471 (1985)]

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**Reed v. Health and Human Services (Oct. 10, 1985)**

""Lump sum rule," which provides, in determining eligibility for aid to families with dependent children benefits, that lump-sum income is to be considered in determining eligibility for a number of months calculated by dividing amount of lump-sum income by state's monthly standard of need, may not be applied to personal injury awards to render AFDC recipients ineligible for benefits."

[Reed Health and Human Services, 774 F.2d. 1270 (1985). [Reversed by Lukhard v. Reed, 481 U.S. 368, 107 S.Ct. 1807 (1987)]]

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**Coleman v. Commissioner (May 7, 1986)**

"Wages are "income" for purpose of internal revenue." "Tax on wages is constitutional. 26 U.S.C.A. §61; U.S.C.A. Const.Amend. 16.

"General tax' levy by Internal Revenue Code does not offend Fifth Amendment taking clause. U.S.C.A. Const. Art. 1, §2, cl. 3; Art. 1, §8, cl. 1, amends. 5, 16."

"There is no right to jury trial in tax court."

"Statutes need not be unambiguous in every application to be constitutional; many words acquire meaning through judicial and administrative construction over the years, and this evolutionary process is constitutional."

"Petition to tax court, or tax return, is "frivolous" if it is contrary to established law and unsupported by reasoned, colorable argument for change in law."

"Taxpayers contentions that wages may not be taxed because they come from taxpayer's person, which is depreciating asset, and because Sixteenth Amendment authorizes only excise taxes, were objectively frivolous, so that tax court and Internal Revenue Service were entitled to impose sanctions."

"They knew or should have known that their claims are frivolous, and they (rather than their adversary) must pay the cost of their self-indulgent litigation."

[Coleman v. Commissioner, 791 F.2d. 68 (7th Cir. 1986)]

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**Lukhard v. Reed (Apr. 22, 1987)**

"Virginia regulations that treated personal injury awards as income, rather than resources, were consistent with statute and regulations governing aid to families with dependent children."

"Provisions in Internal Revenue Code, food stamp program, and poverty guidelines of Department of Health and Human Services, which stated that personal injury awards were not income, did not establish legislative intent to exclude personal injury awards from definition of income as used in statutes governing aid to families with dependent children."

"Common goal of aid to families with dependent children statute, food stamp program, and poverty guidelines of Department of Health and Human Services to define who was needy did not establish that "income" as used in statute governing aid to families with dependent children excluded personal injury awards."

"Legislative and administrative history of statute governing aid to families with dependent children established that Department of Health and Human Services had permitted states to define income to include personal injury awards."

"Legislation using word that has been given administrative interpretation does not freeze administrative interpretation in place."

"Healthy body is not "resource" within meaning of statute governing aid to families with dependent children."

"Virginia regulations, which treated personal injury awards as income, rather than resources, for purposes of aid to families with dependent children did not violate regulation of Department of Health and Human Services, which prohibited exclusion of individuals or groups on arbitrary or unreasonable basis."

[Lukhard v. Reed, 481 U.S. 368, 107 S.Ct. 1807 (1987)]

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**United States v. Wells Fargo Bank (Mar. 23, 1988)**

"State and local public housing agency obligations issued pursuant to Housing Act of 1937, known as "Project Notes," were not exempt from federal estate taxation."

[United States v. Wells Fargo Bank, 485 U.S. 351, 108 S.Ct. 1179; 99 L.Ed.2d. 368 (1988)]

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**Holof v. C.I.R. (Apr. 12, 1989)**

"The notice of deficiency is a pivotal feature of the Code's assessment procedures. Unless the IRS first issues the taxpayer an effective notice of deficiency, the Commissioner is precluded by statute from assessing or collecting any taxes."

[Holof v. Commissioner of Internal Revenue, 872 F.2d. 50 (3rd Cir. 1989)]

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**Sage v. United States (Aug. 13, 1990)**

"United States is not subject to statutes of limitations in enforcing its rights unless Congress explicitly provides otherwise."

"Statutes of limitations must receive strict construction in favor of Government."

[Sage v. United States, 908 F.2d. 18 (5th Cir. 1990)]

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**United States v. Sloan (Aug. 9, 1991)**

"Internal Revenue Code imposes tax on all income, including wages."

"All individuals, freeborn, and nonfreeborn, natural and unnatural alike, must pay federal income tax on their wages, regardless of whether they have requested, obtained or exercised any privilege from federal Government."

"Allegations in indictment, that taxpayer' had willfully and knowingly attempted to evade taxation by filing false W-4 form and by failing to pay tax during tax years' in question, were sufficient to satisfy standards imposed by Fifth and Sixth Amendments."

[United States v. Sloan, 939 F.2d. 499 (7th Cir. 1991)]

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**United States v. Schweitzer (Oct. 9, 1991)**

"Absence of Office of Management and Budget Control number on instruction booklet prepared by Internal Revenue Service to accompany individual income tax Form 1040 did not bar prosecution for willful failure to file income tax returns."

"Tax forms, particularly Form 1040, are information collection requests subject to prescriptions of Paperwork Reduction Act."

[United States v. Schweitzer, 775 F.Supp. 1355 (D.Mont. 1991)]

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**26 U.S.C §6601(e)(2)**

"(2) INTEREST ON PENALTIES, ADDITIONAL AMOUNTS, OR ADDITIONS TO THE TAX.-- (A) IN GENERAL.-- Interest shall be imposed under subsection (a) in respect of any assessable penalty, additional amount, or addition to the tax (other than an addition to tax imposed under section 6651(a)(1) or 6653 or under part II of subchapter A of chapter 68) only if such assessable penalty, additional amount, or addition to the tax is not paid within 10 days from the date of notice and demand therefor, and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment."

[26 U.S.C §6601(e)(2)]

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**26 U.S.C. §6651(a)(1)**

"(a) ADDITION TO THE TAX.--In case of failure--

"(1) to file any return required under authority of subchapter A of chapter 61 (other than part III thereof), subchapter A of chapter 51 (**relating to distilled spirits, wines, and beer**), or of subchapter A of chapter 52 (**relating to tobacco, cigars, cigarettes, and cigarette papers and tubes**) or of subchapter A of chapter 53 (**relating to machine guns and certain other firearms**), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return 5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate;"

[26 U.S.C. §6651(a)(1)]

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**26 U.S.C. §6662(a)**

"(a) IMPOSITION OF PENALTY.--If this section applies to any portion of an underpayment of tax required to be shown on a return, there shall be added to the tax an amount equal to 20 percent of the portion of the underpayment to which this section applies."

[26 U.S.C. §6662(a)]

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**26 U.S.C. §3121(a) & (b)(10)**

"(a) Wages.--For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include--

"(b) **Employment.**--For purposes of this chapter, the term "employment" means any service, of whatever nature, performed (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee for an American employer (as defined in subsection (h)), or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233 of the Social Security Act; except that such term shall not include--

"(10) service performed in the employ of--

"(A) a school, college, or university, or"

(B) an organization described in 509(a)(3) if ..."

"if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;"

[26 U.S.C. §3121(a) & (b)(10)]

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**26 U.S.C. §3121(l)(1)**

**"(1) Agreements entered into by American employers with respect to foreign affiliates.--**

**"(1) Agreement with respect to certain employees of foreign affiliate.--**The Secretary shall, at the American employer's request, enter into an agreement (in such manner and form as may be prescribed by the Secretary) with any American employer (as defined in subsection (h)) who desires to have the insurance system **established by title II of the Social Security Act** extended to service performed outside the United States in the employ of any 1 or more of such employer's foreign affiliates (as defined in paragraph (6)) by all Employees who are citizens or residents of the United States, **except that the agreement shall not apply to any service performed by, or remuneration paid to, an employee if such service or remuneration would be excluded from the term "employment" or "wages", as defined in this section, had the service been performed in the United States.**" [Bold added.]

[26 U.S.C. §3121(l)(1)]

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**26 C.F.R. §36.3121(l)(1)-1**

"26 C.F.R. §36.3121(l)(1)-1: Agreements entered into by domestic corporations with respect to foreign subsidiaries.

"Social security coverage extended to individuals employed by a foreign subsidiary of a domestic corporation pursuant to an agreement under section 3121 (1) of the Federal Insurance Contributions Act is limited to United States citizens. Accordingly, such coverage ceases on the date that such an employee becomes a citizen of another country. Amounts paid under the agreement with respect to coverage of such individual prior to the date on which he became a citizen of another country are not refundable."

[26 C.F.R. §36.3121(l)(1)-1]

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**26 U.S.C. §3401(a), (c) & (d)**

"(a) **Wages.**--For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to public official) for services performed by an employee for his employer," including the cash value of all remuneration (including

benefits) paid in any medium other than cash; except that such term shall not include remuneration paid--

"(1) for active service performed in a month for which such employee is entitled to the benefits of section 112 (relating to certain combat pay of members of the Armed Forces of the United States); or

"(2) for agricultural labor (as defined in section 3121(g)); or

"(3) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority; or

"(4) for service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if--

"(A) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or

"(B) such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter; or

"(5) for services by a citizen or resident of the United States for a foreign organization; or

"(6) for such services, performed by a nonresident alien individual, as may be designated by regulations prescribed by the Secretary; or

"[(7) Repealed. Pub.L. 89-809, Title I, §103(k), Nov. 13, 1966, 80 Stat. 1554]

"(8)(A) for services for an employer (other than the United States or any agency thereof)--

"(i) performed by a citizen of the United States if, at the time of the payment of such remuneration, it is reasonable to believe that such remuneration will be excluded from gross income under section 911; or

"(ii) performed in a foreign country or in a possession of the United States by such a citizen if, at the time of the payment of such remuneration, the employer is required by the law of any foreign country or possession of the United States to withhold income tax upon such remuneration; or

"(B) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within a possession of the United States (other than Puerto Rico), if it is reasonable to believe that at least 80 percent of the remuneration to be paid to the employee by such employer during the calendar year will be for such services; or

"(C) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within Puerto Rico, if it is reasonable to believe that during the entire calendar year the employee will be a bona fide resident of Puerto Rico; or

"(D) for services for the United States (or any agency thereof) performed by a citizen of the United States within a possession of the United States to the extent the United States (or such agency) withholds taxes on such remuneration pursuant to an agreement with such possession; or

"(9) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or "(10)(A) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

"(B) for services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such services, or is entitled to be credited with the unsold newspapers or magazines turned back; or

"(11) for services not in the course of the employer's trade or business, to the extent paid in any medium other than cash; or

"(12) to, or on behalf of, an employee or his beneficiary--

"(A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust; or

"(B) under or to an annuity plan which, at the time of such payment it is reasonable to believe that the employee will be entitled to an exclusion under such section for payment; or

"(13) pursuant to any provision of law other than section 5(c) or 6(1) of the Peace Corps Act, for service performed as a volunteer or volunteer leader within the meaning of such Act; or

"(14) in the form of group-term life insurance on the life of an employee; or

"(15) to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is

reasonable to believe that a corresponding deduction is allowable under section 217 (determined without regard to section 274(n)); or

"(16)(A) as tips in any medium other than cash;

"(B) as cash tips to an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is \$20 or more;

"(17) for services described in section 3121(b)(20);

"(18) for any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129; or

"(19) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 117, or 132."

"(c) **Employee.**--For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

"(d) **Employer.**--For purposes of this chapter, the term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that--

"(1) if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" (except for purposes of subsection (a)) means the person having control of the payment of such wages, and

"(2) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term "employer" (except for purposes of subsection (a)) means such person."

[26 U.S.C. §3401(a), (c) & (d)]

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### **IRS Publication 515; Withholding of Tax on Nonresident Aliens and Foreign Corporations**

"Except in the case of dividends, the payee should use Form W-8, Certificate of Foreign Status, to tell the payer, broker, or barter exchange that the payee is a nonresident alien and is not subject to backup withholding. Form W-8 does not exempt the payee from the 30% (or lower treaty) withholding rate. Absent definite knowledge that a payee is a U.S. person, the payer of dividends may treat such payments to a payee with a foreign address as exempt from the possible application of backup withholding."

[IRS Publication 515; Withholding of Tax on Nonresident Aliens and Foreign Corporations]

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### **Certificate of Foreign Status, Form W-8**

"**Purpose of Form.**--Use Form W-8 or a substitute form containing a substantially similar statement to tell the payer, mortgage interest recipient, middleman, broker, or barter exchange that you are a nonresident alien individual, foreign entity, or exempt foreign person not subject to certain U.S. information return reporting or backup withholding rules."

[*Certificate of Foreign Status, Form W-8; General Instructions*]

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### **26 C.F.R. §301.6109-1(b)**

"(b) *Use of one's own number.* Every person who files under this title a return, statement, or other document shall furnish his taxpayer identifying number as required by the forms and the instructions relating thereto. A person whose number must be included on a document filed by another person shall give the taxpayer identifying number so required to the other person on request. For provisions dealing specifically with the duty of employees with respect to their social security numbers, see paragraphs (a) and (b) of §31.6011(b)-2 of this chapter (Employment Tax Regulations)."

[26 C.F.R. §301.6109-1(b)]

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### **Tax Management Portfolios: Income Tax Liability: Concepts and Calculations, by Maule, James Edward, Esq. (1994)**

#### ***"D. Other Taxes***

##### ***"1. Self-Employment Taxes***

##### ***"b. Self-Employment Income***

"Generally, self-employment income equals the net earnings from self-employment derived by an individual, other than nonresident aliens, during any taxable year. "

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"*Note:* Individuals who are not citizens of the United States but who are residents of Puerto Rico, the Virgin Islands, Guam, or American Samoa are not considered to be nonresident aliens for purposes of the self-employment tax. Nonresident aliens who are the subject of agreements under §233 of the Social Security Act are not considered to be nonresident aliens for purposes of the self-employment tax."

*"c. Net Earnings From Self-Employment (1) In General*

"Net earnings from self-employment is the gross income derived by an individual from any trade or business carried on by the individual, reduced by income tax deductions attributable to the trade or business. Net earnings from self-employment also includes the individual's distributive share of nonseparately stated partnership income or loss...."

*"d. Trade or Business*

*"(1) In General*

"A trade or business, in the context of the self-employment tax, has the same meaning it has for purposes of determining whether the individual is allowed to deduct expenses under §162.

*"(2) Exceptions*

*"(a) Public Officials*

"A trade or business does not include the performance of the functions of a public office. This exception does not apply to performance of the functions of a public office of a state or political subdivision of a state with respect to fees received in any period in which the functions are performed in a position compensated solely on a fee basis and in which the functions are not covered under an agreement under §218 of the Social Security Act between the state and the Secretary of Health and Human Services.

*(b) Employees*

"A trade or business does not include the performance of services as an employee. An individual is an employee if the individual is an employee for purposes of the FICA Tax. This exception does not apply to the following types of employment:

"(a) Services as a newspaper carrier by an individual who has not attained the age of 18, to the extent the rendition of the services are not treated as employment for FICA tax purposes;"

**"I. Introduction**

"There are three particular trades or businesses, those of being an employee, a farmer, and a timber and mineral extractor [...]."

**"II. Trade or Business Deductions Generally "B. Trade or Business**

*"1. In General*

"Because there is no statutory or regulatory definition of a trade or business, the task of establishing parameters for determining the existence of a trade or business has fallen to the courts. The courts have developed two definitional elements, one in relation to profit motive and the other in relation to the scope of the activities.

*"2. Profit Motive*

*"a. In General*

"There can be no trade or business unless the taxpayer enters into and carries on the activity with a good faith purpose of making a profit or in the belief that a profit can be made from the activity.

"A trade or business can exist even if there are no profits in the initial years provided there is profit potential.

*"b. Generation of Tax Benefits*

"No trade or business exists if the primary purpose of the activity is to generate tax deductions or other tax benefits.

*"3. Scope of the Activity*

"*Note:* As a practical matter, most activities that are determined to be trades or businesses are so treated because the taxpayer offers goods or services to the public. The *Groetzing* decision, however, expands the group of activities that are treated as trades or businesses by bringing within the ambit of the definition the activities of a taxpayer who does not offer goods or services to the public, but which are the sources of the taxpayer's livelihood. "

*"6. Employment as Trade or Business*

*"a. In General*

"The performance of services as an employee constitutes a trade or business. In order for an expenditure to be deductible, the employee must show the relationship between the expenditure and the employment. However, the performance of services for which compensation is not sought nor received does not constitute a trade or business because of the lack of a profit motive.

*"b. Corporate Officers and Directors*

"Generally, being employed as a corporate officer constitutes a trade or business.

*"7. Activities of Corporations*

*"a. In General*

"Generally, a for-profit corporation's activities constitute a trade or business because the corporation's existence is predicated solely on engaging in transactions with third parties in a manner intended to generate a profit."

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**"Historical Background of Income Tax"** [Contents included by reference.]

[Tax Management Portfolios: Income Tax Liability: Concepts and Calculations, by Maule, James Edward, Esq.]

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**Circular E, Employer's Tax Guide (Jan. 1996)**

"Federal Government employers."--The information in this guide applies to Federal agencies except for the rules requiring deposit of Federal taxes only at Federal Reserve banks or through the FedTax option of the Government On-Line Accounting Link Systems (GOALS). See the Treasury Financial Manual (I TFM 3-4000) for more information."

"If you are required to report employment taxes or give tax statements to employees or annuitants, you need an EIN."

"Generally, employees are defined either under common law or under special statutes for special purposes."

**"Employment status under common law.**--Anyone who performs services is an employee if you, as an employer, can control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the legal right to control the method and result of the services."

"Generally, people in business for themselves are not employees. For example, doctors, lawyers, veterinarians, construction contractors, and others in an independent trade in which they offer their services to the public are usually not employees."

"If an employer-employee relationship exists, it does not matter what it is called. The employee may be called an agent or independent contractor. It also does not matter how payments are measured or paid, what they are called, or if the employee works full or part time."

**"Statutory employees.**--If someone who works for you is not an employee under the common law rules discussed above, do not withhold Federal income tax from his or her pay."

**"Statutory nonemployees.**--Direct sellers and qualified real estate agents are by law considered nonemployees. They are instead treated as self-employed for income tax and employment tax purposes. See Pub. 15-A for details."

**"Treating employees as nonemployees.**--You will be liable for income tax and employee social security and Medicare taxes if you don't deduct and withhold them because you treat an employee as a nonemployee. See Internal Revenue Code section 3509 for details."

"If you want the IRS to determine whether a worker is an employee, file **Form SS-8**, Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding."

**"Child employed by parents.**--Payments for the services of a child under the age of 18 who works for his or her parent (or a partnership in which each partner is a parent of the child) in a trade or business are not subject to social security and Medicare taxes. If these services are for work other than in a trade or business, such as domestic work in the parent's private home, they are not subject to social security and Medicare taxes until the child reaches 21."

"Payments for the services of a child under the age of 21 who works for his or her parent whether or not in a trade or business are not subject to Federal unemployment taxes."

"The above rules apply even if the child is paid regular wages. The wages for these services are not subject to social security, Medicare, and Federal unemployment taxes. But they may still be subject to income tax withholding."

"You must get each employee's name and SSN because you must enter them on Form W-2. (This requirement also applies to resident and nonresident alien employees.) If you do not provide the correct name and SSN, you may owe a penalty."

Any employee without a social security card can get one by completing **Form SS-5**, Application for a Social Security Card. You can get this form at Social Security Administration (SSA) offices or by calling 1-800-772-1213. If your employee applied for an SSN but does not have it when you must file form W-2, enter "Applied For" on the form. When the employee receives the SSN, file **Form W-2c**, Statement of Corrected Income and Tax Amounts, to show the employee's SSN."

"Wages subject to Federal employment taxes include all pay you give an employee for services performed. The pay may be in cash or in other forms. It includes salaries, vacation allowances, bonuses, commissions, and fringe benefits. It does not matter how you measure or make the payments. See section 6 for a discussion of tips and section 7 for supplemental wages. Also see section 15 for exceptions to the general rules for wages."

[IRS Publication 15; Circular E, Employer's Tax Guide. (Rev. January 1996)]

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**Letter from Dept. of HHS (Mar. 24, 1995)**

"The Social Security Act does not require an individual to have a Social Security number (SSN) to live and work in the United States, nor does it require an SSN simply for the purpose of having one."

"We do not have the authority to require an employer to provide or deny employment or services to anyone who refuses to disclose his or her number. This is a matter between the individual and the employer."

[Department of Health & Human Services letter from Vincent Sanudo, Director, Office of Public Inquiries, March 24,

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### **27 C.F.R. Part 194**

"Part 194--Liquor Dealers."  
[27 C.F.R., Part 194]

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### **27 C.F.R. Part 197**

"Part 197--Drawback on Distilled Spirits used in Manufacturing Nonbeverage Products."  
[27 C.F.R., Part 197]

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## **8.3 Territoriality of Income Taxation**

Territoriality of income taxation means that it is limited to the territory over which the U.S. government enjoys exclusive legislative jurisdiction under Article 1, Section 8, Clause 17 and Article 4 of the Constitution. The following authorities define and describe the territoriality of the federal income tax:

1. *Citizenship Status v. Tax Status*, Form #10.011, Section 13  
[https://sedm.org/Forms/10-Emancipation/CitizenshipStatusVTaxStatus/CitizenshipVTaxStatus.htm#13\\_INCOME\\_TAXATION\\_PROPRIETORIAL](https://sedm.org/Forms/10-Emancipation/CitizenshipStatusVTaxStatus/CitizenshipVTaxStatus.htm#13_INCOME_TAXATION_PROPRIETORIAL)
2. *Challenge to Income Tax Enforcement Authority Within Constitutional States of the Union*, Form #05.052  
<https://sedm.org/Forms/FormIndex.htm>
3. *Federal Enforcement Authority Within States of the Union*, Form #05.032  
<https://sedm.org/Forms/FormIndex.htm>
4. *Federal Jurisdiction*, Form #05.018  
<https://sedm.org/Forms/FormIndex.htm>
5. *Flawed Tax Arguments to Avoid*, Form #08.004, Sections 8.1, 8.3, 8.7, 8.24, 9.6  
<https://sedm.org/Forms/FormIndex.htm>
6. *Why the Federal Income Tax is a Privilege Tax Upon Government Property*, Form #04.404  
<https://sedm.org/Forms/FormIndex.htm>

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### **Constitution Article 4, Section 3, Clause 2**

United States Constitution

Article 4, Section 3

**The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.**

[Constitution Article 4, Section 3, Clause 2]

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### **Bouvier's Law Dictionary, 1856**

**TERRITORY**. Apart of a country, separated from the rest, and subject to a particular jurisdiction. The word is derived from terreo, and is so called because the magistrate within his jurisdiction has the power of inspiring a salutary fear. Dictum cat ab eo quod magistratus intra fines ejus terrendi jus habet. Henrion de Pansy, Auth. Judiciare, 98. In speaking of the ecclesiastical jurisdictions, Francis Duaren observes, that the ecclesiastics are said not to have territory, nor the power of arrest or removal, and are not unlike the Roman magistrates of whom Gellius says vocationem habebant non prehensionem. De Sacris Eccl. Minist. lib. 1, cap. 4. In the sense it is used in the constitution of the United States, it signifies a portion of the country subject to and belonging to the United States, which is not within the boundary of any of them. 2. The constitution of the United States, art. 4, s. 3, provides, that "the congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property of the United States; and nothing in this constitution shall be construed, so as to preclude the claims of the United States or of any state." 3. Congress possesses the power to erect territorial governments within the territory of the United States; the power of congress over such territory is exclusive and universal, and their legislation is subject to no control, unless in the case of ceded territory, as far as it may be affected

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by stipulations in the cessions, or by the ordinance of 1787, 3 Story's L. U.S. 2073, under which any part of it has been settled. Story on the Const. Sec. 1322; Rawle on the Const: 237; 1 Kent's Com. 243, 359; 1 Pet. S. C. Rep. 511, 542, 517. 4. The only organized territories of the United States are Oregon, Minnesota, New Mexico and Utah. Vide Courts of the United States."

[[Bouvier's Law Dictionary, 1856](#)]

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**Black's Law Dictionary, Sixth Edition, p. 1473**

**"Territory:** A part of a country separated from the rest, and subject to a particular jurisdiction. Geographical area under the jurisdiction of another country or sovereign power.

*A portion of the United States not within the limits of any state, which has not yet been admitted as a state of the Union, but is organized with a separate legislature, and with executive and judicial powers appointed by the President."*

[Black's Law Dictionary, Sixth Edition, p. 1473]

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**86 Corpus Juris Secundum (C.J.S.), Territories, §1 (2003)**

"§1. Definitions, Nature, and Distinctions

**"The word 'territory,' when used to designate a political organization has a distinctive, fixed, and legal meaning under the political institutions of the United States, and does not necessarily include all the territorial possessions of the United States, but may include only the portions thereof which are organized and exercise governmental functions under act of congress."**

"While the term 'territory' is often loosely used, and has even been construed to include municipal subdivisions of a territory, and 'territories of the' United States is sometimes used to refer to the entire domain over which the United States exercises dominion, the word 'territory,' when used to designate a political organization, has a distinctive, fixed, and legal meaning under the political institutions of the United States, and the term 'territory' or 'territories' does not necessarily include only a portion or the portions thereof which are organized and exercise government functions under acts of congress. The term 'territories' has been defined to be political subdivisions of the outlying dominion of the United States, and in this sense the term 'territory' is not a description of a definite area of land but of a political unit governing and being governed as such. The question whether a particular subdivision or entity is a territory is not determined by the particular form of government with which it is, more or less temporarily, invested.

**"Territories' or 'territory' as including 'state' or 'states.'" While the term 'territories of the' [United States](#) may, under certain circumstances, include the states of the Union, as used in the federal Constitution and in ordinary acts of congress "territory" does not include a [foreign state](#).**

**"As used in this title, the term 'territories' generally refers to the political subdivisions created by congress, and not within the boundaries of any of the several states."**

[86 C.J.S. [Corpus, Juris, Secundum, Legal Encyclopedia], Territories]

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**[Cunard S. S. Co. v. Mellon, 262 U.S. 100, 43 S.Ct. 504 \(1923\)](#)**

**"Various meanings are sought to be attributed to the term 'territory' in the phrase 'the United States and all territory subject to the jurisdiction thereof.' We are of opinion that it means the regional areas- of land and adjacent waters-over which the United States claims and exercises dominion and control as a sovereign power. The immediate context and the purport of the entire section show that the term is used in a physical and not a metaphorical sense-that it refers to areas or districts having fixity of location and recognized boundaries.** See United States v. Bevens, 3 Wheat. 336, 390.

"It now is settled in the United States and recognized elsewhere that **the territory subject to its jurisdiction includes the land areas under its dominion and control, the ports, harbors, bays and other enclosed arms of the sea along its coast and a marginal belt of the sea extending from the coast line outward a marine league, or three geographic miles.** Church v. Hubbard, 2 Cranch, 187, 234; The Ann, 1 Fed. Cas. No. 397, p. 926; United States v. Smiley, 27 Fed. Cas.

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No. 16317, p. 1132; *Manchester v. Massachusetts*, [139 U.S. 240, 257](#), 258 S., 11 Sup. Ct. 559; *Louisiana v. Mississippi*, [202 U.S. 1, 52](#), 26 S. Sup. Ct. 408; 1 Kent's Com. (12th Ed.) \*29; 1 Moore, [262 U.S. 100, 123] *International Law Digest*, 145; 1 Hyde, *International Law*, 141, 142, 154; Wilson, *International Law* (8th Ed.) 54; Westlake, *International Law* (2d Ed.) p. 187, et seq; Wheaton, *International Law* (5th Eng. Ed. [Phillipson]) p. 282; 1 Oppenheim *International Law* (3d Ed.) 185-189, 252. This, we hold, is the territory which the amendment designates as its field of operation; and the designation is not of a part of this territory but of 'all' of it."

[[Cunard S. S. Co. v. Mellon](#), [262 U.S. 100](#), [43 S.Ct. 504](#) (1923)]

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**Dred Scott v. Sandford, 60 U.S. 393, 509-510 (1856)**

“The Constitution permits Congress to dispose of and to make all needful rules and regulations respecting the territory or other property belonging to the United States. This power applies as well to territory belonging to the United States within the States, as beyond them. It comprehends all the public domain, wherever it may be. The argument is, that the power to make ‘ALL needful rules and regulations’ ‘is a power of legislation,’ ‘a full legislative power;’ ‘that it includes all subjects of legislation in the territory,’ and is without any limitations, except the positive prohibitions which affect all the powers of Congress. Congress may then regulate or prohibit slavery upon the public domain within the new States, and such a prohibition would permanently affect the capacity of a slave, whose master might carry him to it. And why not? Because no power has been conferred on Congress. This is a conclusion universally admitted. But the power to ‘make rules and regulations respecting the territory’ is not restrained by State lines, nor are there any constitutional prohibitions upon its exercise in the domain of the United States within the States; and whatever rules and regulations respecting territory Congress may constitutionally make are supreme, and are not dependent on the situs of ‘the territory.’”

[*Dred Scott v. Sandford*, 60 U.S. 393, 509-510 (1856)]

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**O’Donoghue v. U.S., 289 U.S. 516, 53 S.Ct. 740, (U.S. 1933)**

“In this connection, the peculiar language of the territorial clause, article 4, s 3, cl. 2, of the Constitution, should be noted. By that clause Congress is given power 'to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.' Literally, the word 'territory,' as there used, signifies property, since the language is not 'territory or property,' but 'territory or other property.' There thus arises an evident difference between the words 'the territory' and 'a territory' of the United States. The former merely designates a particular part or parts of the earth's surface--the imperially extensive real estate holdings of the nation; the latter is a governmental subdivision which happened to be called a 'territory,' but which quite as well could have been called a 'colony' or a 'province.' 'The Territories,' it was said in *First National Bank v. County of Yankton*, 101 U.S. 129, 133, 25 L.Ed. 1046, 'are but political subdivisions of the outlying dominion of the United States.'

[*O’Donoghue v. U.S.*, 289 U.S. 516, 53 S.Ct. 740, (U.S. 1933)]

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**Lawrence v. Wardell, Collector. 273 F. 405 (1921). Ninth Circuit Court of Appeals**

“[I] The power of Congress, in the imposition of taxes and providing for the collection thereof in the possessions of the United States, is not restricted by constitutional provision (section 8, article 1), which may limit its general power of taxation as to uniformity and apportionment when legislating for the mainland or United States proper, for it acts in the premises under the authority of clause 2, section 3, article 4, of the Constitution, which clothes Congress with power to make all needful rules and regulations respecting the territory or other property belonging to the United States. *Binns v. United States*, 194 U.S. 486, 24 Sup.Ct. 816, 48 L.Ed. 1087; *Downes v. Bidwell*, 182 U.S. 244, 21 Sup.Ct. 770, 45 L.Ed. 1088.”

[*Lawrence v. Wardell, Collector*. 273 F. 405 (1921). Ninth Circuit Court of Appeals]

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**Federalist Papers, James Madison, Number 45, pp. 295 - 296**

“The number of individuals employed under the Constitution of the United States will be much smaller than the number employed under the particular States. There will consequently be less of personal influence on the side of the former than of the latter. The members of the legislative, executive, and judiciary departments of thirteen **and** more States, the justices of peace, officers of militia, ministerial officers of justice, with all the county, corporation, and town officers, for three millions and more of people, intermixed and having particular acquaintance with every class and circle of people must exceed, beyond all proportion, both in number and influence, those of every description who will be employed in the administration of the federal system. [. . .] If the federal government is to have collectors of revenue. the State

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governments will have theirs also. And as those of the former will be principally on the seacoast, and not very numerous, whilst those of the latter will be spread over the face of the country, and will be very numerous, the advantage in this view also lies on the same side. It is true that the Confederacy is to possess, and may exercise, the power of collecting internal as well as external taxes throughout the States: but it is probable that this power will not be resorted to, except for supplemental purposes of revenue: that an option will then be given to the States to supply their quotas by previous collections of their own: and that the eventual collection, under the immediate authority of the Union, will generally be made by the officers, and according to the rules, appointed by the several States. [ . . . ] Should it happen, however, that separate collectors of internal revenue should be appointed under the federal government, the influence of the whole number would not bear a comparison with that of the multitude of State officers in the opposite scale. Within every district to which a federal collector would be allotted, there would not be less than thirty or forty, or even more, officers of different descriptions, and many of them Persons of character and weight whose influence would lie on the side of the State.”

[Federalist Papers, James Madison, Number 45, pp. 295 - 296]

### **Why the Federal Income Tax is a Privilege Tax Upon Government Property, Form #04.404, Section 8.3: State Income Tax: The Public Salary Tax Act**

The Public Salary Tax Act of 1939, 3 Stat. 574, April 12, 1939 allegedly allows “States” to tax the income of public offices of the national government. You can read the act below:

1. *Public Salary Tax Act of 1939*, Library of Congress  
<https://www.loc.gov/law/help/statutes-at-large/76th-congress/session-1/c76s1ch59.pdf>
2. *Public Salary Tax Act of 1939*, Family Guardian Fellowship  
<https://famguardian.org/PublishedAuthors/Govt/HistoricalActs/PublSalaryTaxAct1939.htm>
3. Table of Popular Names: Public Salary Tax Act of 1939, Cornell University  
[https://www.law.cornell.edu/topn/public\\_salary\\_tax\\_act\\_of\\_1939](https://www.law.cornell.edu/topn/public_salary_tax_act_of_1939)
4. *Public Salary Tax Act of 1939*, California Law Review, Volume 27, pp. 705-711  
<http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=3713&context=californialawreview>

The severe problem with the act is that it does NOT expressly define the term “State” to include CONSTITUTIONAL states. It would be unconstitutional if it DID because of the Separation of Powers. The definition of the term “State” for the purposes of that act and most other legislation is found in 4 U.S.C. §110(d):

*4 U.S. Code § 110. Same; definitions*

*(d) The term “State” includes any Territory or possession of the United States.*

This is exactly the same problem that the Buck Act has. It is touted as being available for Constitutional states, but it in fact is NOT. If it is used by the CONSTITUTIONAL states, it violates the Separation of Powers Doctrine as described in:

*Government Conspiracy to Destroy the Separation of Powers*, Form #05.023

<https://sedm.org/Forms/FormIndex.htm>

Instead of what was proposed and described in the above references on the Public Salary Tax Act of 1939, we propose that its real but UNSTATED and UNCONSTITUTIONAL purpose behind the act was the following:

1. To make EVERYONE who files a W-4 into such federal officer.

*26 U.S. Code § 3402. Income tax collected at source*

*(p) VOLUNTARY WITHHOLDING AGREEMENTS*

*(1) CERTAIN FEDERAL PAYMENTS*

*(A) In general*

*If, at the time a specified Federal payment is made to any person, a request by such person is in effect that such payment be subject to withholding under this chapter, then for purposes of this chapter and so much of subtitle F*

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as relates to this chapter, such payment shall be treated as if it were a payment of wages by an employer to an employee.

The definition of STATUTORY “employee” for the purposes of the above is as follows:

26 C.F.R. §31.3401(c)-1 Employee:

**“...the term [employee] includes officers and employees, whether elected or appointed, of the United States, a [federal] State, Territory, Puerto Rico or any political subdivision, thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term 'employee' also includes an officer of a [FEDERAL but not STATE] corporation.”**

Notice they HIDE it in the regulations rather than the statutes so you don’t receive notice that you are agreeing effectively to BECOME a federal “employee” by submitting such a form. They also don’t warn you on the W-4 form this is what you are doing either.

2. To deputize EVERYONE in constitutional states to become a public officer of the national government. See:

[Why Your Government is Either a Thief or You are a “Public Officer” for Income Tax Purposes](https://sedm.org/Forms/05-MemLaw/WhyThiefOrPubOfficer.pdf), Form #05.008  
<https://sedm.org/Forms/05-MemLaw/WhyThiefOrPubOfficer.pdf>

3. To INVADE the Constitutional states with “swarms of federal officers to harass our people, and eat out their substance”. Those “officers” are called “taxpayers”.

*“He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our people, and eat out their substance.”*

[Declaration of Independence, 1776; SOURCE: <https://www.archives.gov/founding-docs/declaration-transcript>]

4. To violate Article 4, Section 4 of the Constitution, which FORBIDS the above commercial “invasion” of the states:

*Article 4: States’ Relations*

***Section 4. Obligations of United States to States***

*The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.*

5. To do EXACTLY what one of the AUTHORS of the Constitution, James Madison, warned that they COULD NOT do!

*“With respect to the words general welfare, I have always regarded them as qualified by the detail of powers connected with them. To take them in a literal and unlimited sense would be a metamorphosis of the Constitution into a character which there is a host of proofs was not contemplated by its creator.”*

**“If Congress can employ money indefinitely to the general welfare, and are the sole and supreme judges of the general welfare, they may take the care of religion into their own hands; they may appoint teachers in every State, county and parish and pay them out of their public treasury; they may take into their own hands the education of children, establishing in like manner schools throughout the Union; they may assume the provision of the poor; they may undertake the regulation of all roads other than post-roads; in short, every thing, from the highest object of state legislation down to the most minute object of police, would be thrown under the power of Congress.... Were the power of Congress to be established in the latitude contended for, it would subvert the very foundations, and transmute the very nature of the limited Government established by the people of America.”**

*“If Congress can do whatever in their discretion can be done by money, and will promote the general welfare, the government is no longer a limited one possessing enumerated powers, but an indefinite one subject to particular exceptions.”*

[James Madison. House of Representatives, February 7, 1792, On the Cod Fishery Bill, granting Bounties; More quotes like this later in Form #05.016, Section 5.1]

6. To allow States of the Union to ILLEGALLY tax federal officers domiciled within and/or working within the Constitutional States and NOT within federal enclaves. Why is it illegal? Because:
  - 6.1. It is a crime in most states to simultaneously serve as a federal and state officer at the same time.
  - 6.2. Serving two masters creates a criminal financial conflict of interest on the part of said officers. 18 U.S.C. §208.
7. To break down the constitutional separation between the federal government and the state government.

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8. To deceive PRIVATE employers within constitutional states into thinking that EVERYONE is a federal STATUTORY “employee” or officer. Making them believe that a STATUTORY “employee” includes PRIVATE workers instead of what they are defined as above, and then telling their workers that they MUST submit a W-4 to work for the company essentially leaves them with only two choices:
- 8.1. To starve to death if they don’t want to submit a VOLUNTARY W-4.
- 8.2. To commit perjury by misrepresenting their status as a federal STATUTORY “employee” under 5 U.S.C. §2105.
9. To make PRIVATE companies and employers into COMMUNIST INFORMANTS who in effect ILLEGALLY “elect” all their workers into a public office by filing FALSE information returns, such as the W-4, 1099, etc. This violates 18 U.S.C. §911. See:

[Correcting Erroneous Information Returns](https://sedm.org/Forms/04-Tax/0-CorrErrInfoRtns/CorrErrInfoRtns.pdf), Form #04.001  
<https://sedm.org/Forms/04-Tax/0-CorrErrInfoRtns/CorrErrInfoRtns.pdf>

10. To violate the U.S. Supreme Court prohibition against establishing taxable franchise offices within the constitutional states:

*“Thus, Congress having power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes, may, without doubt, provide for granting coasting licenses, licenses to pilots, licenses to trade with the Indians, and any other licenses necessary or proper for the exercise of that great and extensive power; and the same observation is applicable to every other power of Congress, to the exercise of which the granting of licenses may be incident. All such licenses confer authority, and give rights to the licensee.*

*But very different considerations apply to the internal commerce or domestic trade of the States. Over this commerce and trade Congress has no power of regulation nor any direct control. This power belongs exclusively to the States. No interference by Congress with the business of citizens transacted within a State is warranted by the Constitution, except such as is strictly incidental to the exercise of powers clearly granted to the legislature. The power to authorize a business within a State is plainly repugnant to the exclusive power of the State over the same subject. It is true that the power of Congress to tax is a very extensive power. It is given in the Constitution, with only one exception and only two qualifications. Congress cannot tax exports, and it must impose direct taxes by the rule of apportionment, and indirect taxes by the rule of uniformity. Thus limited, and thus only, it reaches every subject, and may be exercised at discretion. But, it reaches only existing subjects. Congress cannot authorize a trade or business within a State in order to tax it.”*  
 [License Tax Cases, 72 U.S. 462, 18 L.Ed. 497, 5 Wall. 462, 2 A.F.T.R. 2224 (1866) ]

11. To create a criminal financial conflict of interest on the part of federal judges not domiciled or present on federal territory by making them afraid of “selective enforcement” by the IRS. They in effect are compelled at gunpoint to become “taxpayer” recruiters or face IRS retribution on their income tax liability. See 18 U.S.C. §208, 28 U.S.C. §144, and 28 U.S.C. §144.
12. To remove ALL of the constitutional protections from people in the states who do the above, because you have no constitutional protections as a STATUTORY federal “employee”:

***“The restrictions that the Constitution places upon the government in its capacity as lawmaker, i.e., as the regulator of private conduct, are not the same as the restrictions that it places upon the government in its capacity as employer. We have recognized this in many contexts, with respect to many different constitutional guarantees. Private citizens perhaps cannot be prevented from wearing long hair, but policemen can. Kelley v. Johnson, 425 U.S. 238, 247 (1976). Private citizens cannot have their property searched without probable cause, but in many circumstances government employees can. O’Connor v. Ortega, 480 U.S. 709, 723 (1987) (plurality opinion); id., at 732 (SCALIA, J., concurring in judgment). Private citizens cannot be punished for refusing to provide the government information that may incriminate them, but government employees can be dismissed when the incriminating information that they refuse to provide relates to the performance of their job. Gardner v. Broderick, [497 U.S. 62, 95] 392 U.S. 273, 277-278 (1968). With regard to freedom of speech in particular: Private citizens cannot be punished for speech of merely private concern, but government employees can be fired for that reason. Connick v. Myers, 461 U.S. 138, 147 (1983). Private citizens cannot be punished for partisan political activity, but federal and state employees can be dismissed and otherwise punished for that reason. Public Workers v. Mitchell, 330 U.S. 75, 101 (1947); Civil Service Comm’n v. Letter Carriers, 413 U.S. 548, 556 (1973); Broadrick v. Oklahoma, 413 U.S. 601, 616-617 (1973).”***  
 [Rutan v. Republican Party of Illinois, 497 U.S. 62 (1990)]

We know, however, that not only does the SINISTER plan above violate the separation of powers, but it also violates the mandate of 4 U.S.C. §72. To wit:

[TITLE 4 > CHAPTER 3 > § 72](#)  
[§ 72. Public offices; at seat of Government](#)

*All offices attached to the seat of government shall be exercised in the District of Columbia, and not elsewhere, except as otherwise expressly provided by law.*

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Why does this sinister plan violate the above? Because they never EXPRESSLY identify Constitutional states within the definition of “State” in 4 U.S.C. §110(d) and per the Rules of Statutory Construction and Interpretation<sup>68</sup>, they CAN’T presume that constitutional states are included.

**“When a statute includes an explicit definition, we must follow that definition, even if it varies from that term’s ordinary meaning. Meese v. Keene, 481 U.S. 465, 484-485 (1987) (“It is axiomatic that the statutory definition of the term excludes unstated meanings of that term”); Colautti v. Franklin, 439 U.S. at 392-393, n. 10 (“As a rule, a definition which declares what a term “means” . . . excludes any meaning that is not stated”); Western Union Telegraph Co. v. Lenroot, 323 U.S. 490, 502 (1945); Fox v. Standard Oil Co. of N.J., 294 U.S. 87, 95-96 (1935) (Cardozo, J.); see also 2A N. Singer, Sutherland on Statutes and Statutory Construction, §47.07, p. 152, and n. 10 (5th ed. 1992) (collecting cases). That is to say, the statute, read “as a whole,” post at 998 [530 U.S. 943] (THOMAS, J., dissenting), leads the reader to a definition. That definition does not include the Attorney General’s restriction -- “the child up to the head.” Its words, “substantial portion,” indicate the contrary.” [Stenberg v. Carhart, 530 U.S. 914 (2000)]**

**“Expressio unius est exclusio alterius. A maxim of statutory interpretation meaning that the expression of one thing is the exclusion of another. Burgin v. Forbes, 293 Ky. 456, 169 S.W.2d. 321, 325; Newblock v. Bowles, 170 Okl. 487, 40 P.2d. 1097, 1100. Mention of one thing implies exclusion of another. When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred. Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded.” [Black’s Law Dictionary, Sixth Edition, p. 581]**

They also don’t EXPRESSLY include constitutional states within the definition of “State” in the Buck Act, because they KNOW it is unconstitutional to do this and violates the Separation of Powers.

So the REAL agenda is to UNCONSTITUTIONALLY extend the federal income tax within the states and make everyone into an uncompensated federal office or statutory “EMPLOYEE” and to assimilate the states using contract law or consent into the federal government. That is a silent COUP if I ever saw one, and it is effected mainly by exploiting the legal ignorance of people they are supposed to be protecting.

At one time, they tried to document the TYRANNY of the above in the Internal Revenue Code and because it was found unconstitutional, they had to remove it. See:

1. 26 U.S.C. §6361-6365.
2. 26 C.F.R. §301.6361-1 through 301. 6361-5.

The way to avoid this sinister plot documented above is to NEVER file a form W-4, but instead to file the correct withholding paperwork. And then to ensure that NO information returns are filed against you, because they are usually FALSE. The procedures for doing this are found in:

Federal and State Tax Withholding Options for Private Employers, Form #09.001  
<https://sedm.org/Forms/09-Procs/FedStateWHOOptions.pdf>

Lastly, if you would like tools for challenging the introduction of federal offices or federal civil enforcement into the constitutional states, see the following resources on our website:

1. Federal Jurisdiction, Form #05.018  
<https://sedm.org/Forms/05-MemLaw/FederalJurisdiction.pdf>
2. Federal Enforcement Authority Within States of the Union, Form #05.032  
<https://sedm.org/Forms/FormIndex.htm>
3. Challenge to Income Tax Enforcement Authority Within Constitutional States of the Union, Form #05.052  
<https://sedm.org/Forms/05-Memlaw/ChallengeToIRSEnforcementAuth.pdf>

[Why the Federal Income Tax is a Privilege Tax Upon Government Property, Form #04.404, Section 8.3: State Income Tax: The Public Salary Tax Act; SOURCE: <https://sedm.org/Forms/FormIndex.htm>]

<sup>68</sup> See the following for details on the Rules of Statutory Construction and Interpretation: Legal Deception, Propaganda, and Fraud, Form #05.014;  
<https://sedm.org/Forms/05-MemLaw/LegalDecPropFraud.pdf>.

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**Why the Federal Income Tax is a Privilege Tax Upon Government Property, Form #04.404, Section 8.4: State Income Tax: The Buck Act**

The Buck Act, 4 U.S.C. §105-108, authorizes the enforcement of “State” income tax within federal enclaves. Within the act, “State” is defined as follows:

*4 U.S. Code § 110. Same; definitions*

*(d) The term “[State](#)” includes any Territory or possession of the United [States](#).*

The federal enclaves subject to the act are therefore within Territories and possessions, and NOT within Constitutional states. The Rules of Statutory Construction and Interpretation forbid ADDING anything to the above definition of “State”.<sup>69</sup> Black’s Law Dictionary defines “possession” as follows:

*POSSESSION. The detention and control, or the manual or ideal custody, of anything which may be the subject of property, for one’s use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one’s place and name. Act or state of possessing. That condition of facts under which one can exercise his power over a corporeal thing at his pleasure to the exclusion of all other persons. *Starits v. Avery*, 204 Iowa 401, 213 N.W. 769, 771; *Schenk v. State*, 106 Tex.Cr.R. 564, 293 S.W. 1101, 1102; *State v. Compton, Mo.App.*, 297 S.W. 413, 414; *Nevin v. Louisville Trust Co.*, 258 Ky. 187, 79 S.W.2d. 688, 689.*

*In the older books, “possession” Is sometimes used as the synonym of “seisin;” but, strictly speaking, they are entirely- different terms. “The difference between possession and seisin is: Lessee for years is possessed, and yet the lessor is still seised; and therefore the terms of law are that of chattels a man is possessed, whereas In feoffments, gifts in tail, and leases for life he is described as ‘seised.’ ” *Noy.Max. 64.**

*“Possession” Is used in some of the books In the sense of property. “A possession is an hereditament or chattel. *Finch, Law, b. 2, c. 3.**

*Possession of liquor which Is made unlawful Is possession under some claim of right, control, or dominion, with knowledge of facts. *Schwartz v. State*, 192 Wis. 414, 212 N.W. 664, 665. Taking a drink of Intoxicating liquor on invitation of owner thereof does not constitute criminal “possession.” *Colbaugh v. U. S.*. C.C.A.Okla.. 15 F.2d. 929, 931; *State v. Williams*. 117 Or. 238. 243 P. 563; *Sizemore v. Commonwealth*, 202 Ky. 273, 259 S.W. 337, 342; *Brazeale v. State*. 133 Miss. 171. 97 So. 525, 526; *Harness v. State*, 130 Miss. 673, 95 So.64; *State v. McAllister*, 187 N.C. 400, 121 S.E. 739, 740; *People v. Leslie*, 239 Mich. 334, 214 N.W. 128. [*Black’s Law Dictionary, Fourth Edition, p. 1325*]*

The provision authorizing states to institute sales and use and income taxes in federal areas is below:

*4 U.S. Code § 106. Same; income tax*

*(a) No [person](#) shall be relieved from liability for any [income tax](#) levied by any [State](#), or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a [Federal area](#) or receiving income from transactions occurring or services performed in such area; and such [State](#) or taxing authority shall have full jurisdiction and power to levy and collect such tax in any [Federal area](#) within such [State](#) to the same extent and with the same effect as though such area was not a [Federal area](#).*

*(b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940.*

*(July 30, 1947, ch. 389, [61 Stat. 644](#).)*

The SEVERE problem with the Buck Act is the definition of “State” for the purposes of the above. The problem is that it does not include CONSTITUTIONAL states. That “State” is defined instead as “The term “[State](#)” includes any Territory or possession of the United [States](#).” So what the act actually does is allow a Territory or possession and NOT a Constitutional

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<sup>69</sup> For a detailed coverage of the Rules of Statutory Construction and Interpretation, see: [Legal Deception, Propaganda, and Fraud](#), Form #05.014; <https://sedm.org/Forms/05-MemLaw/LegalDecPropFraud.pdf>.

state to institute its own income tax within federal areas WITHIN that Territory or possession. There are no remaining Territories, and only possessions remain. Those possessions include the following, extracted from Title 48:

1. Puerto Rico
2. Guam
3. Virgin Islands
4. American Samoa

This is rather curious, because the so-called “Buck Act” DOES NOT expressly authorize CONSTITUTIONAL states, but rather Territories and Possessions to tax federal areas. This calls into doubt the entire Jurisdiction over Federal Areas Within the States Report as a useful resource for whether CONSTITUTIONAL state income taxes can be enforced in federal areas.

Why does such a glaring problem exist with the report? The reason is the Separation of Powers Doctrine, which forbids overlap of federal and state jurisdiction:

Government Conspiracy to Destroy the Separation of Powers, Form #05.023  
<https://sedm.org/Forms/05-MemLaw/SeparationOfPowers.pdf>

All law is prima facie territorial. In order for the Separation of Powers to be preserved that is built into the constitution, there must be GEOGRAPHICAL separation of the two powers and they can never overlap legislatively. ONLY by acting as an AGENT of the national government through the District of Columbia can Constitutional states participate in taxation of federal areas. When they do so, they must IN EFFECT behave as federal corporations and federal territories. Madison talked about this in the Federalist Papers:

*The number of individuals employed under the Constitution of the United States will be much smaller than the number employed under the particular States. There will consequently be less of personal influence on the side of the former than of the latter. The members of the legislative, executive, and judiciary departments of thirteen and more States, the justices of peace, officers of militia, ministerial officers of justice, with all the county, corporation, and town officers, for three millions and more of people, intermixed and having particular acquaintance with every class and circle of people must exceed, beyond all proportion, both in number and influence, those of every description who will be employed in the administration of the federal system. [ . . . ] If the federal government is to have collectors of revenue, the State governments will have theirs also. And as those of the former will be principally on the seacoast, and not very numerous, whilst those of the latter will be spread over the face of the country, and will be very numerous, the advantage in this view also lies on the same side. It is true that the Confederacy is to possess, and may exercise, the power of collecting internal as well as external taxes throughout the States: but it is probable that this power will not be resorted to, except for supplemental purposes of revenue: that an option will then be given to the States to supply their quotas by previous collections of their own: and that the eventual collection, under the immediate authority of the Union, will generally be made by the officers, and according to the rules, appointed by the several States. [ . . . ] Should it happen, however, that separate collectors of internal revenue should be appointed under the federal government, the influence of the whole number would not bear a comparison with that of the multitude of State officers in the opposite scale. Within every district to which a federal collector would be allotted, there would not be less than thirty or forty, or even more, officers of different descriptions, and many of them Persons of character and weight whose influence would lie on the side of the State.*  
 [Federalist Papers, James Madison, Number 45, pp. 295 - 296]

This leads us to the subject of the next section, which are all the authorities PREVENTING overlap of federal exclusive jurisdiction and Constitutional state jurisdiction. It just ISN'T legally possible for those legislative jurisdictions to overlap. The only practical way for them to overlap is for Constitutional states to shed their sovereign character and behave as federal corporations and therefore federal “possessions” when they tax federal Territories or geographical possessions. Federal corporations are creations of and property of the national government.

[Why the Federal Income Tax is a Privilege Tax Upon Government Property, Form #04.404, Section 8.4: State Income Tax: The Buck Act; SOURCE: <https://sedm.org/Forms/FormIndex.htm>]

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## **26 U.S.C. §7701**

[TITLE 26](#) > [Subtitle F](#) > [CHAPTER 79](#) > § 7701  
[§ 7701. Definitions](#)

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

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(10)State

The term "State" shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.

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#### **4 U.S.C. 110(d)**

TITLE 4 - FLAG AND SEAL, SEAT OF GOVERNMENT, AND THE STATES  
CHAPTER 4 - THE STATES

[Sec. 110. Same](#); definitions

(d) The term "State" includes any [Territory](#) or possession of the United States.

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#### **Downes v. Bidwell (1901)**

“Loughborough v. Blake, 5 Wheat. 317, 5 L.Ed. 98, was an action of trespass or, as appears by the original record, replevin, brought in the circuit court for the District of Columbia to try the right of Congress to impose a direct tax for general purposes on that District. 3 Stat. at L. 216, chap. 60. **It was insisted that Congress could act in a double capacity: in one as legislating [182 U.S. 244, 260] for the states; in the other as a local legislature for the District of Columbia.** In the latter character, it was admitted that the power of levying direct taxes might be exercised, **but for District purposes only**, as a state legislature might tax for state purposes; but that it could not legislate for the District under art. 1, 8, giving to Congress the power 'to lay and collect taxes, imposts, and excises,' which 'shall be uniform throughout the United States,' **inasmuch as the District was no part of the United States [described in the Constitution]. It was held that the grant of this power was a general one without limitation as to place, and consequently extended to all places over which the government extends; and that it extended to the District of Columbia as a constituent part of the United States. The fact that art. 1, 2, declares that 'representatives and direct taxes shall be apportioned among the several states . . . according to their respective numbers' furnished a standard by which taxes were apportioned, but not to exempt any part of the country from their operation.** The words used do not mean that direct taxes shall be imposed on states only which are represented, or shall be apportioned to representatives; **but that direct taxation, in its application to states, shall be apportioned to numbers.**' That art. 1, 9, 4, declaring that direct taxes shall be laid in proportion to the census, was applicable to the District of Columbia, 'and will enable Congress to apportion on it its just and equal share of the burden, with the same accuracy as on the respective states. If the tax be laid in this proportion, it is within the very words of the restriction. It is a tax in proportion to the census or enumeration referred to.' It was further held that the words of the 9th section did not 'in terms require that the system of direct taxation, when resorted to, shall be extended to the territories, as the words of the 2d section require that it shall be extended to all the states. They therefore may, without violence, be understood to give a rule when the territories shall be taxed, without imposing the necessity of taxing them.'”

“**There could be no doubt as to the correctness of this conclusion, so far, at least, as it applied to the District of Columbia.** This District had been a part of the states of Maryland and [182 U.S. 244, 261] Virginia. It had been subject to the Constitution, and was a part of the United States[\*\*\*]. **The Constitution had attached to it irrevocably. There are steps which can never be taken backward. The tie that bound the states of Maryland and Virginia to the Constitution could not be dissolved, without at least the consent of the Federal and state governments to a formal separation. The mere cession of the District of Columbia to the Federal government relinquished the authority of the states, but it did not take it out of the United States or from under the aegis of the Constitution. Neither party had ever consented to that construction of the cession. If, before the District was set off, Congress had passed an unconstitutional act affecting its inhabitants, it would have been void.** If done after the District was created, it would have been equally void; in other words, Congress could not do indirectly, by carving out the District, what it could not do directly. The District still remained a part of the United States, protected by the Constitution. Indeed, it would have been a fanciful construction to hold that territory which had been once a part of the United States ceased to be such by being ceded directly to the Federal government.”

“Indeed, the practical interpretation put by Congress upon the Constitution has been long continued and uniform to the effect [182 U.S. 244, 279] that **the Constitution is applicable to territories acquired by purchase or conquest, only when and so far as Congress shall so direct.** Notwithstanding its duty to 'guarantee to every state in this Union a

republican form of government' (art. 4, 4), by which we understand, according to the definition of Webster, 'a government in which the supreme power resides in the whole body of the people, and is exercised by representatives elected by them,' Congress did not hesitate, in the original organization of the territories of Louisiana, Florida, the Northwest Territory, and its subdivisions of Ohio, Indiana, Michigan, Illinois, and Wisconsin and still more recently in the case of Alaska, to establish a form of government bearing a much greater analogy to a British Crown colony than a republican state of America, and to vest the legislative power either in a governor and council, or a governor and judges, to be appointed by the President. It was not until they had attained a certain population that power was given them to organize a legislature by vote of the people. In all these cases, as well as in territories subsequently organized west of the Mississippi, Congress thought it necessary either to extend to Constitution and laws of the United States over them, or to declare that the inhabitants should be entitled to enjoy the right of trial by jury, of bail, and of the privilege of the writ of habeas corpus, as well as other privileges of the bill of rights."

[Downes v. Bidwell, [182 U.S. 244](#) (1901)]

### **California Revenue and Taxation Code**

California Revenue and Taxation Code - RTC

DIVISION 1. PROPERTY TAXATION [50 - 5911]( Division 1 enacted by Stats. 1939, Ch. 154. )

PART 1. GENERAL PROVISIONS [101 - 198.1]( Part 1 enacted by Stats. 1939, Ch. 154. )

CHAPTER 1. Construction [101 - 136] ( Chapter 1 enacted by Stats. 1939, Ch. 154. )

RTC 130 (f) "In this state" means within the exterior limit of the State of California, and includes all territory within these limits owned by, or ceded to, the United States of America.

California Revenue and Taxation Code – RTC

DIVISION 2. OTHER TAXES [6001 - 60709]( Heading of Division 2 amended by Stats. 1968, Ch. 279. ) PART 1.

SALES AND USE TAXES [6001 - 7176]( Part 1 added by Stats. 1941, Ch. 36. )

CHAPTER 1. General Provisions and Definitions [6001 - 6024]( Chapter 1 added by Stats. 1941, Ch. 36. )

RTC 6017. "In this State" or "in the State" means within the exterior limits of the State of California and includes all territory within these limits owned by or ceded to the United States of America.

California Revenue and Taxation Code - RTC

DIVISION 2. OTHER TAXES [6001 - 60709] ( Heading of Division 2 amended by Stats. 1968, Ch. 279. )

PART 3. USE FUEL TAX [8601 - 9355]( Part 3 added by Stats. 1941, Ch. 38. )

CHAPTER 1. General Provisions and Definitions [8601 - 8621] Chapter 1 added by Stats. 1941, Ch. 38

8609. "In this State" or "in the State" means within the exterior limits of the State of California and includes all territory within these limits owned by or ceded to the United States of America.

California Revenue and Taxation Code – RTC

DIVISION 2. OTHER TAXES [6001 - 60709]( Heading of Division 2 amended by Stats. 1968, Ch. 279. )

PART 10. PERSONAL INCOME TAX [17001 - 18181]( Part 10 added by Stats. 1943, Ch. 659. )

CHAPTER 1. General Provisions and Definition [17001 - 17039.2]

17018. "State" includes the District of Columbia, and the possessions of the United States.

## **8.4 Taxing Procedures**

### **Federal Tax Lien Act of 1966**

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**Senate Report No. 1708**

"The Federal Tax Lien bill of 1966 represents the first comprehensive revision and modernization of the provisions of the internal revenue laws concerned with the relationship of Federal tax liens to the interests of other creditors.

"Since the adoption of the Federal income tax in 1913, the nature of commercial financial transactions has changed appreciably. Business practices have been substantially revised and, as a result, many new types of secured transactions have been developed. In an attempt to take into account these changed commercial transactions, and to secure greater uniformity among the several States, a Uniform Commercial Code was promulgated somewhat over 10 years ago by the American Law Institute and the National Conference of Commissioners on Uniform State Laws. A revised version of this code is already law in over 40 States and could well be adopted by many of the remaining States in the near future. Under the Commercial Code, priority now is afforded new types of commercial secured creditors not previously protected.

"This bill is in part an attempt to conform the lien provisions of the internal revenue laws to the concepts developed in this Uniform Commercial Code. It represents an effort to adjust the provisions in the internal revenue laws relating to the collection of taxes of delinquent persons to the more recent developments in commercial practice (permitted and protected under State law) and to deal with a multitude of technical problems which have arisen over the past 50 years. The bill represents the culmination of a project initiated approximately 10 years ago by those concerned with the relationship of the tax lien provisions to the interests of other creditors. Since that time, the suggestions and ideas of various groups have been studied and analyzed carefully, both by the groups themselves and by the staffs of the Treasury Department and the congressional committees.

"Under present law, a lien for Federal taxes arises when a taxpayer's liability is assessed. The lien attaches to all of the property he then holds or subsequently acquires. The assessment is made when the unpaid tax liability is entered on the appropriate records of the Internal Revenue Service--which occurs, in the case of a taxpayer who voluntarily shows the tax liability on his return, shortly after the time the return is filed. Although the lien arises on the date of assessment, present law provides that purchasers and certain categories of secured creditors are given priority over the tax lien up to the time a notice of the tax lien is filed in the appropriate local office as designated by State law. Mortgagees, pledgees, purchasers, and judgment lien creditors are given this priority status. In addition, in the case of securities and motor vehicles, present law provides that even a filed Federal tax lien is not generally to be effective as against a purchaser or a mortgagee or pledgee of securities or a purchaser of motor vehicles."

[Federal Tax Lien Act of 1966, P.L. 89-719, Legislative History, Senate Report No. 1708, p. 3722]

**26 U.S.C. §6332**

"(a) **Requirement.--Except** as otherwise provided in this section, any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary, surrender such property or rights (or discharge such obligation) to the Secretary, except which part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process."

"(b) **Special rule for life insurance and endowment contracts.--[...]**"

"(c) **Special rule for banks.--Any** bank (as defined in section 408(n)) shall surrender (subject to an attachment or execution under judicial process) any deposits (including interest thereon) in such bank only after 21 days after service of levy."

"(d) **Enforcement of levy.--**

"(1) **Extent of personal liability.--Any** person who fails

or refuses to surrender any property or rights to property, subject to levy, upon demand by the Secretary, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum at the underpayment rate established under section 6621 from the date of such levy (or, in the case of a levy described in section 6331(d)(3), from the date such person would otherwise have been obligated to pay over such amounts to the taxpayer). Any amount (other than costs) recovered under this paragraph shall be credited against the tax liability for the collection of which such levy was made.

"(2) **Penalty for violation.--In** addition to the personal liability imposed by paragraph (1), if any person required to surrender property or rights to property fails or refuses to surrender such property or rights to property without reasonable cause, such person shall be liable for a penalty equal to 50 percent of the amount recoverable under paragraph (1). No part of such penalty shall be credited against the tax liability for the collection of which such levy was made.

"(e) **Effect of honoring levy.--Any** person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary, surrenders such property or rights to property (or discharges such obligation) to the Secretary (or who pays a liability under subsection (d)(1)) shall be discharged from any obligation or liability to the delinquent taxpayer and any other person with respect to such property or rights to property arising from such surrender or payment."

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"(f) **Person defined.**--The term "person," as used in subsection (a), includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights to property, or to discharge the obligation."  
[26 U.S.C. §6332]

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### 26 U.S.C. §6334

"(a) **Enumeration.**--There shall be exempt from levy—

"(1) **Wearing apparel and school books.**--[...]

"(2) **Fuel, provisions, furniture, and personal effects.**--[...]

"(3) **Books and tools of a trade, business, or profession.**--[...]

"(4) **Unemployment benefits.**--[...]

"(5) **Undelivered mail.**--[...]

"(6) **Certain annuity and pension payments.**--[...]

"(7) **Workmen's compensation.**--[...]

"(8) **Judgments for support of minor children.**--If the taxpayer is required by judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his minor children, so much of his salary, wages, or other income as is necessary to comply with such judgment.

"(9) **Minimum exemption for wages, salary, and other income.**--[...]

"(10) **Certain service-connected disability payments.**--[...]

"(11) **Certain public assistance payments.**--[...]

"(12) **Assistance under Job Training Partnership Act.**--[...]

"(13) **Principal residence exempt in absence of certain approval or jeopardy.**--Except to the extent provided in subsection (e), the principal residence of the taxpayer (within the meaning of section 1034)."

"(b) **Appraisal.**--[...]

"(c) **No other property exempt.**--[...]

"(d) **Exempt amount of wages, salary, or other income.**--[...]

"(e) **Levy allowed on principal residence in case of jeopardy or certain approval.**--Property described in subsection (a)(13) shall not be exempt from levy if--

"(1) a district director or assistant district director of the Internal Revenue Service personally approves (in writing) the levy of such property, or

"(2) the Secretary finds that the collection of tax is in jeopardy."

"(f) **Inflation adjustment.**--[...]

[26 U.S.C. §6334]

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### 26 U.S.C. §7805(a)

"(a) **AUTHORIZATION.**--Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue."  
[26 U.S.C. §7805(a)]

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### 26 C.F.R. §301.6331-1

"(a) **Authority to levy--(l) In general.** If any person liable to pay any tax neglects or refuses to pay the tax within 10 days after notice and demand, the district director to whom the assessment is charged (or, upon his request, any other district director) may proceed to collect the tax by levy.

"(4) **Certain types of compensation-- (i) Federal employees.** Levy may be made upon the salary or wages of any officer or employee (including members of the Armed Forces), or elected or appointed official, of the United States, the District of Columbia, or any agency or instrumentality of either, by serving a notice of levy on the employer of the delinquent taxpayer. As used in this subdivision, the term "employer" means (a) the officer or employee of the United States, the District of Columbia, or of the agency or instrumentality of the United States or the District of Columbia, who has control of the payment of the wages, or (b) any other officer or employee designated by the head of the branch,

department, agency, or instrumentality of the United States or of the District of Columbia as the party upon whom service of the notice of levy may be made. If the head of such branch, department, agency or instrumentality designates an officer or employee other than one who has control of the payment of the wages, as the party upon whom service of the notice of levy may be made, such head shall promptly notify the Commissioner of the name and address of each officer or employee so designated and the scope or extent of his authority as such designee.

"(ii) *State and municipal employees.* Salaries, wages, or other compensation of any officer, employee, or elected or appointed official of a State or Territory, or of any agency, instrumentality, or political subdivision thereof, are also subject to levy to enforce collection of any Federal tax."

[26 C.F.R. §301.6326-1]

### **26 C.F.R. §301.6331-2**

"(a) *Notice of intent to levy--(1) In general.* Levy may be made upon the salary, wages, or other property of a taxpayer for any unpaid tax no less than 30 days after the district director, the service center director, or the compliance center director (director) has notified the taxpayer in writing of the intent to levy. The notice must be given in person, be left at the dwelling or usual place of business of the taxpayer, or be sent by registered or certified mail to the taxpayer's last known address. The notice of intent to levy is separate from, but may be given at the same time as, the notice and demand described in §301.6331-1.

"(2) *Content of Notice.* The notice of intent to levy is to contain a brief statement in nontechnical terms including the following information--

"(i) The Internal Revenue Code provisions and the procedures relating to levy" and sale of property;

"(ii) The administrative appeals available with respect to the levy and sale of property and the procedures relating to such appeals;

"(iii) The alternatives available that could prevent levy on the property (including the use of an installment agreement under section 6159); and

"(iv) The Internal Revenue Code provisions and the procedures relating to redemption of property and release of liens on property."

[26 C.F.R. §301.6331-2]

### **Black's Law Dictionary: Levy**

"**LEVY**, v. To assess; raise; execute; exact; collect; gather; take up; seize. Thus, to levy (assess, exact, raise, or collect) a tax; to levy (raise or set up) a nuisance; to levy (acknowledge) a fine; to levy (inaugurate) war; to levy an execution. i. e., to levy or collect a sum of money on an execution."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1051]

### **Black's Law Dictionary: Levy**

"**LEVY**, n. A seizure. *Farris v. Castor*, 186 Old. 668, 99 P.2d. 900, 902; *McBrien v. Harris*, 39 Ga. App. 41, 145 S.E. 919; *Radford v. Rachman*, 27 Ohio App. 86, 160 N.E. 875, 877; *Plaxico v. Webster*, 175 S.C. 69, 178 S.E. 270. An actual making the money out of the property; the obtaining of money by seizure and sale of property; *Farris v. Castor*, 186 Oki. 668, 99 P.2d. 900, 902, 186 Old. 668."

"In reference to taxation, the word may mean the legislative function and declaration of the subject and rate or amount of taxation, ... or the rate of taxation rather than the physical act of applying the rate to the property, ... or the formal order, by proper authority declaring property subject to taxation at fixed rate at its assessed valuation, ... or the ministerial function of assessing, listing and extending taxes,

or the extension of the tax, ... or the doing of whatever is necessary in order to authorize the collector to collect the tax, .... The qualified electors "levy" a tax when they vote to impose it." [All cites omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1051]

### **27 C.F.R. §170.21 - Miscellaneous Regulations Relatin to Liquor**

"The regulations in this subpart relate to the returns and records of the disposition of articles from which distilled spirits may be recovered, of the disposition of substances of the character used in the manufacture of distilled spirits, and of the disposition of containers of the character used for the packaging of distilled spirits."

[27 C.F.R. §170.21 --Miscellaneous Regulations Relating to Liquor]

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**27 C.F.R. Part 296--Miscellaneous Regulations Relating to Tobacco Products and Cigarette Papers and Tubes, Subpart A-Application of 26 U.S.C. 6423, as Amended, To Refund or Credit of Tax on Tobacco Products, and Cigarette Papers and Tubes****"§296.1. Scope of regulations in this subpart.**

"The regulations in this subpart relate to the limitations imposed by 26 U.S.C. 6423, on the refund or credit of tax paid or collected in respect to any article of a kind subject to a tax imposed by 26 U.S.C. chapter 52."

[27 C.F.R. §296.1-Miscellaneous Regulations Relating to Tobacco Products and Cigarette Papers and Tubes.]

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**Black's Law Dictionary: Return**

"RETURN. To bring, carry, or send back; to place in the custody of; to restore; to re-deliver; to send back. Tuttle v. City of Boston, 215 Mass. 57, 102 N.E. 350; Johnson v. Curlee Clothing Co., 240 P. 632, 633, 112 Old. 220."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1480]

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**26 U.S.C. §6011**

"(a) **General rule.**--When required by regulations prescribed by the Secretary any person **made liable** for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations." [Bold added.]

"(b) **Identification of taxpayer.**--The Secretary is authorized to require such information with respect to persons subject to the taxes imposed by chapter 21 or chapter 24 as is necessary or helpful in securing proper identification of such persons.

[26 U.S.C. §6011]

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**26 U.S.C. §6012**

"(a) **General rule.**--Returns with respect to income taxes under subtitle A shall be made by the following:

"(1)(A) Every individual having for the taxable year' gross income which equals or exceeds the exemption amount, except that a return shall not be required of an individual--[...]."

[26 U.S.C. §6012]

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**26 U.S.C. §6020**

"(a) **PREPARATION OF RETURN BY SECRETARY.**--If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person.

"(b) **EXECUTION OF RETURN BY SECRETARY.**--

"(1) **AUTHORITY OF SECRETARY TO EXECUTE RETURN.**--If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefore, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

"(2) **STATUS OF RETURNS.**--Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes."

[26 U.S.C. §6020]

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**26 C.F.R. §301.6020-1**

"(a) **Preparation of returns.**(1) In general. If any person required by the Code or by the regulations prescribed thereunder to make a return fails to make such return, it may be prepared by the district director or other authorized internal revenue officer or employee provided such person consents to disclose all information necessary for the preparation of such return. The return upon being signed by the person required to make it shall be received by the district director as the return of such person."

"(b) **Execution of returns.**(1) In general. If any person required by any internal revenue law or by the regulations

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prescribed thereunder to make a return (other than a declaration of estimated tax required under section 6015 or 6016) fails to make such return at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the district director or other authorized internal revenue officer or employee"° shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise."

[26 C.F.R. §301.6020-1]

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**26 C.F.R. §301.6012-1**

"For provisions with respect to persons required to make returns of incomes, see §§1.6012-1 to 1.6012-4, inclusive, of this chapter (Income Tax Regulations)."

[26 C.F.R. §301.6012-1]

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**26 C.F.R. §301.6109-1(g)**

"(g) *Nonresident alien exclusion.* This section shall not apply to nonresident aliens, foreign corporations, foreign partnerships, or foreign private foundations that do not have income effectively connected with the conduct of a trade or business within the United States and do not have an office or place of business or a fiscal or paying agent in the United States."

[26 C.F.R. §301.6109-1(g)]

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**26 U.S.C. §1040**

"(a) GENERAL RULE.--If the executor of the estate of any decedent transfers to a qualified heir (within the meaning of section 2032A(e)(1) any property with respect to which an election was made under section 2032A, then gain' on such transfer shall be recognized to the estate only to the extent that, on the date of such transfer, the fair market value of such property exceeds the value of such property for purposes of chapter 11 (determined without regard to section 2032A)."

[26 U.S.C. §1040]

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**26 U.S.C. §864**

**"Sec. 864. Definitions and special rules.**

**"(a) Produced.**

"For purposes of this part, the term "produced" includes created, fabricated, manufactured, extracted, processes, cured, or aged.

**"(b) Trade or business within the United States.**

"For purposes of this part, part II, and chapter 3, the term "trade or business within the United States" includes the performance of personal services within the United States at any time within the taxable year, but does not include---

**"(1) Performance of personal service for foreign employer.** The performance of personal services--

"(A) for a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, or..."

**"(c) Effectively connected income, etc.**

**"(1) General rule.** For purposes of this title--

"(A) In the case of a nonresident alien individual or a foreign corporation engaged in trade or business within the United States during the taxable year, the rules set forth in paragraphs (2), (3), (4), (6), and (7) shall apply in determining the income, gain, or loss which shall be treated as effectively connected with the conduct of a trade or business within the United States.

"(B) Except as provided in paragraph (6) or (7) or in section 871(d) or sections 882(d) and (e), in the case of a nonresident alien individual or a foreign corporation not engaged in trade or business within the United States during the taxable year, no income, gain, or loss shall be treated as effectively connected with the conduct of a trade or business within the United States."

[26 U.S.C. §864]

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**26 C.F.R. §1.871-7(a)(4)**

"Except as provided in §§1.871-9 and 1.871-10, a nonresident alien individual not engaged in trade or business in the United States during the taxable year' has no income, gain, or loss for the taxable year which is effectively connected for

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the taxable year with the conduct of a trade or business in the United States. See section 864(c)(1)(B) and §1.864-3." [26 C.F.R. §1.871-7(a)(4)]

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**26 C.F.R. §31.3401(a)(6)-1(b)**

"Remuneration for services performed outside the United States. Remuneration paid to a nonresident alien individual (other than a resident of Puerto Rico) for services performed outside the United States is excepted from wages and hence is not subject to withholding."

[26 C.F.R. §31.3401(a)(6)-1(b)]

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**26 C.F.R. §31.6011(b)-2(iv)**

"(iv) *Employee who is unable to furnish number or receipt.* [ \* \* \* ] The foregoing [furnishing a number or filing an application for a number on Form SS-5] **provisions of this subdivision are not applicable to an employee engaged exclusively in the performance of domestic service in a private home** of his employer not on a farm operated for profit, or in the performance of agricultural labor, if the services are performed for an employer other than an employer required to file returns of the taxes imposed by the Federal Insurance Contributions Act **with the office** of the United States Internal Revenue Service **in Puerto Rico.**

However, such employee shall advise the employer of his full name and present address."

[26 C.F.R. §31.6011(b)-2(iv)]

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**26 C.F.R. §1.1402(b)-1(d)**

"Nonresident aliens. **A nonresident alien individual never has self-employment income.** While a nonresident alien individual who derives income from a trade or business carried on within the United States, Puerto Rico, the Virgin Islands, Guam, or American Samoa (whether by agents or employees, or by a partnership of which he is a member) may be subject to the applicable income tax provisions on such income, **such nonresident alien individual will not be subject to the tax on self-employment income, since any net earnings which he may have from self-employment do not constitute self-employment income.**" [Bold added.]

[26 C.F.R. §1.1402(b)-1(d)]

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**Arthur v. Unkart (Apr. 15, 1878)**

"Neither can it be doubted that unless protest is made within ten days, and unless an appeal is taken to the Secretary of the Treasury within thirty days after such decision, the decision of the Collector on these points is final and conclusive. The statute expressly declares that it shall be so. The decision of the Secretary upon such appeal is also declared by the statute to be final and conclusive, unless a suit be brought to recover any alleged excess of duties within ninety days after the payment of duties, if payment be made after such decision."

"When an appeal is taken from his decision, the decision of the Collector ceases to be conclusive; and the same is true of the decision of the Secretary of the Treasury."

""When the issue involves the charge of culpable omission, it is incumbent on the party making the charge to prove it, although he must prove a negative, for the other party shall be presumed to be innocent until proved to be guilty.""

"Mr. Greenleaf, Greenl. Evl, sec. 80, thus lays down the rule: "So where the negative allegation involved criminal neglect of duty, official or otherwise, or fraud, or the wrongful violation of actual lawful possession of property, the party making the allegation must prove it; for in these cases the presumption of law, which is always in favor of innocence and quiet possession, is in favor of the party charged;" and many instances are cited."

[Arthur v. Unkart, 96 U.S. 118 (1878)]

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**Turpin v. Lemon (Nov. 3, 1902)**

"Exactly what due process of law requires in the assessment and collection of general taxes has never yet been decided by this court, although we have had frequent occasion to hold that, in proceedings for the condemnation of land under the laws of eminent domain, or for the imposition of special taxes for local improvements, notice to the owner at some stage of the proceedings, as well as an opportunity to defend, is essential. [Cites omitted.] But laws for the assessment and collection of general taxes stand upon a somewhat different footing, and are construed with the utmost liberality,

sometimes even to the extent of holding that no notice whatever is necessary. Due process of law was well defined by Mr. Justice Field in *Hagar v. Reclamation Dist. No. 108*, 111 U.S. 701, 28 L.Ed. 569, 4 Sup.Ct.Rep. 663, in the following words: "It is sufficient to observe here, that by 'due process' is meant one which, following the forms of law, is appropriate to the case, and just to the parties to be affected.

It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and wherever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought. The clause in question means, therefore, that there can be no proceeding against life, liberty, or property which may result in deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights."

"Under the Fourth Amendment, the legislature is bound to provide a method for the assessment and collection of taxes that shall not be inconsistent with natural justice; but it is not bound to provide that the particular steps of a procedure for the collection of such taxes shall be proved by written evidence; and it may properly impose upon the taxpayer the burden of showing that in a particular case the statutory method was not observed."

[*Turpin v. Lemon*, 187 U.S. 51, 23 S.Ct. 20 (1902)]

### **Wilson v. United States (May 15, 1911)**

"Neither the 6th Amendment to the Federal Constitution, nor U.S. Rev.Stat. §829, U.S. Comp. Stat. 1901, p. 636, accords the right to the accused to be apprised of the names of the witnesses who appeared before the grand jury."

"The enforced production before a grand jury engaged in investigating the alleged criminal conduct of corporate officers, directors, and stockholders, of the letter-press copy books of the corporation for two specified months, in the possession of its president, under a subpoena duces tecum directed to the corporation, does not violate the provisions of U.S. Const., 4th Amend., forbidding unreasonable searches and seizures."

"The officer of a corporation having in his possession the books of the corporation, described in a subpoena duces tecum directed to the corporation, must produce the books or be held in contempt."

"A corporation cannot resist, upon the ground of the constitutional protection against self-crimination, the compulsory production of its books and papers before the grand jury under a subpoena duces tecum."

"The privilege against self-crimination afforded by the U.S. Const., 5th Amend., does not protect the officer of a corporation in resisting the compulsory production before the grand jury under a subpoena duces tecum directed to the corporation, of the letter-press copy books of such corporation in his possession, because the contents thereof may tend to incriminate him, even though the inquiry before the grand jury was not directed to the corporation itself."

[*Wilson v. United States*, 221 U.S. 361, 31 S.Ct. 538 (1911)]

### **United States v. Sullivan (May 16, 1927)**

"We may take it that the defendant had sufficient gross income to require a return under the statute unless he was exonerated by the fact that the whole or a large part of it was derived from business in violation of the National Prohibition Act (Comp. St. §10138 et seq.). The Circuit Court of Appeals held that gains from illicit traffic in liquor were subject to the income tax, but that the Fifth Amendment' to the Constitution protected the defendant from the requirement of a return."

"If the form of return provided called for answers that the defendant was privileged from making he could have raised the objection in the return, but could not on that account refuse to make any return at all. We are not called on to decide what, if anything, he might have withheld. Most of the items warranted no complaint. It would be an extreme if not an extravagant application of the Fifth Amendment to say that it authorized a man to refuse to state the amount of his income because it had been made in crime. But if the defendant desired to test that or any other point he should have tested it in the return so that it could be passed upon. He could not draw conjurer's circle around the whole matter by his own declaration that to write any word upon the government blank would bring him into danger of the law."

[*United States v. Sullivan*, 274 U.S. 259, 47 S.Ct. 607 (1927)]

### **Staten Island Rapid Transit Railway Co. v. Phoenix Indemnity Co. (Mar. 17, 1930)**

"Manner of collecting penalties and disposition of sum collected are within legislative discretion."

"Insurance carrier could recover from wrongdoer causing employee's death award paid state treasurer, where administratrix made settlement with wrongdoer."

"Statute giving insurance carrier cause of action for payment to state treasurer in death cases where no persons are entitled to compensation held not invalid as denying due process or equal protection of laws."

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[Staten Island Rapid Transit Railway Co. v. Phoenix Indemnity Co., 281 U.S. 98, 50 S.Ct. 242 (1930)]

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**Gregory v. Helvering (Jan. 7, 1935)**

"A taxpayer can decrease amount of his taxes or altogether avoid them by means which law permits."

.. the motive of the taxpayer thereby to escape payment of a tax will not alter the result or make unlawful what the statute allows."

"The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted."

[Gregory v. Helvering, 293 U.S. 465, 55 S.Ct. 266 (1935)]

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**Wheeling Steel Corp. v. Fox (May 18, 1936)**

"It is essential to the validity of an ad valorem property tax, under the due process clause, that the property be within the territorial jurisdiction of the taxing state."

"The taxation of the accounts receivable and bank deposits of a **foreign corporation** by the state in which it has established its commercial domicile does not violate the due process clause, although the corporation has manufacturing plants and sales offices in other states,...." [Bold added.]

[Wheeling Steel Corp. v. Fox, 298 U.S. 193, 80 L.Ed. 1143 (1936)]

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**Jenkins v. Smith (Dec. 1, 1937)**

"Taxes may be collected in certain cases, by suit, without assessment. In such cases, the requirement of notice and demand is, of course, inapplicable, for the provision as to notice and demand relates only to assessed liabilities." But in such cases the burden is on the government to establish by proof of facts that the taxes sued for are liabilities of the persons sued. Little Miami & Columbus & Xenia R. Co. v. United States (1883) 108 U.S. 277, 2 S.Ct. 627, 27 L.Ed. 724. Where assessments are made, or required to be made, there are two methods of compelling payment, one by suit, a judicial proceeding; the other, by distraint, an executive proceeding. In either case, compliance with statutory conditions precedent, including initiation of proceedings within the time specified, is necessary. Bowers v. New York & Albany Lighterage Co. (1927) 273 U.S. 346, 47 S.Ct. 389, 71 L.Ed. 676.

"In all cases of income tax deficiencies, assessment by the Commissioner and service of notice and demand by the collector are specially required. Section 272(b) and (c), Revenue Act of 1932 (26 U.S.C.A. §272(b, c) and note. The service of notice of the assessment and demand for payment complete the initiation of collection proceedings, by official communication to the taxpayer. Due notice and demand are prerequisite to further proceedings to collect, either by distraint or by suit, although the time within which either suit or distraint may be begun runs six years from the date of assessment. It is not reasonable to believe that Congress intended that the required notice of the assessment might be given to the taxpayer six years after the assessment. It was intended, rather, that the notice should be given in due course, within the time already fixed by statute; that is, within ten days after receipt of the assessment list by the collector."

"The conclusion is unavoidable that service of notice and demand by collector of Internal Revenue within ten days after receipt by him of assessment list is a necessary condition to validity of further proceedings to collect."  
[Jenkins v. Smith, 21 F.Supp. 433 (1937)]

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**United States v. Brechtel (May 29, 1937)**

"A notice of the levy of a federal tax on money due a taxpayer from a county and notice and demand for surrender of such money to the collector of internal revenue were not binding on the county when addressed only to the chairman of the board of supervisors and not to the county."

"Under Iowa statutes, *the* county treasurer is the only person who has the possession and control of the money of the county."

"In an action to hold a county and its board of supervisors liable for the amount of a federal tax because of their failure to surrender to the collector of internal revenue on demand money due from the county to a taxpayer, an allegation in the petition that *the* moneys were for services rendered by the taxpayer at the special instance and request of defendants was not sufficient to show that the moneys were subject to distraint."

"When the allegations of the petition are thus read, it is clear that the "final notice and demand" and the "notice of levy" of December 9, 1935, were not binding on Woodbury county because not addressed to it."

"The papers left with Tabke were not binding upon the supervisors other than Tabke because they were neither



addressed to them nor served upon them."

"It is true that in paragraphs VIII and IX of the petition there is an allegation that certain warrants for distraint were served, but it is not alleged that they were served upon any particular defendant."

"Finally, we think that the money in the hands, of the treasurer of Woodbury county owing to H. M. Havner, was not shown by the petition to be "subject to distraint." See 49 C.J. p. 151, §167, and cases cited.

"The petition alleges that such moneys so owing were for services rendered by said Havner at the special instance and request of said defendants. We think these allegations were not sufficient to show that the moneys were "subject to distraint."

"We shall not discuss this phase of the case at length but simply call attention to the following authorities: Collector v. Day, 11 Wall. 113, 20 L.Ed. 122; Indian Motorcycle Co. v. United States, 283 U.S. 570, 51 S.Ct. 601, 75 L.Ed. 1277; Brush v. Commissioner, 57 S.Ct. 495, 81 L.Ed. ---, opinion of the United States Supreme Court, filed March 15, 1937; McGrew v. McGrew, 59 App.D.C. 230, 38 F.(2d) 541; McCarthy v. U.S. Shipping Board, 60 App.D.C. 311, 53 F.(2d) 923."

[United States v. Brechtel, 37-2 U.S.T.C. 1, 9322, 90 F.2d. 516 (1937)]

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### **Federal Register, Tuesday (Sept. 7, 1943)**

"(f) *Compensation paid by foreign government or wholly-owned instrumentality thereof.* Remuneration paid for services performed as an employee of a foreign government, or the government of the Commonwealth of the Philippines, or a wholly-owned instrumentality of any such government is excepted. The exception includes not only remuneration paid for services performed by ambassadors, ministers, and other diplomatic officers and employees but also remuneration paid for services performed as a consular or other officer or employee of a foreign government, or as nondiplomatic representative of such a government.

"The citizenship or residence of the employee and the place where the services are performed are immaterial for purposes of the exception."

"(h) *Remuneration for services performed outside the United States* The remuneration paid by an employer for services performed outside the United States does not constitute wages and hence is not subject to withholding unless the major part of the services performed by the employee for such employer during the calendar year is to be performed within the United States. The term "United States" includes the several States, the Territories of Alaska and Hawaii, and the District of Columbia."

"Sec. 2. COLLECTION OF TAX AT SOURCE ON WAGES." (Current Tax Payment Act of 1943.)

(a) *In general.* Chapter 9 of the Internal Revenue Code (relating to employment taxes) is amended by inserting at the end thereof the following new subchapter:

SUBCHAPTER D-COLLECTION OF INCOME TAX AT SOURCE OF WAGES

Sec. 1621. Definitions. As used in this subchapter--\* \* \* \* \*

"(c) *Employee.*" The term "employee" includes an officer, employee, or elected official of the United States, a State, Territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

\* \* \* \* \*

"§404.104 *Employee.* The term "employee" includes every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee. The term specifically includes officers and employees whether elected or appointed, of the United States, a State, Territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing."

[Federal Register, Tuesday, September 7, 1943, p. 12266-7]

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### **Givan v. Cripe (Feb. 9, 1951)**

"Nothing alleged to have been done amounts to a levy, which requires that the property be brought into legal custody through seizure, actual or constructive, levy being 'an absolute appropriation in law of the property levied upon.' \* \* \* Levy is not effected by mere notice. \* \* \* No warrants of distraint were issued here." We think the same is true in our case. So far as the petition shows, there was no seizure, but only a threat of seizure--the petition alleges that the Collector threatens to issue a warrant of distraint. As we interpret the facts, the notice of levy operated to freeze the assets of the taxpayer in the hands of the Bank, and no more."

[Givan v. Cripe, 187 F.2d. 225 (1951)]

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**C.I.R. v. Chelsea Products (June 24, 1952)**

"Under provision of Internal Revenue Code authorizing Commissioner in case of organizations controlled by the same interests, to allocate gross income and deductions if necessary to prevent evasion of taxes or to reflect income of any such organizations, Commissioner might not disregard corporate entities of sales corporations owned by same interest which owned manufacturing corporation, and might not lump together all net incomes and attribute aggregate to manufacturing corporation for purpose of income and excess profit taxes."

[Commissioner of Internal Revenue v. Chelsea Products, 197 F.2d. 620 (1952)]

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**In re Holdsworth (July 27, 1953)**

"These provisions of the Code are unambiguous and must be literally construed. When these provisions are thus construed it is clear that the conditions precedent to the creation of the statutory lien are: first, the receipt by the Collector of Internal Revenue of an assessment list certified by the Commissioner of Internal Revenue in accordance with Sections 61, 3640 and 3641 of the Internal Revenue Code, Title 26 U.S.C.A.; and second, a demand for payment by the Collector of Internal Revenue, and the neglect or refusal of taxpayer to pay. [Cites omitted.] The lien arises only upon the fulfillment of these conditions."

An actual or constructive seizure is essential to a valid levy and distraint; where, as here, the subject matter is an account receivable or chose in action, the seizure may be effected by a levy and the service of a warrant of distraint upon the debtor."

[In re Holdsworth, 113 F.Supp. 878 (1953)]

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**Thomas v. Mercantile Nat. Bank at Dallas (June 18, 1953)**

"The deficiency assessment did not come into existence until the Commissioner certified the assessment list on August 17, 1945. 26 U.S.C.A. §3642. Welch Ins. Agency v. Brast, 4 Cir., 55 F.2d. 60; Davidovitz v. United States, Ct.Cl., 58 F.2d. 1063; United States v. Bank of Commerce, etc., D.C., 32 F.Supp. 942. The waiver signed by the taxpayer on August 2, 1945, did not bring the deficiency into existence. It merely waived the ninety day notice and other procedural requirements of 26 U.S.C.A. 871(a) (1)."

"Until the Commissioner certified the assessment list on August 17, 1945, there was no deficiency assessment, and no liability on the part of the taxpayer, and consequently nothing to pay."

[Thomas v. Mercantile Nat. Bank at Dallas, 204 F.2d. 943 (1953)]

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**Macatee Inc. v. United States (June 30, 1954)**

"Theory that there must be formal act of assessment before tax liability arises does not generally hold true as to excise taxes".

[Macatee Inc. v. United States, 214 F.2d. 717 (1954)]

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**Freeman v. Mayer (May 28, 1957)**

"A "levy" requires that property be brought into legal custody through seizure, actual or constructive, levy being an absolute appropriation in law of property levied on, **and mere notice of intent to levy is insufficient.** United States v. O'Dell, 6 Cir., 1947, 160 F.2d. 304, 307. Accord, In re Holdsworth, D.C.N.J.1953, 113 F.Supp. 878, 888; United States v. Aetna Life Ins. Co. of Hartford, Conn., D.C.Conn.1942, 146 F.Supp. 30, 37, in which Judge Hincks observed that he could "find no statute which says that a mere notice shall constitute a levy." There are cases which hold that a warrant for distraint is necessary to constitute a levy. Givan v. Cripe, 7 Cir., 1951, 187 F.2d. 225; United States v. O'Dell, supra. The Court of Appeals for the Third Circuit stated in its opinion, 221 F.2d. at page 642, "These sections [26 U.S.C. §§3690-3697] require that a levy by a deputy collector be accompanied by warrants of distraint." In re Brokol Manufacturing Co., supra."

"I am constrained to conclude that a levy upon both tangible and intangible property under §3692 requires the execution of warrant for distraint and then effective only to amounts affixed thereon. As noted above, the Court of Appeals for this Circuit declared when this matter was before it that §§3690-3697 "require that a levy by a deputy collector be accompanied by warrants of distraint."

"The distress authorized by §3690 is different from anything known to the common law, both because it authorizes sale of the property seized, and because it extends to other personality than chattels. By its very nature it requires that demands of procedural due process of law be rigorously honored." [Bold added.]

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***Sovereignty and Freedom Points and Authorities***

[Freeman v. Mayer, 152 F.Supp. 383 (1957)]

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**Sims v. United States (Mar. 23, 1959)**

"Questions of whether a federal levy on accrued salaries of Employees of a state for income tax deficiencies was authorized and whether State Auditor was personally liable for refusing to surrender accrued salaries to federal government justified granting of certiorari."

"Nothing in the constitution requires that salaries of state employees be treated any differently for federal tax purposes than the salaries of others."

"Generally, accrued salaries are property and rights to property subject to levy for income tax deficiencies."

"Under statute providing that any person in possession of property or rights of property subject to levy upon which a levy has been made shall surrender such property rights and upon failure to surrender shall be subject in his own person and estate, a state is a "person" and a levy on accrued salaries of employees of a state is permissible."

"Whether the term "person" when used in a federal statute includes a state cannot be abstractly declared, but depends upon its legislative environment."

"In interpreting federal revenue measures expressed in terms of general application, Supreme Court has ordinarily found them operative in the case of state activities even though states are not expressly indicated as subjects of tax."

"Under provision of Internal Revenue Code authorizing collection of delinquent taxes by levy upon all property and rights of property belonging to delinquent taxpayer and providing that such levy may be made upon accrued salary or wages of any officer, employee, or elected official of United States, District of Columbia, or any agency or instrumentality of United States or District of Columbia, a levy may be made upon accrued salary or wages of state employee although state employees are not specifically mentioned in such statute."

"Statute authorizing collection of delinquency taxes by levy upon all property and rights of property of a delinquent taxpayer including a levy upon accrued salary or wages of any officer, employee, or elected official of the United States was enacted to subject salaries of federal employees to same collection procedures as are available against all other taxpayers, including employees of a state."

"Where conclusion of judges who are constantly required to pass upon laws of a state appear to be founded on reason and authority, such conclusions will be accepted by the Supreme Court."

"Nor is there merit in petitioner's contention that Congress, by specifically providing in §6331 for levy upon the accrued salaries of federal employees, but not mentioning state employees, evinced an intention to exclude the latter from levy. The explanation of that action by Congress appears quite clearly to be that this Court had held in Smith v. Jackson, 246 U.S. 388, 38 S.Ct. 353, 62 L.Ed. 788, that a federal disbursing officer might not, in the absence of express congressional authorization, set off an indebtedness of a federal employee to the Government against the employee's salary, and, pursuant to that opinion, the Comptroller General ruled that an "administrative official served with [notices of levy] would be without authority to withhold any portion of the current salary of such employee in satisfaction of the notices of levy and distraint." 26 Comp.Gen. 907, 912 (1947). It is evident that §6331 was enacted to overcome that difficulty and to subject the salaries of federal employees to the same collection procedures as are available against all other taxpayers," including employees of a State.

"Accordingly we hold that §§6331 and 6332 authorize levy upon the accrued salaries of state employees for the collection of any federal tax." [Brackets original.]

[Sims v. United States, 359 U.S. 108 (1959)]

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**United States v. Lehigh (Dec. 28, 1961)**

"It is settled that where the notice is sent by registered or certified mail to the taxpayer's last known address it is not necessary that the notice actually be received by the taxpayer. Nor is it necessary that the notice be sent to what is actually the taxpayer's "correct address." But a letter which is simply properly addressed has no legal efficacy as a notice. Merten's op. cit. §49.

In many instances the "last known address" of the taxpayer is the address shown on the return so that a mailing of a deficiency notice to that address will be sufficient. However, if, after the return is filed, the Government learns that the taxpayer has moved and has acquired a new address, the notice must be sent to that address."

"When a notice of deficiency is to be given, the Commissioner is required to exercise ordinary care to ascertain the correct address of a taxpayer and to mail the notice to that address. Arlington Corporation v. Commissioner of Internal Revenue, 5 Cir., 183 F.2d. 448, and other cases there cited."

"Where the notice is sent by ordinary mail, as contrasted to registered or certified mail, and is not actually received by the taxpayer, it is plain that the notice is insufficient even though it may have been directed to the correct last known

address of the taxpayer."

"Counsel for the Government say that if defendant prevails in this action he will avoid a tax liability justly due by means of a "technical defense." That statement is both true and immaterial. Any procedural defense is in a sense "technical." The procedures set forth in the Internal Revenue Code were prescribed for the protection of both Government and taxpayer. Neglect to comply with those procedures may entail consequences which the neglecting party must be prepared to face, whether such party be the taxpayer or the Government."

[United States v. Lehigh, 201 F.Supp. 224 (1961)]

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**Reisman v. Caplin (Jan. 20, 1964)**

"If the Secretary or his delegate wishes to enforce the summons, he must proceed under §7602(b), which grants the District Courts of the United States jurisdiction "by appropriate process to compel such attendance, testimony, or production of books, papers, or other data."

"Any enforce action under this section would be an adversary proceeding affording a judicial determination of the challenges to the summons and giving complete protection to the witness. In such a proceeding only a refusal to comply with an order of the district judge subjects the witness to contempt proceedings."

"It is sufficient to say that noncompliance is not subject to prosecution thereunder when the summons is attacked in good faith."

"Furthermore, we hold that in any of these procedures before either the district judge or United States Commissioner, the witness may challenge the summons on any appropriate ground. This would include, as the circuits have held, the defenses that the material is sought for the improper purpose of obtaining evidence for use in a criminal prosecution, Boren v. Tucker, 239 F.2d. 767, 772-773, as well as that it is protected by the attorney-client privilege, Sale v. United States, 228 F.2d. 682."

[Reisman v. Caplin, 375 U.S. 440, 84 S.Ct. 508, 11 L.Ed.2d. 459 (1964)]

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**Brafman v. United States (Oct. 23, 1967)**

"Signature is not necessary for validity of deficiency notice."

"Where assessment certificate was not signed by proper official, as prescribed by applicable treasury regulation, within statutory period after filing of estate tax return, assessment of deficiency against estate was invalid and suit against [sic] transferee for collection of unpaid estate taxes was barred by statute of limitations."

"Treasury regulations are binding on government as well as on taxpayer."

"Since the certificate lacks the requisite signature, it cannot constitute a valid assessment."

"We are not moved by the Government's argument that the assessment was valid and effective on July 23rd because it is certified for authenticity under the seal of the United States Treasury. There is no question as to the authenticity of the document or its admissibility into evidence. But authenticity of the certificate cannot be equated with validity of the assessment on the alleged date: a seal establishes the former, a signature of the assessment officer--as required by the Treasury Regulations--establishes the latter."

"We find section 301.6203-1 of the Treasury Regulations reasonably adapted to carry out the intent of Congress as reflected in §6203 of the Code. We therefore adhere to our pronouncement in United States v. Fisher, 5 Cir. 1965, 353 F.2d. 396, 398-399, that:

"In the absence of any better test, we give effect to the generally recognized rule that Regulations issued by the Secretary of the Treasury, pursuant to statutory authority, and when necessary to make a statute effective, although not a statute, may have the force of law. Fawcus Machine Co. v. United States, 282 U.S. 375, 51 S.Ct. 144, 75 L.Ed. 397; Commissioner of Internal Revenue v. South Texas Lumber Co.," 333 U.S. 496, 501, 68 S.Ct. 695, 92 L.Ed. 831.

"The Treasury Regulations are binding on the Government as well as the taxpayer: "Tax officials and taxpayers alike are under the law, not above it." Pacific National Bank of Seattle v. Commissioner, 9 Cir. 1937, 91 F.2d. 103, 105. Even the instructions on the reverse side of the assessment certificate, Form 23C, specify that the original form "is to be transmitted to the District Director for signature, after which it will be returned to the Accounting Branch for permanent filing. \* \* \*"

"Case after case has quoted Treasury Regulation §301.6203-1 and cited it approvingly, and the treatises on taxation take its literal application for granted."

"It appears to us that the requirement of the applicable Treasury Regulation--that an assessment officer sign the assessment certificate--is consistent with the literally mechanical procedures for recording of liability. The recordation is to be accomplished through "machine operations", but the actual and final assessment step, that step which establishes a prima facie case of taxpayer liability, can be taken only with the approval of a responsible officer of the Internal Revenue Service. [ \* \* \* ] What is important in any case is that assessment is not automatic upon recordation; it requires the action

of an assessment officer. That action, as defined explicitly in the Treasury Regulations, is the signing of the certificate." "As the district court said in *United States v. Lehigh*, W.D.Ark.1961, 201 F.Supp. 224, 234, this is both true and immaterial:

"Any procedural defense is in a sense "technical." The procedures set forth in the Internal Revenue Code were prescribed for the protection of both Government and taxpayer. Neglect to comply with those procedures may entail consequences which the neglecting party must be prepared to face, whether such party be the taxpayer or the Government.

"Certainly the courts have not hesitated to enforce strictly the Code requirement that a taxpayer's returns must be signed to be effective. Thus, unsigned returns, even with remittances, have been viewed as nullities from the standpoint of imposition of penalties and of commencement of the running of the statute of limitations. It has availed the taxpayer little that his failure to sign was inadvertent.

"Finally, where state taxation is involved compliance with a statutory provision requiring an assessment list to be signed by the assessors is usually considered essential to the validity of further proceedings. 84 C.J.S. Taxation §473 (1954).

\* \* \*

"Since the assessment certificate in this case was not signed by the proper official, as prescribed by the applicable Treasury Regulation, within the statutory period after the filing of the estate tax return, this suit for collection of any deficiency is barred by the statute of limitations."

[*Brafman v. United States*, 384 F.2d. 863 (1967)]

### **United States v. Dickerson (July 28, 1969)**

"Privilege against self-incrimination is imperiled when one deprived of his freedom of action in any significant way is subjected to interrogation without being apprised of his right to remain silent, the consequences of a decision to forego that right, and the right to presence of an attorney, retained or appointed, to assist in making such decision."

"One confronted with governmental authority in an adversary situation should be accorded the opportunity to make an intelligent decision as to the assertion or relinquishment of those constitutional 'rights designed to protect him under precisely such circumstances."

"Incriminating statements elicited from a taxpayer under criminal investigation by Internal Revenue agents in reliance on taxpayer's misapprehension as to danger of inquiry, his obligation to respond, and possible consequences of doing so must be regarded as equally violative of constitutional protections as a custodial confession extracted without proper warnings."

"Without regard to taxpayer's subjective state of mind, Miranda' warnings must be given to taxpayer under criminal investigation by either the revenue agent or the special agent at the inception of the first contact with taxpayer after case has been transferred to the Intelligence Division of Internal Revenue Service."

"Documentary and oral information obtained from taxpayer by an Internal Revenue agent and a special agent for Intelligence Division of Internal Revenue Service, without advising taxpayer that investigation had become criminal and without advising taxpayer of his Miranda' rights, was subject to suppression."

"Only the rare taxpayer would be likely to know that he could refuse to produce his records to IRS agents. Nor would he be likely to make any distinction between revenue agents and special agents without some explanation as to the different functions of these two offices. As noted in Lipton, "Constitutional Rights in Criminal Tax Investigations," 45 F.R.D. 323, 336 (1968), the pressures on the uninformed taxpayer to cooperate with the agents are considerable:

"First, there is always the fear of incurring a civil tax liability that hopefully might be avoided by cooperation. Also, a taxpayer may conclude that lack of cooperation will result in unwanted publicity about a tax liability. *The average citizen, moreover, believes that the government prosecutes only the recalcitrant, uncooperative individual who is unwilling to pay what he owes. Who would believe the ironic truth that the cooperative taxpayer fares much worse than the individual who relies upon his constitutional rights!*" (Emphasis supplied.)"

[*United States v. Dickerson*, 413 F.2d. 111 (1969). [Overruled by *United States v. Fitzgerald*, 545 F.2d. 578 (1976).]]

### **United States v. Habig (Sept. 5, 1969)**

"Advice of constitutional rights prescribed in Miranda' decision of United States Supreme Court must be given to taxpayers suspected of criminal violations by either revenue agent or special agent at inception of first contact with taxpayer after case has been transferred to the Intelligence Division."

[*United States v. Habig*, 413 F.2d. 1108 (1969)]

### **Ray v. United States (Jan. 21, 1972)**

#### ***Sovereignty and Freedom Points and Authorities***



"Air Force was liable for monies it erroneously exposed to taxation...."

"10 U.S.C. §1552 endows the Secretary with authority to correct a serviceman's record and to pay "a claim for the loss of pay, allowances, compensation, emoluments, or *other pecuniary benefits* \* \* \* if, as a result of correcting a record \* \* \*, the amount is found to be due the claimant \* \* \*" §1552(c)."

"We would dilute the effectiveness of this remedial statute...by a holding that this plaintiff is entitled to *something less* than he would have had if the erroneous determination had not been made."

"It is the Air Force which erroneously withheld from his retirement pay amounts approximately equal to his supposed tax liability, not the IRS...It is the Air Force, then, which is liable to plaintiff for the monies it erroneously exposed to taxation."

[Rav v. United States, 453 F.2d. 754 (1972)]

#### **United States v. Malinowski (Mar. 27, 1972)**

"Prohibition against selective prosecution is applicable to federal prosecutions. U.S.C.A.Const. Amends. 5, 14."

"Not all selective enforcement of a statute is forbidden but only that which is based on some unjustifiable standard such as race, religion or other arbitrary classification. U.S.C.A.Const. Amends. 5, 14."

**"The employer' is not authorized to alter the form or to dishonor the employee's claim. The certificate goes into effect automatically** in accordance with certain standards enumerated in §3402(f)(3).

"The purpose of §7205 is to protect the integrity of the tax withholding system. It forbids the wilful filing of false information by one required to file information under §3402. **The information required from an employee is that information which appears on the Form W-4. Any other knowledge or suspicions of employers or government officials are irrelevant to the purpose because it is only the information on the certificate which effects tax withholding.**" [Bold added.]

[United States v. Malinowski, 347 F.Supp. 347 (1972)]

#### **Burruss Land and Lumber Co., Inc., v. United States (Aug. 17, 1972)**

"Burden of proof to establish reasonable cause is on taxpayer seeking to escape imposition of statutory penalties for failure to file tax return."

"This court is satisfied that the present state and trend of the law is that reliance upon the advice of counsel or an accountant does constitute reasonable cause under §6651(a) & §6656(a) where the taxpayer exercised ordinary business care and prudence and made full disclosure of all relevant and material facts to such person. Commissioner of Internal Revenue v. American Ass'n of Engineers Employment, Inc., 204 F.2d. 19 (7th Cir. 1953); Burton Swartz Land Corp. v. Commissioner of Internal Revenue, 198 F.2d. 558 (5th Cir. 1952); Haywood Lumber and Mining Co. v. Commissioner of Internal Revenue, 178 F.2d. 769 (2nd Cir. 1950);...." [additional cites omitted.]

"Finally the government has not shown this court, nor can it discern on its own, any statute or regulation in the Internal Revenue Code which requires a taxpayer to seek a ruling or I.R.S. advice on questionable matters. While this may be advisable in certain instances, it is not required."

[Burruss Land and Lumber Co, In., v. United States, 349 F.Supp. 188 (1972)]

#### **Garner v. United States (Mar. 23, 1976)**

"Had Garner invoked the privilege against compulsory self-incrimination on his tax returns in lieu of supplying the information used against him, the Internal Revenue Service could have proceeded in either or both of two ways. First, the Service could have sought to have Garner criminally prosecuted under §7203.... Second, the Service could have sought to complete Garner's returns administratively "from [its] own knowledge and from such information as [it could] obtain through testimony or otherwise.""

"The court has held that an individual under compulsion to make disclosures as a witness who revealed information instead of claiming the privilege lost the benefit of the privilege."

"The information revealed in the preparation and filing of an income tax return is, for purposes of Fifth Amendment analysis, the testimony of a "witness," as that term is used herein."

"Since submitting a claim of privilege in lieu of the returns also would incriminate, the Court held that the privilege could be exercised by simply failing to file."

"A §7203 conviction cannot be based on a valid exercise of the privilege. This is implicit in the dictum of United States v. Sullivan, 274 U.S. 259, 71 L.Ed. 1037, 47 S.Ct.607, 51 A.L.R. 1020 (1927), that the privilege may be claimed on a return. Furthermore, the Court has held that an individual summoned by the Service to provide documents or testimony

can rely on the privilege to defend against a §7203 prosecution for failure to "supply any information." See *United States v. Murdock*, 290 U.S. 389...." [Cites omitted.]  
 [Garner v. United States, 424 U.S. 648; 96 S.Ct. 1178, 47 L.Ed.2d. 370 (1976)]

### **United States v. Fitzgerald (Nov. 3, 1976)**

"There was no requirement that Internal Revenue Service agents give full Miranda warnings to persons suspected of criminal violations of tax laws who were not in custody; overruling *United States v. Dickerson*, 413 F.2d. 1111, and *United States v. Oliver*, 505 F.2d. 301, to extent that they held otherwise."

"When lower court relies on legal principle which is changed by treaty, statute or decision prior to direct review, appellate court must apply current law rather than law as it existed at time lower court acted."  
 [United States v. Fitzgerald, 545 F.2d. 578 (1976)]

### **Green v. United States (July 19, 1977)**

"Commissioner of Internal Revenue is required to exercise reasonable care and diligence in mailing deficiency notice to correct address, and burden of proof is upon taxpayer to prove that such care and diligence was not exercised."  
 [Green v. United States, 437 F.Supp. 334 (1977)]

### **Central Illinois Public Service Co. v. United States (Feb. 28, 1978)**

"Under internal revenue statutes, required withholding is rightly much narrower than subjectability to income taxation. 26 U.S.C.A. (I.R.C.1954) §§1, 61(a), (a)(1), 63(a)? 119, 162(a), (a)(2), 3401-3401(a), 3402, 3402(a), 6532(a)(1)."

**"Employer is in secondary position as to liability for tax of employee, and it is matter of obvious concern that, absent further specific congressional action, employer's obligation to withhold be precise and not speculative. 26 U.S.C.A. (I.R.C.1954) §§3401-3403, 3401(a), 3402(a)."**

"The withholding tax, in some contrast, is confined to wages, §3402(a), and §3401(a)" defines as "wages," "all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash." The two concepts--income and wages--obviously are not necessarily the same. Wages usually are income, but many items qualify as income and yet clearly are not wages. Interest, rent, and dividends are ready examples. **And the very definition of "wages" in §3401(a) itself goes on specifically to exclude certain types of remuneration for an employee's services to his employer (e.g., combat pay, agricultural labor, certain domestic service)."**

"The present withholding system has a later origin in the Victory Tax imposed by the Revenue Act of 1942, §172.... The Victory Tax was replaced by the Current Tax Payment Act of 1943, 57 stat. 126, and was repealed by the Individual Income Tax Act of 1944, §6(a), 58 Stat. 234."

"The committee reports of the time stated consistently that "wages" meant remuneration "if paid for services performed by an employee for his employer" (emphasis supplied). H.R.Rep. No.2333, 77th Cong., 2d Sess., 126 (1942)...." [Cites omitted.]

"Considerations that support subjectability to the income tax are not necessarily the same as the considerations that support withholding. To require the employee to carry the risk of his own tax liability' is not the same as to require the employer to carry the risk of the tax liability of its employee. Required withholding, therefore, is rightly much narrower than subjectability to income taxation.

"As we have noted above, withholding, under §3402, is required only upon wages, and §3402(a) defines wages as "all remuneration . . . for services performed by an employee for his employer." When the withholding system was effectuated in 1942, the obligation was confined to wages, and the like, "in the interest of simplicity and ease of administration. 308"

**"Decided cases have made the distinction between wages and income and have refused to equate the two in withholding or similar controversies. Peoples Life Ins. Co. v. United States, 373 F.2d. 924, 932, 179 Ct.Cl. 318, 332, (1967); Humble Pipe Line Co. v. United States, 442 F.2d. 1353, 1356, 194 Ct.Cl. 944, 950 (1971); Humble Oil & Refining Co. v. United States, 442 F.2d. 1362, 194 Ct.Cl. 920 (1971); Stubbs, Overbeck & Associates v. United States, 445 F.2d. 1142 (C.A.5 1971); Royster Co. v. United States, 479 F.2d, at 390; Acacia Mutual Life Ins. Co. v. United States, 272 F.Supp. 188 (D.C.Md. 1967). The Government would distinguish these cases on the ground that some of them involved overnight travel, the expenses of which would be deductible, and that others were concerned with particularized allowances. We perceive the distinctions but are not persuaded that they blunt the basic difference between the wage and the income concepts the respective courts have emphasized.**

An expansive and sweeping definition of wages, such as was indulged in by the Court of Appeals, 540 F.2d, at 302, and is urged by the Government here, is not consistent with the existing withholding system. As noted above, Congress chose simplicity, ease of administration, and confinement to wages as the standard in 1942. This was a standard that was intentionally narrow and precise. It has not been changed by Congress since 1942, although, of course, as is often the case, administrative and other pressures seek to soften and stretch the definition. Because the employer is in a secondary position as to liability for any tax of the employee, it is a matter of obvious concern that, absent further specific congressional action, the employer's obligation to withhold be precise and not speculative." [Cites omitted.]

"Those who administer the Internal Revenue Code unquestionably have broad authority to make tax rulings and regulations retroactive. That authority is not unfettered, however, and conditions are present here that would make retroactive application of the withholding tax to petitioner's lunch payments an abuse of discretion."

"The legislative history of the Internal Revenue Code does not reveal any evidence of congressional intent to make employers guarantors of the tax liabilities of their employees, which would in all likelihood be the result if withholding taxes can be assessed retroactively. Far from it. When Congress has changed the withholding provisions to enlarge the scope of the withholding base or to increase the tax rate, its uniform practice has been to give employers a grace period in which to bring their withholding practices in line with the new law. In the one instance where this has not been the case, Congress has made clear that its retroactive application of withholding tax changes was inadvertent and it has moved promptly to correct its error:..." [Bold added.]

[Central Illinois Public Service Co. v. United States, 435 U.S. 21, 98 S.Ct. 917, 55 L.Ed.2d. 82 (1978)]

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### **Marshall v. Barlow's (May 23, 1978)**

"Reasonableness of warrantless search depends upon specific enforcement needs and privacy guarantees of each regulatory statute. U.S.C.A.Const. Amend. 4."

"Occupational Safety and Health Act is unconstitutional insofar as it purports to authorize inspection of business premises without warrant or its equivalent. Occupational Safety and Health Act of 1970, §§8, 8(a), 29 U.S.C.A. §§657, 657(A); U.S.C.A Const. Amend. 4."

"The Warrant Clause of the Fourth Amendment protects commercial buildings as well as private homes."

"The Framers' familiarity with the abuses attending the issuance of such general warrants provided the principal stimulus for the restraints on arbitrary governmental intrusions embodied in the Fourth Amendment-

"[O]ur constitutional fathers were not concerned about warrantless searches, but about overreaching warrants. It is perhaps too much to say that they feared the warrant more than the search, but it is plain enough that the warrant was the prime object of their concern. Far from looking at the warrant as a protection against unreasonable searches, they saw it as an authority for unreasonable and oppressive searches...." [Quoting T. Taylor, *Two Studies in Constitutional Interpretation* 41 (1969).]

[Marshall v. Barlow's, 436 U.S. 307, 56 L.Ed.2d. 305 (1978)]

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### **United States v. LaSalle Nat'l Bank (June 19, 1978)**

"Section of Internal Revenue Code permitting use of summons for purpose of ascertaining correctness of any return, determining liability of any person for any internal revenue tax, or collecting any such liability, necessarily permits use of summons for examination of suspected tax fraud and for calculation of 50% civil penalty."

"Congress has not categorized tax fraud investigations into civil and criminal components, but rather intended to design system with interrelated criminal and civil elements, and any limitation on good-faith use of internal revenue summons must reflect that statutory premise."

"Prior to recommendation for prosecution to Department of Justice, Internal Revenue Service must use its summons authority in good faith; dispositive question in each case is whether Service is pursuing authorized purposes in good faith or whether it has abandoned, in institutional sense, pursuit of civil tax determination or collection."

"That single special agent intends only to gather evidence for criminal investigation is not dispositive of question of good faith of IRS as institution in issuing summons; those resisting enforcement of summons have heavy burden of disproving actual existence of valid civil tax determination or collection purpose by IRS."

"Internal Revenue Service does not enjoy inherent authority to summon production of private papers of citizens, but may only exercise that authority granted by Congress."

"Congress intended Internal Revenue Service summons authority to be used to aid determination and collection of taxes, which purposes do not include goal of filing criminal charges against citizens; consequently, summons authority does not exist to aid criminal investigations solely."

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### ***Sovereignty and Freedom Points and Authorities***

[United States v. LaSalle National Bank, 437 U.S. 289, 98 S.Ct. 2357 (1978)]

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**United States v. Freedom Church (Dec. 28, 1979)**

"In order to establish its good faith in issuing a summons, Internal Revenue Service must show that the investigation will be conducted pursuant to a legitimate purpose, that inquiry may be relevant to the purpose, that information sought is not already in possession of IRS, and that administrative steps required by Internal Revenue Code have been followed. 26 U.S.C.A. (I.R.C.1954) §7602."

"Lists of church membership and contributors sought by Internal Revenue Service summons, which was issued for purpose of making a determination as to church's tax-exempt statutes, met applicable relevancy requirements. 26 U.S.C.A. (I.R.C.1954) §7602."

"Once government has made its minimal showing of relevancy of information sought by Internal Revenue Service summons, burden shifts to summoinee to challenge summons on that or any other ground. 26 U.S.C.A. (I.R.C.1954) §7602."

[United States v. Freedom Church, [80-1 U.S.T.C. 1 9132], 613 F.2d. 316, 319 (1st Cir. 1979)]

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**United States v. Long (May 1, 1980)**

"Defendant could not be convicted of willful failure to file income tax returns where he filed returns in which he had inserted zeros in spaces reserved for entering exemptions, income, tax and tax withheld, even if information was false."

[United States v. Long, 618 F.2d. 74 (1980)]

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**Crum v. C.I.R. (Dec. 23, 1980)**

"In *Stebbins' Estate v. Helvering*, 74 U.S.App.D.C. 21, 22-23, 121 F.2d. 892, 893-94 (1941), this court said "it has been decided time and again that the statutory period is jurisdictional, and the duty to dismiss on failure to comply is mandatory." IRC §6212(a) & (b) specifies that a notice of deficiency be sent to the taxpayer by certified or registered mail at his last known address, and it is clear that the statute requires "a proper giving of notice before a deficiency is assessed". See *Cohen v. United States*, 297 F.2d. 760, 772 (9th Cir. 1962).... The United States Tax Court in *Alta Sierra Vista, Inc. v. Commissioner*, 62 T.C. 367, 374 (1974), *aff'd mem.*, 538 F.2d. 334 (9th Cir. 1976), defined "last known address" as "the taxpayer's last permanent address or legal residence known by the Commissioner or the last known temporary address of a definite duration to which the taxpayer has directed the Commissioner to send all communications.""

"An innocent taxpayer should not be penalized because tax collector neglects to tell his right hand what his left hand is doing."

[Crum v. C.I.R., 635 F.2d. 895 (1980)]

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**Commissioner v. Portland Cement Co. of Utah (Mar. 3, 1981)**

"These regulations command our respect, for Congress has delegated to the Secretary of the Treasury, not to this Court, the task "of administering the tax laws of the Nation." *United States v. Cartwright*, 411 U.S. 546, 550, 36 L.Ed.2d. 528, 93 S.Ct. 1713 (1973); accord, *United States v. Correll*, 389 U.S. 299, 307, 19 L.Ed.2d. 537, 88 S.Ct.45 (1967).... We therefore must defer to Treasury Regulations that "implement the congressional mandate in some reasonable manner." *United States v. Correll*, supra, at 307,...; accord, *National Muffler Dealers Assn. v. United States*, 440 U.S. 472,... To put the same principle conversely, Treasury Regulations "must be sustained unless unreasonable and plainly inconsistent with the revenue statutes." *Commissioner v. South Texas Lumber Co.*, 333 U.S. 496,...; accord, *Fulman v. United States*, 434 U.S. 528, [...]; *Bingler v. Johnson*, 394 U.S. 741,...."

[Commissioner v. Portland Cement Co. of Utah, 450 U.S. 156, 101 S.Ct. 1037, 67 L.Ed.2d. 140 (1981)]

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**United States v. Voorhies (Oct. 8, 1981)**

"Federal statute proscribing as felony willful attempts to evade or defeat any tax includes both offenses of willfully attempting to evade or defeat the assessment of a tax as well as the offense of willfully attempting to evade or defeat the payment of a tax."

"A mere failure to file a return and pay the tax, however, is insufficient for a conviction under §7201 for willful evasion of payment. *United States v. Mesheski*, 286 F.2d. 345, 346-47 (7th Cir. 1961). The question of willfulness is uniquely suited for determination by the trier of fact. *United States v. House*, 524 F.2d. 1035, 1045 (3d Cir.1975)."

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**Sovereignty and Freedom Points and Authorities**

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[United States v. Voorhies, 658 F.2d. 710 (1981)]

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**United States v. McCarty (Jan. 11, 1982)**

"In prosecution for willful and knowing failure to file income tax returns, instruction defining "willfully" as meaning "a voluntary, intentional violation of a legal duty," and providing that "the statutory requirement to file a return does not violate a taxpayer's right against self-incrimination." [sic] correctly stated applicable legal principles."

"Fifth Amendment' privilege protects erroneous taxpayer by providing defense to charge of willful and knowing failure to file income tax return if taxpayer's claim, though erroneous, was made in good faith, but Fifth amendment does not allow defendant to refuse to file on ground that he believed that Constitution excused him from obeying the law."

[United States v. McCarty, 665 F.2d. 596 (1982)]

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**U.S. v. Drape (Jan. 14, 1982)**

"To sustain conviction of filing false and fraudulent tax returns the evidence must show beyond a reasonable doubt that taxpayer acted willfully with knowledge that his return was not correct in material respects and taxpayer's signature on the return is sufficient to establish knowledge once it is shown that the return is false."

"In considering the evidence, we must determine whether there is sufficient evidence from which reasonable persons could find defendant guilty beyond a reasonable doubt. *United States v. Leach*, 427 F.2d. 1107, 1111 (1st Cir.), cert. denied, 400 U.S. 829, 91 S.Ct. 57, 27 L.Ed.2d. 59 (1970). The evidence is to be evaluated in the light most favorable to the prosecution, with such inferences as may legitimately be drawn. *Glasser v. United States*, 315 U.S. 60, 80, 62 S.Ct. 457, 469, 86 L.Ed. 680 (1942); *United States v. Indorato*, 628 F.2d. 711, 719 (1st Cir.), cert. denied, 449 U.S. 1016, 101 S.Ct. 578, 66 L.Ed.2d. 476 (1980)."

[United States v. Drape, 668 F.2d. 22 (1982)]

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**United States v. Brooksby (Feb. 22, 1982)**

"Term "willful" in statute proscribing willfully making and subscribing tax return not believed to be true and correct requires proof of specific intent to do something which law forbids, and more than showing of careless disregard for truth is required, and thus trial court erred in accepting and using instruction which did not include element "willfully" and, in view of fact that question of "willfulness" was only element of offense challenged by defendant, she was prejudiced by failure to instruct jury that "willfulness" was essential element though court correctly stated law by reading indictment and statute and by defining term "willfully.""

[United States v. Brooksby, 668 F.2d. 1102 (1982)]

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**United States v. \$8,850.00 (May 23, 1983)**

"General rule is that absent an extraordinary situation a party cannot invoke the power of the state to seize a person's property without a prior judicial determination that seizure is justified, but such an extraordinary situation exists when the government seizes items subject to forfeiture."

"Unlike the situation where due process requires a prior hearing, there is no obvious bright line dictating when a post-seizure hearing must occur. Because our prior cases in this area have wrestled with whether due process requires a pre-seizure hearing, we have not previously determined when a postseizure delay may become so prolonged that the dispossessed property owner has been deprived of a meaningful hearing at a meaningful time."

"In applying the *Barker* balancing test to this situation, the overarching factor is the length of the delay. As we said in *Barker*, the length of the delay "is to some extent a triggering mechanism." *Ibid*. Little can be said on when a delay becomes presumptively improper, for the determination necessarily depends on the facts of the particular case. Our inquiry is the constitutional one of due process; we are not establishing a statute of limitations. Obviously, short delays--of perhaps a month or so--need less justification than longer delays. We regard the delay here--some 18 months--as quite significant. Being deprived of this substantial sum of money for a year and a half is undoubtedly a significant burden."

"Justice STEVENS, dissenting."

"None of the various activities that various Government bureaucrats undertook before filing the civil forfeiture proceeding was required by the Constitution or by any statute. None of those activities made it impossible, or even arduous, for the Government to act promptly to establish its right to hold claimant's currency. In my opinion a rule that allows the Government to dispossess a citizen of her property for more than 18 months without her consent and without a hearing is a flagrant violation of the Fifth Amendment."

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***Sovereignty and Freedom Points and Authorities***



[United States v. Eight Thousand Eight Hundred and Fifty Dollars, 461 U.S. 555, 103 S.Ct. 2005, 76 L.Ed.2d. 143 (1983)]

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**Ueckert v. United States (Mar. 26, 1984)**

"It is well-established that a taxpayer cannot rely on the privilege against self-incrimination to refuse to supply any information on his return from which his tax liability can be determined. *Ueckert v. Commissioner of Internal Revenue*, 721 F.2d. 248, 250 (8th Cir.1983). The privilege only applies where the danger of self-incrimination is real and appreciable, rather than remote and speculative. *Id.* The taxpayer cannot be the sole arbiter of whether the information sought would tend to incriminate. *Id.* If the circumstances appear to be innocuous, he must make some positive disclosure indicating where the danger lies. *Id.*"

"Procedural due process is flexible concept and does not always require hearing before property is taken." *Mathews v. Eldridge*, 424 U.S. 319, 334, 96 S.Ct. 893, 902, 47 L.Ed.2d. 18 (1976). This Court must balance three factors to determine when a hearing is required: (1) the private interest affected by official action, (2) the risk of erroneous deprivation through the procedures used and the probable value, if any, of additional or substitute procedural safeguards, and (3) the government's interest. *Id.* at 335, 96 S.Ct. at 903."

.. the government has a compelling interest in tax collection."

[Ueckert v. United States, 581 F.Supp. 1262 (1984)]

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**United States v. Burton (July 11, 1984)**

"Wages are "income" for purposes of internal revenue statutes. 26 U.S.C.A. §1 et seq."

"Both the failure to file and false filing offenses require that an accused have acted "willfully," that is, intentionally in violation of a known legal duty. *United States v. Pomponio*, 429 U.S. 10, 12, 97 S.Ct. 22, 23, 50 L.Ed.2d. 12 (1976). This "implements the pervasive intent of Congress to construct penalties that separate the purposeful tax violator from the well-meaning, but easily confused, mass of taxpayers?" *United States v. Bishop*, 412 U.S. 346, 361, 93 S.Ct. 2008, 2017, 36 L.Ed.2d. 941 (1973). Similarly, "Congress did not intend that a person by reason of a bona fide misunderstanding as to his liability for the tax ... should become a criminal by his mere failure to measure up to the prescribed standard of conduct." *United States v. Murdock*, 290 U.S. 389, 396, 54 S.Ct. 223, 226, 78 L.Ed. 381 (1933). *See also United States v. Garber*, 607 F.2d. 92, 97-98 (5th Cir.1979) (*en banc*).

"A bona fide misunderstanding of the tax laws can negate essential element of willfulness and in that sense is a "defense.""

"In the context of whether the defendant willfully violated the tax laws because he did not think his conduct would result in an understatement of income, we held that it was plain error for the trial court to invite the jury to consider what other people similarly situated would have reasonably realized. *Mann v. United States*, 319 F.2d. 404, 409 (5th Cir.1963), *cert. denied*, 375 U.S. 986, 84 S.Ct. 520, 11 L.Ed.2d. 474 (1964)."

[United States v. Burton, 737 F.2d. 439 (1984)]

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**United States v. Dack (Nov. 5, 1984)**

"Existence of tax deficiency is element of both willful attempt "to evade or defeat any tax" and willful attempt to evade or defeat "payment" of any tax. 26 U.S.C.A. §7201."

"In sum, tax assessment proceedings are civil in nature and are not normally prerequisite to criminal liability. But when the crime charged is one of evading the payment of taxes that have been assessed in civil proceedings, the Government must prove the existence of a valid tax assessment."

[United States v. Dack, 747 F.2d. 1172 (1984)]

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**Cyclone Drilling, Inc. v. Kelly (Aug. 2, 1985)**

"In recognition of obvious nationwide administrative realities, the burden is on the taxpayer to provide "clear and concise" notice of his current address to the IRS; the IRS is otherwise entitled to rely on the address shown on taxpayer's tax return for the year in question. *Weinroth v. Commissioner*, 74 T.C. 430, 435 (1980). "Clear and concise notice" is notice by which the taxpayer indicates to the IRS that he wishes the new address to *replace* all old addresses in subsequent communication. [Cites omitted.] Such an indication of replacement may be either explicit or implicit; we follow the Ninth Circuit in our view that a taxpayer's subsequent tax return bearing a new address provides the IRS with "clear and concise" notice. *See United States v. Zolla*, 724 F.2d. 808, 810 (9th Cir. 1984) *cert. denied* --- U.S. ---, 105 S.Ct. 116, 83 L.Ed.2d. 59 (1984); *Cool Fuel v. Connell*, 685 F.2d. 309, 312 (9th Cir. 1982); *McPartlin v. Commissioner*,

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***Sovereignty and Freedom Points and Authorities***

653 F.2d. 1185, 1190 (7th Cir. 1981) (citing Ninth Circuit cases)."

"The IRS is, however, required to use "reasonable diligence" in attempting to ascertain taxpayer's correct address. *Id.*, *Cool Fuel, Inc. v. Connett*, 685 F.2d. 309, 313 (9th Cir. 1982); *Mall v. Kelly*, 564 F.Supp. 371, 373 (D.Wyo.1983); *Tangren v. Mihlbachler*, 522 F.Supp. 701, 703 (D.Colo.1981). The burden of proof is on the taxpayer to prove that this "reasonable diligence" was not exercised. *Green v. United States*, 437 F.Supp. 334, 337 (N.D.Okla.1977); *Butler v. District Director*, 409 F.Supp. 853, 856 (S.D.Tex.1975)."  
[*Cyclone Drilling, Inc. v. Kelly*, 769 F.2d. 662 (1985)]

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#### **Abrams v. C.I.R. (Apr. 9, 1986)**

"To qualify as notice of deficiency, while a document need not assume any particular form, *Commissioner v. Forest Glen Creamery Co.*, 98 F.2d. 968 971 (7th Cir.1938), *cert. denied*, 306 U.S. 639, 59 S.Ct. 487, 83 L.Ed. 1039 (1939); *Olsen v. Helvering*, 88 F.2d. 650, 651 (2d Cir.1937), nevertheless, it must meet certain substantial requirements. There must be a statement that the Internal Revenue Service has examined a return and determined a deficiency. It must inform taxpayer of the exact amount of the deficiency." [Cites omitted.]  
[*Abrams v. C.I.R.*, 787 F.2d. 939 (1986)]

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#### **Fuller v. United States (Apr. 15, 1986)**

"Term, "self-assessment," as used in 26 U.S.C.A. §6702, which provides for penalty of \$500 when individual files return for frivolous or dilatory purposes and when the return does not show that its "self-assessment" is substantially accurate, included tax returns on which individuals refused to furnish numerical responses to questions concerning taxes owed."

"The fifth amendment's self-incrimination clause provides no right to taxpayers to refuse to provide the IRS with financial information unless they make some showing that there is an appreciable possibility of prosecution for a non-tax crime."

"If the individual left the tax liability lines blank, for the same spurious reasons, he would not be subject to the penalty."

[*Fuller v. United States*, 786 F.2d. 1437 (9th Cir. 1986)]

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#### **Stubbs v. Commissioner of IRS (Aug. 25, 1986)**

"Claims that wages are not taxable income and that individual taxpayer was not person required to file tax return are patently frivolous."

"Facts deemed admitted by taxpayer, based on his failure to respond in any manner to Commissioner of Internal Revenue Service's requests for admissions, that taxpayer had received taxable income for 1976 through 1980 in amounts stated in notice of deficiency, and that his failure to file proper returns and pay his tax was due to intentional disregard of revenue laws, established taxpayer's liability for deficiencies and penalties assessed, where taxpayer did not come forward with any evidence that any part of the Commissioner's determination of tax deficiencies and penalties was erroneous."

"Assessment of \$5,000 penalty against individual who, it was deemed due to his failure to respond to requests for admissions, failed to file proper returns and pay his tax due to intentional disregard of revenue laws was proper, where taxpayer did not come forward with any evidence that any part of the Commissioner of Internal Revenue Service's determination was erroneous, but rather, alleged in response solely the patently frivolous position that wages were not taxable income and that he was not person required to file tax return."

[*Stubbs v. Commissioner of IRS*, 797 F.2d. 936 (11th Cir. 1986)]

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#### **C.I.R. v. Groetzinger (Feb. 24, 1987)**

"To be engaged in a trade or business, for purposes of Internal Revenue Code, taxpayer must be involved in an activity with continuity and regularity, and taxpayer's primary purpose for engaging in activity must be for income or profit, sporadic activity, hobby or amusement diversion does not qualify."

"Full-time gambler who wagers in good faith solely for his own account to produce income was engaged in a "trade or business" for purposes of Internal Revenue Code; accordingly, no part of his gambling losses were an item of tax preference subjecting him to a minimum tax."

"Resolution of issue of whether taxpayer's activity constitutes a "trade or business," for purposes of Internal Revenue Code, requires an examination of the facts in each case."

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#### ***Sovereignty and Freedom Points and Authorities***

[Commissioner of Internal Revenue v. Groetzinger, 480 U.S. 24; 107 S.Ct. 980, 94 L.Ed.2d. 25 (1987)]

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**Scar v. C.I.R. (Apr. 14, 1987)**

"Failure to comply with statutory requirements renders the deficiency notice null and void and leaves nothing on which court jurisdiction can rest. *See Sanderling Inc. v. Commissioner*, 571 F.2d. 174, 176 (3d Cir.1978) ("The Tax Court has held that it has no jurisdiction where the deficiency notice does not cover a proper taxable period")...."  
[Scar L, C.I.R., 814 F.2d. 1363 (9th Cir. 1987)]

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**In re Carter (June 11, 1987)**

""Tax assessment is administrative device, used by Internal Revenue Service in collection activities, which serves function of court judgment; thus, just as setting aside judgment does not, of necessity, invalidate underlying claim, setting aside tax assessment does not determine taxpayer's liability for unpaid taxes."

"Assessment filed more than three years after taxes were due was invalid under applicable nonbankruptcy law and, therefore, claim was not entitled to priority within meaning of Bankruptcy Code."  
[In re Carter, 74 B.R. 613 (Bkrcty. E. D. Pa . 1987)]

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**United States v. Berman (Aug. 6, 1987)**

"Government's failure to provide taxpayers with copy of notice of assessment and demand for payment did not bar civil action to collect tax liability; Internal Revenue Code requirement that Government provide taxpayer with such notice and demand applies only when Government seeks to collect taxes administratively. 26 U.S.C.A. §6303(a)."  
[United States v. Berman, 825 F.2d. 1053 (6th Cir.1987)]

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**Hatcher v. United States (Jan. 16, 1990)**

"Treasury Department orders delegating to IRS agents the authority to issue summonses were binding upon taxpayer with actual knowledge thereof, even assuming that they were never published in Federal Register; accordingly, taxpayer could not complain of special agent's alleged lack of delegated authority to issue or approve summonses."  
[Hatcher v. United States, 733 F.Supp. 218 (1990)]

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**Ward v. C.I.R. (Aug. 1, 1990)**

"The taxpayer's "last known address" is the address to which, in light of all surrounding facts and circumstances, the Commissioner reasonably believed that the taxpayer wished the notice of deficiency to be sent. *Pomeroy*, 864 F.2d. at 1195; *Mulder*, 855 F.2d. at 211; *Eschweiler v. United States*, 877 F.2d. 634, 636 7th Cir.1989); *Guillen v. Barnes*, 819 F.2d. 975, 977 (10th Cir.1987)."

"We presume that the IRS used reasonable diligence if it mailed the deficiency notice to the address contained in the taxpayer's most recently filed tax return, unless the taxpayer provided "clear and concise" notice to the IRS of an address change. *Pomeroy*, 864 F.2d. at 1194; *King v. Commissioner*, 857 F.2d. 676, 681 (9th Cir.1988); [cites omitted]. [...] Where the taxpayer has provided clear and concise notice, a deficiency notice mailed to the address listed on the taxpayer's prior, albeit most recent, tax return is ineffective."  
[Ward v. C.I.R., 907 F.2d. 517 (5th Cir. 1990)]

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**Kulway v. United States (Oct. 25, 1990)**

"But since the assessment automatically results in lien on taxpayer's property, *see* 26 U.S.C. §§6321 & 6322, the taxpayer may bring action under §2410(a)(1) to challenge procedural irregularities in the seizure and sale of his property following such an assessment, *see, e.g., Aqua Bar & Lounge, Inc. v. United States*, 539 F.2d. 935, 983-40 (3d Cir.1976); *Schmidt v. King*, 913 F.2d. at 839; *Elias v. Connitt*, 908 F.2d. at 527; *Popp v. Eberlein*, 409 F.2d. 309, 312 (7th Cir.), *cert. denied*, 396 U.S. 909, 90 S.Ct. 222, 24 L.Ed.2d. 185 (1969); *see also Pollack v. United States*, 819 F.2d. 144, 145 (6th Cir. 1987)."

[Kulway v. United States, 917 F.2d. 729 (2nd Cir. 1990)]

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***Sovereignty and Freedom Points and Authorities***

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**Robinson v. United States (Dec. 21, 1990)**

"Notice of deficiency is jurisdictional prerequisite to suit in tax court. 26 U.S.C.A. §§6212(a), 6213."

"Notice of deficiency serves as a prerequisite to valid assessment by Internal Revenue Service. 26 U.S.C.A. §§6212(a), 6213(a, c)."

"The notice is a "pivotal feature of the Code's assessment procedures," *Holof*, 872 F.2d. at 53, because it serves as a prerequisite to a valid assessment by the IRS. The Internal Revenue Code is clear that "no assessment of a deficiency...and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice [of deficiency] has been mailed to the taxpayer, nor until the expiration of such 90-day...period." [Brackets original.]  
[Robinson v. United States, 920 F.2d. 1157 (3rd Cir. 1990)]

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**First Atlas Funding Corp. Through Kersting v. United States (May 22, 1991)**

"A lien is not an assertion of adverse title or an actual effort to dispossess. It is merely a means of securing a position as a creditor. For there to be a taking, there must be other acts suggesting deprivation of access or use. The mere filing of a notice of a tax lien against the property interest, if any, of a taxpayer other than the landowner does not state a claim for a physical taking of property." [Cites omitted.]  
[First Atlas Funding Corp. Through Kersting v. United States, 23 Cl.Ct. 137 (1991)]

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**Arford v. United States (May 31, 1991)**

"Taxpayer's allegation in quiet title action against the United States that government did not assess taxes properly under statute defining method of assessment and requiring that taxpayer be furnished with copy of assessment record if he or she so requests, satisfied waiver of sovereign immunity requirement, to extent that taxpayers were challenging procedural lapses of assessment under statute."

"Transfer of taxpayer's Air Force retirement pay to the Internal Revenue Service (IRS) in satisfaction of unpaid tax assessments was a "levy," not a "set-off," and as such, transfer was subject to procedural requirements governing transfers by lien & levy."  
[Arford v. United States, 934 F.2d. 229 (9th Cir. 1991)]

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**Portillo v. C.I.R. (June 11, 1991)**

"...in order for a notice of deficiency to be valid, the I.R.S. must have made a "determination" of a tax deficiency. *See* 26 U.S.C. §6212(a). Portillo argues that in this case the I.R.S. failed to make such a "determination" and therefore the notice was invalid and the tax court consequently lacked jurisdiction."

"The need for tax collection does not serve to excuse the government, however, from providing some factual foundation for its assessments. *Id.* "The tax collector's presumption of correctness has a herculean muscularity of Goliathlike reach, but we strike an Achilles' heel when we find no muscles, no tendons, no ligaments of fact." *Id.*"  
[Portillo v. C.I.R., 932 F.2d. 1128 (5th Cir. 1991)]

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**United States v. Saunders (Dec. 13, 1991)**

"The Saunders argue first that the summonses were invalid because they lacked an Office of Management and Budget ("OMB") control number. Consequently, the Saunders continue, section 3512 of the Paperwork Reduction Act, 44 U.S.C. §§3501 to 3520, relieves them of the obligation to respond to the summonses. Section 3512 reads: "Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved was made after Dec. 31, 1981, and does not display a current control number assigned by the Director, or fails to state that such request is not subject to this chapter."

"The district court appropriately rejected the Saunders' argument. The Paperwork Reduction Act specifically excepts from section 3512's requirements "the collection of information ... during the conduct of ... an administrative action or investigation involving an agency against specific individuals or entities." 44 U.S.C. §3518(c)(1)(B); *see also* 5 C.F.R. §1320.3(c)."  
[United States v. Saunders, 951 F.2d. 1065 (9th Cir. 1991)]

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**United States v. Streett (Jan. 14, 1992)**

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"To establish prima facie case for enforcement of administrative summons, IRS need only present affidavit of agent involved in investigation offering requisite good-faith elements; party challenging summons then assumes heavy burden of disproving actual existence of valid civil tax determination or collection purpose."

"IRS has both statutory and regulatory authority to issue administrative summons; regulations providing Bureau of Alcohol, Tobacco and Firearms authority to issue such summons are not exclusive."

[United States v. Streett, 791 F.Supp. 563 (D.Md. 1992)]

### **United States v. Stoecklin (Feb. 15, 1994)**

"To obtain judicial enforcement of a summons, the Internal Revenue Service must establish: (1) the investigation is being conducted for a legitimate purpose; (2) the inquiry may be relevant to that purpose; (3) the information sought is not already in the IRS's possession; and (4) the administrative steps required by the Internal Revenue Code have been followed. *United States v. Powell*, 379 U.S. 48, 57-58, 85 S.Ct. 248, 245-55, 13 L.Ed.2d. 112 (1964); *United States v. Medlin*, 986 F.2d. 463, 466 (11th Cir.)..."

"Respondent argued at the hearing that his primary assertion is that this Court lacks subject matter jurisdiction. Respondent asserts that the Secretary of the Treasury is required by 26 U.S.C. §7805(a) to promulgate implementing regulations, that these regulations have the force of law, that the Secretary has failed to promulgate such regulations regarding income tax, and that without such regulations the IRS statutes are given no force and effect. In the absence of such regulations, respondent asserts that 26 U.S.C. §7604(a), which purports to vest jurisdiction in the district court, has no effect."

"26 U.S.C. §7805(a) requires the Secretary to prescribe "all needful rules and regulations for the enforcement of this title..." Regulatory embellishment is unnecessary, because enforcement procedure is clearly set forth in the statutes. 26 U.S.C. §7602 et seq. Similarly, there is no need for regulations regarding the jurisdiction of a district court because the statutes themselves also specifically vest jurisdiction. 26 U.S.C. §§7402(b), 7604(a). Because Congress has spoken clearly, there was no need to promulgate or refer to regulations. *RJR Nabisco, Inc. v. United States*, 955 F.2d. 1457, 1464 (11th Cir.1992). Therefore, respondent's argument that without regulations the statutes are not operative is without merit."

"Respondent argues that there is no personal jurisdiction over him because he is not "federal subject" and is not a "person" who owes an obligation to pay taxes to the federal government. Respondent alleges that petitioner has failed to produce any written documentation that he has agreed to subject himself to federal income tax. Respondent argues that he is not a citizen of the United States but rather a free citizen of the republic of Florida. ... Respondent's argument has consistently been rejected. *United States v. Gerads*, 999 F.2d. 1255, 1256 (8th Cir.1993)(Minnesota); *United States v. Price*, 798 F.2d. 111, 112-13 (5<sup>th</sup> Cir.1986)(Texas). Additionally, *Stoecklin v. C.I.R.*, 865 F.2d. at 1224 stated "Stoecklin's arguments that he is not subject to the income tax laws are equally frivolous."

[United States v. Stoecklin, 848 F.Supp. 1521 (1994)]

### **27 C.F.R. Part 70--Procedure and Administration, Subpart A-Scope**

#### **"§70.1 General.**

"This part sets forth the procedural and administrative rules of the Bureau of Alcohol, Tobacco and Firearms for:

"(a) The issuance and enforcement of summonses, examination of books of account and witnesses, administration of oaths, entry of premises for examination of taxable objects, granting of rewards for information, canvass of regions for taxable objects and persons, and authority of ATF officers.

"(b) The use of commercial banks for payment of excise taxes imposed by 26 U.S.C. Subtitles E and F.

"(c) The preparing or executing of returns; deposits; payment on notice and demand; assessment; abatements, credits and refunds; limitations on assessment; limitations on credit or refund; periods of limitation in judicial proceedings; interest; additions to the tax, additional amounts, and assessable penalties; enforced collection activities; authority for establishment, alteration, and distribution of stamps, marks, or labels; jeopardy assessment of alcohol, tobacco and firearms taxes, and registration of persons paying a special tax.

"(d) Distilled spirits, wines, beer, tobacco products, cigarette papers and tubes, firearms, ammunition, and explosives."

[27 C.F.R. Part 70--Procedure and Administration, Subpart A--Scope, §70.1]

### **7 C.F.R. Part 3--Debt Management, Subpart A-Settlement of Small or Old Debts**

#### **"§3.1 Purposes of the act and regulations.**

"The principal purposes of the act and of the regulations in this part are to provide means of: (a) Settling, by



compromise, adjustment or cancellation relatively small debts long past due and owing to the Government arising from loans or payments made under farm programs administered by the Department; (b) recovering by the Department of substantial sums which are found uncollectible when the indebtednesses are treated as full obligations, and which otherwise would probably never be collected; (c) clearing the accounts of balances so small as not to warrant continued efforts of collection; and (d) the clearing of the account of the records of indebtedness made uncollectible by reason of the death or disappearance of the debtors. The existence of the act will neither serve as grounds for any relaxation in the general collection policy of the Department nor should it serve as grounds for any lessening of the efforts of farmers to pay their indebtedness."

[7 C.F.R. Part 3--Debt Management, Subpart A--Settlement of Small or Old Debts, §3.1]

### **26 C.F.R. §301.6321-1**

#### **"Lien for taxes**

"If any person liable to pay any tax neglects or refuses to pay the same after demand, [..]."

[26 C.F.R. §301.6321-1]

### **26 C.F.R. §301.6601-1**

#### **"Interest on underpayments**

"(a) *General rule.* (1) Interest at the annual rate referred to in the regulations under section 6621 shall be paid on any unpaid amount of tax from the last date prescribed for payment of the tax (determined without regard to any extension of time for payment) to the date on which payment is received."

[26 C.F.R. §301.6601-1]

### **26 C.F.R. §301.6651-1**

#### **"Failure to file tax return or to pay tax**

"(a) *Addition to the tax--*(1) *Failure to file tax return.* In case of failure to file a return required under authority of-

"(i) Subchapter A, chapter 61 of the Code, relating to returns and records (other than sections 6015, and 6016, relating to declarations of estimated tax, and part III thereof, relating to information returns);

"(ii) Subchapter A, chapter 51 of the Code, relating to distilled spirits, wines, and beer;

"(iii) Subchapter A, chapter 52 of the Code, relating to cigars, cigarettes, and cigarette papers and tubes; or

"(iv) Subchapter A, chapter 53 of the Code, relating to machine guns, destructive devices, and certain other firearms; and...."

[26 C.F.R. §301.6651-1]

### **26 U.S.C. §6702**

"(a) *Civil Penalty.--If--* (1) any individual files what purports to be a return' of a tax imposed by subtitle A but which-- (A) does not contain information on which the substantial correctness of the self-assessment may be judged, or (B) contains information that on its face indicates that the self-assessment is substantially incorrect; and (2) the conduct referred to in paragraph (1) is due to-- (A) a position which is frivolous, or (B) a desire (which appears on the purported return) to delay or impede the administration of Federal income tax laws; then such individual shall pay a penalty of \$500.

"(b) *Penalty in Addition to Other Penalties.--* The penalty imposed by subsection (a) shall be in addition to any other penalty provided by law."

[26 U.S.C. §6702]

### **26 U.S.C.A., §6702, Notes**

- .. notwithstanding fact that taxpayer was not obligated to report his tax liability, *Bradley v. U.S.*, Cal.App.9 (Cal.) 1987, 817 F.2d. 1400." Note 8.

- .. taxpayers, assessed a penalty based on amended return claiming they received no income or gain because their services rendered and compensation received constituted an equal exchange of value, were not penalized for expressing their ideas on tax planning and, in any event, compelling governmental interests of maintaining a revenue system suffices to

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override the fundamental right of freedom of expression and governing regulation is narrowly drawn to avoid unnecessary intrusion on freedom of expression. *McCullough v. Secretary of Treasury*, D.C.Miss.1985, 621 F.Supp. 750." Note 9.

- .. assessment action is subject to judicial review. ... taxpayer may immediately apply for a refund of penalty and if such is denied he has full access to the courts." Note 11. [Cites omitted.]

"Internal Revenue Service properly imposed \$500 civil penalty on taxpayer who filed tax return reflecting obviously incorrect self-assessment based on patently frivolous legal theory that Congress was not empowered to levy tax on wage and salary income, and which included words "For Information only [sic] Not a Return" on signature line." Note 17. [Cites omitted.]

- .. taxpayer, who had claimed that he was a natural individual and unenfranchised freeman who neither requested, obtained nor exercised any privilege from any agency of the government, could be assessed a penalty for filing a frivolous tax return. *Holker v. U.S.*, C.A.Minn.1984, 737 F.2d. 751." Note 17.

"Taxpayer's blanket assertion of constitutional privilege to decline to disclose any information requested on income tax form was ineffective and, absent any specification of legitimate reasons for the particular objections, return was of "frivolous" nature so as to warrant imposition of penalty." Note 23. [Cites omitted.]

"Frivolous return penalty of \$500 was properly assessed against taxpayers who filed amended return claiming refund on ground that wages had been erroneously reported as income but were now considered by taxpayers exempt as having been received in equal exchange for services, pursuant to statute providing for imposition of civil penalty for filing of frivolous income tax return, where courts which had considered that position had uniformly rejected it as patently without merit. *Sisemore v. U.S.*, C.A.6 (Tenn.) 1986, 797 F.2d. 268." Note 27.

"Amended income tax return claiming that wages were not income was frivolous and subject to penalty due to information on its face indicating self-assessment was substantially incorrect contention that an individual receives no taxable gain from exchange of labor for money is meritless. *Beard v. U.S.*, E.D.Tenn.1986, 630 F.Supp. 92." Note 27.

- .. "frivolous" tax return based on long-defunct argument that wages or salaries did not constitute income. *Beckelheimer v. U.S.*, M.D.Tenn.1985, 623 F.Supp. 115." Note 27.

"Document, which was purported to be an amended tax return, which reflected that taxpayer and his wife had earned wages of \$18,646 but had asserted no tax was owed, and which was based on a position that wages were not taxable income, was a frivolous return, so that taxpayer was liable for a civil penalty of \$500. *Hill v. U.S.*, D.C.Tenn.1984, 599 F.Supp. 118." Note 27.

"Taxpayer was properly assessed penalty for filing frivolous income tax return on which he refused to state his wages, contending that wages did not represent taxable income. *Neal v. Regan*, D.C.Ind. 1984, 587 F.Supp. 1558." Note 27.

[For same position as stated above see *Lovell v. U.S.*, D.C.Wis. 1984, 579 F.Supp. 1047, affirmed 753 F.2d. 1077, affirmed 755 F.2d. 517; *Googe v. Secretary of the Treasury*, C.C.Tenn. 1983, 577 F.Supp. 758.] Note 27.  
[26 U.S.C.A., §6702, Notes 8, 9, 11, 17, 23, 27]

### **26 U.S.C. §6703(a)**

"(a) BURDEN OF PROOF.--In any proceeding involving the issue of whether or not any person is liable for a penalty under section 6700, 6701, or 6702, the burden of proof with respect to such issue shall be on the Secretary."  
[26 U.S.C. §6703(a)]

### **Treasury Decision 1995, June 12, 1914.**

"In special excise and income-tax assessments a notice on Form 647 is required to be given in all cases where the required return is filed in due time. This, however, is simply a preliminary notice of assessment, to be followed, in case of nonpayment, by a formal notice and demand which the law clearly contemplates and which the courts hold to be necessary before the delinquent taxpayer becomes chargeable with penalty and interest."

[Treasury Decision 1995, June 12, 1914]

### **26 U.S.C. §6331(a)**

"AUTHORITY OF SECRETARY. --If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any **officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia**, by serving a

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notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official." [Bold added.]  
[26 U.S.C. §6331(a)]

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**26 U.S.C. §6331(b)**

"(b) SEIZURE AND SALE OF PROPERTY.--The term "levy" as used in this title includes the power of distraint and seizure by any means. Except as otherwise provided in subsection (e), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible)."  
[26 U.S.C. §6331(b)]

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**Black's Law Dictionary: Take**

"TAKE. To lay hold of; to gain or receive into possession, to seize; to deprive one of the use or possession of; to assume ownership."  
[Black's Law Dictionary, Revised Fourth Edition, 1968; p. 1625]

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**Black's Law Dictionary: Taking**

"TAKING. In criminal law and torts." The act of laying hold upon an article, with or without removing the same. It implies a transfer of possession, dominion, or control."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1626]

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**Legal Thesaurus: Take**

"**take** acquire (*secure*), adopt, apprehend (*arrest*), attach (*seize*), carry (*transport*), derive (*receive*), despoil, endure (*suffer*), excise (*levy a tax*), gain, hijack, impound, impress (*procure by force*), inherit, loot, obtain, partake, pilfer, plunder, preempt, procure, profit, purloin, reap, receive (*acquire*), seize (*apprehend*), seize (*confiscate*), sequester (*seize property*), spoils, transport, trust, usurp"  
[Legal Thesaurus, Deluxe Edition, William C. Burton, Ed., p. 992]

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**Legal Thesaurus: Taking**

"**taking** acquisition, apprehension (*act of arresting*), arrogation, confiscatory, disseisin, distress (*seizure*), plagiarism"  
[Legal Thesaurus, Deluxe Edition, William C. Burton, Ed., p. 995]

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**Bouvier's Law Dictionary: Take**

"TAKE. A technical expression which signifies to be entitled to: as, a devisee will take under the will.  
"To seize: as, to take and carry away, either lawfully or unlawfully."  
"In its usual signification the word taken implies a transfer of dominion, possession, or control."  
[Bouvier's Law Dictionary, Vol. II, Third Revision, Eighth Edition, 1914, p. 3218]

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**Bouvier's Law Dictionary: Taking**

"TAKING. The act of laying hold upon an article, with or without removing the same. LARCENY; ROBBERY"  
[Bouvier's Law Dictionary, Vol. II, Third Revision, Eighth Edition, 1914, p. 3218]

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**Black's Law Dictionary: Seize**

"SEIZE. To put in possession, invest with fee simple, be seized of or in, be legal possessor of, or be holder in fee simple."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1524]

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**Black's Law Dictionary: Seizure**

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"SEIZURE. To take possession of forcibly, to grasp, to snatch, or to put in possession."

"The act performed by an officer of the law, under the authority and exigence of a writ, in taking into the custody of the law the property, real or personal, of a person against whom the judgment of a competent court has passed, condemning him to pay a certain sum of money, in order that such property may be sold, by authority and due course of law, to satisfy the judgment. Or the act of taking possession of goods in consequence of a violation of public law."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1525]

#### **Bouvier's Law Dictionary: Seizure**

"SEIZURE. In Practice. The act of taking possession of the property of a person condemned by the judgment of a competent tribunal to pay a certain sum of money, by a sheriff, constable, or other officer lawfully authorized thereto, by virtue of an execution, for the purpose of having such property sold according to law to satisfy the judgment." [Cites omitted.]

"The seizure is complete as soon as the goods are within the power of the officer; Haggerty v. Wilber, 16 Johns. (N. Y.) 287, 8 Am. Dec. 321...."

[Bouvier's Law Dictionary, Vol. II, Third Revision, Eighth Edition, 1914, p. 3037]

#### **Legal Thesaurus: Seizure**

"seizure apprehension (*act of arresting*), appropriation (*taking*), arrest, arrogation, disseisin, forfeiture, (*act of forfeiting*), garnishment, infringement, levy, occupation (*possession*), onset (*assault*), plunder, sequestration, taking"  
[Legal Thesaurus, Deluxe Edition, William C. Burton, Ed., p. 953]

#### **Black's Law Dictionary: Distraint**

"DISTRRAINT. Seizure; the act of distraining or making a distress." [Cite omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 561]

#### **28 U.S.C. §3101. Prejudgment remedies**

"(a) **Application.--(1)**The United States may, in a proceeding in conjunction with the complaint or at any time after the filing of a civil action on a claim for a debt, make application under oath to a court to issue any prejudgment remedy.

"(2) Such application shall be filed with the court and shall set forth the factual and legal basis for each prejudgment remedy sought.

"(3) Such application shall--

" (A) state that the debtor against whom the prejudgment remedy is sought shall be afforded an opportunity for a hearing; and

"(B) set forth with particularity that all statutory requirements under this chapter for the issuance of the prejudgment remedy sought have been satisfied.

"(b) **Grounds.-Subject to** section 3102, 3103, 3104, or 3105, a prejudgment remedy may be granted by any court if the United States shows reasonable cause to believe that--

"(1) the debtor--

"(A) is about to leave the jurisdiction of the United States with the effect of hindering, delaying, or defrauding the United States in its effort to recover a debt;

"(B) has or is about to assign, dispose, remove, conceal, ill treat, waste, or destroy property with the effect of hindering, delaying, or defrauding the United States;

"(C) has or is about to convert the debtor's property into money, securities, or evidence of debt in a manner prejudicial to the United States with the effect of hindering, delaying, or defrauding the United States; or

"(D) has evaded service of process by concealing himself or has temporarily withdrawn from the jurisdiction of the United States with the effect of hindering, delaying, or defrauding the United States; or

"(2) a prejudgment remedy is required to obtain jurisdiction within the United States and the prejudgment remedy sought will result in obtaining such jurisdiction.

"(c) **Affidavit.--(1)** The application under subsection (a) shall include an affidavit establishing with particularity to the court's satisfaction facts supporting the probable validity of the claim for a debt and the right of the United States to recover what is demanded in the application.

"(2) The affidavit shall state--

"(A) specifically the amount of the debt claimed by the United States and any interest or costs attributable to such debt;

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"(B) one or more of the grounds specified in subsection (b); and

"(C) the requirements of section 3102(b), 3103(a), 3104(a), or 3105(b), as the case may be.

"(3) No bond is required of the United States.

"(d) **Notice and hearing.--**(1) On filing an application by the United States as provided in this section, the counsel for the United States shall prepare, and the clerk shall issue, a notice for service on the debtor against whom the prejudgment remedy is sought and on any other person whom the United States reasonably believes, after exercising due diligence, has possession, custody, or control of property affected by such remedy. Three copies of the notice shall be served on each such person. The form and content of such notice shall be approved jointly by a majority of the chief judges of the Federal districts in the State in which the court is located and shall be in substantially the following form:

"NOTICE

""You are hereby notified that this [property] is being taken by the United States Government ('the Government'), which says that [name of debtor] owes it a debt of \$ [amount] for [reason for debt] and has filed a lawsuit to collect this debt. The Government says it must take this property at this time because [recite the pertinent ground or grounds from section 3101(b)]. The Government wants to make sure [name of debtor] will pay if the court determines that this money is owed.

""In addition, you are hereby notified that there are exemption under the law which may protect some of this property from being taken by the Government if [name of debtor] can show that the exemptions apply. Below is a summary of the major exemptions which apply in most situations in the State of [State where property is located]:

""[A statement summarizing in plain and understandable English the election available with respect to such State under section 3014 and the types of property that may be exempted under each of the alternatives specified in paragraphs (1) and (2) of section 3014(a), and a statement that different property may be so exempted with respect to the State in which the debtor resides.]

""If you are [name of debtor] and you disagree with the reason the Government gives for taking your property now, or if you think you do not owe the money to the Government that it says you do, or if you think the property the Government is taking qualifies under one of the above exemptions, you have a right to ask the court to return your property to you.

""If you want a hearing, you must promptly notify the court. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. If you wish, you may use this notice to request the hearing by checking the box below and mailing this notice to the court clerk. You must also send a copy of your request to the Government at [address], so the Government will know you want a hearing. The hearing will take place within 5 days after the clerk receives your request, if you ask for it to take place that quickly, or as soon after that as possible.

""At the hearing you may explain to the judge why you think you do not owe the money to the Government, why you disagree with the reason the Government says it must take your property at this time, or why you believe the property the Government has taken is exempt or belongs to someone else. You may make any or all of these explanations as you see fit.

""If you think you live outside the Federal judicial district in which the court is located, you may request, not later than 20 days after you receive this notice, that this proceeding to take your property be transferred by the court to the Federal judicial district in which you reside. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. You must also send a copy of your request to the Government at [address], so the Government will know you want the proceeding to be transferred.

""Be sure to keep a copy of this notice for your own records. If you have any questions about your rights or about this procedure, you should contact a lawyer, or office of public legal assistance, or the clerk of the court. The clerk is not permitted to give legal advice, but can refer you to other sources of information.

""(2)By requesting, at any time before judgment on the claim for a debt, the court to hold a hearing, the debtor may move to quash the order granting such remedy. The court shall hold a hearing on such motion as soon as practicable, or, if requested by the debtor, within 5 days after receiving the request for a hearing or as soon thereafter as possible. The issues at such hearing shall be limited to--

"(A) the probable validity of the claim for the debt for which such remedy was granted and of any defense or claim of exemption asserted by such person;

"(B) compliance with any statutory requirement for the issuance of the prejudgment remedy granted;

"(C) the existence of any ground set forth in subsection (b); and

"(D) the inadequacy of alternative remedies (if any) to protect the interests of the United States.

"(e) **Issuance of writ.--**On the court's determination that the requirements of subsections (a), (b), and (c) have been met, the court shall issue all process sufficient to put into effect the prejudgment remedy sought." [Brackets and bold original.]

[28 U.S.C. §3101]

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## **28 U.S.C. §3102. Attachment**

**"(a) Property subject to attachment.--**(1) **A n y** property in the possession, custody, or control of the debtor and in

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which the debtor has a substantial nonexempt interest, **except earnings**, may be attached pursuant to a writ of attachment in an action or proceeding against a debtor on a claim for a debt and may be held as security to satisfy such judgment, and interest and costs, as the United States may recover on such claim. [Bold in text is added.]

"(2) The value of property attached shall not exceed the amount by which the sum of the amount of the debt claimed by the United States and the amount of interest and costs reasonably likely to be assessed against the debtor by the court exceeds the aggregate value of the nonexempt interest of the debtor in any--

"(A)property securing the debt; and

"(B)property garnished or in receivership, or income sequestered, under this subchapter.

"**(b)Availability of attachment.**-If the requirements of section 3101 are satisfied, a court shall issue a writ authorizing' the United States to attach property in which the debtor has a substantial nonexempt interest, as security for such judgment (and interest and costs) as the United States may recover on a claim for a debt--

"(1) in an action on a contract, express or implied, against the debtor for payment of money, only if the United States shows reasonable cause to believe that--

"(A)the contract is not fully secured by real or personal property; or

"(B)the value of the original security is substantially diminished, without any act of the United States or the person to whom the security was given, below the amount of the debt;

"(2) in an action against the debtor for damages' in tort;

"(3) if the debtor resides outside the jurisdiction of the United States; or

"(4) in an action to recover a fine, penalty, or tax.

"**(c) Issuance of writ; contents.**--(1) Subject to subsections (a) and (b), a writ of attachment shall be issued by the court directing the United States marshal of the district where property described in subsection (a) is located to attach the property.

"(2) Several writs of attachment may be issued at the same time, or in succession, and sent to different judicial districts until sufficient property is attached."

"(3) The writ of attachment shall contain--

"(A)the date of the issuance of the writ:

"(B)the identity of the court, the docket number of the action, and the identity of the cause of action;

"(C) the name and last known address of the debtor; "(D)the amount to be secured by the attachment; and "(E)a reasonable description of the property to be attached.

"**(d)Levy of attachment.**--[...]"

"**(e) Return of writ; duties of marshal; further return.**--

" **Levy of attachment as lien on property; satisfaction of lien.**--[...]"

"**(g)Reduction or dissolution of attachment.**--[...]" "**(h)Replevin of attached property by debtor; bond.**--[...],,

"**(i) Preservation of personal property under attachment.**--[...]"

"**(j) Judgment and disposition of attached property.**--[...]" [The substance of paragraphs (d) through (j) are included by way of reference.]

[28 U.S.C. §3102]

## **28 U.S.C. §3104**

### **"Garnishment**

"(a) **In general.** If the requirements of section 3101 are satisfied, a court may issue a writ of garnishment against property (excluding earnings) in which the debtor has a substantial nonexempt interest and which is in the possession, custody, or control of a person other than the debtor in order to satisfy a claim for a debt. Co-owned property shall be subject to garnishment to the same extent as co-owned property is subject to garnishment under the law of the State in which such property is located. A court may issue simultaneous separate writs of garnishment to several garnishees."

"(b) Writ. (1) Subsections (b)(2) and (c) of section 3205 shall apply with respect to garnishment under this section, except that for purposes of this section--

"(A) earnings of the debtor shall not be subject to garnishment [...]"

[28 U.S.C. §3104]

## **8.5 Anticipatory arrangements**

### **U.S. v. Basye, 410 U.S. 441 (1973)**

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“The principle of *Lucas v. Earl*, that he who earns income may not avoid taxation through anticipatory arrangements no matter how clever or subtle, has been repeatedly invoked by this Court and stands today as a cornerstone of our graduated income tax system. See, e. g., *Commissioner v. Harmon*, 323 U.S. 44 (1944); 451\*451 *United States v. Joliet & Chicago R. Co.*, 315 U.S. 44 (1942); *Helvering v. Eubank*, 311 U.S. 122 (1940); *Burnet v. Leininger*, 285 U.S. 136 (1932). And, of course, that principle applies with equal force in assessing partnership income.”

[U.S. v. Basye, 410 U.S. 441 (1973) SOURCE: [https://scholar.google.com/scholar\\_case?case=2042383824145659473j](https://scholar.google.com/scholar_case?case=2042383824145659473j)]

## 8.6 What is “income”?

The authorities in this section come from the following article:

1. *What is Income?: Some Basics*, Constitutional Attorney Larry Becraft  
<http://home.hiwaay.net/~becraft/WhatIsIncome.html>
2. *What is “income”?*, Family Guardian Fellowship  
<https://famguardian.org/Subjects/Taxes/Evidence/WhatIsIncome.htm>

### What Is Income?, Sept. 29, 2018, Larry Becraft

#### Some Basics

(updated links, Sept. 29, 2018)

The subject of the various prior and current income tax acts, income, has always been directly connected to a particular phrase: “gains, profits, and income.” For example, the 1894 act, titled “An Act To reduce taxation, to provide revenue for the Government, and for other purposes,” approved August 27, 1894, [28 Stat. 509](#), ch. 349, provided as follows (starting on page 553):

*“SEC. 27. That from and after the first day of January, eighteen hundred and ninety-five, and until the first day of January, nineteen hundred, there shall be assessed, levied, collected, and paid annually upon the gains, profits, and income received in the preceding calendar year by every citizen of the United States, whether residing at home or abroad, and every person residing therein, whether said gains, profits, or income be derived from any kind of property, rents, interest, dividends, or salaries, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere, or from any other source whatever, \*\*\*.”*

This tax was declared unconstitutional in the Pollock case when the Supreme Court declared it to be a direct tax that failed to comply with the apportionment requirement of the Constitution. See *Pollock v. Farmers’ Loan & Trust Co.*, 157 U.S. 429, 15 S.Ct. 673, aff. reh., [158 U.S. 601](#), 15 S.Ct. 912 (1895).

In 1909, Congress proposed for ratification by the States the Sixteenth Amendment, the federal income tax amendment. At the same time, it adopted the Corporate Excise Tax of 1909, 36 Stat. 112, §38, which was in essence an income tax. This tax was found constitutional as an excise tax in *Flint v. Stone Tracy Co.*, 220 U.S. 107, 31 S.Ct. 342, 349 (1911).

A couple of years later in *Stratton’s Independence, Ltd. v. Howbert*, 231 U.S. 399, 415, 34 S.Ct. 136 (1913), a case involving the 1909 act, the Supreme Court defined “income” as **“the gains derived from capital, from labor, or from both combined.”**

After the alleged ratification of the Sixteenth Amendment, Congress adopted in October, 1913, the first federal income tax based thereon. In reference to the subject of this tax, income, this act, titled “An Act To reduce tariff duties and to provide revenue for the Government, and for other purposes,” [38 Stat. 114](#), 167, ch. 16, imposed this tax as follows:

*“B. That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever, including the income from but not the value of property acquired by gift, bequest, devise, or descent.”*

Like the challenge made to the 1909 Corporate Excise Tax Act, a challenge was also made to the constitutionality of this

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1913 income tax act. The Supreme Court in [Brushaber v. Union Pacific Railroad Co.](#), 240 U.S. 1, 36 S.Ct. 236 (1916), declared that the federal income tax was, in a constitutional sense, an excise tax. See also [Hale v. Iowa State Bd. of Assessment and Review](#), 302 U.S. 95, 106 (1937) ("Finally, and even more conclusively, decisions of our own court forbid us to stigmatize as unreasonable the classification of a tax upon net income as something different from a property tax, if not substantially an excise. People ex rel. Clyde v. Gilchrist, 262 U.S. 94, 43 S.Ct. 501; New York ex rel. Cohn v. Graves, 300 U.S. 308, 57 S.Ct. 466, 108 A.L.R. 821; Brushaber v. Union Pacific R.R. Co., 240 U.S. 1, 36 S.Ct. 236, L.R.A.1917D, 414, Ann.Cas. 1917B, 713, all point in that direction.").

A few months after the decision in Brushaber, Congress repealed the 1913 income tax act and enacted a new federal income tax. See "An Act To increase the revenue, and for other purposes," [39 Stat. 756](#), 757, ch. 463. This act followed its predecessors and defined income as follows:

*"INCOME DEFINED.*

*"SEC. 2. (a) That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever."*

A year later, Congress amended the 1916 act via the 1917 act. See "An Act To provide revenue to defray war expenses, and for other purposes", [40 Stat. 300](#), 329, ch. 63. Again, the phrase, "gains, profits, and income," appeared in this act:

*"SEC. 1200. That subdivision (a) of section two of such Act of September eighth, nineteen hundred and sixteen, is hereby amended to read as follows:*

*"(a) That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income, derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever."*

The Revenue Act of 1918, titled "An Act To provide revenue, and for other purposes", [40 Stat. 1057](#), ch. 18, contained this "gains, profits, and income" phrase:

*"GROSS INCOME DEFINED.*

*"SEC. 213. That for the purposes of this title (except as otherwise provided in section 233) the term 'gross income'—*

*"(a) Includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including in the case of the President of the United States, the judges of the Supreme and inferior courts of the United States, and all other officers and employees, whether elected or appointed, of the United States, Alaska, Hawaii, or any political subdivision thereof, or the District of Columbia, the compensation received as such), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever."*

The Revenue Act of 1921 was adopted by Congress on November 23, 1921. See "An Act To reduce and equalize taxation, to provide revenue, and for other purposes," [42 Stat. 227](#), 237-38, ch. 136. It contained this phrase:

*"GROSS INCOME DEFINED.*

*SEC. 213. That for the purposes of this title (except as otherwise provided in section 233) the term 'gross income'—*

*"(a) Includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including in the case of the President of the United States, the judges of the Supreme and inferior courts of the United States, and all other officers and employees, whether elected or appointed, of the United States, Alaska, Hawaii, or any political subdivision thereof, or the District of Columbia, the compensation received as such), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever."*

The Revenue Act of 1924 was adopted by Congress on June 2, 1924. See "An Act To reduce and equalize taxation, to provide revenue, and for other purposes," [43 Stat. 253](#), 267, ch. 234. It contained this phrase:

*"GROSS INCOME DEFINED.*

*"SEC. 213. For the purposes of this title, except as otherwise provided in section 233—*

*"(a) The term 'gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including in the case of the President of the United States, the judges of the Supreme and inferior courts of the United States, and all other officers and employees, whether elected or appointed, of the United States, Alaska, Hawaii, or any political subdivision thereof, or the District of Columbia, the compensation received as such), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever."*

The Revenue Act of 1926, titled "An Act To reduce and equalize taxation, to provide revenue, and for other purposes," [44 Stat. 9](#), 23-24, ch. 27, contained this phrase:

*"GROSS INCOME DEFINED*

*"SEC. 213. For the purposes of this title, except as otherwise provided in section 233—*

*"(a) The term 'gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including in the case of the President of the United States, the judges of the Supreme and inferior courts of the United States, and all other officers and employees, whether elected or appointed, of the United States, Alaska, Hawaii, or any political subdivision thereof, or the District of Columbia, the compensation received as such), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever."*

The Revenue Act of 1928, titled "An Act To reduce and equalize taxation, provide revenue, and for other purposes," [45 Stat. 791](#), 797, ch. 852, contained this phrase:

*"SEC. 22. GROSS INCOME.*

*"(a) General definition.—'Gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever."*

The Revenue Act of 1932, titled "An Act To provide revenue, equalize taxation, and for other purposes," [47 Stat. 169](#), 178, ch. 209, contained this phrase:

*"SEC. 22. GROSS INCOME.*

*"(a) GENERAL DEFINITION.—'Gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. In the case of Presidents of the United States and judges of courts of the United States taking office after the date of the enactment of this Act, the compensation received as such shall be included in gross income; and all Acts fixing the compensation of such Presidents and judges are hereby amended accordingly."*

The Revenue Act of 1934, titled "An Act To provide revenue, equalize taxation, and for other purposes," [48 Stat. 680](#), 686-87, ch. 277, contained this phrase:

*"SEC. 22. GROSS INCOME.*

*"(a) GENERAL DEFINITION. —'Gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the*

*transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. In the case of Presidents of the United States and judges of courts of the United States taking office after June 6, 1932, the compensation received as such shall be included in gross income; and all Acts fixing the compensation of such Presidents and judges are hereby amended accordingly."*

The Revenue Act of 1936, titled "An Act To provide revenue, equalize taxation, and for other purposes," [49 Stat. 1648](#), 1657, ch. 690, contained this phrase:

"SEC. 22. GROSS INCOME.

*"(a) GENERAL DEFINITION.—'Gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. In the case of Presidents of the United States and judges of courts of the United States taking office after June 6, 1932, the compensation received as such shall be included in gross income; and all Acts fixing the compensation of such Presidents and judges are hereby amended accordingly."*

The Revenue Act of 1938, titled "An Act To provide revenue, equalize taxation, and for other purposes," [52 Stat. 447](#), 457, ch. 289, contained this phrase:

"SEC. 22. GROSS INCOME.

*"(a) GENERAL DEFINITION.—'Gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. In the case of Presidents of the United States and judges of courts of the United States taking office after June 6, 1932, the compensation received as such shall be included in gross income; and all Acts taxing the compensation of such Presidents and judges are hereby amended accordingly."*

And finally, the [1939 Internal Revenue Code](#) (53A, Statutes at Large) contained this phrase:

"SEC. 22. GROSS INCOME.

*"(a) GENERAL DEFINITION.—'Gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever."*

[Stratton's Independence, Ltd. v. Howbert](#), 231 U.S. 399, 415, 34 S.Ct. 136 (1913) ("for 'income' may be defined as the gains derived from capital, from labor, or from both combined, and here we have combined operations of capital and labor."); [Doyle v. Mitchell Bros. Co.](#), 247 U.S. 179, 185, 38 S.Ct. 467 (1918) ("Whatever difficulty there may be about a precise and scientific definition of 'income, it imports, as used here, something entirely distinct from principal or capital either as a subject of taxation or as a measure of the tax; conveying rather the idea of gain or increase arising from corporate activities. As was said in *Stratton's Independence v. Howbert*, 231 U.S. 399, 415: 'Income may be defined as the gain derived from capital, from labor, or from both combined'."); [Eisner v. Macomber](#), 252 U.S. 189, 207, 40 S.Ct. 189 (1920) ("Income may be defined as the gain derived from capital, from labor, or from both combined, provided it be understood to include profit gained through a sale or conversion of capital assets."); [Goodrich v. Edwards](#), 255 U.S. 527, 535, 41 S.Ct. 390 (1921) ("And the definition of 'income' approved by this Court is: 'The gain derived from capital, from labor, or from both combined, provided it be understood to include profits gained through sale or conversion of capital assets.'"); [Bowers v. Kerbaugh-Empire Co.](#), 271 U.S. 170, 174, 46 S.Ct. 449 (1926) ("income may be defined as gain derived from capital, from labor, or from both combined, including profit gained through sale or conversion of capital."); [CIR v. Culbertson](#), 337 U.S. 733, 740, 69 S.Ct. 1210 (1949) ("This is after all, but the application of an often iterated definition of income — the gain derived from capital, from labor, or from both combined."); and [CIR v. Glenshaw Glass Co.](#), 348 U.S. 426, 431, 75 S.Ct. 473 (1955) (defined income as "accessions to wealth, clearly realized"). See also [Noel v. Parrott](#), 15 F.2d. 669, 672 (4th Cir. 1926) ("It has been expressly decided that income, within the meaning of the Sixteenth Amendment and the Income Tax Acts passed pursuant thereto, is a gain derived from capital, from labor, or from both combined, including profit gained through sale or conversion of capital assets."). Other lower courts that have defined "income" simply by quoting *Eisner* are [CIR v.](#)

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Simmons Gin Co., 43 F.2d. 327, 328 (10th Cir. 1930); Bass v. Hawley, 62 F.2d. 721, 723 (5th Cir. 1933); Drier v. Helvering, 72 F.2d. 76 (D.C. Cir. 1934); Central R. Co. of New Jersey v. CIR, 79 F.2d. 697, 699 (3rd Cir. 1935); Hawke v. CIR, 109 F.2d. 946, 949 (9th Cir. 1940); National Bank of Commerce of Seattle v. CIR, 115 F.2d. 875, 876 (9th Cir. 1940); Sprouse v. CIR, 122 F.2d. 973, 975 (9th Cir. 1941); McKnight v. CIR, 127 F.2d. 572, 573 (5th Cir. 1942); Cheley v. CIR, 131 F.2d. 1018, 1020 (10th Cir. 1942); Meyer v. CIR, 383 F.2d. 883, 891 (8th Cir. 1967); *In re Given's Estate*, 323 Pa. 456, 462, 185 A. 778 (1936); State v. Flenner, 236 Ala. 228, 231, 181 So. 786 (1938); and Schuette v. Wisconsin Tax Comm., 234 Wis. 574, 586, 292 N.W. 9 (1940). See also Dallas Transfer & Terminal Warehouse Co. v. CIR, 70 F.2d. 95, 96 (5th Cir. 1934) ("Taxable income is not acquired by a transaction which does not result in the taxpayer getting or having anything he did not have before. Gain or profit is essential to the existence of taxable income. A transaction whereby nothing of exchangeable value comes to or is received by a taxpayer does not give rise to or create taxable income."); Hirsch v. CIR, 115 F.2d. 656, 657 (7th Cir. 1940); Connor v. United States, 439 F.2d. 974, 980 (5th Cir. 1971) ("We agree with the District Court that 'there must be gain before there is income within the meaning of the sixteenth amendment.'"); Beard v. South Carolina Tax Comm., 230 S.C. 357, 368, 95 S.E.2d 628 (1956) ("the word 'income' as used in a tax statute is to be taken in its ordinary sense of gain or profit."); Plasse v. Comm. of Revenue Services, 49 Conn. Sup. 38, 40, 858 A.2d. 919 (Conn.Super. 2003) ("Income may be defined as the gain derived from capital, from labor, or from both combined, provided it be understood to include profit gained through a sale or conversion of capital assets."); and Weiss v. McFadden, 353 Ark. 868, 876, 120 S.W.3d. 545 (2003) ("income for purposes of income taxation 'may be defined as the gain derived from capital, from labor, or from both combined.'").

And from Southern Pacific v. Lowe, 247 U.S. 330 (1928), "We must reject...the broad contention submitted in behalf of the government that all receipts ... everything that comes in ... are income".

Here is an interesting test for students of the federal income tax to perform. Download the searchable old tax acts: the Revenue Act of 1918 through the 1939 Code, the 1954 Code, and the 2002 version of the 1986 Code. Search these income tax acts for the phrase "gains, profits", which will thus find all references to this phrase, "gains, profits, and income." Why does this search demonstrate a certain pattern in the tax acts, with particular emphasis on non-resident aliens and foreign corporations?

\* \* \* \* \*

#### Taxing the Right To Work

Here are some important state cases regarding the taxability of compensation for labor:

O'Keefe v. City of Somerville, 190 Mass. 110, 76 N.E. 457, 458 (1906): "cannot levy an excise tax upon the business of a husbandman or an ordinary mechanic".

Sims v. Ahrens, 167 Ark. 557, 271 S.W. 720, 733 (1925): "[T]he Legislature has no power to declare as a privilege and tax for revenue purposes occupations that are of common right, but it does have the power to declare as privileges and tax as such for state revenue purposes those pursuits and occupations that are not matters of common right..."

Redfield v. Fisher, 135 Or. 180, 292 P. 813, 819 (Ore. 1930): "The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; but the individual's rights to live and own property are natural rights for the enjoyment of which an excise cannot be imposed."

Jerome H. Sheip Co. v. Amos, 100 Fla. 863, 130 So. 699, 705 (1930): gas tax case: "A man is free to lay hand upon his own property. To acquire and possess property is a right, not a privilege ... The right to acquire and possess property cannot alone be made the subject of an excise .... nor, generally speaking, can an excise be laid upon the mere right to possess the fruits thereof, as that right is the chief attribute of ownership."

Cary v. Bellingham, 41 Wn. 2d 468, 250 P.2d 114 (1952): excise can't be used to tax right to work.

Jack Cole Co. v. MacFarland, 337 S.W.2d. 453, 455-56 (Tenn. 1960): "Realizing and receiving income or earnings is not a privilege that can be taxed. \* \* \* Since the right to receive income or earnings is a right belonging to every person, this right cannot be taxed as a privilege."

\* \* \* \* \*

"Exempt" Pursuant to the Constitution

Starting with Regs 45 for the Revenue Act of 1918, certain sections of the regs mentioned that some income was “fundamentally” exempt from the tax, or exempt pursuant to the Constitution and thus not taxable by the Federal Government. For your convenience, extracts of these various regulations are included here:

[Regs 45](#)

[Regs 62](#)

[Regs 65](#)

[Regs 69](#)

[Regs 74](#)

[Regs 77](#)

[Regs 86](#)

[Regs 94](#)

[Regs 101](#)

[Regs 103](#)

[Regs 111](#)

[Regs 118](#)

Please notice that when Congress expanded the imposition of the tax to foreign companies maintaining an office or place of business in the United States, this phrase was extended to those companies.

[What is Income?, Attorney Larry Becraft; SOURCE: <http://home.hiwaay.net/~becraft/WhatIsIncome.html>]

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**Staples v. U.S., 21 F.Supp. 737 at 739 (1937)**

The Sixteenth Amendment authorizes the taxation without apportionment of "incomes, from whatever source derived." Income has been defined as "the gain derived from capital, from labor, or from both combined," [Stratton's Independence v. Howbert, 231 U.S. 399, 34 S.Ct. 136, 140, 58 L.Ed. 285](#), "including profit gained through sale or conversion of capital," [Doyle v. Mitchell Bros. Co., 247 U.S. 179, 38 S.Ct. 467, 62 L.Ed. 1054](#); [Eisner v. Macomber, 252 U.S. 189, 40 S.Ct. 189, 193, 64 L.Ed. 521, 9 A.L.R. 1570](#). The gain is, however, not taxable until it is realized. [North American Oil Consol. v. Burnet, 286 U.S. 417, 52 S.Ct. 613, 76 L.Ed. 1197](#). Furthermore, a gain from capital must be derived from it, not merely accruing to it. [Eisner v. Macomber, supra](#). In the case just cited Mr. Justice Pitney, after quoting the foregoing definition, said, [252 U. S. 189](#), at page 207, [40 S.Ct. 189, 193, 64 L. Ed. 521, 9 A.L.R. 1570](#):

"Brief as it is, it indicates the characteristic and distinguishing attribute of income essential for a correct solution of the present controversy. The government, although basing its argument upon the definition as quoted, placed chief emphasis upon the word 'gain, which was extended to include a variety of meanings; while the significance of the next three words was either overlooked or misconceived. 'Derived — from — capital'; 'the gain — derived — from — capital, etc. Here we have the essential matter: not a gain accruing to capital; not a growth or increment of value in the investment; but a gain, a profit, something of exchangeable value, proceeding from the property, severed from the capital, however invested or employed, and coming in, being 'derived' — that is, received or drawn by the recipient (the taxpayer) for his separate use, benefit and disposal — that is income derived from property. Nothing else answers the description.

"The same fundamental conception is clearly set forth in the Sixteenth Amendment [740\\*740](#) — 'incomes, from whatever source derived' — the essential thought being expressed with a conciseness and lucidity entirely in harmony with the form and style of the Constitution."

[SOURCE: [https://scholar.google.com/scholar\\_case?case=6472922329517103644](https://scholar.google.com/scholar_case?case=6472922329517103644)]

[Staples v. U.S., 21 F.Supp. 737 at 739 (1937)]

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**Oliver v. Halstead, 196 Va. 922, 86 S.E.2d. 858 (1955)**

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"There is a clear distinction between 'profit' and 'wages', or a compensation for labor. Compensation for labor (wages) cannot be regarded as profit within the meaning of the law. The word 'profit', as ordinarily used, means the gain made upon any business or investment -- a different thing altogether from the mere compensation for labor."

[SOURCE: [https://scholar.google.com/scholar\\_case?case=2408159815955863618](https://scholar.google.com/scholar_case?case=2408159815955863618)]

[Oliver v. Halstead 196 Va. 922, 86 S.E.2d. 858 (1955)]

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**Helvering v. Edison Bros. Stores, 133 F.2d. 575 (1943)**

The argument on behalf of the taxpayer runs as follows: The treasury regulations interpreting revenue acts prior to the Act of 1934, under which a corporation was held not to realize taxable income from the purchase and sale of its own stock, have acquired the force of law by repeated reenactments of the income tax laws by Congress without change in the definition of gross income. The regulation in question thus having acquired the force of law, the taxpayer contends, the Treasury Department is without power to change it in the absence of a change in the definition of gross income by Congress itself. In the view of the taxpayer it follows that Articles 22(a)-6 and 22(a)-16 of Treasury Regulations 86 and 94 are void. The argument is pressed further by the contention that the interpretation of § 22(a) of the Revenue Acts of 1934 and 1936, now advanced by the Treasury Department, is beyond the power of either the Department or Congress as conflicting with the meaning of the word "income" as used in the Sixteenth Amendment to the Constitution; and finally, the taxpayer contends that if valid the treasury regulations in question here are not applicable to the taxpayer's purchase and sale of its own stock in the circumstances of this case. The Commissioner contends for the reverse of these propositions. Accordingly, the taxpayer seeks reversal of the decision of the Board of Tax Appeals affirming the determination of a deficiency in its income tax for 1937, and the Commissioner, a reversal of the Board's decision reversing the determination of a deficiency against the taxpayer for the year 1935.

[. . .]

The principles controlling in the decision of the questions stated are established. **The Treasury Department cannot, by interpretative regulations, make income of that which is not income within the meaning of the revenue acts of Congress, nor can Congress, without apportionment, tax as income that which is not income within the meaning of the Sixteenth Amendment. Eisner v. Macomber, 252 U.S. 189, 40 S.Ct. 189, 64 L.Ed. 521, 9 A.L.R. 1570; M. E. Blatt Co. v. United States, 305 U.S. 267, 59 S.Ct. 186, 83 L. Ed. 167. But Congress, in defining gross income in the various revenue acts, manifested its intention to use to its fullest extent the power granted it by the Sixteenth Amendment. Douglas v. Willcuts, 296 U.S. 1, 9, 56 S.Ct. 59, 80 L.Ed. 3, 101 A.L.R. 391; Helvering v. Clifford, 309 U.S. 331, 341, 60 S.Ct. 554, 84 L.Ed. 788. What is or is not income within the meaning of the Sixteenth Amendment must be determined in each case "according to truth and substance, without regard to form." Eisner v. Macomber, supra [252 U.S. 189, 40 S.Ct. 193, 64 L.Ed. 521, 9 A.L.R. 1570]. The meaning of the word "income" in the Sixteenth Amendment and in the acts of Congress pursuant to the Amendment is that given it in common speech and every day usage. Old Colony R. Co. v. Commissioner, 284 U.S. 552, 52 S.Ct. 211, 76 L.Ed. 484; United States v. American Trucking Ass'ns, 310 U.S. 534, 60 S.Ct. 1059, 84 L.Ed. 1345.** In the construction of the revenue acts in question here, and of the administrative regulations interpreting them, we may put aside as not controlling the meaning of income in the language of accountancy and economics. Nor can the ruling of one administrative department of the government concerning income accounting control that of another department made for an entirely different purpose under another act of Congress. Old Colony R. Co. v. Commissioner, supra.

[SOURCE: [https://scholar.google.com/scholar\\_case?case=10667411908906006440](https://scholar.google.com/scholar_case?case=10667411908906006440)]

[Helvering v. Edison Bros. Stores, 133 F.2d. 575 (1943)]

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**Flora v. U.S., 362 U.S. 145, (1959)**

"Of course, the Government can collect the tax from a District Court suitor by exercising its power of distraint—if he does not split his cause of action—but we cannot believe that compelling resort to this extraordinary procedure is either wise or in accord with congressional intent. Our system of taxation is based upon voluntary assessment and payment, not upon distraint.<sup>[42]</sup>"

[. . .]

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"[Footnote 43] If the government is forced to use these remedies(distrain) on a large scale, it will affect adversely the taxpayers willingness to perform under our VOLUNTARY assessment system."

[SOURCE: [https://scholar.google.com/scholar\\_case?case=13305625317215905](https://scholar.google.com/scholar_case?case=13305625317215905)]

[Flora v. U.S., 362 U.S. 145 (1960)]

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**Evans v. Gore, 253 U.S. 245 (1920)**

"After further consideration, we adhere to that view and accordingly hold that the Sixteenth Amendment does not authorize or support the tax in question. " (A tax on salary)

[SOURCE: [https://scholar.google.com/scholar\\_case?case=5009531389693487180](https://scholar.google.com/scholar_case?case=5009531389693487180)]

[Evans v. Gore, 253 U.S. 245 (1920)]

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**Edwards v. Keith, 231 F. 110, 113 (1916)**

"The phraseology of form 1040 is somewhat obscure; perhaps it means that there shall be included actual receipts (a) for services rendered in the year for which return is made and (b) for unpaid accounts, or charges for services rendered in former years, and paid in the year for which return is made. But it matters little what it does mean; the statute and the statute alone determines what is income to be taxed. It taxes only income "derived" from many different specified sources; one does not "derive income" by rendering services and charging for them.."

[Edwards v. Keith, 231 F. 110, 113 (1916)]

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**McCutchin v. Commissioner of IRS, 159 F.2d. 472**

"The 16th Amendment does not authorize laying of an income tax upon one person for the income derived solely from another." [wages]

[SOURCE: [https://scholar.google.com/scholar\\_case?case=14832216208055238603](https://scholar.google.com/scholar_case?case=14832216208055238603)]

[McCutchin v. Commissioner of IRS, 159 F.2d. 472]

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**Blatt Co. v. U.S., 305 U.S. 267, 59 S.Ct. 186 (1938)**

"Treasury regulations can add nothing to income as defined by Congress[9]."

Footnotes:

[9] [Koshland v. Helvering, 298 U.S. 441, 447.](#)

[SOURCE: [https://scholar.google.com/scholar\\_case?case=8974594538226603892](https://scholar.google.com/scholar_case?case=8974594538226603892)]

[Blatt Co. v. U.S., 305 U.S. 267, 59 S.Ct. 186 (1938)]

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**Commissioner of IRS v. Duberstein, 363 U.S. 278, 80 S.Ct. 1190 (1960)**

"The exclusion of property acquired by gift from gross income under the federal income tax laws was made in the first income tax statute [4](#) passed under the authority of the Sixteenth Amendment, and has been a feature of the income tax statutes ever since. The meaning of the term "gift" as applied to particular transfers has always been a matter of contention. [5](#) Specific and illuminating legislative history on the point does not appear to exist. Analogies and inferences drawn from other revenue provisions, such as the estate and gift taxes, are dubious. See Lockard v. Commissioner, 166 F.2d. 409. The meaning of the statutory term has been shaped largely by the decisional law."

[SOURCE: [https://scholar.google.com/scholar\\_case?case=13651737858641373965](https://scholar.google.com/scholar_case?case=13651737858641373965)]

[Commissioner of IRS v. Duberstein, 363 U.S. 278, 80 S.Ct. 1190 (1960)]

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**Central Illinois Publishing Service v. U.S., 435 U.S. 21 (1978)**

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"Decided cases have made the distinction between wages and income and have refused to equate the two."

[SOURCE: [https://scholar.google.com/scholar\\_case?case=14509910460633806612](https://scholar.google.com/scholar_case?case=14509910460633806612)]

[Central Illinois Publishing Service v. U.S., 435 U.S. 21 (1978)]

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**Anderson Oldsmobile, Inc. v. Hofferbert, 102 F.Supp. 902 (1952)**

"Constitutionally the only thing that can be taxed by Congress is "income." And the tax actually imposed by Congress has been on net income as distinct from gross income. The tax is not, never has been and could not constitutionally be upon "gross receipts".<sup>[3]</sup> "

Footnotes:

[3] See [Southern Pacific Co. v. Lowe, 247 U. S. 330, 38 S.Ct. 540, 62 L.Ed. 1142](#); [Doyle v. Mitchell Bros. Co., 247 U.S. 179, 38 S.Ct. 467, 62 L.Ed. 1054](#).

[SOURCE: [https://scholar.google.com/scholar\\_case?case=5147423276685227595](https://scholar.google.com/scholar_case?case=5147423276685227595)]

[Anderson Oldsmobile, Inc. v. Hofferbert, 102 F.Supp. 902 (1952)]

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**Conner v. US, 303 F.Supp. 1187 (1969)**

"Whatever may constitute income, therefore, must have the essential feature of gain to the recipient. This was true when the sixteenth amendment became effective, it was true at the time of the decision in [Eisner v. McComber, supra](#), it was true under section 22(a) of the Internal Revenue Code of 1939, and it is likewise true under section 61 (a) of the Internal Revenue Code of 1954. If there is no gain, there is no income."

[SOURCE: [https://scholar.google.com/scholar\\_case?case=11945345764657501477](https://scholar.google.com/scholar_case?case=11945345764657501477)]

[Conner v. U.S., 303 F.Supp. 1187 (1969)]

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**Bowers v. Kerbaugh-Empire Co., 271 U.S. 174 (1926)**

" "Income" has been taken to mean the same thing as used in the Corporation Excise Tax Act of 1909, in the Sixteenth Amendment and in the various revenue acts subsequently passed. [Southern Pacific Co. v. Lowe, 247 U.S. 330, 335](#); [Merchants' L. & T. Co. v. Smietanka, 255 U.S. 509, 519](#). After full consideration, this Court declared that income may be defined as gain derived from capital, from labor, or from both combined, including profit gained through sale or conversion of capital. [Stratton's Independence v. Howbert, 231 U.S. 399, 415](#); [Doyle v. Mitchell Brothers Co., 247 U.S. 179, 185](#); [Eisner v. Macomber, 252 U.S. 189, 207](#). And that definition has been adhered to and applied repeatedly. See e.g. [Merchants' L. & T. Co. v. Smietanka, supra, 518](#); [Goodrich v. Edwards, 255 U.S. 527, 535](#); [United States v. Phellis, 257 U.S. 156, 169](#); [Miles v. Safe Deposit Co., 259 U.S. 247, 252-253](#); [United States v. Supplee-Biddle Co., 265 U.S. 189, 194](#); [Irwin v. Gavit, 268 U.S. 161, 167](#); [Edwards v. Cuba Railroad, 268 U.S. 628, 633](#). In determining what constitutes income substance rather than form is to be given controlling weight. [Eisner v. Macomber, supra, 206](#)."

[SOURCE: [https://scholar.google.com/scholar\\_case?case=9246029933485828434](https://scholar.google.com/scholar_case?case=9246029933485828434)]

[Bowers v. Kerbaugh-Empire Co., 271 U.S. 174 (1926)]

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**Brushaber v. Union Pacific R.R. Co., 240 U.S. 1 (1916)**

"The conclusion reached in the Pollock Case did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, but on the contrary recognized the fact that taxation on income was in its nature an excise entitled to be enforced as such..."

[SOURCE: [https://scholar.google.com/scholar\\_case?case=5893140094506516673](https://scholar.google.com/scholar_case?case=5893140094506516673)]

[Brushaber v. Union Pacific R.R. Co., 240 U.S. 1 (1916)]

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**Simms v. Ahrens, 271 S.W. 720 (1925)**

"An income tax is neither a property tax nor a tax on occupations of common right, but is an EXCISE tax...The legislature may declare as 'privileged' and tax as such for state revenue, those pursuits not matters of common right, but it has no power to declare as a 'privilege' and tax for revenue purposes, occupations that are of common right."

[Simms v. Ahrens, 271 S.W. 720 (1925)]

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**Eisner v. Macomber, 252 U.S. 189 (1920)**

"After examining dictionaries in common use (Bouv. L.D.; Standard Dict.; Webster's Internat. Dict.; Century Dict.), we find little to add to the succinct definition adopted in two cases arising under the Corporation Tax Act of 1909 ([Stratton's Independence v. Howbert, 231 U.S. 399, 415](#); [Doyle v. Mitchell Bros. Co., 247 U.S. 179, 185](#)) — ""Income may be defined as the gain derived from capital, from labor, or from both combined," provided it be understood to include profit gained through a sale or conversion of capital assets, to which it was applied in the *Doyle Case*(pp. 183, 185)."

[SOURCE: [https://scholar.google.com/scholar\\_case?case=6666969430777270424](https://scholar.google.com/scholar_case?case=6666969430777270424)]

[Eisner v. Macomber, 252 U.S. 189 (1920)]

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**Laureldale Cemetery Assoc. v. Matthews, 345 Pa. 239 (1946)**

"Reasonable compensation for labor or services rendered is not profit"

[SOURCE: [https://scholar.google.com/scholar\\_case?case=2408159815955863618](https://scholar.google.com/scholar_case?case=2408159815955863618)]

[Laureldale Cemetery Assoc. v. Matthews, 345 Pa. 239 (1946)]

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**Schuster v. Helvering, 121 F.2d. 643**

"To argue that all these are income as soon as the obligor becomes bound, especially when the taxpayer, as here, keeps his books on a cash basis, is so fantastic as to deserve no discussion; it contradicts the fundamental notion that income is "realized" gain, and would incidentally be unworkable in practice, for substantially all such payments are conditional in obligation, as were the quarterly payments in the agreement of June 11, 1928."

[SOURCE: [https://scholar.google.com/scholar\\_case?case=1291092147031788432](https://scholar.google.com/scholar_case?case=1291092147031788432)]

[Schuster v. Helvering, 121 F.2d. 643]

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**Butchers' Union Co. v. Crescent City Co. (1883)**

"We hold these truths to be self-evident" — that is so plain that their truth is recognized upon their mere statement — "that all men are [757\\*757](#)endowed" — not by edicts of Emperors, or decrees of Parliament, or acts of Congress, but "by their Creator with certain inalienable rights" — that is, rights which cannot be bartered away, or given away, or taken away except in punishment of crime — "and that among these are life, liberty, and the pursuit of happiness, and to secure these" — not grant them but secure them — "governments are instituted among men, deriving their just powers from the consent of the governed."

"Among these inalienable rights, as proclaimed in that great document, is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give to them their highest enjoyment.

"The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all communities from time immemorial, must, therefore, be free in this country to all alike upon the same conditions. The right to pursue them, without let or hindrance, except that which is applied to all persons of the same age, sex, and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright.

"It has been well said that, "The property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own

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hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property. It is a manifest encroachment upon the just liberty both of the workman and of those who might be disposed to employ him. As it hinders the one from working at what he thinks proper, so it hinders the others from employing whom they think proper." Adam Smith's Wealth of Nations, Bk. I. Chap. 10."

[SOURCE: [https://scholar.google.com/scholar\\_case?case=2843870813948488667](https://scholar.google.com/scholar_case?case=2843870813948488667)]

[Butchers' Union Co. v. Crescent City Co., 111 U.S. 746 (1884)]

## 8.7 What is a "return"?

### 26 U.S.C. §6213(g)

[26 U.S.C. §6213\(g\): Restrictions Applicable to deficiencies; petition to Tax Court](#)

(g) Definitions

For purposes of this section -

(1) Return

The term "return" includes any return, statement, schedule, or list, and any amendment or supplement thereto, filed with respect to any tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44.

[26 U.S.C. §6213(g)]

### 26 U.S.C. 6103: Confidentiality of returns and return information

[TITLE 26](#) > [Subtitle F](#) > [CHAPTER 61](#) > [Subchapter B](#) > § 6103  
[§ 6103. Confidentiality and disclosure of returns and return information](#)

(b) Definitions For purposes of this section—

(1) Return

The term "return" means any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules,

[26 U.S.C. §6103(b)(1)]

### Milsap v. Commissioner (1988)

This is because **the return is a consent to assessment of tax in our tax system.** See 26 U.S.C. §6201(a)(1) and 26 C.F.R. §1.6201-1(a)(1), Income Tax Regs."

[Millsap v. Commissioner, 91 T.C. 926 (1988)]

### Klunder v. C.I.R. (1991)

"Petitioner, nevertheless, attempts to assert that the withholding of income tax by his employer satisfies his obligation to pay tax, and that in essence, there is no underpayment. **A withholding credit, however, is not in payment of petitioner's tax liability until he consents to assessment, or a liability is otherwise determined. The filing of a proper return is treated as a consent to assessment of the tax and would obviate the need for the deficiency procedures under sections**

**6211 through 6215.<sup>70</sup> In failing to file a return, petitioner clearly failed to report or admit to his tax liability. Thus, his withholding credits had not and could not be applied by respondent to reduce or satisfy that tax liability, or his deficiency or underpayment.”**

[Klunder v. C. I. R., T.C.Memo. 1991-489, 1991 W.L. 191552 (Tax Court, 1991)]

### **Sullivan v. C.I.R. (1991)**

“Because petitioner here filed no return, he is not entitled to any amount with which to offset his total tax liability for purposes of the above calculation. Sec. 6653(c); [sec. 301.6211-1\(a\), Proced. & Admin. Regs](#); Cirillo v. Commissioner, [314 F.2d. 478, 484 \(3d Cir. 1953\)](#); Emmons v. Commissioner, [supra at 348](#). Petitioner's underpayment is, therefore, the full amount of his 1983 tax liability. Schneiker v. Commissioner, [T.C. Memo. 1989-378](#). The rationale underlying our holding, the case law, and the statute is that **a prepayment credit cannot become a payment of petitioner's tax liability until he consents to assessment, or a liability is otherwise determined. In this same view, prepayment credits are not considered for purposes of computing a deficiency for section 6211. The filing of a proper return is treated as a consent to assessment of the tax** and would obviate the need for the deficiency procedures under sections 6211 through 6215 before respondent is able to collect the tax.<sup>71</sup> In failing to file a return, petitioner clearly failed to admit and consent to his tax liability.

[Sullivan v. C. I. R., T.C.Memo. 1991-492, 1991 W.L. 191583 (Tax Court, 1991)]

## **8.8 Validity of return and requirement to file**

### **Davis v. U.S. (1983)**

Taxpayers argue that § 6702 does not apply to them in that the Form 1040 that they filed was not a “purported return.” While taxpayers did write on the forms the words “not a tax return,” the form was undeniably filed to obtain a refund of the taxes withheld from their wages for which the filing of a return is necessary. 26 C.F.R. §301.6402-3(a)(1) (1983). As stated a district court that recently faced this same situation:

**Since the plaintiffs' stated purpose was to obtain a refund, the documents submitted must be deemed to be purported tax returns for purposes of Section 6702. It is true that the plaintiffs wrote on the forms that they were not returns, but this disclaimer has no effect in light of the plaintiffs' stated purpose to have the documents treated as returns. If such a disclaimer were sufficient to avoid liability under Section 6702, tax protesters could flood the IRS with frivolous tax returns bearing similar disclaimers without penalty.”**

Nichols v. United States, 575 F.Supp. 320, 322(D.Minn.1983). Thus, the Form 1040 was a purported return, and the district court correctly granted summary judgment on the issue of the penalty under § 6702.

[Davis v. U.S., 742 F.2d. 171, 54 A.F.T.R.2d 84-6084, 84-2 USTC P 9808]

## **26 U.S.C. §6012: Persons Required to make returns of income**

[26 U.S.C. §6012](#). Persons required to make **returns of income**

(a) General rule

**Returns with respect to income** taxes under subtitle A shall be made by the following:

(1) (A) Every individual having for the taxable year gross income which equals or exceeds the exemption amount, except that a return shall not be required of an individual –

[26 U.S.C. §6012(a)(1)(A)]

<sup>70</sup> See discussion in M. Saltzman, IRS Practice and Procedure, par. 10.02, p. 10-8 (2d ed. 1991). Early on, a deficiency was considered properly determined where a taxpayer did not admit to his tax liability - even where the correct amounts were shown on his return. Continental Accounting & Audit Co. v. Commissioner, [2 B.T.A. 761, 763 \(1925\)](#).

<sup>71</sup> See discussion in M. Saltzman, IRS Practice and Procedure, par. 10.02, p. 10-8 (2d ed. 1991). Early on, a deficiency was considered properly determined where a taxpayer did not admit to his tax liability - even where the correct amounts were shown on his return. Continental Accounting & Audit Co. v. Commissioner, [2 B.T.A. 761, 763 \(1925\)](#).

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**26 U.S.C. §7508-Time for performing certain acts postponed by reason of service in combat zone**

[26 U.S.C. §7508](#). Time for performing certain acts postponed by reason of service in combat zone

(a) Time to be disregarded

In the case of an individual serving in the Armed Forces of the United States, or serving in support of such Armed Forces, in an area designated by the President of the United States by Executive order as a "combat zone" for purposes of section 112, at any time during the period designated by the President by Executive order as the period of combatant activities in such zone for purposes of such section, or hospitalized as a result of injury received while serving in such an area during such time, the period of service in such area, plus the period of continuous qualified hospitalization attributable to such injury, and the next 180 days thereafter, shall be disregarded in determining, under the internal revenue laws, in respect of any tax liability (including any interest, penalty, additional amount, or addition to the tax) of such individual –

(1) Whether any of the following acts was performed within the time prescribed therefor:

(A) **Filing any return of income**, estate, or gift tax (except income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby);

[26 U.S.C. §7508(a)(1)(A)]

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**26 U.S.C. §6075 Time for filing estate and gift tax returns**

[26 U.S.C. §6075](#). Time for filing estate and gift tax returns

(a) Returns relating to large transfers at death

The return required by section 6018 with respect to a decedent shall be filed with the return of the tax imposed by chapter 1 for the decedent's last taxable year or such later date specified in regulations prescribed by the Secretary.

(b) Gift tax returns

(1) General rule

Returns made under section 6019 (relating to gift taxes) shall be filed on or before the 15th day of April following the close of the calendar year.

(2) Extension where taxpayer granted extension for filing income tax return

Any extension of time granted the taxpayer for **filing the return of income** taxes imposed by subtitle A for any taxable year which is a calendar year shall be deemed to be also an extension of time granted the taxpayer for filing the return under section 6019 for such calendar year.

[26 U.S.C. §6075 Time for filing estate and gift tax returns]

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**Internal Revenue Manual, Section 25.6.5.5.1 Valid Returns**

Internal Revenue Manual

[Section 25.6.5.5.1](#) (11-01-2004)

Valid Return

1. A **taxpayer** is not considered to have filed a tax return (which begins the period of limitations on assessment) until the **taxpayer** files a valid tax return. A valid return is described at IRM 25.6.2.4.14. In general, a tax return is considered sufficient for establishing a statute of limitations period if it meets the following criteria:

- A. It has data sufficient available to calculate a tax liability,
- B. It purports to be a return,
- C. It is an honest and reasonable attempt to satisfy the requirements of the **tax law**, and
- D. It is signed under penalties of perjury.

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Note:

#While there is no question that an unsigned return is an invalid return; the Service has found it necessary to process unsigned balance due returns since 1970 in order for the Service to handle the volume of unsigned payment returns received annually. This business decision is reflected in P-2-11 (Approved 10-02-1970), IRM 1.2.1.3.6.#

2. A return filed on the wrong form may be a valid return for the purpose of starting the period of limitations if it provides sufficient date to calculate a tax liability.

A. Federal Insurance Contributions Act (FICA) form instead of Railroad Retirement Tax Act (RRTA) form. A FICA return did not start the period on an employer's RRTA tax liability because the FICA return did not include all the information necessary to compute the RRTA tax. See *Atlantic Land & Improv. Co. v. United States*, 790 F.2d. 853, 860 (11th Cir. 1986).

B. RRTA form instead of FICA form. It appears that a RRTA return filed for a FICA tax liability might be sufficient to start the period on that liability. See the suggestion in *Atlantic Land & Improv. Co.*, 790 F.2d. 860 at footnote 12.

[SOURCE: <http://www.irs.gov/irm/part25/ch06s05.html>]

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### **Revenue Ruling 2005-59: Valid Return, Election to file Joint Return**

Revenue Ruling 2005-59: Valid Return; Election to File Joint Return  
LAW

#### **In general, a document filed with the Service is treated as a return if the document:**

**(1) contains sufficient data to calculate the tax liability;**

**(2) purports to be a return;**

**(3) represents an honest and reasonable attempt to satisfy the requirements of the tax law; and**

**(4) is executed under penalties of perjury.**

*Beard v. Commissioner*, 82 T.C. 766, 777 (1984), *aff'd*, 793 F.2d. 139 (6th Cir. 1986) (citing *Badaracco v. Commissioner*, 464 U.S. 386 (1984); *Zellerbach Paper Co. v. Helvering*, 293 U.S. 172 (1934); and *Florsheim Bros. Drygoods Co. v. United States*, 280 U.S. 453 (1930)).

[Revenue Ruling 2005-59: Valid Return; Election to File Joint Return]

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### **Spurlock v. Commissioner (2003)**

In *Spurlock v. Commissioner*, *supra* at 157 n. 3, we stated that "Both parties agree that respondent filed sec. 6020(b) returns for the years in issue; however, we do not decide whether those 'returns' meet the requirements of sec. 6020(b)." Since respondent has failed to produce any evidence that a "return" was filed, we hold that the section 6651(a)(2) additions to tax for failure to pay tax shown on a return is inapplicable.

[. . .]

We previously addressed what constitutes a section 6020(b) return in *Millsap v. Commissioner*, 91 T.C. 926, 1988 W.L. 123581 (1988), and *Phillips v. Commissioner*, 86 T.C. 433, 1986 W.L. 22098 (1986). In *Phillips v. Commissioner*, *supra* at 437-438, we held that a "dummy return", i.e., page 1 of a Form 1040 showing only the taxpayer's name, address, and Social Security number, was not a section 6020(b) return.

[FN18] In *Millsap v. Commissioner*, *supra*, the Commissioner prepared a Form 1040 and attached a revenue agent's report which contained sufficient information from which to compute the taxpayer's tax liability. The attached report was subscribed, and we held that the Form 1040 together with the attached revenue agent's report containing information from which the tax could be computed met the requirements for a section 6020(b) return. The same elements we found necessary to constitute a section 6020(b) return in *Millsap v. Commissioner*, *supra*, and *Phillips v. Commissioner*, *supra*, are generally required for purposes of a section 6020(b) return in the context of section 6651(a)(2) and (g)(2). Namely, the return must be subscribed, it must contain sufficient information from which to compute the taxpayer's tax liability, and the return form and any attachments must purport to be a "return". The mere fact that respondent's files contain information upon which a tax might be determined does not transform his files into a section 6020(b) return. See *Cabirac v. Commissioner*, 120 T.C. -

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---, (2003).

[. . .]

The documents attached to respondent's response to petitioner's motion for partial summary judgment for 1996 and 1997 consist of:

- (1) Half-page printouts of numerous codes and information which the Court is unable to translate;
- (2) portions of pages 1 of Forms 1040, each of which contains petitioner's name, address, Social Security number, and filing status;
- (3) computer-generated Forms 5344(CG), Examination Closing Record, each of which contains numerous codes and listings including petitioner's tax liability, penalty, and interest adjustments, credit and tax computation adjustments;
- (4) manually completed Forms 5344 signed by a tax examiner containing codes and information which the Court is also unable to translate;
- (5) a Form 4549-CG, Income Tax Examination Changes; and
- (6) a Letter 915(DO)(CG) (the "30-day letter")

[FN19] for petitioner's 1995, 1996, and 1997 tax years. Only the Form 5344 document and the 30-day letter were signed. FN19. Letter 915(DO)(CG) provides notice to the taxpayer of proposed adjustments to his or her tax liability. The letter is commonly referred to as a "30-day letter", because the taxpayer has 30 days to agree or disagree with the proposed adjustments.

[FN20] Respondent's revenue agent, Chris English, signed the 30-day letter. The dates which appear on the numerous documents that respondent alleged to be section 6020(b) returns do not match; indeed, the date entries span several years. The half-page printouts are dated November 22, 2000. Those printouts contain the notation "Received-Date: 10071999". Each of the Forms 1040 is dated September 23, 1999. The computer-generated Forms 5344(CG) contain no date. [Spurlock v. Commissioner, T.C.Memo. 2003-124]

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### Steines v. C..I.R. 1991

**The Supreme Court on a number of occasions has considered the essential elements of a valid tax return, usually for purposes of the statute of limitations.** Badaracco v. Commissioner, [464 U.S. 386 \(1984\)](#); Commissioner v. Lane-Wells Co., [321 U.S. 219 \(1944\)](#); Zellerbach Paper Co. v. Helvering, [293 U.S. 172 \(1934\)](#); Lucas v. Pilliod Lumber Co., [281 U.S. 245 \(1930\)](#); Florsheim Bros. Drygoods Co. v. United States, [280 U.S. 453 \(1930\)](#). This Court has distilled the essence of the Supreme Court's test and applied it to determine whether or not a particular document constitutes a tax return for purposes of section 6651(a)(1). Beard v. Commissioner, [82 T.C. 766, 777 \(1984\)](#), affd. [793 F.2d. 139 \(6th Cir. 1986\)](#). **Those essential elements, as set out in Beard, are as follows:**

**First, there must be sufficient data to calculate tax liability; second, the document must purport to be a return; third, there must be an honest and reasonable attempt to satisfy the requirements of the tax law; and fourth, the taxpayer must execute the return under penalties of perjury. (82 T.C. at 777.)**

[Steines v. C. I. R., T.C.Memo. 1991-588, 1991 W.L. 251520, Tax Court, 1991]

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### **8.9 Validity of assessment**

For further details on the subject of this section, see:

*Why the Government can't Lawfully Assess Human Beings With an Income Tax Liability Without Their Consent*, Form #05.011  
<https://sedm.org/Forms/FormIndex.htm>

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### **26 U.S.C. §6201 Assessment Authority**

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[TITLE 26](#) > [Subtitle F](#) > [CHAPTER 63](#) > [Subchapter A](#) > § 6201

[§6201. Assessment authority](#)

(a) Authority of Secretary

The Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, **which have not been duly paid by stamp** at the time and in the manner provided by law. Such authority shall extend to and include the following:

(1) Taxes shown on return

The Secretary **shall assess all taxes determined by the taxpayer or by the Secretary** [per 26 U.S.C. §6020(b)] as to which returns or lists are made under this title.

[26 U.S.C. §6201(a)(1)]

#### **Office of Chief Counsel, Notice-CC 2007-005**

“It is essential that section 6020(b) returns be placed in evidence if the Tax Court is to find that the Service has met its burden of production under section 7491(c) and sustain the Service’s addition to tax determination. In cases brought by nonfilers, the Tax Court will deny the section 6651(a)(2) addition to tax if a valid section 6020(b) return is not entered into the record. See, *Wheeler v. Commissioner*, 127 T.C. 14 (2006); *Guthrie v. Commissioner*, T.C.Memo. 2006-81; and *Holmes v. Commissioner*, T.C.Memo. 2006-80. This Notice updates and modifies CC-2004-009 (Jan. 22, 2004), which updated and modified CC-2003-019 (June 12, 2003).”

[**Office of Chief Counsel, Notice** – CC 2007-005, dated February 4, 2007; SOURCE: SEDM Exhibit #05.037, <http://sedm.org/Exhibits/ExhibitIndex.htm>]

#### **Internal Revenue Manual, Section 35.2.2.11 (2004)**

Internal Revenue Manual

Section 35.2.2.11 (08-11-2004)

Answers in Failure to Pay (Section 6651(a)(2) Cases Where Substitute for Return Filed under Section 6020(b))

Section 6020(b)(1) authorizes the Secretary to make a return upon either a taxpayer’s failure to file a return or upon a taxpayer’s filing of a fraudulent return. In two cases decided in 2003, the Tax Court clarified what constitutes a return under section 6020(b) for purposes of the addition to tax under section 6651(a)(2). See *Cabirac v. Commissioner*, 120 T.C. 163 (2003), and *Spurlock v. Commissioner*, T.C.Memo. 2003-124. In *Spurlock*, the Tax Court held that a return for section 6020(b) purposes must be "subscribed, it must contain sufficient information from which to compute the taxpayer’s tax liability, and the return form and any attachments must purport to be a ‘return’." *Spurlock*, slip. op. at 27. In *Cabirac*, the documents the Service proffered as constituting a section 6020(b) return were (a) dummy Forms 1040 that identified the taxpayer, but which were not signed and did not show any tax due, (b) a subsequently prepared 30-day letter, and (c) a revenue agent’s report attached to the 30-day letter explaining how the Service computed the taxpayer’s liability.

Applying the analysis later explained in *Spurlock*, the Tax Court held that these documents did not constitute a section 6020(b) return. Critical to the Tax Court’s analysis was that the Service never treated the documents, which the Service created at various times, as one group purporting to be a return. See *Millsap v. Commissioner*, 91 T.C. 926 (1988), acq. in result in part, 1991-2 C.B. 1, describing a valid section 6020(b) return at issue therein.

[Internal Revenue Manual, Section 35.2.2.11 (08-11-2004)]

#### **26 C.F.R. §301.6211-1 Deficiency Defined (2005)**

[Code of Federal Regulations]

[Title 26, Volume 18]

[Revised as of April 1, 2005]

From the U.S. Government Printing Office via GPO Access

[CITE: 26CFR301.6211-1]

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[Page 160-162]

TITLE 26--INTERNAL REVENUE  
CHAPTER I--INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY  
PART 301\_PROCEDURE AND ADMINISTRATION--Table of Contents  
Assessment

Sec. 301.6211-1 Deficiency defined.

(a) In the case of the income tax imposed by subtitle A of the Code, the estate tax imposed by chapter 11, subtitle B, of the Code, the gift tax imposed by chapter 12, subtitle B, of the Code, and any excise tax imposed by chapter 41, 42, 43, or 44 of the Code, the term "deficiency" means the excess of the tax, (income, estate, gift, or excise tax as the case may be) over the sum of the amount shown as such tax by the taxpayer upon his return and the amounts previously assessed (or collected without assessment) as a deficiency; but such sum shall first be reduced by the amount of rebates made. **If no return is made, or if the return (except a return of income tax pursuant to sec. 6014) does not show any tax, for the purpose of the definition "the amount shown as the tax by the taxpayer upon his return" shall be considered as zero.** Accordingly, in any such case, if no deficiencies with respect to the tax have been assessed, or collected without assessment, and no rebates with respect to the tax have been made, **the deficiency is the amount of the income tax imposed by subtitle A, the estate tax imposed by chapter 11, the gift tax imposed by chapter 12, or any excise tax imposed by chapter 41, 42, 43, or 44. Any amount shown as additional tax on an "amended return," so-called (other than amounts of additional tax which such return clearly indicates the taxpayer is protesting rather than admitting) filed after the due date of the return, shall be treated as an amount shown by the taxpayer "upon his return" for purposes of computing the amount of a deficiency.**

(b) For purposes of the definition, the income tax imposed by subtitle A and the income tax shown on the return shall both be determined without regard to the credit provided in section 31 for income tax withheld at the source and without regard to so much of the credit provided in section 32 for income taxes withheld at the source as exceeds 2 percent of the interest on tax-free covenant bonds described in section 1451. Payments on account of estimated income tax, like other payments of tax by the taxpayer, shall likewise be disregarded in the determination of a deficiency. Any credit resulting from the collection of amounts assessed under section 6851 or 6852 as the result of a termination assessment shall not be taken into account in determining a deficiency.

(c) **The computation by the Internal Revenue Service, pursuant to section 6014, of the income tax imposed by subtitle A shall be considered as having been made by the taxpayer and the tax so computed shall be considered as the tax shown by the taxpayer upon his return.**

[26 C.F.R. §301.6211-1 Deficiency Defined]

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**26 C.F.R. §6201-1 Assessment Authority**

[Code of Federal Regulations]  
[Title 26, Volume 17]  
[Revised as of April 1, 2001]  
From the U.S. Government Printing Office via GPO Access  
[CITE: 26CFR301.6201-1]  
[Sec. 301.6201-1 Assessment authority.](#)

(a) IN GENERAL.

The district director is authorized and required to make all inquiries necessary to the determination and assessment of all taxes imposed by the Internal Revenue Code of 1954 or any prior internal revenue law. The district director is further authorized and required, and the director of the regional service center is authorized, to make the determinations and the assessments of such taxes. However, certain inquiries and determinations are, by direction of the Commissioner, made by other officials, such as assistant regional commissioners. The term "taxes" includes interest, additional amounts, additions to the taxes, and assessable penalties. The authority of the district director and the director of the regional service center to make assessments includes the following:

**(1) TAXES SHOWN ON RETURN. The district director or the director of the regional service center shall assess all**

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**taxes determined by the taxpayer or by the district director or the director of the regional service center and disclosed on a return or list.**

(2) UNPAID TAXES PAYABLE BY STAMP.

(i) If without the use of the proper stamp:

(a) Any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale or use by the manufacturer thereof, or

(b) Any transaction or act upon which a tax is required to be paid by means of a stamp occurs; The district director, upon such information as he can obtain, must estimate the amount of the tax which has not been paid and the district director or the director of the regional service center must make assessment therefor upon the person the district director determines to be liable for the tax. However, the district director or the director of the regional service center may not assess any tax which is payable by stamp unless the taxpayer fails to pay such tax at the time and in the manner provided by law or regulations.

(ii) If a taxpayer gives a check or money order as a payment for stamps but the check or money order is not paid upon presentment, then the district director or the director of the regional service center shall assess the amount of the check or money order against the taxpayer as if it were a tax due at the time the check or money order was received by the district director.

...

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**Internal Revenue Manual, Section 5.1.11.6.8.4 Preparing Returns for Assessment**

Internal Revenue Manual  
5.1.11.6.8.4 (03-01-2007)  
Preparing Returns for Assessment

1. Process the returns for assessment under the authority of IRC 6020(b) if the taxpayer fails to file by the specified date or has not returned the 6020(b) returns signed.
  2. In all cases if payment of the proposed return is not received, follow procedures in Section 11.5.2 of this IRM.
  3. **Revenue officers must; Sign, Title, Date, and enter the following on the bottom of the return:**
    - A. The statement —"**This return was prepared and signed under the authority of Section 6020(b) of the Internal Revenue Code. Apply condition code 4.**"
  4. Enter the appropriate TC and closing code on the left margin of the return, (see Exhibit 5.1.11-3 of this IRM);
  5. Close the ICS Del Ret module under "**Option A, Return Secured**" using the appropriate sub-menu option (see section 11.7.1 of this IRM);
  6. Complete section III of F5604, attach a copy, and forward the signed, date-stamped, 6020(b) return to submission processing as a secured return.
- [Internal Revenue Manual (I.R.M.), Section 5.1.11.6.8.4 (03-01-2007)]

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**8.10 26 U.S.C. §6020(b) Substitute for Returns (SFRs)**

For further details on the subject of this section, see:

*Tax Deposition Questions*, Form #03.016, Section 13: 26 U.S.C. §6020(b) Substitute for Returns  
FORMS PAGE: <https://sedm.org/Forms/FormIndex.htm>  
DIRECT LINK: <https://famguardian.org/TaxFreedom/Forms/Discovery/Deposition/Deposition.htm>

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**26 U.S.C. §6020 Returns Prepared by the Secretary**

[26 U.S. Code § 6020 - Returns prepared for or executed by Secretary](#)

**(a) PREPARATION OF RETURN BY SECRETARY**

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If any [person](#) shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the [Secretary](#) may prepare such return, which, being signed by such person, may be received by the [Secretary](#) as the return of such person.

**(b) EXECUTION OF RETURN BY SECRETARY**

**(1) AUTHORITY OF SECRETARY TO EXECUTE RETURN**

**If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.**

**(2) STATUS OF RETURNS**

Any [return](#) so made and subscribed by the [Secretary](#) shall be prima facie good and sufficient for all legal purposes.  
[26 U.S.C. §6020(b)]

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**Internal Revenue Manual, Section 5.1.11.6.8 IRC 6020(b) Authority**

[Internal Revenue Manual, Section 5.1.11.6.8 \(05-27-1999\)](#)

IRC 6020(b) Authority

1. The following returns may be prepared, signed and assessed under the authority of IRC 6020(b):

- A. Form 940, Employer's Annual Federal Unemployment Tax Return
- B. Form 941, Employer's Quarterly Federal Tax Return
- C. Form 943, Employer's Annual Tax Return for Agricultural Employees
- D. Form 720, Quarterly Federal Excise Tax Return
- E. Form 2290, Heavy Vehicle Use Tax Return
- F. Form CT-1, Employer's Annual Railroad Retirement Tax Return
- G. Form 1065, U.S. Return of Partnership Income.

2. Pursuant to IRM 1.2.2.97, Delegations of Authority, Order Number 182 (rev. 7), dated 5/5/1997, revenue officers GS-09 and above, and Collection Support Function managers GS-09 and above, have the authority to prepare and execute returns under IRC 6020(b).

[Internal Revenue Manual, Section 5.1.11.6.8 IRC 6020(b) Authority (05-27-1999)]

[NOTE: Form 1040 isn't on the above list!]

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**Internal Revenue Manual, Section 4.19.17.1.3.1 Substitute For Return Procedures**

Internal Revenue Manual  
Section 4.19.17.1.3.1 (11-10-2006)  
Substitute For Return Procedures

[. . .]

7. Complete Form 13496 **with a live signature** or computer facsimile signature when the 30 day letter is sent to the taxpayer. See IRM 20.1.2.1.4

[. . .]

10. Returns submitted **must have the taxpayer's signature.**

[Internal Revenue Manual (I.R.M.), Section 4.19.17.1.3.1 (11-10-2006)]

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**26 C.F.R. §31.6011(a)-7 Execution of returns**

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## TITLE 26--INTERNAL REVENUE

## CHAPTER I--INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

## PART 31 \_EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE--Table of Contents

## Subpart G \_Administrative Provisions of Special Application to Employment Taxes (Selected Provisions of Subtitle F, Internal Revenue Code of 1954)

## Sec. 31.6011(a)-7 Execution of returns.

(a) In general.

Each return required under the regulations in this part, together with any prescribed copies or supporting data, shall be filled in and disposed of in accordance with the forms, instructions, and regulations applicable thereto. The return shall be carefully prepared so as fully and accurately to set forth the data required to be furnished therein. Returns which have not been so prepared will not be accepted as meeting the requirements of the regulations in this part. **The return may be made by an agent in the name of the person required to make the return if an acceptable power of attorney is filed with the internal revenue office with which such person is required to file his returns and if such return includes all taxes required to be reported by such person on such return for the period covered by the return.**

[26 C.F.R. §31.6011(a)]

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**Government Accountability Office Report GAO/GGD-00-60R, p. 1, Footnote 1**

“In its response to this letter, IRS officials indicated that they do not generally prepare actual tax returns. Instead, IRS prepares **substitute documents that propose [not MAKE] assessments**. Although IRS and legislation refer to this as the substitute for return program, these officials said the document does not look like an actual tax return.”

[Government Accountability Office Report GAO/GGD-00-60R, p. 1, Footnote 1;

SOURCE: <http://www.gao.gov/docsearch/repandtest.html>]

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**Government Accountability Office Report GAO/GGD-00-60R, p. 2**

“[IRS] Customer Service Division official commented on the phrase ‘Substitute for Return.’ They asked us to emphasize that **even though the program is commonly referred to as the SFR program, no actual tax return is prepared.**”

[Government Accountability Office Report GAO/GGD-00-60R, p. 2;

SOURCE: <http://www.gao.gov/docsearch/repandtest.html>]

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**26 C.F.R. §601.105 Examination of returns and claims for refund, credit or abatement; determination of correct tax liability**

## TITLE 26--INTERNAL REVENUE

## CHAPTER I--INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

## PART 601 \_STATEMENT OF PROCEDURAL RULES--Table of Contents

## Subpart A \_General Procedural Rules

## Sec. 601.105 Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(4) Conclusion of examination.

**At the conclusion of an office or field examination, the taxpayer is given an opportunity to agree with the findings of the examiner.** If the taxpayer does not agree, the examiner will inform the taxpayer of the appeal rights. **If the taxpayer does agree with the proposed changes, the examiner will invite the taxpayer to execute either Form 870 or another appropriate agreement form.** When the taxpayer agrees with the proposed changes but does not offer to pay any deficiency or additional tax which may be due, the examiner will also invite payment (by check or money order), together with any applicable interest or penalty. If the agreed case involves income, profits, estate, gift, generation-skipping transfer, or Chapter 41, 42, 43, or 44 taxes, the agreement is evidenced by a waiver by the taxpayer of restrictions on assessment and collection of the deficiency, or an acceptance of a proposed overassessment. **If the case involves excise or employment taxes or 100 percent penalty, the agreement is evidenced in the form of a consent to assessment and collection of additional tax or penalty and waiver of right to file claim for abatement, or the acceptance of the proposed overassessment.** Even though the taxpayer signs an acceptance of a proposed overassessment the district director or the director of the regional service center remains free to assess a deficiency. On the other hand, the taxpayer who has given a

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waiver may still claim a refund of any part of the deficiency assessed against, and paid by, the taxpayer, or any part of the tax originally assessed and paid by the taxpayer. **The taxpayer's acceptance of an agreed overassessment does not prevent the taxpayer from filing a claim and bringing a suit for an additional sum, nor does it preclude the Government from maintaining suit to recover an erroneous refund. As a matter of practice, however, waivers or acceptances ordinarily result in the closing of a case insofar as the Government is concerned.**

[26 C.F.R. §601.105(b)(4);

SOURCE: [http://edocket.access.gpo.gov/cfr\\_2006/aprqrtr/26cfr601.105.htm](http://edocket.access.gpo.gov/cfr_2006/aprqrtr/26cfr601.105.htm)]

## **8.11 Parties EXPRESSLY liable for withholding, payment, and/or reporting**

### **26 U.S.C. §1461 – Liability for withheld tax**

#### [26 U.S. Code § 1461 - Liability for withheld tax](#)

Every [person](#) required to deduct and withhold any tax under this chapter is hereby made liable for such tax and is hereby indemnified against the claims and demands of any [person](#) for the amount of any [payments](#) made in accordance with the provisions of this chapter.

[26 U.S.C. §1461]

[NOTE: If liability does not appear in STATUTE, then it DOES NOT EXIST. IRS cannot, by regulation ADD a liability or a liable party that does not expressly appear in statute. See [United States v. Calamaro, 354 U.S. 351 \(1957\)](#) for proof.]

### **26 U.S. Code § 1463 - Tax paid by recipient of income**

#### [26 U.S. Code § 1463 - Tax paid by recipient of income](#)

If—

(1)any person, in violation of the provisions of this chapter, fails to deduct and withhold any tax under this chapter, and

(2)thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from such person; but this section shall in no case relieve such person from liability for interest or any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

[26 U.S.C. §1463 Tax paid by recipient of income]

[NOTE: If liability does not appear in STATUTE, then it DOES NOT EXIST. IRS cannot, by regulation ADD a liability or a liable party that does not expressly appear in statute. See [United States v. Calamaro, 354 U.S. 351 \(1957\)](#) for proof.

If the tax isn't paid by the RECIPIENT, the IRS, according to this statute MUST enforce against the withholding agent, and NOT the recipient. The Withholding Agent, in turn, is a government instrumentality and NOT a private human or private business. All civil statuses within the Internal Revenue Code are public offices, and not private humans. See:

1. *Why Statutory Civil Law is Law for Government and Not Private Persons*, Form #05.037  
<https://sedm.org/Forms/FormIndex.htm>
2. *Why Your Government is Either a Thief or You are a "Public Officer" for Income Tax Purposes*, Form #05.008  
<https://sedm.org/Forms/FormIndex.htm>

]

## **8.12 Parties EXPRESSLY NOT liable from withholding, payment, and/or reporting**

### **1 F.R. 1817, Sec. 22, Art 22(b)-1, November 14, 1936**

SEC. 22. *Gross Income*

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(b) Exclusions from gross income.—The following items shall not be included in gross income and shall be exempt from taxation under this title:

Art. 22 (b)-1. *Exemptions-Exclusions from gross income.*—

Certain Items of Income specified in section 22 (b) are exempt from tax and may be excluded from gross income. These items, however, are exempt only to the extent and in the amount specified. No other items are exempt from gross income except (i) those items of income which are, under the Constitution, not taxable by the Federal Government; [1 F.R. 1817, Sec. 22, Art 22(b)-1, November 14, 1936]

**tuesday, November 14, 1936**

**1817**

[Sec. 22. Gross Income.]

(b) *Exclusions from gross income.*—The following items shall not be included in gross income and shall be exempt from taxation under this title:

**ART. 22 (b)-1. Exemptions—Exclusions from gross income.**—Certain items of income specified in section 22 (b) are exempt from tax and may be excluded from gross income. These items, however, are exempt only to the extent and in the amount specified. **No other items are exempt from gross income except (1) those items of income which are, under the Constitution, not taxable by the Federal Government; (2) those items of income which are exempt from**

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**4 F.R. 632, Sec. 22, February 10, 1939**

SEC. 22. *Gross income.*

(b) *Exclusions from gross income.*—The following items shall not be included in gross Income and shall be exempt from taxation under this title:

ART. 22 (b)-1. *Exemptions-Exclusions from gross income.*—

Certain items of income specified in section 22 (b) are exempt from tax and may be excluded from gross income. These items, however, are exempt only to the extent and in the amount specified. **No other items are exempt from gross Income except (1) those items of income which are, under the Constitution, not taxable by the Federal Government;** [4 F.R. 632, Sec. 22, February 10, 1939]

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**45 F.R. 367, 26 C.F.R. §19.22(b)-1, February 1, 1940**

§ 19.22 (b)-1 *Exemptions—Exclusions from gross income.*

Certain items of income specified in section 22 (b) are exempt from tax and may be excluded from gross income. These items, however, are exempt only to the extent and in the amount specified. **No other items are exempt from gross income except (1) those items of income which are, under the Constitution, not taxable by the Federal Government;** [45 F.R. 367, 26 C.F.R. §19.22(b)-1]

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**8 F.R. 14896, November 3, 1943, 26 C.F.R. §29.22(b)-1**

§ 29.22 (b)-1 *Exemptions; exclusions from gross income.*

Certain items of income specified in section 22 (b) are exempt from tax and may be excluded from gross income. These items, however, are exempt only to the extent and in the amount specified. **No other items are exempt from gross income except (1) those items of income which are, under the Constitution, not taxable by the Federal Government;** [8 F.R. 14896, November 3, 1943, 26 C.F.R. §29.22(b)-1]

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**18 F.R. 5795, September 26, 1953, 26 C.F.R. §39.22(b)**

§ 39.22 (b) *Statutory provisions; exclusions from gross income.*  
Sec. 22. Gross income.

**(b) Exclusions from gross income. The following items shall not be included in gross income and shall be exempt from taxation under this chapter: \* \* \***

§ 39.22 (b)-1 *Exemptions; exclusions from gross income.*

Certain items of Income specified in section 22 (b) are exempt from tax and may be excluded from gross income. These items, however, are exempt only to the extent and in the amount specified. **No other items may be excluded from gross income except (a) those items of Income which are, under the Constitution, not taxable by the Federal Government;** [18 F.R. 5795, September 26, 1953, 26 C.F.R. §39.22(b)-1]

**Treasury Decision 8734**

A withholding agent (defined next) is the person responsible for withholding on payments made to a foreign person. However, a withholding agent that can reliably associate the payment with documentation (discussed later) from a U.S. person **is not required to withhold.**

As a general matter, a withholding agent (whether U.S. or foreign) must ascertain whether the payee is a U.S. or a foreign person. If the payee is a U.S. person, the withholding provisions under chapter 3 of the Code do not apply; however, information reporting under chapter 61 of the Code may apply; further, if a TIN is not furnished in the manner required under section 3406, backup withholding may also apply. If the payee is a foreign person, however, the withholding provisions under chapter 3 of the Code apply instead. **To the extent withholding is required under chapter 3 of the Code, or is excused based on documentation that must be provided, none of the information reporting provisions under chapter 61 of the Code apply, nor do the provisions under section 3406.**

[Treasury Decision 8734]

**Long v. Rasmussen (1922)**

"The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws...The distinction between persons and things within the scope of the revenue laws and those without is vital."

[Long v. Rasmussen, 281 F. 236 @ 238(1922)]

**Economy Plumbing and Heating v. United States (1972)**

"Revenue Laws relate to taxpayers [officers, employees, and elected officials of the Federal Government] and not to non-taxpayers [American Citizens/American nationals not subject to the exclusive jurisdiction of the Federal Government]. The latter are without their scope. No procedures are prescribed for non-taxpayers and no attempt is made to annul any of their Rights or Remedies in due course of law."

[Economy Plumbing & Heating v. U.S., 470 F.2d. 585 (1972)]

**26 U.S.C. §7426: Civil actions by persons other than taxpayers**

[26 U.S. Code § 7426 - Civil actions by persons other than taxpayers](#)

(a) Actions permitted

(1) Wrongful levy

If a levy has been made on property or property has been sold pursuant to a levy, **any person (other than the person against whom is assessed the tax out of which such levy arose)** who claims an interest in or lien on such property and

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that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary.

(2) Surplus proceeds

If property has been sold pursuant to a levy, **any person (other than the person against whom is assessed the tax out of which such levy arose)** who claims an interest in or lien on such property junior to that of the United States and to be legally entitled to the surplus proceeds of such sale may bring a civil action against the United States in a district court of the United States.

(3) Substituted sale proceeds

If property has been sold pursuant to an agreement described in section 6325(b)(3) (relating to substitution of proceeds of sale), any person who claims to be legally entitled to all or any part of the amount held as a fund pursuant to such agreement may bring a civil action against the United States in a district court of the United States.

(4) Substitution of value

If a certificate of discharge is issued to any person under section 6325(b)(4) with respect to any property, such person may, within 120 days after the day on which such certificate is issued, bring a civil action against the United States in a district court of the United States for a determination of whether the value of the interest of the United States (if any) in such property is less than the value determined by the Secretary. No other action may be brought by such person for such a determination.

[26 U.S.C. §7425(a)]

### 8.13 **Private earnings of PRIVATE humans protected by the Constitution are “exempt by fundamental law”**

A synonym for the constitution is “fundamental law”. CONSTITUTIONAL income is earnings paid to a PRIVATE human who is protected by the constitution and the common law. Such earnings are NOT taxable under the Internal Revenue Code and they are referred to as “exempt by fundamental law”. If it is CONSTITUTIONAL income, then it by definition CANNOT be STATUTORY income. PUBLIC privileges and PRIVATE rights cannot coexist at the same time and are mutually exclusive. See:

*Why Statutory Civil Law is Law for Government and Not Private Persons*, Form #05.037  
<https://sedm.org/Forms/FormIndex.htm>

Earnings “exempt by fundamental law” MUST be considered both by you and the IRS in the computation of “gross income” on a tax return. No IRS form or procedure we have ever seen or read even acknowledges the existence of such an exemption, which is proof that they are communists. Under communism there is no private property and the state owns or at least CONTROLS everything. Ownership and control are synonymous. Our constitution, however, has as its main goal the protection of such property, as described in:

*Separation Between Public and Private Course*, Form #12.025  
<https://sedm.org/Forms/FormIndex.htm>

Below are authorities cited acknowledging an exemption from taxation of “income exempt by fundamental law”. No such earnings can EVER be considered part of “gross income”:

*Treasury Decision 3640, January 1, 1924*

**"ART. 71. Exclusions from gross income.--The term "gross income" as used in the Act does not include those items of income exempted by statute or by fundamental law. The exemption of such income should not be confused with the reduction of taxable income by the application of allowable deductions." p. 769.**

**"ART. 92. Gross income of nonresident alien individuals.--In the case of nonresident alien individuals "gross income" means only the gross income from sources within the United States.... The items of gross income from**



sources without the United States and therefore not taxable to nonresident aliens or foreign corporations are described in section 217 (c) and article 323." p. 781.

"ART. 311. Definition.--A "nonresident alien individual" means an individual (a) whose residence is not within the United States and (b) who is not a [STATUTORY] citizen of the United States. An alien actually present in the United States who is not a mere transient or sojourner is a resident of the United States for purposes of the income tax. Whether he is a transient or not is determined by his intentions with regard to the length and nature of his stay. A mere floating intention, indefinite as to time, to return to another country is not sufficient to constitute him a transient. If he lives in the United States and has no definite intention as to his stay, he is a resident. One who comes to the United States for a definite purpose which in its nature may be promptly accomplished is a transient; but if his purpose is of such a nature that an extended stay may be necessary for its accomplishment, and to that end the alien makes his home temporarily in the United States, he becomes a resident, though it may be his intention at all times to return to his domicile abroad when the purpose for which he came has been consummated or abandoned. A foreign corporation is one which is not domestic." p. 841.  
[Treasury Decision 3640, January 1, 1924]

Regs 45: ART. 71. What excluded from gross income.— Gross income excludes the items of income specifically exempted by the statute and also certain other kinds of income by statute or fundamental law free from tax. Such tax-free income should not be included in the return of income and need not be mentioned in the return, unless information regarding it is specifically called for, as in the case, for example, of interest on municipal bonds. See article 402.

Regs 62: ART. 71. What excluded from gross income.— Gross income excludes the items of income specifically exempted by the statute and also certain other kinds of income by statute or fundamental law free from tax. Such tax-free income should not be included in the return of income and need not be mentioned in the return. The exclusion of such income should not be confused with the reduction of taxable income by the application of allowable deductions. See section 212 of the statute and article 21.

Regs 65: ART. 71. Exclusions from gross income.— The term " gross income" as used in the Act does not include those items of income exempted by statute or by fundamental law. The exemption of such income should not be confused with the reduction of taxable income by the application of allowable deductions.

Regs 69: ART. 71. Exclusions from gross income.— The term "gross income" as used in the Act does not include those items of income exempted by statute or by fundamental law. The exemption of such income should not be confused with the reduction of taxable income by the application of allowable deductions.

Regs 74: ART. 81. Exclusions from gross income.— The term " gross income" as used in the Act does not include those items of income exempted by statute or by fundamental law.

Regs 77: ART. 81. Exclusions from gross income.— The term " gross income" as used in the Act does not include those items of income exempted by statute or by fundamental law.

Regs 86:

ART. 21-1. Meaning of net income.— The tax imposed by Title I is upon income. Neither income exempted by statute or fundamental law, nor expenses incurred in connection therewith, other than interest, enter into the computation of net income as defined by section 21.

ART. 22 (b) -1. Exemptions— Exclusions from gross home.— Certain items of income specified in section 22(b) are exempt from tax and may be excluded from gross income. These items, however, are exempt only to the extent and in the amount specified. No other items are exempt from gross income except (1) those items of income which are, under the Constitution, not taxable by the Federal Government; (2) those items of income which are exempt from tax on income under the provisions of any Act of Congress not inconsistent with or repealed by the Act; (3) the income exempted under the provisions of section 116.

ART. 24-4. Amounts allocable to exempt income, other than interest.—

(a) Class of exempt income.— As used in this article, the term "class of exempt income" means any class of income, other than interest (whether or not any amount of income of that class or classes is received or accrued), wholly exempt from the taxes imposed by Title I of the Act. Included are any item or class of income, other than interest, constitutionally exempt from the taxes imposed by Title I; any item or class, other than interest, excluded from gross income under any provision of section 22 or section 116 of the Act; and any item or class of income, other than interest, exempt under the provisions of any other law from the taxes imposed by Title I. Thus the income derived from the operation of a lease of State lands, constituting such an instrumentality of the State as to render the income constitutionally exempt from the tax, is a class of exempt income. The expenses or other items referable

to the operation of such a lease are allocable to a class of exempt income, even though no income was received or accrued from such operations during the year.

The object of section 24 (a) (5) is to segregate the exempt income from the taxable income, in order that a double exemption may not be obtained through the reduction of taxable income by expenses and other items incurred in the production of item of income wholly exempt from tax. Accordingly, just as exempt items of income are excluded from the computation of gross income under section 22, so this provision of the Act excludes from the computation of deductions under section 23 all items referable to the production of exempt income. Only one exception is made, namely, in the case of exempt interest. (See section 23 (b).)

ART. 115-1. Dividends.— The term “dividends” for the purpose of Title I (except when used in sections 203 (a) (4) and 207 (c) (1) ) comprises any distribution in the ordinary course of business, even though extraordinary in amount, made by a domestic or foreign corporation to its shareholders out of its earnings or profits accumulated since February 28, 1913. Among the items entering into the computation of corporate “earnings or profits” for a particular period are all income exempted by statute, income not taxable by the Federal Government under the Constitution, as well all items includible in gross income under section 22 (a) of the Act or corresponding provisions of prior Acts.

Regs 94:

ART. 21-1. Meaning of net income.— The tax imposed by Title I is upon income. Neither income exempted by statute or fundamental law, nor expenses incurred in connection therewith, other than interest, enter into the computation of net income as defined by section 21.

ART. 22(a)-8. Sale of stock and rights. \*\*\* In the case of stock in respect of which were issued stock subscription rights which did not constitute income under the Constitution, and in the case of such rights, the following rules are to be applied:

ART. 24-4. Amounts allocable to exempt income, other than interest.—

(a) Class of exempt income.—As used in this article, the term “class of exempt income” means any class of income, other than interest (whether or not any amount of income of that class or classes is received or accrued), wholly exempt from the taxes imposed by Title I of the Act. Included are any item or class of income, other than interest, constitutionally exempt from the taxes imposed by Title I; any item or class, other than interest, excluded from gross income under any provision of section 22 or section 116 of the Act; and any item or class of income, other than interest, exempt under the provisions of any other law from the taxes imposed by Title I. Thus the income derived from the operation of a lease of State lands, constituting such an instrumentality of the State as to render the income constitutionally exempt from the tax, is a class of exempt income. The expenses or other items referable to the operation of such a lease are allocable to a class of exempt income, even though no income was received or accrued from such operations during the year.

Section 115. \*\*\*

(f) Stock dividends—

(1) GENERAL RULE.— A distribution made by a corporation to its shareholders in its stock or in rights to acquire its stock shall not be treated as a dividend to the extent that it does not constitute income to the shareholder within the meaning of the Sixteenth Amendment to the Constitution.

\*\*\*

(h) Effect on Earning and Profits of distribution of stock.

\*\*\*

(2) if the distribution was not subject to tax in the hands of such distributee because it did not constitute income to him within the meaning of the Sixteenth Amendment to the Constitution or because exempt to him under section 115(f) of the Revenue Act of 1934 or a corresponding provision of the prior Revenue Act. ART. 115-7. Stock dividends.— A distribution made by a corporation to its shareholders in its stock or in rights to acquire its stock shall be treated as a dividend to the full extent that it constitutes income to the shareholders within the meaning of the sixteenth amendment to the Constitution.

See also ART. 115-8, ART. 351-2.

Regs 101:

*ART. 21-1. Meaning of net income.*— The tax imposed by Title I is upon income. Neither income exempted by statute or fundamental law, nor expenses incurred in connection therewith, other than interest, enter into the computation of net income as defined by section 21.

*ART. 22 (b) -1. Exemptions– Exclusions from gross income.* – Certain items of income specified in section 22(b) are exempt from tax and may be excluded from gross income. These items, however, are exempt only to the extent and in the amount specified. No other items are exempt from gross income except (1) those items of income which are, under the Constitution, not taxable by the Federal Government; (2) those items of income which are exempt from tax on income under the provisions of any Act of Congress not inconsistent with or repealed by the Act; and (3) the income exempted under the provisions of section 116.

*ART. 22(a)-8. Sale of stock and rights.*

\*\*\*

*In the case of stock in respect of which were issued stock subscription rights which did not constitute income under the Constitution, and in the case of such rights, the following rules are to be applied:*

*ART. 24-4. Amounts allocable to exempt income, other than interest.*– (a) *Class of exempt income.*– As used in this article, the term "class of exempt income" means any class of income, other than interest (whether or not any amount of income of that class or classes is received or accrued), wholly exempt from the taxes imposed by Title I of the Act. Included are any item or class of income, other than interest, constitutionally exempt from the taxes imposed by Title I; any item or class, other than interest, excluded from gross income under any provision of section 22 or section 116 of the Act; and any item or class of income, other than interest, exempt under the provisions of any other law from the taxes imposed by Title I.

*See also ART. 27(i)-1, ART. 115-3, ART. 115-7, ART. 115-8, ART. 116-2 (state employees are immune).*

*ART. 212-1:*

\*\*\*

*(b) United States business office.* – The gross income of a nonresident alien individual who at any time within the taxable year was engaged in trade or business within the United States or had an office or place of business therein is not limited to the items of gross income specified in section 211(a), but includes any item of gross income which is treated as income from sources within the United States, except those items which are exempt from taxation by statute or treaty or which are not taxable by the Federal Government under the Constitution. (See sections 22(b), 112, 116, 119, and 212(b) .)

*ART. 231-2:*

\*\*\*

*(b) Resident foreign corporation.*–The gross income from sources within the United States of a resident foreign corporation is not limited to the items of fixed or determinable annual or periodical income referred to in section 231 (a), but includes every item of gross income which is treated as income from sources within the United States, except those items which are specifically exempt from taxation by statute or treaty or which are not taxable by the Federal Government under the Constitution.

*See also ART. 332-1, ART. 403-1,*

*Regs 103:*

*SEC. 19.21-1. Meaning of net income.*— The tax imposed by Title I is upon income. Neither income exempted by statute or fundamental law, nor expenses incurred in connection therewith, other than interest, enter into the computation of net income as defined by section 21.

*SEC. 19.22(a)-8. Sale of stock and rights.*

\*\*\*

*In the case of stock in respect of which were issued stock subscription rights which did not constitute income under the Constitution, and in the case of such rights, the following rules are to be applied:*

*SEC. 19.22 (b) -1. Exemptions– Exclusions from gross income. – Certain items of income specified in section 22(b) are exempt from tax and may be excluded from gross income. These items, however, are exempt only to the extent and in the amount specified. No other items are exempt from gross income except (1) those items of income which are, under the Constitution, not taxable by the Federal Government; (2) those items of income which are exempt from tax on income under the provisions of any Act of Congress still in effect; and (3) the income exempted under the provisions of section 116.*

*SEC. 19.24-4. Amounts allocable to exempt income, other than interest.– (a) Class of exempt income.– As used in this section, the term "class of exempt income" means any class of income, other than interest (whether or not any amount of income of that class or classes is received or accrued), wholly exempt from the taxes imposed by chapter 1. Included are any item or class of income, other than interest, constitutionally exempt from the taxes imposed by chapter 1; any item or class, other than interest, excluded from gross income under any provision of section 22 or section 116; and any item or class of income, other than interest, exempt under the provisions of any other law from the taxes imposed by chapter 1.*

*See also SEC. 19.27(i)-1, SEC. 19.113(a)(19)-1, SEC. 19.115-3, SEC. 19.115-7, SEC. 19.115-8, SEC. 116-2 (state employees are immune).*

*SEC. 19.212-1:*

\*\*\*

*(b) United States business office. – The gross income of a nonresident alien individual who at any time within the taxable year was engaged in trade or business within the United States or had an office or place of business therein is not limited to the items of gross income specified in section 211(a), but includes any item of gross income which is treated as income from sources within the United States, except those items which are exempt from taxation by statute or treaty or which are not taxable by the Federal Government under the Constitution. (See sections 22(b), 112, 116, 119, and 212(b) .)*

*SEC. 19.231-2:*

\*\*\*

*(b) Resident foreign corporation.– The gross income from sources within the United States of a resident foreign corporation is not limited to the items of fixed or determinable annual or periodical income referred to in section 231 (a), but includes every item of gross income which is treated as income from sources within the United States, except those items which are specifically exempt from taxation by statute or treaty or which are not taxable by the Federal Government under the Constitution.*

*See also SEC. 19.332-1, SEC. 19.502-1.*

A nonresident alien can claim an item of income is exempt/excluded from "gross income" by statute (such as IRC Section 872) as well. This is much harder for the IRS to argue with than claiming an exemption by fundamental law. They can more easily twist your words if you invoke "fundamental law" to them--they can claim you are making "Constitutional arguments/objections to the income tax." They fight dirty.

You could easily make a case that your wages and salary are not even income, per 26 C.F.R. §1.61-2, let alone "gross income". But it seems simpler to just rely on the exclusions from "gross income" available under IRC Section 872, which accomplishes the same thing. It is not necessary to argue your paycheck is not "income" if it is excluded from "gross income" anyway. The statutory exclusion under 26 U.S.C. §872 is a product of the limitations in the fundamental law on the tax power of Congress.

Some great questions to ask when writing to the IRS about your tax liability is:

1. Do you know what "exempt by fundamental law" means?
2. Did you consider income "exempt by fundamental law" in your computation of "gross income"?
3. If you didn't, why not?

If they refuse to answer the above questions, essentially they are refusing to acknowledge the limits of the statutes OR the constitution upon their behavior. The U.S. Congress defines this type of behavior as the essence of communism itself:

[TITLE 50 > CHAPTER 23 > SUBCHAPTER IV > Sec. 841.](#)  
[Sec. 841. - Findings and declarations of fact](#)

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*The Congress finds and declares that the Communist Party of the United States [consisting of the IRS, DOJ, and a corrupted federal judiciary], although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the [de jure] Government of the United States [and replace it with a de facto government ruled by the judiciary]. It constitutes an authoritarian dictatorship [IRS, DOJ, and corrupted federal judiciary in collusion] within a [constitutional] republic, demanding for itself the rights and [FRANCHISE] privileges [including immunity from prosecution for their wrongdoing in violation of Article 1, Section 9, Clause 8 of the Constitution] accorded to political parties, but denying to all others the liberties [Bill of Rights] guaranteed by the Constitution [Form #10.002]. Unlike political parties, which evolve their policies and programs through public means, by the reconciliation of a wide variety of individual views, and submit those policies and programs to the electorate at large for approval or disapproval, the policies and programs of the Communist Party are secretly [by corrupt judges and the IRS in complete disregard of, Form #05.014, the tax franchise "codes", Form #05.001] prescribed for it by the foreign leaders of the world Communist movement [the IRS and Federal Reserve]. Its members [the Congress, which was terrorized to do IRS bidding by the framing of Congressman Traficant] have no part in determining its goals, and are not permitted to voice dissent to party objectives. Unlike members of political parties, members of the Communist Party are recruited for indoctrination [in the public FOOL system by homosexuals, liberals, and socialists] with respect to its objectives and methods, and are organized, instructed, and disciplined [by the IRS and a corrupted judiciary] to carry into action slavishly the assignments given them by their hierarchical chieftains. Unlike political parties, the Communist Party [thanks to a corrupted federal judiciary] acknowledges no constitutional or statutory limitations upon its conduct or upon that of its members [ANARCHISTS!, Form #08.020]. The Communist Party is relatively small numerically, and gives scant indication of capacity ever to attain its ends by lawful political means. The peril inherent in its operation arises not from its numbers, but from its failure to acknowledge any limitation as to the nature of its activities, and its dedication to the proposition that the present constitutional Government of the United States ultimately must be brought to ruin by any available means, including resort to; force and violence [or using income taxes]. Holding that doctrine, its role as the agency of a hostile foreign power [the Federal Reserve and the American Bar Association (ABA)] renders its existence a clear present and continuing danger to the security of the United States. It is the means whereby individuals are seduced [illegally KIDNAPPED via identity theft!, Form #05.046] into the service of the world Communist movement [using FALSE information returns and other PERJURIOUS government forms, Form #04.001], trained to do its bidding [by FALSE government publications and statements that the government is not accountable for the accuracy of, Form #05.007], and directed and controlled [using FRANCHISES illegally enforced upon NONRESIDENTS, Form #05.030] in the conspiratorial performance of their revolutionary services. Therefore, the Communist Party should be outlawed*

If they refuse to answer the above questions, essentially they are refusing to acknowledge the limits of the statutes OR the constitution upon their behavior. It is not their job to compute your "gross income"---that is YOUR job. If you don't do that, you are in no position to complain about how they compute your tax based on available gross income information.



## 9 REMEDIES FOR THE INNOCENT

For the purposes of this section “Innocent” is defined in the following I.R.S. Document:

*Your Rights as a Non-Taxpayer*, IRS Publication 1a  
<http://famguardian.org/TaxFreedom/Forms/IRS/IRSPub1.pdf>

The above document is also available at:

*SEDM Liberty University*, Section 6.9  
<https://sedm.org/LibertyU/LibertyU.htm>

For further information on the subject of this section see:

1. *Sovereignty and Freedom Page, Section 9: Legal Self-Help*, Family Guardian Fellowship  
<https://famguardian.org/Subjects/Freedom/Freedom.htm>
2. *Legal Remedies That Protect Private Rights Course*, Form #12.019  
<https://sedm.org/Forms/FormIndex.htm>
3. *Common Law Practice Guide*, Litigation Tool #10.013  
<https://sedm.org/Litigation/LitIndex.htm>

### 9.1 Generally

#### 16 C.J.S., §65

##### **"Necessity of Injury in General"**

"In order to have standing to contest the validity of legislation or governmental action, the claimant must show an injury in fact and that he has been deprived of a constitutional right, or that he is adversely affected by a statute or governmental action."

[16 Corpus Juris Secundum, Constitutional Law, §65]

#### **Black's Law Dictionary: Damage**

"DAMAGE. Loss, injury, or deterioration, caused by the negligence, design, or accident of one person to another, in respect of the latter's person or property. The word is to be distinguished from its plural,--"damages,"--which means a compensation in money for a loss or damage. An injury produces a right in them who have suffered any damage by it to demand reparation of such damage from the authors of the injury. By damage, we understand every loss or diminution of what is a man's own, occasioned by the fault of another. 1 Ruth. Inst. 399.

"The harm, detriment, or loss sustained by reason of an injury. *Yazoo & M. V. R. Co. v. Fields*, 188 Miss. 725, 195 So. 489, 490.

"Synonymous with "condemnation money." [Cite omitted.] "Injury". [Cite omitted.] "Loss,"...." [Cite omitted]. [Black's Law Dictionary, Revised Fourth Edition, 1968, p. 466]

#### **Black's Law Dictionary: Damages**

"DAMAGES. A pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another." [Cites omitted.]

##### **"Compensatory damages**

"Compensatory damages are such as will compensate the injured party for the injury sustained, and nothing more; such as will simply make good or replace the loss caused by the wrong or injury." [Cite omitted.]

##### **"Contingent damages**

"Where a demurrer has been filed to one or more counts in a declaration, and its consideration is postponed, and

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meanwhile other counts in the same declaration, not demurred to, are taken as issues, and tried, and damages awarded upon them, such damages are called "contingent damages.""

#### **"Exemplary damages**

"Exemplary damages are damages on an increased scale, awarded to the plaintiff over and above what will barely compensate him for his property loss, where the wrong done to him was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct on the part of the defendant, and are intended to solace the plaintiff for mental anguish, laceration of his feelings, shame, degradation, or other aggravations of the original wrong, or else to punish the defendant for his evil behavior or to make an example of him, for which reason they are also called "punitive" or "punitory" damages or "vindictive" damages, and (vulgarly) "smart-money." [Cites omitted.] It is said that the idea of punishment does not enter into the definition; the term being employed to mean an increased award in view of supposed aggravation of the injury to the feelings of plaintiff by the wanton or reckless act of defendant. [Cite omitted.]

#### **"General damages**

"General damages are such as the law itself implies or presumes to have accrued from the wrong complained of, for the reason that they are its immediate, direct, and proximate result, or such as necessarily result from the injury, or such as did in fact result from the wrong, directly and proximately, and without reference to the special character, condition, or circumstances of the plaintiff." [Cites omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, pp. 466-469]

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#### **Black's Law Dictionary: Duress**

"DURESS, *n.* Unlawful constraint exercised upon a man whereby he is forced to do some act that he otherwise would not have done. It may be either "duress of imprisonment," where the person is deprived of his liberty in order to force him to compliance, or by violence, beating, or other actual injury, or duress *per minas*, consisting in threats of imprisonment or great physical injury or death. Duress may also include the same injuries, threats, or restraint exercised upon the man's wife, child, or parent. [Cites omitted.]

"Duress consists in any illegal imprisonment, or legal imprisonment used for an illegal purpose, or threats of bodily or other harm, or other means amounting to or tending to coerce the will of another, and actually inducing him to do an act contrary to his free will. [Cites omitted.] And it is never "duress" to threaten to do that which a party has a legal right to do. [Cites omitted.] Such as, instituting or threatening to institute civil actions." [Cites omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 594]

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#### **Black's Law Dictionary: Equity**

"EQUITY. In its broadest and most general signification, this term denotes the spirit and the habit of fairness, justness, and right dealing which would regulate the intercourse of men with men, --the rule of doing to all others as we desire them to do to us; or, as it is expressed by Justinian, "to live honestly, to harm nobody, to render to every man his due." Inst. 1, 1, 3. It is therefore the synonym of natural right or justice. But in this sense its obligation is ethical rather than jural, and its discussion belongs to the sphere of morals. It is grounded in the precepts of the conscience, not in any sanction of positive law.

"In a restricted sense, the word denotes equal and impartial justice as between two persons whose rights or claims are in conflict; justice, that is, as ascertained by natural reason or ethical insight, but independent of the formulated body of law. This is not a technical meaning of the term, except in so far as courts which administer equity seek to discover it by the agencies above mentioned, or apply it beyond the strict lines of positive law. See *Miller v. Kennirton*, 86 Me. 550, 30 A. 114.

"In a still more restricted sense, it is a system of jurisprudence, or branch of remedial justice, administered by certain tribunals, distinct from the common-law courts and empowered to decree "equity" in the sense last above given. Here it becomes a complex of well-settled and well-understood rules, principles, and precedents. *Isabelle Properties v. Edelman*, 297 N.Y.S. 572, 574, 164 Misc. 192.

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 634]

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#### **Black's Law Dictionary: Mandamus**

"MANDAMUS. Lat. We command. This is the name of a writ (formerly a high prerogative writ) which issues from a court of superior jurisdiction, and is directed to a private or municipal corporation, or any of its officers, or to an executive, administrative or judicial officer, or to an inferior court, commanding the performance of a particular act therein specified, and belonging to his or their public, official, or ministerial duty, or directing the restoration of the complainant to rights or

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privileges of which he has been illegally deprived." [Cite omitted.]

"Writ of "mandamus" is summary writ issued from court of competent jurisdiction to command performance of specific duty which relator is entitled to have performed. [Cite omitted.]

"It is legal, not equitable, remedy, and, when issued, is an inflexible peremptory command to do a particular thing." [Cite omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1113]

#### **Black's Law Dictionary: Common-Law Remedy**

"COMMON-LAW REMEDY. This phrase, within the meaning of U.S. Judicial Code 1911, §256 (Act March 3, 1911, c. 231, 36 Stat. 1100, see Historical and Revision Notes under 28 U.S.C.A. §1333), was not limited to remedies in the common-law courts, but embraced all methods of enforcing rights and redressing injuries known to the common or statutory law. *Kenneron v. Thames Towboat Co.*, 89 Conn. 367, 94 A. 372, 375, L.R.A. 1916A, 436. See, also, *Northern Pacific S. S. Co. v. Industrial Ace. Commission of California*, 174 Cal. 346, 163 P. 199, 202. See Notes of Decisions under 28 U.S.C.A. §1333."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 347]

#### **Black's Law Dictionary: Administrative Remedy**

"ADMINISTRATIVE REMEDY. One not judicial, but provided by commission or board created by legislative power." [Cite omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 67]

#### **28 U.S.C. §1343**

"(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

"(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

"(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

"(b) For purposes of this section--

"(1) the District of Columbia shall be considered to be a State; and

"(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

[28 U.S.C. §1343]

#### **Coles v. Com'rs of Washington Co. (Apr. 5, 1886)**

"In *State v. Cronkhite, supra*, the statute under consideration related to the reimbursement of purchasers where tax sales are adjudged void, and it was there held that "where a tax sale has been declared void a moral obligation arises to refund the purchaser's money."

[*Coles v. Com'rs of Washington Co.*, 35 Minn. 124, 27 N.W. 497 (1886)]

#### **Western Union Tel. Co. v. Ferguson (May 28, 1901)**

"Though courts should and do extend the application of the rules of the common law to the new conditions of advancing civilization, they may not rightfully create a new principle unknown to the common law, nor abrogate a known one. If new conditions cannot properly be met by the application of existing laws, the supplying of needful new laws is the province of the legislative, not the judicial, department."

"One who unintentionally fails to perform a duty should pay compensatory damages only. One who maliciously

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infringes another's legal rights should pay both compensatory and punitive damages."  
[Western Union Tel. Co. v. Ferguson, 60 N.E. 674 (1901)]

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**Harrigan v. Gilchrist (Apr. 19, 1904)**

"The jurisdiction of courts of equity is defined by principles, not precedents; the former govern, the latter illustrate."

"When it appears that the court has no jurisdiction over the subject-matter of the suit, it will take notice of the defect whether objection is made or not, and will dismiss or stay proceedings ex mero motu, and it is its duty to do so without determining any other matter involved in the litigation."

"The instances are very rare where any court has ventured to invade this salutary doctrine for the purpose of saving a party from the consequences, however severe. It would be difficult to assign any justification for such an invasion that would leave it free from condemnation as an act of usurpation, as it goes to the question of power. A court is all-powerful within its jurisdiction, but is absolutely powerless in any legitimate sense when acting outside thereof."

"How vast that is in its chancery field can best be appreciated by applying thereto the standard of measurement which the distinguished men who have been significant in the development of our system have taught us must be used to span it: "Equity will not suffer a wrong without a remedy." The term "wrong" in the maxim, as before indicated, has here a significance which does not reach violations of mere moral rights. Any other wrong is said to involve a corresponding primary legal or equitable right, with and equitable or legal remedy, according to circumstances, for the former, and an equitable remedy for the latter. Pomeroy, Eq.Jur. 424."

[Harrigan v. Gilchrist, 121 Wis. 127, 99 N.W. 909 (1904)]

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**People ex rel. Eckerson v. Board of Education, etc., of School Dist. No. 1 of Haverstraw (May 1, 1908)**

"The mere fact that a tax was voluntarily paid does not debar the Legislature from providing for a refund of that part of it which was excessive; and hence a taxpayer is not precluded by voluntarily paying a tax from obtaining relief under a statute relating to the refunding of excessive taxes not previously refunded, which were levied and paid upon a basis thereafter pronounced improper by the courts, where the statute did not limit its application to involuntary or compulsory payments."

"Legislative recognition of the existence of a moral obligation to refund excessive taxes to a taxpayer, and the giving it legal effect by a retroactive statute, is within the legislative power."

"The legislative policy in enacting a law is not the concern of the courts, so long as the legislative enactment is within the Constitution, and, though the practical effect of an act may be considered by the courts in arriving at the legislative intent where that requires interpretation, the courts will not nullify or limit a statute under the guise of interpretation because they may not approve of its policy or scope."

The obligation to refund excessive taxes levied and collected carries with it the right to interest as a matter of course."

[People ex rel. Eckerson v. Board of Education, of School Dist. No. 1 of Haverstraw, 126 App. Div. 414, 110 N.Y.S. 769 (1908)]

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**Coe v. Armour Fertilizer Works (May 3, 1915)**

"A person is not precluded from complaining that the taking of his property conformably to state legislation, to satisfy an alleged debt or obligation, was without the notice and hearing essential under the due process of law clause of U.S. Const., 14th Amend., because, in his particular case, due process of law would lead to the same result, because he had no adequate defense on the merits."

"Extra-official or casual notice, or a hearing granted as a matter of favor or discretion in proceedings for the taking of one's property to satisfy his alleged debt or obligation, is not a substantial substitute for the due process of law which U.S. Const., 14th Amend., requires."

[Coe v. Armour Fertilizer Works, 237 U.S. 413, 423, 35 S.Ct. 625, 628, 59 L.Ed. 1027 (1915)]

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**State v. County Com'rs of Fairfield County (July 27, 1923)**

"Mandamus will lie to compel the payment of money by public officials, where the duty to pay is plain, the claim just, undisputed in amount, and based on a clear legal right, and the county commissioners of such portion of their license fees as liquor dealers were entitled to, under Pub. Acts 1919, c. 164, §2, after the going into effect of the War-Time Prohibition Act."

"The court did not err in issuing the writ. The statute is mandatory. It leaves nothing to the discretion of the commissioners."

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The application for the writ alleges facts upon which it became the statutory duty of the commissioners to pay the relator a fixed sum, and alleges that they refused to pay it. *State ex rel. Bulkeley v. Williams*, 68 Conn. 131, 35 Atl. 24, 421, 48 L.R.A. 465, is exactly in point.

"It is said that the relator has an adequate remedy at law, because he might obtain a judgment against the commissioners in an action at law. But the remedy at law is inadequate, because ineffectual and incomplete. The judgment could not be collected by levy of execution and could be collected only by mandamus, or by an action on the commissioners' bonds. To avoid circuitry of action, and because the state is interested in compelling its agents to obey its commands, it is well settled that mandamus will lie to compel the payment of money by public officials, when the duty to pay it is plain, and the claim is just, undisputed in amount, and based on a clear legal right."

.. it is apparent not only from the language of the act, but from the circumstances surrounding the passage of the act, that it is not in the nature of a vote of a gratuity, but in the nature of a remission of a tax, and the power of the General Assembly to remit taxes within constitutional limits being unquestionable, the real issue is whether this particular remission is a valid exercise of powers incidental to the taxing power."

""When the license fee is imposed solely or primarily for \* \* \* raising revenue, it is the imposition of a tax no matter by what name it may be called." *State v. Murphy*, 90 Conn. 662, 665, 98 Atl. 343, 345."

[*State v. County Com'rs of Fairfield County*, 99 Conn. 378, 121 A. 800 (1923)]

### **Old Colony Trust Co. v. Seattle (June 1, 1926)**

""But immunity from suit is a high attribute of sovereignty--a prerogative of the State itself--which cannot be availed of by public agents when sued for their own torts. The 11th Amendment was not intended to afford them freedom from liability in any case where, under color of their office, they have injured one of the State's citizens. To grant them such immunity would be to create a privileged class free from liability from wrongs inflicted or injuries threatened. Public agents must be liable to the law, unless they are to be put above the law." [Citing *Hopkins v. Clemson Agri. College*, 221 U.S. 6361." [Old Colony Trust Co. v. Seattle, 271 U.S. 427, 70 L.Ed. 1019 (1926)]

### **In re Heinemann's Will (Apr. 29, 1930)**

"Where statute relating to inheritance taxes was held unconstitutional by United States Supreme Court, legislature could recognize moral obligation on state's part to repay tax previously collected (Stat. §§72.01, 72.26)."

"Constitutional limitations regarding assessment and collection of taxes do not obtain with reference to appropriations of money out of state treasury."

"Statute authorizing' repayment of illegal inheritance taxes collected does not invade judicial power of state (Stat. §72.26; Const. art. 7, §2)."

"In constitutional provision regarding time of filing claims against state, word "claim" means legal claim, a demand as of right (Const. art. 8, §2)."

[In re *Heinemann's Will*, 230 N.W. 698 (1930)]

### **Austin Nat. Bank of Austin v. Sheppard (May 2, 1934)**

"Person voluntarily paying illegal tax has no claim for repayment."

"Person paying illegal tax under duress has legal claim for its repayment, notwithstanding money has gone into treasury and has been paid out by disbursing officers."

"Duress in payment of illegal tax may be either express or implied, and legal duty to refund exists in both instances."

"In absence of contrary statutory provision, it is immaterial whether illegal tax is paid under protest."

"A person who pays an illegal tax under duress has a legal claim for its repayment. In this connection it is held in some jurisdictions that a taxpayer cannot maintain an action to recover taxes illegally exacted after the money has gone into the treasury and been paid out by the disbursing officers, but we think the sounder rule is to the contrary. 26 R.C.L. p. 454, §410; *Commonwealth v. Boske*, 99 S. W. 316, 30 Ky. Law Rep. 400, 11 L. R. A. (N. S.) 1106, and note. In such instances the money never becomes the property of the state as against the real owner.

"Duress in the payment of an illegal tax may be either express or implied, and the legal duty to refund is the same in both instances. 26 R.C.L. p. 457, §413."

[*Austin Nat. Bank of Austin v. Sheppard*, 71 S.W.2d. 242 (1934)]

### **Louis Kamm, Inc. v. Flink (Oct. 5, 1934)**

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"One may become liable to action for tort by doing something he should not do to another's prejudice, wrongfully or negligently doing something he may rightfully do by such means, at such time or in such manner that another is injured, or by neglecting to do something he should do, whereby another suffers injury."

""Wrong" is merely privation of right, for such remedy is restoration of right by specific delivery or restoration of subject-matter in dispute to legal owner, or, if that is impossible or inadequate remedy, by making pecuniary satisfaction in damages."

""Legal right" is claim enforceable by legal means against person or community bound to respect it.

""Legal right" may be said to be well-founded claim, enforced by sanctions, or right to which state gives sanction of remedies."

""Tort" or "wrong" is breach or violation of duty or infringement of right."

"Right to pursue lawful business is "property right," which law protects against unjustifiable interference."

"One to whom another intentionally and maliciously causes temporal loss or damage, without justifiable cause, may recover damages, sustained as natural proximate result of such wrong, in action of tort."

"Strangers to contract cannot interpose party's noncompliance with statute of frauds as defense to action for unjustifiable interference with contractual relation."

"The complaint is sufficient in law. The action sounds in tort. The ways in which one may become liable to an action as for tort are the following: (1) By actually doing to the prejudice of another something he ought not to do; (2) by doing something he may rightfully do, but wrongfully or negligently doing it by such means or at such times or in such manner that another is injured; and (3) by neglecting to do something which he ought to do, whereby another suffers an injury. Cooley on Torts (4th Ed.) §44."

"The primary inquiry therefore is, What constitutes a wrong that the law will redress? All wrong may be considered as merely a privation of right, and the plain, natural remedy for every species of wrong is the being put in possession of that right whereof the party injured is deprived. This may either be effected by a specific delivery or restoration of the subject-matter in dispute to the legal owner, or, where that is not possible, or at least not an adequate remedy, by making the sufferer a pecuniary satisfaction in damages. 3 Blackstone's Commentaries, 116. There is no necessary identity, or even relation, of legal right and moral right. Legal right must be established on principles of general utility. A legal right may be said to be a well-founded claim, enforced by sanctions. By legal rights are intended those to which the state gives its sanction. The sanction it gives is the sanction of remedies; so that a legal right may be said to be a claim which can be enforced by legal means against the persons or the community whose duty it is to respect it. 1 Cooley's Blackstone, pp. 109, 113, note. "A tort or a wrong may be spoken of either as a breach or violation of a duty or an infringement of a right." 1 laggard Torts 2."

[Louis Kamm, Inc. v. Flink, 175 A. 62 (1934)]

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### **National Biscuit Co. v. State (Jan. 24, 1940)**

"A person who voluntarily pays an illegal tax has no claim for repayment."

"A person paying an illegal tax under duress has legal claim for repayment."

"Duress in payment of an illegal tax may be either express or implied, and legal duty to refund exists in both."

"In absence of contrary statute, it is immaterial to right of repayment of illegal tax whether the tax is paid under protest."

"An unconstitutional statute is a void statute. In other words, it is not a law at all."

[National Biscuit Co. v. State, 135 S.W.2d. 687 (1940)]

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### **Cole v. Arkansas (Mar. 8, 1948)**

"Notice of specific charge and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in criminal proceeding."

"It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made."

"Where state provides for an appeal to state Supreme Court and on that appeal considers questions raised under federal Constitution, proceedings in the state supreme court must conform to procedural due process."

"Where accused construed information as charging them with offense of promoting an unlawful assemblage, trial judge construed information as charging that offense instructed jury to that effect but state Supreme Court refused to consider validity of conviction for such offense and affirmed conviction as though defendants had been tried and convicted of offense of using force and violence to prevent another from working, the defendants were denied safeguards guaranteed by due process of law."

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"To conform to due process of law, defendants were entitled to have validity of their convictions appraised on consideration of case as it was tried and as the issues were determined in trial court."

"Where defendants were convicted of promoting an unlawful assemblage but state Supreme Court affirmed conviction as though defendants had been tried and convicted of offense of using force and violence to prevent another from working, without passing on contentions which challenged validity, under Fourteenth Amendment, of state statute making it an offense to promote an unlawful assemblage, the United States Supreme Court could not pass on such contentions."  
[*Cole v. Arkansas*, 333 U.S. 196, 68 S.Ct. 514 (1948)]

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**Carroll v. Socony-Vacuum Oil Co. (Aug 23, 1949)**

"One who can suffer no injury by the operation of a statute cannot claim that it is unconstitutional."

"In passing upon constitutional questions, Supreme Court of Errors has regard to substance and not to mere matters of form, and statute must be tested by its operation and effect."

"In determining constitutionality of a statute, motive of legislature is immaterial, and if General Assembly acted inadvertently, that fact could not give any additional validity to law."

"Presumption of validity of a statute because of some reasonably conceivable factual situation which legislature might have had in mind is rebuttable."

[*Carroll v. Socony-Vacuum Oil Co.*, 136 Conn. 49, 68 A.2d. 299 (1949)]

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**Mullane v. Central Hanover Bank and Trust Co. (Apr. 24, 1950)**

"A fundamental requisite of due process of law is the opportunity to be heard."

"A fundamental requirement of due process of law in any proceeding which is to be accorded finality is notice reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections; and the notice must be of such nature that it reasonably conveys the required information, and must afford a reasonable time for those interested to make their appearance; but if, with due regard for practicalities and peculiarities of the case, those conditions are reasonably met, the constitutional requirements are satisfied."

"Great caution should be used not to let fiction deny the fair play that can be secured only by a pretty close adhesion to fact." *McDonald v. Mabee*, 243 U.S. 90, 91, 37 S.Ct. 343, 61 L.Ed. 608, L.R.A.1917F, 458."

[*Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306; 70 S.Ct. 652; 94 L.Ed. 865 (1950)]

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**Kimsey v. State (June 16, 1951)**

"A penal statute must be strictly construed in favor of rights of citizens."

"The Supreme Court has judicial knowledge of the inadequate pay of teachers."

[*Kimsey v. State*, 241 S.W.2d. 514 (1951)]

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**State v. Giessel (May 4, 1954)**

"Public funds may be expended only for a public purpose, and an expenditure of such funds for a private purpose is unconstitutional."

"A legislative act providing for refund of taxes or license fees is valid if there exists a moral obligation to support it."

"A subsequent legislature cannot by a later act declare the construction which was intended by a former enactment in such manner as to make the construction binding upon a court faced with making a construction of the earlier act, and a declaration by subsequent legislature, that statute adopted by former legislature, imposing tax or license fee, had been enacted as result of inadvertence or mistake, is ineffective to establish a moral obligation to refund a tax or fee paid pursuant to prior enactment, but such rule does not apply to a declaration by the same legislature of such tenor, in which case it will be accepted as a verity by the court."

"However, there is a further applicable and well recognized general rule that a legislative act providing for a refund of taxes or license fees is valid if there exists a moral obligation to support the same."

[*State v. Giessel*, 266 Wis. 547, 64 N.W.2d. 421 (1954)]

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**Whitaker & Co. v. Sewer Improvement District No. 1 (Mar. 30, 1955)**

"The equitable maxim that equity will not suffer a wrong without a remedy requires as a basis for its application the

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presence of a "wrong" which does not mean a moral duty only, unconnected with legal obligations."  
[Whitaker Co. v. Sewer Improvement District No. 1, 221 F.2d. 649 (1955)]

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**State v. Akin Products Company (Jan. 4, 1956)**

"It is immaterial to right of recovery of taxes paid, in absence of statutory provision to that effect, whether or not an illegal tax was paid under protest."

"Where taxes were paid under duress of an unconstitutional act, they should be refunded regardless of whether taxpayers industry might have been benefited by them."

""The compulsion upon the plaintiffs to pay the taxes is similar to that discussed in Crow v. City of Corpus Christi, 146 Tex. 558, 209 S.W.2d. 922, 924, where the Court said:

""The early common-law doctrine of duress has been expanded (17 Am.Jur., p. 875) and many courts have adopted the modern doctrine of "business compulsion," under which "it is established that where by reason of the peculiar facts a reasonably prudent man finds that in order to preserve his property or protect his business interest it is necessary to make a payment of money which he does not owe and which in equity and good conscience the receiver should not retain, the payment may be recovered." 40 Am.Jur., p. 831. A view similar to that to "business compulsion" has been taken by our courts in cases involving the recovery of illegal taxes or fees; and "it is immaterial to the right of repayment," in the absence of statutory provision to that effect, "whether or not an illegal tax is paid under protest." National Biscuit Co. v. State," supra; Austin Nat. Bank [of Austin] v. Sheppard," Tex.Com.App., 123 Tex. 272, 71 S.W.2d. 242; Cooley on Taxation, Vol. 3 (4th Ed.) p. 2566.

[State v. Akin Products Company, 286 S.W.2d. 110 (1956)]

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**Spouting Rock Beach Corporation v. United States (Aug. 25, 1959)**

"Plaintiff contends that reasonable cause for its failure to file said returns on time existed because it relied on the advice of its counsel and of the special committee of which he was a member, and all of whose members were reputable attorneys. My consideration of this contention must begin with an acknowledgement of the now accepted rule, which is well set forth in 10 Mertens, Law of Federal Income Taxation (Zimet revision 1958), §55.27:

"It may be stated generally that a taxpayer who acts upon the advice of reputable counsel is not to be considered guilty of either fraud, or negligence, or delinquency. It has been indicated that the taxpayer's interpretation of a transaction may be viewed in the light of what was reasonable at the time the transaction occurred. The fact that the taxpayer seeks and obtains advice from counsel tends to show that he is acting in good faith and that he avails himself of the best means at his command to determine his liability honestly and fairly."

"The law requires only that a taxpayer show reliance in good faith upon the advice of a practicing lawyer. Mayflower Investment Co. v. Commissioner, 5 Cir., 1956, 239 F.2d. 624; Orient Investment & Finance Co. v. Conuissioner, 1948, 83 U.S.App.D.C. 74, 166 F.2d. 601, 3 A.L.R.2d 612; Dayton Bronze Bearing Co. v. Gilligan, 6 Cir. 1922, 281 F. 709; The C. R. Lindback Foundation, supra."

[Spouting Rock Beach Corporation v. United States, 176 F.Supp. 938 (1959)]

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**Sniadach v. Family Finance Corp. of Bay View (June 9, 1969)**

"Supreme Court does not sit as a superlegislative body and is not concerned with what philosophy a state should or should not embrace."

"A procedural rule that may satisfy due process for attachments in general does not necessarily satisfy procedural due process in every case."

"A procedural rule that may satisfy due process for attachments in general, see McKay v. McInnes, 279 U.S. 820, 49 S.Ct. 344, 73 L.Ed. 975, does not necessarily satisfy procedural due process in every case. The fact that a procedure would pass muster under a feudal regime does not mean it gives necessary protection to all property in its modern forms. We deal here with wages--a specialized type of property presenting distinct problems in our economic system. We turn then to the nature of that property and problems of procedural due process.

"A prejudgment garnishment of the Wisconsin type is a taking which may impose tremendous hardship on wage earners with families to support. Until a recent Act of Congress, §304 of which forbids discharge of employees on the ground that their wages have been garnished, garnishment often meant the loss of a job. Over and beyond that was the great drain on family income. As stated by Congressman Reuss:

""The idea of wage garnishment in advance of judgment, of trustee process, of wage attachment, or whatever it is called is a most inhuman doctrine. It compels the wage earner, trying to keep his family together, to be driven below

the poverty level."

"Recent investigations of the problem have disclosed the grave injustices made possible by prejudgment garnishment whereby the sole opportunity to be heard comes after the taking. Congressman Sullivan, Chairman of the House Subcommittee on Consumer Affairs who held extensive hearings on this and related problems stated:

""What we know from our study of this problem is that in a vast number of cases the debt is a fraudulent one, saddled on a poor ignorant person who is trapped in an easy credit nightmare, in which he is charged double for something he could not pay for even if the proper price was called for, and then hounded into giving up his pound of flesh, and being fired besides." 114 Cong.Rec. 1832.

"The lever of the creditor on the wage earner is enormous. The creditor tenders not only the original debt but the "collection fees" incurred by his attorneys in the garnishment proceedings:

""The debtor whose wages are tied up by a writ of garnishment, and who is usually in need of money, is in no position to resist demands for collection fees. If the debt is small, the debtor will be under considerable pressure to pay the debt and collection charges in order to get his wages back. If the debt is large, he will often sign a new contract of 'payment schedule' which incorporates these additional charges."

"Apart from those collateral consequences, it appears that in Wisconsin the statutory exemption granted the wage earner is "generally insufficient to support the debtor for any one week."

"The result is that the prejudgment garnishment of the Wisconsin type may as a practical matter drive a wage-earning family to the wall. Where the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing (cf. *Coe v. Armour Fertilizer Works*, 237 U.S. 413, 423, 35 S.Ct. 625, 628, 59 L.Ed. 1027) this prejudgment garnishment procedure violates the fundamental principles of due process."

[Footnote 9.] ""For a poor man--and whoever heard of the wage of the affluent being attached?--to lose part of his salary often means his family will go without the essentials. No man sits by while his family goes hungry or without heat. He either files for consumer bankruptcy and tries to begin again, or just quits his job and goes on relief. Where is the equity, the common sense, in such a process?" Congressman Gonzales, 114 Cong.Rec. 1833. For the impact of garnishment on personal bankruptcies see H.R. Rep. No.

1040, 90th Cong., 1st Sess., 20-21." [End footnote.]

[*Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed. 349 (1969)]

#### **Randone v. Appellate Dept. of S.Ct. of Sacramento Co. (Sept. 23, 1971)**

"Individual must be afforded notice and opportunity for hearing before he is deprived of any significant property interest, and exceptions to this principle can be justified only in extraordinary circumstances."

""Attachment" is a purely statutory remedy activated by a plaintiff under which property of defendant is seized by legal process in advance of trial and judgment."

""Garnishment" is a sub-category of attachment and refers to seizure or attachment of property belonging to or owing to debtor but which is presently in possession of a third party."

[*Randone v. Appellate Dept. of S.Ct. of Sacramento Co.*, 96 Cal.Rptr. 709, 488 P.2d. 13 (1971)]

#### **Fuentes v. Shevin (June 12, 1972)**

"Central meaning of "procedural due process" is that parties whose rights are to be affected are entitled to be heard and, in order that they may enjoy that right, they must first be notified."

"Procedural due process includes right to notice and opportunity to be heard at meaningful time and in meaningful manner. "

"Constitutional right to be heard is basic aspect of duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions; purpose of requirement is not only to ensure abstract fair play to the individual but to protect his use and possession of property from arbitrary encroachment--to minimize substantively unfair or mistaken deprivations of property, a danger that is especially great when the state seizes goods simply upon application of and for benefit of private party."

"Prohibition against deprivation of property without due process of law reflects the high value, embedded in our constitutional and political history, that we place on a person's right to enjoy what is his, free of governmental interference."

"Right to notice and hearing as to seizure of person's goods must be granted at time when deprivation can still be prevented inasmuch as, even though at later hearing his possessions can be returned to him or damages may be awarded for wrongful deprivation, no later hearing and no damage award can undo fact that arbitrary taking that was subject to right of procedural due process has already occurred."

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"Right of party in possession of property to be heard before he is deprived of it does not depend upon an advance showing that he will surely prevail at the hearing and it is enough to invoke procedural safeguards of Fourteenth Amendment that a significant property interest is at stake, whatever the ultimate outcome of a hearing on the contractual right to continued possession and use of the goods."

"Due process requirement of hearing before deprivation of property takes effect is not limited to protection of only a few types of property interest."

"The rather ordinary costs in time, effort and expense resulting from hearing held prior to deprivation of property interest cannot outweigh the constitutional right to such a hearing."

"Procedural due process is not intended to promote efficiency or accommodate all possible interests; it is intended to protect the particular interests of the person whose possessions are about to be taken."

"Outright seizure of property interest without opportunity for prior hearing is justified only when a seizure is directly necessary to secure an important governmental or general public interest, there is a special need for very prompt action and the state keeps strict control over its monopoly of legitimate force, that is, the person initiating the seizure has been a government official responsible for determining, under standards of a narrowly drawn statute, that it is necessary and justified in the particular instance."

"In civil, no less than criminal area, courts indulge every reasonable presumption against waiver of procedural due process rights."

"Waiver of constitutional rights in any context must, at the very least, be clear and courts will not be concerned with involuntariness or intelligence of waiver when the contractual language relied upon does not even, on its face, amount to a waiver."

"Essential reason for requirement of prior hearing before depriving person of property interest is to prevent unfair and mistaken deprivations of property; the hearing must provide a real test and due process is afforded only by the kings of notice and hearing that are aimed at establishing the validity, or at least the probable validity, of the underlying claim against the alleged debtor."

"The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decisionmaking when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment--to minimize substantively unfair or mistaken deprivations of property, a danger that is especially great when the State seizes goods simply upon application of and for benefit of private party. So viewed, the prohibition against the deprivation of property without due process of law reflects the high value, embedded in our constitutional and political history, that we place on a person's right to enjoy what is his, free of governmental interference. See *Lynch v. Household Finance Corp.*, 405 U.S. 538, 552, 92 S.Ct. 1113, 1122, 31 L.Ed.2d. 424."

"If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented. At a later hearing, an individual's possessions can be returned to him if they were unfairly or mistakenly taken in the first place. Damages may even be awarded to him for the wrongful deprivation. But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred. "This Court has not . . . embraced the general proposition that a wrong may be done if it can be undone." *Stanley v. Illinois*, 405 U.S. 645, 647, 92 S.Ct. 1208, 1210, 31 L.Ed.2d. 551."

"No doubt, there may be many gradations in the "importance" or "necessity" of various consumer goods. Stoves could be compared to television sets, or beds could be compared to tables. But if the root principle of procedural due process is to be applied with objectivity, it cannot rest on such distinctions. The fourteenth Amendment speaks of "property" generally. And, under our free-enterprise system, an individual's choices in the marketplace are respected, however unwise they may seem to someone else. It is not the business of a court adjudicating due process rights to make its own critical evaluation of those choices and protect only the ones that, by its own lights, are "necessary."

"There are "extraordinary situations" that justify postponing notice and opportunity for a hearing. *Boddie v. Connecticut*, 401 U.S., at 379, 91 S.Ct., at 786. These situations, however, must be truly unusual. Only in a few limited situations has this Court allowed outright seizure without opportunity for a prior hearing. First, in each case, the seizure has been directly necessary to secure an important governmental or general public interest. Second, there has been a special need for very prompt action. Third, the State has kept strict control over its monopoly of legitimate force; the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance. Thus, the Court has allowed summary seizure of property to collect the internal revenue of the United States, to meet the needs of a national war effort, to protect against the economic disaster of a bank failure, and to protect the public from misbranded drugs and contaminated food."

[*Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d. 556 (1972)]

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### **Blackledge v. Perry (May 20, 1974)**

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"Once the state has established avenues of appellate review, the avenues must be kept free of unreasonable distinctions that can only impede open and equal access to the courts."

[Blackledge v. Perry, 417 U.S. 21, 94 S.Ct. 2098, 40 L.Ed.2d. 628 (1974)]

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**United States v. Barker (May 17, 1976)**

"It is a fundamental tenet of criminal law that an honest mistake of fact negatives criminal intent, when a defendant's acts would be lawful if the facts were as he supposed them to be. A mistake of law, on the other hand, generally will not excuse the commission of an offense. A defendant's error as to his *authority* to engage in particular activity, if based upon a mistaken view of legal requirements (or ignorance thereof), is a mistake of *law*. Typically, the fact that he relied upon the erroneous advice of another is not an exculpatory circumstance. He is still deemed to have acted with a culpable state of mind."

[United States v. Barker, 546 F.2d. 940 (1976)]

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**Mathes v. C.I.R. (July 10, 1978)**

"Taxpayers also assert they were denied their Seventh Amendment right to trial by jury before the Tax Court. The Seventh Amendment preserves the right to jury trial "in suits at common law." Since there was no right of action at common law against a sovereign, enforceable by jury trial or otherwise, there is no constitutional right to a jury trial in a suit against the U.S. See 9 C. Wright & A. Miller, *Federal Practice & Procedure* §2314, 68-69 (1971). Thus, there is a right to jury trial in actions against the United States only if a statute so provides. Congress has not so provided when the taxpayer elects not to pay the assessment and sue for a redetermination in the tax court. For a taxpayer to obtain a trial by jury, he must pay the tax allegedly owed and sue for refund in the district court. 28 U.S.C. §§2412 & 1346(a)(1). The law is therefore clear that a taxpayer who elects to bring his suit in the tax court has no right, statutory or constitutional, to a trial by jury. *Phillips v. Commissioner*, 283 U.S. 589, 599 n. 9, 51 S.Ct. 608, 75 L.Ed. 1289 (1931); *Wickwire v. Reincke*, 275 U.S. 101, 105-106, 48 S.Ct. 43, 72 L.Ed. 184 (1927); *Dori v. Commissioner*, 507 F.2d. 406, 407 (2d Cir. 1974) (holding it "elementary that there is no right to a jury trial in the Tax Court.")"

[Mathes v. C.I.R., 576 F.2d. 70 (1978)]

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**State v. City Nat. Bank of Austin (Feb. 8, 1979)**

"State Commission for the Blind is an agency of the state, and state is bound by Commission's contract as a private citizen is bound by a like contract."

"In the old case of *State v. Cloudt*, 84 S.W. 415, 416 (Tex.Civ.App.--San Antonio 1904, writ ref d), the court said: "When a state appears as a party to a suit, she voluntarily casts off the robes of her sovereignty, and stands before the bar of a court of her own creation in the same attitude as an individual litigant; and her rights are determined and fixed by the same principles of law and equity, and a judgment for or against her must be given the same effect as would have been given it had it been rendered in a case between private individuals." [Emphasis added.] [Brackets original.]

"The above language from *State v. Cloudt* was approved and quoted by the Supreme Court in *Wortham v. Walker*, 133 Tex. 255, 128 S.W.2d. 1138, 1145-6 (1939).

"Again in *Harris v. O'Connor*, 185 S.W.2d. 993, 998 (Tex.Civ.App.--El Paso 1944, writ ref d w. o. m.), the court said:

""The State at all times voluntarily appears before her courts. If she elects to so appear, there are no special privileges to be accorded by the courts. To accord the State any such special privileges would defeat the purpose of the appearance. The government is bound by law just as the citizen."

"The court in *Railroad Commission v. Arkansas Fuel Oil Co.*, 148 S.W.2d. 895, 898 (Tex.Civ.App.--Austin 1941, writ ref d), said:

""It is likewise a general rule that when the State enters the courts as a litigant it casts off its robe as a sovereign, comes as would an individual litigant, and is bound by the judgment rendered as would an individual litigant.""

[State v. City Nat. Bank of Austin, 578 S.W.2d. 155 (1979)]

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**Lincoln Nat. Life Ins. Co. v. State (Apr. 22, 1982)**

"One who voluntarily pays tax has no legal claim for its repayment, but one who pays more tax than law requires, under duress, has such a claim."

"Notwithstanding amendment of Texas Insurance Code under which certificates of authority are now valid until revoked according to law, rather than subject to annual renewal, duress could still be implied from institution of administrative or

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legal proceedings...."

[Lincoln Nat. Life Ins. Co. v. State, 632 S.W.2d. 227 (1982)]

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**United States v. Hylton (June 10, 1982)**

"Shortly after 6:00 p.m. on the evening of November 4, 1981, IRS special agents Michael E. Rentsch and Thomas E. Artru entered the Hylton premises to inquire of the whereabouts of the defendant's son, David Hylton. They were met by the defendant at the front of a patio adjoining the defendant's house, and a conversation ensued, after which the agents departed. Both the agents and the defendant tape-recorded the conversation, and there is no dispute as to what transpired.

"The following day, the defendant, armed with her recording, filed a criminal complaint against the agents with Chambers County Attorney Eugene T. Jenson. The complaint was factually accurate and properly alleged the elements of criminal trespass pursuant to Tex.Penal Code Ann. tit. 7 §30.05 (Vernon Supp. 1980-81). Subsequently, criminal prosecution in state court was commenced by information. The action was removed to this Court where after the presentation of the state's case-in-chief, the Court, relying upon *Foster v. United States*, 296 F.2d. 65, 67 (5th Cir. 1962), entered judgment of acquittal."

"The issue before the Court is whether the defendant can be convicted of violating 26 U.S.C. §7212(a) for filing a nonfraudulent criminal complaint against federal agents with appropriate local law enforcement officials. The gravamen of the Government's case is that the defendant, in lodging her complaint, did not act in a good faith assertion of her own rights, but rather with the specific purpose and intent of obstructing an IRS investigation into the criminal liability of her son. Hence, the Government contends that she can be convicted because she acted with an obstructionist's heart.

"The Court disagrees. Even assuming the evidence to have established beyond any doubt that the defendant acted with the sole purpose of obstructing the investigation of the two IRS agents, the Court finds the application of the criminal law to the facts and circumstances of this case constitutes an impermissible infringement upon the first amendment right of the defendant to petition the government for redress of grievances. Accordingly, even construing the evidence and reasonable inferences therefrom in a manner supportive of the jury's verdict, the Court holds that the defendant has committed no offense proscribed by 26 U.S.C. §7212(a)."

"The first amendment right to petition for redress of grievances is "among the most precious of the liberties safeguarded by the Bill of Rights." [Cites omitted.] There can be no doubt that the filing of a legitimate criminal complaint with local law enforcement officials constitutes an exercise of the first amendment right."

"Despite the defendant's questionable motivation and intent, the Court holds that the challenged conduct was constitutionally protected under the first amendment. It is well settled that liability can be imposed for activities ostensibly consisting of petitioning the government for redress of grievances only if the petitioning is a "sham," and the real purpose is not to obtain governmental action, but otherwise to obtain an unlawful result. ... It is clear that the defendant genuinely sought governmental response to her complaint against the IRS agents, namely, the filing of criminal charges by officials of Chambers County. In such a situation, the defendant's intent or purpose in lodging the complaint is of no moment."

"In sum, the Court finds that the defendant's activities alleged by the Government to be in violation of 26 U.S.C. §7212(a) all fall within the aegis of constitutionally protected expression under the first amendment. It is irrelevant to the applicability of the right to petition that its exercise might have the effect of intimidating or impeding federal officials about whom complaints are made, or even that the complainer might be aware of and pleased by such prospects."

[United States v. Hylton, 558 F.Supp. 872 (1982)]

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**United States v. Boyle (Jan. 9, 1985)**

"This case is not one in which a taxpayer has relied on the erroneous advice of counsel concerning a question of law. Courts have frequently held that "reasonable cause" is established when a taxpayer shows that he reasonably relied on the advice of an accountant or attorney that it was unnecessary to file a return, even when such advice turned out to have been mistaken. [Cites omitted.] This court also has implied that, in such a situation, reliance on the opinion of a tax adviser may constitute reasonable cause for failure to file a return."

When an accountant or attorney *advises* a taxpayer on a matter of tax law, such as whether a liability exists, it is reasonable for the taxpayer to rely on that advice. Most taxpayers are not competent to discern error in the substantive advice of an accountant or attorney. To require the taxpayer to challenge the attorney, to seek a "second opinion," or to try to monitor counsel on the provisions of the Code himself would nullify the very purpose of seeking the advice of a presumed expert in the first place. See *Haywood Lumber, supra*, at 771. "Ordinary business care and prudence" do not demand such actions."

[United States v. Boyle, 469 U.S. 241, 105 S.Ct. 687 (1985)]

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**United States v. Reinis (July 14, 1986)**

"Reporting Act and its regulations do not impose duty on participant in currency transaction with bank to inform bank of nature of transaction."

"Defendant who ran money laundering operation, and with agents, paid cash to purchase cashier's checks from various banks, was not guilty of conspiring to violate Reporting Act, where each currency transaction involved less than \$10,000."

"Criminal penalties for failure to report currency transactions under Reporting Act can attach only upon violations of regulations promulgated by Secretary of the Treasury."

"Reporting Act did not require bank to treat as single transaction or to report defendant's cashier check purchases, made on ten different days, which totalled more than \$10,000, and thus, defendant was not guilty of aiding and abetting bank's failure to report currency transactions as required by Act, conspiring to violate Act, or causing concealment of material fact from Internal Revenue Service."

[United States v. Reinis, 794 F.2d. 506 (9th Cir. 1986)]

**Meriwether v. Coughlin (June 30, 1989)**

"As the district court noted, supervisory liability may be imposed when an official has actual or constructive notice of unconstitutional practices and demonstrates "gross negligence" or "deliberate indifference" by failing to act. *McCann v. Coughlin*, 698 F.2d. 112, 125 (2d Cir. 1983)."

"Punitive damages' may be available in section 1983 actions when conduct is motivated by evil motive or intent or when it demonstrates reckless or callous indifference to federally protected rights. *Smith v. Wade*, 461 U.S. 30, 56, 103 S.Ct. 1625, 1640, 75 L.Ed.2d. 632 (1983). The jury awarded punitive damages because it found that the defendants' conduct was malicious, wanton, or oppressive."

[Meriwether v. Coughlin, 879 F.2d. 1037 (2nd Cir. 1989)]

**Heller v. Plave (July 18, 1990)**

"If taxpayer can establish that she relied on advice and approval of her tax preparer--the so-called "reliance defense"--she will not be convicted of tax evasion. *See e.g., Bursten v. United States*, 395 F.2d. 976, 981-982 (5th Cir. 1968)." Footnote 3, p. 1557.

"Absolute immunity protects certain government officials from prosecution. *Imbler v. Pachtman*, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d. 128 (1976). Its justification in the judicial arena is that certain decisions must be made freely and without fear of personal liability for error."

"*Imbler* held that a prosecutor cannot be held personally liable for her "decisions to initiate a prosecution" or for her presentation of the state's case at trial. [Cite omitted.] Derived from common law prosecutorial immunity, absolute immunity affords wide discretion to prosecutors and judges in the conduct of trials and in the presentation of evidence. [Cites omitted.] But absolute immunity ends with the prosecutor's role as an advocate. Even a prosecutor will lose absolute immunity when her duties are merely investigative."

"The Defendants, as IRS agents, are not prosecutors, nor are the cases granting absolute immunity to prosecutors helpful to them. Rather, their duties are merely investigative. They gather facts and refer cases to prosecutors, who then decide whether or not to prosecute. "Considering these duties, an IRS agent is analogous to a complaining witness at common law--both are detached from the judicial process by the interposition of the prosecutor. For this reason, a complaining witness was not entitled to absolute immunity at common law. [Cites omitted.] It follows that the Defendants, IRS agents, should not be entitled to absolute immunity on the same basis."

"Accordingly, we find that when IRS agents investigate and refer cases for criminal investigations, they do not enjoy absolute immunity for their actions. *Accord, Cameron v. I.R.S.*, 773 F.2d. 126, 128 (7th Cir. 1985) (IRS agents are not entitled to absolute immunity)."

"**A supervisor can be held liable for civil rights violations where his "conduct is causally related to constitutional violation committed by his subordinate."** *Greason v. Kemp*, 891 F.2d. 836 (citing, *Wilson v. Attaway*, 757 F.2d. 1227, 1241 (11th Cir. 1985)) (personal participation is not required to impose liability for a civil rights deprivation. There must be some causal connection between the actions of the superior and the alleged deprivation); *see also Rizzo v. Goode*, 423 U.S. 362, 375-76, 96 S.Ct. 598, 606 L.Ed.2d. 561, 572 (1976) (for liability under §1983, supervisory officials must have direct responsibility for actions of officials who had engaged in misconduct)." [Bold added.]

[Heller v. Piave, 743 F.Supp 1553 (1990)]

**Cheek v. United States (Jan. 8, 1991)**

"Based on the notion that the law is definite and knowable, the common law presumed that every person knew the law. This common-law rule has been applied by the Court in numerous cases construing criminal statutes. [Cites omitted].

"The proliferation of statutes and regulations has sometimes made it difficult for the average citizen to know and comprehend the extent of the duties and obligations imposed by the tax laws. Congress has accordingly softened the impact of the common-law presumption by making specific intent to violate the law an element of certain federal criminal tax offenses. Thus, the Court almost 60 years ago interpreted the statutory term "willfully" as used in the federal criminal tax statutes as carving out an exception to the traditional rule. This special treatment of criminal tax offenses is largely due to the complexity of the tax laws." p. 609.

"Willfulness, as construed by our prior decisions in criminal tax cases, requires the Government to prove that the law imposed a duty on the defendant, that the defendant knew of the duty, and that he voluntarily and intentionally violated that duty." p. 610.

"Defendant's claimed good-faith belief need not be objectively reasonable in order for it to negate Government's evidence purporting to show defendant's awareness of his duties under the tax laws." p. 605.  
[Cheek v. United States, 498 U.S. 192; 111 S.Ct. 604 (1991)]

**Soldal v. Cook County, Illinois (Dec. 8, 1992)**

""Seizure" of property occurs when there is some meaningful interference with individual's possessory interests in that property."

"The Fourth Amendment protects people from unreasonable searches and seizures of their persons, houses, papers and effects, protecting property as well as privacy."

The Fourth Amendment's reach extends to property, but does not protect possessory interests in all kinds of property."

"Property rights are not the sole measure of Fourth Amendment violation."

"Fourth Amendment protection against unreasonable searches and seizures fully applies in the civil context."

**"Seizures of property are subject to Fourth Amendment scrutiny even though no search within the meaning of the amendment has taken place."** [Bold added.]

"When multiple violations of Constitution are alleged in civil rights suit, each constitutional provision is examined by court in turn, and court does not generally as preliminary matter identify the claim's dominant character. 42 U.S.C.A. §1983."

"A "seizure" of property, we have explained, occurs when "there is some meaningful interference with an individual's possessory interests in that property." *United States v. Jacobsen*, 466 U.S. 109, 113, 104 S.Ct. 1652, 1656, 80 L.Ed.2d. 85 (1984)."

"As a result of the state action in this case, the Soldals' domicile was not only seized, it literally was carried away, giving new meaning to the term "mobile home.""

"The Amendment protects the people from unreasonable searches and seizures of "their persons, houses, papers, and effects." This language surely cuts against the novel holding below, and our cases unmistakably hold that the Amendment protects property as well as privacy. This much was made clear in *Jacobsen, supra*, where we explained that the first clause of the Fourth Amendment

""protects two types of expectations, one involving `searches, the other `seizures, A `search' occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. A `seizure' of property occurs where there is some meaningful interference with an individual's possessory interests in that property." 466 U.S., at 113, 104 S.Ct., at 1656."

"The Court of Appeals understandably found it necessary to reconcile its holding with our recognition in the plain view cases that the Fourth Amendment protects property as such. In so doing, the court did not distinguish this case on the ground that the seizure of the Soldals' home took place in a noncriminal context. Indeed, it acknowledged what is evident from our precedents--that the Amendment's protection applies in the civil context as well. [Cites omitted.]

"Nor did the Court of Appeals suggest that the Fourth Amendment applied exclusively to law enforcement activities. It observed, for example, that the Amendment's protection would be triggered "by a search or other entry into the home incident to an eviction or repossession," 942 F.2d, at 1077. Instead, the court sought to explain why the Fourth Amendment protects against seizures of property in the plain view context, but not in this case, as follows:

""[S]eizures made in the course of investigations by police or other law enforcement officers are almost always, as in the plain view cases, the culmination of searches. The police search in order to seize, and it is the search *and ensuing seizure* that the Fourth Amendment by its reference to `searches and seizures' seeks to regulate. Seizure means one thing when it is the outcome of a search; it may mean something else when it stands apart from a search or any other investigative activity. The Fourth Amendment may still nominally apply, but, precisely because there is no invasion of privacy, the usual rules do not apply." *Id.*, 942 F.2d. at 1079 (emphasis in original)." [Brackets original.]

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"We have difficulty with this passage. The court seemingly construes the Amendment to protect only against seizures that are the outcome of a search. But our cases are to the contrary and hold that seizures of property are subject to Fourth Amendment scrutiny even though no search within the meaning of the Amendment has taken place. See, e.g., *Jacobsen*, 466 U.S., at 120-125, 104 S.Ct., at 1660-1662; *Place*, 462 U.S., at 706-707, 103 S.Ct., at 2644-2645; *Cardwell*, 417 U.S., at 588-589, 94 S.Ct., at 2468-2469."

[Footnote to above paragraph.] "The officers in these cases were engaged in law enforcement and were looking for something that was found and seized. In this broad sense the seizures were the result of "searches," but not in the Fourth Amendment sense. That the Court of Appeals might have been suggesting that the plain view cases are explainable because they almost always occur in the course of law enforcement activities receives some support from the penultimate sentence of the quoted passage, where the court states that the word "seizure" might lose its usual meaning "when it stands apart from a search or any other investigative activity." 942 F.2d, at 1079 (emphasis added). And, in the following paragraph, it observes that "[o]utside of the law enforcement area the Fourth Amendment retains its force as a protection against searches, because they invade privacy. That is why we decline to confine the amendment to the law enforcement setting." *Id.*, at 1079-1080. Even if the court meant that seizures of property in the course of law enforcement activities, whether civil or criminal, implicate interests safeguarded by the Fourth Amendment, but that pure property interests are unprotected in the nonlaw enforcement setting, we are not in accord, as indicated in the body of this opinion." [End footnote; brackets original.]

"The Court of Appeals' effort is both interesting and creative, but at bottom it simply reasserts the earlier thesis that the Fourth Amendment protects privacy but not property. We remain unconvinced and see no justification for departing from our prior cases. In our view, the reason why an officer might enter a house or effectuate a seizure is wholly irrelevant to the threshold question of whether the Amendment applies. What matters is the intrusion on the people's security from governmental interference. Therefore, the right against unreasonable seizures would be no less transgressed if the seizure of the house was undertaken to collect evidence, verify compliance with a housing regulation, effect an eviction by the police, or on a whim, for no reason at all. As we have observed on more than one occasion, it would be "anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior." *Camara*, 387 U.S., at 530, 87 S.Ct., at 1732; see also *O'Connor*, 480 U.S., at 715, 107 S.Ct., at 1496; *T.L.O.*, 469 U.S., at 335, 105 S.Ct., at 739.

"The Court of Appeals also stated that even if, contrary to its previous rulings, "there is some element or tincture of a Fourth Amendment seizure, it cannot carry the day for the Soldals." 942 F.2d, at 1080. Relying on our decision in *Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d. 443 (1989), the court reasoned that it should look at the "dominant character of the conduct challenged in a section 1983 case [to] determine the constitutional standard under which it is evaluated." 942 F.2d, at 1080. Believing that the Soldals' claim was more akin to a challenge against the deprivation of property without due process of law than against an unreasonable seizure, the court concluded that they should not be allowed to bring their suit under the guise of the Fourth Amendment.

"But we see no basis for doling out constitutional protections in such fashion. Certain wrongs affect more than a single right and, accordingly, can implicate more than one of the Constitution's commands. Where such multiple violations are alleged, we are not in the habit of identifying as a preliminary matter the claim's "dominant" character. Rather, we examine each constitutional provision in turn. See, e.g., *Hudson* (Fourth Amendment and Fourteenth Amendment Due Process Clause); *Ingraham v. Wright*, 430 U.S. 651, 97 S.Ct. 1401, 51 L.Ed.2d. 711 (1977)(Eighth Amendment and Fourteenth Amendment Due Process Clause). *Graham* is not to the contrary. Its holding was that claims of excessive use of force should be analyzed under the Fourth Amendment's reasonableness standard, rather than the Fourteenth Amendment's substantive due process test. We were guided by the fact that, in that case, both provisions targeted the same sort of governmental conduct and, as a result, we chose the more "explicit textual source of constitutional protection" over the "more generalized notion of substantive due process. 490 U.S., at 394-395, 109 S.Ct., at 1870-1871." [Brackets original.] [*Soldal v. Cook County, Illinois*, 506 U.S. 56, 113 S.Ct. 538, 121 L.Ed.2d. 450 (1992)]

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### **United States v. James Daniel Good Real Property (Dec. 13, 1993)**

"In general, due process requires that individuals must receive notice and an opportunity to be heard before government deprives them of property."

"Though Fourth Amendment places limits on government's power to seize property for purposes of forfeiture, it does not provide sole measure of constitutional protection that must be afforded property owners in forfeiture proceedings, and consideration must also be given to Due Process Clause of Fifth and Fourteenth Amendments."

"Right of prior notice and hearing is central to Constitution's command of due process."

"If statute does not specify consequence for noncompliance with statutory timing provisions, federal courts will not in ordinary course impose their own coercive sanction."

**"We have rejected the view that the applicability of one constitutional amendment preempts the guarantees of**

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**another.** As explained in *Soldal v. Cook County*, 506 U.S. 113 S.Ct. 538, 548, 121 L.Ed.2d. 450 (1992):

""Certain wrongs affect more than a single right and, accordingly, can implicate more than one of the Constitution's commands. Where such multiple violations are alleged, we are not in the habit of identifying as a preliminary matter the claim's "dominant" character.

Rather, we examine each constitutional provision in turn." "Here, as in *Soldal*, the seizure of property implicates two "explicit textual source[s] of constitutional protection, the Fourth Amendment and the Fifth. *Ibid.* **The proper question is not which Amendment controls but whether either Amendment is violated.**" [Brackets and italics original; bold added.]

"It is true, of course, that the Fourth Amendment applies to searches and seizures in the civil context and may serve to resolve the legality of these governmental actions without reference to other constitutional provisions. ... Here the Government seized property not to preserve evidence of wrongdoing, but to assert ownership and control over the property itself. Our cases establish that government action of this consequence must comply with the Due Process Clause of the Fifth and Fourteenth Amendments.

"Though the Fourth Amendment places limits on the Government's power to seize property for purposes of forfeiture, it does not provide the sole measure of constitutional protection that must be afforded property owners in forfeiture proceedings. So even assuming that the Fourth Amendment were satisfied in this case, it remains for us to determine whether the seizure complied with our well-settled jurisprudence under the Due Process Clause."

""[F]airness can rarely be obtained by secret, one-sided determination of facts decisive of rights.... No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it." *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 170-172, 71 S.Ct. 624, 647-649, 95 L.Ed. 817 (1951) (Frankfurter, J., concurring) (footnotes omitted). [Bold added.]

"The purpose of an adversary hearing is to ensure the requisite neutrality that must inform all governmental decisionmaking. That protection is of particular importance here, where the Government has a direct pecuniary interest in the outcome of the proceeding. See *Hannelin v. Michigan*, 501 U.S. , n. 9, 111 S.Ct. 2680, 2693, n. 9, 115 L.Ed.2d. 836 (1991) (opinion of SCALIA, J.) ("[I]t makes sense to scrutinize governmental action more closely when the State stands to benefit")."

[Footnote (n. 2) to above paragraph.] "The extent of the Government's financial stake in drug forfeiture is apparent from a 1990 memo, in which the Attorney General urged United States Attorneys to increase the volume of forfeitures in order to meet the Department of Justice's annual budget target:

""We must significantly increase production to reach our budget target.

... Failure to achieve the \$470 million projection would expose the Department's forfeiture program to criticism and undermine confidence in our budget projections. Every effort must be made to increase forfeiture income during the remaining three months of [fiscal year] 1990." Executive Office for United States Attorneys, U.S. Dept. of Justice, 38 United States Attorney's Bulletin 180 (1990). [Brackets original; end footnote (n. 2).]

"Although the Government relies to some extent on forfeitures as a means of defraying law enforcement expenses, it does not, and we think could not, justify the prehearing seizure of forfeitable real property as necessary for the protection of its revenues."

"Chief Justice REHNQUIST, with whom Justice SCALIA joins, and Justice O'CONNOR joins in Parts II and III, concurring in part and dissenting in part."

"The Court acknowledges the long history of *ex parte* seizures of real property through civil forfeiture, see *Phillips v. Commissioner*, 283 U.S. 589, 51 S.Ct. 608, 75 L.Ed. 1289 (1931); *Springer v. United States*, 102 U.S. 586, 26 L.Ed. 253 (1881) [sic]; *Murray's Lessee v. Hoboken Land & Improvement Co.*, 18 How. 272, 15 L.Ed. 372 (1856); *United States v. Stowell*, 133 U.S. 1, 33 L.Ed. 555 (1890); and *Dobbins's Distillery v. United States*, 96 U.S. 395, 24 L.Ed. 637 (1878), and says "[w]ithout revisiting these cases," *ante*, at 504,--whatever that means--that they appear to depend on the need for prompt payment of taxes. The Court goes on to note that the passage of the Sixteenth Amendment alleviated the Government's reliance on liquor, customs, and tobacco taxes as sources of operating revenue. Whatever the merits of this novel distinction, it fails entirely to distinguish the leading case in the field, *Phillips v. Commissioner*, *supra*, a unanimous opinion authored by Justice Brandeis. That case dealt with the enforcement of income tax liability, which the Court says has replaced earlier forms of taxation as the principle source of governmental revenue. There the Court said:

""The right of the United States to collect its internal revenue by summary administrative proceedings has long been settled ...[w]here, as here, adequate opportunity is afforded for a later judicial determination of the legal rights, summary proceedings to secure prompt performance of pecuniary obligations to the government have been consistently sustained." 283 U.S., at 595, 51 S.Ct., at 610 (footnote omitted). "Where only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, if the opportunity given for the ultimate judicial determination of the liability is adequate." *Id.*, at 596-597, 51 S.Ct., at 611-612."

[*United States v. James Daniel Good Real Property*, 510 U.S. 43, 114 S.Ct. 492 (1993)]

**Taxpayer Bill of Rights 2 (July 30, 1996)****"SEC. 101. ESTABLISHMENT OF POSITION OF TAXPAYER ADVOCATE WITHIN INTERNAL REVENUE SERVICE."****""(D) OFFICE OF TAXPAYER ADVOCATE.--**

"(1) IN GENERAL.--There is established in the Internal Revenue Service an office to be known as the 'Office of the Taxpayer Advocate'. Such office shall be under the supervision and direction of an official to be known as the 'Taxpayer Advocate' who shall be appointed by and report directly to the Commissioner of Internal Revenue. The Taxpayer Advocate shall be entitled to compensation' at the same rate as the highest level official reporting directly to the Deputy Commissioner of the Internal Revenue Service.

**"(2) FUNCTIONS OF OFFICE.--**

"(A) IN GENERAL.--It shall be the function of the Office of Taxpayer Advocate to--

""(i) assist taxpayer in resolving problems with the Internal Revenue Service,"

**"SEC. 102. EXPANSION OF AUTHORITY TO ISSUE TAXPAYER ASSISTANCE ORDERS."**

""(c) AUTHORITY To MODIFY OR RESCIND.--Any Taxpayer Assistance Order issued by the Taxpayer Advocate under this section may be modified or rescinded--

"(1) only by the Taxpayer Advocate, the Commissioner of Internal Revenue, or the Deputy Commissioner of Internal Revenue, and

"(2) only if a written explanation of the reasons for the modification or rescission is provided to the Taxpayer Advocate. ". "

**"SEC. 302. REVIEW OF IRS FAILURE TO ABATE INTEREST.**

"(g) REVIEW OF DENIAL OF REQUEST FOR ABATEMENT OF INTEREST.--

""(1) IN GENERAL.--The Tax Court shall have jurisdiction over any action brought by a taxpayer who meets the requirements referred to in section 7430(c)(4)(A)(iii) to determine whether the Secretary's failure to abate interest under this section was an abuse of discretion, and may order an abatement, if such action is brought within 180 days after the date of the mailing of the Secretary's final determination not to abate such interest.

**""(1) SPECIAL RULES.--**

"(A) DATE OF MAILING.--Rules similar to the rules of section 6213 shall apply for purposes of determining the date of the mailing referred to in paragraph (1).

"(B) REVIEW.--An order of the Tax Court under this subsection shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order." "

**"SEC. 501. MODIFICATIONS TO LIEN AND LEVY PROVISIONS. "**

"(a) WITHDRAWAL OF NOTICE IN CERTAIN CIRCUMSTANCES.--

""(1) IN GENERAL.--The Secretary may withdraw a notice of a lien filed under this section and this chapter shall be applied as if the withdrawn notice had not been filed, if the Secretary determines that--"

""(D)with the consent of the taxpayer or the Taxpayer Advocate, the withdrawal of such notice would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the United States.

"Any such withdrawal shall be made by filing notice at the same office as the withdrawn notice. A copy of such notice of withdrawal shall be provided to the taxpayer." ""

""(d) RETURN OF PROPERTY IN CERTAIN CASES.--If-

"(1) any property has been levied upon,

""(D) with the consent of the taxpayer or the Taxpayer Advocate, the return of such property would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the United States,

the provisions of subsection (b) shall apply in the same manner as if such property had been wrongly levied upon, except that no interest shall be allowed under subsection (c)." " "

**"SEC. 7434. CIVIL DAMAGES FOR FRAUDULENT FILING OF INFORMATION RETURNS.**

""(a) IN GENERAL.--If any person willfully files a fraudulent information return with respect to payments purported to be made to any other person, such other person may bring a civil action for damages against the person so filing such return.

""(b) DAMAGES.--In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the greater of \$5,000 or the sum of--

""(1) any actual damages sustained by the plaintiff as a proximate result of the filing of the fraudulent information return (including any costs attributable to resolving deficiencies asserted as a result of such filing),

""(2) the costs of the action, and

"(3) in the court's discretion, reasonable attorneys fees.

""(c) PERIOD FOR BRINGING ACTION.--Notwithstanding any other provision of law, --an action to enforce the liability created under this section may be brought without regard to the amount in controversy and may be brought only

within the later of--

""(1) 6 years after the date of the filing of the fraudulent information return, or

-(2) 1 year after the date such fraudulent information return would have been discovered by exercise of reasonable care.

""(d) COPY OF COMPLAINT FILED WITH IRS--Any person bringing an action under subsection (a) shall provide a copy of the complaint to the Internal Revenue Service upon the filing of such complaint with the court.

""(e) FINDING OF COURT TO INCLUDE CORRECT AMOUNT OF PAYMENT.--The decision of the court awarding damages in an action brought under subsection (a) shall include a finding of the correct amount which should have been reported in the information return.

""(f) INFORMATION RETURN.--For purposes of this section, the term 'information return' means any statement described in section 6724(d)(1)(A)."

**"SEC.602REQUIREMENT TO CONDUCT REASONABLE INVESTIGATIONS OF INFORMATION RETURNS.**

""(d) REQUIRED REASONABLE VERIFICATION OF INFORMATION RETURNS.--In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under subpart B or C of part III of subchapter A of chapter 61 by a third party and the taxpayer has fully cooperated with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the Secretary), the Secretary shall have the burden of producing reasonable and probative information concerning such deficiency in addition to such information return."."

**"SEC. 701. UNITED STATES MUST ESTABLISH THAT ITS POSITION IN PROCEEDING WAS SUBSTANTIALLY JUSTIFIED.**

""(B) EXCEPTION IF UNITED STATES ESTABLISHES THAT ITS POSITION WAS SUBSTANTIALLY JUSTIFIED.--

""(i)GENERAL RULE.--A party shall not be treated as the prevailing party in a proceeding to which subsection (a) applies if the United States establishes that the position of the United States in the proceeding was substantially justified.

""(ii) PRESUMPTION OF NO JUSTIFICATION IF INTERNAL REVENUE SERVICE DID NOT FOLLOW CERTAIN PUBLISHED GUIDANCE.--For purposes of clause (i), the position of the United States shall be presumed not to be substantially justified if the Internal Revenue Service did not follow its applicable published guidance in the administrative proceeding. Such presumption may be rebutted.

""(iii) APPLICABLE PUBLISHED GUIDANCE.--"For purposes of clause (ii), the term 'applicable published guidance' means--

""(1) regulations, revenue rulings, revenue procedures, information releases, notices, and announcements, and

""(II) any of the following which are issued to the taxpayer private letter rulings, technical advice memoranda, and determination letters."."

"SEC. 702. INCREASED LIMIT ON ATTORNEY FEES. "(a) IN GENERAL.--Paragraph (1) of section 7430(c) (defining reasonable litigation costs) is amended--

"(1) by striking "\$75" in clause (iii) of subparagraph (B) and inserting "\$110"

"(2) by striking "an increase in the cost of living or" in clause (iii) of subparagraph (B), and

"(3) by adding after clause (iii) the following:

"In the case of any calendar year beginning after 1996, the dollar amount referred to in clause (iii) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof. If any dollar amount after being increased under the preceding sentence is not a multiple of \$10, such dollar amount shall be rounded to the nearest multiple of \$10."

**"SEC. 801. INCREASE IN LIMIT ON RECOVERY OF CIVIL DAMAGES FOR UNAUTHORIZED COLLECTION ACTIONS.**

"(a) GENERAL, RULE.--Subsection (b) of section 7433 (relating to damages) is amended by striking "\$100,000" and inserting "\$1,000,000"."

**"SEC. 802. COURT DISCRETION TO REDUCE AWARD FOR LITIGATION COSTS FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.**

"(a) GENERAL RULE.--Paragraph (1) of section 7433(d) (relating to civil damages for certain unauthorized" collection actions) is amended to read as follows:

""(1) AWARD FOR DAMAGES MAY BE REDUCED IF ADMINISTRATIVE REMEDIES NOT EXHAUSTED.--

The amount of damages awarded under subsection (b) may be reduced if the court determines that the plaintiff has not exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service."."

**"SEC. 901. PRELIMINARY NOTICE REQUIREMENT.**

“(a) IN GENERAL.--Section 6672 (relating to failure to collect and pay over tax, or attempt to evade or defeat tax) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

“(b) PRELIMINARY NOTICE REQUIREMENT.--

“(1) IN GENERAL.--No penalty shall be imposed under subsection (a) unless the Secretary notifies the taxpayer in writing by mail to an address as determined under section 6212(b) that the taxpayer shall be subject to an assessment of such penalty.

“(2) TIMING OF NOTICE.--The mailing of the notice described in paragraph (1) shall precede any notice and demand of any penalty under subsection (a) by at least 60 days.

“(3) STATUTE OF LIMITATIONS.--If a notice described in paragraph (1) with respect to any penalty is mailed before the expiration of the period provided by section 6501 for the assessment of such penalty (determined without regard to this paragraph), the period provided by such section for the assessment of such penalty shall not expire before the later of--

“(A) the date 90 days after the date on which such notice was mailed, or

“(B) if there is a timely protest of the proposed assessment, the date 30 days after the Secretary makes a final administrative determination with respect to such protest.

“(4) EXCEPTION FOR JEOPARDY.--This subsection shall not apply if the Secretary finds that the collection of the penalty is in jeopardy.”.

“SEC. 1203. **UNAUTHORIZED ENTICEMENT OF INFORMATION DISCLOSURE.**

“(a) IN GENERAL.--Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties), as amended by section 601(a), is amended by redesignating section 7435 as section 7436 and by inserting after section 7434 the following new section:

“**SEC. 7435. CIVIL DAMAGES FOR UNAUTHORIZED ENTICEMENT OF INFORMATION DISCLOSURE.**

“(a) IN GENERAL.--If any officer or employee of the United States intentionally compromises the determination or collection of any tax due from an attorney, certified public accountant, or enrolled agent representing a taxpayer in exchange for information conveyed by the taxpayer to the attorney, certified public accountant, or enrolled agent for purposes of obtaining advice concerning the taxpayer's tax such taxpayer may bring a civil action for damages" against the United States. Such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

“(b) DAMAGES.--In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of \$500,000 or the sum of--

“(1) actual, direct economic damages sustained by the plaintiff as a proximate result of the information disclosure, and

“(2) the costs of the action.

"Damages shall not include the taxpayer's liability for any civil or criminal penalties, or other losses attributable to incarceration or the imposition of other criminal sanctions.

“(c) PAYMENT AUTHORITY.--Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

“(d) PERIOD FOR BRINGING ACTION.--Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the actions creating such liability would have been discovered by exercise of reasonable care.

“(e) MANDATORY STAY.--Upon a certification by the Commissioner or the Commissioner's delegate that there is an ongoing investigation or prosecution of the taxpayer, the district court before which an action under this section is pending shall stay all proceedings with respect to such action pending the conclusion of the investigation or prosecution.

“(f) CRIME-FRAUD EXCEPTION.--Subsection (a) shall not apply to information conveyed to an attorney, certified public accountant, or enrolled agent for the purpose of perpetrating a fraud or crime.”.

[United States Statutes at Large, 104th CONG., 2d Sess., CH. 110, pp. 1453-1481, July 30, 1996]

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### **16 Am.Jur.2d., Constitutional Law, §202 "Taxpayers.**

"Generally speaking, a person who pays taxes or is liable to pay taxes for the support of a taxing unit and who would be injured' by the unlawful expenditure of public funds, by the illegal disposition of the public property of such taxing unit, or by any other illegal act which would increase his burden of taxation, is entitled to institute and maintain a taxpayer's action, regardless of the amount or kind of taxes that he pays. However, as a general rule, private citizens who seek to restrain official acts must allege and prove damage to themselves different in character from that sustained by the public generally. Ordinarily, the mere status of one as a taxpayer is not sufficient to qualify him to institute a taxpayer's action. The rule is that he must have a pecuniary interest in the subject of the action and must show that the acts complained of will result in

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some pecuniary loss or other injury to his property or interest as a taxpayer and to taxpayers as a class, through increased taxation and the consequences thereof, or in some financial loss or injury to the municipal corporation or other governmental unit on behalf of which he institutes the action, and in the absence of such a showing of direct pecuniary injury by the taxpayer, no justiciable case or controversy would exist."

[16 Am.Jur.2d., Constitutional Law, §202]

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**16 Am.Jur.2d., Constitutional Law, §203**

**"Other classes; citizens, aliens, electors, and residents.**

"A mere citizen, as such, has no right to raise the question of the constitutionality of a statute, in the absence of a showing of direct injury. Thus, he may not complain about the legality of expenditure of public funds, or contest the policies of prosecuting authorities when he himself is neither prosecuted nor threatened with prosecution, or attack the practice of some Congressmen in holding reserve commissions in the military, in apparent violation of a provision of the United States Constitution."

[16 Am.Jur.2d., Constitutional Law, §203]

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**California Code of Civil Procedure, §418.10**

"(a) A defendant, on or before the last day of his time to plead or within such further time as the court may for good cause allow, may serve and file a notice of motion either or both:

"(1) To quash service of summons on the ground of lack of jurisdiction of the court over him.

"(2) To stay or dismiss the action on the ground of inconvenient forum.

"(d) No default may be entered against the defendant before expiration of his time to plead, and no motion under this section, or under Section 473 or 473.5 when joined with a motion under this section, or application to the court or stipulation of the parties for an extension of the time to plead, shall be deemed a general appearance by the defendant."

[California Code of Civil Procedure, §418.10]

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**California Code of Civil Procedure, §490.010**

"A wrongful attachment consists of any of the following:

"(a) The levy' under a writ of attachment or the service of a temporary protective order in an action in which attachment is not authorized except that it is not a wrongful attachment if both of the following are established:

"(1) The levy was not authorized solely because of the prohibition of subdivision (c) of Section 483.010.

"(2) The person who sold or leased, or licensed for use, the property, furnished the services, or loaned the money reasonably believed that it would not be used primarily for personal, family, or household purposes.

"(b) The levy under writ of attachment or the service of a temporary protective order in an action in which the plaintiff does not recover judgment.

"(c) The levy under writ of attachment obtained pursuant to Article 3 (commencing with Section 484.510) of Chapter 4 or Chapter 5 (commencing with Section 485.010) on property exempt from attachment except where the plaintiff shows that the plaintiff reasonable believed that the property attached was not exempt for attachment."

[California Code of Civil Procedure, §490.010]

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**Black's Law Dictionary: Delict**

"DELICT. In the Roman and civil law. A wrong or injury; an offense; a violation of public or private duty.

"It will be observed that this word, taken in its most general sense, is wider in both directions than our English term "tort."

On the one hand, it includes those wrongful acts which, while directly affecting some individual or his property, yet extend in their injurious consequences to the peace or security of the community at large, and hence rise to the grade of crimes or misdemeanors. These acts were termed in the Roman law "public delicts;" while those for which the only penalty exacted was compensation to the person primarily injured were denominated "private delicts." On the other hand, the term appears to have included injurious actions which transpired without any malicious intention on the part of the doer. Thus Pothier gives the name "*quasi delicts*" to the acts of a person who, without malignity, but by an inexcusable imprudence, caused an injury to another. Poth.Obl. 116. But the term is used in modern jurisprudence as a convenient synonym of "tort."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 514]

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**Black's Law Dictionary: Form**

"FORM. A model or skeleton of an instrument to be used in a judicial proceeding, containing the principal necessary matters, the proper technical terms or phrases, and whatever else is necessary to make it formally correct, arranged in proper and methodical order, and capable of being adapted to the circumstances of the specific case.

"In contradistinction to "substance," "form" means the legal or technical manner or order to be observed in legal instruments or juridical proceedings, or in the construction of legal documents or processes.

"Antithesis of "substance."" Phoenix Building & Homestead Ass'n v. Meraux, 189 La. 819, 180 So. 648, 649." [Black's Law Dictionary, Revised Fourth Edition, 1968, p. 780]

**Black's Law Dictionary: Injury**

"**INJURY.** Any wrong or damage done to another, either in his person, rights, reputation, or property. An act which damages, harms, or hurts.

"The words "damage," "loss," and "injury" are used interchangeably, and, within legislative meaning and judicial interpretation, import the same thing.

"The term "injury," used to describe an error for which a reversal may be had, means an error which affects the result.

**"Civil Law**

"A delict committed in contempt or outrage of any one, whereby his body, his dignity, or his reputation is maliciously injured.

**"In General**

"**Absolute injuries.** Injuries to those rights which a person possesses as being a member of society."

"**Civil injury.** Injuries to person or property, resulting from a breach of contract, delict, or criminal offense, which may be redressed by means of a civil action."

"**Irreparable injury.** This phrase does not mean such an injury as is beyond the possibility of repair, or beyond possible compensation in damages, or necessarily great damage, but includes an injury, whether great or small, which ought not to be submitted to, on the one hand, or inflicted, on the other; and which, because it is so large or so small, or is of such constant and frequent occurrence, or because no certain pecuniary standard exists for the measurement of damages, cannot receive reasonable redress in a court of law. Wrongs of a repeated and continuing character, or which occasion damages that are estimated only by conjecture, and not by any accurate standard, are included." [Cites omitted.] [Black's Law Dictionary, Revised Fourth Edition, 1968, pp. 924-925]

**Words and Phrases: Injury**

"Injury" within constitutional section providing that every person, for an injury done him in his lands, goods, person or reputation, shall have a remedy by due process of law is damage resulting from breach of a legal duty. Randle v. Payne, 107 So.2d. 907, 911, 39 Ala.App. 652."

"Constitutional guarantee insuring a remedy for "injuries" to person, property, or character does not guarantee a remedy for every species of injury, but only such as results from invasion or infringement of a legal right or a failure to discharge a legal duty. Scholbergv. Itnyre, Wis., 58 N.W.2d. 698, 699, 264 Wis. 211."

"Under constitutional provision that every person, for an injury done him, in his lands, goods, person or reputation, shall have a remedy, "injury" is damage which results from breach of legal duty, and whatever damage which results from doing that which is lawful is absque injuria. Const.1901 §13. Pickett v. Matthews, 192 So. 261, 263, 238 Ala. 542." [Words and Phrases: Injury, Vol. 21A, pp. 95-96]

**Black's Law Dictionary: Substance**

"SUBSTANCE. Essence; the material or essential part of a thing, as distinguished from "form." [Cites omitted.] That which is essential. [Cite omitted.]

"It means not merely subject of act, but an intelligible abstract or synopsis of its material and substantial elements, though the "substance" may be stated without recital of any details." [Cite omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1597]

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## 9.2 Restitution

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### Black's Law Dictionary: Restatement of Law

**"Restatement of Law.** A series of volumes authored by the American Law Institute that tell what the law in a general area is, how it is changing, and what direction the authors (who are leading legal scholars in each field covered) think this change should take; for example, Restatement of the Law of Contracts; Restatement of the Law of Torts. The various Restatements have been a formidable force in shaping the disciplines of the law covered; they are frequently cited by courts and either followed or distinguished; they represent the fruit of the labor of the best legal minds in the diverse fields of law covered."

[Black's Law Dictionary, Sixth Edition, 1990, p. 1313]

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### Restatement of the Law, Agency, Restitution

"A person who has been unjustly enriched at the expense of another is required to make restitution to the other." **"Comment:**

"a. This statement of the basic principle of restitution is made here in order to indicate that in many of the situations involving agency the result is reached not primarily by principles of agency but upon restitutional principles. Thus when a person who has no authority or apparent authority to act for another, purports to act as the agent of another in the acquisition of property, the purported principal may be liable for its value, not because of any agency principle but because he has been unjustly enriched. Again, an agent who properly receives property from a third person on account of the principal may be under a duty of restitution to transferor if later it is found that the transaction with the principal under which he received the property is voidable by the third person. Between principal and agent the right of the principal to recover profits improperly made by an agent is a restitutional right. Similarly, the duty of the principal to indemnify the agent and, in other situations, the duty of an agent to indemnify the principal, is created by the rules of restitution."

[Restatement of the Law, Agency, 2d, §8C, American Law Institute, 1958]

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### Law of Agency

#### **"1. Definitions are concise, and hence incomplete, descriptions of that which they define.**

*"A. Inaccuracy of definitions.* Because of their brevity, definitions are more or less incomplete and inaccurate. They should, however, give an idea of what the writer has in mind. In Agency, key words have been used by the courts and text writers in so many different senses that it is especially important to state the meaning assigned to them here. The definitions in this chapter are intended to accord with judicial usage in the more carefully reasoned opinions, except for the terms "inherent agency power" and "subservant," which have little judicial sanction."

#### **"2. Agency deals with the rules applicable to the legal relations which arise when two persons agree that one is to act for the benefit of the other in accordance with the other's directions.**

*"A. Purpose.* The agency relation exists in order to enable a person to utilize the services of others and thereby to accomplish what he could not achieve alone. Business is today almost wholly conducted by agents, mostly individuals, but in many cases partnerships and corporations, acting on behalf of principals who are usually corporations and partnerships. The rules applicable to the liabilities of the parties have been evolved by the courts for the advancement of the interests of business and of the community in which it is done.

*"B. Scope.* The subject includes the relations commonly described in treatises and digests as Principal and Agent and as Master and Servant. The latter relation is included in the agency relation, a servant being a particular kind of agent. Two hundred years ago the term Agency was hardly known; the present rules have grown out of the relation of master and servant. Other agents are given no general name, being called attorneys, factors, auctioneers or brokers, whose function it was and is, of course, to act as agents."

#### **"3. Agency is a consensual, fiduciary relation between two persons, created by law by which one, the principal, has a right to control the conduct of the agent, and the agent has a power to affect the legal relations of the principal.**

*"B. Principal and agent.* The term "principal" describes one who has permitted or directed another to act for his benefit and subject to his direction and control. "Agent" describes a person who has undertaken to act for another and to be controlled by the other in so acting. "Principal" includes in its meaning the term "master", a species of principal who, in addition to other control, has a right to control the physical conduct of the species of agents known as servants (see Section 84), as to whom special rules are applicable with reference to harm caused by their physical acts. Except for that purpose, the rules stated in this book as to principals apply to servants. For other purposes it is immaterial whether an agent is or is not a

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### ***Sovereignty and Freedom Points and Authorities***

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servant.

"The term "agent" as used in the statutes may vary in meaning from the term as used here. Thus one appointed by the state to receive notices of actions against foreign corporations doing business in the state, may be called an agent, although not responding in any way to the will of his "principal". He is merely a person who is used to satisfy the requirements of due process. The term agent may also be used to describe a particular type of state officer, excluding other types from its meaning."

"D. *The relation is created by law.* All legal relations are created by law. The legal consequences of an act done by a person are determined by rules of law and not by his intent. It is important to note this fact in marginal agency cases, since the parties may do acts from which they believe that an agency relation results or does not result, but which creates a relation different from that intended. Thus, for one or another reason, a wholesaler who wishes the benefit of the agency rules in appointing distributors may find his arrangements are such that the court will determine the relation to be one of seller and buyer, although the parties have called it agency. If the relation to which the parties agree satisfies the tests for agency, that is what it is.

"E. *Right to control.* The right of the principal to direct what the agent shall do or shall not do is basic. It is a violation of duty for the agent to act for the principal in a manner contrary to orders and he has a duty to obey all orders which are within his contractual undertaking. It is this which distinguishes a non-agency trust from a trust in which the "trustee" is also an agent. See Section 10C. In determining the existence of a master-servant relation, the existence of a right to control the physical conduct of the agent is normally the most important element although there are other elements to consider. See Section 84.

"F. *Agent's power to subject the principal to personal liability.* This power is the characteristic result of the agency relation--the ability of the agent to subject the principal to personal liability and to create rights in his favor. Other fiduciaries such as the representatives of the estates of deceased persons, trustees who are not also agents, receivers and those holding control over property, can affect the interests of their beneficiaries in the property which they hold, but cannot create personal liabilities as to these persons.

"The agent's power may be consistent with principles of Torts, Contracts or Restitution. Thus, where the agent of a disclosed principal contracts with a third person as he is told to do, the requirement of a manifestation between the parties is satisfied. This is true also where the agent contracts with one whom the principal has told that the agent will contract with him. If the principal directs an agent to do an act which is tortious, ordinary tort principles make the principal liable. The rules of restitution make the principal liable for property wrongfully taken from a third person and transferred to the principal by the agent."

**"8. An agent may have power to create relations between the principal and a third person because of authority, apparent authority, estoppel, or inherent agency power.**

"A. *The agent's power.* The power of an agent to create legal relations between the principal and third persons is a characteristic element of the agency relation. It is based upon the principal's consent or apparent consent to the relation. It is difficult to define legal power without the use of synonyms. It has been described as a personal capacity to do something. Perhaps it is better to say that it is an ability to create, change or destroy legal relations created by law."

"An agency power is limited to the ability of the agent to change legal relations between any of the parties involved, the principal, the third person, and himself. It exists, irrespective of the intent of the parties, upon the happening of the events required to bring it into existence. Thus if a person is found to be a servant, his power to subject the master to liability for his torts exists--although against the wishes of both and even though they believe that the relation does not exist."

"B. *Authority.* Authority is the privileged power of the agent to bind the principal, the privilege being based upon the principal's manifestations of a consent to him. It is the power which, as to his principal, the agent is privileged to exercise and which is effective to create rights and liabilities between the principal and third persons. For an agent to be authorized to do an act there must be a manifestation of consent to him by a principal who has capacity to give consent, the act must be delegable, and any required formalities must have been performed. If these facts exist, the principal becomes a party to the transaction performed by the agent, in most instances with the same effect as if conducted by himself, although the other party knew nothing as to the agent's authority or identity. If the authorized act constitutes a tort, the principal is liable; if it is the making of a contract or the transfer of property, the principal is a party to the contract or the grantor of the property. [\* \* \*] Where the directed act is a tort, the liability of the parties follows normal tort principles, since one who knowingly causes a tort is liable for it."

"F. *Inherent agency power.* This is a term first used in the Restatement of Agency, 2d, Section 8 A, to explain the liability of the principal in cases in which the agent who conducts a transaction has neither authority nor apparent authority and there are no estoppel elements. The outstanding illustration of this is the liability of a master for negligence or other tortious and unauthorized physical acts "in the scope of employment.""

"These inherent agency powers have been created by the courts in accordance with what they believe to be for the benefit of the entire community--the test to be applied to all law. It is not unjust that a master should be required to pay for the inevitable harm caused by the expectable negligence and other acts of his servants, or that principals should be liable for

many of the frauds of those he employed to make profits for him. The extension of liability upon contracts to cases in which there is neither authority nor apparent authority reacts ultimately to the benefit of the business community, in that it tends to facilitate business transactions, now almost entirely conducted by agents. The imposition of liability causes the employer to use care to select good representatives and police their conduct. If he does as well in this as his competitors, the losses resulting from careless, deceitful, over zealous employees can be passed to those who use the products or services and then borne by the entire consuming public, as are the amounts paid in "Workmen's Compensation" awards."

**"57. A principal whose agent makes or conducts an unauthorized transaction is not liable to the other party because of it, unless the unauthorized portion was severable, the agent had apparent authority or inherent agency power, the principal is estopped, or he has been unjustly benefitted.**

*"A. Bases [sic] for liability.* The generalization of the Section is an attempt to list the grounds of the principal's liability upon transactions entered into by an agent who acted beyond his authority. Inherent power is the result of agency conceptions. Estoppel is essentially a tort principle; the principles of restitution because of unjust enrichment are found in all branches of the law. The section also indicates the line beyond which the principal's liability does not extend, with mention below of two situations in which there may be doubt. The rules as to the liability of the principal in such cases define also the rights of the principal against the other party, in the absence of fraud or some ground of avoidance of the transaction by the other party; the latter can not well claim rights under a transaction without being subject to the accompanying liabilities."

**"58. A disclosed, partially disclosed or undisclosed principal is subject to liability for unauthorized conduct by an agent within his inherent agency power.**

*"A. Nature of the power.* The liability of the principal based upon authority, apparent authority, estoppel, or unjust enrichment is supported by the principles of Contracts, Torts, or Restitution. The inherent agency power of an agent to bind his principal, like the rules of ratification, is unique, since it may make a principal liable or cause him to lose his property because of conduct which he did not desire or direct, to persons who may not have known of his existence or who did not rely upon anything which he said or did. It is a contribution to the common law by judges, since most of the rules have been created without statutory authority. See Section 8F which gives a general statement of its nature and function.

*"B. Scope of the power.* The area within which a principal has been made liable for unauthorized conduct has been gradually expanded by the courts. As the nation's business has more and more been done by agents, it has become clearer that the business enterprise should bear the burden of the losses created by the mistakes or over-zealousness of its agents. It stimulates the watchfulness of the employer in selecting and supervising the agents. This is especially true with reference to general agents whose inherent power is broadest. Its existence has been concealed in many cases, by basing the liability upon apparent authority, even in cases in which it was obvious there was no appearance of authority, or upon an expanded idea of estoppel."

*"E. Limits of general agent's power.* There are some rather obvious limits to the agent's power, whether or not the principal is disclosed or undisclosed. Thus an agent has no power to bind the principal beyond the geographic boundaries of his employment."

**"60. A principal is bound by unauthorized misrepresentations made by an agent in the course of a transaction in which he was authorized to make true statements on the subject, unless the other party had notice of the truth or of the agent's lack of authority.**

*"Agent as spokesman for principal.* The rule applies to statements of the general and the special agents of all three types of principals. In most cases it is unnecessary to rely upon this rule when the speaker is a general agent. The reason for making the principal responsible is the same as that which makes him liable for the agent's fraud (see Section 92) and although frequently there is apparent authority to make the true statements, his responsibility is not limited to such cases. The formula and the reason for the result is much the same as that which makes a false statement by an agent operate as an admission of the principal, if the agent had been authorized to make such a statement if true."

**"61. The fact that an agent acts with an improper motive when conducting a transaction on account of the principal does not prevent the principal from being bound by it, unless the other party has notice of the agent's motives."**

"It is not unfair to place the risk of the agent's honesty upon the principal, since he has the opportunity of investigating the agent before entrusting him with his affairs, and in the long run this result inures to the benefit of employers, whose interests require that they should guarantee the honesty of agents to those doing business with them. It is not likely that a principal who, to escape from liability, notifies those dealing with his agent that they take the risk of the agent's honesty, would get much business. Of course, if the other party has notice that the agent is acting improperly, he cannot hold the principal (see Section 76), but the principal may be responsible criminally."

**"67. A principal who employs a general agent to issue or indorse negotiable instruments, or appoints one to a position in which it is usual for such agents to do so, is subject to liability to holders in due course for the unauthorized issue or indorsement of such instruments.**

"A. *Scope of rule.* The rule applies to all types of principals. It is essential that the instrument purports to be the principal's instrument, but the name used can be a trade name, including that of the agent, or the name of a partnership in which one of the partners is unknown to others. See Section 72A."

**"75. The rules as to the liability of a principal to third persons for authorized acts are applicable to unauthorized acts which, as to the other party to the transaction, are apparently authorized.**

"A. *Compared with authority.* As stated in Section 8D which defines apparent authority, the exercise of apparent authority creates the same relations between the apparent principal and the other party as if the one acting was authorized. The apparent agent may also be authorized; it is only when there is a difference between authority and apparent authority that the other party needs to rely upon apparent authority. It may be noted that apparent authority may be easier to prove than authority, since it can be proved without the testimony of either principal or agent. Many of the situations dealt with in this Section have been treated in earlier Sections, such as those on interpretation and termination, and are inserted here for convenience."

"D. *Statements of agents creating apparent authority.* In general, a principal is not bound by the unauthorized statements of an agent as to the extent of his authority or the facts upon which it depends. He can testify as to this, but evidence of such statements in transactions with third persons is admissible only after proof that he had authority or apparent authority to make them. See Sections 104, 105.

"If a principal authorizes an agent to enter into a transaction, he necessarily authorizes him to say that he has authority and this statement is a basis of apparent authority. It is to be noted, however, that although authorized to act for the principal, he has no authority to represent that he is so acting, if at the time he has determined to embezzle the proceeds, as where he is sent to cash a check the proceeds of which he has decided to keep. In such case, the liability of the principal must be based upon the inherent power which agents have to bind their principals upon a transaction otherwise authorized but in which the agent acts with an improper motive. See Section 61."

**"76. A person can not bind a principal to a contract or conveyance because of apparent authority or inherent agency power, if he should know, has reason to know, or has been notified that the agent is not authorized to make it.**

**"83. A master, although not liable because of his own conduct, is liable for the unauthorized tortious conduct of a servant which is within the scope of employment.**

"A. *Rationale.* "Respondeat superior" is the phrase used by the courts to indicate the area within which a master is liable for the torts of servants which, although committed disobediently, are connected with the service of the employer. This is a condition imposed by the common law in return for the privilege of utilizing the services of others in household and business matters."

**"84. A servant is normally one who gives personal service as a member of a business or domestic household, and subject to control by the employer as to his physical activities.**

"A. *Difficulties of definition.* No short statement can give an accurate picture of what the courts include within the term servant. In general they have in mind a more intimate relation than that between principal and a non-servant agent or one who is casually employed and who is not primarily a part of the core of workers in the enterprise."

"C. *Right to control.* The right to control the physical movements of the employee is the most important single element in most of the situations. This does not mean de facto control, which is usually absent, but the right to control. This may be described as the element responsive to the tort principle that control creates responsibility. The name the parties give to the relation may not be important, since a servant in fact may be called an independent contractor, in order to avoid liability."

**"89. Unauthorized trespasses, conversion, assaults, defamation and other similar torts committed by a servant may be within his scope of employment if not done for a purely personal motive or, in case of assaults, were not unexpected."**

"A. *Historical development.* The liability of a master for torts under the rules of respondeat superior was mostly limited to the negligent acts of servants, until the second half of the nineteenth century."

"Today, however, the courts have no hesitancy in imposing liability for acts which are far from those authorized but which are likely to be done by over-zealous servants or in reaction to a situation arising out of the employment. In this, as in other areas, the master's liability is expanding, but it is still true that an act done from a purely personal motive or one for which the employment furnishes only the opportunity, is not in the scope of employment unless it is a violation of a duty owed by the master to the person harmed.

"B. *Trespass and conversion.* A master is liable for the mistakes of his servants as to the boundaries of land or the ownership of property, which lead to a tortious entry or to conversion. He is also liable for torts resulting from a not too egregious error as to orders and for acts likely to be done by servants eager to serve the employer's interests, as by converting hay in order to feed a hungry team "borrowing" a pump to prevent a flood on master's building, taking plaintiff's property without his consent, instead of with it."

**"91. (I) A principal is not liable for the harm caused by negligent physical activities of a non-servant agent.**

**"(II) A principal is liable to third persons for the other torts of any agent, whether or not a servant;**



"(a) if the act was authorized, or, as to one relying upon the relation, was apparently authorized: or

"(b) if the tort was committed within the agent's inherent powers, or

"(c) if the agent's position enabled him to commit the tort."

"B. *Authorized or apparently authorized acts.* Obviously the principal is liable for authorized or intended results which are tortious, as where he authorized the buying of specific goods from one who, it later appears, had stolen them from the plaintiff. It has been held that the principal may also be responsible where the tort is caused by a mistake of fact or of interpretation in carrying out orders. The rules as to apparent authority in making contracts apply to torts committed by an agent which are made possible by his apparent authority.

"C. *Inherent powers.* An agent can bind the principal by an unauthorized transaction within his inherent powers. Thus a general selling agent can bind the principal by deceit in a transaction or a tort incidental to it, as if the transaction were authorized."

**"92. A principal is liable in an action at law for misrepresentations by an agent in the course of transactions authorized or apparently authorized if**

"(a) the principal intends that the untrue statements shall be made, or

"(b) the statement is as to a matter upon which the principal would expect representations to be made and the agent's statement is one which it is not too unlikely that a fraudulent agent might make, or

"(c) the agent's position enabled him to deceive.

"D. *Scope of agent's powers to bind the principal.* Except where the principal has created a situation enabling the agent to deceive others, the principal is not bound by his agent's deceits unless the agent is authorized or apparently authorized to make the statements or it is within his inherent power to conduct the transaction in the course of which they are made."

"As for general agents, it would appear that if the principal is bound by their inherent powers to make contracts, he would be bound by misrepresentation incidental to them, and that an undisclosed principal would be liable equally with a disclosed principal."

"F. *Motive of agent.* The fact that the agent is acting from purely personal motives is immaterial unless this is known to the other party. [\* \* \*] Special as well as general agents have an inherent power to bind the principal in transactions which would otherwise make the principal responsible, although the agent acts for a purely personal motive, if the other party has no notice of it."

**"93. A principal is not immune from liability for the act of an agent because of the agent's immunity to civil liability to the plaintiff."**

"A. *Immunities.* Immunity means the absence of civil liability for an act otherwise tortious. It results either from a relation between the parties, as that of husband and wife, or the status or position of a person, such as that of a municipality or a legislator acting as such. Immunities are always personal to the holder. Thus a negligent servant is not protected by the fact that his employer is immune from liability for his torts, (see Section 129C), and a master is not relieved from liability to a person injured by a servant who, because of a personal relation between the two, is immune from liability, as where a servant, while in the scope of employment, negligently runs over his wife or child."

**"94. A principal who has acquired property as the result of the tort of an agent is subject to a restitutionary action, either for the specific return of the property or for its value."**

"C. *Unjust enrichment.* One who has acquired property of another which it is inequitable for him to retain is subject to liability to the other for its value or its proceeds, or [sic] is appropriate."

**"95. A person injured by the tort of an agent for which the principal is responsible can maintain an action against either or both."**

**"98. The principal may become responsible for the knowledge or lack of knowledge of an agent who fails to perform his duty to the principal in acquiring or in acting upon knowledge relevant to a transaction for which he is employed.**

"A. *Rationale.* In each case dealt with in the following paragraphs the principal is liable to another because the agent has been guilty of some type of wrongful conduct which is a breach of duty to the principal, in the course of the performance of his duties."

"F. *Knowledge of several agents combined.* Knowledge may be held by a number of agents which, in combination, create liability of the principal, or a defense to the other party; the duty of the agent having the knowledge may be merely to report the condition to others who are to attend to the matter."

"J. *Agent's knowledge of his own unauthorized act.* If an agent makes an unauthorized contract within his apparent authority or inherent powers, or a servant does an unauthorized act within the scope of his employment, the principal is held liable, but not upon the ground that the agent's knowledge is imputed to him. Likewise the liability of a principal who receives a benefit as the result of his agent's conduct is based either on ratification or restitution. [\* \* \*] Of course the real basis is unjust enrichment, the defendant not being a bona fide purchaser."

"K. *Apparent authority.* In a transaction conducted by the agent within his apparent authority, the principal is subject

to the same liabilities to the other party as if the agent were authorized and hence is charged with the knowledge which the agent has to the same extent as in an authorized transaction."

**"99. The time when, and the manner by which, an agent acquires knowledge is immaterial to the liability of the principal if the agent has it as a relevant time, except when it is acquired confidentially."**

"B. *Knowledge which agent should have.* There are many situations in which the principal is subject to liability or is deprived of property because an agent should have discovered relevant facts."

[Law of Agency, Hornbook Series, 1964]

### **Black's Law Dictionary: Restitution**

**"Restitution.** An equitable remedy under which a person is restored to his or her original position prior to loss or injury, or placed in the position he or she would have been, had the breach not occurred. Act of restoring; restoration; restoration of anything to its rightful owner; the act of making good or giving equivalent for any loss, damage or injury; and indemnification. *State v. Barnett*, 110 Vt. 221, 3 A.2d. 521, 525, 526. Act of making good or giving an equivalent for or restoring something to the rightful owner. *Antoine v. McCaffery*, Mo.App., 335 S.W.2d. 474, 489. Compensation for the wrongful taking of property. *Com. v. Fuqua*, 267 Pa.Super. 504, 407 A.2d. 24, 25. Restoration of status quo and is amount which would put plaintiff in as good a position as he would have been if no contract had been made and restores to plaintiff value of what he parted with in performing contract. *Explorers Motor Home Corp. v. Aldridge*, Tex.Civ.App., 541 S.W.2d. 851, 852. See Restatement, Second, Contracts, §373.

"A person who has been unjustly enriched at the expense of another is required to make restitution to the other. Restatement of the Law, Restitution, §1.

"In torts, restitution is essentially the measure of damages, while in contracts a person aggrieved by a breach is entitled to be placed in the position in which he would have been if the defendant had not breached."

[Black's Law Dictionary, Sixth Edition, 1990, p. 1313]

### **Restatement of the Law, Restitution**

"§1. UNJUST ENRICHMENT.

**"A person who has been unjustly enriched at the expense of another is required to make restitution to the other.**

*"Comment:*

"a. A person is enriched if he has received a benefit (see Comment b). A person is unjustly enriched if the retention of the benefit would be unjust (see Comment c). A person obtains restitution when he is restored to the position he formerly occupied either by the return of something which he formerly had or by the receipt of its equivalent in money. Ordinarily, the measure of restitution is the amount of enrichment received (see Comment d), but as stated in Comment e, if the loss suffered differs from the amount of benefit received, the measure of restitution may be more or less than the loss suffered or more or less than the enrichment.

"b. *What constitutes a benefit.* A person confers a benefit upon another if he gives to the other possession of or some other interest in money, land, chattels, or choses in action, performs services beneficial to or at the request of the other, satisfies a debt or a duty of the other, or in any way adds to the other's security or advantage. He confers a benefit not only where he adds to the property of another, but also where he saves the other from expense or loss. The word "benefit," therefore, denotes any form of advantage. The advantage for which a person ordinarily must pay is pecuniary advantage; it is not, however, necessarily so limited, as where a physician attends an insensible person who is saved subsequent pain or who receives thereby a greater chance of living.

"c. *Unjust retention of benefit.* Even where a person has received a benefit from another, he is liable to pay therefor only if the circumstances of its receipt or retention are such that, as between the two persons, it is unjust for him to retain it."

"d. *Where benefit and loss coincide.* Ordinarily the benefit to the one and the loss to the other are co-extensive, and the result of the remedies given under the rules stated in the Restatement of this Subject is to compel the one to surrender the benefit which he has received and thereby to make restitution to the other for the loss which he has suffered."

"§ 3. TORTIOUS ACQUISITION OF A BENEFIT.

**"A person is not permitted to profit by his own wrong at the expense of another.**

*"Comment:*

"a. The principle stated in this Section underlies the more specific rules stated in Chapter 7, by which in many cases a person who receives property as the result of a tort committed by him against another has a duty of compensating the

other for the loss suffered, at least to the extent of the benefit received."

"§ 4. REMEDIES.

**"In situations in which a person is entitled to restitution, he is entitled, in an appropriate case, to one or more of the following remedies:**

- "(a) the use of self-help to regain or to retain possession of land or chattels;**
- "(b) a judgment by a court of law enforced by a writ directing a sheriff or other officer of the court to seize and restore the subject matter to him;**
- "(c) a decree by a court of equity that the title or possession of the subject matter be transferred to him or that a cause of action or other right be reinstated;**
- "(d) a decree by a court of equity that a lien upon the subject matter or its proceeds be established, enforced, discharged, or reduced;**
- "(e) a judgment or decree by which the transferor is subrogated to the position of another claimant against the transferee;**
- "(f) a judgment at law or decree in equity for the payment of money, directly or by way of set-off or counterclaim.**

"§19. MISTAKEN BELIEF AS TO EXISTENCE OF A NONCONTRACTUAL DUTY TO PAY.

"A person who has paid money to another because of an erroneous belief induced by a mistake of fact that he was thereby performing in whole or in part a duty to the payee, other than a contract duty, is entitled to restitution of the amount so paid if such did not exist.

*"Comment:*

"a. The rule stated in this Section is applicable both where there was no original liability and where the liability has terminated, as where there has been a prior payment by the payor or by some other party."

"b. *Tort claims.* A person who pays money to another in satisfaction of a non-existent tort liability assumed to have been created by the conduct of the payor or of someone for whose conduct he is responsible, is entitled to recover it except where the payment is made by way of compromise. There are innumerable bases of tort liability and hence there are many kinds of mistakes of fact which may have caused the error as to liability."

"If the payment was made in mistaken belief as to the existence of a fact without which the tort liability would not exist, there can be recovery under the rule stated in this Section."

"§ 44. LIMITATIONS ON RESTITUTION. IN GENERAL.

"A person who has paid money or otherwise conferred a benefit upon another induced thereto by a mistake of law is not entitled to restitution if he would not have been so entitled had the mistake been one of fact."

"§ 45. SATISFACTION OF NON-EXISTENT OBLIGATION. WHEN RESTITUTION NOT GRANTED.

"Except as otherwise stated in §§46-55, a person who, induced thereto solely by a mistake of law, has conferred a benefit upon another to satisfy in whole or in part an honest claim of the other to the performance given, is not entitled to restitution."

*"Comment on:*

"a. The rule stated in this Section depends upon the policy against reopening settled transactions where the transferee has made an honest claim and payment has been made without coercion or mistake of fact."

"The rule is applicable to all kinds of supposed obligations, including those for taxes levied without proper authorization."

"c. *Mistake of law and fact.* Where money is paid another when it is not due because of two basic mistakes, one of law and one of fact, since the mistake of fact is one of the inducing causes, restitution will be granted irrespective of the fact that a mistake of law was also a cause."

"§46. SATISFACTION OF NON-EXISTENT OBLIGATION. WHEN RESTITUTION GRANTED.

"A person who has conferred a benefit upon another because of an erroneous belief induced by a mistake of law that he is under a duty so to do, is entitled to restitution as though the mistake were one of fact if:

- "(a) the benefit was conferred by a State or subdivision thereof, or
- "(b) the benefit was received on behalf of a court which has control over its disposition, or
- "(c) the mistake was as to the law of a State in which the transferor neither resided nor did business, except a mistake of law in the payment of taxes, or
- "(d) the mistake was as to the validity of a judgment subsequently reversed."

*"Comment of Clause (c):*

"c. The rule stated in this clause applies only in those situations where it may be assumed that the transferor is unfamiliar with the law of the jurisdiction which controls the transaction. A foreigner, if regularly doing business in the State, even though temporarily, is not entitled to restitution hereunder because of an error of law. On the other hand, if a person is domiciled in another State and does not regularly transact business in the State as to which he makes a mistake of law, the mistake of law has the same consequences as if it were a mistake of fact."

"§55. BENEFIT OBTAINED BY FRAUD OR MISREPRESENTATION.

"A person who has conferred a benefit upon another induced thereto by a mistake of law, is entitled to restitution thereof if his mistake was caused by

"(a) reliance upon a fraudulent misrepresentation of law by the other, or

"(b) justifiable reliance upon an innocent misrepresentation of law by the other."

"§59. LACK OF CARE BY TRANSFEROR.

"A person who has conferred a benefit upon another by mistake is not precluded from maintaining an action for restitution by the fact that the mistake was due to his lack of care."

"Comment:

"a. The fact that the transferor fell below the standard of a reasonable man in ascertaining facts or in drawing inferences from facts, whether or not his failure was with respect to his own interests, those of the payee or those of third persons, is normally not decisive and does not prevent him from obtaining restitution. This is so because one is not penalized for lack of care unless this results in harm to someone else, and restitution is allowed because of mistake only to the extent that benefits have been received by one at the expense of the other."

"§61. EXISTENCE OF MORAL DUTY BY TRANSFEROR.

"A person who, in the mistaken belief that he is subject to a duty to another, has conferred a benefit upon such other intending to confer or manifesting that he is conferring the benefit as the performance of such duty, is not entitled to restitution therefor, in the absence of fraud, misrepresentation, or duress by the transferee, if the existence of an enforceable duty was prevented only by the Statute of Frauds, and Statute of Limitation, a discharge in bankruptcy, infancy or coverture at the time of the original transaction, or if otherwise it is not inequitable for the transferee to retain the benefit."

" §70. IN GENERAL.

"A person who has conferred a benefit upon another as the result of a transaction which is void or voidable because of duress or undue influence, is entitled to restitution under the same conditions as if the benefit had been conferred as the result of fraud."

"§73. VOID JUDGMENTS AND JUDICIAL PROCESSES.

"(1) Except as stated in Subsection (2), a person is entitled to restitution of a benefit which he has conferred upon another, induced thereto by a levy under or a threat of execution of a judgment or process which is void as to him, if the execution thereof would subject him to serious risk of substantial loss.

"(2) An action for restitution does not lie against an officer who, acting in good faith and in conformity with process which, although invalid, is fair on its face, has received payment and has paid it over to the person specified in the process.

"Comment:

"a. The rule stated in the Section is a special application of the rule stated in §70. It is applicable, and applicable only, to judgments or processes to which the payor has no duty of obedience or which, if executed by the seizure of his things, would affect his interests therein no more than would any wholly unauthorized and wrongful seizure. This is true where the judgment or process is void as to all persons and also where, although valid as to others, it is ineffective as to the payor. A void judgment cannot be the basis of a valid execution or process; however, under the conditions stated in Subsection (2), the enforcing officer is relieved from liability."

"§75. VOID TAXES AND ASSESSMENTS.

"(1) Except as otherwise provided for by statute, a person who without mistake of fact pays a tax or assessment to a municipal corporation, or to a State if a suit for restitution is permitted against the State, is entitled to restitution of the amount paid if, but only if,

"(a) the statute, ordinance, or administrative order by virtue of which the tax or assessment was levied and paid was void as to the payor, and

"(b) the payor reasonably believed that if the payment was not made the means taken to enforce collection of the tax or assessment would subject him to serious risk of imprisonment or of the loss of possession of his things or of other substantial loss.

"(2) A collecting officer who has received possession of the money is under a duty of restitution until he has paid the money over to the municipal corporation or State for which he received it; if the payor did not protest the tax before such payment over, the officer is thereafter relieved from liability; if the payor protested the tax before the payment over, the collecting officer is thereafter relieved from liability only if he is required by statute to make such payment over irrespective of protest."

"Comment on Subsection (1):"

"e. Void taxes. The most important situations in which a taxpayer is entitled to recover for a tax improperly collected are those where the statute, ordinance, or order upon which the tax is based is unconstitutional or where, although valid as to others, the tax is void as to the payor or with respect to his property because the State does not have jurisdiction to tax him or his property, or where an assessment is void because an unfair method of valuation has been used."

"Comment of Subsection (1, b):

*f Duress.* Restitution is allowed only if payment is made because of a reasonable anticipation by the payor of substantial

risk of loss or serious inconvenience if the payment is not made. The burden of proving this is on the payor. As in the case of other transactions set aside for duress, the question of whether or not there is sufficient coercion to require restitution is a matter of degree, but rules with respect to certain situations have become crystallized. Thus payment made a considerable time before it is necessary to do so in order to avert the threatened loss (see Illustration 7), or payment made to save interest at not much above the normal rate is not a sufficient basis for restitution (see Illustration 8).

"On the other hand, the payor is entitled to restitution if he makes payments immediately necessary to retain or regain possession of land or goods which otherwise would be taken from him (see Illustration 9); to prevent a lease from being forfeited or a condition from happening which would adversely affect his interests in the subject matter; to effectuate an impending transaction with a third person which would be prevented by his failure to pay (see Illustration 10); to continue or to retain a business which otherwise could not be operated; or to retain his personal freedom which he would otherwise lose. It is not necessary for the taxpayer to wait until the officer has taken possession of the goods, closed his business, or put him in prison. Where the tax official would be privileged to act in this way without further judicial process if the tax were valid, payments thus made are not voluntary, and the fact that the taxpayer could have secured an injunction against the enforcement of the tax does not preclude the right to restitution."

"g. *Penalties and forfeitures.* Under many tax laws which are of doubtful validity, a heavy penalty is imposed for failure to pay the tax. Where this is true, even though there is no attempt to seize the things or the person of the taxpayer, if he has a reasonable belief that upon failure to pay the tax there is a substantial chance of serious loss because of the imposition of the penalty, his payment is coerced and can be recovered. The threatened imposition of a substantial fine with a reasonable chance of its being imposed is to be distinguished from the likelihood of being required to pay interest, even though somewhat above the normal rate."

"§139. CAPACITY OF DEFENDANT.

"Incapacity to enter into a contract or to incur liability in tort is not in itself a defense in an action for restitution."

*Comment:*

"a. *Reason for the rule.* Certain persons are not subject to liability upon agreements into which they have entered. This is true of infants and insane persons and, to some extent even under some modern statutes, of married women. Likewise idiots and very young children who do not have sufficient mentality to form a purpose or to understand the consequences of their physical reactions, may have no capacity to incur liability in tort.

The reasons which cause incapacity to make contracts or to incur liability in tort do not apply to actions for restitution which are based upon unjust enrichment. It is fair that married women, insane persons and infants, even if they are not required to perform their promises or to pay for the harm which they do, should be required to return benefits which they have received, at least if they are still in possession of the subject matter or its proceeds."

"d. *Benefits received other than by an agreement or tort.*

Any person whether or not having capacity to be liable otherwise, is liable in an action for the restitution of benefits which he has received and which it would be unjust for him to retain."

[Restatement of the Law, Restitution, American Law Institute, 1937]

### 9.3 Anti-injunction Act

#### 26 U.S.C. §7421(a)

"(a) TAX.--Except as provided in sections 6212(a) and (c), 6213(a), 6672(b), 6694(c), 7426(a) and (b)(1), and 7429(b), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed."

[26 U.S.C. §7421(a)]

#### Filipowicz v. Rothensies (Feb. 16, 1940)

"The Declaratory Judgments Act, providing that in cases of actual controversy, "except with respect to federal taxes" courts of the United States shall have power to declare rights of any interested party, should be interpreted to deny a declaratory judgment to a petitioner only where he could not obtain an injunction against illegal seizure by tax collector. 26 U.S.C.A. §1543; 26 U.S.C.A. Internal Revenue Code, §3653(a); Jud.Code. §274d, 28 U.S.C.A. §400."

[Filipowicz v. Rothensies, 31 F.Supp. 716 (1940)]

#### Yates v. White (June 4, 1957)

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"Where taxpayer did not show that the seizure and sale of his partnership interest in certain property would ruin taxpayer financially, or that partnership business would be utterly and totally destroyed, taxpayer had an adequate remedy through administrative procedure and could not properly bring an action to restrain collection of internal revenue taxes and penalties assessed against the taxpayer as responsible officer of corporation for failure of corporation to pay withholding taxes of employees."

"Hardship in raising money with which to pay taxes is not a special circumstance conferring equity and jurisdiction upon courts to prevent collection of internal revenue taxes by injunctive process."

[Yates v. White, 152 F.Supp. 320 (1957)]

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**Bob Jones University v. Simon (May 15, 1974)**

"This case ... involve[s] the application of the Anti-Injunction Act, §7421(a) of the Internal Revenue Code of 1954 (the Code), 26 U.S.C. §7421(a), to the ruling-letter program of the Internal Revenue Service (the Service) for organizations claiming tax-exempt status under Code §501(c)(3), 26 U.S.C. §501(c)(3)."

[Bob Jones University L.. Simon, 416 U.S. 725 (1974)]

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**United States v. American Friends Service Committee (Oct. 29, 1974)**

"Injunction against collection of income tax by withholding was contrary to Anti-Injunction Act, notwithstanding contention that Act did not apply because district court enjoined only one method of collection and Government was still free to assess and levy taxes when due."

"Irreparable injury is prerequisite for traditional equity jurisdiction to grant injunctive relief."

"Though remitting of employees to action for refund of income taxes withheld frustrated their chosen method of bearing witness to their religious convictions, inasmuch as they would not succeed in action for refund, bar of Anti-Injunction Act was not for such reason inapplicable to action for injunctive relief against withholding."

"Objectives of Anti-Injunction Act are efficient and expeditious collection of taxes with minimum of preenforcement judicial interference and protection of internal revenue collector from litigation pending refund suit."

[United States v. American Friends Service Committee, 419 U.S. 7, 95 S.Ct. 13, 42 L.Ed.2d. 7 (1974)]

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**Blech v. United States (Mar. 5, 1979)**

"The antiinjunction provision of the Internal Revenue Code not only prohibits suits to restrain the assessment or collection of a tax but also prevents the district court from granting equitable relief that would have such effect."

"Where complaint prayed that the Government be permanently enjoined from assessing any tax liability for 1971, from reexamining plaintiffs' tax returns for 1971 and from issuing further statutory notices of deficiency to plaintiffs for the tax year 1971, the complaint by its own terms fell within the literal prohibition of the antiinjunction section of the Internal Revenue Code and, therefore, federal district court did not have jurisdiction to grant the relief prayed for."

"The statutory ban against judicial interference with the assessment or collection of taxes, embodied in the antiinjunction provision of the Internal Revenue Code, is equally applicable to activities that are intended to or may culminate in the assessment or collection of taxes."

"Plaintiffs who sought a permanent injunction restraining the Government from assessing any tax liability for one tax year and from reexamining plaintiffs' tax returns for that year did not establish extra-ordinary or exceptional circumstances bringing them within the judicially created exception to the antiinjunction provision of the Internal Revenue Code where no contortions of the fact would establish that irreparable injury would occur if the desired relief was not granted, so that plaintiffs had an adequate remedy at law, and where plaintiffs did not establish that the Government could under no circumstances prevail"

"Under the Declaratory Judgment Acts' specific exception barring declaratory judgments with respect to federal taxes, district court lacked jurisdiction to enter judgment declaring that certain already issued tax deficiency notices were illegal, invalid and void."

[Blech v. United States, 595 F.2d. 462 (1979)]

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**Cool Fuel, Inc. v. Connett (Aug. 24, 1982)**

"Oral motions for summary judgment are not authorized or recognized in Ninth Circuit but if, when party moves for summary judgment and at hearing, it is made to appear from all records, files, affidavits and documents presented that there is no genuine dispute respecting material fact essential to proof of movant's case, court may sua sponte grant

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summary judgment to nonmoving party."

"Appellate court must carefully review record and determine that moving party against whom summary judgment was rendered had full and fair opportunity to ventilate issues involved in motion."

"While purpose of requirement that Internal Revenue Service send notice of deficiency to taxpayer by certified or registered mail is to provide taxpayer with actual notice, notice of deficiency will be sufficient if mailed to taxpayer's last known address."

"Under statute which provides that assessment may be enjoined by proceeding in proper court, and since injunctive relief against Internal Revenue Service is generally prohibited by Anti-Injunction Act, taxpayer was not entitled to injunctive relief based on showing alone that assessment had been made prior to valid notice of deficiency."

"Since payment of tax followed by suit for refund constitutes adequate remedy at law, since taxpayer presented to district court all that it deemed material on equitable issues inherent in its application for injunctive relief, and since its president stated that taxpayer had ability to pay alleged tax deficiency, taxpayer, which alleged that fact of assessment as well as possibility of collection would have deleterious effect on its business operations and credit rating, was not entitled to injunction preventing Internal Revenue Service from collecting tax deficiency."

[Cool Fuel, Inc. v. Connett, 685 F.2d. 309 (1982)]

#### **Maxfield v. United States Postal Service (Oct. 26, 1984)**

"Taxpayer's suit to enjoin his employer from withholding taxes from his wages was properly barred under the Anti-Injunction act where he made no showing that he did not incur tax liability for the preceding year or that he could reasonably anticipate incurring no liability for current year; taxpayer's assertion that he was exempt from paying income tax based solely on his allegation that the income tax is unconstitutional was frivolous. 26 U.S.C.A. §7421."

"Employer was immune from liability to taxpayer for withholding taxes from taxpayer's pay because its duty to withhold was mandatory rather than discretionary. 26 U.S.C.A. §3402."

"Taxpayer's appeal in which he alleged employer wrongfully withheld taxes from his pay was frivolous, warranting award to employer of reasonable attorney fees and double costs. 28 U.S.C.A. §1912; F.R.A.P. Rule 38, 28 U.S.C.A."

[Maxfield v. United States Postal Service, 752 F.2d. 433 (1984)]

#### **9.4 Exceptions to the Anti-injunction Act**

##### **26 U.S.C. §7426**

##### **"(a) Actions permitted**

##### **"(1) Wrongful levy**

"If a levy has been made on property or property has been sold pursuant to a levy, and any person (other than the person against whom is assessed the tax out of which such levy arose) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary."

##### **"(b) Adjudication**

The district court shall have jurisdiction to grant only such of the following forms of relief as may be appropriate in the circumstances:

##### **"(1) Injunction**

"If a levy or sale would irreparably injure rights in property which the court determines to be superior to rights of the United States in such property, the court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

##### **"(2) Recovery of property**

"If the court determines that such property has been wrongfully levied upon, the court may--

"(A) order the return of specific property if the United States is in possession of such property;

"(B) grant a judgment for the amount of money levied upon; or

"(C) if such property was sold, grant a judgment for an amount not exceeding the greater of--

"(i) the amount received by the United States from the sale of such property, or

"(ii) the fair market value of such property immediately before the levy.

For the purposes of subparagraph (C), if the property was declared purchased by the United States at a sale pursuant to section 6335(e) (relating to manner and conditions of sale), the United States shall be treated as having received an amount

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equal to the minimum price determined pursuant to such section or (if larger) the amount received by the United States from the resale of such property."

**"(c) Validity of assessment**

"For purposes of an adjudication under this section, the assessment of tax upon which the interest or lien of the United States is based shall be conclusively presumed to be valid.

**"(d) Limitation on rights of action**

"No action may be maintained against any officer or employee of the United States (or former officer or employee) or his personal representative with respect to any acts for which an action could be maintained under this section.

**"(e) Substitution of United States as party**

"If an action, which could be brought against the United States under this section, is improperly brought against any officer or employee of the United States (or former officer or employee) or his personal representative, the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action was commenced upon proper service of process on the United States.

**"(f) Provision inapplicable**

"The provisions of section 7422(a) (relating to prohibition of suit prior to filing claim for refund) shall not apply to actions under this section."

[26 U.S.C. §7426]

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**F.R.C.P. Rule 65(a). Injunctions**

**"Preliminary Injunction.**

"(1) *Notice.* No preliminary injunction shall be issued without notice to the adverse party.

"(2) *Consolidation of Hearing with Trial on Merits.* Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a)(2) shall be so construed and applied as to save the parties any rights they may have to trial by jury."

[Federal Rules of Civil Procedure Rule 65(a). **Injunctions**]

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**F.R.C.P. Rule 65(b). Injunctions**

**"Temporary Restraining Order; Notice; Hearing; Duration.** A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required."

.. shall define the injury and state why it is irreparable...shall expire by its terms within such time after entry, not to exceed 10 days...."

[Federal Rules of Civil Procedure Rule 65(b). **Injunctions**]

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**F.R.C.P. Rule 65(c). Injunctions**

**"Security.** No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper...."

[Federal Rules of Civil Procedure Rule 65(c). **Injunctions**]

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**F.R.C.P. Rule 65(d). Injunctions**

**"Form and Scope of Injunction or Restraining Order.** Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise."

[Federal Rules of Civil Procedure Rule 65(d). **Injunctions**]

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**F.R.C.P. Rule 65, Notes****"1. Generally**

"Equitable relief by injunction is remedial, not penal."

"Injunction is preventive remedy and cannot be invoked for purpose of punishment for wrongful acts already committed."

**"2. Purpose**

"Purpose of injunctions is to prevent future violations, and it can be utilized even without showing past wrongs, but moving party must satisfy court that relief is needed, and that there exists some cognizable danger of recurrent violations, something more than mere possibility which serves to keep case alive."

"Function of equitable remedy of injunctions is preventive, prohibitory, protective, or restorative, as law and circumstances of case warrant."

**"4. Applicability; admiralty proceedings**

"Courts sitting in admiralty may award injunctive relief in accordance with Rule 65 in situations where such relief would be appropriate on land."

**"6. Temporary restraining injunction compared**

"Rule 65(a) and (b) make restraining orders and injunctions.

"Where opposing party has notice of application for temporary restraining order, such order does not differ functionally from preliminary injunction.

"Rule 65(a) contemplates that issuance of preliminary injunction shall be upon notice to adverse party and after hearing.

"Temporary injunction is granted upon evidence after trial and is not governed by same rules which regulate and control granting of temporary restraining order.

**"10. Generally**

"Need for, and availability of, such equitable remedy as injunction must be reconsidered in view of existence of Declaratory Judgment Act as well as liberal joinder provision of Rules of Civil Procedure.

"Injunctive relief is not warranted pursuant to 42 U.S.C.S. §2000e et seq. where movant has not sustained its burden of proof that irreparable harm will result to it if preliminary relief is not granted, facts do not raise questions going to merits so serious, substantial, difficult and doubtful as to make them fair grounds for litigation and there is no strong or substantial likelihood or probability of success on merits on part of movant since criteria for granting injunctive relief under 42 U.S.C.S. §2000e et seq. is showing that prompt judicial action is necessary to carry out proposes of act." [Cites omitted.] [Federal Rules of Civil Procedure Rule 65, Notes]

**Elliott v. Swartwout (1836)**

"It is the settled doctrine of the law that where money is illegally demanded and received by an agent, he cannot exonerate himself from personal responsibility by paying it over to his principal, when he has had notice not to pay it over."

"The payment of the illegal duties gave the collector no right to them, and the collector cannot discharge himself by paying over the money. (1 Camp. N. P., 396) This was a case in which money was illegally claimed by overseers, and was paid over to their successors; but they were not protected from personal responsibility by the payment. if [sic] it was illegally demanded, it was illegally paid over by the collector."

"It appears that the collector was instructed to demand the higher duties. While obedience to his instructions might give him a full claim to indemnity on the government, he is not the less responsible to individuals. Such instructions are no protection to him when he violates the law."

"But it is said the collector was an agent. He is agent of the law, to carry its provisions into effect. He is not an agent for any illegal purposes; and he is bound to disregard instructions from the department of the government having charge of the collection of the revenue, if they are contrary to law. If a collector is an agent of the treasury, then he is not an agent of the law of the land."

"The collector is responsible as a principal, when he compels the payment of duties; and he must answer to an injured individual for his actions. This is a responsibility from which he cannot escape."

.. where a man demands money of another, as matter of right, and that other, with a full knowledge of the facts upon which the demand is founded, has paid a sum of money voluntarily, ee voluntarily, he cannot recover it back."

"The case of *Hearsey v. Pryn* (7 Johns., 179)...the court says the law is well settled that an action may be sustained against an agent who has received money to which the principal had no right, if the agent has had notice not to pay it over."

"... in the case of *Ripley v. Gelston*...the cases *which* exempt an agent when the money is paid over to his principal without notice, do not apply to cases where the money is paid by compulsion, or extorted as a condition, &c. From this

view of the cases, it may be assumed as the settled doctrine of the law that where money is illegally demanded and received by an agent, he cannot exonerate himself from personal responsibility by paying it over to his principal, if he has had notice not to pay it over."

[Elliott v. Swartwout, 35 U.S. 137, 10 Peters 137, 9 L.Ed. 373 (1836)]

#### **Erskine v. Van Arsdale (Dec. 16, 1872)**

"Taxes illegally assessed and paid may always be recovered back, if the collector understands from the payer that the taxes are regarded as illegal and that suit will be instituted to compel the refunding of them."

"Where an illegal tax has been collected, the citizens [sic] who has paid it, and has been obliged to bring suit against the collector, is, we think, entitled to interest in the event of recovery, from the time of the illegal exaction."

[Erskine v. Van Arsdale, 82 U.S. 63 (1872)]

#### **Hill v. Wallace (May 15, 1922)**

"A suit by members of the Chicago Board of Trade to restrain the enforcement of the Future Trading Act of August 24, 1921, challenged as unconstitutional, is not, in so far as it seeks relief against the United States district attorney and the collector of internal revenue, forbidden by the provisions of U.S. Rev.Stat. §3224, as one to restrain the collection of a tax, in view of the exceptional and extraordinary circumstances with respect to the operation of the act under which a sale of grain for future delivery, without paying the tax, would subject the seller to heavy criminal penalties, and to pay the heavy tax in each of many daily transactions which occur in the ordinary business of a member of an exchange, and then sue to recover it back, would necessitate a multiplicity of suits...."

"The Future Trading Act of August 24, 1921, which in its essence and on its face, is a complete regulation of boards of trade...cannot be sustained as a valid exercise of the taxing power of Congress, but is an unconstitutional interference with the rights reserved by U.S. Const., 10th Amend., to the several states."

[Hill v. Wallace, 259 U.S. 44, 42 S.Ct. 453, 66 L.Ed. 822 (1922)]

#### **American Airways v. Wallace (Mar. 31, 1932)**

"Equity court may enjoin collection of illegal tax in absence of full, free, complete, and adequate legal remedy (Jud. Code §266, 28 U.S.C.A. §380)."

"State statute, imposing tax on persons selling, storing, and distributing gasoline, *held* not to impose property tax on gasoline, but excise or privilege tax on business of selling, storing, and withdrawing (Pub. Acts Tenn. 1923, c. 58, as amended by Pub. Acts Tenn. 1925, c. 67). The terms "excise tax" and "privilege tax" are synonymous."

"State may impose license tax in nature of excise or privilege tax on conduct of business in state."

"The terms 'excise tax' and 'privilege tax' are synonymous, the two are often used interchangeably. *Bank of Commerce v. Senter*, 149 Tenn. 569, 260 S. W. 144."

[American Airways v. Wallace, 57 F.2d. 877 (1932)]

#### **Midwest Haulers v. Brady (June 2, 1942)**

"Section 3653 of the [1939] Internal Revenue Code is not an absolute bar to every action to restrain the collection of an illegal tax. [Cites omitted.] The genesis of this statute is found in Section 10 of the Act of March 2, 1867, ch. 169, 14 Stat. 475. Originally, it was an amendment of the Internal Revenue Act of July 13, 1866, ch. 184, 14 Stat. 152. The Act of which it was made a part expressly provided for a remedy at law by suit to recover taxes erroneously or illegally assessed or collected. In its present language it appeared in the Revised Statutes independently of the Revenue Act as R.S. 3224. Its original and present setting require that it be construed in *pari materia* with other parts of the Internal Revenue Act which give to a taxpayer the unqualified right of recovery of all that has been illegally exacted from him under the guise of a tax. *Snyder v. Marks*, 109 U.S. 189, 3 S.Ct. 157, 27 L.Ed. 901. When it is made to appear that the rights and property of an alleged taxpayer will be utterly destroyed if he is compelled to pay a tax that is not in fact his obligation and the pursuit of his remedy by suit for the recovery will not adequately restore to him that which he has lost, a court of equity may take jurisdiction to grant relief in advance of payment notwithstanding the prohibition of Section 3653. The complaint in the case at bar, the allegations of which are admitted by the motion to dismiss, alleges facts which if true, show that the taxes sought to be collected by the appellee from appellant probably are not in fact due...."

[Midwest Haulers v. Brady, 128 F.2d. 496 (1942)]

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**Ettelson v. Metropolitan Life Ins. Co. (Dec. 7, 1942)**

"The relief afforded by provision of Judicial Code authorizing' appeals to Circuit Court of Appeals from an interlocutory order granting, continuing, modifying, refusing, or dissolving an injunction is not restricted by the terminology used but the statutory provision looks to the substantial effect of the order made."

[Ettelson v. Metropolitan Life Ins. Co., 317 U.S. 188, 63 S.Ct. 163 (1942). [Overturned by Gulfstream Aerospace Corp. v. Mayacamas Corp., 485 U.S. 271, 108 S.Ct. 113 (1988).]]

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**John M. Hirst & Co. v. Gentsch (Feb. 8, 1943)**

"It has been construed in a long line of cases to withdraw from the courts the power to restrain assessment or collection of taxes where the challenge is to the validity or applicability of the tax. Its restraint is not, however, absolute, and beginning with Dodge v. Brady, 240 U.S. 122, 126, 36 S.Ct. 277, 60 L.Ed. 560, through Hill v. Wallace, 259 U.S. 44, 42 S.Ct. 453, 66 L.Ed. 822, and Miller v. Standard Nut Margarine Co., 284 U.S. 498, 509, 52 S.Ct. 260, 76 L.Ed. 422, an exception to the universality of its application has been recognized in cases which, though apparently within its terms, present extraordinary and entirely exceptional circumstances to make its provisions inapplicable."

[John M. Hirst & Co. v. Gentsch, 133 F.2d. 247 (6th Cir. 1943)]

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**Shelton v. Gill (Feb. 17, 1953)**

"Statute prohibiting suits to restrain assessment or collection of Federal taxes is general in its terms and should not be construed as abrogating equitable principles which permit suits to restrain collection where exaction is illegal and there exist special circumstances sufficient to bring case within some acknowledged head of equity jurisdiction. 26 U.S.C.A. §3653."

"Statute prohibiting suits to restrain assessment and collection of Federal taxes is directed at the person liable for taxes and is not intended to preclude courts from affording protection to one not liable to taxes whose property may be in danger of seizure and sale by the taxing authorities."

[Shelton v. Gill, 202 F.2d. 503 (1953)]

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**Holland v. Nix (June 23, 1954)**

"As was stated by the Supreme Court in Miller v. Standard Nut Margarine Company of Florida, 284 U.S. 498, 52 S.Ct. 260; 76 L.Ed. 422, and in subsequent decisions, Section 3653 [of the 1939 Internal Revenue Code] is general in its terms and should not be construed' as abrogating the equitable principles which permit suits to restrain collection where the exaction is illegal (as we think here), or there exist special and extraordinary circumstances sufficient to bring the case within some acknowledged head of equity jurisdiction."

[Holland v. Nix, 214 F.2d. 317 (1954)]

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**Szerlip v. Marcelle (Nov. 14, 1955)**

"Under internal revenue statute providing property taken under revenue laws shall not be repleviable, nondelinquent third-parties, whose property has been taken by Collector of Internal Revenue for tax liability of another, may maintain actions in federal District Courts to stay the sale thereof without being bound by provisions of Internal Revenue Code forbidding suits restraining assessment of tax."

"Under judiciary code section giving federal District Court jurisdiction of any civil action arising under any act of Congress providing for internal revenue, suits against Collector of Internal Revenue for money damages, usually as claims for tax refunds, are properly brought in federal District Courts and nondelinquent third-parties have been permitted to sue under this section where their interest is pecuniary rather than proprietary [sic]."

[Szerlip v. Marcelle, 136 F.Supp. 862 (1955)]

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**Martin v. Andrews (Nov. 15, 1956)**

"Under certain extraordinary and exceptional circumstances, taxpayer may maintain suit to enjoin collection of federal taxes, notwithstanding statutory prohibition. 26 U.S.C.A. (LR.C.1954) §7421(a); 26 U.S.C.A. (LR.C.1939) §3403."

.. in Reams case, 140 F.2d. at page 241:

"Hardship in raising money with which to pay taxes is now common to all taxpayers, but this is not a special

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circumstance conferring equity jurisdiction on the courts to prevent collection by injunctive process. State of California v. Latimer, 305 U.S. 255, 262, 59 S.Ct. 166, 83 L.Ed. 159."

[Martin v. Andrews, 238 F.2d. 552 (9th Cir. 1956)]

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**Flora v. United States (Mar. 21, 1960)**

"Frequently, the legislative history of a statute is the most fruitful source of instruction as to the proper interpretation of the statute."

"Our system of taxation is based upon voluntary assessment and payment, not upon distraint."

"I pass, then, to an examination of the history of the present jurisdictional provision, §1346(a), and the scheme of the present tax law to determine whether there is any real support for the Government's contention that a proper reading of the language of §1346(a) requires an implied qualification to its obvious self-explanatory meaning, so that full payment of an assessment, alleged to have been illegal, is made a condition upon the jurisdiction of a District Court to entertain a suit for refund.

"Judicial proceedings for refund of United States taxes in federal courts originated, without express statutory authority, by suits against Collectors (now District Directors), before the United States had made itself amenable to suit. Elliott v. Swartwout, 1836, 10 Pet. 137, 9 L.Ed. 373, recognized the existence of a right of action against a Collector of Customs for refund of duties illegally assessed and paid under protest. The doctrine of the action, based upon the common-law count of assumpsit for money had and received, was thus formulated: "[W]here money is illegally demanded and received by an agent, he cannot exonerate himself from personal responsibility by paying it over to his principal; if he has had notice not to pay it over." 10 Pet., at page 158. As a result of that case, Collectors of Customs who collected monies, paid under protest, resorted to the practice of withholding such amounts from the Government as indemnity against loss should a refund suit against them be successful. See Plumb, Tax Refund Suits Against Collectors of Internal Revenue, 60 Harv.L.Rev. 685, 688-689. That practice led to the guise of self-protection. Because of the wholesale frauds of Swartwout, the New York Collector (see Swartwout, 18 Dictionary of American Biography (1936), 238-239), Congress, in 1839, expressly prohibited such withholdings by Customs Collectors pending the possibility, or the result, of litigation against them. Act of March 3, 1839, c. 82, §2, 5 Stat. 348. Six years later, in 1845, this Court held that this Act, by reducing the Collector to "the mere bearer of those sums [duties] to the Treasury," terminated the right of action against the Collector for refund, for, being deprived of the right to withhold payment to his principal, he was no longer under an implied promise to refund illegally collected duties to the taxpayer. Cary v. Curtis, 1845, 3 How. 236, 241, 11 L.Ed. 576.

"This created the intolerable condition of denying to taxpayers any remedy whatever in the District Courts to recover amounts illegally assessed and collected, and--doubtless also influenced by the vigorous dissents of Mr. Justice Story and Mr. Justice McLean in that case--induced Congress to pass the Act of Feb. 26, 1845, c. 22, 5 Stat. 727, which was the first statute expressly giving taxpayers the right to sue for refund of taxes illegally collected. That Act, in substance, provided that nothing contained in the Act of March 3, 1839 (c. 82, §2, 5 Stat. 348), should be construed to take away or impair the right of any person who had paid duties under protest to any Collector of Customs, which were not lawfully "payable in part or in whole," to maintain an action at law against the Collector to recover such amounts. It is evident that Congress, by that statute, was merely concerned to reverse the consequences of Cary v. Curtis, supra, and to restore the right of action against Collectors which had originally been sustained in Elliott v. Swartwout, supra. Neither the terms of that statute nor such knowledge as is available of its history reveals any limiting purpose except that the protest be made in writing before or at the time of the payment.

"While that statute, the Act of Feb. 26, 1845, referred only to refunds of customs duties, this Court held in City of Philadelphia v. The Collector (Diehl) 1866, 5 Wall. 720, 730-733, 18 L.Ed. 614, that taxpayers had the same right of action against Collectors to recover illegally collected internal revenue taxes." [Brackets original with the court.]

[Flora v. United States, 362 U.S. 145, 80 S.Ct. 630, 647 (1960)]

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**Smith v. Flinn (Dec. 5, 1958)**

"Extraordinary and exceptional circumstances render inapplicable provisions of federal statute prohibiting suits to restrain assessment or collection of taxes."

"What constitutes unusual and extraordinary circumstances so as to render the statute inapplicable is determined by no precise formula but is varied and each case must be decided on its own peculiar underlying facts. Courts have held that mere illegality of the exaction is not sufficient to make the statute inapplicable, Allen v. Shelton, 5 Cir., 1938, 96 F.2d. 102, certiorari denied 305 U.S. 630, 59 S.Ct. 94, 83 L.Ed. 404; nor will hardship upon the taxpayer suffice to stay the statute and grant the injunction, [cites omitted]. But the courts have on numerous occasions recognized, though dealing

with situations coming within the statutory terms, that its provisions are inapplicable due to additional factors. ... and in *Hirst & Co. v. Gentsch*, 6 Cir., 1943, 133 F.2d. 247, 248, where it was shown that the taxes sought to be collected from appellant were probably not validly assessed taxes, and if collection was enforced by distraint the appellant would be ruined in its business and forced to close its mine, the court said:

"In that event no remedy provided by the Internal Revenue Law would be adequate to compensate the appellant for its loss. There is thus presented a case under the authorities, as we read them, for an interposition of a court of equity, and the exercise of its extraordinary equity power."

For other cases where the courts have found that these unusual circumstances exist see: *Allen v. Regents*, 1938, 304 U.S. 439, 58 S.Ct. 980, 82 L.Ed. 1448; *Hill v. Wallace*, 1922, 259 U.S. 44, 42 S.Ct. 453, 66 L.Ed. 822; *Dodge v. Brady*, 1916, 240 U.S. 122, 36 S.Ct. 277, 60 L.Ed. 560; *National Foundry Co. of New York v. Director of Int. Rev.*, 2 Cir., 1956, 229 F.2d. 149; *Holland v. Nix*, 5 Cir., 1954, 214 F.2d. 317; *Shelton v. Gill*, 4 Cir., 1953, 202 F.2d. 503; *Midwest Haulers v. Brady*, 6 Cir., 1942, 128 F.2d. 496."

[*Smith v. Flinn*, 261 F.2d. 781 (1958)]

### **Singleton v. Mathis (Dec. 27, 1960)**

"Not only must there be element of illegality of tax, but additionally, there must exist special and extraordinary circumstances of sufficient importance to warrant court interference by injunction against collection of the tax. 26 U.S.C.A. (I.R.C.1954) §7421."

"A nontaxpayer may obtain an injunction restraining federal government from levying on nontaxpayer's property for purpose of satisfying another's liability. 26 U.S.C.A. (I.R.C.1954) §7421."

"It would appear that in the many cases in which taxpayers have endeavored to restrain collection of a tax, the courts have consistently adhered to the rule laid down in the *Miller* case, that is, that not only must the element of illegality be present, but, additionally, there must exist special and extraordinary circumstances of sufficient importance to warrant court interference."

[*Singleton v. Mathis*, 284 F.2d. 616 (8th Cir. 1960)]

### **Enochs v. Williams Packing & Navigation Co. (May 28, 1962)**

"The purpose of §7421(a) of the Internal Revenue Code of 1954 is to withdraw jurisdiction from the state and federal courts to entertain suits seeking jurisdictions prohibiting the collection of federal taxes, to permit the United States to assess and collect taxes **alleged** to be due without judicial intervention, and to require that the legal right to the disputed sums be determined in a suit for refund." [Bold added.]

"Section 7421(a) of the Internal Revenue Code of 1954, which prohibits suits to restrain the assessment or collection of a federal tax, is inapplicable where it is clear that under no circumstances can the government ultimately prevail; only if it is apparent, on the basis of the information available to the government at the time of suit, that, under the most liberal view of the law and the facts, the United States cannot establish its claim, may the suit for an injunction be maintained, otherwise the District Court is without jurisdiction and the complaint must be dismissed."

[*Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 82 S.Ct. 1125, 8 L.Ed.2d. 292 (1962)]

### **Walker v. I.R.S., U.S. Treasury Dept. (June 16, 1964)**

"Internal Revenue Code provision forbidding suits to enjoin assessment or collection of taxes is inapplicable only if it is established that legal remedy is inadequate and it is apparent that, under most liberal view of law and facts, United States cannot establish its claim."

[*Walker v. Internal Revenue Service, U.S. Treasury Dept.*, 333 F.2d. 768 (1964)]

### **Bauer v. Foley (Dec. 18, 1968)**

"But the basic issue is not whether the Government had a right to compute and send out a notice of deficiency before it had examined into and discovered whether or not the signatures on the returns were genuine and that the filing was not the result of duress--a procedure which would impose an intolerable burden on the collection of taxes--...."

"If it is clear that under no circumstances could government ultimately prevail in collection of federal taxes allegedly due, an attempted collection may be enjoined, if equity jurisdiction otherwise exists."

"In *Enochs* the Supreme Court said, 370 U.S. p. 7, 82 S.Ct. p. 1129,

"We believe the question of whether the Government has a chance of ultimately prevailing is to be determined on the

basis of information available to it at the time of suit.""  
 [Bauer v. Foley, 404 F.2d. 1215 (1968)]

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**Gordon v. U.S. Treasury Dept., Int. Rev. Serv. (Nov. 6, 1970)**

"Statute authorizing' civil action to be brought against the United States by person claiming interest or lien on property" on which wrongful levy has been made provided sufficient jurisdiction to defeat government's motion to dismiss complaint seeking to enjoin government from levying against plaintiff's salary and real property for taxes assessed against corporations which allegedly were owned and managed by plaintiff's parents."

"Statute providing that no suit for purpose of restraining assessment or collection of any tax shall be maintained by any person, whether or not such person is the person against whom such tax was assessed, did not bar plaintiff's suit to enjoin government from levying against plaintiff's real property for taxes assessed against corporations where no formal assessment ever issued against plaintiff."

[Gordon v. U.S. Treasury Dept., Int. Rev. Serv., 322 F.Supp. 537 (1970)]

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**Economy Plumbing & Heating v. United States (Dec. 12, 1972)**

"In support of the foregoing conclusions, we wish to point out and emphasize that Congress has established a well-defined and comprehensive administrative system for the recovery of overpaid taxes by taxpayers. All *taxpayers* who have overpaid their taxes are within this system and must follow the appropriate procedures and regulations, including the timely filing of claims for refunds for overpayment of taxes, if they are to have the benefits of the system. On the other hand, persons who *are not taxpayers* are not within the system and can obtain no benefit by following the procedures prescribed for taxpayers, such as the filing of claims for refunds. For example, there have been many cases where parties have sued to enjoin the assessment or collection of their moneys to pay the taxes of another, notwithstanding Section 263 of the Internal Revenue Code of 1939 (26 U.S.C. §3653 (1952 ed.) that provided that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court" The courts have allowed these suits because the parties filing the suits were not taxpayers and were outside the revenue system of which the above statute is a part. *See* Long v. Rasmussen, 281 F. 236 (D.Mont. 1922); Rothensies v. Ullman, 110 F.2d. 590 (3rd Cir. 1940); Raffaele v. Granger, 196 F.2d. 620 (3rd Cir. 1952); and Bullock v. Latham, 306 F.2d. 45 (2d Cir. 1962). In Long v. Rasmussen, the court said:

"\* \* \* They [the revenue laws] relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. \* \* \* [*Id.* 281 F. at 238.]

"In other cases suits have been filed by nontaxpayers whose property has already been taken to pay the taxes of others, without filing claims for refund, and such suits have been allowed against the Collector or District Director of Internal Revenue in actions similar to the old action in assumpsit for money had and received, even though lacking in statutory authority."

"Our plaintiffs are not taxpayers and could not sue for a tax refund as a taxpayer could. All they could do was to sue to recover their property, which was the funds due them as an equitable adjustment under the contract, and this is exactly what they have done.

"The above cases are illustrative of the proposition that a nontaxpayer is outside the administrative system set up for the collection of a refund of overpaid taxes, and is not required to file a claim for refund to recover money taken from him to pay the taxes of another." [Brackets original.]

[Economy Plumbing & Heating v. United States, 470 F.2d. 585 (1972)]

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**In re Koome (Sept. 27, 1973)**

"A "stay order" or a "stay of proceedings," is a stopping, the act of arresting a judicial proceeding by the order of a court or the temporary suspension of the regular order of proceedings in a cause by direction or order of the court."

"Supreme Court's authority to issue a stay order, in aid of its appellate or original jurisdiction, emanates from its inherent power, the State Constitution and the implementation thereof."

"A "stay order" or a "stay of proceedings," such as we are here concerned with is respectively defined in Black's Law Dictionary 1583 (4th ed.rev.1968) as:

"A stopping; the act of arresting a judicial proceeding by the order of a court. ... The temporary suspension of the regular order of proceedings in a cause, by direction or order of the court,...."

[In re Koome, 82 Wash.2d. 816, 514 P.2d. 520 (1973)]

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**Canal Authority of State of Florida v. Callaway (Feb. 15, 1974)**

"Preliminary injunction may be issued to protect plaintiff from irreparable injury and preserve district court's power to render a meaningful decision at trial on merits."

"Grant or denial of preliminary injunction rests in the discretion of district court; however, such discretion is not unbridled and must be exercised in light of the prerequisites for the extraordinary relief of preliminary injunction."

"Prerequisites for grant of preliminary injunction are: substantial likelihood that plaintiff will prevail on the merits, substantial threat that plaintiff will suffer irreparable injury if injunction is not granted, threatened injury to plaintiff outweighing threatened harm injunction may do to defendant and absence of disservice to the public interest if the injunction should be granted."

"Preliminary injunction is an extraordinary and drastic remedy which should not be granted unless the movant clearly carries burden of persuasion."

"Only those injuries that cannot be redressed by application of a judicial remedy after hearing on the merits can properly justify a preliminary injunction."

"In action to enjoin alleged wrongful termination of canal project, district court improperly placed burden of proof on defendants with respect to issue of whether plaintiff was entitled to preliminary injunction...; burden of persuasion as to requirements for the preliminary injunction was at all times upon plaintiff."

"Preliminary injunction should not be issued to protect status quo unless court's ability to render meaningful decision on merits would otherwise be in jeopardy."

"Preliminary injunction is an extraordinary remedy not available unless plaintiff carries burden of persuasion as to all four prerequisites."

"If currently existing status quo itself is causing one of parties to suit irreparable injury, it may be necessary to alter situation by grant of preliminary injunction so as to prevent injury, thereby returning to last uncontested status quo between parties, or by allowing parties to take proposed action that court finds will minimize irreparable injury; focus always must be on prevention of injury by proper order, not merely on preservation of status quo."

"Importance of requirement for preliminary injunction that plaintiff demonstrate substantial likelihood of prevailing on merits varies with relative balance of threatened hardships facing each of the parties."

"Failure of defendants to appeal from grant to plaintiff of preliminary injunction or from orders regarding subsequent motions to modify the injunction would not, in itself, give rise to modify the preliminary injunction was found to be erroneous; if plaintiff could establish that defendants' failure to take earlier appeal was relevant to prerequisites for preliminary injunction, that factor could be given appropriate consideration on remand, but, otherwise, delay was irrelevant to proper disposition of defendants' motion to modify the preliminary injunction."

"District court has continuing jurisdiction over a preliminary injunction and, in the exercise of that jurisdiction, is authorized to make any changes in the injunction that are equitable in light of subsequent changes in the facts or the law or for any other good reason. "

"In view of possibility that erroneous grant of preliminary injunction preventing proposed drawdown of lake which had been created by dam constructed in connection with canal project had caused irreparable injury to trees in lake which remained flooded, district court would be expected to reexamine its order on remand without delay and no evidentiary hearing should be held before reexamination."

[Canal Authority of State of Florida v. Callaway, 489 F.2d. 567 (5th Cir. 1974)]

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**Medline Industries, Inc. v. Pascal (Nov. 18, 1974)**

"A "stay order" is synonymous with an injunctive order and is therefore appealable. Supreme Court Rules, rules 307, 307(a), S.H.A. ch. 110A, §§307, 307(a)."

"Illinois courts, as well as the United States Supreme Court, have held that a "stay order" is synonymous with an injunctive order and therefore appealable. (Property Management, Ltd. v. Howasa, Inc. (1973), 14 Ill.App.3d. 536, 539, 302 N.E.2d. 754; Wiseman v. Law Research, Inc. (1971), 133 Ill.App.2d 790, 793, 270 N.E.2d. 77; School District No. 46 v. Del Bianco (1966), 68 Ill.App.2d 145, 152, 215 N.E.2d. 25; and Ettelson v. Metropolitan L. Ins. Co., 317 U.S. 188, 63 S.Ct. 163, 87 L.Ed. 176.) None of these cases, nor those cited by Medline, sets forth any requirement for an inquiry into, or consideration of, "the substance rather than the form of the stay order to determine if it was an injunctive order and therefore appealable", as urged by Medline."

[Medline Industries, Inc. v. Pascal, 319 N.E.2d. 310 (1974)]

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**Laing v. United States (Jan. 13, 1976)**

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**"Burden of proof**

"It has been held by the Supreme Court that under the exception to the Anti-Injunction Act's (26 U.S.C.S. §7421(a)) prohibition of suits to restrain the assessment or collection of federal taxes, whereby an injunction may be obtained if (1) it is clear that under no circumstances can the government ultimately prevail, and (2) equity jurisdiction otherwise exists (see §10[a], supra,) the question whether the government will ultimately prevail is to be resolved on the basis of the information possessed by the government at the time of the suit, and that while the burden of producing evidence is on the taxpayer, the government will be required to disclose, through discovery, facts in its sole possession, unless it voluntarily discloses the basis for its assessment, which, if sufficient, will terminate discovery proceedings and justify judgment for the government."

[Laing v. United States, 423 U.S. 161, 96 S.Ct. 473, 46 L.Ed.2d. 416 (1976), **Annotation**, by Romualdo P. Eclavea]

**Commissioner v. Shapiro (Mar. 8, 1976)**

"Normally, the Internal Revenue Service may not "assess" a tax or collect it, by levying on or otherwise seizing a taxpayer's assets, until the taxpayer has had an opportunity to exhaust his administrative remedies, which include an opportunity to litigate his tax liability fully in the Tax Court, 26 U.S.C. §§6212, 6213; and if the Internal Revenue Service does attempt to collect the tax by levy or otherwise, before such exhaustion of remedies in violation of §6213, the collection is not protected by the Anti-Injunction Act and may be restrained by a United States district court at the instance of the Taxpayer. §§6213, 7421."

"As the court understood the Williams Packing decision, the Anti-Injunction act does not deprive the District Court of jurisdiction to restrain collection of a tax, if (1) the taxpayer shows "extraordinary circumstances causing irreparable harm" for which he has no "adequate remedy at law," and (2) it is apparent that, under the most liberal view of the law and the facts, the United States "cannot establish its claim"."

"Respondent argues on the other hand that unless the Government has some obligation to disclose the factual basis for its assessments, either in response to a discovery request or on direct order of the court, the exception to the Anti-Injunction Act in Enochs v. Williams Packing Co., supra, is meaningless. The taxpayer can never know, unless the Government tells him, what the basis for the assessment is and thus can never show that the Government will certainly be unable to prevail."

"Our conclusion that the Court of Appeals correctly reversed the judgment of the District Court and remanded for further proceedings is fortified by the fact that construing the Act to permit the Government to seize and hold property on the mere good-faith allegation of an unpaid tax would raise serious constitutional problems in cases, such as this one, where it is asserted that seizure of assets pursuant to a jeopardy assessment is causing irreparable injury. This Court has recently and repeatedly held that, at least where irreparable injury may result from a deprivation of property pending final adjudication of the rights of the parties, the Due Process Clause requires that the party whose property is taken be given an opportunity for some kind of predeprivation or prompt post-deprivation hearing at which some showing of the probable validity of the deprivation must be made."

[Commissioner v. Shapiro, 424 U.S. 614, 96 S.Ct. 1062, 47 L.Ed.2d. 278 (1976)]

**Elrod v. Burns (June 28, 1976)**

"In respect to the political question doctrine, the fact that matters related to a state's, or even the federal government's elective process are implicated by the Supreme Court's resolution of a question is not sufficient to justify its withholding decision of the question."

"There can be no impairment of executive power, whether on the state or federal level, where actions pursuant to that power are impermissible under the Constitution."

"Supreme Court's determination of the limits on state executive power contain in the Constitution is in proper keeping with the Court's primary responsibility of interpreting that document."

"Prohibition on encroachment of First Amendment protections is not absolute; restraints are permitted for appropriate reasons."

"Denial of a public benefit may not be used by the government for the purpose of creating an incentive enabling it to achieve what it may not command directly."

"A significant impairment of First Amendment rights must survive exacting scrutiny."

"Though First Amendment rights are not absolute, they may be curtailed only by interests of vital importance, the burden of proving which rests on the government."

"Loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."

[Elrod v. Burns, 427 U.S. 347; 96 S.Ct. 2673; 49 L.Ed.2d. (1976).

**United States v. Dema (Oct. 2, 1977)**

.. held that statute prohibiting suit for the purpose of restraining the assessment or collection of any tax was applicable to motion made by taxpayer to enjoin enforcement of IRS summonses, that injunction could be issued only upon showing that the Government could not ultimately prevail under any circumstances and that equity jurisdiction existed;...."

"Restraint placed on the courts with respect to enjoining the collection or assessment of taxes is not absolute; extraordinary or exceptional circumstances may exist which are of sufficient importance to warrant court interference. 26 U.S.C.A. (I.R.C. 1954) §7421(a)."

"The restraint placed on the courts in this regard, however, is not absolute. *John M. Hirst & Co. v. Gentsch*, 133 F.2d. 247, 248 (6th Cir. 1943). Extraordinary or exceptional circumstances may exist, for example, which are of sufficient importance to warrant court interference. *Singleton v. Mathis*, 284 F.2d. 616, 618 (8th Cir. 1960). Therefore, under certain circumstances, a taxpayer may maintain a suit to enjoin the collection of federal taxes. *Martin v. Andrews*, 238 F.2d. 552, 554 (9th Cir. 1956). In order that such a suit may be maintained, though, the taxpayer has the burden of proving: (1) that the government could not ultimately prevail under any circumstances; and (2) that equity jurisdiction otherwise exists. *Enochs, supra*, 370 U.S. at 7, 82 S.Ct. 1125; *Pizzarello v. United States*, 408 F.2d. 579, 582 (2d Cir. 1969)."

"The taxpayer, having once proved his case, should not be subjected to the further harassment of having to defend the same issues again."

"The irreparable injury' done the taxpayer when harassed by his government is but a part of the injury done a society attempting to live free. Arbitrary, arrogant and capricious action by a government agent, engaged in a vendetta and unfettered by law, does injustice to us all, including especially the government itself. Such action cries out for the healing power of judicial intervention."

[United States v. Dema, 544 F.2d. 1373 (1977)]

**Bothke v. Fluor Engineers and Constructors, Inc. (Jan. 24, 1983)**

"Qualified immunity for federal executive officials is general rule and absolute immunity the exceptional' case."

"Absolute immunity is accorded only to those federal officials whose special function or constitutional status requires complete protection from suit, including members of legislature and judiciary performing their characteristic functions and President of United States."

.. Internal Revenue Service agents who are relatively low-level executive officers with correspondingly narrow range of official discretion are not entitled to absolute immunity."

"Violations of taxpayers procedural rights are exceptions to Anti-Injunction Act."

"For levy to be **statutorily authorized**, ten-day notice of intent to levy must have issued and taxpayer must be liable for tax."

"Because income tax system is based on voluntary self-assessment, rather than distraint, Internal Revenue Service may assess tax only in certain circumstances and in conformity with proper procedures. 26 U.S.C.A. §6331(a)."

"Internal Revenue Service, with its expertise, is obliged to know its own governing statutes and to apply them realistically."

"We recognize the government's interest in collecting taxes. Congress's taxing power is granted by the Constitution, U.S. Const. Art.I §8, cl. 1; Amend. XVI. The importance of tax collection is reflected in statutes which, for example, prohibit its injunction. See 26 U.S.C. §7421(a)."

"But the law reflects also a Congressional determination that the taxpayer should be afforded certain procedural rights, which the IRS is bound to respect. See, e.g., *Laing v. United States*, 423 U.S. 161, 96 S.Ct. 473, 46 L.Ed.2d. 416 (1976). In balancing these interests, Congress has determined that violations of the procedural rights at issue here are exceptions to the Anti-Injunction Act."

"With the IRS's broad power must come a concomitant responsibility to exercise it within the confines of the law. The Court has emphasized that no official is above the law, and that the broad powers present broad opportunities for abuse. *Buttz*, 438 U.S. at 505-06, 98 S.Ct. at 2910-11 (1978). *Ct. Mark v. Groff*, 521 F.2d. at 1380 n. 4." [*Buttz v. Economou*, 438 U.S. 478, 506; 98 S.Ct. 2894, 2910-2911 (1978)]

[Bothke v. Fluor Engineers and Constructors, Inc., 713 F.2d. 1405 (1983)]

**Black's Law Dictionary: Voluntary**

"**VOLUNTARY.** Unrestrained by interference; unimpelled by another's influence; spontaneous; acting of oneself. *Coker v. State*, 199 Ga. 20, 33 S.E.2d. 171, 174. Done by design or intention, purpose, intended. *Nelson County v. Williams County, N.D.*, 276 N.W. 265, 269. Proceeding from the free and unrestrained will of the person. *Brown v. McCulloch*,

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Tenn.App., 144 S.W.2d. 1,4. Produced in or by an act of choice. Hartingh v. Bay Circuit Judge, 176 Mich. 289, 142 N.W. 585, 587, Ann.Cas.1915B, 520. Resulting from choosing. Travelers' Protective Ass'n v. Jones, 75 Ind.App. 29, 127 N.E. 783, 784. The word, especially in statutes, often implies knowledge of essential facts. Sweeney v. Sweeney, 96 Vt. 196, 118 A. 882, 26 A.L.R. 1066; Choate v. State, 19 Ok1.Cr. 169, 197 P. 1060, 1063." [Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1746]

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#### **Mall v. Kelly (June 3, 1983)**

"District court had jurisdiction to enjoin placement of liens or other measures instituted by Internal Revenue Service in an attempt to collect existing assessment against taxpayers stemming from federal tax returns."

"Assessments of tax deficiencies against taxpayers were void where Internal Revenue Service had not met its requirements of reasonably and diligently determining and mailing sufficient notice to taxpayers' last known address." [Mall Kelly, 564 F.Supp. 371 (1983)]

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#### **South Carolina v. Regan (Feb. 22, 1984)**

"The Anti-Injunction Act (26 U.S.C.S. §7421(a)), which provides that no suit to restrain the collection of any tax shall be maintained in any court by any person, does not bar an action where Congress has not provided the plaintiff with an alternate legal way to challenge the validity of the tax."

"The Court holds that suits by nontaxpayers generally are not barred." [South Carolina v. Regan, 465 U.S. 367, 104 S.Ct. 1107, 79 L.Ed.2d. 372 (1984)]

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#### **Ramirez de Arellano v. Weinberger (Oct. 5, 1984)**

**"When there is no authorization by act of Congress or Constitution for executive to take private property, effective taking by executive is unlawful because it usurps Congress' constitutionally granted powers of lawmaking and appropriation."**

**When monetary compensation available through Tucker Act remedy is so inadequate that plaintiff would not be justly compensated for seizure of property by United States, injunctive remedy is not barred by sovereign immunity.** 5 U.S.C.A. §702; 5 U.S.C.A. §1491."

"Duty of trial court is to decree relief that corrects condition offending Constitution or United States laws."

"It is important to remember that the plaintiffs do not challenge the defendants' actions merely because just compensation has not been paid; plaintiffs deny the existence of any constitutional or statutory power of the defendants to seize their private ranch. While courts may properly find that the only relief for an authorized taking of private property is compensation in accordance with the just compensation requirement of the fifth amendment, **injunctive relief is available when the owner proves that government officials lack lawful authority to expropriate his property.** In the latter situation, the landowner is entitled to equitable relief and need not rely on the asserted availability of a damages remedy. When government officials seize private property without constitutional or statutory authority, the trial court must apply general equitable principles to determine whether injunctive relief is proper. This involves determining whether monetary relief is adequate and whether a balancing of the equities favors relief." [Bold added.]

[Ramirez de Arellano v. Weinberger, 745 F.2d. 1500 (1984)]

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#### **Washington Suburban Sanitary Comm'n v. Mitchell and Best (July 17, 1985)**

""Stay" is itself an injunction and is immediately appealable under Code, Courts and Judicial Proceedings, §12-303(c)(1) (now §12-303(3)(i))."

[Washington Suburban Sanitary Comm'n v. Mitchell and Best, 303 Md. 544, 495 A.2d. 30 (1985)]

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#### **People v. Santana (June 9, 1986)**

"A stay is a temporary suspension of a procedure in a case until the happening of a defined contingency."

[People v. Santana, 227 Cal.Rptr. 51, 182 Cal.App.3d. 185 (1986)]

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#### **Jensen v. IRS (Dec. 22, 1987)**

"Taxpayer alleged sufficient facts to support claim for injunctive relief to prevent further levies on his wages by IRS"

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#### ***Sovereignty and Freedom Points and Authorities***

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pending its compliance with statutory notice requirements; taxpayer had been deprived of ability to provide necessities of life for himself and his family as result of levy, and alleged failure to give notice of deficiency deprived taxpayer of opportunity for tax court challenge without payment of tax, thus causing substantial hardship. 26 U.S.C.A. §§6212(a), 6213(a)."

"Once a taxpayer satisfies one of the exceptions to the Act, he is no longer jurisdictionally barred from seeking an injunction. *See Perlowin v. Sassi*, 711 F.2d. 910, 911 (9th Cir. 1983)."

"After other deductions Jensen was left with \$144.82 per month to support his family of five. If these facts are true, and if Jensen had no other income or assets at his disposal from which he might pay the claimed deficiencies, the levy on his wages caused more than monetary harm. It deprived Jensen of the ability to provide necessities of life for himself and family. *Cf. Lopez v. Heckler*, 713 F.2d. 1432, 1436-38 (9th Cir.) (distinguishing deprivation of the necessities of life from monetary harm compensable at a later time), *rev'd in part on other grounds*, 463 U.S. 1328, 104 S.Ct. 10, 77 L.Ed.2d. 1431 (1983)."

[*Jensen v. IRS*, 835 F.2d. 196 (9th Cir. 1987)]

### **Gulfstream Aerospace Corp. v. Mayacamas Corp. (March 22, 1988)**

"The primary issue in this case is whether a district court order denying a motion to stay or dismiss a motion to stay or dismiss an action when a similar suit is pending in state court is immediately appealable."

"In *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949), however, we recognized a "small class" of decisions that are appealable under §1291 even though they do not terminate the underlying litigation. *Id.* at 546, 69 S.Ct., at 1225. We stated in *Cohen* that a district court's decision is appealable under §1291 if it "finally determine[s] claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." [Brackets original.]

"We have articulated a three-pronged test to determine whether an order that does not finally resolve a litigation is nonetheless appealable under §1291. [Citations omitted.] First, the order must "conclusively determine the disputed question." *Coopers & Lybrand v. Livesay*, 437 U.S., AT 468, 98 S.Ct., at 2458. - Second, the order must "resolve an important issue completely separate from the merits of the action." *Ibid.* Third and finally, the order must be "effectively unreviewable on appeal from a final judgment." *Ibid.* (footnote omitted). If the order at issue fails to satisfy any one of these requirements, it is not appealable under the collateral-order exception to §1291."

"First, the action in which the order is entered must be an action that, before the merger of law and equity, was by its nature an action at law. Second, the order must arise from or be based on some matter that would then have been considered an equitable defense or counterclaim. [ \* \* \* ] Thus, unless a stay order is made in a historically legal action on the basis of a historically equitable defense or counterclaim, the order cannot be analogized to a premerger injunction and therefore cannot be appealed under §1291(a)(1) pursuant to the *Enelow-Ettelson* doctrine."

"We refrained then from overruling the *Enelow* and *Ettelson* decisions, but today we take that step. A half century's experience has persuaded us, as it has persuaded an impressive array of judges and commentators, that the rule is unsound in theory, unworkable and arbitrary in practice, and unnecessary to achieve any legitimate goals."

"We therefore overturn the cases establishing the *Enelow-Ettelson* rule and hold that orders granting or denying stays of "legal" proceedings on "equitable" grounds are not automatically appealable under §1291(a)(1). This holding will not prevent interlocutory review of district court orders when such review is truly needed. Section 1291(a)(1) will, of course, continue to provide appellate jurisdiction over orders that grant or deny injunctions and orders that have the practical effect of granting or denying injunctions and have "serious, perhaps irreparable, consequence. *Carson v. American Brands, Inc.*, 450 U.S. 79 84, 101 S.Ct. 993, 996, 67 L.Ed.2d. 59 (1981), quoting *Baltimore Contractors, Inc. v. Bodinger*, *supra*, 348 U.S., at 181, 75 S.Ct., at 252. As for orders that were appealable under §1291(a)(1) solely by virtue of the *Enelow-Ettelson* doctrine, they may, in appropriate circumstances, be reviewed under the collateral-order doctrine of §1291, see *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 103 S.Ct. 927, 74 L.Ed.2d. 765 (1983), and the permissive appeal provision of §1292(b), as well as by application for writ of mandamus. Our holding today merely prevents interlocutory review of district court orders on the basis of historical circumstances that have no relevance to modern litigation."

[*Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 108 S.Ct. 113 (1988)]

### **In re Hall (Dec. 19, 1990)**

"EXCEPTION to the general prohibition against enjoining the Internal Revenue Service (IRS) from assessing or collecting tax exists if party seeking injunction will suffer irreparable harm with no adequate remedy at law and if that party

can show certainty of success on the merits; certainty means that under the most liberal view of the law and the facts, the United States cannot establish its claim. 26 U.S.C.A. §7421(a)."

"Exception to the general prohibition against enjoining the Internal Revenue Service (IRS) from assessing or collecting tax exists if Congress failed to provide alternative legal way to challenge validity of tax."

"Two exceptions to the Anti-Injunction Act, however, have been recognized by the U.S. Supreme Court. The first, announced in *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 82 S.Ct. 1125, 8 L.Ed.2d. 292 (1962), permits an injunction if the moving party will suffer irreparable harm with no adequate remedy at law and if the moving party can show a *certainty* of success on the merits. "Certainty" means that "under the most liberal view of the law and the facts, the U.S. cannot establish its claim." *Id.* at 7, 82 S.Ct. at 1129.

"The second exception was announced in *South Carolina v. Regan*, 465 U.S. 367, 104 S.Ct. 1107, 79 L.Ed.2d. 372 (1984). The *Regan* case involved a suit by the state of South Carolina to determine the constitutionality under the Tenth Amendment of an income tax on the income of state obligations. The action was allowed to proceed because "Congress has not provided the plaintiff with an alternative legal way to challenge the validity of a tax." *Id.* at 373, 104 S.Ct. at 1111." [In re Hall, 123 B.R. 441 (Bkrcty. N.D.Ga. 1990)]

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### **Wuerl v. International Life Science Church (Mar. 4, 1991)**

"To invoke exception to Anti-Injunction Act's provision that collection of taxes in most cases is insulated from judicial intervention and that dispute as to sums is to be determined in suit for refund, it must appear that government cannot prevail on merits even when facts and law are examined in light most favorable to government, and there must be independent basis for court to exercise its equitable jurisdiction."

[*Wuerl v. International Life Science Church*, 758 F.Supp. 1084 (W.D.Pa. 1991)]

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## **9.5 Bivens Action**

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### **Words and Phrases: Bivens Action**

#### **"BIVENS ACTION**

"A "Bivens action" provides action for damages to vindicate constitutional right when federal government official has violated such right; action is available if no equally effective remedy is available, no explicit congressional declaration precludes recovery, and no "special factors counsel hesitation." *Rauschenberg v. Williamson*, C.A. 11(Ga). 785 F.2d. 985, 987.

"Bivens action" is nonstatutory counterpart of suit brought pursuant to §1983, and is aimed at federal, rather than state, officials. *Mahoney v. National Organization for Women*, D.Conn., 681 F.Supp. 129, 132.

"In "Bivens action," damages may be obtained for injuries consequent upon violation of Constitution by federal officials. *Kingsley v. Bureau of Prisons*, C.A.2 (N.Y.), 937 F.2d. 26, 31."

[Words and Phrases: Bivens Action, Vol. 40, p. 134]

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### **Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics (June 21, 1971)**

"Petitioner's complaint states a federal cause of action under the Fourth Amendment for which damages"" are recoverable upon proof of injuries resulting from the federal agents' violation of that Amendment."

"The Fourth Amendment operates as a limitation upon the exercise of federal power regardless of whether the state in whose jurisdiction that power is exercised would prohibit or penalize the identical act if engaged in by a private citizen, and citizen who sustains damage as result of federal agents' violation of Fourth Amendment is not limited to action in tort, under state law, in state courts, to obtain money damages to redress invasion of Fourth Amendment rights."

"Damages may be obtained for injuries consequent upon a violation of the Fourth Amendment by federal officials."

.. power, once granted, does not disappear like a magic gift when it is wrongfully used. An agent acting--albeit unconstitutionally--in the name of the United States possesses a far greater capacity for harm than an individual trespasser exercising no authority other than his own. [Cites omitted.] Accordingly, as our cases make clear, the Fourth Amendment operates as a limitation upon the exercise of federal power regardless of whether the State in whose jurisdiction that power is exercised would prohibit or penalize the identical act if engaged in by a private citizen."

"Historically, damages have been regarded as the ordinary remedy for an invasion of personal interests in liberty? ... Of course, the Fourth Amendment does not in so many words provide for its enforcement by an award of monetary damages for the consequences of its violation. But "it is \* \* \* well settled that where legal rights have been invaded, and a federal



statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done." *Bell v. Hood*, 327 U.S., at 684, 66 S.Ct. at 777 (footnote omitted)."

"Having concluded that petitioner's complaint states a cause of action under the Fourth Amendment, *supra*, at 2001-2004, we hold that petitioner is entitled to recover money damages for any injuries he has suffered as a result of the agents' violation of the Amendment."

"The contention that the federal courts are powerless to accord a litigant damages for a claimed invasion of his federal constitutional rights until Congress explicitly authorizes the remedy cannot rest on the notion that the decision to grant compensatory relief involves a resolution of policy considerations not susceptible of judicial discernment. Thus, in suits for damages based on violations of federal statutes lacking any express authorization of a damage remedy, this Court has authorized such relief where, in its view, damages are necessary to effectuate the congressional policy underpinning the substantive provisions of the statute."

"But I do not think that the fact that the interest is protected by the Constitution rather than statute or common law justifies the assertion that the federal courts are powerless to grant damages in the absence of explicit congressional action authorizing the remedy."

"If explicit congressional authorization is an absolute prerequisite to the power of a federal court to accord compensatory relief regardless of the necessity or appropriateness of damages as a remedy simply because of the status of a legal interest as constitutionally protected, then it seems to me that explicit congressional authorization is similarly prerequisite to the exercise of equitable remedial discretion in favor of constitutionally protected interests. Conversely, if a general grant of jurisdiction to the federal courts by Congress is thought adequate to empower a federal court to grant equitable relief for all areas of subject-matter jurisdiction enumerated therein, see 28 U.S.C. §1331(a), then it seems to me the same statute is sufficient to empower a federal court to grant a traditional remedy at law."

"To be sure, "it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts." *Missouri, Kansas & Texas R. Co. of Texas v. May*, 194 U.S. 267, 270, 24 S.Ct. 638, 639, 48 L.Ed. 971 (1904). But it must also be recognized that the Bill of Rights is particularly intended to vindicate the interests of the individual in the face of the popular will as expressed in legislative majorities; at the very least, it strikes me as no more appropriate to await express congressional authorization of traditional judicial relief with regard to these legal interests than with respect to interests protected by federal statutes."

"*Bivens*, after all, has invoked judicial processes claiming entitlement to compensation for injuries resulting from allegedly lawless official behavior, if those injuries are properly compensable in money damages. I do not think a court of law--vested with the power to accord a remedy--should deny him his relief simply because he cannot show that future lawless conduct will thereby be deterred."

[*Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 91 S.Ct. 1999 (1971)]

### **Davis v. Passman (Jan. 3, 1977)**

"Although Fourteenth Amendment's equal protection clause applies only to states, Fifth Amendment due process clause contains equal protection component applicable to federal government."

"Statutory actions may give breadth to constitutional rights, but congressional inaction cannot suffocate them."

"Among other things, the Constitution is a compendium of rights, and their enforcement does not depend upon statutory enrollment. As *Bivens* establishes, legislative inaction does not vitiate constitutional rights. Statutory actions may give breath to constitutional rights, but congressional inaction cannot suffocate them."

[*Davis v. Passman*, 544 F.2d. 865 (1977)]

### **Young v. IRS (Sept. 25, 1984)**

"Summary judgment serves as vehicle with which court can determine whether exploration of fact is necessary."

"Because of limited nature of district court's jurisdiction, court may inquire into its jurisdiction *sua sponte*."

"Statute providing for equal rights of all citizens is restricted by import of its language to discrimination based on race or color, and was not appropriate basis for relief to plaintiff seeking to challenge taxes, in view of statutory provision that "all persons" shall be subject to taxes."

"Actions of Internal Revenue Service officials, even if beyond scope of their official duties, are acts under color of federal law, and not state law, and thus 1871 civil rights statute is not appropriate basis for relief to plaintiff seeking to challenge Internal Revenue tax statutes."

"Statute granting to district court original jurisdiction of any civil action arising under any act of Congress providing for internal revenue does not create jurisdiction in and of itself, and suit must be based on some cause of action which the Internal Revenue Code recognizes and allows plaintiff to bring."

### ***Sovereignty and Freedom Points and Authorities***

"Where whole thrust of plaintiff's case was that he was outside scope of the Internal Revenue code so that actions of IRS officials were violations of his rights, statute granting district court original jurisdiction of any civil action arising under any act of Congress providing for internal revenue was inapplicable and did not provide plaintiff with jurisdiction."

"No Bivens-type cause of action lies against Internal Revenue Service or IRS officials and agents for collection and assessment of taxes."

"United States has specifically reserved its immunity with respect to claims arising out of tax collection and assessment, and, to extent that any part of plaintiff's complaint challenging Internal Revenue Code could be construed as claim against United States, it was barred by doctrine of sovereign immunity, and same was true despite contention that claim was not against the United States but rather against the Internal Revenue Service."

"Secretary of the Treasury created Internal Revenue Service pursuant to legislative grant of authority, and thus the IRS was not a "private corporation" which would not be entitled to sovereign immunity."

"Although congress did not pass Internal Revenue Code as a title, it did enact the Code as separate Code, which was then denominated as Title 26 by House Judiciary Committee, and, as against contention that the Code was not positive law, district court had discretion to recognize the Code as applicable law, or require proof of underlying statute, and court in its discretion recognized Code as positive law applicable to disputes concerning whether taxes were owed by someone like the plaintiff, who claimed that he was a "sovereign citizen."

"Federal district court has sufficient equitable power to assess sanctions for fees and costs if it finds that a plaintiff's claim is meritless and in bad faith."

"Federal Rule of Civil Procedure providing for imposition of sanctions was designed to discourage dilatory or abusive tactics and to help streamline litigation process by lessening frivolous claims or defenses, and rule applies to anyone who sign pleading, motion or other paper, and same standards apply to pro se litigants, although judicially expressed concerns can be taken into account."

"Assessment of attorney fees may be proper in cases involving parties who claim not to owe income taxes or who file frivolous tax appeals."

"Under both general equitable principles and provisions of Federal Rule of Civil Procedure, case in which plaintiff challenged Internal Revenue Code as being inapplicable to him because he was "sovereign citizen" was one which merited imposition of sanctions against plaintiff."

[Young v. IRS, 596 F.Supp. 141 (N.D. Ind. 1984)]

### **Cameron v. I.R.S. (Sept. 6, 1985)**

"Internal Revenue Service agents do not have absolute immunity from liability for damages arising out of performance of their duties; agents are immune only if they act in good faith, i.e., with reason to believe that they are acting lawfully."

"It is true that *Bivens v. Six Unknown Named Agents*, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d. 619 (1971), created a private damage remedy for violations of the Fourth Amendment and that the remedy has been assumed to embrace violations of the Fourth Amendment by internal revenue agents. See, e.g., *G.M. Leasing Corp. v. United States*, 429 U.S. 338, 360, 97 S.Ct. 619, 632, 50 L.Ed.2d. 530 (1977); *Capozzoli v. Tracey*, 663 F.2d. 654, 656 n. 1 (5th Cir.1981).

But this taxpayer is not complaining about a search or seizure. It is also true that some cases hold, suggest, or assume that **the remedy extends to violations of other constitutional rights** by such agents, including the right not to be deprived of liberty' or property without due process of law. See e.g., *Hall v. United States*, 704 F.2d. 246, 249 n. 1 (6th Cir.1983); *Rutherford v. United States*," 702 F.2d. 580, 583-84 (5th Cir.1983); *Stonecipher v. Bray*, 653 F.2d. 398, 401-03 (9th Cir.1981); but cf. *Murray v. United States*, 686 F.2d. 1320, 1325 n. 7 (8th Cir.1982)." [Bold added.]

"If in the course of enforcing the tax laws internal revenue agents ransack people's homes without a warrant, or otherwise violate the Fourth Amendment, the argument for a damage remedy against the agents is a powerful one, since a suit for a tax refund would not be an adequate substitute."

[Cameron v. I.R.S., 773 F.2d. 126 (1985)]

### **Rauschenberg v. Williamson (Apr. 2, 1986)**

"A "Bivens action" provides an action for damages to vindicate a constitutional right when a federal government official has violated such a right. The action is available if no equally effective remedy is available, no explicit congressional declaration precludes recovery, and when no "special factors counsel hesitation.""

[Rauschenberg v. Williamson, 785 F.2d. 985 (11th Cir. 1986)]

### **Stokwitz v. United States (Nov. 3, 1987)**

#### ***Sovereignty and Freedom Points and Authorities***

"Taxpayer who alleged unlawful seizure and subsequent use of his tax information could pursue remedy through *Bivens* action, or through other applicable tort action."

"Stokwitz was employed as a civilian attorney by the United States Navy at the Naval Ocean Systems Center ("NOSC"). Stokwitz's secretary and assistant gave a list of allegations of misconduct involving Stokwitz to his immediate supervisor. The supervisor requested a Naval Investigative Service ("NIS") inquiry. Stokwitz was informed of the investigation, ordered to surrender his access badge, and escorted off NOSC property. Shortly thereafter, Stokwitz's supervisor, his secretary, his assistant, and another NOSC employee acting without a warrant or prior authorization, searched Stokwitz's office and briefcase. They seized several items, including Stokwitz's personal copies of his federal and state tax returns for 1982 and 1983, the originals of which had been filed with the Secretary of the Treasury.

"The seized copies of Stokwitz's tax returns were audited by a NOSC employee and disclosed to various MS agents and other Navy employees, and Stokwitz was questioned about their contents. His employment was terminated the next day."

"This is not to say that the appellant has no remedy for the alleged unlawful seizure and subsequent use of his tax information. Those issues can be addressed in Stokwitz's *Bivens* action, or through any other applicable tort action."

[Stokwitz v. United States, 831 F.2d. 893 (9th Cir. 1987)]

### **Mahoney v. National Organization for Women (Dec. 10, 1987)**

"Plaintiff cannot invoke Fourteenth Amendment's due process clause as basis for *Bivens* claim against federal agents acting under color of federal law."

"*Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, [cite omitted], established a federal common-law cause of action for damages caused by a federal agent acting "under color of his authority" in violation of a claimant's fourth amendment right."

.. a *Bivens* action has two principal elements: first, a claimant must show he has been deprived of a right secured by the Constitution and the laws of the United States; second, he must show that in depriving him of that right the defendant acted under color of federal law."

[Mahoney v. National Organization for Women, 681 F.Supp. 129 (D.Conn. 1987)]

### **Kingsley v. Bureau of Prisons (June 24, 1991)**

"In a *Bivens* action, "damages may be obtained for injuries consequent upon a violation of [the Constitution] by federal officials." 403 U.S. at 395, 91 S.Ct. at 2004." [Brackets original.]

[Kingsley v. Bureau of Prisons, 937 F.2d. 26 (2nd Cir. 1991)]

### **Janicki Logging Co. v. Mateer (Dec. 13, 1994)**

"District courts have jurisdiction over *Bivens* actions brought against employees of federal government in their individual capacities to redress violations of citizens' constitutional rights."

"Logging company's failure to state *Bivens* cause of action against Forest Service officials did not deprive district court of jurisdiction."

"District court did not abuse its discretion in refusing to grant leave for logging company to amend its complaint against officers of Forest Service in their individual capacities in order to substitute Forest Service as defendant to allow transfer to Court of Federal Claims, in light of undue delay and prejudice that would have resulted from amendment...."

"It is clear that district courts do have jurisdiction over *Bivens* actions. Those actions are brought against employees of the federal government in their individual capacities and are brought to redress violations of citizens' constitutional rights. See *Bivens*, 403 U.S. at 395-96, 91 S.Ct. at 2004-05. They are firmly within the subject matter jurisdiction of the district courts."

"It is true that Janicki cannot state a cause of action in this case, but that inability did not deprive the district court of jurisdiction. See *Bell v. Hood*, 327 U.S. 678, 682, 66 S.Ct. 773, 776, 90 L.Ed. 939 (1946) ("Jurisdiction ... is not defeated ... by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover."); *Mace v. Skinner*, 34 F.3d. 854, 859-60, 860 n. 6 (9th Cir. 1994) (although plaintiff's *Bivens*-type complaint may be subject to dismissal, the district court did have subject matter jurisdiction to hear the claim)."

"Since then, the Court has returned to that theme and has declared that a *Bivens* action will not lie when Congress has created "comprehensive procedural and substantive provisions giving meaningful remedies against the United States...." [Cites omitted.] ...We have, of course, followed the Supreme Court's lead and have summed up the law as follows:

### **Sovereignty and Freedom Points and Authorities**

"The Supreme Court has made clear the propriety of according great deference to Congress in devising remedial schemes.... When Congress has created a statutory remedy for potential harms, the courts must refrain from implying nonstatutory causes of actions such as *Bivens*. In obeying the Court's directive to show deference to Congress, we [have] held ... that if there is *some* statutory mechanism for remedying harm ... non-statutory claims are barred.

*Berry v. Hollander*, 925 F.2d. 311, 316 (9th Cir.1991); *see also Saul v. United States*, 928 F.2d. 829, 940 (9th Cir.1991)."

[*Janicki Logging Co. v. Mateer*, 42 F.3d. 561 (9th Cir. 1994)]

### **Earnest v. United States (May 2, 1995)**

"Assessed income tax deficiency must be paid in full before refund action may be brought in Court of Federal Claims"

"No suit for recovery of income taxes alleged to have been erroneously or illegally assessed or collected may be filed until claim for refund or credit has been duly filed with Secretary, according to provisions of law in that regard, and regulations of Secretary established in pursuance thereof."

"Even assuming that taxpayer's letters to Internal Revenue Service (IRS) requesting removal of income tax liens claimed refund and sufficiently stated basis for such claim, letters were not signed under penalty of perjury and were not submitted on correct form and, therefore, letters did not constitute filing of claim for income tax refund so that taxpayer could bring action to challenge income tax lien and levy imposed against his military retirement benefits."

"Internal Revenue Service (IRS) is entitled to insist on compliance with requirements for bringing suit for recovery of taxes allegedly erroneously or illegally assessed."

"Due Process Clause does not mandate payment of money for its violation and, therefore, does not support jurisdiction in Court of Federal Claims."

"If Internal Revenue Service (IRS) acted improperly in withholding of unpaid income taxes from taxpayer's military retirement benefits, then no taking occurred in violation of Fifth Amendment," for taking results only from authorized acts of government officials."

"Benefits owing military service member are governed by statutes and regulations, and not by general principles of contract law."

"Federal benefits are subject to Internal Revenue Code unless specifically exempted."

"Transfer of action from Court of Federal Claims to District Court due to Court of Federal Claims' lack of jurisdiction is not necessary to advance interests of justice when plaintiff may refile complaint in district court without penalty."

"Federal Claims Court was not required to transfer, in interest of justice, taxpayer's claim against United States for levying income tax lien on taxpayer's military retirement benefits in alleged violation of his due process rights, where limitations for filing actions in district court had not expired."

"*Bivens* claim against individual officers is not same claim as action against United States and, therefore, claim cannot be transferred .by Court of Federal Claims in interest of justice."

[*Earnest v. United States*, 33 Fed.Cl. 341 (1995)]

### **26 C.F.R. §301.6326-1**

"(a) *In general.* Any person may appeal to the district director of the district in which a notice of federal tax lien was filed on the property or rights to property of such person for a release of lien alleging an error in the filing of notice of lien. Such appeal may be used only for the purpose of correcting the erroneous filing of a notice of lien, not to challenge the underlying deficiency that led to the imposition of a lien. If the district director determines that the Internal Revenue Service has erroneously filed the notice of any federal tax lien, the district director shall expeditiously, and, to the extent practicable, within 14 days after such determination, issue a certificate of release of lien. The certificate of release of such lien shall include a statement that the filing of notice of lien was erroneous."

"(b) *Appeal alleging an error in the filing of notice of lien.*

For purposes of Paragraph (a) of this section, an appeal of the filing of notice of federal tax lien must be based on any one of the following allegations:"

"(1) The tax liability that gave rise to the lien, plus any interest and additions to tax associated with said liability, was satisfied prior to the filing of notice of lien;

"(2) The tax liability that gave rise to the lien was assessed in violation of the deficiency procedures set forth in section 6213 of the Internal Revenue Code;

"(3) The tax liability that gave rise to the lien was assessed in violation of Title 11 of the United States Code (the Bankruptcy Code); or

"(4) The statutory period for collection of the tax liability that gave rise to the lien expired prior to the filing of notice

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of federal tax lien."

"(c) *Notice of federal tax lien that lists multiple liabilities....*"

"(d) *Procedures for appeal.--(1) Manner.* An appeal of the filing of notice of federal tax lien shall be made in writing to the district director (marked for the attention of the Chief, Special Procedures Function) of the district in which the notice of federal tax lien was filed.

"(2) *Form.* The appeal shall include the following information and documents:

"(i) Name, current address, and taxpayer identification number of the person appealing the filing of notice of federal tax lien;

"(ii) A copy of the notice of federal tax lien affecting the property, if available; and

"(iii) The grounds upon which the filing of notice of federal tax lien is being appealed.

"(A) If the ground upon which the filing of notice is being appealed is that the tax liability in question was satisfied prior to the filing, proof of full payment as defined in paragraph (e) of this section must be provided.

"(B) If the ground upon which the filing of notice is being appealed is that the tax liability that gave rise to lien was assessed in violation of the deficiency procedures set forth in section 6213 of the Internal Revenue Code, the appealing party must explain how the assessment was erroneous.

"(C) If the ground upon which the filing of notice is being appealed is that the tax liability that gave rise to the lien was assessed in violation of Title 11 of the United States Code (the Bankruptcy Code), the appealing party must provide the following:

"(1) The identity of the court and the district in which the bankruptcy petition was filed; and

"(2) The docket number and the date of filing of the bankruptcy petition.

"(3) *Time.* An administrative appeal of the erroneous filing of notice of federal tax lien shall be made within 1 year after the taxpayer becomes aware of the erroneously filed tax lien.

"(e) *Proof of full payment.* As used in paragraph (d)(2)(iii) of this section, the term "proof of full payment" means:

"(1) An internal revenue cashier's receipt reflecting full payment of the tax liability in question prior to the date the federal tax lien issue was filed;

"(2) A canceled check to the Internal Revenue Service in an amount which was sufficient to satisfy the tax liability for which release is being sought; or

"(3) Any other manner of proof acceptable to the district director.

"(f) *Exclusive remedy.* The appeal established by section 6326 of the Internal Revenue Code and by this section shall be the exclusive administrative remedy with respect to the erroneous filing of a notice of federal tax lien.

"(g) *Effective date.* The provisions of this section are effective July 7, 1989."

[26 C.F.R. §301.6326-1]

## **26 U.S.C. §6326 Administrative appeal of liens**

"(a) **In General.--**In such form and at such time as the Secretary shall prescribe by regulations, any person shall be allowed to appeal to the Secretary after the filing of a notice of a lien under this subchapter on the property or the rights to property of such person for a release of such lien alleging an error in the filing of the notice of such lien.

"(b) **Certificate of release.--**If the Secretary determines that the filing of the notice of any lien was erroneous, the Secretary shall expeditiously (and, to the extent practicable, within 14 days after such determination) issue a certificate of release of such lien and shall include in such certificate a statement that such filing was erroneous."

[26 U.S.C. §6326(a) & (b)]

## **31 U.S.C. §1304**

"(a) Necessary amounts are appropriated to pay final judgments, awards, compromise settlements, and interest and costs specified in the judgments or otherwise authorized by law when--

"(1) payment is not otherwise provided for;

"(2) payment is certified by the Comptroller General;

"(3) the judgment, award, or settlement is payable--

"(A) under section 2414, 2517, 2672, or 2677 of title 28;

"(B) under section 3723 of this title;

"(C) under a decision of a board of contract appeals; or

"(D) in excess of an amount payable from the appropriations of an agency for a meritorious claim under section 2733 or 2734 of title 10, section 715 of title 32, or section 203 of the National Aeronautics and Space Act of 1958 (42 U.S.C. §2473).



"(b)(1) Interest may be paid from the appropriation made by this section--

"(A) on a judgment of a district court, only when the judgment becomes final after review on appeal or petition by the United States Government, and then only from the date of filing of the transcript of the judgment with the Comptroller General through the day before the date of the mandate or affirmance; or

"(B) on a judgment of the Court of Appeals for the Federal Circuit or the United States Claims Court under section 2516(b) of title 28, only from the date of filing of the transcript of the judgment with the Comptroller General through the day before the date of the mandate of affirmance.

"(2) Interest payable under this subsection in a proceeding reviewed by the Supreme Court is not allowed after the end of the term in which the judgment is affirmed."

[31 U.S.C. §1304]

## 10 COURT PROCEDURE

For further information about the subject of this section, see:

*Civil Court Remedies for Sovereigns: Taxation*, Litigation Tool #10.002  
<https://sedm.org/Litigation/LitIndex.htm>

### 10.1 Standing to Sue

#### **Black's Law Dictionary: Standing to Sue Doctrine**

“STANDING TO SUE DOCTRINE. Doctrine that in action in federal constitutional court by citizen against a government officer, complaining of alleged unlawful conduct there is no justiciable controversy unless citizen shows that such conduct invades or will invade a private substantive legally protected interest of plaintiff citizen. Associated Industries of New York State v. Ickes, C.C.A.2, 134 F.2d. 694, 702.”

[Black's Law Dictionary, Fourth Edition, p. 1577]

#### **Lujan v. Defenders of Wildlife (1992)**

**Over the years, our cases have established that the irreducible constitutional minimum of standing contains three elements.**

**[1] First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, see *id.*, at 756; *Warth v. Seldin*, 422 U. S. 490, 508 (1975); *Sierra Club v. Morton*, 405 U. S. 727, 740-741, n. 16 (1972);<sup>[1]</sup> and (b) "actual or imminent, not 'conjectural' or 'hypothetical,' " *Whitmore, supra*, at 155 (quoting *Los Angeles v. Lyons*, 461 U. S. 95, 102 (1983)).**

**[2] Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly. . . traceable" to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." *Simon v. Eastern Ky. Welfare 561\*561 Rights Organization*, 426 U. S. 26, 41-42 (1976).**

**[3] Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." *Id.*, at 38, 43.**

**The party invoking federal jurisdiction bears the burden of establishing these elements.** See *FW/PBS, Inc. v. Dallas*, 493 U. S. 215, 231 (1990); *Warth, supra*, at 508. Since they are not mere pleading requirements but rather an indispensable part of the plaintiff's case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i. e.*, with the manner and degree of evidence required at the successive stages of the litigation. See *Lujan v. National Wildlife Federation*, 497 U. S. 871, 883-889 (1990); *Gladstone, Realtors v. Village of Bellwood*, 441 U. S. 91, 114-115, and n. 31 (1979); *Simon, supra*, at 45, n. 25; *Warth, supra*, at 527, and n. 6 (Brennan, J., dissenting). At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we "presum[e] that general allegations embrace those specific facts that are necessary to support the claim." *National Wildlife Federation, supra*, at 889. In response to a summary judgment motion, however, the plaintiff can no longer rest on such "mere allegations," but must "set forth" by affidavit or other evidence "specific facts," Fed. Rule Civ. Proc. 56(e), which for purposes of the summary judgment motion will be taken to be true. And at the final stage, those facts (if controverted) must be "supported adequately by the evidence adduced at trial." *Gladstone, supra*, at 115, n. 31.

When the suit is one challenging the legality of government action or inaction, the nature and extent of facts that must be averred (at the summary judgment stage) or proved (at the trial stage) in order to establish standing depends considerably upon whether the plaintiff is himself an object of the action (or forgone action) at issue. If he is, there is ordinarily little question that the action or inaction has <sup>562</sup>562 caused him injury, and that a judgment preventing or requiring the action will redress it. When, however, as in this case, a plaintiff's asserted injury arises from the government's allegedly unlawful regulation (or lack of regulation) of *someone else*, much more is needed. In that circumstance, causation and redressability ordinarily hinge on the response of the regulated (or regulable) third party to the government action or inaction—and perhaps on the response of others as well. The existence of one or more of the essential elements of standing "depends on the unfettered choices made by independent actors not before the courts and whose exercise of broad and legitimate

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discretion the courts cannot presume either to control or to predict," *ASARCO Inc. v. Kadish*, 490 U.S. 605, 615 (1989) (opinion of Kennedy, J.); see also *Simon, supra*, at 41-42; and it becomes the burden of the plaintiff to adduce facts showing that those choices have been or will be made in such manner as to produce causation and permit redress ability of injury. E. g., *Warth, supra*, at 505. Thus, when the plaintiff is not himself the object of the government action or inaction he challenges, standing is not precluded, but it is ordinarily "substantially more difficult" to establish. *Allen, supra*, at 758; *Simon, supra*, at 44-45; *Warth, supra*, at 505. [Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)]

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### **Gaitor v. Peninsular & Occidental Steamship Co. (Feb. 8, 1961)**

"We agree. First, the burden of establishing jurisdiction rests upon the party seeking to invoke it and cannot be placed upon adversary who challenges it. *Carson v. Dunham*, 121 U.S. 421, at page 425, 7 S.Ct. 1030, at page 1031, 30 L.Ed. 992; *Gold-Washing & Water Co. v. Keyes*, 96 U.S. 199, at page 202, 24 L.Ed. 656; *Crehore v. Ohio & Mississippi Railway Co.*, 131 U.S. 240, at page 244, 9 S.Ct. 692, at page 693, 33 L.Ed. 144; ...." [Cites omitted.]

"Judge Yanlcwich, in *Some Jurisdictional Pitfalls in Diversity Cases*, 2 F.R.D. 388, states at page 394:

"I desire to emphasize the fact, *which is overlooked by many*, that the mere fact that a matter arises under the laws of the United States or even involves the question of constitutionality under the Federal Constitution, is, in itself, insufficient to give jurisdiction to the federal courts. Jurisdiction does not exist unless, at the same time, the plaintiff can show affirmatively that he is injured in the jurisdictional amount."

[*Gaitor v. Peninsular & Occidental Steamship Co.*, 287 F.2d. 252 (1961)]

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### **Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing**

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

- (1) lack of subject-matter jurisdiction;
- (2) lack of personal jurisdiction;
- (3) improper venue;
- (4) insufficient process;
- (5) insufficient service of process;

**(6) failure to state a claim upon which relief can be granted; and**

- (7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

[Federal Rule of Civil Procedure 12: Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing]

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### **Lee v. United States (Jan. 5, 1995)**

"When considering motion to dismiss for failure to state claim upon which relief can be granted, actual allegations in complaint are taken as true and all reasonable inferences are drawn in favor of plaintiff. RCFC, Rule 12(b)(4), 28 U.S.C.A."

"Standard for dismissal mandates that claims court may not dismiss complaint unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. RCFC, Rule 12(b)(4), 28 U.S.C.A."

"Only disputes over "material facts," facts that affect outcome of suit, preclude entry of summary judgment. RCFC, Rule 56(c), 28 U.S.C.A."

"Justiciability" relates to whether federal court may hear and decide case; it involves prudential and constitutional concerns such that in some instances policy or deference to other branches of government dictates against judicial

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review."

"While claims court has jurisdiction over claim for money founded upon United States Constitution, First Amendment, standing alone, has not been interpreted to mandate payment of money so as to support court's jurisdiction. 28 U.S.C.A. §1491(a)(1); U.S.C.A. Const.Amend. 1."

"For purposes of Tucker Act jurisdiction, due process clause of Fifth Amendment" is not in and of itself money-mandating provision. U.S.C.A. Const.Amend. 5; 28 U.S.C.A. §1491(a)."

"When liberty' interest is violated so as to entitle person to notice and opportunity to be heard, purpose of that hearing is to give person opportunity to clear his name. U.S.C.A. Const.Amend. 5."

"In order to satisfy his threshold burden to state claim for deprivation of constitutionally protected liberty interest, plaintiff must show that in course of his discharge, the military, without notice and opportunity for plaintiff to be heard, prepared discharge form which was stigmatizing, false, and published. U.S.C.A. Const.Amend. 5."

[Lee v. United States, 32 Fed.Cl. 530 (1995)]

## 10.2 Generally

### Constitution for the United States of America, Article III, Section 1 (Sept. 17, 1787)

"The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office."

[Constitution for the United States of America, Article III, Section 1]

### Constitution for the United States of America, Article III, Section 2, Clause 1 (Sept. 17, 1787)

"The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a state and citizens of another state, between citizens of different States, between citizens of the same state claiming lands under grants of different States, and between a state, or the citizens thereof, and foreign States, citizens or subjects."

[Constitution for the United States of America, Article III, Section 2, Clause 1]

### 5 U.S.C. §702, Right of review

"A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority- shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought."

[5 U.S.C. §702]

### 5 U.S.C. §706, Scope of review

"To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

"(1) compel agency action unlawfully withheld or unreasonably delayed; and

"(2) hold unlawful and set aside agency action, findings, and conclusions found to be--

"(A) arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law;

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- "(B) contrary to constitutional right, power, privilege," or immunity;"
- "(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- "(D) without observance of procedure required by law;
- "(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
- "(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

"In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error."

[5 U.S.C. §706]

#### **F.R.C.P. Rule 7(c), Pleadings Allowed; Form of Motions**

"**Demurrers, Pleas, etc., Abolished.** Demurrers, pleas, and exceptions' for insufficiency of a pleading shall not be used. [Federal Rules of Civil Procedure Rule 7(c), **Pleadings Allowed; Form of Motions**]

#### **F.R.C.P. Rule 8(c). General Rules of Pleading**

"**Affirmative Defenses.** In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicator, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation."

[Federal Rules of Civil Procedure Rule 8(c). **General Rules of Pleading**]

#### **F.R.C.P. Rule 8(d). General Rules of Pleading**

"**Effect of Failure To Deny.** Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided."

[Federal Rules of Civil Procedure Rule 8(d). **General Rules of Pleading**]

#### **F.R.C.P. Rule 12(b)**

"**Rule 12(b) How Presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

- (1) lack of jurisdiction over the subject matter,
- (2) lack of jurisdiction over the person,
- (3) improper venue,
- (4) insufficiency of process,
- (5) insufficiency of service of process,
- (6) failure to state a claim upon which relief can be granted,
- (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted."

[Federal Rules of Civil Procedure Rule 12(b)]

#### **F.R.C.P., Rule 12(h)**

##### **"Rule 12 (h) Waiver or Preservation of Certain Defenses**

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course."

"(2) A defense of failure to state a claim upon which relief can be granted, a defence of failure to join a party

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indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits."

"(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."

[Federal Rules of Civil Procedure, Rule 12(h)]

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### **Black's Law Dictionary: Demurrer**

"DEMURRER. An allegation of a defendant, which, admitting the matters of fact alleged by the bill to be true, shows that as they are therein set forth they are insufficient for the plaintiff to proceed upon or to oblige the defendant to answer; or that, for some reason apparent on the face of the bill, or on account of the omission of some matter which ought to be contained therein, or for want of some circumstances which ought to be attendant thereon, the defendant ought not to be compelled to answer to the whole bill, or to some certain part thereof." [Cite omitted.]

"A "demurrer" is not an absolute admission of any fact but simply admits those facts that are well pleaded." [Cite omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 520]

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### **Black's Law Dictionary: Evidence**

"EVIDENCE. Any species of proof, or probative matter, legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to their contention." [Cites omitted.]

"The word signifies, in its original sense, the state of being evident, i. e., plain, apparent or notorious. But by an almost peculiar inflection of our language, it is applied to that which tends to render evident or to generate proof." [Cites omitted.]

[Black's Law Dictionary, Revised Fourth Edition, 1968, pp. 656-657]

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### **60 C.J.S., Motions & Orders §1**

"A motion seeks some order of court falling short of the dignity of a judgment."

[60 Corpus Juris Secundum, Motions & Orders §1]

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### **Black's Law Dictionary: Summary Judgment**

"**Summary judgment.** Procedural device available for prompt and expeditious disposition of controversy without trial when there is no dispute as to either material fact or inferences to be drawn from undisputed facts, or if only question of law is involved. *American State Bank of Killdeer v. Hewson*, N.D., 411 N.W.2d. 57, 60. Federal Rule of Civil Procedure 56 permits any party to a civil action to move for a summary judgment on all claim, counterclaim, or cross-claim when he believes that there is no genuine issue of material fact and that he is entitled to prevail as a matter of law. The motion may be directed toward all or part of a claim or defense and it may be made on the basis of the pleadings or other portions of the record in the case or it may be supported by affidavits and a variety of outside material."

[Black's Law Dictionary, Sixth Edition, 1990, p. 1435]

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### **49 C.J.S., Judgments §5**

"As a general rule, judgments are to be distinguished from orders or rules; one does not include the other. ... As distinguished from a judgment, an order is the mandate or determination of the court on some subsidiary or collateral matter arising in an action, not disposing of the merits, but adjudicating a preliminary point or directing some step in the proceedings; and the term is commonly defined in codes of procedure as every direction of a court or judge, made or entered in writing, and **not included in a judgment. A judgement**, on the other hand, is the determination of the court on the issue presented by the pleadings which **ascertains and fixes absolutely and finally the rights of the parties in the particular suit with relation to the subject matter in litigation, and puts an end to the suit. The distinguishing characteristic of a judgment is that it is final, while that of an order, when it relates to proceeding in an action is that it is interlocutory....**" p. 29.

"An order or rule ordinarily is not founded on the whole record in the case, but is granted on a special application to the court called a "motion;" **the determination of such motion is an order, not a judgment.**" p. 30. [Bold added.]

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[49 Corpus Juris Secundum, Judgments, §5]

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**Black's Law Dictionary: Inerlocutory**

**"Interlocutory** [pronunciation symbols omitted]

Provisional; interim; temporary; not final. Something intervening between the commencement and the end of a suit which decides some point or matter, but is not a final decision of the whole controversy. An interlocutory order or decree is one which does not finally determine a cause of action but only decides some intervening matter pertaining to the cause, and which requires further steps to be taken in order to enable the court to adjudicate the cause on the merits."

[Black's Law Dictionary, Sixth Edition, 1990, p. 815]

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**Words and Phrases: Stay Order**

**"STAY ORDER**

"The provision of the Chancery Act of New Jersey, Revision, p. 119, §80, prohibiting an injunction to restrain legal proceedings, after verdict or judgment, at the instance of the defendant therein, unless the money be paid into court, or a bond given according to the statutory requirement, is peremptory and **includes a temporary injunction called a "stay order."** [Citing Phillips v. Pullen, 45 N.J.Eq. 157, 16 A. 915 (1889).]

"A "stay order" is synonymous with an injunctive order and is therefore appealable." [Citing Medline Industries, Inc. v. Pascal, 23 Ill.App.3d. 346, 319 N.E.2d. 310, 312 (1974).]

"A "stay order" or a "stay of proceedings," is a stopping, the act of arresting a judicial proceeding by the order of a court or the temporary suspension of the regular order of proceedings in a cause by direction or order of the court." [Citing In re Koome, 82 Wash.2d. 816, 514 P.2d. 520, 522 (1973).]

"A "stay order", as such, is not subject to the statutory limitations on issuance and duration applicable to temporary restraining order." [Citing Franchise Tax Bd. v. Municipal Court, Los Angeles Judicial Dist. Clerk of Municipal Court, 119 Cal.Rptr. 552, 557, 45 Cal.App.3d. 377 (1975).]

[Words and Phrases: Stay Order, Vol. 40, pp. 191-192]

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**Words and Phrases: Stay**

**"STAY**

"A "stay" is a temporary suspension of a procedure in a case until the happening of a defined contingency." [Citing People v. Santana, 227 Cal.Rptr. 51, 53, 182 Cal.App.3d. 185 (1986).]

" "Stay" is itself an injunction and is immediately appealable under Code, Courts and Judicial Proceedings, §12-303(c)(1) (now §12-303(3)(i))." [Citing Washington Suburban Sanitary Comm'n v. Mitchell and Best, 303 Md. 544; 495 A.2d. 30 (1985).]

[Words and Phrases: Stay, Vol. 40, pp. 185-188]

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**20 Federal Procedures, Tax Court Proceedings, §48:371**

**"Venue...A** United States citizen or resident not residing in and not found in any United States judicial district is treated as residing in the District of Columbia."

[20 Federal Procedures, Tax Court Proceedings, §48:371]

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**26 U.S.C. §7429(e)(1)**

**"Venue. (1) District Court.** A civil action in a district court under subsection (b) shall be commenced only in the judicial district described in section 1402(a)(1) or (2) of title 28, United States Code."

[26 U.S.C. §7429(e)(1)]

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**18 U.S.C. §241**

"If two or more persons conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same;...."

"They shall be fined not more than \$10,000 or imprisoned not more than ten years, or both; and if death results, they

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shall be subject to imprisonment for any term of years or for life."  
[18 U.S.C. §241]

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#### **18 U.S.C. §242**

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if bodily injury results shall be fined under this title or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life."  
[18 U.S.C. §242]

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#### **18 U.S.C. §1001**

"Whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."  
[18 U.S.C. §1001]

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#### **26 U.S.C. §7214**

"UNLAWFUL ACTS OF REVENUE OF HCERS OR AGENTS.--Any officer or employee of the United States acting in connection with any revenue law of the United States-- (1) is guilty of any extortion or willful oppression under color of law; or (2) who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or ... (7) who makes or signs any fraudulent entry in any book, or makes or signs any fraudulent certificate, return, or statement; or ... (9) who demands, or accepts, or attempts to collect, directly or indirectly as payment or gift, or otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of law, except as expressly authorized by law so to do; shall be dismissed from office or discharged from employment and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both."  
[26 U.S.C. §7214]

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#### **California Civil Code, §3294**

##### **"For homicide, oppression, fraud, or malice**

"(a) In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant."

"(c) ... (3) "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury."

[California Civil Code, §3294]

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#### **California Civil Code, §1709**

##### **"Fraudulent deceit**

"One who willfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damages which he thereby suffers."

[California Civil Code, §1709]

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#### **Black's Law Dictionary: Fraud**

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**"Fraud.** An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Anything calculated to deceive, whether by a single act or combination, or by suppression of truth, or suggestion of what is false, whether it be by direct falsehood or innuendo, by speech or silence, word of mouth, or look or gesture. [cite omitted.] A generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated."

"Elements of a cause of action for "fraud" include false representation of a present or past fact made by defendant, action in reliance thereupon by plaintiff, and damage resulting to plaintiff from such misrepresentation."

"As distinguished from negligence, it is always positive, intentional. It comprises all acts, omissions, and concealments involving a breach of a legal or equitable duty and resulting in damage to another. And includes anything calculated to deceive, whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false, whether it be by direct falsehood or by innuendo, by speech or by silence, by word of mouth, or by look or gesture. Fraud, as applied to contracts, is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other."

[Black's Law Dictionary, Sixth Edition, 1990, p. 660]

### **37 C.J.S., Fraud §3**

#### **"Statement of Elements**

"Various statements of the elements of actionable fraud have been made, the most comprehensive one including the making, falsity, and materiality of a representation, the speaker's knowledge of its falsity or ignorance of its truth, his intent that it should be acted on by the person and in the manner reasonably contemplated, the hearer's ignorance of its falsity, his rightful reliance on its truth, and his consequent and proximate injury."

[37 Corpus Juris Secundum, Fraud §3]

### **California Civil Code, §1710**

#### **Elements of actionable fraud**

"A deceit, within the meaning of the last section is either: 1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true; 2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true; 3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact;...."

[California Civil Code, §1710]

### **California Civil Code, §1711**

#### **Intent to defraud public includes any deceived person**

"One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit."

[California Civil Code, §1711]

### **California Code of Civil Procedure, §573**

"Whenever money is paid into or deposited in the court, the same must be delivered to the clerk, or, if there be no clerk, to the judge, in person, or to such of the clerk's deputies as shall be specially authorized by his appointment in writing to receive the same. Such appointment must be filed with the county treasurer, who must exhibit it, and give to each person applying for the same a certified copy of the same. It shall be in force until a revocation in writing is filed with the county treasurer, who must thereupon write "revoked," in ink, across the face of the appointment. The judge, clerk, or such deputy clerk, must, unless otherwise directed by law, deposit such money with the county treasurer, to be held by him subject to the order of the court. The treasurer must keep each fund distinct, and open an account for each. For the safekeeping of the money deposited with him the treasurer is liable on his official bond."

[California Code of Civil Procedure, §573]

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**California Civil Code, §3336**

"The detriment caused by the wrongful conversion of personal property is presumed to be:  
"First--The value of the property at the time of the conversion, with the interest from that time, or, an amount sufficient to indemnify the party injured for the loss which is the natural, reasonable and proximate result of the wrongful act complained of and which a proper degree of prudence on his part would not have averted; and  
"Second--A fair compensation for the time and money properly expended in pursuit of the property."  
[California Civil Code, §3336]

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**California Civil Code, §3338**

"DAMAGES OF LIENOR. One having a mere lien on personal property, cannot recover greater damages for its conversion, from one having a right thereto superior to his, after his lien is discharged, than the amount secured by the lien, and the compensation allowed by Section 3336 for loss of time and expenses."  
[California Civil Code, §3338]

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**26 U.S.C. §7401**

"No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Secretary authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the actions be commenced."  
[26 U.S.C. §7401]

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**California Civil Code, §1712****"Property obtained without consent or unlawfully must be returned"**

"One who obtains a thing without the consent of its owner, or by a consent afterwards rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse, must restore it to the person from whom it was thus obtained, unless he has acquired a title thereto superior to that of such other person, or unless the transaction was corrupt and unlawful on both sides."  
[California Civil Code, §1712]

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**California Civil Code, §1713****"Demand not necessary"**

"The restoration required by the last section must be made without demand, except where a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until he has notice of the mistake."  
[California Civil Code, §1713]

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**Black's Law Dictionary: Simulation**

"SIMULATION. Assumption of appearance which was feigned, false, deceptive, or counterfeit. United States v. Peppas, S.C.Cal., 13 F.Supp. 669, 670."  
"In the civil law. Misrepresentation or concealment of the truth; as where parties pretend to perform a transaction different from that in which they really are engaged. Mackeld. Rom.Law, §181. A feigned, pretended act, one which assumes the appearance without the reality and, being entirely without effect, it is held not to have existed, and, for that reason, it may be disregarded or attacked collaterally by any interested person. Freeman v. Woods, La.App., 1 So.2d. 134, 136."  
[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1556]

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**28 U.S.C. §1340, Internal revenue; customs duties**

"The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, or revenue from imports or tonnage except matters within the jurisdiction of the Court of International Trade."  
[28 U.S.C. §1340]

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**28 U.S.C. §1346, United States as defendant**

"(a) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of: "(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws;"

"(c) The jurisdiction conferred by this section includes jurisdiction of any set-off, counterclaim, or other claim or demand whatever on the part of the United States against any plaintiff commencing an action under this section.

"(d) The district courts shall not have jurisdiction under this section of any civil action or claim for a pension.

"(e) The district courts shall have original jurisdiction of any civil action against the United States provided in section 6226, 6228(a), 7426, or 7428 (in the case of the United States district court for the District of Columbia) or section 7429 of the Internal Revenue Code of 1986.

"(f) The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States."

[28 U.S.C. §1346 (a), (c), (d), (e), & (f)]

**28 U.S.C. §2410, Actions affecting property on which United States has lien**

"(a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter--

"(1) to quiet title to,

"(2) to foreclose a mortgage or other lien upon,

"(3) to partition,

"(4) to condemn, or

"(5) of interpleader or in the nature of interpleader with respect to,

"real or personal property on which the United States has or claims a mortgage or other lien.

"(b) The complaint or pleading shall set forth with particularity the nature of the interest or lien of the United States. In actions or suits involving liens arising under the internal revenue laws, the complaint or pleading shall include the name and address of the taxpayer whose liability created the lien and, if a notice of the tax lien was filed, the identity of the internal revenue office which filed the notice, and the date and place such notice of lien was filed."

[28 U.S.C. §2410]

**IA C.J.S., Actions §§1 - 14a****"§2 Meaning of "Action"**

"**a. In General** Many definitions of the term "action" have been given by the courts. In its ordinary use, it has been defined as the legal or lawful demand of one's right or rights; the lawful demand of one's right in a court of justice; the legal and formal demand of one's rights from another person or party, made and insisted on in a court of justice; a litigation between two parties."

"In addition, various authorities have defined it [action] as a remedial instrument of justice whereby redress is obtained for any wrong committed or right withheld; a proceeding at law to enforce a private right or to redress a private wrong; an ordinary proceeding in a court of justice by which one party prosecutes another for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense."

"**b. Elements and Characteristics of Action** It has been said that every action, however complicated, or however simple, must contain these essential elements: a primary right possessed by plaintiff; and a corresponding primary duty devolving upon defendant; a delict or wrong done by defendant which consisted in a breach of such primary right and duty; a remedial right in favor of plaintiff, and a remedial duty resting on defendant springing from this delict; and finally the remedy or relief itself, as there can be no resort to the courts except for the purpose of obtaining some form of relief."

**"§ 3. --- Application and Scope of Term**

"**b. Other Terms Compared and Distinguished** The term "action" has been defined or treated as synonymous with the term "case," consistent with the characterization discussed, infra §5 of "cause" as coinciding in meaning with "case" and "action".

.. cause of action consists merely of the primary right, the primary duty, and the breach thereof, or, as otherwise stated, the action is the means of redress of the legal wrong described by the words "cause of action," and the cause of

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action precedes and affords the right to the remedy."

#### "§ 4. Classes and Kinds of Action

##### "b. Particular Species of Actions Defined

*"Common-law action.* A common-law action is an action which will lie on particular facts, at common law, without the aid of a statute."

*"Criminal action.* A criminal action is an action instituted and prosecuted by the state for the punishment of a crime."

*"Personal action.* A personal action is an action brought for the recovery of personal property, for the enforcement of a contract or to recover damages' for its breach, or for the recovery of damages for the commission of an injury". to the person or property."

#### "§ 5. Meaning of Related Terms

##### "a. In General

"The gist of an action is defined as the cause for which an action will lie...."

*"Liability.* "Liability" is an obligation to pay and arises only when all essential elements of an action are established."

##### "b. Cause

"In a legal sense, the meaning of the word "cause" coincides nearly with that of case, from cado, and of action, from ago, to urge and drive, and the term has been defined as any question, civil or criminal, contested before a court of justice, any legal process which a party institutes to obtain his demand...."

#### "§10. Meaning of Terms

"The term "remedy," when properly used in a legal sense, signifies and is limited to the judicial means or method whereby a cause of action may be enforced; the judicial means for enforcing a right or redressing a wrong."

"As distinguished from rights or matters of substance, the word "remedy" pertains more properly to those modes of procedure and pleading which lead up to and end in the judgment, including the application of the measure of damages' to the relief sought and the means provided after judgment for making it effective."

"The term "legal remedy" or, as otherwise called, a "remedy at law," has also been defined as a remedy on the law side of court, as distinguished from a remedy in equity. "Legal remedy" is distinguishable from "personal remedy.""

#### "§11. Correlation of Right, Wrong, and Remedy

##### "a. In General

.. for every right ... there is a remedy. In other words, wherever the law recognizes a right it gives a remedy to enforce it or to redress its violation; this principle has been expressly recognized by statute."

"The enforcement of a legal right therefore should be sought through legal procedure, and not summarily, nor by physical force or stealth. Right and remedy within the meaning of this rule, are reciprocal; there can be no right without a remedy, and to deny the remedy is, in substance, to deny the right."

##### "b. Scope of Rule

*"Case of first impression.* If, as discussed infra §33, the case can be sustained on some recognized principle of law, the fact that the circumstances are novel, and that it is a case of first impression and without direct precedent, does not make it one without a remedy, although the court will proceed with greater caution in such a case. If a case is entirely new in principle, the courts cannot afford a remedy without legislative interposition; but if it is only new in instance, and the question is one of applying a recognized principle to new facts and circumstances, the courts may apply such principle and afford a remedy as readily as if a similar case had been previously decided."

##### "c. Statutory and Constitutional Rights

"The rule, that wherever the law recognizes a right it gives a remedy, applies to rights conferred by statutory or constitutional provisions; and so wherever a statute or constitution creates a new right or duty, and does not prescribe any particular remedy for its enforcement, the party entitled to the benefit of the statute or constitution may resort to any existing common-law or statutory remedy which will afford adequate and proper redress."

#### "§12. - Nature and Form of Remedy

"In some cases, there may be more than one appropriate remedy, and plaintiff and no one else must choose his remedy and determine the form and character of his action."

[1A Corpus Juris Secundum, Actions §§1 - 14a]

### **70A American Jurisprudence 2d, Social Security and Medicare, §1**

#### "§1. Generally

"The principal law governing the awarding of Social Security benefits is the Social Security Act. Rights to Social Security benefits derive solely from the statutory scheme and not from the United States Constitution or common law."

"The Act is, nonetheless, subject to constitutional scrutiny with respect to its specific provisions. Thus, an individual with a "colorable" constitutional argument can challenge the validity of specific provisions of the Act on grounds such as violations of equal protection under the Due Process Clause of the Fifth Amendment,...."

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[70A American Jurisprudence 2d, Social Security and Medicare, §1]

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### **8 Federal Procedures, Proceedings in Forma Pauperis, §20:405**

"**Test of frivolousness.** The U.S. Supreme Court has described a "frivolous" claim, subject to dismissal under 28 U.S.C.S. §1915 as (1) a claim based on an indisputably meritless legal theory, such as where it is clear that the defendants are immune from suit or claims of infringement of a legal interest which clearly does not exist; or (2) a complaint whose factual allegations are clearly baseless, such as claims describing fantastic or delusional scenarios."  
[8 Federal Procedures, Proceedings in Forma Pauperis, §20:405]

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### **Georgia v. Brailsford (Feb. 1794)**

"It may not be amiss, here, gentlemen, to remind you of the good old rule, that on questions of fact, it is the province of the jury, on questions of law, it is the province of the court, to decide. But it must be observed that by the same law, which recognizes this reasonable distribution of jurisprudence, you have nevertheless a right to take upon yourselves to judge of both, and to determine the law as well as the fact in controversy. On this, and on every other occasion, however, we have no doubt, you will pay that respect, which is due to the opinion of the court. For, as on the one hand, it is presumed, that juries are the best judges of facts; it is, on the other hand, presumable, that the court are the best judges of law. But still, both objects are lawfully, within your power of decision.

"Some stress has been laid on a consideration of the different situations of the parties to the cause. The state of Georgia, sues three private persons. But what is it to justice, how many, or how few; how high, or how low; how rich or how poor; the contending parties may chance to be? Justice is indiscriminately due to all, without regard to numbers, wealth, or rank. Because to the state of Georgia, composed of many thousands of people, the litigated sum cannot be of great moment, you will not for this reason be justified, in deciding against her claim; if the money belongs to her, she ought to have it; but on the other hand, no consideration of the circumstances, or of the comparative insignificance of the defendants, can be a ground to deny them the advantage of a favorable verdict, if in justice they are entitled to it.

"Go then, gentlemen, from the bar, without any impressions of favor or prejudice for the one party or the other; weigh well the merits of the case, and do on this, as you ought to do on every occasion, equal and impartial justice."  
[Georgia v. Brailsford, 3 U.S. 1 (1794)]

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### **Cohens v. Virginia (1821)**

**.. for he who demands decision without permitting inquiry, affirms that the decision he asks does not depend on inquiry.**" [Bold added.]

"The constitution gave to every person having a claim upon a state, a right to submit his case to the court of the nation. **However unimportant his claim might be, however little the community might be interested in its decision, the framers of our constitution thought it necessary, for the purposes of justice, to provide a tribunal as superior to influence as possible, in which that claim might be decided.** Can it be imagined, that the same persons considered a case involving the constitution of our country and the majesty of the laws--questions in which every American citizen must be deeply interested--as withdrawn from this tribunal, because a state is a party?" [Bold added.]

"The constitution of the United States furnishes no security against the universal adoption of this principle. When we observe the importance which that constitution attaches to the independence of judges, we are the less inclined to suppose that it can have intended to leave these constitutional questions to tribunals where this independence may not exist, in all cases where a state shall prosecute an individual who claims the protection of an act of Congress. These prosecutions may take place even without a legislative act. A person making a seizure under an act of Congress, may be indicted as a trespasser, if force has been employed, and of this a jury may judge. How extensive may be the mischief if the first decisions in such cases should be final!

"These collisions may take place in times of no extraordinary commotion. But a constitution is framed for ages to come, and is designed to approach immortality as nearly as human institutions can approach it."

"It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision."

"The citizen who has paid his money to his state, under a law that is void, is in the same situation with every other person who has paid money by mistake. The law raises an assumpsit to return the money, and it is upon that assumpsit that the action is to be maintained."

**"It is clear that Congress, as a legislative body, exercise two species of legislative power: the one, limited as to**

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its objects but extending all over the Union; the other, an absolute, exclusive legislative power over the District of Columbia." [Bold added.]

"Every act of legislation must be limited by its subject-matter, and there is nothing to show that this power is to be exercised more extensively than the other powers of the corporation; nothing to show that this municipal power is to be carried beyond the city."

"A law cannot exceed the authority of the law-giver...."

"It cannot be denied that the character of the jurisdiction which Congress has over the district, is widely different from that which it has over the states; for, over them, Congress has not exclusive jurisdiction. Its powers over the states are those only which are specifically given, and those which are necessary to carry them into effect; whilst over the district it has all the powers which it has over the states, and in addition to these, a power of legislation exclusive of all the states."

"Does the corporate power to authorize the drawing of a lottery imply a power to authorize its being drawn without the jurisdiction of a corporation, in a place where it may be prohibited by law?"

"These, and all other laws relative to the district, have the authority which may be claimed by other acts of the national legislature; but their extent is to be determined by those rules of construction which are applicable to all laws. The act incorporating the city of Washington is, unquestionably, of universal obligation; but the extent of the corporate powers conferred by that act, is to be determined by those considerations which belong to the case."

[Cohens v. Virginia, 6 Wheat. 264, 5 L.Ed. 257 (1821)]

#### **Whitney v. Board of Delegates of the S. F. Fire Department (Jan. 1860)**

"Whenever the rights of an individual are infringed by acts of persons clothed with authority to act, and who exercised that authority illegally and injuriously, the person injured may have redress by *certiorari*."

.. whenever any power, in its nature judicial, is illegally exercised, no matter by what body or individual, it is the subject of review and correction by the proper tribunals."

"This Board being a tribunal of limited powers, must show affirmatively, and on the face of their proceedings, that they acted in a case within their powers and within the law.

"We think it is well settled that a common law *certiorari* tries nothing but the jurisdiction, and, incidentally, the regularity of the proceedings upon which the jurisdiction depends. It brings up no issue of law or fact not involved in the question of jurisdiction. Under no circumstances, can the review be extended to the merits."

[Whitney v. Board of Delegates of the S. F. Fire Department, 14 Cal. 479 (1860)]

#### **United States v. State National Bank of Boston (Jan. 21, 1878)**

"Where the money or property of an innocent person has gone into the coffers of the nation by means of a fraud to which its agent was a party, such money or property cannot be held by the United States against the claim of the wronged and injured" party."

"An action will lie whenever the defendant has received money which is the property of the plaintiff, and which the defendant is obliged by natural justice and equity to refund. The form of the indebtedness or the mode in which it was incurred is immaterial. *Bayne v. U.S.*, 93 U.S., 642 [XXIII., 997]."

"In these cases, and many others that might be cited, the rules of law applicable to individuals were applied to the United States. Here—the basis of the **liability insisted upon is an implied contract by which they might well become bound in virtue of their corporate character**. Their sovereignty is in nowise involved." [Bold added; brackets original.]

[United States v. State National Bank of Boston, 96 U.S. 647, 6 Otto 30; 24 L.Ed. 647 (1878)]

#### **Phillips v. Pullen (Feb. 1, 1889)**

"The provision in the eightieth section of the chancery act is peremptory, and prohibits the issuing of an injunction to restrain legal proceedings, after verdict or judgment, at the instance of the defendant therein, unless the money be paid into court, or a bond given according to the statutory requirement. "

"A temporary injunction, called in this case a "stay order," is within the statutory prohibition."

[Phillips v. Pullen, 45 N.J.Eq. 157, 16 A. 915 (1889)]

#### **Reynolds v. Stockton (May 11, 1891)**

"We quote from [*Munday v. Vail*, 34 N.J.L. 418] the opinion: "Jurisdiction may be defined to be the right to adjudicate concerning the subject matter in the given case. To constitute this there are three essentials: *First*, the court must have

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cognizance of the class of cases to which the one to be adjudged belongs; *second*, the proper parties must be present; and *third*, the point decided must be, in substance and effect, within the issue. That a court cannot go out of its appointed sphere, and that its action is void with respect to persons who are strangers to its proceedings, are propositions established by a multitude of authorities. A defect in a judgment arising from the fact that the matter decided was not embraced within the issue has not, it would seem, received much judicial consideration. And yet, I cannot doubt that, upon general principles, such a defect must avoid a judgment. It is impossible to concede that because A and B are parties to a suit, a court can decide any matter in which they are interested, whether such matter be involved in the pending litigation or not. Persons by becoming suitors do not place themselves for all purposes under the control of the court, and it is only over these particular interests, which they choose to draw in question that a power of judicial decision arises." [Reynolds v. Stockton, 140 U.S. 584 (1891)]

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#### **Wohlford v. People (Dec. 12, 1892)**

"In those jurisdictions where the juries are the judges of the law as well as the facts, it is a settled rule of practice to allow counsel to read books of law to the jury. 1 Thompson on Trials, Secs. 945, 949; Stout v. The People, 96 Ind. 407; Wade v. State, 65 Ga. 756. Considerable embarrassment must necessarily arise to trial courts in determining how much of reported cases it is proper to read to the jury. . . . It will not do to hold, as contended for her by counsel, that it is only proper to read such portions of reported cases from our Supreme Court as announced legal principles. Lawyers and trial judges often find it necessary to read the recital of facts and the reasoning thereon to comprehend the principle announced. How much more essential in such cases to the jury, who are the judges of the law, but whose habits of study and thought have not so well prepared them to grasp legal principles as trained legal minds? We can see no impropriety in reading to the jury the entire opinion of a case reported from our Supreme Court applicable to the case on trial, except wherein a principle is announced which has since been overruled. When objection is made to reading from text books or reported cases from other States, it is the duty of the court to examine the portions proposed to be read, and if he finds the principles therein stated to be in harmony with the law of this State and applicable to the case on trial, to permit them to be read; if he finds otherwise, he should exclude them." [Wohlford v. People, 45 Ill.App. 188 (1892)]

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#### **Stanley v. Schwalby (February 6, 1893)**

"Although the United States are not bound by the laws of a state, the word "person" in a state statute of limitations includes them as a body politic and corporate, and they may take advantage of such statute." [Stanley v. Schwalby, 147 U.S. 508, 13 S.Ct. 418 (1893)]

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#### **Evans v. United States (May 14, 1894)**

"A rule of criminal pleading which at one time obtained in some of the circuits, and perhaps received a qualified sanction from this court in U.S. v. Mills, 7 Pet. 138, that an indictment for a statutory misdemeanor is sufficient if the offense be charged in the words of the statute, must, under more recent decisions, be limited to cases where the words of the statute themselves, as was said by this court in U.S. v. Carll, 105 U.S. 611, "fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished." The crime must be charged with precision and certainty, and every ingredient of which it is composed must be accurately and clearly alleged. U.S. v. Cook, 17 Wall. 174; U.S. v. Cruikshank, 92 U.S. 542, 558. "The fact that the statute in question, read in the light of the common law, and of other statutes on the like matter, enables the court to infer the intent of the legislature, does not dispense with the necessity of alleging in the indictment all the facts necessary to bring the case within that intent." U.S. v. Carll, 105 U.S. 611."

**"Even in the cases of misdemeanors, the indictment must be free from all ambiguity, and leave no doubt in the minds of the accused and the court of the exact offense intended to be charged,** not only that the former may know what he is called upon to meet, but that, upon a plea of former acquittal or conviction, the record may show with accuracy the exact offense to which the plea relates." [Bold added.]

[Evans v. United States, 153 U.S. 584, 14 S.Ct. 934, 38 L.Ed. 830 (1894)]

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#### **Rich v. Braxton (May 6, 1895)**

"The placing of lands upon the tax books according to a survey upon which no patent had ever been issued as the property of persons who had no title whatever thereto is unauthorized by law, and a tax sale had under such an assessment

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is void, and confers no title. 47 Fed. 178, affirmed."  
 [Rich v. Braxton, 158 U.S. 375, 15 S.Ct. 1006 (1895)]

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**Drummond Carriage Co. v. Mills (Apr. 8, 1898)**

"By operation of the common law in the absence of any specific agreement, every person who has bestowed labor and skill on a chattel bailed to him for the purpose, and has thereby increased its value, has a lien on such chattel, and may retain it until paid his reasonable charges for his services."

"Such rule of the common law is in force in this state."

"The common-law lien to which we have just referred may, by force of special facts or circumstances, override or be superior to prior contractual or statutory liens."

[Drummond Carriage Co. v. Mills, 54 Neb. 417, 74 N.W. 966 (1898)]

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**De Lima v. Bidwell (May 27, 1901)**

"The case of *Elliott v. Swartwout*, 10 Pet. 137, 9 L.Ed. 373, was an action of assumpsit against the collector of the port of New York to recover certain duties upon goods alleged to have been improperly classified. It was held that as the payment was purely voluntary, by a mutual mistake of law, no action would lie to recover them back, although it would have been different if they had been paid under protest. Said Mr. Justice Thompson: "Here, then, is the true distinction: when the money is paid voluntarily and by mistake to an agent, and he has paid it over to his principal, he cannot be made personally responsible; but if, before paying it over, he is apprised of the mistake, and required not to pay it over, he is personally liable."

"A foreign country was defined by Mr. Chief Justice Marshall and Mr. Justice Story to be one exclusively within the sovereignty of a foreign nation, and without the sovereignty of the United States."

"That is, that, although Florida had by cession actually become a part of the United States, and was in our possession, yet under our revenue laws, its ports must be regarded as foreign until they were established as domestic by act of Congress."

"In the more recent case of *National Bank v. Yankton County*, 101 U.S. 129, 25 L.Ed. 1046, it was said by Mr. Chief Justice Waite that Congress "has full and complete legislative authority over the people of the territories and all the departments of the territorial governments. It may do for the territories what the people, under the Constitution of the United States, may do for the states.""

"Thus, a statute forbidding the sale of liquors to minors applies, not only to minors in existence at the time the statute was enacted, but to all who are subsequently born, and ceases to apply to such as thereafter reach their majority. So, when the Constitution of the United States declares in art. 1 §10, that the state shall not do certain things, this declaration operates, not only upon the thirteen original states, but upon all who subsequently become such; and when Congress places certain restrictions upon the powers of a territorial legislature, such restrictions cease to operate the moment such territory is admitted as a state. By parity of reasoning a country ceases to be foreign the instant it becomes domestic."

[De Lima v. Bidwell, 182 U.S. 1 (1901)]

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**Hopkins v. Clemson Agricultural College (May 29, 1911)**

"But immunity from suit is a high attribute of sovereignty--a prerogative of the State itself,--which cannot be availed of by public agents when sued for their own torts. The 11th Amendment was not intended to afford them freedom from liability in any case where, under color of their office, they have injured one of the State's citizens. To grant them such immunity would be to create a privileged class free from liability for wrongs inflicted or injuries threatened. Public agents must be liable to the law, unless they are to be put above the law. For how "can these principles of individual liberty' and right be maintained if, when violated, the judicial tribunals are forbidden to visit penalties upon individual offenders . . . whenever they interpose the shield of the State? . . . The whole frame and scheme of the political institutions of this country, state and Federal, protest" against extending to any agent the sovereign's exemption from legal process. *Poindexter v. Greenhow*, 114 U.S. 270, 291, 29 L.Ed. 185, 193, 5 Sup.Ct.Rep. 903, 962.

"The many claims of immunity from suit have therefore been uniformly denied, where the action was brought for injuries done or threatened by public officers. If they were indeed agents, acting for the state, they--though not exempt from suit--could successfully defend by exhibiting the valid power of attorney or lawful authority under which they acted.

*Cunningham v. Macon & B. R. Co.*, 109 U.S. 446, 452, 27 L.Ed. 992, 994, 3 Sup.Ct.Rep. 292, 609. But if it appeared that they proceeded under an unconstitutional statute their justification failed, and their claim of immunity disappeared on the production of the void statute. Besides, neither a State nor an individual can confer upon an agent authority to commit a

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tort, so as to excuse the perpetrator. In such cases the law of agency has no application,--the wrongdoer is treated as a principle and individually liable for damages inflicted, and subject to injunction against the commission of acts causing irreparable injury."

"But a void act is neither a law or command. It is a nullity. It confers no authority. It affords no protection. Whoever seeks to enforce unconstitutional statutes, or to justify under them, or to obtain immunity through them, fails in his defense and in his claim of exemption from suit."

"Corporate agents or individual officers of the State stand in no better position than officers of the general government, and as to them it has often been held that "the exemption of the United States from judicial process does not protect their officers and agents, civil or military, in time of peace, from being personally liable to an action of tort by a private person, whose rights of property they have wrongfully invaded or injured, even by authority of the United States." *Belknap v. Schild*, 161 U.S. 18, 40 L.Ed. 601, 16 Sup.Ct.Rep. 443."

[*Hopkins v. Clemson Agricultural College*, 221 U.S. 636, 55 L.Ed. 890 (1911)]

#### **Weeks v. United States (Feb. 24, 1914)**

"Protection against individual misconduct of municipal police officers not acting under any claim of Federal authority is not afforded by the guaranty of U.S. Const., 4th Amend., of immunity from unreasonable searches and seizures, but the limitations of such Amendment reach only the Federal government and its agents."

"The effect of the 4th Amendment is to put the courts of the United States and Federal officials, in the exercise of their power and authority, under limitations and restraints as to the exercise of such power and authority, and to forever secure the people, their persons, houses, papers, and effects, against all unreasonable searches and seizures under the guise of law. This protection reaches all alike, whether accused of crime or not, and the duty of giving to it force and effect is obligatory upon all intrusted under our Federal system with the enforcement of the laws."

"We therefore reach the conclusion that the letters in question were taken from the house of the accused by an official of the United States, acting under color of his office, in direct violation of the constitutional rights of the defendant; that having made a seasonable application for their return, which was heard and passed upon by the court, there was involved in the order refusing the application a denial of the constitutional rights of the accused, and that the court should have restored these letters to the accused. In holding them and permitting their use upon the trial, we think prejudicial error was committed. As to the papers and property seized by the policemen, it does not appear that they acted under any claim of Federal authority such as would make the amendment applicable to such unauthorized seizures. The record shows that what they did by way of arrest and search and seizure was done before the finding of the indictment in the Federal court; under what supposed right or authority does not appear. What remedies the defendant may have against them we need not inquire, as the 4th Amendment is not directed to individual misconduct of such officials. Its limitations reach the Federal government and its agencies."

[*Weeks v. United States*, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652 (1914)]

#### **United States v. Emery, Bird, Thayer Realty Co. (Apr. 5, 1915)**

"The remedy by suit against the collector where internal revenue taxes have been wrongfully collected under the Federal corporation tax law of August 5, 1909 (36 Stat. at L. 11, 112, chap. 6, Comp. Stat. 1913, §6300), §38, is not made exclusive by the provision of that section that all laws relating to the collection, remission, and refund of internal revenue taxes, so far as applicable, are extended to this tax."

"Claims to recover back internal revenue taxes alleged to have been wrongfully collected under the Federal corporation tax law of August 5, 1909 (36 Stat. at L. 11, 112, chap. 6, Comp. Stat. 1913, §6300), §38, are founded upon that act within the meaning of the provision of the Judicial Code, §24, 1 20, conferring jurisdiction on the Federal district courts of "all claims not exceeding \$10,000 founded upon the Constitution of the United States or any law of Congress."

"The objection to the jurisdiction pressed by the government is that the only remedy is a suit against the collector. As the United States has received and keeps the money, and would indemnify the collector if he had to pay (Rev. State. §3220, Comp. Stat. 1913, §5944), the least that can be said is that it would be adding a fifth wheel to the coach to require a circuitous process to satisfy just claims. It is true that this tax law provides that "all laws relating to the collection, remission, and refund of internal revenue taxes, so far as applicable," etc, are extended to this tax (§38, 36 Stat. at L. 117, chap. 6), but that is far from the case of a statute creating a new right and a special remedy to enforce it in such form as to make that remedy exclusive. The right to sue the collector for an unjustified collection was given by the common law. The jurisdiction over suits against the United States under §24 of the Judicial Code extends to "all claims not exceeding ten thousand dollars founded upon the Constitution of the United States or any law of Congress." However gradually the result may have been approached in the earlier cases it now has become accepted law that claims like the present are

"founded upon" the revenue law. The argument that there is a distinction between claims "arising under" (Judicial Code, §24, first) and those "founded upon" (Id. §24, twentieth), a law of the United States, rests on the inadmissible premise that the great act of justice embodied in the jurisdiction of the Court of Claims is to be construed strictly and read with an adverse eye. *Dooley v. United States*, 182 U.S. 222, 228, 45 L.Ed. 1074, 1080, 21 Sup.Ct.Rep. 762; *United States v. Hvoslef*, March 22, 1915, [237 U.S. 1, 59 L.Ed. --, 35 Sup.Ct.Rep. 459.] Jurisdiction was taken for granted in *United States v. New York & C. Mail S. S. Co.* U.S. 488, 50 L.Ed. 569, 26 Sup.Ct.Rep. 327, and was upheld in *Christie-Street Commission Co. v. United States*, 69 C.C.A. 464, 136 Fed. 326; *United States v. Hyams*, 76 C.C.A. 523, 146 Fed. 15, 18; *United States v. Finch*, 119 C.C.A. 433, 201 Fed. 95, 97." [Brackets original.]  
 [United States v. Emery, Bird, Thayer Realty Co., 237 U.S. 28, 35 S.Ct. 499, 59 L.Ed. 825 (1915)]

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### **Sage v. United States (May 19, 1919)**

"Judgment for part of the amount claimed in action against the collector of internal revenue to recover back taxes paid, not being a judgment for or against the United States, is not a bar to subsequent action against it for the balance."

"Were judgment for part only of the amount claimed, in action against the collector of internal revenue to recover back taxes erroneously collected under Act June 13, 1898, §29, otherwise a bar to action against the United States to recover the balance, the bar would be removed by the subsequent enactment of Act July 27, 1912, directing repayment of such taxes to claimants presenting their claims as prescribed."

"It is true that the statutes modify the common law liability for money wrongfully collected by duress so far as to require a preliminary appeal to the Commissioner of Internal Revenue before bringing a suit. Rev.St. §3226 (Comp. St. §5949). It is true also that it is the duty of the District Attorney to appear for the collector in such suits, Rev.St. 771 (Comp. St. §1296); that the judgment is to be paid by the United States and the collector is exempted from execution if a certificate is granted by the Court that there was probable cause for his act, Rev.St. §989 (Comp. St. §1635); and that there was a permanent appropriation for the refunding of taxes illegally collected. Rev.St. §3689 (17) (Comp. St. §6799). No doubt too, if it appeared in a suit against a collector who had acted with probable cause and had turned over his money to the United States, that a part of the tax properly was due to the United States, unnecessary formalities might be omitted and the sum properly due might be retained. Of course, the United States in such a case could not require a second payment of that sum. *Crocker v. Malley*, March 17, 1919. 249 U.S. 223, 39 Sup.Ct. 270, 63 L.Ed. 573. But no one could contend that technically a judgment of a District Court in a suit against a collector was a judgment against or in favor of the United States. It is hard to say that the United States is privy to such a judgment or that it would be bound by it if a suit were brought in the Court of Claims. The suit is personal and its incidents, such as the nature of the defenses open and the allowance of interest, are different. It does not concern property in which the United States asserts an interest on its own behalf or as trustee, as in *Minnesota v. Hitchcock*, 185 U.S. 373, 388, 22 Sup.Ct. 650, 46 L.Ed. 954. At the time the judgment is entered the United States is a stranger. Subsequently the discretionary action of officials may, or it may not, give the United States a practical interest in the amount of the judgment, as determining the amount of a claim against it, but the claim would arise from the subsequent official act, not from the judgment itself. *United States v. Frerichs*, 124 U.S. 315, 8 Sup.Ct. 514, 31 L.Ed. 471."

[Sage v. United States, 250 U.S. 33, 39 S.Ct. 415, 63 L.Ed. 828 (1919)]

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### **Smietanka v. Indiana Steel Co. (Oct. 24, 1921)**

"As the law stood before later statutes a collector was liable personally for duties mistakenly collected, if the person charged gave notice, at the time, of his intention to sue, and warning not to pay over the amount to the Treasury. *Elliott v. Swartwout*, 10 Pet. 137, 9 L.Ed. 373. But after an Act of Congress had required collectors to pay over such monies, it was held, against the dissent of Mr. Justice Story, that the personal liability was gone. *Cary v. Curtis*, 3 How. 236, 11 L.Ed. 576. Later statutes however recognize suits against collectors in such cases, and the plaintiff contends that they should be construed to create a new statutory liability attached to the office and passing to successors, as was held in this case, the formal defendant being saved from harm by the United States. This however is not the language of the statutes and hardly can be reconciled with the decision of this Court in *Sage v. United States*, 250 U.S. 33, 39 Sup.Ct. 415, 63 L.Ed. 828, and other cases to which we shall refer."

"The language of the most material enactment, Rev.St. §989 (Comp. St. §1635), gives no countenance to the plaintiff's argument. It enacts that no execution shall issue against the collector but that the amount of the judgment shall "be provided for and paid out of the proper appropriation from the Treasury," when and only when the Court certifies to either of the facts certified here, and "when a recovery is had in any suit or proceedings against a collector or other officer of the revenue for any act done by him, or for the recovery of any money exacted by or paid to him and by him paid into the Treasury, in the performance of his official duty."

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"In *Patton v. Brady*, 184 U.S. 608, 22 S.Ct. 493, 46 L.Ed. 713, a suit against a collector begun after the passage of this statute, it was held that it could be revived against his executrix, which shows again that the action is personal; as also does the fact that the collector may be held liable for interest."

[*Smietanka v. Indiana Steel Co.*, 257 U.S. 1, 42 S.Ct. 1, 66 L.Ed. 99 (1921)]

### **Lipke v. Lederer (June 5, 1922)**

"The Federal Supreme Court has jurisdiction of a direct appeal from a decree of a district court dismissing the bill in a suit to enjoin a collector of internal revenue from collecting the sum demanded under the provisions of the National Prohibition Act of October 28, 1919, §35, where complainant claims that such section, as construed and sought to be enforced by the collector, conflicts with the guaranties of the Federal Constitution respecting due process of law and trial by jury."

"The so-called tax imposed by the National Prohibition Act of October 28, 1919, §35, lacks all the ordinary characteristics of a tax, the primary function of which is to provide for the support of the government, and clearly involves the idea of punishment for infraction of the law,—the definite function of a penalty."

"The prohibition of U.S. Rev.Stat. §3224, against suits to restrain the assessment or collection of a tax, has no application to a suit to restrain the collector of internal revenue from collecting the sum demanded by him under the provisions of the National Prohibition Act of October 28, 1919, §35, as a penalty."

"Statutes granting the right to sue to recover back taxes paid under protest have no application, so as to afford an adequate remedy at law, where an internal revenue officer, without notice, was undertaken to assess a penalty for an alleged criminal act, and threatens to enforce payment by seizure and sale of property, without opportunity for a hearing of any kind."

"Relief by way of injunction should be granted where an internal revenue officer, without notice, has undertaken to assess a penalty for an alleged criminal act, and threatens to enforce payment by seizure and sale of property without opportunity for a hearing of any kind."

[*Lipke v. Lederer*, 259 U.S. 557, 66 L.Ed. 1061 (1922)]

### **United States v. Supplee-Biddle Hardware Co. (May 26, 1924)**

"The Supplee-Biddle Hardware Company sued the United States in the Court of Claims to recover \$55,153.89, with interest, as taxes illegally assessed on the proceeds of two life insurance policies paid to it as the beneficiary on the death in 1918 of the insured...."

[*United States v. Supplee-Biddle Hardware Co.*, 265 U.S. 189, 44 S.Ct. 546 (1924)]

### **Agnello v. United States (Oct. 12, 1925)**

"Properly invoked, Const. Amend. 5, protects every person from incrimination by use of evidence obtained through search or seizure made in violation of Amendment 4."

"Necessity for application before trial for return of evidence obtained by unlawful search arises from rule that court will not pause in criminal case to determine collateral issues as to how evidence was obtained."

[*Agnello v. United States*, 269 U.S. 20, 46 S.Ct. 4 (1925)]

### **Compagnie General Transatlantique v. United States (July 7, 1927)**

"Action for deposit taken for fine for bringing illiterate immigrant held maintainable as "founded upon \* \* \* law of Congress" (Tucker Act being 28 U.S.C.A. §41 [20]; Immigration Law 1917. §9 [Comp. St. §4289%e]).

"Where sum is deposited to secure payment of prospective fine for violation of Immigration Law 1917, §9 (Comp. St. §4289%e), by bringing an illiterate alien into the United States, and the fine is thereafter unlawfully imposed and the deposit is paid into the Treasury of the United States, an action to recover the sum is maintainable as an action "founded upon \* \* \* law of Congress," within the meaning of the Tucker Act U.S.C.A. §41 [20]; Comp. St. §991 [20], providing that the United States District Court shall have jurisdiction of claims against the United States founded upon any law of Congress."

"[1] The actions are brought under the Tucker Act to recover money had and received to the use of the plaintiff. The Tucker Act 28 U.S.C.A. §41 [20]; Comp. St. §991 [20], provides:

"The [United States] District Courts shall have original jurisdiction as follows:

"\* \* \*

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"Twentieth--Concurrent with the Court of Claims, of all claims not exceeding ten thousand dollars founded upon the Constitution of the United States or any law of Congress, \* \* \* or upon any contract, express or implied, with the government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect to which claims the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable."

"The basis of the within causes of action is a "law of Congress," so that the discussion in the briefs as to whether there can be a recovery upon an implied contract is unimportant. For a long time claims to recover taxes illegally exacted have been recoverable under the first class provided for by the Tucker Act. As Justice Holmes said in *United States v. Emery, Bird, Thayer Realty Co.*, 237 U.S. 28, 35 S.Ct. 499, 59 L.Ed. 825, when discussing a case where it was sought to recover taxes paid, under protest: "Claims like the present are 'founded upon' the revenue law." To limit the recovery in cases "founded" upon a law of Congress to cases where the law provides in terms for a recovery would make that provision of the Tucker Act almost entirely unavailable, because it would allow recovery only in cases where laws other than the Tucker Act already created a right of recovery. "Founded" must therefore mean reasonably involving the application of a law of Congress. *Dooley v. United States*, 182 U.S. 222, 21 S.Ct. 762, 45 L.Ed. 1074, is in accord with this reasoning. There custom duties were improperly exacted. Justice Brown there said:

"The first section" (of the Tucker Act) "evidently contemplates four distinct classes of cases: (1) Those founded upon the Constitution or any law of Congress, with an exception of pension cases; (2) cases founded upon a regulation of an executive department; (3) cases of contract, express or implied, with the government; (4) actions for damages, liquidated or unliquidated, in cases not sounding in tort. The words 'not sounding in tort' are in terms referable only to the fourth class of cases."

"In my opinion, the present case more nearly resembles actions like *United States v. Emery, Bird, Thayer Realty Co.*, 237 U.S. 28, 35 S.Ct. 499, 59 L.Ed. 825, allowing recovery of taxes unlawfully exacted, than *United States v. Holland-America Lijn*, supra, where, upon the admitted facts, there seems to have been scarcely any color of right in attempting to collect expenses of detention of aliens from the transportation company. As Mr. Justice Holmes said in the *Emery Case*:

"However gradually the result may have been approached in the earlier cases it now has become accepted law that claims like the present are 'founded upon' the revenue law. The argument that there is a distinction between claims 'arising under' (Judicial Code, §24, first) and those 'founded upon' (Id. §24, twentieth), a law of the United States, rests on the inadmissible premise that the great act of justice embodied in the jurisdiction of the Court of Claims is to be construed strictly and read with an adverse eye."

"I can see no reason why the doctrine as to taxes should not be applied to penalties unlawfully exacted." [Brackets original.]

[*Compagnie Generale Transatlantique v. United States*, D.C., 21 F.2d. 465 (1927)]

### **State of Arizona v. State of California (May 18, 1931)**

"United States may perform its functions without conforming to police regulations of state."

"Federal government has power to construct dam, thereby obstructing river for purpose of improving navigation, if particular river is navigable."

"Whether stream is navigable in law depends upon whether it is navigable in fact."

**"Motion to dismiss bill, like a demurrer, admits every well-pleaded allegation of fact."** [Bold added.]

"Possible abuse of power to regulate navigation is not argument against its existence."

"To "appropriate" water means to take and divert specified quantity and put it to beneficial use in accordance with local laws."

"Appropriator of water under local laws acquires vested right to divert from same source, and to use same quantity of water annually forever, subject only to right of prior appropriations."

"Under Arizona law, perfected vested right to appropriate water cannot be acquired without performance of physical acts diverting water to beneficial use."

"Supreme Court cannot issue declaratory decrees."

"State of Arizona has no constitutional right to use, in aid of appropriation of waters from Colorado river, any land of United States."

[*State of Arizona v. State of California*, 283 U.S. 423, 51 S.Ct. 522 (1931)]

### **Bull v. United States (Apr. 29, 1935)**

"United States cannot, as against claim of innocent party, hold his money which has gone into its treasury by means of fraud of their agent."

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"Where exaction of tax was wrongful, although by mistake without any element of fraud, unjust detention by United States of tax payment amounted at law to fraud on taxpayer's rights."

"Action will lie whenever defendant has received money which is property of plaintiff and which defendant is obliged by natural justice and equity to refund and form of indebtedness or mode in which it was incurred is immaterial."

"Rule that an action will lie whenever defendant has received money which is property of plaintiff and which defendant is obliged by natural justice and equity to refund is applicable to United States as well as individuals."

[Bull v. United States, 295 U.S. 247, 55 S.Ct. 695 (1935)]

#### **First Nat'l. Bank of Key West v. H.H. Filer (Jan. 2, 1933)**

"Whenever there is a wrong there is a remedy. And the general test to determine whether there is a liability in an action of tort is the question whether the defendant has by act or omission disregarded his duty. This applied to public officers who may become liable on common-law principles to individuals who sustain special damages from the negligent or wrongful failure to perform imperative or ministerial duties. Dillon on Municipal Corps. (5th Ed.) vol. 1, p. 762; 22 R.C.L. pars. 160-162, pp. 483, 484."

"That public officers should be held to a faithful performance of their official duties, and made to answer in damages to all persons who may have been injured through their malfeasance, omission, or neglect, to which the persons injured have in no respect contributed, cannot be denied. Lick v. Madden, 36 Cal. 208, 95 Am. Dec. 175, 180. And it is well settled that, where the law imposes upon a public officer the performance of ministerial duties in which a private individual has a special and direct interest, the officer will become liable to such individual for any injury which he may proximately sustain in consequence of the failure or neglect of the officer either to perform the duty at all, or to perform it properly. In such a case the officer is liable as well for nonfeasance as for misfeasance or malfeasance."

[First Nat'l. Bank of Key West v. H.H. Filer, 145 So. 204, 87 A.L.R. 267 (1933)]

#### **United States v. Murdock (Dec. 11, 1933)**

"A federal judge may analyze the evidence, comment upon it, and express his views with regard to the testimony of witnesses. He may advise the jury in respect of the facts, but the decision of issues of fact must be fairly left to the jury. Patton v. United States, 281 U.S. 276, 288, 50 S.Ct. 253, 74 L.Ed. 854, 70 A.L.R. 263; Quercia v. United States, 289 U.S. 466, 53 S.Ct. 698, 77 L.Ed. 1321. Although the power of the judge to express an opinion as to the guilt of the defendant exists, it should be exercised cautiously and only in exceptional cases." p. 394, 225.

"Congress did not intend that a person, by reason of a bona fide misunderstanding as to his liability for the tax, as to his duty to make a return, or as to the adequacy of the records he maintained, should become a criminal by his mere failure to measure up to the prescribed standard of conduct." p. 396.

[United States v. Murdock, 290 U.S. 389, 54 S.Ct. 223 (1933)]

#### **State v. District Court of Fourth Judicial Dist. (Apr. 21, 1936)**

"A judgment is defined as a final determination of the rights of the parties. \* \* \* If the "order" has the effect of finally determining the rights of the parties, in other words, disposed of the case finally, it is a "judgment," the "title to the instrument" being not conclusive; it is to be judged by its contents and substance."

[State v. District Court of Fourth Judicial Dist., 57 P.2d. 778 (1936)]

#### **Helvering v. Mitchell (Mar. 7, 1938)**

"Civil procedure is incompatible with the accepted rules and constitutional guaranties governing the trial of criminal prosecutions, and where civil procedure is prescribed for the enforcement of remedial sanctions, those rules and guaranties do not apply. Thus the determination of the facts upon which liability is based may be by an administrative agency instead of a jury, or if the prescribed proceeding is in the form of a civil suit, a verdict may be directed against the defendant; there is no burden upon the Government to prove its case beyond a reasonable doubt, and it may appeal from an adverse decision; furthermore, the defendant has no constitutional right to be confronted with the witnesses against him, or to refuse to testify; and finally, in the civil enforcement of a remedial sanction there can be no double jeopardy."

[Helvering v. Mitchell, 303 U.S. 391, 82 L.Ed. 917 (1938)]

#### **Carriso, Inc. v. United States (Sept. 18, 1939)**

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"An ambiguous pleading must be construed against the pleader."

"The practical interpretation of an ambiguous or doubtful statute by department of government charged with its administration will not be disturbed except for weighty reasons."

"A claim by ship owner for surveyor fees alleged to have been wrongfully exacted by collector of customs was a "claim founded upon law of Congress" within Judicial Code conferring concurrent jurisdiction on federal District Courts with Court of Claims of "all claims not exceeding \$10,000 founded upon the Constitution of the United States or any law of Congress."

"Appellee contends that this is a case sounding in tort, within the meaning of §24(20) of the Judicial Code, 28 U.S.C.A. §41(20), and that, therefore, the District Court had no jurisdiction. This contention, which the District Court upheld, must be rejected. It appears from the complaint that the surveyors' fees in question were exacted of appellant under and pursuant to §4186 of the Revised Statutes and were, in fact, the fees therein prescribed. Appellant's claim is that the fees were exacted, not tortiously, but illegally, in that they were exacted after §4186 had been repealed.

"Thus, in effect, appellant claims that the Collector misconstrued and misapplied §4186, that is to say, construed it as remaining in effect after it had been repealed, and so applied it to appellant; and that, therefore, the fees should be refunded. Such a claim does not sound in tort. It is a claim founded upon a law of Congress, within the meaning of §24(20) of the Judicial Code 28 U.S.C.A. §41(20)." [Cites omitted.]

[Carriso, Inc. v. United States, 106 F.2d. 707 (1939)]

### **Kirkendall v. United States (Mar. 4, 1940)**

"Where the government has illegally received money which is the property of an innocent citizen and the money has gone into the treasury, there arises an "implied contract" on the part of the government to make restitution to the rightful owner under the statute and Court of Claims has jurisdiction to entertain suit therefor. Tucker Act, 24 Stat. 505."

"An action will lie whenever the United States has received money which is the property of the plaintiff and which the defendant is obligated by natural justice and equity to return, the form of the indebtedness or the mode in which it was incurred being immaterial. Tucker Act, 24 Stat. 505."

"Where the money or property of an innocent person has gone into the coffers of the nation by means of a fraud to which nation's agent was a party, such money or property cannot be held by the nation against the claim of the wronged and injured party. Tucker Act, 24 Stat. 505."

[Kirkendall v. United States, 31 F.Supp. 766 (1940)]

### **United States v. Kales (Dec. 8, 1941)**

"The right of action thus continued is identical with that which existed before Congress had acted. Notwithstanding the provision for indemnifying the collector and protecting him from execution, the nature and extent of the right asserted and the measure of the recovery remain the same. It was payment to the collector which gave rise to the suit against him and limited the amount of the recovery. The judgment against the collector is a personal judgment, to which the United States is a stranger except as it has obligated itself to pay it.

"While the statutes have for most practical purposes reduced the personal liability of the collector to a fiction, the course of the legislation indicates clearly enough that it is a fiction intended to be acted upon to the extent that the right to maintain the suit and its incidents, until judgment rendered, are to be left undisturbed. Among its incidents are the right to a jury trial, which is not available in suits against the United States."

"By no possibility could the respondent in the suit brought against Collector Woodworth in 1925 recover taxes paid to Collector Grogan in 1920, which she demands here. Recovery from one collector of the payment to him does not bar recovery on the different cause of action arising upon payment to the other, even though the two collections are for taxes arising out of the same transaction. The right to pursue the common law action against the collector is too deeply imbedded in the statutes and judicial decisions of the United States to admit of so radical a departure from its traditional use and consequences as the Government now urges, without further Congressional action."

[United States v. Kales, 314 U.S. 186, 62 S.Ct. 214, 86 L.Ed. 132 (1941)]

### **Ross Packing Co. v. United States (Jan. 20, 1942)**

"The purpose of the Tucker Act was to give the District Courts the jurisdiction, previously vested in the Court of Claims, to hear cases against the government involving sums not exceeding \$10,000."

An employer's action against the government to recover back moneys paid the Federal Treasury under an order of the National Labor Relations Board directing payment of an amount representing WPA earnings by a discharged employee

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ordered reinstated, the action being brought after a decision by the Supreme Court that such an order was illegal, was authorized by the Tucker Act providing for cases "founded upon any law of Congress," though neither the National Labor Relations Act nor any general statute provides for such refunding."

.. the well-established rule that courts will not set aside compromises entered into to effect the settlement of litigation."

"On numerous occasions, the Supreme Court has quoted with approval the following breakdown of the Tucker Act written by Mr. Justice Brown in *Dooley v. United States*, 182 U.S. 222, 21 S.Ct. 762, 763, 45 L.Ed. 1074:

""The 1st section evidently contemplates four distinct classes of cases:

- (1) Those founded upon the Constitution or any law of Congress, with an exception of pension cases; (2) cases founded upon a regulation of an executive department;
- (3) cases of contract, express or implied, with the government;
- (4) actions for damages, liquidated or unliquidated, in cases not sounding in tort. The words 'not sounding in tort' are in terms referable only to the fourth class of cases."

"There can be no doubt as to the similarity between the Carriso case and this one. In each the Government received money to which it was not entitled. There, the official misconstrued the law by construing it to be in effect after it had been repealed. Here, the Board misconstrued the law by construing that it had power to inflict a penalty on the plaintiff. In neither case was there any compulsion brought upon the plaintiff to make payment except the necessity of complying with an order of a legally constituted government official or agency. In each case the act of the government's agent was illegal. Clearly, if the acts of the Collector in the Carriso case were not tortious, then the action of the Board here was not tortious. There can be no essential difference between an act which is unauthorized because the power to do it has been repealed and one which is unauthorized because such power was not given by the law in the first place.

"There is one difference in the facts of the two cases. In the Carriso case, there is a statute, 18 U.S.C.A. §643, which makes specific provision for the refunding of exactions illegally imposed by the Collector of Customs. Authority therefor is given to the Secretary of the Treasury. There is no provision in the National Labor Relations Act for such refunding. Nor is there any general statute which is available for that purpose. The basic question in this case is whether the absence of such a provision or statute should prevent plaintiff's recovery under the Tucker Act. The answer to that question must come from determining what is meant by the words "founded upon \* \* \* any law of Congress." Do they refer to the substantive portion of the laws, the misconstruction of which resulted in the illegal exaction? Or do they mean that, in addition to that, there must be either a provision in the same law or a provision in some general law showing congressional intent that there should be a refunding of the illegal exaction?

"Of the five cases cited in the Carriso decision, two show no indication that the court saw any need for a remedial statute on which to base its conclusion that the Tucker Act was available. In *Dooley v. United States*, supra, the action was to recover duties illegally exacted upon imports into Porto Rico [sic] after the signing of the treaty of peace. There was nothing to indicate the consideration of any refunding statute. Likewise, in *United States v. Emery, Bird, Thayer Realty Co.*, supra, there was no provision for a refund. In that opinion, the following language by Justice Holmes is of interest [237 U.S. 28, 35 S.Ct. 500, 59 L.Ed. 825]: "However gradually the result may have been approached in the earlier cases it now has become accepted law that claims like the present are 'founded upon' the revenue law. The argument that there is a distinction between claims 'arising under' (Judicial Code, §24, First) and those 'founded upon' (Id. §24, Twentieth), a law of the United States, rests on the inadmissible premise that the great act of justice embodied in the jurisdiction of the Court of Claims is to be construed strictly and read with an adverse eye.

"The other three cases, *United States v. Hvoslef*, supra; *United States v. Compagnie Generale Transatlantique*, supra; and *Christie-Street Commission Co. v. United States*, supra, all refer to provisions for the refunding of sums illegally collected. In the *Compagnie Generale Transatlantique* case there is definite indication that it is upon this statute that the court rested its conclusion that the action was founded on a law of Congress.

"The *Christie-Street Commission Co.* decision, however, definitely supports the opposite view. In that opinion, Judge Sanborn points out specifically that the authorities submitted by the Government, as they do in the case here, "fail to consider the real question in this case--whether such claims are of the first class \* \* \* claims founded on the Constitution or upon a law of Congress--and are devoted exclusively to the discussion of the issue whether or not they fall within the third class, in the class of claims founded upon any contract, express or implied, with the government." [136 F. 329.] Further in the opinion, this precise statement is made: "The demurrer in the case at bar admits that the taxes which are the subject of this action were illegally exacted from the plaintiff by virtue of the war revenue law of 1898, misconstrued by the collector of internal revenue. The claim to recover back these taxes was therefore founded upon, and its validity is conditioned by, that law."

"Any doubt I may have upon this question is foreclosed in the Ninth Circuit by the manner in which the provision of the revenue act providing for refunds is disposed of in the Carriso decision. In that case, the Government urged that the refunding statute afforded an exclusive remedy. The court answered the argument by saying, "It does not follow, however, that this was appellant's only remedy. Long before the *administrative* remedy was provided, Congress had, by §1 of the

Act of February 24, 1855, c. 122, 10 Stat. 612, now embodied in §145 (1) of the Judicial Code, 28 U.S.C.A. §250 (1), provided a *judicial* remedy in such cases. That remedy was by suit or action in the Court of Claims, which had, and still has, jurisdiction to hear and determine claims such as appellant's. That jurisdiction was not impaired or in anywise affected by §26 of the Act of June 26, 1884, supra. By §2 of the Act of March 3, 1887, c. 359, 24 Stat. 505, now embodied in §24 (20) of the Judicial Code, 28 U.S.C.A. §41 (20), supra, concurrent jurisdiction of claims such as appellant's was vested in the district courts."

"Since the court thus clearly indicated that it was not considering the refunding statute as the Act of Congress upon which the appellant's cause of action was founded, it logically follows that it must have accepted the repealed statute as the basis of appellant's claim. That being true, the decision in the Carriso case is controlling here and defendant's motions must be denied." [Brackets original except for [sic]]

[Ross Packing Co. v. United States, 42 F.Supp. 932 (1942)]

#### **Yakus v. United States (Mar. 27, 1944)**

"The Constitution does not deny to Congress the necessary resources of flexibility and practicality to perform its function."

"The denial of a right to a restraining order or interlocutory injunction to one who has failed to apply for available administrative relief, not shown to be inadequate, is not a denial of "due process of law."

"The award of an interlocutory injunction by courts of equity is not a matter of right, even though irreparable injury may otherwise result to the plaintiff."

"Even in suits in which only private interests are involved, the award of an interlocutory injunction is a matter of sound judicial discretion, in the exercise of which the court balances the conveniences of the parties and possible injuries to them according as they may be affected by the granting or withholding of the injunction."

"Equity court will avoid inconveniences and injuries to parties so far as may be, by attaching conditions to award of an interlocutory injunction."

"Where an injunction is asked which will adversely affect a public interest for whose impairment, even temporarily, an injunction bond cannot compensate, the court may in the public interest withhold relief until a final determination of the rights of the parties, though the postponement may be burdensome to the plaintiff."

"There is no constitutional requirement that test of validity of administrative regulation be made in one tribunal rather than in another, so long as there is an opportunity to be heard and for judicial review which satisfies the demands of due process."

[Yakus v. United States, 321 U.S. 414, 64 S.Ct. 660 (1944)]

#### **Bell v. Hood (Apr. 1, 1946)**

"Before deciding that there is no jurisdiction, because the action does not involve a "controversy arising under Constitution or laws of the United States", the court must look to the way the complaint is drawn to see if it claims a right to recover under the Constitution and laws of the United States, for to that extent **the party who brings a suit is master to decide what law he will rely upon and does determine whether he will bring a suit arising thereunder.** Jud.Code §24(1), 28 U.S.C.A. §41(1)."

' ... the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction. Jud.Code §24(1), 28 U.S.C.A. §41(1)."

"Whether the complaint states a cause of action on which relief can be granted is a question of law and, just as issues of fact, it must be decided after and not before the court has assumed jurisdiction over the controversy. Jud.Code §24(1), 28 U.S.C.A. §41(1)."

"Where the alleged violations of the Fourth and Fifth Amendments by defendants formed the sole basis of relief sought, and, if the allegations had any foundation in truth, plaintiff's legal right had been violated, the court could not dismiss the action for want of jurisdiction on ground that the cause of action was patently without merit. Jud.Code §24(1), 28 U.S.C.A. §41(1); U.S.C.A.Const.Amend. 4,5."

[Bell v. Hood, 327 U.S. 678, 66 S.Ct. 773 (1946)]

#### **Stuart v. Chinese Chamber of Commerce of Phoenix (June 15, 1948)**

"The United States, we have held, cannot, as against the claim of an innocent party, hold his money which has gone into its treasury by means of fraud of its agent." [Citing Bull v. United States, 55 S.Ct. 695, 295 U.S. 247 (1935).]

"The appellees could not have maintained a suit for refund as could a taxpayer from whom a tax had been illegally

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collected; their only recourse was to bring suit to recover possession of the property of which they claimed to be owners."

"In *United States v. Kales*, 314 U.S. 186, 197, 62 S.Ct. 214, 219, 86 L.Ed. 132, the Supreme Court said:

"But we think these contentions disregard the statutory scheme which has been set up for the recovery from an internal revenue collector, of taxes which he had unlawfully collected \* \* \* Originally payment under protest to an internal revenue collector of illegally exacted taxes gave rise to a common law cause of action against the collector for restitution of the overpayment. \* \* \* By the protest the collector was informed of the contention of the taxpayer and was thus precluded from relieving himself, by payment into the Treasury of the moneys collected, from liability-loan to make restitution."  
[*Stuart v. Chinese Chamber of Commerce of Phoenix*, 168 F.2d. 712 (1948)]

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#### **Pon v. United States (May 25, 1948)**

"The defendant went to trial on his plea of not guilty without objecting to the jurisdiction of the court over his person and thereby waived such objection."

"While the competency of any court to adjudicate the subject matter may always be questioned, jurisdiction of the person, if not challenged upon appearance, is equivalent to consent."

[*Pon v. United States*, 168 F.2d. 373 (1948)]

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#### **Cuoio v. Koseris (Nov. 3, 1948)**

"An asserted telephone conversation in which judge orally granted defendant's attorney further time for filing answer was not recognizable "order" effective to grant further time, and hence did not warrant setting aside default."

"Oral conversations over the telephone or on the street between court and counsel are not orders."

[*Cuoio v. Koseris*, 200 P.2d. 359 (1948)]

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#### **Raines v. Damon (Jan. 26, 1949)**

"[A] trial court upon its own motion has jurisdiction to correct mistakes in its orders and records which are not actually the result of the exercise of judgment."

"While the minute order was not the judgment or decision of the court it may be considered as evidence of the intent of the court as to the decision, findings and judgment he intended ultimately to make."

[*Raines v. Damon*, 201 P.2d. 886 (1949)]

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#### **Haigler v. United States (Feb. 9, 1949)**

"We have said that where, as here, motive or bad purpose is an essential element of the offense charged, the accused may not only directly testify that he had no such motive or purpose, but he may, within rational rights, "buttress such statement with testimony of relevant circumstances, including conversations had with third persons or statements made by them, tending to support his statement \* \* \*."

[*Haigler v. United States*, 172 F.2d. 986 (1949)]

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#### **Jablon v. Henneberger (Apr. 22, 1949)**

"Section 1003 of the Code of Civil Procedure provides: "Every direction of a court, judge, or justice, made or entered in writing, and not included in a judgment, is denominated an order.""

[*Jablon v. Henneberger*, 205 P.2d. 1 (1949)]

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#### **United States v. Interstate Commerce Commission (June 20, 1949)**

"An action brought by the United States to set aside the Commission's order was dismissed by a district court, composed of three judges, on the theory that the government could not maintain a suit against itself, and also that a three-judge court was without jurisdiction of the suit."

"Congress is constitutionally free to make an administrative determination final and immune from judicial review where it gives the aggrieved party a right to elect between administrative or judicial relief."

[*United States v. Interstate Commerce Commission*, 337 U.S. 426, 69 S.Ct. 1410, 93 L.Ed. 1451 (1949)]



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**Bushard v. Washoe County (Mar. 15, 1951)**

"Conclusions of law are not part of the judgment roll on appeal."

"Minutes and opinion and decision of the trial court are not a part of the judgment roll on appeal."

"Documents, papers or exhibits which are not settled or allowed by the court or by stipulation are not a part of the bill of exceptions."

"Where minute order of decision of trial court is a variance with formal judgment filed thereafter, the formal judgment must prevail."

"Solemn decree of court bearing signature of the judge thereof is the judgment of the court until changed by appropriate proceedings instituted therefor."

"Time for filing motions for new trial began from date when written notice of decision was served on losing parties."

[Bushard v. Washoe County, 229 P.2d. 156 (1951)]

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**Raffaele v. Granger (May 14, 1952)**

"Under Pennsylvania Law husband and wife who created bank accounts in their joint names "as tenants by the entireties" had a unity of ownership as if they were a single personality and interest of neither was severable except by consent of both, and Collector of Internal Revenue, in order to collect taxes allegedly owing by husband alone, could not issue a distraint against such bank accounts under statute conferring upon Collector remedy of distraint upon bank account of a person who neglects or refuses to pay taxes."

"United States cannot take property from an innocent spouse to satisfy tax obligation of delinquent spouse."

"Statute prohibiting suit to restrain collection of tax does not prevent judicial interposition to prevent Collector of Internal Revenue from taking property of one person to satisfy tax obligation of another."

"Statute prohibiting suit to restrain collection of tax did not prevent Federal District Court from quashing warrant of distraint on petition of husband and wife where Collector of Internal Revenue, in order to collect taxes allegedly owing by husband alone, issued warrant of distraint against bank accounts created by husband and wife, as tenants by the entireties and where interest of neither husband nor wife was severable under applicable State law."

""Distraint" is a summary extra judicial remedy having its origin in the common law under which it consisted of seizure and holding of personal property by individual action without intervention of legal process for purpose of compelling payment of debt."

"Relief of one aggrieved by levy of distraint, at common law, was by action of replevin against distrainor."

"Property taken or detained under any revenue law, unlike property seized at common law, is not repleviable but is deemed to be in custody of the law and is subject to orders and decrees of courts of United States having jurisdiction thereof."

"Court having jurisdiction of bank accounts against Collector of Internal Revenue issued distraint, purportedly under statute conferring upon Collector the remedy of distraint upon bank account of a person who neglects or refuses to pay taxes, was Federal District Court for District wherein bank accounts were situated and distraint occurred."

"Where due process of law was satisfied by notice to interested parties and opportunity to be heard, Federal District Court could proceed summarily to adjudicate rightfulness of action of Collector of Internal Revenue in issuing a distraint purportedly pursuant to statute conferring upon Collector remedy of distraint upon bank account of a person who neglects or refuses to pay taxes, and plenary civil suit was not necessary to enable court to exercise jurisdiction of bank accounts against distraint was issued."

"He who would employ distraint as a special extra judicial remedy and form of self-help must justify his seizure on basis of title as it is and not as he thinks in equity it should be."

"On petition to quash warrant of distraint issued by Collector of Internal Revenue against bank accounts created by husband and wife, as tenants by the entireties, to collect taxes allegedly owing by husband alone, Collector was not entitled to justify levy upon property of wife for taxes of husband by proving that into pre-existing bank accounts owned by husband and wife as tenants by the entireties the husband deposited personal funds after tax levy against husband's personalty became imminent."

[Raffaele v. Granger, 196 F.2d. 620 (3rd Cir. 1952)]

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**In re Brokol Manufacturing Company (Apr. 14, 1955)**

*"Once it is established that the claim is not colorable nor frivolous, the claimant has the right to have the merits of his claim passed on in a plenary suit and not summarily."* [Quoting *Cline v. Kaplan*, 1944, 323 U.S. 97, 65 S.Ct. 155, 89 L.Ed. 97; italics original.]

[In re Brokol Manufacturing Company, 221 F.2d. 640 (1955)]

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**Homan Mfg. Co. v. Long (Feb. 4, 1957)**

"Government official has power to abate an income tax assessment even after the levy has been made. 26 U.S.C.A. (I.R.C.1954) §6861(g)."

"Where complainant shows that, in addition to illegality of an exaction in guise of a tax, there exists special and extraordinary circumstances sufficient to bring case within some acknowledged head of equity jurisprudence, action may be maintained to enjoin' the collector."

"Summary judgment proceeding is not a substitute for a trial but is rather a judicial search for determining whether genuine issues exist as to material facts."

"Trial court cannot try factual issues on motion for summary judgment."

"The Code does provide interim relief for a taxpayer if he is able to give a bond under §6863 and, of course, a review of the assessment is available in the tax court."

"Of course saddling an exempt taxpayer with a jeopardy assessment, for example, would be arbitrary."

"While a jurisdictional challenge meets us at the outset it can be resolved only by determining whether plaintiff's case qualifies for relief under some head of equity jurisdiction."

"For the Miller case principles to become operative "special and extraordinary circumstances" must combine with illegality."

"Summary judgment procedure enables district judges to nip in the bud litigation which would wilt, if the case went forward to a trial on the merits, because there was no genuine issue as to any material fact."

"A summary judgment proceeding is not a substitute for a trial, but rather a judicial search for determining whether genuine issues exist as to material facts. The lower court cannot try out factual issues on a motion for summary judgment because once such an issue is found the court's function on that aspect of the case ends. There is statutory power to make a jeopardy assessment and levy in this case."

"We are sending the case back without further comment on the issue or issues of fact necessitating our reversal. When litigants are to proceed again at the trial level with a cause after our review it is essential that the case arrive below without furnishing fuel to fire up preconceived notions on the fact issues that will need disposition at a trial on the merits."

[Homan Mfg. Co. v. Long, 242 F.2d. 645 (1957)]

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**Seattle Association of Credit Men v. United States (Feb. 7, 1957)**

"The statute providing that United States may be named as party in civil action in federal District Court having jurisdiction thereof to quiet title or foreclose mortgage or other lien upon property on which United States claims mortgage or other lien is not limited to judicial sales and includes action by trustee for benefit of creditors to quiet title to funds on which District Director of Internal Revenue has levied."

"The statute providing that United States may be named party in civil action in United States District Court having jurisdiction of subject matter, to quiet title or to foreclose mortgage or other lien upon property on which United States has mortgage or claims lien, has for its purpose waiving sovereign immunity, presupposes that court in which suit is brought has jurisdiction, and does not confer jurisdiction to entertain quiet title actions."

"The United States District Court having jurisdiction over property on which District Director of Internal Revenue has levied is the District Court serving the geographical area wherein the property is situated."

"We are of the view that the consent to sue the United States, conferred by §2410, is not limited to judicial sales, and does include quiet title actions such as this. This section, however, does not confer jurisdiction upon district courts to entertain quiet title actions. As we pointed out in Wells v. Long, 9 Cir., 162 F.2d. 842, at page 844, the limited purpose of §2410 is to waive sovereign immunity from suit, and "presupposes that the court in which such suit is pending or brought has jurisdiction thereof on grounds independent of the statute."

"In its opening brief in this court, appellant relies not alone upon §2410 to establish jurisdiction, but also cites 28 U.S.C.A. §§1340, 1346(a) (2), and 2463. In its reply brief, appellant moves for leave to amend its complaint to include in its jurisdictional statement a reference to these additional statutes."

"It is provided in 28 U.S.C.A. §1653 that defective allegations of jurisdiction may be amended, upon terms, in either the trial or appellate court. We accordingly grant leave to amend the complaint in the manner requested, and will regard the complaint as so amended."

"We hold that, under the allegations of the complaint, and pursuant to §2463, the district court had jurisdiction to entertain this suit. As before indicated, the district court was not afforded an opportunity to consider the jurisdictional statute *which* we have found to be decisive."

[Seattle Association of Credit Men v. United States, 240 F.2d. 906 (1957)]

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**Hoffman v. Stevens (Sept. 23, 1959)**

"Depriving one of property without just compensation? is a denial of due process of law."

The measure of damages where there has been actual taking of land by state of Pennsylvania is difference in market value of whole tract of which land taken is a part before the taking and market value of land remaining after the taking, as affected by the taking."

To ascertain damages accruing to an owner from appropriation of his land for consequential injury that may follow from such appropriation, usual and ordinary standard under Pennsylvania law is difference in market before and after the taking and estimates as to injury to particular uses affected by the taking are not recoverable or admissible as distinct items of damages, but such losses may become useful as elements bearing on market value before and after the appropriation."

"Fundamental right guaranteed by Fourteenth Amendment to federal Constitution is that owner of property shall not be deprived of market value of his property under rule of law which makes it impossible for him to obtain just compensation."

"Where state officials, purporting to act under state authority, invade rights secured by federal Constitution, they are subject to process of federal courts in order that persons injured may have appropriate relief."

"Purpose of federal statute providing that any highway department which submits plans for a federal-aid highway project shall certify to Secretary that it has held public hearings or has afforded opportunity for such hearings and has considered economic effects of such a location was to insure wise and fair use of federal funds, and under Pennsylvania law and policy, absent federal aid, such hearings are not required to be held."

"Power of eminent domain of a state is an attribute of sovereignty and it cannot be surrendered, and if attempted to be contracted away, it may be resumed at will, and it is not dependent upon any specific grant, and the United States has no right to interfere by any of its departments with the exercise of such power."

"Where intended use of land is public, necessity and expediency of taking may be determined by an agency of state and in such mode as state may designate, and a hearing thereon is not essential to due process."

"Whether particular property is needed for public use is a legislative or executive, not a judicial, question."

[Hoffman v. Stevens, 177 F.Supp. 808 (1959)]

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**Steiner v. Nelson (Oct. 16, 1958)**

"Notice is a condition precedent, its absence invalidates assessment, and waiver not accepted by Commissioner personally did not relieve taxing officials of their statutory obligation to give notice before assessment and collection, and in such situation the federal District Court could, and properly did, bring its equity powers into play, despite statute."

"Point raised for first time on appeal could be disregarded."

[Steiner v. Nelson, 259 F.2d. 853 (1958)]

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**Chappell v. United States (Aug. 11, 1959)**

"Under these circumstances it is clear that the giving of the instruction quoted above, in which after referring to the subject of criminal intent, the court said that "every person is presumed to intend the consequences of his own voluntary and deliberate acts" was likely to mislead the jury. In Bloch v. United States, 9 Cir., 221 F.2d. 786, 788, we said of a similar instruction that it was error which was "fundamental and goes to the very essence of the case." Precisely applicable here is the language of the Supreme Court in Morissette v. United States, supra, where the court had under consideration the same §641 which we deal with here. Said the Court (342 U.S. at 275, 72 S.Ct. at page 256): "We think presumptive intent has no place in this case. A conclusive presumption which testimony could not overthrow would effectively eliminate intent as an ingredient of the offense. A presumption which would permit but not require the jury to assume intent from an isolated fact would prejudice a conclusion which the jury should reach of its own violation. A presumption which would permit the jury to make an assumption which all the evidence considered together does not logically establish would give to a proven fact an artificial and fictional effect. In either case, this presumption would conflict with the overriding presumption of innocence with which the law endows the accused and which extends to every element of the crime. Such incriminating presumptions are not to be improvised by the judiciary.""

[Chappell v. United States, 274 F.2d. 174 (1959)]

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**State v. James (June 12, 1961)**

""A motion is an application made to a court or judge for the purpose of obtaining a rule or order directing some act to

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be done in favor of the applicant." 37 Am.Jur. 502 §3. 60 C.J.S. Motions and Orders §§1, 3, pp. 4, 7. Defendant's motion sought an order of the court falling short of the dignity of a judgment. *Ewing v. Vernon County*, 216 Mo. 681, 116 S.W. 518, 519(3)."

[*State v. James*, 347 S.W.2d. 211 (1961)]

### **Thompson v. Hodge (June 14, 1961)**

"The general rule is that, with certain exceptions with which we are not here concerned, a final judgment becomes fixed and beyond the reach of the trial court to change, amend, or modify after the expiration of thirty days [cites omitted]; whereas interlocutory judgments are presumed to remain in the breast of the court, are not final, and are therefore usually subject to alteration."

"The apparent conflict may be due partly to nomenclature and the application of too-general terms, so that a judgment is classified as all white or all black. Actually the very term "interlocutory judgment" is a technical misnomer, for if it is not final as the issues determined it is not a "judgment" at all, merely an interlocutory order."

[*Thompson v. Hodge*, 348 S.W.2d. 11 (1961)]

### **Perez v. United States (Dec. 21, 1961)**

"It is elementary law that the defendant in a criminal case is entitled to have presented instructions relating to a theory of defense for which there is any foundation in the evidence. *Tatum v. United States*, 190 F.2d. 612 (D.C.Cir.1951). A charge is erroneous which ignores a claimed defense with such a foundation. *Hyde v. United States*, 15 F.2d. 816 (4th Cir.1926). The charge to which he is entitled, upon proper request, in such circumstances is one which precisely and specifically, rather than merely generally or abstractly, points to his theory of defense, Cf. *United States v. Indiana Trailer Corp.*, 226 F.2d. 595, 598 (7th Cir. 1955); *Apel v. United States*, 247 F.2d. 277 (8th Cir. 1951), and one which does not unduly emphasize the theory of the prosecution, thereby deemphasizing proportionally the defendant's theory. It is also fundamental to our jurisprudence that instructions to the jury must be consistent with each other, and not misleading to the jurors. *Smith v. United States*, 230 F.2d. 935 (6th Cir. 1956). The fact that one instruction is correct does not cure the error in giving another that is inconsistent with it. *Smith v. United States*, supra. Most important, in no condition of proof is it permissible to leave with the jury the idea that it had become the duty of the defendant to establish his innocence to obtain an acquittal. See e. g., *Ezzard v. United States*, 7 F.2d. 808 (8th Cir. 1925)."

[*Perez v. United States*, 297 F.2d. 12 (1961)]

### **Bartell v. Riddell (Feb. 5, 1962)**

"Federal court had jurisdiction of action which was essentially to determine title to certain stock seized and sold by United States under tax laws as between plaintiff and conflicting claimants, and incidentally for injunctive relief against Director of Internal Revenue and United States, by statute respecting actions affecting property on which United States has lien, consented to become party to action."

"Statute authorizing United States to be named as party in actions affecting property on which United States has lien does not of itself confer jurisdiction on district courts but presupposes existence of some independent ground of federal jurisdiction, and where independent basis of federal jurisdiction exists statute constitutes waiver of sovereign immunity"

"Statute making property taken under revenue laws not repleviable does not presuppose independent ground of federal jurisdiction but is in itself grant of jurisdiction in appropriate cases, and where property is taken or detained under any revenue law district court within whose district property is located has jurisdiction to decide claims of title and award possession of seized property to rightful owner."

"Where property is seized and detained under tax laws, district courts have jurisdiction over actions brought by taxpayer contesting propriety of levy or by third persons claiming that they and not delinquent taxpayer are rightful owners of property seized."

**"Revenue laws are code or system in regulation of tax assessment collection and relate to taxpayers and not to nontaxpayers."** [Bold added.]

"Statute requiring notice to taxpayer on public sale of property seized by government under tax law is intended to protect taxpayer and failure to comply gives taxpayer right to avoid sale."

"Complaint of purchaser at first government sale of property seized for tax liability against purchaser at second government sale of same property and other defendants to establish first purchaser's right to conveyance of property and to prevent conveyance to second purchaser was sufficient to state a claim upon which relief could be granted."

"The court is of the opinion that jurisdiction in such a case may be predicated on 28 U.S.C. §1340 (formerly 28 U.S.C.

§41(5)) and 28 U.S.C. §2463, and that the United States, or its duly authorized agent, has consented to become a party to an action of this type by virtue of 28 U.S.C. §2410."

"It is well settled in this Circuit that 28 U.S.C. §2410 does not, of itself, confer jurisdiction upon the district courts, but, rather, presupposes the existence of some independent ground of federal jurisdiction. (*Wells v. Long*, 162 F.2d. 842, 844 (9 Cir. 1947); *Seattle Association of Credit Men v. United States*, 240 F.2d. 906, 908 (9 Cir. 1957); *United States v. Coson*, 286 F.2d. 453, 455 (9 Cir. 1961); *Gerth v. United States*, 132 F.Supp. 894, 896 (D.C.S.C.Cal. 1955); *Coson v. United States*, 169 F.Supp. 671, 672-673 (D.C.S.C.Cal. 1958); *Jones v. United States*, 179 F.Supp. 456, 458 (D.C.S.C.Cal. 1959).) Where, however, an independent basis of federal jurisdiction exists, Section 2410 constitutes a waiver of sovereign immunity by the United States and a consent to be sued in quiet title actions arising out of tax sales." [*Bartell v. Riddell*, 202 F.Supp. 70 (1962)]

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### **Baker v. Carr (Mar. 26, 1962)**

"Court cannot reject as "no law suit" a bona fide controversy as to whether some action denominated "political" exceeds constitutional authority."  
[*Baker v. Carr*, 369 U.S. 186, 82 S.Ct. 691 (1962)]

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### **Russell v. United States (May 21, 1962)**

"It is an elementary principle of criminal pleading, that where the definition of an offense, whether it be at common law or by statute, includes generic terms, it is not sufficient that the indictment shall charge the offense in the generic terms as in the definition; but it must state the species,--it must descend to particulars." *United States v. Cruikshank*, 92 U.S. 542, 558, 23 L.Ed. 588, 593. An indictment not framed to apprise the defendant with reasonable certainty, of the nature of the accusation against him . . . is defective, although it may follow the language of the statute." *United States v. Simmons*, 96 U.S. 360, 362, 24 L.Ed. 819, 820. "In an indictment upon a statute, it is not sufficient to set forth the offense in the words of the statute, unless those words of themselves fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished; ..." *United States v. Carll*, 105 U.S. 611, 612, 26 L.Ed. 1135. "Undoubtedly the language of the statute may be used in the general description of an offense, but it must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offense, coming under the general description, with which he is charged." *United States v. Hess*, 124 U.S. 483, 487, 31 L.Ed. 516, 518, 8 S.Ct. 571. [Cites omitted.] That these basic principles of fundamental fairness retain their full vitality under modern concepts of pleading, and specifically under Rule 7(c) of the Federal Rules of Criminal Procedure, is illustrated by many recent federal decisions."

[*Russell v. United States*, 369 U.S. 749, 82 S.Ct. 1038, 8 L.Ed.2d. 240 (1962)]

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### **De Masters v. Arend (Feb. 26, 1963)**

"Where Internal Revenue Service personnel purported to act under provision of Internal Revenue Code in issuing summons to bank to investigate taxpayer account, and taxpayers challenged authority under that section on ground that inquiry was prohibited by another provision of code as well as by the Fourth Amendment, since taxpayers' suit to restrain such investigation involved a substantial controversy as to construction and effect of sections of the code, such action, if otherwise maintainable, fell within jurisdictional grant of statute giving district courts original jurisdiction of civil action arising under an act of Congress providing for internal revenue."

"The statute giving district courts original jurisdiction of civil action arising under an act of Congress providing for internal revenue is not a consent by the United States to suits against it, but if Internal Revenue Service employee were prohibited by provision of Internal Revenue Code or the Fourth Amendment from initiating inquiry regarding taxpayers' income tax liability for years as to which recovery would be barred by statute of limitations in absence of fraud, or the Fourth Amendment, a suit to restrain their unlawful conduct would not be barred by the doctrine of sovereign immunity."

"Where Internal Revenue Service employees commenced investigation of possible income tax liability for years as to which recovery would be barred by statute of limitations in absence of fraud, taxpayers' action to enjoin such investigation was neither one for declaratory judgment "with respect to federal taxes" precluded by statute, nor an action "for the purpose of restraining the assessment or collection of any tax" precluded by another statute."

"Internal Revenue Service employees' conduct in causing a summons to issue directing a bank to produce records pertaining to taxpayers' transactions with the bank during certain years did not violate the Fourth Amendment as to taxpayers, since even assuming that administrative subpoena directed to a corporation may constitute an "unreasonable search and seizure," the right violated would be that of the bank which waived any right it might have had to resist

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### ***Sovereignty and Freedom Points and Authorities***



production."

"Fourth Amendment rights do not depend upon nice distinctions of property law."

"The provision of Internal Revenue Code that "No taxpayer shall be subjected to unnecessary examination or investigations" constitutes a limitation on power of tax collecting authorities, and if Internal Revenue Service employees violated such statutory limitation upon their power, taxpayers' suit to restrain such investigation was maintainable."

"The grant of power to Commissioner of Internal Revenue to make investigations concerning persons who might be liable to pay tax and authorizing examination of records, etc. are to be liberally construed in recognition of the vital public purposes which they serve, and the exception stated in provision prohibiting unnecessary examination or investigations is not to be read so broadly as to defeat them."

"Under provision of Internal Revenue Code that no taxpayer shall be subjected to unnecessary examination or investigations, an investigation cannot be said to be "unnecessary" if it may contribute to the accomplishment of any purposes for which commissioner is authorized by statute to make inquiry, and, since these include making a return where none has been made and ascertaining the correctness of any that have, taxpayer will rarely be able to discharge his burden of showing that first investigation of a particular tax year is unnecessary."

"In providing that "No taxpayer shall be subjected to unnecessary examination or investigations" Congress was primarily concerned with protecting taxpayers from examinations which were "unnecessary" in sense that they followed prior investigations of the same matter which had established that there was no basis for liability, and the statutory stricture was designed to prevent uselessly repetitive procedures and investigations not relevant to possible tax liability, not to nullify preceding sections of that code."

"The investigative power granted administrative agencies is inquisitorial in nature; its exercise does not depend upon a showing of probable cause to believe that a violation of law has occurred."

"The power of inquiry vested in Commissioner of Internal Revenue does not depend upon a showing of probable cause to believe that a violation of law has occurred, and he may as a general rule check to determine whether a return should have been filed where one was not, or whether more tax was due than was actually paid, without first showing that there was probable cause, or any cause at all, to believe that these things were true."

"The Bureau of Internal Revenue, like other administrative agencies charged with enforcement of law, can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not."

"The power of Commissioner of Internal Revenue to investigate for purpose of "determining the liability of any person for any internal revenue tax" includes liability which may be assessed on a finding of fraud, and even if no fraud exists, investigation of barred years' may be useful or even essential to establish a sound starting point for checking accuracy of returns filed in years that remain open, and a preliminary showing of probable cause is not necessary before initiating such investigations."

"The limitations imposed upon Commissioner of Internal Revenue by interdiction of "unnecessary" investigations are essentially the same as those which may preclude judicial enforcement of administrative subpoenas, namely, that he may not act arbitrarily or in excess of his statutory authority, but that does not mean that his inquiry must be limited by forecasts of probable result of investigation."

"In determining right of Internal Revenue Service Employees to investigate possible income tax liability for years as to which recovery would be barred by statute of limitations in absence of fraud, proof that period for assessment absent fraud has expired is relevant to question of whether an investigation is "unnecessary", just as it would be relevant to whether a court should enforce an administrative subpoena."

"If Commissioner of Internal Revenue asserted no purpose other than one which was then barred of accomplishment, or asserted a purpose not authorized by statute, proposed investigation would be "unnecessary" within provision of Internal Revenue Code prohibiting unnecessary investigations and might be enjoined, just as an administrative subpoena issued by Commissioner in such circumstances would be denied judicial enforcement as in excess of his statutory authority."

[De Masters v. Arend, 313 F.2d. 79 (1963)]

### **Perseverance Common School Dist. No. 90 v. Honey (Apr. 25, 1963)**

"Temporary restraining order" or "stay order" is limited in time and is self-dissolving at expiration of time fixed unless continued or extended or converted into injunction pendente lite, whereas "temporary injunction" runs until dissolved by action of court or parties."

"A "temporary restraining order" is an injunction."

"Rights already lost or wrongs already perpetrated cannot ordinarily be corrected by injunction."

[Perseverance Common School Dist. No. 90 v. Honey, Mo.App., 367 S.W.2d. 243 (1963)]

### **Mann v. United States (June 25, 1963)**

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"...When the words, "So unless the contrary appears from the evidence" were introduced, the burden of proof thereupon shifted from the prosecution to the defendant to prove lack of intent. If an inference from a fact or set of facts must be overcome with opposing evidence, then the inference becomes a presumption and places a burden on the accused to overcome that presumption. Such a burden is especially harmful when a person is required to overcome a presumption as to anything subjective, such as intent or willfulness, and a barrier almost impossible to hurdle results."

"Instructions to the jury must be consistent and not misleading. The fact that one instruction is correct does not cure error in giving another inconsistent one. *Perez v. United States*, 5 Cir., 1961, 297 F.2d. 12."

[*Mann v. United States*, 319 F.2d. 404 (1963)]

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#### **United States v. Powell (Nov. 23, 1964)**

"Because of differing views in the circuits on standards Internal Revenue Service must meet to obtain judicial enforcement of its orders, certiorari was granted."

"Government need make no showing of probable cause to suspect fraud for enforcement of Internal Revenue Service administrative summons unless taxpayer raises substantial question that judicial enforcement of summons would be abusive use of court's process, predicated upon more than fact of re-examination and running of statute of limitations on ordinary tax liability."

"Four decisions of lower courts neither represented settled judicial construction of statute nor one which Supreme Court would be justified in presuming Congress by its silence impliedly approved, in view of other decisions."

**"While power of Commissioner of Internal Revenue with respect to administrative summons is derived from different body of statutes than those of other agencies, analogies to other agency situations were not without force when scope of Commissioner's power was called into question."**

"Commissioner of Internal Revenue need not meet any standard of probable cause to obtain enforcement of administrative summons, either before or after limitation on ordinary tax liabilities has expired, but must show that investigation will be conducted pursuant to legitimate purpose, that inquiry may be relevant to the purpose, that the information is in his possession and that administrative steps have been followed."

"At adversary hearing to which taxpayer is entitled before judicial enforcement of administrative summons under Revenue Code is ordered, taxpayer may challenge summons on any appropriate ground."

"Reading the statutes as we do, the Commissioner need not meet any standard of probable cause to obtain enforcement of his summons, either before or after the three-year statute of limitations on ordinary tax liabilities has expired. He must show that the investigation will be conducted pursuant to a legitimate purpose, that the inquiry may be relevant to the purpose, that the information sought is not already within the Commissioner's possession, and that the administrative steps required by the Code have been followed--in particular, that the "Secretary or his delegate," after investigation, has determined the further examination to be necessary and has notified the taxpayer in writing to that effect. This does not make meaningless the adversary hearing to which the taxpayer is entitled before enforcement is ordered. At the hearing he "may challenge the summons on any appropriate ground," *Reisman v. Caplin*, 375 U.S. 440, at 449, 84 S.Ct. at 513. Nor does our reading of the statutes mean that under no circumstances may the court inquire into the underlying reasons for the examination. It is the court's process which is invoked to enforce the administrative summons and a court may not permit its process to be abused. Such an abuse would take place if the summons had been issued for an improper purpose, such as to harass the taxpayer or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation. The burden of showing an abuse of the court's process is on the taxpayer, and it is not met by a mere showing, as was made in this case, that the statute of limitations for ordinary deficiencies has run or that the records in question have already been once examined."

"Mr. Justice DOUGLAS, with whom Mr. Justice STEWART and Mr. Justice GOLDBERG concur, dissenting.

"Congress, by the three-year statute of limitations that bars assessments of tax deficiencies except (so far as relevant here) in case of fraud, 26 U.S.C. §§6501 (a) and (c), has brought into being a "statute of repose" that I would respect more highly than my Brethren. I would respect it by requiring the District Court to be satisfied that the Service is not acting capriciously in reopening the closed tax period. Since the agency must go to the court for process to compel the production of the records for the closed tax period, I would insist that the District Court act in a judicial capacity, free to disagree with the administrative decision unless that minimum standard is met."

"Here we have a congressional "statute of repose" embodied in the three-year statute of limitations. I would make it meaningful by protecting it from invasion by mere administrative *fiat*. Where the limitations period has expired, an examination is presumptively "unnecessary" within the meaning of §7605(b)--a presumption the Service must overcome. That is to say, a re-examination of the taxpayer's records after the three-year period is "unnecessary" within the meaning of §7605(b), unless the District Court is shown something more than mere caprice for believing fraud was practiced on the revenue. Without that minimum safeguard the statutory status of repose becomes rather meaningless."

[*United States v. Powell*, 379 U.S. 48; 85 S.Ct. 248 (1964)]

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#### ***Sovereignty and Freedom Points and Authorities***

**Schoenbaum v. Firstbrook (Mar. 29, 1967)**

"Statements in briefs are not considered as evidence on summary judgment motion and do not controvert evidence submitted by moving parties. Fed. Rules Civ.Proc. rule 56(e), 28 U.S.C.A."

"On summary judgment, as at trial, resolution of factual contentions must be made in favor of party supporting his position with evidence."

"On summary judgment, court is not limited to questions raised by the pleadings."

"Summary judgment may be granted when affidavits in support of motion pierce alleged issues of fact raised by pleadings."

"Parties making accusations of fraud and conspiracy should be prepared to produce evidence as to their validity."

"It is a standard canon of construction that " \* \* \* legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States \* \* \*. It is based on the assumption that Congress is primarily concerned with domestic conditions." *Foley Bros. Inc. v. Filardo*, 336 U.S. 281, 285, 69 S.Ct. 575, 577, 93 L.Ed. 680 (1949); *Blackmer v. United States*, 284 U.S. 421, 436-437, 52 S.Ct. 252, 76 L.Ed. 375 (1932)."

[Schoenbaum v. Firstbrook, 268 F.Supp. 385 (1967)]

**Russell-Vaughn Ford, Inc. v. Rouse (Jan. 11, 1968)**

"It is the refusal, without legal excuse, to deliver a chattel which constitutes a "conversion".

"It has been held by this court that the fact of conversion does not necessarily import an acquisition of property in the defendant. *Howton v. Mathias*, 197 Ala. 457, 73 So. 92, 95. The conversion may consist, not only in an appropriation of the property to one's own use, but in its destruction, *or in exercising dominion over it in exclusion or defiance of plaintiff's right.*"

"We find nothing in our cases which would require the plaintiff to exhaust all possible means of gaining possession of a chattel which is withheld from him by the defendant, after demanding its return. On the contrary, it is the refusal, without legal excuse, to deliver a chattel, which constitutes a conversion."

[Russell-Vaughn Ford, Inc. v. Rouse, 206 So.2d. 371 (1968)]

**Bursten v. United States (May 27, 1968)**

"In *Perez v. United States*, (5 Cir. 1961), we held:

It is elementary law that the defendant in a criminal case is entitled to have presented instructions relating to a theory of defense for which there is any foundation in the evidence. \* \* [sic] A charge is erroneous which ignores a claimed defense with such a foundation. \* \* \* The charge to which he is entitled, upon proper request, in such circumstances is one which precisely and specifically, rather than merely generally or abstractly, points to his theory of defense, \* \* \* and one which does not unduly emphasize the theory of the prosecution, thereby deemphasizing proportionally the defendant's theory." (Citations omitted) (297 F.2d. at 12, 15, 16)"

"\* \* \* If the trial judge evaluates or screens the evidence supporting a proposed defense, and upon such evaluation declines to charge on that defense, he dilutes the defendant's jury trial by removing the issue from the jury's consideration. In effect, the trial judge directs a verdict on that issue against the defendant. This is impermissible.

*Bryan v. United States*, 5 Cir. 1967, 373 F.2d. 403."

"It is well settled that a federal district judge is not relegated to complete silence and inaction during the course of a criminal jury trial. He must, however, be most careful that his interventions are proper, timely, made in a fair effort to clear unanswered issues, and are not prejudicial to defendant. Many federal decisions recognize the power of the judge, within reasonable limits, to comment on the evidence and to express fair opinions. This privilege, however, has been limited to the point where the trial judge is under a strict duty to direct the jury clearly that they are the sole judges of the facts and are not bound by the judge's questions or comments. Matters of fact unmistakably must be left to the jury."

[Bursten v. United States, 395 F.2d. 976 (1968)]

**Horn v. People of California (Sept. 23, 1968)**

"Although defendants were not entitled to dismissal of right on ground that they had discontinued illegal conduct, case might still be dismissed if plaintiff failed to convince court that further relief was needed or that there was not some cognizable danger of recurrent violation."

[Horn v. People of California, 321 F.Supp. 961 (1968)]

**Sovereignty and Freedom Points and Authorities**

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**In re Estate of Callnon (Jan. 20, 1969)**

"An order for a judgment is not a judgment (United Taxpayers Co. v. City & County of San Francisco (1921) 55 Cal. App. 239, 243, 203 P. 120, 121)...."

[In re Estate of Callnon, 74 Cal. Rptr. 250 (1969)]

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**Sewell v. United States (Feb. 24, 1969)**

"Federal criminal rule requiring that challenge to validity of indictment must be made before trial has purpose of preventing unnecessary trials and deterring interruption of a trial on merits for any objection relating to institution and presentation of charge."

"Under Rule 12(b)(2), Fed.R.Crim.P., a motion challenging the validity of the indictment must be made before trial."

[Sewell v. United States, 406 F.2d. 1289 (1969)]

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**Griffin v. Matthews (July 10, 1969)**

"Litigant seeking federal court jurisdiction must plead essential jurisdictional facts, and **has burden of establishing such facts by preponderance of evidence if allegations are challenged by his adversary.**"

"Person's state of mind must be determined by what he does as well as what he says and his entire course of conduct is controlling factor in determining his domicile."

.. Rule 12(h) of the Federal Rules of Civil Procedure requires the Court to dismiss an action whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction."

[Griffin v. Matthews, 310 F.Supp. 341 (1969)]

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**United States v. Moylan (Oct. 15, 1969)**

"We recognize, as appellants urge, the undisputed power of the jury to acquit, even if its verdict is contrary to the law as given by the judge and contrary to evidence. This is a power that must exist as long as we adhere to the general verdict in criminal cases, for the courts cannot search the minds of jurors to find the basis on which they judge. If the jury feels that the law under which the defendant is accused is unjust, or the exigent circumstances justified the actions of the accused, or any reason which appeals to their logic or passion, the jury has power to acquit, and the court must abide by the decision."

[United States v. Moylan, 417 F.2d. 1002 (1969)]

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**United States v. Matosky (Feb. 2, 1970)**

"Rather, the Government has proven its case when it has established beyond a reasonable doubt: that the defendant was required to file a return; that he knew that he was so required; and that he willfully or purposefully, as distinguished from inadvertently, negligently, or mistakenly, failed to file such a return. His reasons for failing to so file are irrelevant under §7203, so long as the above facts are shown. The only good faith defense to a charge of failure to file a required return is one where the defendant alleges "a bona fide misunderstanding as to his liability for the tax, as to his duty to make a return, or as to the adequacy of the records he maintained \* \* \*." United States v. Murdock, 290 U.S. 389, 396, 54 S.Ct. 223, 226, 78 L.Ed. 381 (1933)."

[United States v. Matosky, 421 F.2d. 410 (1970)]

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**In re Winship (Mar. 31, 1970)**

"Expressions in many opinions of this Court indicate that it has long been assumed that proof of a criminal charge beyond a reasonable doubt is constitutionally required. See, for example, Miles v. United States, 103 U.S. 304, 312, 26 L.Ed. 481 (1881); [other cites omitted]. Mr. Justice Frankfurter stated that "tilt is the duty of the Government to establish \* \* \* guilt beyond a reasonable doubt. This notion--basic in our law and rightly one of the boasts of a free society--is a requirement and a safeguard of due process of law in the historic, procedural content of `due process.'" Leland v. Oregon, *supra*, 343 U.S., at 802-803, 72 S.Ct., at 1099 (dissenting opinion). In a similar vein, the Court said in Brinegar v. United States, *supra*, 338 U.S., at 174, 69 S.Ct., at 1310, that "[g]uilt in a criminal case must be proved beyond a reasonable doubt and by evidence confined to that which long experience in the common-law tradition, to some extent embodied in the Constitution, has crystallized into rules of evidence consistent with that standard. These rules are historically grounded

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rights of our system, developed to safeguard men from dubious and unjust convictions, with resulting forfeitures of life, liberty, and property".

"No man should be deprived of his life under the forms of law unless the jurors who try him are able, upon their consciences, to say that the evidence before them \* \* \* is sufficient to show beyond a reasonable doubt the existence of every fact necessary to constitute the crime charged." p. 363.

"The reasonable-doubt standard plays a vital role in the American scheme of criminal procedure. It is a prime instrument for reducing the risk of convictions resting on factual error. The standard provides concrete substance for the presumption of innocence--that bedrock "axiomatic and elementary" principle whose "enforcement lies at the foundation of the administration of our criminal law." Coffin v. United States, *supra*, 156 U.S., at 453, 15 S.Ct., at 403. As the dissenters in the New York Court of Appeals observed, and we agree, "a person accused of a crime \* \* \* would be at a severe disadvantage, a disadvantage amounting to a lack of fundamental fairness, if he could be adjudged guilty and imprisoned for years on the strength of the same evidence as would suffice a civil case." 24 N.Y.2d, at 205, 299 N.Y.S.2d, at 422, 247 N.E.2d, at 259."

"The requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for cogent reasons. The accused during a criminal prosecution has at stake interest of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction. Accordingly, a society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt. As we said in *Speiser v. Randall*, *supra*, 357 U.S., at 525-526, 78 S.Ct., at 1342: "There is always in litigation a margin of error, representing error in factfinding, which both parties must take into account. Where one party has at stake an interest of transcending value--as a criminal defendant his liberty--this margin of error is reduced as to him by the process of placing on the other party the burden of \* \* \* persuading the factfinder at the conclusion of the trial of his guilt beyond a reasonable doubt. Due process commands that no man shall lose his liberty unless the Government has borne the burden of \* \* \* convincing the factfinder of his guilt." To this end, the reasonable-doubt standard is indispensable, for it "impresses on the trier of fact the necessity of reaching a subjective state of certitude of the facts in issue." Dorsen & Reznick, *In Re Gault and the Future of Juvenile Law*, 1 Family Law Quarterly, No. 4, pp. 1, 26 (1967).

"Moreover, use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law."

"It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper fact finder of his guilt with utmost certainty." p. 364. [Brackets original.]

[*In Re Winship*, 397 U.S. 358 (1970)]

#### **United States v. Prudden (Apr. 10, 1970)**

"Silence can only be equated with fraud where there is a legal or moral duty to respond or where an inquiry left unanswered would be intentionally misleading."

[*United States v. Prudden*, 424 F.2d. 1021 (1970)]

#### **Joyce v. United States (July 16, 1971)**

"Generally, jurisdiction may be raised at any time in trial and appellate courts, but allowing question as to jurisdiction to be raised is discretionary with the court where defendant has had time and opportunity on many occasions to do so; and where defendant chooses to participate fully in discovery, pretrial, and preparation and formulation of issues for trial, it would be abuse of discretion to permit him to amend his answer to deny jurisdiction".

[*Joyce v. United States*, 329 F.Supp. 1242 (1971)]

#### **Haines v. Kerner (Jan. 13, 1972)**

"Allegations of pro se complaint are held to less stringent standards than formal pleadings drafted by lawyers."

"Whatever may be the limits on the scope of inquiry of courts into the internal administration of prisons, allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the *pro se* complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.""

[*Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d. 652 (1972)]

#### ***Sovereignty and Freedom Points and Authorities***



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**United States v. Newman (Oct. 26, 1972)**

"Where a defendant's conduct violates two separate statutes, it is improper to impose sentences under both statutes where one offense (here §7203, the misdemeanor) is, in effect, a lesser included offense of the other (here §7201, the felony). See *United States v. Rosenthal*, 2 Cir. 1972, 454 F.2d. 1252, 1255. It is clear that "Congress did not intend two punishments for the same crime" *id.*"

[*United States v. Newman*, 468 F.2d. 791 (1972)]

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**Schein v. United States (Dec. 29, 1972)**

"A suit nominally naming as a defendant an officer or agent of the United States Government will be held to be a suit against the United States itself, where the relief sought would interfere with the public administration. *Land v. Dollar*, 330 U.S. 731, 67 S.Ct. 1009, 91 L.Ed. 1209 (1949), or where, by obtaining relief against an officer or agent of the Government, relief in effect would be obtained against the sovereign itself. [Cites omitted.] The sovereign United States cannot be sued without its consent. [Cites omitted.] This immunity applies also to officers and agents of the United States acting within the scope of their official functions. [Cites omitted.] And, the doctrine of sovereign immunity has clearly been extended to officials of the Internal Revenue Service."

[*Schein v. United States*, 352 F.Supp. 182 (1972)]

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**United States v. Bishop (May 29, 1973)**

"Word "willfully" has the same meaning in tax felony statutes as in tax misdemeanor statutes, importing with respect to both a bad purpose or evil motive; disapproving *Abdul v. United States*, 254 F.2d. 292. 18 U.S.C.A. §1;...."

"Context is important in quest for meaning of word used in statute."

"Term "return" within statute providing that tax misdemeanor is committed by one who willfully delivers or discloses to the IRS any return or document known by him to be fraudulent or to be false as to any material matter is not necessarily limited to a federal income tax return, but may apply to a nonfederal return or in the course of tax audit."

**"In our complex tax system, uncertainty often arises even among taxpayers who earnestly wish to follow the law.**

The Court has said, "It is not the purpose of the law to penalize frank difference of opinion or innocent errors made despite the exercise of reasonable care." *Spies*, 317 U.S., at 496, 63 S.Ct. at 367. Degrees of negligence give rise in the tax system to civil penalties. **The requirement of an offense committed "willfully" is not met, therefore, if a taxpayer has relied in good faith on a prior decision of this Court.** *James v. United States*, 366 U.S. at 221-222, 81 S.Ct., at 1056. Cf. *Lambert v. California*, 355 U.S. 225, 78 S.Ct. 240, 2 L.Ed.2d. 228 (1957). The Court's consistent interpretation of the word "willfully" to require an element of *mens rea* implements the pervasive intent of Congress to construct penalties that separate the purposeful tax violator from the well-meaning, but easily confused, mass of taxpayers."

[*United States v. Bishop*, 412 U.S. 346, 93 S.Ct. 2008, 36 L.Ed.2d. 941 (1973)]

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**United States v. McCorkle (Apr. 8, 1974)**

"Principle of verbal completeness prescribes that the defendant may bring out on cross-examination that testimony which might qualify, explain, limit or contradict the portion offered by the Government on direct examination."

"As the Sixth Circuit stated in *Banning v. United States*, 130 F.2d. 330, 338 (6th Cir. 1942):

"It frequently happens that on direct examination of a witness as to a conversation, transaction or other matter, counsel will bring out only such parts as are favorable to the party he represents. When this occurs, it is the right of the cross-examiner to put the trial court in possession of the full details respecting the matters within the scope of the direct examination."

"Having utilized hearsay statements on direct with respect to the conversations between the defendant and the agents, the Government cannot object to the usage of testimony on cross-examination that brings out the whole of those conversations simply due to the hearsay nature of that testimony."

"As the Fifth Circuit has stated: "Instructions to the jury must be consistent and not misleading. The fact that one instruction is correct does not cure error in giving another inconsistent one." *Mann v. United States*, 319 F.2d. 04, 410 (5th Cir. 1963)."

[*United States v. McCorkle*, 511 F.2d. 477 (1974)]

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**Scheuer v. Rhodes (Apr. 17, 1974)**

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**"When a federal court reviews sufficiency of complaint, before reception of any evidence either by affidavit or admissions, issue is not whether plaintiff will ultimately prevail or is likely to prevail but whether claimant is entitled to offer evidence to support claims."** [Bold added.]

"In passing on motion to dismiss, whether on ground of lack of jurisdiction over subject matter or for failure to state cause of action, allegations of complaint should be construed favorably to pleader."

**"When state officer acts under state law in manner violative of Federal Constitution he comes into conflict with superior authority of that Constitution and is stripped of his official or representative character and subjected in his person to consequences of his individual conduct; a state has no power to impart to him any unmunty from responsibility to supreme authority of United States."** [Bold added.]

[Scheuer v. Rhodes, 416 U.S. 232 (1974)]

#### **United States v. Benson (June 5, 1974)**

"It is axiomatic that the prosecution must always prove territorial jurisdiction over a crime in order to sustain a conviction therefor."

[United States v. Benson, 495 F.2d. 475 (1974)]

#### **Miller v. United States (July 11, 1974)**

"Statute authorizing' action against Government must generally be strictly construe as a waiver of sovereign immunity."

.. the government is not estopped by an *unauthorized* act of one of its agents."

"We would note in this regard that our holding does no violence to the fundamental purpose of any statute of limitations--the barring of stale claims. [Cite omitted.] The statutory limit of two years remains the same whichever triggering event is chosen, and the timing of that critical event remains completely within the control of the Commissioner. Indeed it is difficult to see how the Commissioner will be prejudiced by a seven-month "extension" on a claim which he did not disallow until four years after the contested taxes were paid and the initial refund claim was filed. The Commissioner must merely defend one more refund action for a not insubstantial amount.

"In sum, given that the relevant statute of limitations is by its very terms rather flexible, that there is no suggestion that anyone in the Service acted in collusion with the taxpayers to defraud the federal fist, and that the taxpayers' reliance on the erroneously issued disallowance notice was not unreasonable, we conclude that the government is estopped from raising the earlier deadline as a bar to this action."

[Miller v. United States, 500 F.2d. 1007 (1974)]

#### **Miller v. United States (Nov. 25, 1974)**

"Even though corporation did not label \$65,000 check made payable to its sole stockholder a dividend, check could constitute a dividend for tax purposes."

"Crucial concept in a finding that there is a constructive dividend for tax purposes is that corporation has conferred a benefit on stockholder in order to distribute available earnings and profits without expectation of repayment."

"Basic principle of tax law is that form into which a taxpayer" casts a transaction will not obliterate the tax consequence that emerge from the substance of the transaction."

"Burden was on individual taxpayers to establish that corporation did not have earnings and profits equal to amounts diverted and sought to be taxed as dividend income."

[Miller v. United States, 404 F.Supp. 284 (1975)]

#### **FTB v. Municipal Court, LA Judicial Dist. Clerk of Municipal Court (Feb. 18, 1975)**

"Order, which prohibited municipal court action while superior court mandate proceeding was pending, although denominated a "temporary restraining order," was a "stay order" and, as such, was not subject to the statutory limitations on issuance and duration applicable to temporary restraining order."

[Franchise Tax Bd. v. Municipal Court, Los Angeles Judicial Dist. Clerk of Municipal Court, 119 Cal.Rptr. 552, 45 Cal.App.3d. 377 (1975)]

#### **Fredson v. C.I.R. (Nov. 12, 1975)**

.. Rule 36 of the Federal Rules of Civil Procedure. Rule 36(a) of the Federal Rules contains the following:

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"Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, \* \* \* "This provision has been interpreted to require affirmative action to avoid an admission. If no answer or objection is made within the time prescribed by the rule or the time fixed by the Court, the statements in the request are deemed admitted without the entry of any order by the Court. [Cites omitted.] Where no response is made to a request for admissions, the party making the request is entitled to rely upon his adversary's failure to respond as an admission of the requested matters and to prepare for trial accordingly." [Cites omitted.]

[Freedson v. Commissioner of Internal Revenue, 65 T.C. 333 (1975)]

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### **United States v. Testan (May 3, 1976)**

The Tucker Act is only a jurisdictional statute and does not create any substantive right enforceable against the United States for money damages. 28 U.S.C.A. §1491."

The remand statute, Pub.L. 92-415, 86 Stat. 652, now codified as part of 28 U.S.C. §1491 (1970 ed., Supp. IV), authorizes the Court of Claims to "issue orders directing restoration to ... position, placement in appropriate duty ... status, and correction of applicable records" in order to complement the relief afforded by a money judgment, and also to "remand appropriate matters to any administrative ... body" in a case "within its jurisdiction." The remand statute, thus, applies only to cases already within the court's jurisdiction."

[United States v. Testan, 424 U.S. 392, 96 S.Ct. 948, 47 L.Ed.2d. 114 (1976)]

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### **Busse v. United States (Sept. 27, 1976)**

"Only "the taxpayer" can bring a refund suit under the statute granting district courts jurisdiction over suits to recover wrongfully collected taxes. 28 U.S.C.A. §1346(a)(1)."

"A refund suit cannot be brought by a person who owns or has an interest in property that has been levied upon to satisfy the tax obligations of a third party. 28 U.S.C.A. §1346(a)(1)."

"Neither a person whose property is seized to satisfy another person's taxes nor a person who pays the tax to eliminate the threat of seizure may bring a tax refund suit. 28 U.S.C.A. §1346(a)(1)."

"Statute granting district courts jurisdiction over tax refund suits is a waiver of sovereign immunity and must be construed narrowly. 28 U.S.C.A. §1346(a)(1)."

[Busse v. United States, 542 F.2d. 421 (1976)]

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### **United States v. Tweel (Apr. 8, 1977)**

"We cannot condone this shocking conduct by the IRS. Our revenue system is based upon good faith of the taxpayers and the taxpayers should be able to expect the same from the government in its enforcement and collection activities." [See also 1541.]

[United States v. Tweel, 550 F.2d. 297 (1977)]

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### **Gonzalez v. Young (July 15, 1977)**

"Jurisdiction over a claim respecting an alleged conflict between state and federal statutes and regulations must rest on a constitutional claim of sufficient substance' independent of statutory conflicts under supremacy clause. 28 U.S.C.A. §§1343, 1343(3, 4); 42 U.S.C.A. §1983; U.S.C.A. Const. art. 6, cl. 2."

[Gonzalez v. Young, 560 F.2d. 160 (1977)]

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### **United States v. Kahl (Nov. 16, 1978)**

"Selective prosecution, if based on improper motives, can violate the equal protection clause of the Fourteenth Amendment. *Oyler v. Boles*, 368 U.S. 448, 82 S.Ct. 501, 7 L.Ed.2d. 466 (1962). In order to make out a claim of selective prosecution the defendant must show: first, that others similarly situated generally have not been prosecuted; and second, that the Government's prosecution of him is selective, invidious, in bad faith or based on impermissible considerations such as race, religion, or his exercise of constitutional rights. *United States v. Johnson*, 577 F.2d. 1304, 1308 (5th Cir. 1978); *United States v. Murdock*, 548 F.2d. 599, 600 (5th Cir. 1977)."

"Rule 12(b)(1) of the Rules of Criminal Procedure requires that objections based on the institution of the prosecution be raised prior to trial, and failure to adhere to the requirements of that Rule results in a waiver of the objection. Unlike the

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objections to the subject matter jurisdiction of the court which cannot be waived under Rule 12(b)(1), [cite omitted], objections to personal jurisdiction over a particular defendant can be. An objection to the manner of issuance of an arrest warrant goes to the jurisdiction of the court over the person of the defendant. *United States v. Andreas*, 458 F.2d. 491, 492 (8th Cir.), *cert. denied*, 409 U.S. 848, 93 S.Ct. 54, 34 L.Ed.2d. 89 (1972); *Sewell v. United States*, 406 F.2d. 1289, 1292 (8th Cir. 1969); *Pon v. United States*, 168 F.2d. 373, 374 (1st Cir. 1948)."

[*United States v. Kahl*, 583 F.2d. 1351 (1978)]

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#### **United States v. Batchelder (June 4, 1979)**

"When act violates more than one criminal statute, government may prosecute under either so long as it does not discriminate against any class of defendants."

"Whether to prosecute and what charge to file or bring before grand jury are decisions that generally rest in prosecutor's discretion."

"Just as defendant has no constitutional right to elect which of two applicable federal statutes shall be the basis of his indictment and prosecution neither is he entitled to choose penalty scheme under which he will be sentenced."

[*United States v. Batchelder*, 442 U.S. 114, 99 S.Ct. 2198, 60 L.Ed.2d. 755 (1979)]

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#### **United States v. Ware (Sept. 27, 1979)**

"In prosecution for failing to prepare and file income tax returns wherein defendant contended that the income & 961 he received was not dollars since he received only Federal Reserve notes, willfulness instruction, which provided that "Defendant's conduct is not 'willful' if he acted through negligence, inadvertence or mistake, or due to his good faith misunderstanding of the requirements of the law," was adequate with respect to defendant's contention that his good-faith belief that it was unnecessary to file return precluded finding of willfulness where evidence supported conclusion that defendant acted deliberately in failing to file the return."

[*United States v. Ware*, 608 F.2d. 401 (1979)]

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#### **United States v. Neff (Feb. 28, 1980)**

"The information that would be revealed by direct answer need not be such as would itself support a criminal conviction, however, but must simply "furnish a link in chain of evidence needed to prosecute the claimant for federal crime." *Id. See also Hashagen v. United States*, 283 F.2d. 345, 348 (9th Cir. 1960). Indeed, it is enough if responses would merely "provide a lead or clue" to evidence having a tendency to incriminate. *Id* at 348."

"The law does not require him " to prove guilt to avoid admitting it." [Cites omitted.]

"Thus the defendant is placed in a delicate position, well described by Judge Learned Hand:

"Obviously a witness may not be compelled to do more than show that the answer is likely to be dangerous to him, else he will be forced to disclose those very facts which the privilege protects. Logically, indeed, he is boxed in a paradox, for he must prove the criminatory character of what it is his privilege to suppress just because it is criminatory. The only practicable solution is to be content with the door's being set a little ajar, and while at times this no doubt partially destroys the privilege, and at times it permits the suppression of competent evidence, nothing better is available.

*United States v. Weisman, supra*, 111 F.2d. at 262."

[*United States v. Neff*, 615 F.2d. 1235 (1980)]

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#### **United States v. Thiel (Apr. 25, 1980)**

"When evidence is offered, not to prove truth of the matter stated therein, but only as illustration of present state of mind, evidence does not constitute hearsay. Fed. Rules Evid. Rule 801(c), 28 U.S.C.A."

... a good faith misunderstanding of the law may negate willfulness, a good faith disagreement with the law does not."

[*United States v. Thiel*, 619 F.2d. 778 (1980)]

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#### **United States v. Ross (June 19, 1980)**

"The district court instructed the jury, in part, as follows:

""[I]ntent ordinarily may not be proved directly because there is no way of fathoming or scrutinizing the operations of the human mind.

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"You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequence of acts knowingly done or knowingly omitted. As has been said to you throughout these instructions, it is entirely up to you to decide what facts to find from the evidence."

"Defendant argues that this instruction improperly shifted the burden of proof to defendant, contrary to the holding of the Supreme Court in *Sandstrom v. Montana*, 442 U.S. 510, 99 S.Ct. 2450, 61 L.Ed.2d. 39 (1979). In *Sandstrom*, the Supreme Court considered an instruction in which a jury was told that "the law presumes that a person intends the ordinary consequences of his voluntary acts." The Court held that this instruction violated the Fourteenth Amendment requirement that a State prove every element of a criminal offense beyond a reasonable doubt."

[*United States v. Ross*, 626 F.2d. 77 (1980)]

#### **United Sand and Gravel Contractors, Inc. v. U.S. (Aug. 22, 1980)**

"Under statute limiting time period in which courts may act on suit for wrongful levy by United States request for return of property must be made within nine months from date of levy or agreement giving rise to such action, in order to extend period for suit. 26 U.S.C.A. (I.R.C.1954) §6532(c), (c)(2)."

[*United Sand and Gravel Contractors, Inc. v. United States*, 624 F.2d. 733 (1980)]

#### **United States v. Moore (Aug. 22, 1980)**

"It is acceptable for a judge to question a witness as long as he is careful not to do so in a way which would communicate a belief in defendant's guilt to the jury. *United States v. Baron*, 602 F.2d. 1248, 1249 (7th Cir.), cert. denied, 44 U.S. 967, 100 S.Ct. 456, 62 L.Ed.2d. 380 (1979)."

"A defendant is entitled to have the jury instructed on a theory of defense which has some foundation in the evidence and which is supported by the law. *United States v. Cullen*, 454 F.2d. 386, 390 (7th Cir. 1971); *United States v. Grimes*, 413 F.2d. 1376, 1378 (7th Cir. 1969)."

[*United States v. Moore*, 627 F.2d. 830 (1980)]

#### **Bank of Denver v. Romstrom (Sept. 8, 1980)**

"Waivers of governmental immunity should be liberally construed."

"Any suit against the Secretary of the Department of Housing and Urban Development in his official capacity subjects funds of agency to execution."

"Only funds which have been paid over to Department of Housing and Urban Development and hence severed from Treasury are subject to execution in suit against Secretary in his official capacity as United States Treasury is not subject to execution because United States has not waived immunity to that extent."

[*Bank of Denver v. Romstrom*, 496 F.Supp. 242 (1980)]

#### **Beller v. Middendorf (Oct. 23, 1980)**

"(1) sovereign immunity did not bar claims for equitable relief; (2) Court of Claims did not have exclusive jurisdiction over nonmonetary claims;..."

"Due process clause of the Fifth Amendment includes equal protection components, and Fifth Amendment equal protection claims are treated the same as Fourteenth Amendment equal protection claims."

"Although one does not surrender his or her constitutional rights on entering the military, constitutional rights must be viewed in light of the special circumstances and needs of the armed forces and regulations which might infringe constitutional rights in other contexts may survive scrutiny because of military necessities."

"The congressional abolition of the jurisdictional amount requirement for suits brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity applies to this case." [Original footnote 2: "We hold below that the defendant Middendorf is being sued in his official capacity."]

"In *Glines v. Wade*, 586 F.2d. 675 (9th Cir.1978) ... at 681. The court held that sovereign immunity did not bar the district court from awarding this nonmonetary relief:

"[I]n actions claiming that a government official acted in violation of the Constitution or of statutory authority ... Congress has either waived sovereign immunity or the doctrine does not apply. 5 U.S.C. §702; *Larson v. Domestic and Foreign Commerce Corp.*, 337 U.S. 682, 689-91, 69 S.Ct. 1457, 1461-1462, 93 L.Ed.2d. 1628 (1949); *Hill v. United States*, 571 F.2d. 1098, 1102 (9th Cir.1978); 14 Wright, Miller, and Cooper, Federal Practice and Procedure §3655 (Supp.1977).

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"The waiver of sovereign immunity found by the court was an amendment to the Administrative Procedure Act. The amendment provided in part:

"An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party.

5 U.S.C. §702."

.. the Court of Claims had exclusive jurisdiction over the action since a judgment over \$10,000 was sought."

[Beller v. Middendorf, 632 F.2d. 788 (1980)]

### **United States v. Miller (Dec. 1, 1980)**

"The good-faith defense was not available to defendant whose "Fifth Amendment" income tax forms contained no income information and who thus made no return at all, where there was no evidence indicating that defendant believed that filing proper return would subject him to possible prosecution. 26 U.S.C.A. §7203."

"Defendant's conduct is not "willful" if he acted through negligence, even gross negligence, inadvertence, justifiable excuse, or mistake, or due to his good faith misunderstanding of the requirements of the law. However, mere disagreement with the law in and of itself does not constitute good faith misunderstanding of the requirements of the law, because it is the duty of all persons to obey the law whether or not they agree with it. Also, a person's belief that the tax laws violate his constitutional rights does not constitute a good faith misunderstanding of the requirements of the law. Furthermore, a person's disagreement with the Government's monetary system and policies does not constitute a good faith misunderstanding of the requirements of the law."

[United States v. Miller, 634 F.2d. 1134 (1980)]

### **United States v. Romero (Mar. 6, 1981)**

"Defendant, who demanded that he be allowed to represent himself despite being advised by trial judge that self-representation would be extremely unwise, "knowingly and intelligently" waived assistance of appointed counsel." "Court must honor, upon proper request, defendant's constitutional right to represent himself."

"In prosecution for willful failure to file income tax returns, trial judge properly instructed jury on meaning of terms "income" and ".person," despite defendant's proclaimed belief that he was not a "person" and that wages he earned as carpenter were not "income."

"Defendant's good-faith disagreement with statutory provisions of income tax laws did not excuse his failure to file returns, and such failure was "willful."

"Courts are established at public expense to try issues, not to play games."

"Romero also alleges bias and error on the part of the trial judge based upon the judge's comments and instructions concerning the legal meaning of the terms "income" and "person" in 26 U.S.C. §§61 and 7203. We find this allegation to be frivolous. 26 U.S.C. §61 provides in part: "(a) General definition.--Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items: (1) Compensation for services, including fees, commissions, and similar items[.]" In addition, the reference to the word "person" in section 7203 of title 26 is intended to encompass not only all individuals subject to income tax liabilities, but also legal entities liable for tax payments or required by law and regulations to make a tax return."

"In our system of government, one is free to speak out in open opposition to the provisions of the tax laws, but such opposition does not relieve a citizen of his obligation to pay taxes."

[United States v. Romero, 640 F.2d. 1014 (1981)]

### **Stonecipher v. Bray, et. al. (Aug. 10, 1981)**

"Action was brought by taxpayer against his employer and Internal Revenue Service seeking injunction prohibiting employer from denying him exemption from federal income tax withholding, writ of mandamus directing IRS to order payment of withheld taxes, and punitive damages. The United States District Court for the District of Arizona, Walter Early Craig, J., dismissed action for lack of subject-matter jurisdiction and failure to state a claim, and taxpayer appealed."

"The only exception to the Anti-Injunction Act is where the taxpayer demonstrates that: (1) under no circumstance can the governmental defendant ultimately prevail; and (2) the taxpayer will be irreparably harmed if the injunction is not granted. *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7, 82 S.Ct. 1125, 1129, 8 L.Ed.2d. 292 (1962)."

"Treasury Regulation §31.3402(f)(2)-1 requires an employee to file a W-4 with the employer upon commencement of

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employment. Bechtel [the employer] was not required, however, to ascertain whether Stonecipher was entitled to claim exemption from withholding but rather was obligated under Treasury Regulation §31.3402(n)-1 to contact the District Director of the IRS if it believed that the W-4 contained an incorrect statement."

"Stonecipher's argument that due process required the IRS to grant him a hearing before determining that he was not entitled to claim exemption from federal income tax is foreclosed by well-settled law. The prompt collection of taxes is necessary for the nation's continued existence and is an important governmental interest that justifies postponing notice and an opportunity for a hearing. *See Phillips v. Commissioner*, 283 U.S. 589, 595-97, 51 S.Ct. 608, 610-12, 75 L.Ed. 1289 (1931). Stonecipher's due process rights are adequately protected by the statutory scheme which allows him to contest his tax liability in the Tax Court prior to paying the disputed tax or to sue for a refund in federal district court or in the Court of Claims."

"Stonecipher's complaint further alleged that Bechtel breached his employment contract by withholding taxes from his wages. This argument is without merit. Stonecipher has not alleged that his employment contract contained a provision requiring Bechtel to refrain from withholding taxes from his paycheck. In the absence of any express provision to the contrary, we conclude that when an employer withholds taxes from an employee's wages and pays the employee the balance, the employer has discharged his contractual obligations. *See United States Fidelity & Guaranty Co. v. United States*, 201 F.2d. 118, 120 (10th Cir. 1952). Indeed, a contractual clause providing otherwise might very well be invalid as contrary to public policy". [Stonecipher v. Bray, et. al., 653 F.2d. 398 (1981)]

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### **Mitchell v. United States (Oct. 21, 1981)**

"Congress' waiver of sovereign immunity with respect to money compensation must be clear or strong before court can say that statute mandates compensation."

"There was consent to suit against the United States for such claims as claims that government illegally kept some of Indians's own money or property and claims that there had been other illegal withdrawals from funds received from loggers for Indians, as well as for misapplication of trust funds required by law to be paid to Indians or applied for their benefit."

"Constitutional claims for taking under just compensation clause could be brought in court of claims."

"If there was failure to exhaust administrative remedies, it was waived by failure to earlier advance defense."

[Mitchell v. United States, 664 F.2d. 265 (1981)]

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### **Deerfield Medical Center v. City of Deerfield Beach (Nov. 13, 1981)**

"In order for plaintiffs to be granted preliminary injunctive relief they were required to show that there was a substantial likelihood that they would suffer irreparable injury if an injunction were not granted. An injury is "irreparable" only if it cannot be undone through monetary remedies. [Cites omitted.] It is well settled that the loss of First Amendment freedoms' for even minimal periods of time constitutes irreparable injury justifying the grant of a preliminary injunction. [Cites omitted.] Similarly the right of privacy must be carefully guarded for once an infringement has occurred it cannot be undone by monetary relief. [Cites omitted.]"

"The district court misapplied the controlling law to the facts before it, and thereby abused its discretion, when finding no irreparable injury' to pregnant women's rights of privacy because "other abortion facilities nearby [could] provide services to those women." Record at 113. We have already determined that the constitutional right to privacy is "either threatened or in fact being impaired", and this conclusion mandates a finding of irreparable injury. *Elrod v. Burns*, 427 U.S. at 373, 96 S.Ct. at 2689. That the injury resulting from defendants' actions is minimized by the presence of other abortion facilities does not eliminate or render harmless the potential continuing constitutional violation of a fundamental right." [Insertion by the court.]

[Deerfield Medical Center v. City of Deerfield Beach, 661 F.2d. 328 (1981)]

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### **Whorton v. United States (Dec. 13, 1982)**

"*Second*, counsel must make diligent efforts to comply with the time limits applicable to pleadings, responses to discovery and other matters. An enlargement of time can be a useful device but should be viewed as the exception, not the rule."

"*Fourth*, counsel has a responsibility to file an enlargement motion as soon as the need therefor becomes apparent."

"However, any such motion must carefully explain the reasons why it could not have been filed in a more timely fashion." [Footnote to above paragraph.]

"Where a motion for enlargement is based on the occurrence of an unanticipated event, counsel must file the motion

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promptly upon learning of the event." [End of footnote.]

"To avoid unfair surprise and a substantial forfeiture, the court nevertheless allows the motion for enlargement...."  
[Whorton v. United States, 553 F.Supp. 400 (1982)]

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#### **Social Security Amendments of 1983, P.L. 98-21**

"PROHIBIT WITHDRAWAL OF STATE AND LOCAL EMPLOYEES *Present law*

"Employees of State and local governments may be covered under social security at the option of the State and in agreement with the Secretary of Health and Human Services. Coverage may be terminated if the State gives 2 years written notice of such intent, provided that the State or local group has been covered for at least 5 years. Once coverage is terminated, the group can never again be covered under social security."

*Committee Amendment*

"The Committee amendment would prohibit State and local governments from terminating coverage for their employees. Pending terminations would be invalid, effective on enactment. In addition, the amendment would provide an opportunity for State and local governments which have withdrawn from the social security system to voluntarily rejoin. Once having rejoined, the governmental entity would be precluded from terminating coverage.

"This amendment is similar to the recommendation of National Commission on Social Security Reform."  
[Social Security Amendments of 1983, P.L. 98-21, §103]

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#### **United States v. Richards (Dec. 30, 1983)**

"Defendant must raise before trial by motion any objections based on defects in indictment, and failure to raise nonjurisdictional objections prior to trial constitutes waiver of such objections. Fed.Rules Cr. Proc.Rule 12(b)(2), (f), 18 U.S.C.A."

[United States v. Richards, 723 F.2d. 646 (1983)]

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#### **Kloes v. United States (Jan. 17, 1984)**

"Tax Equity and Fiscal Responsibility Act of 1982, and, particularly, penalty provision for filing of frivolous income tax return, was passed in compliance with the origination clause, even though, after the House of Representatives originally passed the legislation, the Senate substituted what amounted to entirely different bill."

"Statute providing for penalties for filing frivolous income tax returns is applicable only where taxpayer has filed what purports to be a tax return, return either fails to contain sufficient information to judge whether self-assessment of taxes is correct or contains information which, on its face, shows that self-assessment is incorrect, and deficiencies which appear on return are due to either position which is frivolous or desire, apparent from face of the return, to delay or impede administration of the tax laws."

"Taxpayer must make colorable showing that he is involved in some activity for which he could be criminally prosecuted in order to validly claim the Fifth Amendment privilege on his income tax return."

"Taxpayer's blanket assertion of constitutional privilege to decline to disclose any information requested on income tax form was ineffective and, absent any specification of legitimate reasons for the particular objections, return was of "frivolous" nature so as to warrant imposition of penalty."

[Kloes v. United States, 578 F.Supp. 270 (1984)]

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#### **Holker v. United States (June 1, 1984)**

"Income tax return facially indicated that taxpayer's self-assessment was incorrect and that his position was frivolous; thus, taxpayer, who had claimed that he was a natural individual and unenfranchised freeman who neither requested, obtained nor exercised any privilege from any agency of the government, could be assessed a penalty for filing a frivolous tax return."

[Holker v. United States, 737 F.2d. 751 (1984)]

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#### **Knight v. United States (Aug. 28, 1984)**

"Statute which merely grants subject-matter jurisdiction over rights and remedies otherwise provided by federal law did not provide separate basis for jurisdiction over common-law tort claims raised by plaintiffs against Internal Revenue Service officials. 28 U.S.C.A. §1331.

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"Where conduct and actions of individual Internal Revenue Service officials occurred, if at all, clearly within scope of their duties and employment, plaintiffs' damage actions for alleged common-law torts as a result of Internal Revenue Service's refusal to honor assignments to plaintiffs by individual taxpayers' of claimed tax refunds were barred by officials' absolute immunity."

"To be within scope of his employment, it is only necessary that action of federal official who claims absolute immunity bear some reasonable relation to and connection with his duties and responsibilities."

"Where plaintiffs had not alleged that Internal Revenue Service officials directed, ordered, participated in or approved alleged wrongful acts in connection with IRS' refusal to honor assignments to plaintiffs by individual taxpayers of claimed tax refunds, officials could not be held vicariously liable for acts of subordinates."

"Vicarious liability will not be visited upon a federal official for illegal acts, if any, of his subordinates."

"Failure of either plaintiff to file proper administrative claim with Internal Revenue Service after it refused to honor assignments to plaintiffs by individual taxpayers of claimed tax refunds precluded commencement of plaintiffs' damage action against United States under Federal Tort Claims Act, 28 U.S.C.A. §§1346(b), 2675(a)."

"Like any other waiver of sovereign immunity, limited waiver contained in the Federal Tort Claims Act must be strictly construed? 28 U.S.C.A. §2675."

"Any award of punitive damages against the United States was specifically prohibited by statute in connection with plaintiffs' claim arising out of refusal of Internal Revenue Service to honor assignments to plaintiffs by individual taxpayers of claimed tax refunds. 28 U.S.C.A. §2674."

[Knight v. United States, 596 F.Supp. 543 (1984)]

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#### **United States v. Escobar De Bright (Sept. 18, 1984)**

"As we noted earlier, we have consistently stated that if a defendant's theory of the case is supported by law, and if there is some foundation for the theory in the evidence, the failure to give the defendant's proposed jury instruction concerning his theory is "reversible error."

"The right to have the jury instructed as to the defendant's theory of the case is one of those rights "so basic to a fair trial" that failure to instruct where there is evidence to support the instruction can never be considered harmless error." [United States v. Escobar De Bright, 742 F.2d. 1196 (1984)]

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#### **Cameron v. Internal Revenue Service (Sept. 25, 1984)**

"Pro se pleadings are to be liberally construed?"

"Pro se complaints are held to less stringent pleading requirements; technical rigor in the examination of such pleadings is inappropriate."

"Summary judgment serves as a vehicle with which court can determine whether further exploration of a fact is necessary."

"In making determination on motion for summary judgment, court must draw all inferences from established or asserted facts in favor of nonmoving party."

"In context of motion for summary judgment, party may not rest on mere allegations of pleadings or bare contentions that an issue of fact exists."

"Party moving for summary judgment must demonstrate absence of genuine issue of material fact."

"Court on motion for summary judgment views all evidence submitted in favor of nonmoving party."

"Even if there are some disputed facts, where undisputed facts are material facts involved and those facts show one party is entitled to judgment as a matter of law, summary judgment is appropriate."

"If court resolves all factual disputes in favor of nonmoving party and still finds summary judgment in favor of moving party is correct as a matter of law, then moving party is entitled to summary judgment in his favor."

"Because of limited nature of a district court's jurisdiction, the court may inquire into its jurisdiction sua sponte."

"Statute providing district court with original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue gives jurisdiction for an action arising under the Internal Revenue laws; as such, the suit must be based on some cause of action which the Internal Revenue Code recognizes and allows plaintiff to bring."

"Suit by plaintiff, who was seeking injunctive relief and damages against Internal Revenue Service and its agents for attempts to assess taxes against him and to levy on his wages and property, did not arise under the Internal Revenue Code, as plaintiff did not seek either to enforce any provision of the Code or to pursue a statutory remedy under the Code; therefore, district court had no jurisdiction under statute providing for original jurisdiction of any civil action arising under any act of Congress providing for internal revenue."

"There was no federal question jurisdiction of plaintiff's suit for injunctive relief and damages against Internal Revenue

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Service and its agents for attempts to assess taxes against him and to levy against his wages and property; while a federal question might have existed, it would have provided no basis for plaintiff to recover injunctive relief or damages, but at best would have allowed district court to declare Internal Revenue Code unconstitutional as a prelude to a refund suit, which plaintiff was not pursuing."

"Internal Revenue Code sections providing that a person cannot sue to enjoin assessment or collection of taxes, and relating to discharge of liens and to declaratory judgment actions concerning tax exempt status for organizations did not provide district court with jurisdiction of suit for injunctive relief and damages against plaintiff and to levy against his wages and property."

"Section 1983 did not provide district court with jurisdiction of suit for injunctive relief and damages against Internal Revenue Service and its agents for attempts to assess taxes against plaintiff and to levy against his wages and property, as the actions of IRS officials, even if beyond scope of their official duties, were acts done under color of federal law, not state law."

"United States is a sovereign and, as such, is immune from suit without its prior consent."

"Internal Revenue Service is immune from suit for tax collection or assessment activities."

"In order to present a situation where a federal official enjoys only qualified immunity, complaint must contain specific allegations of the unconstitutional conduct by the official and must allege the specific statutory provision under which the official exceeded his authority"

"Tenor of plaintiff's complaint was that he sought damages from individual Internal Revenue Service agents for acts done in their official capacities in handling his file; therefore, those individual defendants enjoyed absolute immunity from suit."

"While complaint claimed that individual Internal Revenue Service agents acted unconstitutionally and exceeded their authority in handling plaintiff's file, it did so in very conclusory terms, and therefore those defendants were not limited to qualified immunity on basis that they exceeded their official authority."

"It is entirely proper for Congress to delegate broad powers to executives to determine details of legislative scheme through implementing regulations."

"Doctrine of separation of powers is not violated by the Internal Revenue Code or by Internal Revenue Service regulations enacted pursuant to the Code."

"Wages are taxable as "income." 26 U.S.C.A. §61."

"Plaintiff's due process rights were not adversely affected by an insistence on appeal or suit only in the Tax Court."

"Internal Revenue Service did not violate plaintiff's Fourth Amendment rights by failing to obtain a warrant of seizure in order to withhold his personal property via a levy against his wages."  
[Cameron v. Internal Revenue Service, 593 F.Supp. 1540 (1984)]

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#### **H.F. Allen Orchards v. United States (Dec. 10, 1984)**

"Consent decree is construed as contract for enforcement purposes and aids to construction, such as circumstances surrounding formation of decree and technical meanings words may have had to parties, may be considered."

"Farmers in irrigation district failed to establish implied-in-fact contract under which Bureau of Reclamation would have been obligated to inform farmers of total amount of water expected to be supplied to them from water project in time of shortage."

"Negligent disclosure of information by Government concerning projected water allotments from federal irrigation project could not form basis for breach of contract claim within meaning of Tucker Act."

"Farmers, who were owners of water supplied from federal irrigation project and beneficiaries of irrigation project, were true parties in interest and had standing to sue under consent decree which specified obligation of United States to deliver water and which provided for instance in which shortage occurred."

[H.F. Allen Orchards v. United States, 749 F.2d. 1571 (Fed.Cir. 1984)]

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#### **Litton Industries Products, Inc. v. Solid State Systems Corp. (Feb. 25, 1985)**

In deciding whether summary judgment is appropriate, trial judge should look beyond mere denials or arguments with respect to the factual determinations underlying an obviousness question and resolve all doubt over factual issues in favor of party opposing summary judgment."

"District court failed to consider claimed invention as a whole, and therefore entry of summary judgment finding patent invalid as obvious was improper."

[Litton Industries Products, Inc. v. Solid State Systems Clam, 755 F.2d. 158 (Fed.Cir. 1985)]



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**United States v. Aitken (Feb. 25, 1985)**

"Where, as here, the record reveals what looks like defense counsel's endorsement or ratification of a charge, rather than his objection to it, plain error must be shown on appeal before the jury's verdict can be overturned. Fed.R.Crim.P. 52(b); *United States v. Rosa*, 705 F.2d. 1375, 1380 (1st Cir.1983)."

This survey leads us to conclude that the overwhelming weight of authority in the field of criminal prosecutions for failure to file tax returns and for tax evasion insists on a subjective standard for assessing willfulness."

"In short, we agree with the Fifth Circuit's holding in *Mann v. United States*, 319 F.2d. at 409-10, that an incorrect instruction with respect to intent or willfulness in a tax evasion prosecution constitutes a fundamental error going to the essence of the case and that an appellate court must take notice of such an error."

[*United States v. Aitken*, 755 F.2d. 188 (1985)]

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**Liebowitz v. Aimexco Inc. (Mar. 28, 1985)**

"A claim or defense is frivolous if the proponent can present no rational argument based on the evidence or law in support of that claim or defense."

[*Liebowitz v. Aimexco Inc.*, 701 P.2d. 140 (Colo.App. 1985)]

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**Gilbert v. DaGrossa (Apr. 5, 1985)**

"United States, as sovereign, is immune from suit unless it has expressly waived such immunity and consented to be sued."

"Waiver, by United States, of its sovereign immunity cannot be implied, but must be unequivocally expressed." "Where suit has not been consented to by United States, dismissal of action is required."

"United States may not be sued without its consent and existence of such consent is prerequisite for jurisdiction."

"Bar of sovereign immunity cannot be avoided by naming officers and employees of United States as defendants."

"Suit against Internal Revenue Service employees in their official capacity is essentially a suit against United States, and, as such, absent express statutory consent to sue, dismissal is required."

"To extent that Internal Revenue Service employees were sued in their official capacity, claims were barred by doctrine of sovereign immunity, absent statutory waiver."

"Sovereign immunity does not bar damage action against federal officials in their individual capacity for violation of individual's constitutional rights."

"In order to bring damage action against federal official in his individual capacity, and thereby avoid bar of sovereign immunity, normal rules for establishing in personam jurisdiction apply."

"'Effects' doctrine may serve as basis for finding of in personam jurisdiction in state in which activities complained of had effect."

[*Gilbert v. DaGrossa*, 756 F.2d. 1455 (1985)]

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**Public Agencies Opposed To Social Security Entrapment v. Heckler (May 29, 1985)**

"For purposes of ruling on motion to dismiss for want of standing, both trial and reviewing courts must accept as true all material allegations of complaint, and must construe complaint in favor of complaining party."

"To comply with case and controversy requirement of Article III plaintiff must show distinct and palpable injury, causal connection between injury and defendant's conduct, and substantial likelihood that relief requested will redress injury."

"Taking of property of public agency of state without just compensation is a "distinct and palpable" constitutional injury to local government redressable in action under the just compensation clause; local government or political subdivision is entitled to just compensation when the United States takes its property."

"In determining whether California public agencies possessed sufficient contractual rights under agreement between United States and California to have standing to assert claim that amendment to the Social Security Act, §218(g), as amended, 42 U.S.C.A. §418(g), preventing states and public agencies from withdrawing from participation in Old Age, Survivors, and Disability Insurance Benefits program if they were participating on effective date of amendment was taking of contractual rights without just compensation, district court would rely exclusively on principles of general contract law, since applicable statutes were silent on issue."

"Generally, rights which arise out of contracts with the United States are "property" within meaning of just

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compensation clause of the Fifth Amendment.”

"Agreement between California and United States, which provided that, upon request of California, Old Age, Survivors, and Disability Insurance Benefits would be extended to public agencies, and which invested public agencies with contractual right to terminate participation in program, was so expressed as to give United States reason to know that benefit to public agencies arising from escape clause was contemplated by California as one of motivating causes for making contract, and thus, public agencies, as third-party beneficiaries of contract, had standing to allege taking of their contract rights under such agreement without just compensation."

"Complaint by California public agencies which alleged a contractual right to terminate participation in Old Age, Survivors, and Disability Insurance Benefits program and that such right was taken by enactment of amendment to the Social Security Act, §218(g), as amended, 42 U.S.C.A. §418(g), alleged sufficient causal connection between injury and conduct of the United States to satisfy causal connection requirement of standing."

"For standing purposes, resolution of claim by California public agencies that enactment of amendment to the Social Security Act, §218(g), as amended, 42 U.S.C.A. §418(g), which prevents states and public agencies from withdrawing from participation in Old Age, Survivors, and Disability Insurance Benefits Program if they were participating on effective date of amendment, was taking of agencies, contractual right to withdrawal from program without just compensation would redress injury as to which agencies complained."

"Money paid by California into the United States Treasury was assessed either pursuant to the agreement entered into between the United States and California, or pursuant to 1983 amendment to the Social Security Act, §218(g), as amended, 42 U.S.C.A. §418(g), which prevents states and public agencies from withdrawing from participation in Old Age, Survivors, and Disability Insurance Benefits program; therefore, payments were not federal taxes, and actions challenging 1983 Amendment were not barred by the Anti-Injunction Act or Declaratory Judgment Acts."

"Even if the Social Security Act, §1104, as amended, 42 U.S.C.A. §1304, granted Congress right to amend Title II whenever and however it chooses, such statute does not authorize Congress to alter or amend contract with state dealing with benefits under such statute."

"Enactment of 1983 amendment to the Social Security Act, §218(g), as amended, 42 U.S.C.A. §418(g), which prevents states and public agencies from withdrawing from participation in Old Age, Survivors, and Disability Insurance Benefits program if they were participating on effective date of amendment, was a taking, without just compensation, of contractual right of California and its public agencies to withdraw from program upon two years notice, and such amendment could not be saved from unconstitutionality by rewarding just compensation, in light of legislative history indicating that it was enacted to solve financial crisis relating to social security system."

"In the case before this court, the Congress has specifically divested the State and its public agencies of their contractual right to terminate their participation in the Program; it has further instructed the Secretary to effectuate that divestment by directing her to refuse to accept any otherwise properly tendered notifications of withdrawal. It is to this statutory scheme that the lawsuits are tendered and it is only this question which is addressed."

"They also seek "specific performance" of the government's contractual obligations."

"Plainly, the court may not decide the merits of the case in order to decide whether or not it may reach the merits."

"To get down to basics, "property" is that group of rights which inhere in a person's relation to a physical or intangible thing. *See Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 104 S.Ct. 2862, 2873-74, 81 L.Ed.2d. 815 (1984) (quoting *United States v. General Motors Corp.*, 323 U.S. 373, 377-78, 65 S.Ct. 357, 259, 89 S.Ed. 311 (1945)). It follows, therefore, that the rights arising out of a contract are "property" protected by the Fifth Amendment. The Supreme Court has so held. *See Lynch v. United States*, 292 U.S. at 579, 54 S.Ct. at 843."

"Both the Agreement and the statute provided that the State could withdraw after the giving of two years' advance notice. I assume *arguendo* that Congress would have had the power under §1304 (or otherwise) to divest the State of its right to withdraw if the right existed solely by virtue of the statute."

"By virtue of the Fifth Amendment, Congress is simply not free to deprive the State of its contractual right without just compensation."

"Congress clearly and explicitly intended to deprive the plaintiffs of their right to withdraw from the contract. *See* P.L. 98-21 §103(a) and (b), 97 Stat. 65, 71-72, *reprinted at* [1] U.S.Code Congr. & Admin.News (98th Congr. 1st Sess., 1983). Moreover, Congress provided no means of compensation for depriving plaintiffs of that right. Ordinarily, under such circumstances plaintiff's remedy is to seek "just compensation," in the Court of Claims rather than a declaration that the action of the Government must be set aside. *Ruckelshaus*, 104 S.Ct. at 2880-83. *Cf. Robinson v. Ariyoshi*, 753 F.2d. 1468, 1474-75 (9th Cir.1985). In this case I am not free simply to order "just compensation" to the plaintiffs, or to refer the case to the Court of Claims, thus possibly saving the statute from a declaration of unconstitutionality. The only rational compensation would be reimbursement by the United States to the State or public agencies, of the amount of money they currently pay to the United States for their participation in Title II, since that seems the only sensible measure of damages."

"IT IS HEREBY DECLARED that the challenged Act of Congress, P.L. 98-21, Section 103(a) and (b), is void and of no effect as it purports to affect these plaintiffs; and the State of California and its political subdivisions have the lawful

right to withdraw from Title II so long as they have met the requirements of the Agreement and the law.

"The Secretary of Health and Human Services is hereby ORDERED to accept the notifications of withdrawal properly tendered to her."

[Pub. Agencies Opp, To Soc. Sec. Entrapment v. Heckler, 613 F.Supp. 558 (D.C.Cal. 1985)]

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#### **United States v. Snyder (July 3, 1985)**

"In *United States v. Buckley*, 586 F.2d. 498 (5th Cir.1978), *cert. denied*, 440 U.S. 982, 99 S.Ct. 1792, 60 L.Ed.2d. 242 (1979), the court held:

"Where one of the affirmative acts of evasion relied upon by the government in proving attempted tax evasion under Section 7201 is the failure to file an income tax return, failure to file is a lesser included offense, and Congress did not intend for the defendant to be punished for both offenses: *United States v. Newman*, 468 F.2d. 791, 796 (5th Cir.1972), *cert. denied*, 411 U.S.905, 93 S.Ct. 1527, 36 L.Ed.2d. 194 (1973). ... Where one offense is included in another, it cannot support a separate conviction and sentence. *Jeffers v. United States*, 432 U.S. 137, 97 S.Ct. 2207, 53 L.Ed.2d. 168 (1977); *Brown v. Ohio*, 432 U.S. 161, 97 S.Ct. 2221, 53 L.Ed.2d. 187 (1977); *United States v. York*, 578 F.2d. 1036, 1040 (5th Cir.1978)."

[United States v. Snyder, 766 F.2d. 167 (1985)]

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#### **Lojeski v. Boandl (Aug. 23, 1985)**

"In this court's Memorandum Opinion and Order dated March 26, 1985, we held that defendants' sovereign immunity defense was inappropriate since suit was initiated against defendants in their individual capacities and not against the federal government. In that action involving issues of liability and damages, there existed no express statute permitting suit against the United States; however, this is not the case with the issues *sub judice*. Section 7430 expressly authorizes payment of attorney's fees by the United States in civil proceedings brought by or against the United States. In view of the explicit language of the statute and the intent of Congress in enacting this Section, we can only conclude that plaintiff's Application has been properly initiated pursuant to §7430. Congress intended that the awarding of fees under 26 U.S.C. §7430 will deter abusive actions and overreaching by the Internal Revenue Service and will enable individual taxpayers to vindicate their rights regardless of their economic circumstances." *Kaufman v. Egger*, 584 F.Supp. 872, 879 (D.Me.1984) quoting H.R.Rep. No. 404, 97th Cong., 2nd Sess. 16 (1982). Therefore, we must conclude that for purposes of reviewing an application for attorney's fees under section 7430, the action *sub judice* is, indeed, one against the United States, in furtherance of the stated and unambiguous intentions of Congress.

"Before a party may be awarded attorney's fees and expenses pursuant to §7430, that party must have met several criteria. First, all administrative remedies made available by the Internal Revenue Service must be exhausted prior to the pursuit of civil action." p. 531.

"Where defendants' unreasonable actions forced plaintiff to seek court relief, it is only equitable that defendants, rather than plaintiff, should have to bear the costs that their conduct generated." p. 533.

[Lojeski v. Boandl, 626 F.Supp. 530 (1985)]

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#### **United States v. Phillips (Oct. 17, 1985)**

"We find the First Circuit case of *United States v. Aitken*, 755 F.2d. 188 (1st Cir.1985), to be highly instructive on this issue. In that case, as in the case at hand, the defendant claimed that he sincerely believed wages not to be income." The court found that a subjective, rather than an objective, standard was the appropriate measure of this belief. In support of that finding, the court explicated a number of Supreme Court cases giving rise to an inference that a subjective standard should be employed in assessing "willfulness" in criminal tax prosecutions."

[United States v. Phillips, 775 F.2d. 262 (1985)]

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#### **Tickel v. C.I.R. (Oct. 30, 1985)**

"Commissioner of Internal Revenue was not a proper party to suit brought by taxpayer to recover partial payment of penalty assessed for allegedly frivolous tax return so that district court, pursuant to 26 U.S.C.A. §7422(f)(2), ordered pleadings amended to substitute the United States as party for Commissioner and that proper service be made on the United States."

[Tickel v. Commissioner of Internal Revenue, 85-2 U.S.T.C. 1 9762, 623 F.Supp. 218; (D.C.Tenn. 1985)]

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**Gibson v. Farmers and Merchants Bank (Feb. 12, 1986)**

"Law of the case doctrine" requires courts to follow findings of fact and conclusions of law made by Court of Appeals in prior appeal of same case; moreover, doctrine bars relitigation of all factors impliedly disposed of in prior appeal and all matters decided in prior appeal by necessary implication."

"The law of the case doctrine plays an important role in our judicial system. This self-imposed restriction is grounded upon the sound public policy that litigation must come to an end. *Lehrman v. Gulf Oil Corp.*, 500 F.2d. 659 (5th Cir. 1974). Simply stated, the doctrine requires courts to follow the findings of facts and conclusions of law made by the court of appeals in a prior appeal of the same case. *U.S. v. Robinson*, 690 F.2d. 869 (11th Cir. 1982). The doctrine has been extended by case law to further bar relitigation of all factors impliedly disposed of in the prior appeal, *Gulf Coast B & S Co. v. International Bro. of E.W., No. 480*, 460 F.2d. 105 (5th Cir. 1972), and of all matters decided in the prior appeal by "necessary implication," *Terrell v. Household Goods Carriers' Bureau*, 494 F.2d. 16 (5th Cir. 1974). Otherwise, our system would have no finality and the same question could be relitigated and appealed over and over again. However, the reach and weight of the law of the case doctrine is not limitless. *Terrell*, 494 F.2d. at 19. It is simply a judicial policy and does not carry the same consequences as the rule of *res judicata*. The doctrine is not an inexorable command that rigidly binds courts to their former decisions, especially when circumstances may warrant a re-examination of the earlier decision. *Id.* Further, the policy applies only to issues that were decided, and "does not include determination of all questions which were within the issues of the case and which, therefore, might have been decided."

[*Gibson v. Farmers and Merchants Bank*, 81 B.R. 84 (N.D.Fla. 1986)]

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**United States v. Bass (Mar. 18, 1986)**

"The due process clause protects an accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. *United States v. Johnson*, 718 F.2d. 1317, 1320 (5th Cir.1983) (en bane) (quoting *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d. 368, 375 (1970)). "This means that the prosecution must prove beyond a reasonable doubt the defendant's guilt of every element of the charged offense." *Id.* at 1320-21 (quoting *Moore v. United States*, 429 U.S. 20, 22, 97 S.Ct. 29 30, 50 L.Ed.2d. 25, 28 (1976) (per curiam)). "[A] judge may not direct a verdict of guilty no matter how conclusive the evidence. *Connecticut v. Johnson*, 460 U.S. 73, 83, 103 S.Ct. 969, 975, 74 L.Ed.2d. 823 (1983) (plurality opinion) (quoting *United Brotherhood of Carpenters & Joiners v. United States*, 330 U.S. 395, 408, 67 S.Ct. 775, 782, 91 L.Ed. 973, 985 (1947)). Here, by instructing the jury that Bass was an employee, the district court relieved the prosecution of its duty of proving, beyond a reasonable doubt, Bass's guilt of every element of the offense charged. "[B]ecause the government is never entitled to a directed verdict in a criminal jury trial," *United States v. Burton*, 737 F.2d. 439, 441 (5th Cir.1984), Bass's conviction must be reversed." [Brackets original.]

[*United States L. Bass*, 784 F.2d. 1282 (1986)]

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**Celotex Corp. v. Catrett (June 25, 1986)**

"Entry of summary judgment is mandated, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish that existence of an element essential to that party's case and on which that party will bear the burden of proof at trial."

"Where party will have burden of proof on an element essential to its case at trial and does not, after adequate time for discovery, make a showing sufficient to establish the existence of that element, there can be no genuine issue as to any material fact since a complete failure of proof concerning an essential element of the nonmovant's case necessarily renders all other facts immaterial."

"Party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact."

"There is no express or implied requirement in Rule 56 that the moving party support its motion with affidavits or other similar material negating the opponent's claim."

"Regardless of whether the moving party accompanies its summary judgment motion with affidavits, the motion may and should be granted so long as whatever is before the district court demonstrates that the standard for the entry of summary judgment set forth in Rule 56(c) is satisfied."

"Nonmoving party need not produce evidence in a form that would be admissible at trial in order to avoid summary judgment."

"Summary judgment procedure is properly regarded not a disfavored procedural shortcut but, rather, as an integral part of

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the federal rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action."

[Celotex Corp. v. Catrett, 477 U.S. 317 (1986)]

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#### **Anderson v. Liberty Lobby, Inc. (June 25, 1986)**

"Mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; there must be no genuine issue of material fact."

"Substantive law will identify which facts are material for purposes of summary judgment, as only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment; factual disputes that are irrelevant or unnecessary will not be counted."

"Materiality determination on motion for summary judgment rests on the substantive law and it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs."

"Summary judgment will not lie if the dispute about a fact is "genuine," i.e., if the evidence is such that a reasonable jury could return a verdict for the nonmoving party."

"At summary judgment stage, judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial."

"There is no issue for trial unless there is sufficient evidence favoring the nonmoving party for jury to return a verdict for that party; if the evidence is merely colorable or is not significantly probative, summary judgment may be granted."

"There is no requirement that trial judge make findings of fact when granting summary judgment but, in many cases, findings are extremely helpful to a reviewing court."

"Standard for granting summary judgment mirrors the standard for a directed verdict which is that the trial judge must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict."

"Inquiry involved in a ruling on a motion for summary judgment or for directed verdict necessarily implicates the substantive evidentiary standard of proof that would apply at the trial on the merits."

[Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)]

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#### **United States v. Harrold (July 14, 1986)**

"In *United States v. Phillips*, 775 F.2d. 262 (10th Cir.1985), we held that a defendant in a tax evasion case was entitled to an instruction that a subjective good-faith misunderstanding of tax liability is a defense. *Id.* at 264; *accord United States v. Wells*, 790 F.2d. 73, 74-75 (10th Cir.1986)."

"On the amount of evidence necessary, in *United States v. Swallow*, 511 F.2d. 514 (10th Cir.), *cert. denied*, 423 U.S. 845, 96 S.Ct. 82, 46 L.Ed. 266 (1975), we stated that "[e]ven though the evidence may be weak, insufficient, inconsistent or of doubtful credibility, its presence requires an instruction on a theory of defense." *Id.* at 523; *accord United States v. Curry*, 681 F.2d. 406, 413 (5th Cir.1982); *United States v. Garner*, 529 F.2d. 962, 970 (6th Cir.), *cert. denied*, 426 U.S. 922, 96 S.Ct. 2630, 49 L.Ed.2d. 376 (1976)." [Brackets original.]

[United States v. Harrold, 796 F.2d. 1275 (1986)]

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#### **United States v. Turner (Aug. 26, 1986)**

"A trial court's decision regarding the admissibility of evidence will be overturned only if it is clearly erroneous or an abuse of discretion. *United States v. Rothbart*, 723 F.2d. 752, 755 (10th Cir.1983); *United States v. Neal*, 718 F.2d. 1505, 1509-10 (10th Cir.1983), *cert. denied*, 469 U.S. 818, 105 S.Ct. 87, 83 L.Ed.2d. 34 (1984). Evidence having any tendency to make the existence of any fact of consequence to the action more or less probable is relevant evidence, Fed.R.Evid. 401, and relevant evidence of other crimes or wrongs may be admitted under Rule 404(b) unless it is introduced solely to prove criminal disposition, *United States v. Naranjo*, 710 F.2d. 1465, 1467 (10th Cir.1983), or its prejudice to the defendant substantially outweighs its probative value. *United States v. Cook*, 745 F.2d. 1311, 1317-18 (10th Cir.1984), *cert. denied*, 469 U.S. 1220, 105 S.Ct. 1205, 84 L.Ed.2d. 347 (1985). *United States v. Beechum*, 582 F.2d. 898, 911 (5th Cir.1978), *cert. denied*, 440 U.S. 920, 99 S.Ct. 1244, 59 L.Ed.2d. 475 (1979); *United States v. Dixon*, 698 F.2d. 445, 447 (11th Cir.1983); Fed.R.Evid. 403."

[United States v. Turner, 799 F.2d. 627 (1986)]

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#### **United States v. Crooks (Nov. 25, 1986)**

"The expert advice upon which Laird apparently relied was that of a former IRS auditor, who was not a lawyer. ... Reliance

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on advice of counsel is not an absolute defense, but it is a factor to be considered in assessing good faith and intent. Counsel must, however, have been fully informed of all relevant facts, unbiased and competent. See *United States v. Winans*, 612 F.Supp. 827, 848 (S.D.N.Y.1985), *aff'd in part, rev'd in part*, 791 F.2d. 1024 (2d Cir.1986). The jury, which was properly instructed on the defense of advice of counsel, could rationally have concluded that the nature of the advice was such that reliance upon it did not establish good faith or lack of intent."  
[*United States v. Crooks*, 804 F.2d. 1441 (9th Cir. 1986)]

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**Bass v. United States (Nov. 26, 1986)**

"Suit against agent or department of federal government is proceeding against United States."  
[*Bass v. United States*, 11 Cl.Ct. 295 (1986)]

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**Document Management Group, Inc., v. United States (Jan. 15, 1987)**

"In determining applicable statute of limitations in a tax refund action, the court must first determine whether claimant is a taxpayer or a nontaxpayer within the meaning of Internal Revenue Code."

"Even though third party seeking refund for taxes paid on behalf of another could not obtain relief under Internal Revenue Code as a taxpayer, alternative forms of relief were available to him as a nontaxpayer under Claims Court's implied in fact contract jurisdiction."

"Although plaintiff's complaint mischaracterized his implied in fact contract action, in Claims Court, as a tax refund action, plaintiff's complaint sufficiently asserted implied in fact contract action."

"In view of the fact that in deciding IRS's motion to dismiss, all plaintiff's findings of uncontroverted fact were presumed to be true, plaintiff's assertions that its payments to IRS were involuntary and made under duress, for purpose of obtaining judicial relief under Claims Court's implied in fact contract jurisdiction, were sufficient to defeat motion where IRS merely alleged that payments were voluntary but failed to submit any evidence or affidavits in support."

"While waivers of sovereign immunity must be strictly construed, they must be fairly construed as well."

"In deciding defendant's motion to dismiss, all of the plaintiff's findings of uncontroverted fact are assumed to be true. RUSCC 56(d)."

[*Document Management Group, Inc. v. United States*, 11 Cl.Ct. 463 (1987)]

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**Sweats Fashions, Inc. v. Pannill Knitting Co. (Nov. 13, 1987)**

"Where movant has supported its motion for summary judgment with affidavits or other evidence which, unopposed, would establish its right to judgment, nonmovant may not rest upon general denials in its pleadings or otherwise, but must proffer countering evidence sufficient to create genuine factual dispute."

"Mere conclusory statements and denials do not take on dignity sufficient to support opposition to motion for summary judgment by placing them in affidavit form."

"Party may not simply assert in its brief that discovery was necessary, and thereby overturn summary judgment, when it failed to comply with requirement to set out reasons for need for discovery in affidavit."

[*Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d. 1560 (Fed.Cir. 1987)]

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**Bowen v. Massachusetts (June 29, 1988)**

"Moreover, while reiterating that Congress intended 'suits for damages' to be barred, both Reports go on to say that 'the time [has] now come to eliminate the sovereign immunity defense in *all equitable actions for specific relief* against a Federal agency or officer acting in an official capacity.' H.R.Rep. No. 1656, *supra*, at 9; S.Rep. No. 996, *supra*, at 8, U.S.Code Cong. & Admin.News 1976, p. 6129 (emphasis added). ...We therefore hold that Maryland's claims for specific relief, albeit monetary, are for 'relief other than money damages' and therefore within the waiver of sovereign immunity in section 702." [Brackets original.]

[*Bowen v. Massachusetts*, 487 U.S. 879, 108 S.Ct. 2722, 101 L.Ed.2d. 749 (1988)]

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**Golder v. United States (Sept. 19, 1988)**

"Tucker Act does not create substantive rights enforceable against the United States for money damages; rather, claim for damages must be based upon violation of law set forth in Act which can fairly be interpreted as mandating payment of compensation from the United States."

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***Sovereignty and Freedom Points and Authorities***

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"Claims Court lacked jurisdiction to entertain claim based upon violation of Fifth Amendment' due process clause arising from seizure and release of aircraft to primary lienholder; Claims Court has jurisdiction over damages claims against United States, and Fifth Amendment due process clause does not mandate payment of money by United States."

"Taking within meaning of Fifth Amendment occurs when rightful property, contract or regulatory powers of government are employed to control rights or property which have not been purchased."

"No taking claim under Fifth Amendment arises when rights or property have been impaired through unlawful government action."

"Drug Enforcement Administration's seizure of aircraft, which had allegedly been used to facilitate sale of marijuana, was not a Fifth Amendment taking of property, even if there was no probable cause for seizure; no taking claim arises when rights of property have been impaired through unlawful government action."

"Claims of plaintiffs who had interest in seized aircraft, for wrongful release of aircraft to primary lienholder sounded in tort and were outside Claims Court jurisdiction."

[Golder v. United States, 15 Cl.Ct. 513 (1988)]

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### **United States v. Harting (July 11, 1989)**

"Refusal to instruct as to failure-to-file defendants requested defense of good-faith misunderstanding of his duty to file tax return was reversible error where defendant presented sufficient evidence to allow reasonable jury to conclude that he acted in good faith; though defendant had filed tax returns for previous years, there was no evidence that defendant disagreed with tax laws or believed them to be unconstitutional."

[United States v. Harting, 879 F.2d. 765 (10th Cir. 1989)]

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### **United States v. Dalm (Mar. 20, 1990)**

"Tax refund claim not filed within limitations period cannot be maintained, regardless of whether tax is alleged to have been erroneously, illegally or wrongfully collected."

"Taxpayer contesting government tax claim in timely proceeding may, in connection with that proceeding, seek recoupment of related payment made on theory inconsistent with that supporting Government's present claim, even though any refund claim would be time barred; doctrine of equitable recoupment must be invoked in connection with Government's timely claim and will not provide jurisdictional basis for independent suit against Government, after time for filing refund claim has expired."

"Fact that taxpayer does not learn until after limitations period has run that tax was paid in error, and that he or she has ground upon which to claim refund, does not operate to lift limitations bar."

[United States v. Dalm, 494 U.S. 596; 110 S.Ct. 1361; 108 L.Ed.2d. 548 (1990)]

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### **Elias v. Connitt (July 16, 1990)**

"Complaint should not be dismissed unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

"Based on that evidence, we conclude that the taxpayer suffered more than mere monetary harm because he was deprived of the ability to give his family the necessities of life and had lost a valuable administrative remedy. *Id.* We held that the allegations were sufficient to support a claim for injunctive relief." [Quoting Jensen v. IRS, 835 F.2d. 196 (9th Cir. 1987).]

"The United States is a sovereign entity and may not be sued without its consent. Gilbert v. DaGrossa, 756 F.2d. 1455, 1458 (9th Cir.1985)."

[Elias v. Connitt, 908 F.2d. 521 (9th Cir. 1990)]

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### **Zakaria v. Safani (June 22, 1990)**

"When court's authority to exercise jurisdiction over nonresident is challenged, burden is on party seeking to invoke court's jurisdiction to establish that he has placed himself within reach of court's jurisdictional arm for purposes of litigation. Fed .Rules Civ.Proc.Rule 12(b)(2), 28 U.S.C.A."

"When court's authority to exercise jurisdiction over nonresident is challenged, the burden is on the party seeking to invoke court's jurisdiction to establish that the nonresident's activities are such that he has placed himself within reach of court's jurisdictional arm for purposes of the litigation under consideration. WNS, Inc, v. Farrow, 884 F.2d. 200, 203 (5<sup>th</sup> Cir.1989) (citing C. J. Investments v. Metzeler Motorcycle Tire Agent Gregg, 754 F.2d. 542, 545 (5<sup>th</sup> cir.1985))."

"If the question whether jurisdiction lies in federal court is to be decided on the basis of facts contained in the parties'

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affidavits, however, the party who bears the burden need only present a *prima facie* case for personal jurisdiction; proof by a preponderance of the evidence is not required... Moreover, on a motion to dismiss for lack of jurisdiction, uncontroverted allegations in the plaintiff's complaint must be taken as true and conflicts between the facts contained in the parties' affidavits must be resolved in the plaintiff's favor for purposes of determining whether a *prima facie* case for personal jurisdiction exists."

[Zakaria v. Safani, 741 F.Supp. 1263 (S.D.Miss. 1990)]

### **Lonsdale v. United States (Nov. 20, 1990)**

"We have recognized that "[w]hen the taxpayer challenges the procedural regularity of [a] tax lien and the procedures used to enforce the lien, and not the validity of the tax assessment," sovereign immunity is waived." *Schmidt v. King*, 913 F.2d. at 839; *National Commodity and Barter Ass'n v. Gibbs*, 886 F.2d. 1240, 1246, n. 6 (10<sup>th</sup> Cir.1989)."

[Lonsdale v. United States, 919 F.2d. 1440 (10<sup>th</sup> Cir. 1990)]

### **United States v. Collins (Nov. 27, 1990)**

"Good faith misunderstanding of duty to pay income taxes can negate willfulness element of tax evasion charge and misunderstanding need not have reasonable basis to provide defense; jury may however properly consider reasonableness of good faith defense in determining whether asserted beliefs are genuinely held."

"In tax evasion case, jury could consider objective reasonableness of defendant's belief that he was not obligated to pay taxes in determining whether his subjective belief was genuine even though defendant's subjective belief did not have to be reasonable to state valid good faith defense."

"Defendant's right to retain counsel of his choice represents right of constitutional dimension, denial of which may rise to level of constitutional violation since attorneys are not fungible."

"If court unreasonably or arbitrarily interferes with accused's right to retain counsel of his choice, conviction cannot stand, regardless of whether defendant has been prejudiced."

"Defendant's right to retain counsel of his choice is not absolute and may not be insisted on in manner which will obstruct orderly procedure in courts of justice or deprive courts of exercise of their inherent power to control procedure."

"Courts must balance defendant's constitutional right to retain counsel of his choice against need to maintain high standards of professional responsibility, public's confidence in integrity of judicial process, and orderly administration of justice."

"Although admission of attorney pro hac vice is committed to discretion of district court, denial of admission in criminal cases implicates constitutional right to counsel of choice."

"Attorneys admitted pro hac vice cannot be disqualified under standards and procedures any different or more stringent than those imposed on regular members of district court bar."

"Where district court in exercise of its discretion admitted counsel pro hac vice, subsequent revocation of status had to be evaluated as though court had disqualified regular member of district bar."

"Attorney may be dismissed for pursuing frivolous theories even if attorney acts at behest of defendant."

"Attorney's misconduct in open court may sufficiently impede orderly administration of justice to supersede defendant's Sixth Amendment right to retain counsel of choice."

"If district court disqualifies defendant's counsel of choice, it must make findings on record stating rationale for its action."

"Defense attorney in prosecution for federal tax evasion argued unsupportable theories which transformed legal argument from intellectual process to carnival of frivolity aimed at disseminating defendant's antitax views, and, thus, district court was justified in revoking attorney's pro hac vice admission."

[United States v. Collins, 920 F.2d. 619 (10<sup>th</sup> Cir. 1990)]

### **United States v. Crocker (Jan. 2, 1991)**

"In considering motion for judgment of acquittal, district court must not weigh evidence, but must determine whether Government has proffered sufficient evidence on each element of charged offenses."

"District court is required to view evidence in light most favorable to Government on motion for judgment of acquittal, and to draw all reasonable inferences in prosecution's favor."

"Elements Government must prove to establish guilt of tax evasion are affirmative act to evade or defeat payment of tax, existence of tax deficiency, and willfulness."

"Elements of failure to file tax return are: defendant was required to file return, defendant failed to file return, and

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willfulness."

"Affirmative act element of tax evasion may be met by evidence of affirmative act of filing fraudulent W-4 in which employee falsely claims to be exempt from withholding."

"Six-year limitations period for prosecuting tax evasion offense commenced to run on date return and tax for year in question was due, rather than when defendant filed W-4 form indicating he was exempt from taxation for that year."

"Form 1040 instruction booklets were not "information collection requests" that were required to display Office of Management and Budget (OMB) control numbers under Paperwork Reduction Act."

[United States v. Crocker, 753 F.Supp. 1209 (D.Del. 1991)]

### **Hafer v. Melo (Nov. 5, 1991)**

"The Supreme Court, Justice O'Connor, held that: (1) state officers may be personally liable for damages under §1983 [of title 42] based 'upon actions taken in their official capacities; (2) officers' potential liability is not limited to acts under color of state law that are outside their authority or not essential to operation of state government, but also extends to acts within their authority and necessary to performance of governmental functions; and (3) Eleventh Amendment does not erect barrier against suits to impose individual and personal liability on state officers under §1983."

"State executive officials are not entitled to absolute immunity for their official actions...."

- .. the phrase "acting in their official capacities" is best understood as a reference to the capacity in which the state officer is sued, not the capacity in which the officer inflicts the alleged injury.

"A government official in the role of personal-capacity defendant thus fits comfortably within the statutory term "person.""

- Congress enacted §1983 "to enforce provisions of the Fourteenth Amendment against those who carry a badge of authority of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it." *Scheuer v. Rhodes*, 416 U.S. 232, 243, 94 S.Ct. 1683, 1689, 40 L.Ed.2d. 90 (1974)(quoting *Monroe v. Pape, supra*, 365 U.S., at 171-172, 81 S.Ct., at 475-476). Because of that intent, we have held that in §1983 actions the statutory requirement of action "under color of state law is just as broad as the Fourteenth Amendment's "state action" requirement. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 929, 102 S.Ct. 2744, 2749, 73 L.Ed.2d. 482 (1982)."

"Rather, immunity from suit under §1983 is "predicated upon a considered inquiry into the immunity historically accorded the relevant official at common law and the interests behind it," *Imbler v. Pachtman*, 424 U.S. 409, 421, 96 S.Ct. 984, 990, 47 L.Ed.2d. 128 (1976), and officials seeking absolute immunity must show that such immunity is justified for the governmental function at issue, *Burns v. Reed*, 500 U.S. 478, 111 S.Ct. 1934, 114 L.Ed.2d. 547 (1991)."

"[S]ince *Ex parte Young*, 209 U.S. 123 [28 S.Ct. 441, 52 L.Ed. 714] (1908)," we said, "it has been settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law." *Scheuer*, 416 U.S., at 237, 94 S.Ct., at 1687. While the doctrine of *Ex parte Young* does not apply where a plaintiff seeks damages from the public treasury, damages awards against individual defendants in federal courts "are a permissible remedy in some circumstances notwithstanding the fact that they hold public office." 416 U.S., at 238, 94 S.Ct., at 1687. That is, the Eleventh Amendment does not erect a barrier against suits to impose "individual and personal liability" on state officials under §1983." [Brackets original.]

[Hafer v. Melo, 502 U.S. 21, 112 S.Ct. 358 (1991)]

### **United States v. Fletcher (Mar. 4, 1991)**

"In a prosecution for tax evasion, what counts is subjective belief of a defendant that his conduct will result in an unlawful evasion of taxes, not the degree to which tax laws are, or should be, objectively comprehensible to that defendant. *Cheek v. United States*, 498 U.S. 192, 111 S.Ct. 604, 112 L.Ed.2d. 617 (1991); *United States v. MacKenzie*, 777 F.2d. 811, 818 (2d Cir.1985), *cert. denied*, 476 U.S. 1169, 106 S.Ct. 2889, 90 L.Ed.2d. 977 (1986). We hold, as we have in the past, that the trier of fact may properly consider general educational background and expertise of the defendant as bearing on the defendant's ability to form the requisite willful intent." [Cites omitted.]

[United States v. Fletcher, 928 F.2d. 495 (2nd Cir. 1991)]

### **United States v. Schmidt (June 11, 1991)**

"Returning again to the jury instruction standard, a district court may not refuse a theory of defense instruction *if* such instruction has an evidentiary foundation and is an accurate statement of the law. *Dornhofer*, 859 F.2d. at 1199. As to the law itself, the essential elements of a reliance defense are 1) full disclosure of all pertinent facts and 2) good faith reliance on the expert's advice. *United States v. Miller*, 658 F.2d. 235, 237 (4th Cir.1981)."

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[United States v. Schmidt, 935 F.2d. 1440 (4th Cir.1991)]

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**United States v. Willie (Aug. 12, 1991)**

""Willfulness" is defined as the "voluntary, intentional violation of a *known legal duty*." *Cheek v. United States*, 111 S.Ct. at 610 (emphasis added). To be a relevant defense to willfulness, then Willie, because of his belief or misunderstanding, must not have known he had a legal duty. *Id.* at 611 (defendant must be "ignorant of his duty"). Thus, his belief must be descriptive--he must believe the law *does not* apply to him. A normative belief that the law *should not* apply to him leaves Willie fully aware of his legal obligations and simply amounts to a disagreement with his known legal duty and a "studied conclusion ... that [the law is] invalid and unenforceable". *Id.* at 612-13. In *Cheek*, the Supreme Court stated that "a defendant's views about the validity [or constitutionality] of the tax statutes are irrelevant to the issue of willfulness [and] need not be heard by the jury.... [lit makes no difference whether the claims of invalidity are frivolous or have substance." *Id.* at 613. Thus, a defendant's good faith belief that he has no legal obligation to file and evidence showing the reasonableness of that state of mind is relevant. But, proof of the reasonableness of a belief that he should not have a duty only proves the reasonableness of the defendant's disagreement with the existing law and is, therefore, properly excluded as irrelevant." [Brackets original.]

[United States v. Willie, 941 F.2d. 1384 (10th Cir. 1991)]

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**United States v. Harris (Aug. 30, 1991)**

"We hold that the letters were not hearsay because they were offered to prove the Harris' lack of willfulness, not for the truth of the matters asserted. We further hold that the critical nature of the letters to Harris' defense precludes their exclusion under Rule 403."

"But the letters were not hearsay for the purpose of showing what Harris believed, because her belief does not depend on the actual truth of the matters asserted in the letters. Even if Kritzik were lying, the letters could have caused Harris to believe in good faith that the things he gave her were intended as gifts."

"But criminal prosecutions are a different story. These must rest on a violation of a clear rule of law, not on conflict with a "way of life." If "defendant [in a tax case] ... could not have ascertained the legal standards applicable to their conduct, criminal proceedings may not be used to define and punish an alleged failure to conform to those standards." *United States v. Mallas*, 762 F.2d. 361, 361 (4th Cir.1985). This rule is based on the Constitution's requirement of due process and its prohibition on *ex post facto* laws; the government must provide reasonable notice of what conduct is subject to criminal punishment. [Cites omitted.] The rule is also statutory in tax cases, because only "willful" violations are subject to criminal punishment. [Cites omitted.] In the tax area, "willful" wrongdoing means the "voluntary, intentional violation of a known"--and therefore knowable--"legal duty.""

[United States v. Harris, 942 F.2d. 1125 (7th Cir. 1991)]

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**James v. United States (July 23, 1992)**

"Party bringing suit against United States bears burden of proving that sovereign immunity has been waived."

"Bulk of taxpayer's suit to quiet title to wages in face of federal tax levy was based on merits of underlying tax liability not procedures used to notify taxpayer of deficiency or to collect it, and district court lacked subject matter jurisdiction over action to that extent."

"Claim of notice of intent to levy is prerequisite to valid lien absent finding of jeopardy."

"Genuine issue of material fact, as to whether taxpayers received notice of intention to levy for only one of the two tax years in question, precluded summary judgment in taxpayer's quiet title action challenging procedural irregularities in establishment of lien."

[James v. United States, 970 F.2d. 750 (10th Cir. 1992)]

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**Stallard v. United States (Nov. 5, 1992)**

"A tax penalty must be properly assessed and the taxpayer properly noticed before the penalty is enforceable."

"Assessment and notice of a tax penalty must be completed within the time permitted by the statute of limitations for the penalty to be enforceable."

[Stallard v. United States, 806 F.Supp. 152 (W.D.Tex. 1992)]

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**United States v. Cochrane (Feb. 16, 1993)**

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"Challenge to conviction based on ineffective assistance of counsel ordinarily is made through collateral attack, not on direct appeal, in order to develop complete record on which to evaluate the fact-specific claim; however where record is sufficient, Court of Appeals may decide issue on direct appeal."

"Statute prohibiting making or assisting making of any materially false return, statement, claim or other document under Internal Revenue Code was not unconstitutionally vague; under reasonable construction of statute, person of ordinary intelligence could understand that it criminalized lying on any form or document filed with internal Revenue Service (IRS)."

"Indictment must provide essential facts necessary to apprise defendant of crime charged; it need not specify theories or evidence upon which government will rely to prove those facts."

"Indictment was sufficient where it informed defendant that he was charged with making false tax returns for two years, identified particulars in which returns were alleged to be false, and informed him that he was charged with assisting and advising preparation of returns for other persons identified in indictment who falsely claimed foreign income exclusions." [United States v. Cochrane, 985 F.2d. 1027 (9th Cir. 1993)]

### **United States v. Grunewald (Mar. 3, 1993)**

"One of elements of tax evasion is "willfulness", which connotes voluntary, intentional violation of known legal duty."

"Defendant charged with tax evasion may claim as defense that, because of misunderstanding of law, he had good-faith belief that he was not violating any of provisions of tax laws."

"Government cannot prove that defendant was aware of legal duty under tax laws as required for willfulness element of tax evasion if jury credits defendant's good-faith misunderstanding of law and belief that he was not violating law, whether or not belief is objectively reasonable."

"It is clear that the IRS may not develop a criminal investigation under auspices of a civil audit. See *United States v. Meier*, 607 F.2d. 215 (8th Cir.1979), cert. denied, 445 U.S. 966, 100 S.Ct. 1658, 64 L.Ed.2d. 243 (1980); *United States v. Tweet*, 550 F.2d. 297 (5th Cir.1977). Significantly different rights, responsibilities, and expectations apply to civil audits and criminal tax investigations. It would be a flagrant disregard of individuals' rights to deliberately deceive, or even lull, taxpayers into incriminating themselves during an audit when activities of an obviously criminal nature are under investigation."

[United States v. Grunewald, 987 F.2d. 531 (8th Cir. 1993)]

### **Clomon v. Jackson (Mar. 17, 1993)**

"Debt collection practice can be false, deceptive, or misleading in violation of Fair Debt Collection Practices Act (FDCPA) even if practice does not fall within any of the statutory categories listed as being false or misleading representations. Consumer Credit Protection Act, §807, as amended, 15 U.S.C.A. §1692e."

"Single violation of Fair Debt Collection Practices Act (FDCPA) provision prohibiting debt collector from using any false, deceptive or misleading representation is sufficient to establish civil liability under FDCPA."

"Most widely accepted test for determining whether collection letter is false or misleading representation, thereby violating Fair Debt Collection Practices Act (FDCPA), is objective standard based on "least sophisticated consumer"; standard serves dual purpose in that it endures protection of all consumers, even naive and trusting, against deceptive debt collection practices and protects debt collectors against liability for bizarre or idiosyncratic interpretations of collection notices."

"Use of any false, deceptive or misleading representation in collection letter violates Fair Debt Collection Practices Act (FDCPA), regardless of whether representation in question violates particular subsection of FDCPA prohibiting false or misleading representations."

"Computer-generated debt collection form letters bearing name and facsimile of signature of attorney who did not review collection letter or file of debtor to whom letter were [sic] sent violated Fair Debt Collection Practices Act (FDCPA) provision prohibiting false representation or implication that communication is from attorney; use of attorney's letterhead and signature on collection letters was sufficient to give least sophisticated consumer impression that letters were communications from attorney and this impression was false and misleading because attorney played virtually no day-to-day role in debt collection process."

"Language used in debt collection letter violated Fair Debt Collection Practices Act (FDCPA) provision prohibiting use of any false representation or deceptive means to collect debt; letters stating that attorney was suggesting certain measures be taken to further implement collection of debt, that attorney had received instructions from client to pursue matter to fullest extent, and that attorney told client that it could lawfully undertake collection activity false or misleading because they led debtor to believe that attorney had personally considered debtor's case before letters were sent when in

fact attorney did not review letters or files of debtor."

"Computer-generated debt collection form letters which bore name and facsimile of attorney's signature and which stated that attorney was suggesting that certain measures be taken to implement collection of debt violated general ban on Fair Debt Collection Practices Act (FDCPA) on use of any false, deceptive or misleading representation or means in connection with collection of any debt; attorney did not review debtor's file or letters before they were sent out."

"No mass-mailing technique with respect to debt collection letters is permissible, regardless of how effective it might be, if that technique constitutes false, deceptive or misleading communication in violation of Fair Debt Collection Practices Act (FDCPA)."

"There are few, if any, cases in which mass-produced debt collection letter bearing facsimile of attorney's signature will comply with restrictions imposed by Fair Debt Collection Practices Act (FDCPA) provision prohibiting false, deceptive or misleading representations; use of attorney's signature on collection letter implies that attorney directly controlled or supervised process through which letter was sent and that attorney signing letter formed opinion about how to manage case of debtor to whom letter was sent and in mass mailing, these implications are frequently false because attorney whose signature is used might play no role either in sending letters or in determining who should receive them." [*Clomon v. Jackson*, 988 F.2d. 1314 (2nd Cir. 1993)]

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#### **Accardi v. Superior Court (July 21, 1993)**

"Because a demurrer admits all factual allegations contained in a complaint, an appellate court, following the sustaining of a demurrer, assumes the truth of all well-pled allegations contained in the complaint. The question of the plaintiff's ability to prove these allegations, or the possible difficulty in making such proof, does not concern the reviewing court."

"Accardi, lacking a remedy by way of an appeal, sought relief by way of a petition for extraordinary writ from this court. We have issued an alternative writ of mandate."  
(*Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266, 1273-1274 [258 Cal.Rptr. 66].)"

"(1) Because a demurrer admits all factual allegations contained in a complaint (*White v. Davis* (1975) 13 Cal.3d 757, 765 [120 Cal.Rptr. 94, 533 P.2d. 222]), this court assumes the truth of all well-pled allegations contained in the complaint. "[T]he question of plaintiffs' ability to prove these allegations, or the possible difficulty in making such proof, does not concern the reviewing court." (*Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d. 590, 604 [262 Cal.Rptr. 842].)" [Brackets original.]

[*Accardi v. Superior Court*, 17 Cal.App.4th 341, 21 Cal.Rptr.2d. 292 (July 1993)]

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#### **Farmers Grain Co. v. United States (Oct. 22, 1993)**

"In ruling on motion to dismiss for lack of subject matter jurisdiction, Court of Federal Claims must accept as true complaint's undisputed factual allegation and should construe them in light most favorable to plaintiff."

"If undisputed facts reveal any possible basis on which nonmovant might prevail, Court of Federal Claims must deny motion to dismiss for lack of subject matter jurisdiction."

"If motion to dismiss for lack of subject matter jurisdiction challenges truth of jurisdictional facts alleged in complaint, Court of Federal Claims may consider relevant evidence in order to resolve the factual dispute, Court should look beyond pleadings and decide for itself those facts, even if in dispute, which are necessary for determination of the jurisdictional merits."

"Doctrine of laches is fairness doctrine by which relief is denied to one who has unreasonably and inexcusably delayed in the assertion of a claim."

[*Farmers Grain Co. v. United States*, 29 Fed. Cl. 684 (1993)]

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#### **Mogilefsky v. Superior Court (Dec. 10, 1993)**

"After a trial court sustains a demurrer to a complaint without leave to amend, the plaintiff is entitled to submit a proposed amended complaint by way of a motion for reconsideration. If an amended complaint states any cause of action, the trial court is obligated to vacate its order sustaining the demurrer without leave to amend and make a different order granting leave to file an amended complaint."

[*Mogilefsky v. Superior Court*, 20 Cal. App.4th 1409, 26 Cal.Rptr.2d. 116 (Dec. 1993)]

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#### **Hill v. Greene County School District (Feb. 2, 1994)**

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### ***Sovereignty and Freedom Points and Authorities***

"*Canal Authority of State of Florida v. Callaway*, 489 F.2d. 567 (5th Cir. 1974), is the case most often cited for the four factors this court must consider when determining whether to issue a temporary restraining order or preliminary injunction. Those factors are as follows:

"(1) a substantial likelihood that plaintiff will prevail on the merits,

"(2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted,

"(3) that the threatened injury to the plaintiff outweighs the threatened harm the injunction may do to the defendant, and

"(4) that granting the preliminary injunction will not disserve the public interest."

"A preliminary injunction is an extraordinary remedy. [Cites omitted.] Accordingly, the decision to grant a preliminary injunction is to be treated as the exception?" rather than the rule. [Cite omitted.]"

"Furthermore, injunctive relief should only be granted if the movant has clearly carried the burden of persuasion on all four prerequisites. [Cites omitted.] Failure to prove even one of the prerequisites means that the request for injunctive relief must be denied." [Cite omitted.]

"The Fifth Circuit has established no particular quantum of proof as to each of the four criteria. The district court should use a balancing-type approach in reviewing an application for injunctive relief. [Cite omitted.] The heavy burden of proof in justifying an injunction is *wholly* on the movant. [Cites omitted.] The non-moving party bears no burden to defeat the motion for injunctive relief. [Cite omitted.] In *Treasure Salvors v. Unidentified Wrecked and Abandoned Sailing Vessel*, 640 F.2d. 560 (5th Cir. 1981), the Fifth Circuit held that the four factors set forth in *Canal Authority* are inter-related, rather than independent, and compose a four-step analysis which serves as a mechanism to assist the court in determining whether an injunction is necessary to preserve the court's ability to render a meaningful decision on the merits."

"Irreparable harm in this instance would rest upon plaintiff's showing that their constitutional rights have been violated.

**Violation of a constitutional right is irreparable harm, even for minimal periods of time.** One who shows deprivation of a constitutional right need go no further in showing the requisite harm for injunctive relief." [Bold added.]

[*Hill v. Greene County School District*, 848 F.Supp. 697 (S.D.Miss. 1994)]

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### **Hafen v. United States (Feb. 17, 1994)**

"Fact that both parties moved for summary judgment does not relieve trial court of its responsibility to determine appropriateness of summary disposition; summary judgment will not necessarily be granted to one party or another just because both parties have moved for summary judgment."

"Cross motion for summary judgment is party's claim that it alone is entitled to summary judgment, and it does not follow that if one motion is rejected the other is necessarily supported; court must value each party's motion on its own merit, and resolve all reasonable inferences against party whose motion is under consideration."

"Though no motion to dismiss has been filed on ground of lack of subject-matter jurisdiction, trial court is obliged to notice on its own motion the want of its own jurisdiction."

"Unpatented mining claims are valid against United States if there has been discovery of mineral within limits of claim, if lands are still mineral, and if other statutory requirements have been met."

"If unpatented mining claim is found valid, claimant gains certain exclusive possessory rights, but no rights arise from invalid claim of any kind."

"Pro se plaintiffs are entitled to minimal latitude in presentation and preservation of their rights."

"Pro se status of owner of unpatented mining claim could not save owner from well-established precedent of Court of Federal Claims declining jurisdiction to review administrative determinations of Interior Board of Land Appeals (IBLA); owner did participate in administrative hearing process, had hearing before administrative law judge, and appealed adverse decision to IBLA."

"To extent that owner of unpatented mine claims was asserting taking by mere passage of the Mining and Parks Act (MPA) claim accrued with enactment of the MPA, and thus, claim was barred by six-year statute of limitations."

"Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. [Cites omitted.] A fact is material if it might significantly affect the outcome of the suit under the governing law."

"The party moving for summary judgment bears the initial burden of demonstrating the absence of any genuine issue of material fact. [Cites omitted.] If the moving party demonstrates an absence of genuine issues of material fact, then the burden shifts to the non-moving party to show that a genuine factual dispute does exist. [Cite omitted.] Alternatively, if the moving party can show that there is an absence of evidence to support the non-moving party's case, then the burden shifts to the non-moving party to proffer such evidence."

"The court must resolve any doubts about factual issues in favor of the non-moving party [cites omitted] to whom the benefit of all presumptions and inferences run."

"The right of persons to represent themselves is well recognized as is also the practical impossibility that such persons can be expected to prepare pleadings according to the formal requirements that can be demanded of attorneys, no matter

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how many times they try."

[*Hafen v. United States*, 30 Fed. Cl. 470 (1994)]

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**Paternostro v. Dow Furnace Co. (Mar. 18, 1994)**

"When motion to dismiss challenges personal jurisdiction, plaintiff must make prima facie case on issue." *Paternostro v. Dow Furnace Co.*, 848 F.Supp. 706 (S.D.Miss. 1994).

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**Able v. United States (Apr. 4, 1994)**

**"Exhaustion of administrative remedies is not required when plaintiffs raise constitutional question and irreparable injury' will occur without preliminary judicial relief."**

"The standards for issuing a preliminary injunction in this circuit are clear. A party seeking a preliminary injunction must show

""(1) irreparable harm should the injunction not be granted, and (2) either (a) a likelihood of success on the merits, or (b) sufficiently serious questions going to the merits and a balance of hardships tipping decidedly toward the party seeking injunctive relief."

[Bold added.]

[*Able v. United States*, 847 F.Supp. 1038 (E.D.N.Y. 1994)]

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**Pershing Division of Donaldson, Lufkin & Jenrette Securities Corp. v. United States (Apr. 27, 1994)**

"Supreme Court's decision in *Armstrong v. U.S.*, in which Court ruled that government could not assert sovereign immunity as defense to suit for recovery under takings clause, did not provide basis for district court to exercise subject matter jurisdiction over embezzlement victim's claim to recover taxes paid by corporation on embezzled funds; decision did not question right of Congress to limit its waiver of immunity to suit to particular court, and Court of Federal Claims had exclusive jurisdiction over victim's claim."

[*Pershing Division of Donaldson, Lufkin & Jenrette Securities Corp. v. United States*, 22 F.3d. 741 (7th Cir. 1994)]

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**Fromson v. United States (Aug. 9, 1994)**

"To create genuine issue of material fact to defeat summary judgment, nonmovant must do more than present evidence raising some doubt regarding assertedly disputed issue. RCFC, Rule 56(c), 28 U.S.C.A."

"To create genuine issue of material fact, precluding summary judgment, evidence must be viewed in light most favorable to nonmovant with all reasonable inferences drawn in his favor. RCFC, Rule 56(c), 28 U.S.C.A."

"Party moving for summary judgment bears burden of demonstrating absence of all genuine issues of material fact. RCFC, Rule 56(c), 28 U.S.C.A."

"Party moving for summary judgment need not produce evidence showing absence of genuine issue of material fact, but rather may discharge its burden by showing absence of evidence to support nonmoving party's case."

"A summary judgement "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. RCFC 56(c)."

"The evidence must, however, be viewed in a light most favorable to the nonmovant, with all reasonable inferences drawn in his favor. The moving party bears the burden of demonstrating the absence of all genuine issues of material fact. However, the moving party need not produce evidence showing the absence of a genuine issue of material fact but rather may discharge its burden by showing the Court that there is an absence of evidence to support the nonmoving party's case. RCFC, Rule 56(c), 28 U.S.C.A." [Cites omitted.]

[*Fromson v. United States*, 32 Fed.Cl. 1 (1994)]

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**Meyer v. United States (Sept. 28, 1994)**

"Genuine dispute exists for summary judgment purposes only if, on the entirety of the record, reasonable jury could resolve factual matter in favor of nonmovant." RCFC, Rule 56(c), 28 U.S.C.A."

"Inferences drawn from underlying facts must be viewed in light most favorable to nonmovant for summary judgment. RCFC, Rule 56(c), 28 U.S.C.A."

"Mere denials or conclusory statements not supported by specific facts shown by affidavits or other evidence are

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insufficient to establish existence of factual dispute for summary judgment purposes. RCFC, Rule 56(c), 28 U.S.C.A."

"In tax refund suit, taxpayer bears burden of proving both the error in the assessment and the amount of refund to which he is entitled."

[Meyer v. United States, 32 Fed.Cl. 149 (1994)]

**Advanced America Services, Inc. v. United States (Aug. 18, 1994)**

"While dismissal is discovery sanction to be used only in extreme circumstances, it is appropriate as means of punishing flagrantly disobedient litigant and deterring others from engaging in similar conduct. RCFC, Rule 37(b)(2)(C), 28 U.S.C.A."

[Advanced America Services, Inc. v. United States, 32 Fed.Cl. 191 (1994)]

**Weyerhaeuser Company and Subsidiaries v. United States (Sept. 1, 1994)**

"Tax refund suit in Court of Federal Claims is trial de novo." 26 U.S.C.A. §§6532(a), 7422(a); 28 U.S.C.A. §1491

"In federal income tax refund suits, there is strong rebuttable presumption of correctness of determinations of Commissioner, and before government is obligated to go forward with evidence, taxpayer first has heavy burden of rebutting said presumption and affirmatively establishing entitlement to specific deduction by preponderance of evidence." 26 U.S.C.A. §§6532(a), 7422(a); 28 U.S.C.A. §1491.

"A 'tacit admission' is an acknowledgment or concession of fact inferred from either silence or substance' of what one has said."

[Weyerhaeuser Company and Subsidiaries v. United States, 32 Fed.Cl. 80 (1994)]

**Wright v. United States (Sept. 13, 1994)**

"However, the Tucker Act is "only a jurisdictional statute; it does not create any substantive right enforceable against the United States for money damages." *United States v. Testan*, 424 U.S. 392, 398, 96 S.Ct. 948, 47 L.Ed.2d. 114 (1976). Rather, the Act merely confers jurisdiction on this court when a substantive right to recovery exists. *Id.* The plaintiff must invoke a right to monetary relief that is found in some other source of law. The plaintiff must demonstrate that the source of substantive law she relies upon "can be fairly interpreted as mandating compensation by the Federal Government for the damage sustained. *Eastport S.S. Corp. v. United States*, 372 F.2d. 1002, 178 Ct.C. 599, 607 (1967)."

[Wright v. United States, 32 Fed.Cl. 54 (1994)]

**Lewis v. United States (Sept. 16, 1994)**

"In ruling on motion to dismiss for lack of subject matter jurisdiction, court must accept as true complainant's undisputed factual allegations and construe fact in light most favorable to plaintiff. RCFC, Rule 12(b)(1), 28 U.S.C.A."

"Plaintiff must make only prima facie showing of jurisdictional facts through submitted material in order to avoid defendant's motion to dismiss for lack of subject matter jurisdiction. RCFC, Rule 12(b)(1), 28 U.S.C.A."

"If undisputed facts reveal any possible basis on which nonmoving might prevail, court must deny motion to dismiss for lack of subject matter jurisdiction. RCFC, Rule 12(b)(1), 28 U.S.C.A."

"If motion to dismiss for lack of subject matter jurisdiction challenges truth of jurisdictional facts alleged in complaint, court may consider relevant evidence in order to resolve factual dispute. RCFC, Rule 12(b)(1), 28 U.S.C.A."

"If language and effect of statute is mandatory, United States Court of Federal Claims possesses jurisdiction to hear case based on that money-mandating statute; if, on other hand, language of statute is permissive in scope and effect, statute does not grant jurisdiction to hear case. 28 U.S.C.A. §1491.

This court and its predecessors consistently rejected arguments that the statutory use of the word "may" in §1619 was discretionary and permissive. *Rickard*, 11 Cl.Ct. at 878, *Allen*, 229 Ct.Cl. at 519. *Wilson v. United States*, 135 F.2d. 1005, 1009 (1943)."

"Instead, the court finds that while the 1986 amendment permits Customs to utilize a sliding scale when determining the appropriate amount of an award for an informant, the statute continues to mandate the payment of some award."

"As this court and its predecessors have already determined the statutory use of the word "may," while ordinarily permissive, is given a mandatory meaning in 19 U.S.C. §1619."

"Despite the compelling justifications for the exhaustion doctrine, the courts have also recognized several important

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exceptions. First, if the statute does not specifically mandate the exhaustion of remedies, then the reviewing court has jurisdiction over claims filed by aggrieved parties who failed to exhaust their administrative remedies. *Halas v. United States*, 28 Fed.Cl. 354, 361 (1993); see also *Mathews v. Eldridge*, 424 U.S. 319, 328, 96 S.Ct. 893, 899, 47 L.Ed.2d. 18 (1976); compare *St. Vincent's Medical Center v. United States*, 32 F.3d. 548 (Fed.Cir. 1994). In addition, "riff the aggrieved party's action sets forth a constitutional issue, or alleges that the agency acted outside its authority, or establishes that administrative processes would be futile than the aggrieved party may be permitted to obtain judicial review without first seeking administrative review." *Mayne*, 13 Cl.Ct. at 65."

.. "this court will exercise its discretion and maintain jurisdiction over plaintiff's claim even though he failed to exhaust his administrative remedies."

"The court will stay this action for six months, commencing at the time this opinion is filed, allowing the United States Customs Service an opportunity to consider plaintiffs claims."

[*Lewis v. United States*, 32 Fed.Cl. 59 (1994)]

### **Mayer v. United States (Sept. 28, 1994)**

"Genuine dispute exists for summary judgment purposes only if, on the entirety of the record, reasonable jury could resolve factual matter in favor of nonmovant. RCFC, Rule 56(c), 28 U.S.C.A."

"Inferences drawn from underlying facts must be viewed in light most favorable to nonmovant for summary judgment. RCFC, Rule 56(c), 28 U.S.C.A."

**"Mere denials or conclusory statements not supported by specific facts shown by affidavits or other evidence are insufficient to establish existence of factual dispute for summary judgment purposes. RCFC, Rule 56(F), 28 U.S.C.A." [Bold added.]**

"In tax refund suit, taxpayer bears burden of proving both the error in the assessment and the amount of refund to which he is entitled."

"Summary judgment is appropriate where no genuine issue of material fact is in dispute and the moving party is entitled to judgment as a matter of law. RCFC 56(c); see *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S.Ct. 2505, 2509, 91 L.Ed.2d. 202 (1986). A genuine dispute exists "only if, on the entirety of the record, a reasonable jury could resolve a factual matter in favor of the non-movant." *Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d. 1560, 1562 (Fed.Cir.1987)."

"Mere denials or conclusory statements not supported by specific facts shown by affidavits or other evidence permitted by Appendix H to this court's rules are insufficient to establish the existence of a factual dispute. See UCFC 56(f); *Keebler Co. v. Murray Bakery Prods.*, 866 F.2d. 1386, 1388-89 (Fed.Cir.1989)."

[*Mayer v. United States*, 32 Fed.Cl. 149 (1994)]

### **High Star Toys, Inc. v. United States (Oct. 4, 1994)**

"Dismissal of claim under the Tucker Act on the basis of the pleadings precludes consideration of supporting evidence on substantive merits, and the procedure is drastic and should be used only when clearly appropriate. 28 U.S.C.A. §1491(a)(1); RCFC, Rule 12(b)(1), 28 U.S.C.A."

"Procedure for rendering final dismissal for want of jurisdiction should be used sparingly." RCFC, Rule 12(b)(1), 28 U.S.C.A."

"In passing on motion to dismiss, whether on ground of lack of subject matter jurisdiction or for failure to state a cause of action, allegations of complaint are to be considered favorably to pleader, and issue is not whether plaintiff ultimately will prevail, but is whether plaintiff is entitled to offer evidence to support fact alleged in the complaint. RCFC, Rule 12(b)(1, 4), 28 U.S.C.A."

"Subject matter jurisdiction of federal courts is initially determined according to the "well-pleaded complaint.""

"Subject matter jurisdiction relates to court's general powers to adjudicate in specific areas of substantive law, and though subject matter of dispute between parties on fact peculiar to specific claim under the Tucker Act may implicate the consent of the sovereign to be sued, such jurisdictional concepts do not limit the subject matter jurisdiction of the court. 28 U.S.C.A. §1491(a)(1)."

"Claim under the Tucker Act for refund founded on alleged violation of the customs laws stated claims within subject matter jurisdiction of the Court of Federal Claims. 28 U.S.C.A. §1491(a)(1); RCFC, Rule 12(b)(1), 28 U.S.C.A."

"Complaint should not be dismissed for failure to state claim on which relief can be granted unless it appears beyond doubt that plaintiff can prove no set of facts in support of claim which would entitle him to relief, and court must assume each well-pled factual allegation to be true and indulge in all reasonable inferences in favor of nonmovant. RCFC, Rule 12(b)(4), 28 U.S.C.A."

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"Motion to dismiss for failure to state claim on which relief could be granted is treated as one for summary judgment when matters outside the pleadings are presented to and not excluded by the court. RCFC, Rule 12(b)(4), 28 U.S.C.A."

"Disposition by summary judgment is appropriate where resolution of case involves solely questions of law."  
[High Star Toys Inc. v. United States, 32 Fed.Cl. 176 (1994)]

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#### **Alliance of Descendants v. United States (Oct. 6, 1994)**

"Claim accrues against government when all events have occurred that fix alleged liability of government and entitle plaintiff to institute action. 28 U.S.C.A. §2501."

"Legal cause of action is "property" within meaning of Fifth Amendment. -U.S.C.A.Const.Amend. 5"

"Statute of limitations may be tolled in suits against Government."

"Implied-in-fact contract with government requires mutuality of intent to contract, consideration, and lack of ambiguity in offer and acceptance."

[Alliance of Descendants v. United States, 37 F.3d. 1478 (Fed.Cir. 1994)]

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#### **C & G Excavating, Inc. v. United States (Oct. 24, 1994)**

"Court is authorized to issue injunctive relief in cases of preaward bid protests. 28 U.S.C.A. §1491(a)(3)."

"Award of permanent injunction is appropriate in cases of preaward bid protests whenever party can demonstrate by preponderance of evidence that challenged action is irrational or unreasonable or violates applicable procurement statute or regulation. 28 U.S.C.A. §1491(a)(3)."

"In resolving cross-motions for summary judgment, any evidence presented by opponent is to be believed and all justifiable inferences are to be drawn in its favor."

"For any facts that may be considered contested, each party, in its capacity as opponent of summary judgment, is entitled to all applicable presumptions, inferences, and intendments. "

"The award of a permanent injunction is appropriate whenever a party can demonstrate by "a preponderance of evidence that the challenged action is irrational or unreasonable or violates an applicable procurement [statute or] regulation." *Logicon, Inc. v. United States*, 22 Cl.Ct. 776, 783 (1991) (citing cases)."

"Only disputes over material facts, or facts that might significantly affect the outcome of the suit under the governing law, preclude an entry of judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d. 202 (1986); *see also Stissi v. Interstate and Ocean Transp. Co. of Philadelphia*, 765 F.2d. 370, 374 (2d Cir.1985) (stating that "[w]hen a decision turns on the meaning of words in a statute or regulation, the decision is one of law which must be made by the court...."

"Any evidence presented by the opponent is to be believed and all justifiable inferences are to be drawn in its favor. *Id.* at 255, 106 S.Ct. at 2514. Uncontested material facts also have been found consistent with the rule that, in respect of any facts that may be considered as contested, each party, in its capacity as the opponent of summary judgment, is entitled to "all applicable presumptions, inferences, and intendments." Nonetheless, counsel's assertions regarding a fact at issue "cannot substitute for factual statements under oath."" [Cite omitted; brackets original.]

[C & G Excavating, Inc. L. United States, 32 Fed.Cl. 231 (1994)]

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#### **Chicago Milwaukee Corp. v. United States (Nov. 8, 1994)**

**"Filing refund claim with the Internal Revenue Service (IRS) that complies with IRS regulations is jurisdictional prerequisite to tax refund suit. 26 U.S.C.A. §7422(a)."**

"Refund claim filed with Internal Revenue Service (IRS) must detail each claimed ground for tax refund, and provide sufficient facts to apprise IRS of its basis, to satisfy jurisdictional prerequisite for filing refund suit. 26 U.S.C.A. §7422(a); 26 C.F.R. §301.6402-2(b)(1)."

"The question in this case is whether Treas. Reg. §31.6402(a)-2(a)(2) (1994) imposes a jurisdictional requirement under I.R.C. §7422(a). The regulation provides: "Every [administrative] claim filed by an employer for refund or credit of [RRTA] tax ... collected from an employee shall include a statement that the employer has repaid the tax to such employee or has secured the written consent of such employee to allowance of the refund...."

[Bold added; brackets original.]

[Chicago Milwaukee Corp. v. United States, 40 F.3d. 373 (Fed.Cir. 1994)]

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#### **Lewis v. United States (Nov. 15, 1994)**

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### ***Sovereignty and Freedom Points and Authorities***

"When ruling on motion to dismiss for lack of subject matter jurisdiction, court must generally assume that unchallenged facts are true."

"If facts relevant to subject matter jurisdiction are contested, court is required to decide those facts."

"Although court must generally assume unchallenged facts to be true when deciding whether it has subject matter jurisdiction, court is not required to accept plaintiff's framing of complaint but should, instead, look to plaintiff's factual allegations to ascertain true nature of claim."

"In deciding issue of subject matter jurisdiction, court may look to matters outside pleadings."

"When challenged jurisdictional facts are so closely tied to merits of claim that dismissal for lack of subject matter jurisdiction is essentially dismissal on merits, court should generally assume jurisdiction and decide case on its merits, unless plaintiff's statement of jurisdictional basis is clearly without merit."

"To extent perceived defects in pleading are ones that could be cured by appropriate discovery, it would be inappropriate for court to dismiss complaint for lack of jurisdiction without giving plaintiff opportunity to make such request or amend complaint."

"If party has sufficient information to state claim, but claim is clearly without merit or is outside court's jurisdiction, rule allowing proper party to obtain limited discovery necessary to state claim with sufficient particularity to avoid dismissal cannot be used to obtain discovery."

"Nevertheless, the Tucker Act does support jurisdiction over claims otherwise sounding in tort if they arise out of a contract between the parties. [Cites omitted.] Therefore, if plaintiff's claim arises out of a contract with the United States, this court does not lack jurisdiction merely because the allegations sound in tort."

"However, assuming *arguendo* that the alleged implied-in-fact contract existed, ... Therefore, the court will not dismiss the complaint *merely* upon the ground that it sounds in tort."

"When challenged jurisdictional facts are so closely tied to the merits of a claim that a dismissal for lack of subject matter jurisdiction is essentially a dismissal on the merits, the court should generally assume jurisdiction and decide the case on its merits."

[Lewis v. United States, 32 Fed.Cl. 301 (1994)]

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#### **Sanford v. United States (Nov. 23, 1994)**

"If it is in interests of justice, court may transfer action over which it does not have jurisdiction to any other court with jurisdiction. 28 U.S.C.A. §1631."

[Sanford v. United States, 32 Fed.Cl. 363 (1994)]

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#### **Asco-Falcon II Shipping Co. v. United States (Dec. 21, 1994)**

"When ruling on motion to dismiss for failure to state claim upon which relief can be granted, Court of Federal Claims' focus is limited to facts alleged in complaint, which must be presumed to be true and correct and which must be construed in light most favorable to nonmovant. RCFC, Rule 12(b)(4), 28 U.S.C.A."

"When ruling on motion to dismiss for failure to state claim upon which relief can be granted, task of court of Federal Claims is not to decide whether plaintiff will ultimately prevail but whether plaintiff is entitled to offer evidence to support claims. RCFC, Rule 12(b)(4), 28 U.S.C.A."

"After review of factual allegations of complaint, complaint should be dismissed by Court of Federal Claims for failure to state claim only if no set of facts contained therein would, if proved, entitle plaintiff to relief. RCFC, Rule 12(b)(4), 28 U.S.C.A."

"Federal government will be liable when it delays unreasonably in performing its own obligations and duties under a contract and will be liable when it unreasonably causes delay or hindrance to performance of the other party's contractual obligations."

"Federal government officials are presumed to act conscientiously and in good faith in the discharge of their duties."

"In order to find that federal government breached its duty of good faith, plaintiffs must allege and prove, by clear and strong evidence, specific acts of bad faith on part of government; indeed, it requires well nigh irrefragable proof to induce court to abandon presumption of good faith dealing."

"To state claim premised on federal government's violation of the obligation of good faith and fair dealing, plaintiffs must allege facts which if proved would constitute malice or intent to injure."

"While factual allegations must be presumed to be true by Court of Federal Claims when evaluating motion to dismiss for failure to state claim, conclusory allegations without any supporting facts are insufficient to withstand motion to dismiss. RCFC, Rule 12(b)(4), 28 U.S.C.A."

"Evidence and all factual inferences must be viewed in light most favorable to party opposing summary judgment."

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RCFC, Rule 56(c), 28 U.S.C.A."  
 [Asco-Falcon II Shipping Co. v. United States, 32 Fed.Cl. 595 (1994)]

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**Sam Gray Enterprises, Inc. v. United States (Jan. 3, 1995)**

"In considering motion to dismiss for lack of subject matter jurisdiction, court must accept as true any undisputed allegations of fact made by nonmoving party. RCFC, Rule 12(b)(1), 28 U.S.C.A."

"On motion to dismiss for lack of jurisdiction, court may decide disputed facts relevant to issue of jurisdiction. RCFC, Rule 12(b)(1), 28 U.S.C.A."

"When subject matter jurisdiction is questioned, nonmoving party bears burden of establishing court's jurisdiction. RCFC, Rule 12(b)(1), 28 U.S.C.A."

"Tucker Act alone does not create substantive right to recover money, but instead waives sovereign immunity under specific conditions. 28 U.S.C.A. §1491."

[Sam Gray Enterprises, Inc. v. United States, 32 Fed.Cl. 526 (1995)]

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**Minneapolis Post Office Rifle and Pistol Club v. United States (Jan. 10, 1995)**

"Fact that both parties have moved for summary judgment does not relieve court of its responsibility to determine appropriateness of summary disposition; summary judgment will not necessarily be granted to one party or another just because both parties have moved for summary judgment. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A."

"Court must evaluate each party's summary judgment motion on its own merit, and resolve all reasonable inferences against party whose motion is under consideration. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A."

[Minneapolis Post Office Rifle and Pistol Club v. United States, 32 Fed.Cl. 562 (1995)]

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**Quality Tooling, Inc. v. United States (Jan. 31, 1995)**

"Provision of Tucker Act waiving government's sovereign immunity from breach-of-contract claims was not court-specific, and waived government's immunity not just as to breach-of-contract claims asserted in Court of Federal Claims but in any federal court authorized by Congress to hear such claims. 28 U.S.C.A. §§1295(a)(3), 10, 1334(b)."

"United States may not be sued without its consent, and that consent is prerequisite for jurisdiction."

"Waiver of sovereign immunity is accomplished not by ritualistic formula; rather, intent to waive immunity and scope of waiver may be ascertained only by reference to underlying congressional policy."

[Quality Tooling, Inc. v. United States, 47 F.3d. 1569 (Fed.Cir. 1995)]

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**State of Alaska v. United States (Feb. 8, 1995)**

"Fundamental defense of power to hear, i.e., lack of jurisdiction, is one which can never be waived and must be considered by court whenever and however raised. RCFC, Rule 12(b)(1), (h)(3), 28 U.S.C.A."

"Generally, when considering motion to dismiss complaint, court will presume all facts alleged in complaint to be true and correct. RCFC, Rule 12(b)(1), 28 U.S.C.A."

"When considering motion to dismiss complaint, fact alleged in complaint must be construed favorably to pleader. RCFC, Rule 12(b)(1), 28 U.S.C.A."

"Party who seeks exercise of jurisdiction of Court of Federal Claims in his favor must allege in his complaint facts essential to show that jurisdiction is proper. RCFC, Rule 12(b)(1), 28 U.S.C.A."

"Plaintiff in Court of Federal Claims bears burden of establishing jurisdiction by preponderance of the evidence. RCFC, Rule 12(b)(1), 28 U.S.C.A."

"If amended complaint filed in Court of Federal Claims states claim which arises from same conduct, transaction, or occurrence, and especially if it states same claim arising from same events, as set forth in original complaint, then it must be considered timely if original complaint was filed within six years from date upon which that claim accrued. 28 U.S.C.A. §2501; RCFC, Rule 15(c), 28 U.S.C.A."

"Cause of action against federal government generally accrues when all of events necessary to fix alleged liability of government have occurred and claimant is legally entitled to bring suit. 28 U.S.C.A. §2501."

[State of Alaska v. United States, 32 Fed.Cl. 689 (1995)]

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**Atlas Enterprises Limited Partnership v. United States (Feb. 14, 1995)**

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"Movant for summary judgment must show absence of any genuine issue of material fact or, in alternative, that there is no evidence to support nonmoving party's case; once proper showing is made, burden shifts to adverse party to prove by sufficient evidence that genuine issue of material fact is present for trial."

"In considering motion for summary judgment, court must draw all justifiable inferences in nonmovant's favor, and any evidence which nonmovant presents is considered to be true."

"Genuine issues of fact, as will preclude grant of summary judgment, are issues which would change outcome of litigation."

[Atlas Enterprises Limited Partnership v. United States, 32 Fed.Cl. 704 (1995)]

### **Pevar Company v. United States (Mar. 7, 1995)**

"In considering defendant's motion to dismiss for lack of subject matter jurisdiction, Court of Federal Claims must accept as true any undisputed allegations of fact made by nonmoving party."

"When disputed facts relevant to issue of jurisdiction exist, Court of Federal Claims may decide those questions of fact."

"When subject matter jurisdiction is questioned, nonmoving party bears burden of establishing court's jurisdiction."

"Defendant's motion to dismiss for lack of subject matter jurisdiction would not be treated as one for summary judgment, as materials defendant attached to its motion were relevant to jurisdictional issue. RCFC, Rule 12(b)(1), 28 U.S.C.A."

"In deciding whether court has jurisdiction to hear case, court is not limited to pleadings, but may consider materials and evidence extrinsic to pleadings; truth of jurisdictional fact must be ascertained before court can consider merits of case and, thus any materials relevant to court's jurisdiction may be considered. RCFC, Rule 12(b)(1), 28 U.S.C.A."

"Tucker Act alone does not create substantive right to recover money, but instead waives sovereign immunity under specific conditions. 28 U.S.C.A. §1491."

[Pevar Company v. United States, 32 Fed.Cl. 822 (1995)]

### **Cook v. United States (Apr. 11, 1995)**

"In considering motion to dismiss for lack of subject matter jurisdiction, court must accept as true any undisputed allegations of fact made by nonmoving party. RCFC, Rule 12(b)(1), 28 U.S.C.A."

"When disputed facts relevant to issue of jurisdiction exist, court may decide those questions of fact. RCFC, Rule 12(b)(1), 28 U.S.C.A."

"When subject matter jurisdiction is question, nonmoving party bears burden of establishing court's jurisdiction. RCFC, Rule 12(b)(1), 28 U.S.C.A."

.. while motion to dismiss for failure to state claim may be treated as motion for summary judgment when evidentiary materials outside of pleadings are considered, rule dealing with subject matter jurisdiction contains no similar provision. RCFC, Rule 12(b)(1, 4), 28 U.S.C.A."

[Cook v. United States, 32 Fed.Cl. 783 (1995)]

### **Black's Law Dictionary: Voir Dire**

"**VOIR DIRE.** L. Fr. To speak the truth. This phrase denotes the preliminary examination which the court may make of one presented as a witness or juror, where his competence, interest, etc., is objected to. State v. McRae, 200 N.C. 149, 156 S.E. 800, 803."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1746]

### **10.3 Burden of Proof**

For further details on the subject of this section, see:

*Proof of Claim: Your Main Defense Against Government Greed and Corruption*, Form #09.073  
<https://sedm.org/Forms/FormIndex.htm>

### **Ham v. La Cienega Music Co. (Oct. 19, 1993)**

**"Plaintiffs typically carry burden of proof on personal jurisdiction by making prima facie showing."**

"For purposes of personal jurisdiction, due process requires that defendant have established "minimum contacts" with forum state, and that exercise of personal jurisdiction does not offend traditional notions of fair play and substantial justice"

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U.S.C.A. Const. Amend. 14."

"A two-step analysis governs the inquiry into personal jurisdiction over nonresident defendants. Absent a controlling federal statute regarding service of process, we first determine whether the long arm statute of the forum state permits exercise of jurisdiction. We then determine whether such exercise comports with due process."

[*Ham v. La Cienega Music Co.*, 4 F.3d. 413 (5th Cir. 1993)]

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**Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. United States IRS (Apr. 15, 1988)**

**"Party suing to recover federal taxes erroneously assessed or wrongfully collected has burden of demonstrating compliance with jurisdiction statute.** 28 U.S.C.A. §1346(a)."

"Strict compliance with statute providing for civil actions to recover federal taxes is jurisdiction prerequisite to suit. 28 U.S.C.A. §1346(a)."

"This Court has recognized that only the person legally liable for paying a given federal tax may bring a refund suit under Section 1346(a)(1). *Busse v. United States*, 542 F.2d. 421, 424 (7th Cir.1976)."

.. the basic logic that a "nontaxpayer cannot overpay taxes." See *Economy Plumbing & Heating v. United States*, 470 F.2d. 585, 589 (Ct.Cl.1972)."

'.. the manufacturer, not the consumer, is designated as the actual taxpayer of the manufacturer's excise tax."

"The IRS has consistently ruled that Congress did not intend to impose the federal income tax on tribes."

[*Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. United States IRS*, 845 F.2d. 139 (7th Cir. 1988)]

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**5 U.S.C. §556(d)**

"Except as otherwise provided by statute, **the proponent of a rule or order has the burden of proof.** Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence."

[5 U.S.C. §556(d)]

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**Becker v. Angle (Nov. 15, 1947)**

"The Act of March 3, 1875, c. 137, §5, 18 Stat. 472, Judicial Code, Section 37, 28 U.S.C.A. §80, places upon the trial court the duty of enforcing the statutory limitations upon its jurisdiction, and authorizes the court to inquire into the jurisdictional facts and to dismiss or remand the case if lack of jurisdiction appears. *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 56 S.Ct. 780, 785, 80 L.Ed. 1135.

**"One who invokes the jurisdiction of the court must not only allege the jurisdictional facts, but he has the burden of showing that he is properly in court."**

[*Becker v. Angle*, 165 F.2d. 140 (1947)]

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**Wilshire Oil Company of Texas v. Riffe (Apr. 15, 1969)**

**"Party invoking jurisdiction of court has burden of pleading and proving existence of jurisdiction."**

"It is, of course, elementary that on a motion to dismiss the allegations of the complaint and all supporting affidavits are accepted as true. *Gardner v. Toilet Goods Ass's, Inc.*, 387 U.S. 167, 172, 87 S.Ct. 1526, 18 L.Ed.2d. 704 (1967). ... A complaint may be dismissed only when "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45, 78 S.Ct. 99, 102, 2 L.Ed.2d. 80 (1957)."

[*Wilshire Oil Company of Texas v. Riffe*, 409 F.2d. 1277 (1969)]

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**City of Lawton, Oklahoma v. Chapman (July 28, 1958)**

"It is a well established principle that where the complaint alleges a sufficient jurisdictional amount which is denied by the answer, **the burden of proving jurisdiction rests upon the plaintiff.** *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 56 S.Ct. 780, 80 L.Ed. 1135. And, since courts of U.S. are of limited jurisdiction, there is a presumption against jurisdiction which obtains throughout trial of case. *Grace v. American Central Insurance Co.*, 109 U.S. 278, 3 S.Ct. 207, 27 L.Ed. 932. The reason for these guiding principles is, of course, that the federal courts must act with due regard for rightful independence of state governments and scrupulously confine their own jurisdiction to precise limits defined by statute.

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Healy v. Ratta, 292 U.S. 263, 54 S.Ct. 700, 78 L.Ed. 1248."

"The object or right to be protected against unconstitutional interference is the right to be free of that regulation. The value of that right may be measured by the loss, if any which would follow the enforcement or the rules prescribed."

[Quoting McNutt.]

[City of Lawton, Oklahoma v. Chapman, 257 F.2d. 601 (1958)]

#### **Midland-Guardian of Pensacola, Inc. v. Carr (Aug. 15, 1968)**

"**One who alleges fraud has burden of establishing it by legal and convincing evidence,**" and fraud is never presumed."

"Fraud and simulation may be established by circumstantial evidence."

[Midland-Guardian of Pensacola, Inc. L, Carr, 288 F.Supp. 409 (1968)]

#### **Raymark Industries, Inc. v. United States (Aug. 16, 1988)**

"**It is axiomatic that the party seeking to invoke federal court jurisdiction bears the burden of establishing that such exists.** [Cites omitted.] However, the determination of the appropriate quantum of the burden that the plaintiff must clear will rest upon such factors as the nature of the proceeding and the type of evidence the plaintiff is permitted to present. *Id.* Thus, the limits imposed by the trial judge upon pretrial proceedings will dictate the burden the plaintiff is required to meet. *Id.*

"For example, if the court limits the parties' submissions, with regard to the jurisdictional issue, to merely affidavits or affidavits plus discovery materials, "these very limitations dictate that a plaintiff must make only a *prima facie*' showing of jurisdictional fact through the submitted material in order to avoid a defendant's motion to dismiss." [Cite omitted.] This is equitable because any greater burden "would permit a defendant to obtain a dismissal simply by controverting the facts established by a plaintiff through his own affidavits and supporting materials."

"On the other hand, where, as in the instant case, the court exercises its discretion and takes evidence at a preliminary hearing in open court in order to resolve contested factual issues, the plaintiff must then be put to its full burden of proof. That is to say, "in [such] situation, ... plaintiff must establish the jurisdictional facts by a preponderance of the evidence, just as [it] would have to do at trial."" [Brackets original.]

[Raymark Industries, Inc. v. United States, 15 Cl.Ct. 334 (1988)]

#### **Dreher v. Sielaff (Dec. 9, 1980)**

"**Burden is on party moving for summary judgment to show that there is no issue of material fact in dispute.**

Fed.Rule Civ. Proc. 56(c), 28 U.S.C.A."

"All doubts as to existence of and issue of material fact must be resolved against party moving for summary judgment."

"A court passing on a motion for summary judgment may only determine whether there exists a dispute as to a material issue of fact and may not resolve that dispute."

[Footnote 4 on p. 1143.] "It is well accepted that the purpose of summary judgment is to prevent an unnecessary trial where, on the basis of the pleadings and supporting documents, there remains no material issue of fact to be tried. *Kirk v. Home Indemnity Co.*, 431 F.2d. 554, 559 (7th Cir. 1970). Summary judgment is appropriate only if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Fitzsimmons v. Best*, 528 F.2d. 692, 694 (7th Cir. 1976); Fed.R.Civ.P. 56(c). The burden is upon the moving party to show that there is no issue of material fact in dispute, *Rose v. Bridgeport Brass Co.*, 487 F.2d. 804, 808 (7th Cir. 1973), and all doubts as to the existence of an issue of material fact must be resolved against the movant. *Moutoux v. Gulling Auto Electric, Inc.*, 295 F.2d. 573, 577 (7th Cir. 1961). In passing on a motion for summary judgment, the trial court may only determine whether or not there exists a dispute as to a material issue of fact. It is not permitted to resolve that dispute. *Carter v. Williams*, 361 F.2d. 189, 194 (7th Cir. 1966)."

[Dreher v. Sielaff, 636 F.2d. 1141 (1980)]

### **10.4 Full Payment Rule**

#### **Flora v. United States (1958)**

**The foregoing study of the legislative history of 28 U.S.C. §1346(a)(1) and related statutes leaves no room for**

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**contention that their broad terms were intended to alter in any way the Cheatham principle of "pay first and litigate later."<sup>72</sup> For many years that principle has been reinforced by the rule that no suit can be maintained for the purpose of restraining the assessment or collection of any tax.<sup>73</sup> More recently, Congress took care to except from the operation of the Federal Declaratory Judgments Act any controversies "with respect to Federal taxes."<sup>74</sup> To ameliorate the hardship produced by these requirements Congress created a special court where tax questions could be adjudicated in advance of any payment. But there is no indication of any intent to create the hybrid remedy for which petitioner contends.**

It is suggested that a part-payment remedy is necessary for the benefit of a taxpayer too poor to pay the full amount of the tax. **Such an individual is free to litigate in the Tax Court without any advance payment. Where the time to petition that court has expired, or where for some other reason a suit in the District Court seems more desirable, the requirement of full payment may in some instances work a hardship. But since any hardship would grow out of an opinion whose effect Congress in successive [357 U.S. 63, 76] statutory revisions has made no attempt to alter, if any amelioration is required it is now a matter for Congress, not this Court.**

[Flora v. United States, 357 U.S. 63, 78 S.Ct. 1079 (1958)]

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### **Laing v. U.S. (1976)**

At this point, [Flora v. United States, 357 U.S. 63, 78 S.Ct. 1079, 2 L.Ed.2d. 1165 \(1958\)](#), on rehearing, [362 U.S. 145, 80 S.Ct. 630, 4 L.Ed.2d. 623 \(1960\)](#), deserves comment. In that case the Court held that a federal district court does not have jurisdiction of an action for refund of a part payment **made by a taxpayer** on an assessment. It ruled that **the taxpayer must pay the full amount of the assessment before he may challenge its validity in the court action. Payment of the entire deficiency thus was made a prerequisite to the refund suit.** The ruling, however, was tied directly to the jurisdiction of the Tax Court where litigation prior to payment of the tax was the usual order of the day. [362 U.S., at 158-163, 80 S.Ct., at 637-640](#). The holding thus kept clear and distinct the line between Tax Court jurisdiction and district court jurisdiction. The Court said specifically:

“A word should also be said about the argument that requiring taxpayers to pay the full assessments before bringing suits will subject some of them to great hardship. This contention seems to ignore entirely the right of the taxpayer to appeal the deficiency to the Tax Court without paying a cent.” [Id., at 175, 80 S.Ct., at 646](#).

This passage demonstrates that the **full-payment rule applies only where a deficiency has been noticed**, that is, \*209 only where the taxpayer has access to the Tax Court for redetermination prior to payment. This is the thrust of the ruling in Flora, which was concerned with the possibility, otherwise, of splitting actions between, and overlapping jurisdiction of, the Tax Court and the district court. [Id., at 163, 165-167, 176, 80 S.Ct., at 640, 641-642, 646](#). Where, as here, in these terminated period situations, there is no deficiency and no consequent right of access to the Tax Court, there is and can be no requirement of full payment in order to institute a refund suit. The taxpayer may sue for his refund even if he is unable to pay the full amount demanded upon the termination of his taxable period. [Irving v. Gray, 479 F.2d, at 24-25, n. 6; Lewis v. Sandler, 498 F.2d. 395, 400 \(CA4 1974\)](#).

I recognize that on occasion the refund procedure may cause some hardship for the terminated taxpayer whose entire assets may be seized and who may be required to wait as long as six months before filing his refund suit. Indeed, this hardship was one of the reasons for establishing the Board of Tax Appeals as a prepayment forum in the first place. See H.R.Rep. No. 179, 68th Cong., 1st Sess., 7 (1924); S.Rep. No. 398, 68th Cong., 1st Sess., 8 (1924).<sup>FN14</sup> It is obvious, of course, that when one taxpayer dishonestly \*210 evades his share of the tax burden, \*\*498 that share is shifted to all those who comply with the law. This balance of “hardship” doubtless was in the minds of those who formulated the statutory structure. [Laing v. U.S., 423 U.S. 161, 96 S.Ct. 473 (U.S.Ky. 1976)]

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<sup>72</sup> [Allen v. Regents of University System of Georgia, 304 U.S. 439, 456, 58 S.Ct. 980, 988, 82 L.Ed. 1448](#) (concurring opinion).

<sup>73</sup> 14 Stat. 475 (1867), re-enacted in R.S. s 3224, presently in force as [26 U.S.C. \(Supp. V\) s 7421](#), [26 U.S.C.A. s 7421](#).

<sup>74</sup> 49 Stat. 1027, [28 U.S.C. s 2201](#), [28 U.S.C.A. s 2201](#). See S.Rep.No.1240, 74th Cong., 1st Sess. 11.

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## 10.5 Suits for wrongful enforcement actions filed by non-residents

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### Internal Revenue Manual, Section 35.18.10.1

Internal Revenue Manual, Section 35.18.10.1 (08-31-1982) District Courts

Section 1402(a)(1) of the Judicial Code (28 U.S.C. §1402(a)(1)) provides that if an action is brought against the United States under section 1346(a) of the Judicial Code by an entity other than a corporation, it must be brought in the judicial district where the plaintiff resides. **Accordingly, where an individual resides outside of the [federal] United States (e.g., a nonresident alien), he or she may not bring a refund suit in a district court.** *Malajalian v. United States*, 504 F.2d 842 (1st Cir. 1974). These cases may be brought only in the Court of Claims.

[Internal Revenue Manual, Section 35.18.10.1 (08-31-1982)]

[NOTE: The above provision is currently not found in the Internal Revenue Manual. Technically, the above provision is also incorrect, because the Court of Claims as of April 2, 1982, was reorganized to remove Article III jurisdiction from it and transfer it to the Court of International Trade. See Pub.L. 97-164, 96 Stat. 27.]

### Malajalian v. U.S. (1974)

Taxpayer Malajalian, a resident of Beirut, Lebanon, entered the United States under a business visa on April 22, 1972, and remained as a non-resident alien until June 22, 1972, at which time he left this country. On June 20, as the taxpayer was preparing to depart for London from Logan Airport in Boston, a routine inspection of his baggage disclosed \$147,595 in bills of small denomination. Notified of the discovery of this treasure-cache, the Internal Revenue Service terminated taxpayer's tax year under 6851 of the Internal Revenue Code and made two jeopardy assessments against him totaling \$131,331. When this amount was levied upon and seized out of taxpayer's funds, still in the possession of the Customs Bureau, he filed a tax return declaring that he had no taxable income for his truncated 1972 tax year and requested a refund of the amount seized. After more than six months had passed without action on the claim by the Commissioner, taxpayer instituted suit for refund in the United States District Court for the District of Massachusetts. The court granted the government's motion to dismiss on grounds of improper venue, and this appeal followed.

Section 1346 of the Judicial Code endows the district courts with jurisdiction, concurrent with the Court of Claims, over civil actions against the United States for the recovery of internal revenue taxes alleged to have been erroneously assessed and collected. Section 1402(a)(1) restricts venue in actions against the United States to the district where the plaintiff resides. Since taxpayer, an alien, concededly does not reside in Massachusetts, he cannot lay venue there if 1402(a)(1) is read literally.

Recently, in a patent infringement suit against an alien, [Brunette Machine Works, Ltd. v. Kockum Industries, Inc.](#), 406 U.S. 706, 710 & n. 8, 92 S.Ct. 1936, 1939, 32 L.Ed.2d 428 (1972), the Supreme Court reiterated its longstanding view that 'Congress does not in general intend to create venue gaps, which take away with one hand what Congress has given by way of jurisdictional grant with the other.' The Court reasoned that 'venue provisions are designed, not to keep suits out of the federal courts, but merely to allocate suits to the most appropriate or convenient federal forum.' However, it was easier for the Court in Brunette to avoid a venue gap than it is in the instant case. First, Brunette involved construction of conflicting statutory provisions rather than the necessity to read language into a single governing provision. Second, the traditional judicial view that suits against aliens are outside the scope of venue laws does not generally carry over to suits by aliens.

Taxpayer can derive little consolation from the holding of *United States v. New York & O.S.S. Co.*, 216 F. 61 (2d Cir. 1914), an admiralty suit under the Tucker Act in which a non-resident alien was permitted to sue upon an express finding that respondent had waived its venue objection. See also [Choremi v. United States](#), 28 F.2d 913 (D.Mass.1928). The court declined to venture an opinion as to the result that would obtain if, as in the instant case, there had been no waiver.

Taxpayer next cites a series of cases decided under the Suits in Admiralty Act, 46 U.S.C. 741-752 (1970), which has its own venue provision permitting suits against the United States in the district where libelants reside or have their principal place of business or in which the vessel or cargo charged with liability may be found. 46 U.S.C. §742 (1970). Although there is at least one case to the contrary, *The Elmac*, 285 F. 665 (S.D.N.Y.1922), the courts construing this provision have generally allowed non-resident aliens to bring suit in any district on grounds that otherwise they would have no forum in which to sue. See [McGhee v. United States](#), 154 F.2d 101 (2d Cir. 1946); [Metaxas v. United States](#), 68 F.Supp. 667 (S.D.Cal.1946); *Middleton & Co. v. United States*, 273 F. 199 (E.D.S.C.1921); [Kulukundis v. United States](#), 132 F.Supp. 477, 132 Ct.Cl. 644 (1955). Apart from the fact that these decisions are predicated upon a special statutory provision, they

are inapposite here because the taxpayer, unlike the claimants in the admiralty actions, may repair to the Court of Claims to press his suit, an alternative forum in which his alienage will pose no obstacle.

Legislative history of relevant statutory provisions in fact provides some evidence that Congress was aware of the venue gap existing as to tax refund suits by aliens against the United States in the district courts. Prior to 1966, an alien individual had two possible avenues open for a tax refund suit, without regard to the forum at issue here. An alien before 1966 could sue for a tax refund in the Court of Claims if the country of which he was a citizen permitted itself to be sued by citizens of the United States having claims against it. 28 U.S.C. 2502 (1970). But even without reciprocity an alien could sue the collecting director in the district court where the director resided, since suit against the collecting director is not, at least in form, a suit against the United States. See H.R.Rep. No. 1915, 89th Cong., 2d Sess. 6 (1966). In 1966 Congress abolished refund suits against collecting officers. Act of Nov. 2, 1966, Pub.L. 89-713, 3(a), 80 Stat. 1108, codified at 26 U.S.C. 7422(f) (1970). By thus restricting the taxpayer to his judicial district of residence (i.e., in suits against the United States), Congress sought to prevent forum-shopping by taxpayers looking to the district where the tax collector resided. H.R.Rep. 1915, 89th Cong., 2d Sess. 6 (1966). Congress apparently recognized the effect this abolition would have on aliens:

' . . . in order to preserve the right of aliens and foreign corporations to bring tax refund suits, the bill also modifies present law by permitting aliens and foreign corporations to bring such suits directly against the United States irrespective of whether the foreign country of citizenship or incorporation allows itself to be sued by U.S. citizens or corporations.' Id. Implicit in this statement is the awareness and conclusion that an alien not 'residing' in any judicial district could not sue the United States in any district court. In the view of the writers of the congressional reports, the 1966 legislation was enacted 'only because other adequate remedies either are already available, or are being made available by this bill, for the recovery of illegal collections.' Id. See also S.Rep. No. 1625, 89th Cong., 2d Sess. 6-7 (1966-2 Cum.Bull. 803, 807-08).

The taxpayer also adverts to several statutory provisions to support his position. Section 1402(a)(2) of the Judicial Code accords non-resident alien corporate taxpayers the privilege of bringing suit in the district where the tax return was filed. Nowhere in the meager legislative history of this provision do we find the slightest hint that Congress intended its benefits to extend to individuals. S.Rep. No. 2445, 85th Cong., 2d Sess., in U.S.Code Cong. & Admin.News. 5263, 5265. In fact it was adopted in response to conflicting decisions in the federal courts concerning the residence of corporations. The legislators did recognize that the bill would cover the apparent problem of lack of venue for foreign corporations. H.R.Rep. No. 1715, 85th Cong., 2d Sess. 2 (1958); S.Rep. No. 2445, supra, citing [Argonaut Navigation Co. v. United States, 142 F.Supp. 489 \(S.D.N.Y.1956\)](#). Nor is venue proper in the district court for an alien, individual or corporate, in any other of the various types of suits brought under the Tucker Act. 7B Moore, Federal Practice 1402, at JC 598.1 (2d ed. 1974). Finally, the taxpayer cites language in the legislative history of an amendment to the Judicial Code eliminating the \$10,000 ceiling on tax refund suits in the district courts, Act of July 30, 1954, Pub.L. No. 83-559, ch. 648, 2(a), 68 Stat. 589, codified in 28 U.S.C. 2402 (1970), to the effect that all taxpayers should have the benefit of a local remedy regardless of their financial status. H.R.Rep. No. 659, 83d Cong., 2d Sess., in U.S. Code Cong. & Admin.News 2716, 2717. Context indicates that the innocuous use of the word 'all' in a committee report was not intended to effect the major revision of the law which taxpayer seeks; neither the amendment nor the report makes any reference to alienage.

The district court's order dismissing the complaint is affirmed.

[Malajalian v. U.S., 504 F.2d. 842 (C.A.1 (Mass.), 1974)]

[NOTE; Consequently, non-resident non-persons protected by the Constitution and residing inside a constitutional state but outside the statutory "United States", being federal territory, and suing the U.S. government for a nonstatutory refund must file suit in the Court of International Trade instead of in a district court or the Court of Claims. Why? Because it is the ONLY Article III court dealing with international matters that can hear cases all over the country. The Court of Claims, like the U.S. Tax Court, is an Article I court (see 26 U.S.C. §7441 and 28 U.S.C. §171(a)) and therefore cannot hear cases involving NONtaxpayers or non-franchisees and if they do, they are violating the separation of powers.]

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## 10.6 U.S. Tax Court

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### **20 Federal Procedures, Tax Court Proceedings, §48:895**

"Generally The Tax Court is a court of limited jurisdiction having such jurisdiction [USTC 1 9375] as is conferred under the Internal Revenue Code [26 U.S.C.S. §7442]. The statutory provisions conferring jurisdiction upon the Tax Court must be strictly construed. Although the Tax Court was upgraded from an executive agency to an Article I "legislative



court" in 1969, that change did not extend the jurisdiction of the court to the full judicial power over all cases, in law and equity," that is vested in "constitutional courts" under Article III."  
[20 Federal Procedures, Tax Court Proceedings, §48:895]

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### **Black's Law Dictionary: Legislative Courts**

"LEGISLATIVE COURTS. Courts created by Legislature not named or described by Constitution. *Gorham v. Robinson*, 57 R.I. 1. 186 A. 832.

"Courts exercising judicial power created by Congress under constitutional authority to provide for government and administration of territories and tribunals created by Congress under general legislative power to perform administrative, or quasi judicial, functions. *Gorham v. Robinson*, 57 R.I. 1, 186 A. 832, 849, 850.

"Court of Claims, *Manion v. State*, 303 Mich. 1, 5 N.W.2d. 527, 529; *United States v. Sherwood*, 61 S.Ct. 767, 770, 312 U.S. 584, 85 L.Ed. 1058; Court of Customs and Patent Appeals, *Bland v. Commissioner of Internal Revenue*, C.C.A. 7, 102 F.2d. 157, 159; Territorial courts; *State ex rel. Ralston v. Turner*, 141 Neb. 556, 4 N.W.2d. 302, 306, *O'Donoghue v. U.S.*, Ct.Cl., 53 S.Ct. 740, 289 U.S. 516, 77 L.Ed. 1356; *United States Court for China*, *Casement v. Squier*, D.C.Wash., 46 F.Supp. 296, 297."

[Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1045]

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### **United States v. Roundtree (Apr. 20, 1969)**

"Proceedings in tax court do not extinguish commissioner's summons power."

"If taxpayer can prove that summons by Internal Revenue Service constitutes harassment, court will not enforce summons."

"Taxpayer has burden of proving harassment by Internal Revenue Service."

"Proceeding to enforce summons issued by Commissioner is adversary proceeding."

"In absence of other statutory directions, Federal Rules of Civil Procedure apply to proceeding to enforce summons issued by Commissioner."

"Taxpayer against whom government was attempting to enforce summons and who claimed harassment was entitled to take deposition of internal revenue agent in charge of case in order to investigate Internal Revenue Service's purpose."

"If Internal Revenue Service's investigation is civil investigation, mere fact that evidence might be used against taxpayer in later prosecution would not support claim of self-incrimination."

"If taxpayer can show that Internal Revenue Service's investigation has become inquiry with dominant criminal overtones, he is entitled to raise his Fifth Amendment' objections. "

"Even if danger of self-incrimination is great, taxpayer cannot voice blanket refusal to produce his records or testify and must appear pursuant to commissioner's summons and make objection as to each question or record."

"Attorney-client relationship existing between taxpayer and his wife may be meritorious defense to some questions asked during Internal Revenue Service's investigation but objection must be raised to each question and record."

"When compliance with district court's order that was later vacated would have required surrender of individual's defenses, and when individual effectively appealed that order before failing to comply, failure to secure stay did not, in absence of willfulness, justify contempt conviction."

"The individual taxpayer on whom an audit has focussed is no doubt reluctant to see his records disclosed to the taxing authorities, but we are unable to say that the public has exhibited a strong animosity toward this method of securing proper compliance with the revenue laws. The significance of the public interest, governmental revenue, is beyond dispute. The fact is that Congress built the tax code upon the principle of self-assessment and voluntary compliance with the Code's rules and regulations. To determine deviations from its rules, the IRS must place unusual reliance upon the taxpayer's own records and statements."

In light of the fact that the IRS has filed deficiency notices for all of the years in question, the taxpayer faces a difficult task in proving that the sole purpose of the summons was criminal prosecution. Of course, if he proves harassment, we will not allow the judicial process to be abused by assisting in that harassment."

[*United States v. Roundtree*, 420 F.2d. 845, 851 (5th Cir. 1969)]

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### **Morse v. United States (Mar. 27, 1974)**

.. the tax court...lacked jurisdiction to order a refund or to determine who was entitled to the refund. The tax court's jurisdiction, which exists only to the extent specifically enumerated by statute, is confined to determining the amount of deficiency or overpayment for the particular tax year' for which the commissioner has sought a deficiency and the

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taxpayer has filed a petition for review. The tax court has no jurisdiction to order or to deny a refund, or to decide equitable questions. ...The taxpayer must resort to the district court or the court of claims for a resolution of such disputes or for an order granting a refund." [Cites omitted.]

"There is a big difference between the *factual* conclusion that Mrs. Morse did not pay the tax and the *legal* conclusion that Mrs. Morse was not the taxpayer. Under section 3797(a)(14) of the Internal Revenue Code of 1939, "[t]he term "taxpayer" means any person subject to a tax imposed by this title." Under this definition it is not necessary that a person actually be liable for the tax; it is sufficient that he is potentially liable for it, even if it is ultimately determined that he in fact owes no tax. Accordingly, when returns were filed in Mrs. Morse's name declaring income to her for 1944 and 1945, and making her potentially liable for the tax due on that income, she became a taxpayer within the meaning of the Internal Revenue Code. When she was subsequently named in the commissioner's notice of deficiency, she became the only person who could petition the tax court for review of her tax liability." [Brackets original.]  
[*Morse v. United States*, 494 F.2d. 876 (1974)]

#### **Victor D. McMahan v. Commissioner (Apr. 18, 1985)**

"An award of damages to the United States in two consolidated tax-protester cases was limited to \$5,000. Although the arguments in both dockets were frivolous and made simply to delay the payment of taxes, a maximum of \$5,000 in each docket was not awarded because the court was not dealing with radically different sets of petitioners. There was a distinction between the tax liability in the two dockets, but every step in the two dockets was performed in lockstep with each other."

"Victor's first argument is that wages are not income. This argument has long been dismissed as nonsense. Sec. 61; *Rowlee v. Commissioner* [Dec. 40,228], 80 T.C. 1111 (1983).

"He next has argued that he is neither a person subject to the Code nor an employee as defined in the Code. Among his claims is that only corporations and those engaged in "privileged professions" are statutorily subject to the "excise" tax. He also reads the definition of employee in section 3401(a) as excluding individuals from liability for the income tax. The language of that subsection does not support such a claim." [Brackets original.]  
[*Victor D. McMahan v. Commissioner*, 49 T.C.M. 1257 (1985-191) Dec. 42,040(M)]

#### **Hollingshead v. United States (July 1, 1985)**

"A district court had jurisdiction to hear a request made by the wife of a delinquent taxpayer for injunctive relief from a wrongful levy. Although IRS had not taken action against the wife, a levy was placed on her husband's one half interest of her real estate commissions. The Anti-Injunction provision did not apply against her, whether or not her husband had a vested interest in her earnings which were sole management community property under Texas law."

"Section 7421(a) of the Internal Revenue Code of 1954 ("I.R.C.") states: "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed", with certain exceptions, one of which is a civil action by a nontaxpayer who claims that his or her property has been the subject of a wrongful levy. See 26 U.S.C. §7426(a)."

[*Hollingshead v. United States*, 85-2 U.S.T.C. ¶9772 (5th Cir. 1985)]

#### **Casper v. C.I.R. (Nov. 18, 1986)**

"Money received by taxpayer from employers for labor was taxable income, rather than equal, nontaxable exchange of property. 26 U.S.C.A. §61(a)(1, 3)."

"Taxpayer's contention that amounts he received from his employers for labor performed constituted equal, nontaxable exchange of property rather than taxable income was not warranted by existing law or good-faith argument for extension, modification or reversal of existing law and, thus, \$5,000 in damages were properly awarded to Commissioner of Internal Revenue for taxpayer's filing and maintaining factually groundless and legally frivolous action."

"Sanction for filing and maintaining factually groundless and legally frivolous Internal Revenue action is easily avoided by advancing claims or defenses which have factual basis and are warranted by existing law or good-faith argument for extension, modification or reversal of existing law; additionally, such claims should not be interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in cost of litigation."

"Taxpayer's merely raising argument that value received for labor was not taxable income, but rather was nontaxable exchange of property, justified imposition of sanctions for filing frivolous appeal."

"By notice of deficiency dated October 24, 1983, the Commissioner notified appellant that he owned taxes for the years 1980 and 1981, as well as additions to tax for those same years due to his failure to file a return, I.R.C. §6651(a), his

negligence in failing to pay any tax, I.R.C. §6653(a), and his underpayment of estimated tax payments, I.R.C. §6654. On January 26, 1984, appellant filed his petition in Tax Court, alleging that the Commissioner erroneously determined the deficiencies and additions to tax, and that the Commissioner failed to follow Internal Revenue Code procedures."

"The Tax Court also awarded damages to the Commissioner in the amount of \$5,000 pursuant to I.R.C. §6673. This section allows an award of damages "[w]henver it appears to the Tax Court that proceedings before it have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position in such proceedings is frivolous or groundless." Appellant has not advanced the weary tax protester arguments that income taxes are unconstitutional or that receipt of currency cannot be taxable because Federal Reserve notes are not money. He has been content with a closely-related frivolous argument: that value received for labor is an exchange of property which is not taxable. The fact that appellant's wages constitute taxable income is as true as, well ..., as true as taxes. *See United States v. Lawson*, 670 F.2d. at 925; *Rowlee v. Commissioner*, 80 T.C. at 1119-22.

"Appellant's position is not warranted by existing law or a good faith argument for the extension, modification or reversal of existing law. A review of the record discloses no effort on the part of appellant to distinguish existing case law, to bring about a reasoned extension or change in the law, or to point out actual errors in the Commissioner's determination of deficiency. Rather, our review simply uncovers appellant's total rejection of well-established precedent and a refusal to accept "the other certainty." We affirm the Tax Court's award of damages for filing and maintaining a factually groundless and legally frivolous action. *See Coleman v. Commissioner*, 791 F.2d. 68, 71 (7th Cir.1986). Such a sanction is easily avoided by advancing claims or defenses which have a factual basis and are warranted by existing law or a good faith argument for the extension, modification or reversal of existing law."

"We now choose to adopt a rule awarding a flat fee of \$1,500 as a sanction for a frivolous appeal from a Tax Court decision. *See Coleman v. Commissioner*, 791 F.2d. at 73."

"On appeal, the Commissioner informs us that the average amount of direct costs associated with defending legally frivolous appeals exceeds \$1,400. We now choose to adopt a rule awarding a flat fee of \$1,500.00 as a sanction for a frivolous appeal from a Tax Court decision. *See Coleman v. Commissioner*, 791 F.2d. 73. ... The award will (1) provide an effective sanction for the bringing of a frivolous appeal, (2) serve as an effective deterrent to the bringing of future frivolous appeals, and (3) recompense the government for at least the direct costs of the appeal."

"Again, the sanction is easily avoided by litigants advancing claims on appeal which have a factual basis and are warranted by existing law or a good faith argument for the extension, modification or reversal of existing law. Additionally, such claims should not be interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. "An appeal that lacks merit is not always--or often--frivolous. However, we are not obliged to suffer in silence the filing of baseless, insupportable appeals presenting no colorable claims of error and designed only to delay, obstruct, or incapacitate the operations of the courts or any other governmental authority." *Crain v. Commissioner*, 737 F.2d. 1417, 1418 (5th Cir. 1984). We hope that the increased sanction adopted in this case will sound a "cautionary note to those who would persistently raise arguments against the income tax which have been put to rest for years." *Id.* (quoting *Parker v. Commissioner*, 724 F.2d. 469, 472 (5th Cir. 1984)."

[*Casper v. C.I.R.*, 805 F.2d. 902 (10th Cir. 1986)]

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### **Murray v. C.I.R. (May 13, 1994)**

"Tax Court lacked jurisdiction over taxpayer's petition to redetermine deficiency where Internal Revenue Service did not send taxpayer a notice of deficiency before taxpayer petitioned for redetermination."

"Notice of intent to levy on account of disallowance of withholding credit claimed by taxpayer could not be deemed notice of deficiency for purpose of conferring jurisdiction upon Tax Court; notice did not meet even minimal requirements for notice of deficiency, and IRS was authorized by statute to proceed against taxpayer's property without providing him with notice of deficiency."

[*Murray v. Commissioner of Internal Revenue*, 24 F.3d. 901 (7th Cir. 1994)]

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## **10.7 Court of International Trade**

### COMPOSITION OF THE COURT

The President, with the advice and consent of the Senate, appoints the nine judges who constitute the United States Court of International Trade, which is a national court established under Article III of the Constitution.

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### ***Sovereignty and Freedom Points and Authorities***

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The judges, who are appointed for life, as are all judges of Article III courts, may be designated and assigned temporarily by the Chief Justice of the United States to perform judicial duties in a United States Court of Appeals or a United States District Court.

The chief judge of the Court of International Trade is a statutory member of the Judicial Conference of the United States, and convenes a judicial conference of the Court of International Trade periodically for the purposes of considering the business and improving the administration of justice in the court.

The Judicial Conference of the United States serves as the principal policy making body concerned with the administration of the United States Courts.

The chambers of the judges, the courtrooms, and the offices of court are located at One Federal Plaza in New York City at the Courthouse of the United States Court of International Trade.

## JURISDICTION OF THE COURT

The geographical jurisdiction of the United States Court of International Trade extends throughout the United States. The court can and does hear and decide cases which arise anywhere in the nation. The court also is authorized to hold hearings in foreign countries.

The different types of cases the court is authorized to decide--that is, its subject matter jurisdiction--are limited and defined by the Constitution and specific laws enacted by the Congress.

The subject matter jurisdiction of the court was greatly expanded by the Customs Courts Act of 1980. Under this law, in addition to certain specified types of subject matter jurisdiction, the court has a residual grant of exclusive jurisdictional authority to decide any civil action against the United States, its officers, or its agencies arising out of any law pertaining to international trade.

This broad grant of subject matter jurisdiction is complemented by another provision in the Customs Courts Act of 1980 which makes it clear that the United States Court of International Trade has the complete powers in law and equity of, or as conferred by statute upon, other Article III courts of the United States. Under this provision, the court may grant any relief appropriate to the particular case before it, including, but not limited to, money judgments, writs of mandamus, and preliminary or permanent injunctions.

The Congressional intent for these broad grants of authority was explained by the Honorable Peter W. Rodino, Jr., then Chairman, Committee on the Judiciary, House of Representatives, and a sponsor of the Customs Courts Act of 1980:

"The essential purpose of this legislation is best summarized by the following quote from the committee report:

"(P)ersons adversely affected or aggrieved by agency actions arising out of import transactions are entitled to the same access to judicial review and judicial remedies as Congress had made available for persons aggrieved by actions of other agencies."

In addition to these lawsuits against the United States, the court also has exclusive subject matter jurisdiction of certain civil actions brought by the United States under the laws governing import transactions, as well as counterclaims, cross-claims,

and third-party actions relating to actions pending in the court.

[*Court of International Trade Website*, About the Court Page, Downloaded 11-8-18, SOURCE: <https://www.cit.uscourts.gov/about-court>]

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## **10.8 U.S. Court of Federal Claims**

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### **28 U.S.C.S. §1491**

"(a)(1) The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution [USCS, Constitution], or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

"(2) To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just."

[28 U.S.C.S. §1491]

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### **District of Columbia v. Barnes (Feb. 27, 1905)**

"This court does not sit to review findings of fact made in the court of claims. They are regarded as conclusive here, and our jurisdiction is limited to a determination of such questions of law as are properly brought to our attention upon the record."

"It is true that the purpose of the various acts conferring jurisdiction upon the court of claims has been held to be to permit the adjudication of money demands against the United States, and it may be that under this act, as under others, there was no intention to confer equity jurisdiction beyond that which is required to enable a court to determine whether money relief should be granted. The intent of the act was to enable parties to submit the justice of their claims against the United States to adjudication in a competent court. For that purpose the act conferred in terms, equitable as well as legal jurisdiction."

"The court of claims is not bound by special rules of pleading. The main purpose is to arrive at and adjudicate the justice of alleged claims against the United States."

[*District of Columbia v. Barnes*, 197 U.S. 699 (1905)]

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### **Braun v. United States (Oct. 5, 1942)**

"Court of Claims has no jurisdiction to enter judgment against the United States based on an agreement implied in law."

[*Braun v. United States*, 46 F.Supp. 993 (1942)]

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### **Clapp v. United States (Jan. 5, 1954)**

"If Maritime Administration misconstrued Shipping Act provision authorizing' Administration to prescribe conditions upon which Administration would approve sale to alien of vessel purchased from Administration so as to require plaintiff to pay \$7,500 to Administration as condition of Administration's approval of plaintiff's sale of such a vessel to alien, **plaintiffs claim for refund of \$7,500 paid by plaintiff was claim "founded on Act of Congress" so as to be within jurisdiction of Court of Claims, and government could not defeat jurisdiction on any theory that claim sounded in tort.**" [Bold added.]

"A claim to recover illegal exaction made by officials of Government, which exaction is based on power supposedly conferred by statute, is claim "founded on Act of Congress" so as to be within jurisdiction of Court of Claims."

.. the payment of \$7,500 by plaintiff to the Administration, the exaction could not be justified on any theory that it

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was a consideration for release of plaintiff from any contract obligation to operate the ship only under United States registry,...."

"Where Maritime Administration, acting under provision of Shipping Act enabling it to prescribe conditions under which vessels acquired from Administration could be sold to aliens, conditioned its approval for sale of such a vessel by plaintiff to a Finnish corporation upon payment by plaintiff to the Administration of \$7,500, and such exaction was not justified, plaintiff was not estopped from seeking recovery of the \$7,500 by reason of having received permission to sell the vessel upon making the payment."

"The Government asserts that this court does not have jurisdiction to entertain the suit. In the discussion of the question of jurisdiction, **we assume that there was no legal authority in the Maritime Administration to demand or receive the \$7,500.** The plaintiff says that his claim is "founded upon any Act of Congress", and that we therefore have jurisdiction under 28 U.S.C. §1491(2). The Government says that, **assuming the illegality of the exaction, the claim is one sounding in tort, as to which 28 U.S.C. §1491(5), denies our jurisdiction.**" [Bold added.]

"The plaintiff asserts that this statutory provision does not authorize a money charge to be imposed as a condition upon the grant of permission to sell a ship to an alien purchaser."

"In *Cohens v. Virginia*, 6 Wheat. 264, 5 L.Ed. 257, Chief Justice Marshall, in construing the Judicial Article of the Constitution and the 25th Section of the Judiciary Act said:

""A case in law or equity consists of the right of the one party, as well as the other, and may truly be said to arise under the constitution or a law of the United States whenever its correct decision depends on the construction of either.""

"In *Dooley v. United States*, 182 U.S. 222, 21 S.Ct. 762, 764, 45 L.Ed. 1074, Mr. Justice Brown said, for the court:

In the cases under consideration the argument is made that the money was tortiously exacted; that the alternative of payment to the collector was a seizure and sale of the merchandise for the nonpayment of duties; and that it mattered not that at common law an action for money had and received would have lain against the collector to recover them back. But whether the exactions of these duties were tortious or not, whether it was within the power of the importer to waive the tort and bring suit in the court of claims for money had and received, as upon an implied contract of the United States to refund the money in case it was illegally exacted, we think the case is one within the first class of cases specified in the Tucker act, of claims founded upon a law of Congress, namely, **a revenue law**, in respect to which class of cases the jurisdiction of the court of claims, under the Tucker act, has been repeatedly sustained."" [Bold added.]

"In *Carriso, Inc. v. United States*, 9 Cir., 106 F.2d. 707, 712, the plaintiff sued to recover surveyors' fees which the Collector of Customs had collected from it under the supposed authority of a statute which had, in fact, been repealed. The Court of Appeals, in reversing the District Court's dismissal of the complaint, said:

""Appellee contends that this is a case sounding in tort, within the meaning of §24(20) of the Judicial Code, 28 U.S.C.A. §41(20), and that, therefore, the District Court had no jurisdiction. This contention, which the District Court upheld, must be rejected. [ \* \* \* ] Appellant's claim is that the fees were exacted, not tortiously, but illegally, in that they were exacted after §4186 had been repealed.

"Thus, in effect, appellant claims that the Collector misconstrued and misapplied §4186, that is to say, construed it as remaining in effect after it had been repealed, and so applied it to appellant; and that, therefore, the fees should be refunded. **Such a claim does not sound in tort.** \* \* \* "" [Bold added.]

"In *Compagnie General Transatlantique v. United States*, D.C. 21 F.2d. 465, 466, Judge Augustus Hand said, for the court:

""\* \* \*. To limit the recovery in cases 'founded' upon a law of Congress to cases where the law provides in terms for a recovery would make that provision of the Tucker Act almost entirely unavailable, because it would allow recovery only in cases where laws other than the Tucker Act already created a right of recovery. 'Founded' must therefore mean reasonably involving the application of a law of Congress. \* \* \*

"In *Ross Packing Co. v. United States*, 42 F.Supp 932, 936, Judge Schwellenbach of the United States District Court for the Eastern District of Washington, Southern Division, said:

"There can be no doubt as to the similarity between the Carriso case and this one. In each the Government received money to which it was not entitled. There, the official misconstrued the law by construing it to be in effect after it had been repealed. Here, the Board misconstrued the law by construing that it had power to inflict a penalty on the plaintiff. In neither case was there any compulsion brought upon the plaintiff to make payment except the necessity of complying with an order of a legally constituted government official or agency. In each case the act of the government's agents was illegal. Clearly, if the acts of the Collector in the Carriso case were not tortious, then the action of the Board here was not tortious. There can be no essential difference between an act which is unauthorized because the power to do it has been repealed and one which is unauthorized because such power was not given by the law in the first place.""

"Our best estimate of the present law is that a claim to recover an illegal exaction made by officials of the Government, which exaction is based upon a power supposedly conferred by a statute, is a claim "founded upon any Act of Congress".

"The Government urges that if the collection of the money in question from the plaintiff was wrongful, it was a tort,

and therefore outside our jurisdiction under 28 U.S.C. §1491(5). It has not explained the nature of the tort, and we have difficulty in fitting it into the categories of torts with which we are familiar. It might rather be a claim for damages," "not sounding in tort" of which Section 1491(5) gives us jurisdiction. But we do not so decide. We suppose that the exceptions recited in Section 2680(a) of 28 U.S.C., in the Federal Tort Claims Act, exempts the Government from liability on this claim as a tort claim. If so, the plaintiff's right, if he has one, must be enforced in the instant suit."

**"We find it hard to imagine a case where the Government can take a citizen's money, by refusing him something to which he is entitled, and then keep the money on the ground of estoppel. This defense is beneath the dignity of the Government."** [Bold added.]

[Clapp v. United States, 117 F.Supp. 576 (1954), *cert. denied*, 348 U.S. 834 (1954)]

#### **Catalina Properties v. United States (Oct. 8, 1958)**

"Landlord's complaint against United States which had made a jeopardy assessment against landlord as transferee of person against whom assessments in that amount had been made for income taxes, interest and penalties, to recover amount of subtenant's lease payments which Director of Internal Revenue had failed to collect and which had become uncollectible, failed to state a cause of action over which Court of Claims had jurisdiction."

"If landlord was neither a taxpayer nor a transferee of a taxpayer against whom assessments for income taxes, penalties and interest had been made, action of Director of Internal Revenue in levying jeopardy assessment against landlord and distraining rentals was unauthorized but if no money was collected by government, no implied contract could exist requiring government to return amount of rentals not collected by landlord."

"Where Director of Internal Revenue levied jeopardy assessment against landlord and distrained rentals due him, even if action was unauthorized, where no money was actually collected from rentals by government it could not be said that there was a taking of private property for public use requiring government to pay just compensation."

[Catalina Properties v. United States, 166 F.Supp. 763 (1958)]

#### **Eastport Steamship Corp. v. United States (Feb. 17, 1967)**

"Not every claim involving or invoking Constitution, federal statute, or regulation is cognizable in Court of Claims."

"Claim brought in Court of Claims against United States must be for money."

"Where claim is brought in Court of Claims against United States based on money paid or property, claim must assert that value sued for was improperly paid, exacted, or taken from claimant in contravention of Constitution, statute or regulation."

"Where claim is brought in Court of Claims against United States by plaintiff whose demand is not based on money paid to United States but who claims he is nevertheless entitled to payment from Treasury, allegation must be that particular provision relied upon grants claimant, expressly or by implication, a right to be paid certain sum."

"Monetary claims not based on money plaintiff has paid over to government or on some specific provision of law embodying command to United States to pay plaintiff some money upon proof of conditions which he is said to meet or which do not fall under another head of jurisdiction, such as contract with United States, are beyond jurisdiction of Court of Claims, even though they may intimately involve Constitution, act of congress, or executive regulation."

"Court of Claims in determining whether gravamen of cause of action is tortious must apply same standards as would be applied in case between private parties."

[Eastport S.S. Corp. v. United States, 372 F.2d. 1002 (Ct.Cl. 1967)]

#### **United States v. King (May 19, 1969)**

"The only judgments which the Court of Claims is authorized to render against the government are judgments for money found due from the government to the petitioner."

"Neither the Act creating the Court of Claims nor any amendment to it grants that court jurisdiction of a claim not limited to actual, presently due money damages' from the United States."

.. the settled propositions that the Court of Claims' jurisdiction to grant relief depends wholly upon the extent to which the United States has waived its sovereign immunity to suit, and that such a waiver cannot be implied but must be unequivocally expressed."

[United States v. King, 395 U.S. 1, 89 S.Ct. 1501, 23 L.Ed.2d. (1969)]

#### **Corbino v. United States (Dec. 19, 1973)**

### ***Sovereignty and Freedom Points and Authorities***

"Nature of plaintiff's claim, rather than character of defendant's defense, determines jurisdiction of Court of Claims. 28 U.S.C.A. §1491."

"Nature of plaintiff's claim determines the jurisdiction of the Court of Claims, not the character of the defendant's defense. *Eastport S.S. Co. v. United States*, 130 F.Supp. 333, 131 Ct.Cl. 210 (1955)."  
[*Corbino v. United States*, 488 F.2d. 1008 (1973)]

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**Carruth v. United States (July 2, 1980)**

"Court of Claims had no jurisdiction over claims based upon due process and equal protection guarantees of Fifth Amendment, since such constitutional provisions do not obligate Federal Government to pay money damages."  
[*Carruth v. United States*, 627 F.2d. 1068 (1980)]

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**L'Enfant Plaza Properties, Inc. v. United States (Mar. 11, 1981)**

"In order that Court of Claims had jurisdiction, there must be a "tortious" breach of contract rather than tort independent of the contract."

"The Government argues, in its cross-motion for full summary judgment, that the whole case must be dismissed because the remaining claims (not dealt with in Part II, *supra*) sound in tort (fraud, misrepresentation, and constructive fraud) and are therefore beyond this court's jurisdiction. [Cites omitted.] Plaintiff responds that the alleged fraud and misrepresentations are so closely bound up with the lease and the contractual relationship between RLA and L'Enfant Properties that they lie in contract rather than tort. [Cites omitted.] For this principle to apply, there must be a "tortious" breach of contract rather than a tort independent of the contract. [Cite omitted.] Plaintiff has been unable to show a connection between the alleged wrongful misrepresentations and fraud and any contractual obligations owed to it by the RLA. "

"In certain circumstances, a case which is within the exclusive jurisdiction of the district courts but which is improperly filed in this court, may be transferred to a district court in which it could have been filed. 28 U.S.C. §1506. This transfer statute is discretionary, however, and is available only when transfer is in the interest of justice." *Id.* We hold that transfer is not in the interest of justice although the district court has exclusive jurisdiction under the Federal Tort Claims Act."

.. (United States exempt from liability under Federal Tort Claims Act for claims arising out of misrepresentation or deceit). [ \* \* \* ] It also seems very likely that plaintiff's tort claims would be barred by sovereign immunity since they relate to alleged acts of misrepresentation and deceit on the part of government employees--torts which are excluded from the Tort Claims Act."

[*L'Enfant Plaza Properties, Inc. v. United States*, 645 F.2d. 886 (Ct.Cl. 1981)]

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**United States v. Mitchell (June 27, 1983)**

"By giving court of claims jurisdiction over specified types of claims against United States, Tucker Act constitutes waiver of sovereign immunity with respect to those claims."

"Tucker Act does not create any substantive right enforceable against United States for money damages."

"Not every claim invoking Constitution, federal statute, or regulation is cognizable under Tucker Act; claim must be one for money damages against United States and claimant must demonstrate that source of substantive law he relies upon can fairly be interpreted as mandating compensation by federal government for damages sustained."

"Because Tucker Act supplies waiver of immunity for claims under statutes or regulations that create substantive rights to money damages, separate statutes and regulations need not provide second waiver of sovereign immunity nor need they be construed in manner appropriate to waivers of sovereign immunity."

"Trustee is accountable in damages for breaches of trust."

"Existence of trust relationship between United States and Indian or Indian tribe include as fundamental incident right of injured beneficiary to sue trustee for damages resulting from breach of trust."

"It is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction. The terminology employed in some of our prior decisions has unfortunately generated some confusion as to whether the Tucker Act constitutes a waiver of sovereign immunity. The time has come to resolve this confusion. For the reasons set forth below, we conclude that by giving the Court of Claims jurisdiction over specified types of claims against the United States, the Tucker Act constitutes a waiver of sovereign immunity with respect to those claims."

"Before 1855 no general statute gave the consent of the United States to suit on claims for money damages; the only

recourse available to private claimants was to petition Congress for relief. In order to relieve the pressure caused by the volume of private bills and to avoid the delays and inequities of the private bill procedure, Congress created the Court of Claims. Act of Feb. 24, 1855, 10 Stat. 612. The 1855 Act empowered that court to hear claims and report its findings to Congress and to submit a draft of a private bill in each case which received a favorable decision. §7, 10 Stat. 613. The limited powers initially conferred upon the court failed to relieve Congress from "the laborious necessity of examining the merits of private bills." *Glidden Co. v. Zdanok*, 370 U.S. 530, 553, 82 S.Ct. 1459, 1474, 8 L.Ed.2d. 671 (1962) (opinion of Harlan, J.). Thus, in his State of the Union Message of 1861, President Lincoln recommended that the court be authorized to render final judgments. He declared that it is "as much the duty of Government to render prompt justice against itself, in favor of citizens, as it is to administer the same between private individuals." Cong. Globe, 37th Cong., 2d Sess., App. 2 (1861). Congress adopted President Lincoln's recommendation and made the court's judgments final. Act of Mar. 3, 1863, 12 Stat. 765.

"In 1886 Representative John Randolph Tucker introduced a bill to revise in several respects the jurisdiction and procedures of the Court of Claims and to replace most provisions of the 1855 and 1863 Acts. H.R. 6974, 49th Cong., 1st Sess. (1886). The House Judiciary Committee reported that the bill was a "comprehensive measure by which claims against the United States may be heard and determined." H.R.Rep. No. 1077, 49th Cong., 1st Sess., 1 (1886). The measure was designed to "give the people of the United States what every civilized nation of the world has already done--the right to go into the courts to seek redress against the Government for their grievances." 18 Cong.Rec. 2680 (1887) (remarks of Rep. Bayne). See *id.*, at 622 (remarks of Rep. Tucker); *id.*, at 2679 (colloquy between Reps. Tucker and Townshend); *id.*, at 2680 (remarks of Rep. Holman). The eventual enactment thus "provide[d] for the bringing of suits against the Government of the United States." Act of Mar. 3, 1887., 24 Stat. 505."

"In *United States v. Testan*, 424 U.S. 392, 398, 400, 96 S.Ct. 948, 954, 47 L.Ed.2d. 114 (1976), and in *United States v. Mitchell*, 445 U.S., at 538, 100 S.Ct., at 1351, this Court employed language suggesting that the Tucker Act does not effect a waiver of sovereign immunity. Such language was not necessary to the decision in either case. See *infra*, at 2968. Without in any way questioning the result in either case, we conclude that this isolated language should be disregarded. If a claim falls within the terms of the Tucker Act, the United States has presumptively consented to suit."

"It nonetheless remains true that the Tucker Act "does not create any substantive right enforceable against the United States for money damages." *United States v. Mitchell*, *supra*, at 538, 100 S.Ct., at 1351, quoting *United States v. Testan*, *supra*, 424 U.S., at 398, 96 S.Ct., at 953. A substantive right must be found in some other source of law, such as "the Constitution, or any Act of Congress, or any regulation of an executive department."

"Thus, for claims against the United States "founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department," 28 U.S.C. §1491, a court must inquire whether the source of substantive law can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained. In undertaking this inquiry, a court need not find a separate waiver of sovereign immunity in the substantive provision, just as a court need not find consent to suit in "any express or implied contract with the United States." *Ibid*. The Tucker Act itself provides the necessary consent."

"In this case, however, there is simply no question that the Tucker Act provides the United States' consent to suit for claims founded upon statutes or regulations that create substantive rights to money damages. If a claim falls within this category, the existence of a waiver of sovereign immunity is clear. The question in this case is thus analytically distinct: whether the statutes or regulations at issue can be interpreted as requiring compensation. Because the Tucker Act supplies a waiver of immunity for claims of this nature, the separate statutes and regulations need not provide a second waiver of sovereign immunity, nor need they be construed in the manner appropriate to waivers of sovereign immunity." [Brackets original.]

[*United States v. Mitchell*, 463 U.S. 206, 103 S.Ct. 2961 (1983)]

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### **United States v. Connolly (Sept. 6, 1983)**

"Back Pay Act did not provide jurisdiction for Claims Court to hear First Amendment claims of probationary Postal Service employee in wrongful removal action, in that, even assuming that Act was applicable to Postal Service employees, probationary employee failed to show that his separation from Postal Service violated any relevant statute or regulation." [*United States v. Connolly*, 716 F.2d. 882 (1983)]

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### **Metzger, Shadyac & Schwartz v. United States (June 12, 1986)**

"Law firm's complaint which alleged United States's sending of claim to firm's client in violation of agreement between law firm and Department of Interior stated claim against United States founded upon contract, conferred jurisdiction upon Claims Court, and could not be opposed on jurisdictional grounds by arguments which challenged

validity of contract and went to merits of case, rather than lack of jurisdiction."

"Similarity of jurisdictional facts with facts on merit of claim against United States which alleged breach of contract and which claimed jurisdiction based on express or implied contract with United States would justify Claims Court's decision to delay determination of jurisdiction to give law firm opportunity to develop facts, even if existence in fact of contract, as opposed to claim founded upon contract, were determinative of jurisdiction."

[Metzger, Shadyac & Schwartz v. United States, 10 Cl.Ct. 107 (1986)]

#### **Murray v. United States (May 5, 1987)**

"The Claims Court's jurisdiction encompasses claims against the United States "founded either upon the Constitution, or any act of Congress." 28 U.S.C. §1491(a)(1). The courts have consistently held, however, that the Claims Court's jurisdiction is limited to such cases where the Constitution or a federal statute requires the payment of money damages as compensation for the violation. In determining whether the Claims Court has jurisdiction over the claims advanced by the Murrays, we must first consider whether the statutes or constitutional provisions allegedly violated, require the payment of money damages for the violation." [Cites omitted.]

"A plaintiff seeking to recover under the taking clause must demonstrate that the government took his property and either failed to compensate him justly or failed to put the property to public use."

[Murray v. United States, 817 F.2d. 1580 (Fed.Cir. 1987)]

#### **Pasco Enterprises v. United States (Sept. 30, 1987)**

"Burden of establishing subject matter jurisdiction of Claims Court is on plaintiff, party asserting jurisdiction."

"Extent to which Congress has consented to cause of action against United States is limit of jurisdiction of Court of Claims (now Claims Court) to entertain suits against United States."

"In order to invoke jurisdiction of Claims Court, implied contract must be implied-in-fact contract and not one implied in law based on various equitable considerations."

"In order to establish implied-in-fact contract with Government to invoke jurisdiction of Claims Court, plaintiff must show mutuality of intent to contract, lack of ambiguity in offer and acceptance, and authority to bind Government residing in officer whose conduct was relied upon."

[Pasco Enterprises v. United States, 13 Cl.Ct. 302 (1987)]

#### **W.R. Cooper Gen. Contractor, Inc. v. United States (Apr. 5, 1988)**

"Claims court had jurisdiction, under Tucker Act, to hear dispute between subcontractor on federally funded project and Department of Labor, which had obtained funds withheld from subcontractor by city for alleged violation of federal wage statutes; it was possible that contract existed, either express or implied, obligating Department not to take funds until after it had resolved dispute with subcontractor over alleged violations."

[W.R. Cooper Gen. Contractor, Inc. v. United States, 843 F.2d. 1362 (Fed. Cir. 1988)]

#### **Garrett v. United States (July 29, 1988)**

"Claims Court had no jurisdiction to grant purely declaratory relief about whether Administrator of Veterans Administration had authority to grant direct financing of residential property purchased by nonveteran after VA's repossession of property."

"Nonveteran's claims for punitive damages sounded in tort and were not within Claims Court's jurisdiction; nonveteran claimed that Administrator of Veterans Administration acted in bad faith by making false representations about whether VA could grant direct financing for nonveteran's purchase of residential property that had been repossessed by VA."

[Garrett v. United States, 15 Cl.Ct. 204 (1988)]

#### **Hamsch v. United States (Sept. 14, 1988)**

"Claims court lacked subject matter jurisdiction over Treasury Department employee's claim for entitlement to paid administrative sick leave while he was recovering from motorcycle accident; statute relied on by employee, pursuant to which sick leave could not be charged to employee's account for absence due to injury or illness resulting from performance of duty, did not unequivocally express consent to suit against Government on money claim asserted."

"Federal courts are not courts of general jurisdiction;" they have only the power that is authorized by Article of the

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Constitution and the statutes enacted by Congress pursuant thereto. For that reason, every federal appellate court has a special obligation to "satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review," even though the parties are prepared to concede it."

"(Moreover, even if the parties remain silent, it is well settled that a federal court, whether trial or appellate, is obliged to notice on its own motion the want of its own jurisdiction, or the lower court's lack of subject matter jurisdiction when a case is on appeal.") (citing numerous Supreme Court cases)."

"When a court is without jurisdiction to hear a case, it is correspondingly without authority to decide the merits of that case."

[Hamsch v. United States, 857 F.2d. 763 (Fed. Cir. 1988)]

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#### **Carter v. United States (Oct. 13, 1988)**

"Claims Court was required to dismiss sua sponte for lack of subject matter jurisdiction a tax refund complaint which was not filed on or before the last date allowed by the statute of limitations."

"Rule 12(h)(3) RUSCC provides:

"Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."

[Carter v. United States, 15 Cl.Ct. 753 (1988)]

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#### **Doko Farms v. United States (Nov. 8, 1988)**

"Fifth Circuit's decision that Claims Court had jurisdiction over claims involving release of funds from participation in Upland Cotton Price Support Program was law of case and precluded review of issue after Claims Court determined it did not have jurisdiction and transferred case back to district court in which it had been brought; accordingly, vacation of judgment entered by district court and retransfer of case back to Claims Court was required, despite claim that retransfer amounted to "jurisdictional ping pong."

[Doko Farms v. United States, 861 F.2d. 255 (Fed.Cir. 1988)]

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#### **Hamlet v. United States (Apr. 27, 1989)**

"Claims Court improvidently dismissed for lack of jurisdiction claim by former county employee for the Agricultural Stabilization and Conservation Service for reinstatement and back pay; although employee did assert First and Fifth Amendment violations which alone did not mandate payment of money, employee also relied upon personnel manual provisions for back pay and reinstatement."

"In passing on a motion to dismiss, whether on the ground of lack of jurisdiction over the subject matter or for failure to state a cause of action, unchallenged allegations of the complaint should be construed favorably to the pleader.

[Cite omitted.] The complaint should not be dismissed unless it is beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief."

[Hamlet v. United States, 873 F.2d. 1414 (Fed. Cir. 1989)]

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#### **Commonwealth of Kentucky ex rel. Cabinet for Human Resources v. United States (May 16, 1989)**

"Tucker Act gave Claims Court jurisdiction over suit by Kentucky challenging decision to disallow expenses as necessary expenditures that could have been reimbursable under child support enforcement program of Department of Health and Human Services; HHS assistance in preparation of state plan, its approval of state plan, and elaborate administrative procedures developed to determine and implement federal reimbursement created contractual relationship and obligated Government to comply with terms of program."

"Jurisdiction of the Claims Court is not determined by, or concerned with, the procedures established in the APA. [Cites omitted.] The *Bowen v. Massachusetts* decision, accordingly, does not directly bear upon the issue of this court's jurisdiction to decide plaintiff's claim. In *Bowen v. Massachusetts*, however, the United States argued that the Claims Court has exclusive jurisdiction over a civil action against the United States that includes both a Tucker Act claim for more than \$10,000 in money damages and a claim for declaratory or injunctive relief involving the same issues as the Tucker Act claim."

"The jurisdiction of the Claims Court to entertain an action is dependent upon a claim for money presently due."

"It is well established that the Federal Government is not liable for damages resulting from sovereign acts performed by it in its sovereign capacity." [Cites omitted.]

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"In proceedings to enforce the obligations in a grant, the Government is bound only by its express undertakings."  
[Cites omitted.]  
[Commonwealth of Kentucky ex rel. Cabinet for Human Resources v. United States, 16 Cl.Ct. 755 (1989)]

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#### **Frank's Livestock & Poultry Farm, Inc., v. United States (July 7, 1989)**

"Claims Court jurisdiction involves claims against United States, not federal officials. 28 U.S.C.A. §1491"  
"Alleged constitutional violations, other than taking' claim under the Fifth Amendment, do not state claims for monetary relief against the United States over which Claims Court can exercise jurisdiction. 28 U.S.C.A. §1491."  
[Frank's Livestock & Poultry Farm, Inc., v. United States, 17 Cl.Ct. 601 (1989)]

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#### **Castillo Morales v. United States (Feb. 1, 1990)**

"Claims Court lacked subject matter jurisdiction over taxpayers tort suit, in which taxpayers alleged that seizure of their assets by IRS agents resulted in taxpayers filing for bankruptcy."  
"Claims Court lacked subject matter jurisdiction over Fifth Amendment due process claim; due process clause of Fifth Amendment does not require payment of money damages as compensation for its violation."  
"Claims Court lacked subject matter jurisdiction over taxpayers' tax refund claim based upon seizure and sale of assets by IRS to satisfy tax liability, absent timely filing of tax refund claim with IRS."  
[Castillo Morales v. United States, 19 Cl.Ct. 342 (1990)]

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#### **Wright v. United States (May 8, 1990)**

"The Tucker Act, which sets forth basic jurisdiction of the United States Claims Court, does not create any independent substantive rights enforceable against the United States for money damages; rather, the **Act provides a forum for judicial damages remedy against the United States for violation of substantive right in the Constitution, in acts of Congress, in regulations of executive departments**, or in express or implied contracts; to recover in the Claims Court, party must demonstrate that basis for its substantive right to recover money damages exists in some other provision of the Constitution, act of Congress, or executive department regulation in which the Government's sovereign innumity" is specifically waived and consent of the United States to be sued for money damages is stated."  
"Not every claim arising under federal, constitutional, statutory or regulatory law satisfies jurisdictional requirements of the Tucker Act; to confer jurisdiction in the Claims Court, claim must arise under provision of the Constitution, federal law, or federal regulation which mandates the payment of money damages to compensate for return of money improperly paid or taken, or to compensate for right to be paid a sum by the federal Government."  
"Claims Court lacks jurisdiction to grant relief for claims based on constitutional guarantees of due process, in the Fifth Amendment, absent statute which accords plaintiff right to such monetary award."  
"Equal protection clause does not create a cause of action for money damages, and thus Claims Court lacks jurisdiction to grant relief for claims allegedly based on constitutional guarantees of equal protection."  
"Terms of the Eighth Amendment do not create a cause of action for money damages against United States, and thus Claims Court lacks requisite jurisdictional foundation to grant relief for claims based on Eighth Amendment guarantees against cruel and unusual punishment." [Bold added.]  
[Wright v. United States, 20 Cl.Ct. 416 (1990)]

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#### **City of Wheeling v. United States (June 11, 1990)**

"Claims Court jurisdiction is not governed by the Administrative Procedure Act (APA). 5 U.S.C.A. §551 et seq."  
"Burden of demonstrating that there is no material fact in dispute lies with party moving for summary judgment and burden may be met by showing that there is no evidence to support nonmoving party's case. U.S.Cl.Rule 56(c), 28 U.S.C.A."  
"Once party moving for summary judgment has made proper showing that there is no material fact in dispute, burden shifts to adverse party to provide evidence of specific facts in dispute, and mere allegations or denials of pleadings are not sufficient."  
"Administrative determination will not be set aside unless it is arbitrary, capricious or an abuse of discretion, and in applying that standard, reviewing court looks to administrative record already in existence."  
"Under the *Bowen* analysis, a claim for money based on a past wrong or past labor does not seek to enforce a statutory mandate. Rather, it asks for money in compensation for the damages sustained by the failure of the Government to pay as

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required. Accordingly, plaintiff's claim is based upon an underlying statute which can fairly be interpreted as mandating compensation by the Federal Government for damages sustained; is a claim for money damages under the Tucker Act; and as such, is a claim properly before this Court. Accordingly, this Court will review and decide plaintiff's claim." [Citing *Bowen v. Massachusetts*, 487 U.S. 879, 108 S.Ct. 2722, 2740, 101 L.Ed.2d. 749 (1988).] [City of *Wheeling v. United States*, 20 Cl.Ct. 659 (1990)]

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**Katz v. United States (Apr. 3, 1991)**

"Fact that taxpayers had not paid in full the penalties assessed against them and did not deprive Claims Court of jurisdiction in refund suit."

"In mandating full prepayment of an assessment, however, *Flora* did not require that a taxpayer prepay penalties, as well."

"In the case at bar, defendant argues that the taxpayer need not always prepay penalties:

"During discussion preceding the filing of the joint preliminary status report on December 5, 1990, defendant indicated to plaintiffs that it would withdraw the jurisdictional defense to Counts II and III if plaintiffs agreed that they would not separately contest the penalties assessed against them; in other words, if plaintiffs agreed to let the determination on the merits of the tax dispute control the penalty outcome, defendant would not move to dismiss. It is the Tax Division's view that the full payment of penalties and interest is not required where the taxpayer raises no *independent* issues regarding such assessments." "Thus defendant does not contend that payment of penalties is a jurisdictional, or mandatory, prerequisite, except in certain circumstances."

[*Katz v. United States*, 22 Cl.Ct. 714 (1991)]

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**Rocovich v. United States (May 15, 1991)**

"In determining whether motion to dismiss should be granted, claims court inquires into disputed jurisdictional facts. "Tax refund suit is barred if all deficiencies, penalties, and interest assessed have not been paid."

"Claims court lacked subject matter jurisdiction over coexecutor's suit for estate tax refund where coexecutor had not made full payment of estate tax before bringing action."

"Partial satisfaction of assessed estate tax by installment payment did not satisfy full payment rule for purposes of bringing refund suit."

[*Rocovich v. United States*, 933 F.2d. 991 (Fed. Cir. 1991)]

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**Shearin v. United States (May 11, 1993)**

"The Claims Court's decision to dismiss a complaint for lack of jurisdiction is a question of law subject to complete and independent review by this court. *See In re Sure-Snap Corp.*, 983 F.2d. 1015, 1017 (11th Cir. 1993) (district court's conclusion of law subject to complete and independent review); *Gould, Inc., v. United States*, 935 F.2d. 1271, 1273 (Fed. Cir. 1991) (*de novo* review). "Moreover, in reviewing a dismissal for failure to state a claim, we must assume all well-pled factual allegations are true and [correct]." *Id.* at 1274 (citations omitted). We conclude that the Claims Court properly dismissed Shearin's complaint."

"It is well settled that the United States Court of Federal Claims lacks--and its predecessor the United States Claims Court lacked jurisdiction to entertain tort claims. The Tucker Act expressly provides that the "United States Court of Federal Claims shall have jurisdiction . . . in cases *not* sounding in tort.""

[*Shearin v. United States*, 992 F.2d. 1195 (Fed. Cir. 1993)]

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**Shore v. United States (Nov. 16, 1993)**

"Taxpayers brought action for refund of assessed taxes paid. The Claims Court, Reginald W. Gibson, J., 26 Cl.Ct. 829, dismissed action for lack of subject matter jurisdiction, and taxpayers appealed."

"The full payment rule, requiring that taxpayers prepay tax principal before District Court or Court of Federal Claims will have subject matter jurisdiction over tax refund action, does not require prepayment of interest and penalties when taxpayer only disputes tax assessment only if taxpayers assert claim over assessed interest or penalties on grounds not fully determined by claim for recovery of principal must they prepay such interest and penalties as well as assessed tax principal."

[*Shore v. United States*, 9 F.3d. 1524 (Fed.Cir. 1993)]

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**Detroit International Bridge Company v. United States (Oct. 21, 1994)**

"Any right to monetary relief against the government must be grounded in contract, statute, or the Constitution."  
"Tucker Act confers jurisdiction on Court of Federal Claims when substantive right to recovery exists; it does not create the substantive right. 28 U.S.C.A. §14912"  
[Detroit International Bridge Company v. United States, 32 Fed.Cl. 225 (1994)]

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**Collins v. United States (Oct. 31, 1994)**

"To establish jurisdiction of Court of Federal Claims, plaintiff must show that statute upon which he or she relies grants substantive right to recover money damages from United States."  
"Tucker Act establishes waiver of sovereign immunity but does not create any substantive right enforceable against United States for money damages. 28 U.S.C.A. §1491."  
[Collins v. United States, 32 Fed.Cl. 256 (1994)]

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**Nonprofits' Insurance Alliance of California v. United States (Nov. 10, 1994)**

"For Court of Federal Claims to entertain action for **declaratory judgment** concerning qualification as tax-exempt organization, party seeking declaration must exhaust all administrative remedies and file its action within 90 days of date of receiving Internal Revenue Service's (IRS) final adverse determination regarding its application for exempt status. 26 U.S.C.A. §§501(c)(3), 7428(a), (b)(2, 3)."  
"Court of Federal Claims should follow Tax Court practices with respect to request for **declaratory judgment** concerning qualification as tax-exempt organization. 26 U.S.C.A. §§501(c)(3), 7428(a)."  
"Facts concerning organization's tax designation under state law bear little or no weight in determining whether organization is exempt from federal income tax. 26 U.S.C.A. §§501(c)(3)."  
[Nonprofits' Insurance Alliance of California v. United States, 32 Fed.Cl. 277 (1994)]

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**Kanemoto v. Reno (Dec. 5, 1994)**

"Court of Federal Claims is Article I trial court of limited jurisdiction that was created by Congress as forum where private parties could sue the government for money claims, other than those sounding in tort, where claims would otherwise be barred by sovereign immunity. U.S.C.A. Const. Art. 1, §1 et seq."  
"Remedies available in Court of Federal Claims extend only to those affording monetary relief; court cannot entertain claims for injunctive relief or specific performance except in narrowly defined, statutorily provided circumstances. 28 U.S.C.A. §1491(a)(3)."  
"Tucker Act is not limited to suits for money damages and may include causes of action for payment of money other than damages including statutory causes of action. 28 U.S.C.A. §1491; 50 U.S.C.A.App. §§1989-1989d."  
"Finding that money is presently due is not required before Court of Federal Claims can exercise jurisdiction under Tucker Act; Court of Federal Claims has power to make determination of liability that will give rise to remedy of monetary relief. 28 U.S.C.A. §1491."  
[Kanemoto v. Reno, 41 F.3d. 641 (Fed.Cir. 1994)]

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**IMS Services, Inc. v. United States (Dec. 12, 1994)**

"In motion to dismiss, court may consider all relevant evidence in order to resolve any disputes as to truth of jurisdictional facts alleged in complaint, and court is required to decide any disputed facts which are relevant to issue of jurisdiction."  
"In rendering decision on motion to dismiss, court must presume undisputed factual allegations included in complaint by plaintiff are true. RCFC, Rule 12(b)(1), 28 U.S.C.A."  
"Burden of establishing jurisdiction, on motion to dismiss, is on plaintiff."  
"Jurisdiction of United States Court of Federal Claims is created by statute and is, therefore, subject to limitations and conditions included in statute itself. 28 U.S.C.A. §1491(a)(1)."  
"Decisions of the United States Court of Claims are considered binding on the United States Court of Federal Claims."  
"While equitable jurisdiction of Court of Federal Claims pursuant to Tucker Act does not include ability actually to award contract, Tucker Act does provide authority- for Court, in its discretion, after reviewing merits of application for injunctive relief, to order such injunctive relief in order to ensure that government's contract procurement process is

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conducted fairly and-honestly. 28 U.S.C.A. §1491(a)(3)."  
 [IMS Services, Inc. v. United States, 32 Fed.Cl. 388 (1994)]

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**Calhoun v. United States (Dec. 13, 1994)**

"In motion to dismiss for lack of subject matter jurisdiction court may consider all relevant evidence in order to resolve any disputes as to truth of jurisdictional facts alleged in complaint; court is required to decide any disputed facts which are relevant to issue of jurisdiction. RCFC, Rule 12(b)(1), 28 U.S.C.A."

"Burden of establishing jurisdiction is on plaintiff."

"Court should not grant motion to dismiss for lack of subject matter jurisdiction unless it appears beyond reasonable doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. RCFC, Rule 12(b)(1), 28 U.S.C.A."

"Decisions of United States Court of Federal Claims are considered binding on United States Court of Federal Claims. Federal Courts Administration Act of 1992, §1 et seq., 106 Stat. 4506."

"Not every claim involving or invoking Constitution necessarily confers jurisdiction on United States Court of Federal Claims. 28 U.S.C.A §1491."

"United States Court of Federal Claims only can render judgment for money when statute independently mandates payment of moneysdamages by United States. 28 U.S.C.A. §1491."

"Taxpayer could not bring action against United States in United States Court of Federal Claims to challenge seizure of assets for unpaid taxes based on alleged violations of Fourth and Eighth Amendments and Fifth Amendment" due process clause, where nothing in those constitutional provision could be read to mandate compensation by federal government. U.S.C.A. Const.Amend. 4, 5, 8."

"First Amendment to Constitution is not general waiver of sovereign immunity for citizens to petition government in any regard in federal courts of United States. U.S.C.A. Const. Amend. 1."

"Individuals have right to sue United States for wrongful tax levy, provided that suit is brought in any district court of United States by any person who claims interest in property, other than person against whom is assessed tax out of which levy arose. 26 U.S.C.A. §7426(a)(1)."

"Taxpayer could not sue United States for wrongful levy where taxpayer's assets were levied to satisfy taxpayer's own tax burden, not to satisfy tax assessment of another. 26 U.S.C.A. 7426."

"Power of United States Court of Federal Claims to grant equitable relief is limited to situations arising out of contractual relationship with government. 28 U.S.C.A. §1591(a)(2)."

"Statute granting United States Court of Federal Claims power to grant equitable relief did not apply to taxpayer's action against United States seeking release of all tax liens on his assets. 28 U.S.C.A. §1591(a)(2)."

"Claim for tax refund may only be entertained in United States Court of Federal Claims provided that tax assessed has been paid fully prior to filing of complaint. 28 U.S.C.A. §1346."

**"Taxpayer must file claim, appeal, or demand with Secretary of Treasury as prerequisite to tax refund suit. 26 U.S.C.A. §7422." [Bold added.]**

.. taxpayer's claim sounded in tort, and, therefore, United States Court of Federal Claims could not entertain claim, where taxpayer's claim for damages arose out of alleged reckless behavior by IRS in course of discharging official duties. 28 U.S.C.A. §1491(a)(1)."

"Jurisdiction to hear tort claims is granted exclusively to United States District Courts under Federal Tort Claims Act. 28 U.S.C.A. §1346(b)."

[Calhoun v. United States, 32 Fed.Cl. 400 (1994)]

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**Cincinnati Electronics Corp. v. United States (Dec. 16, 1994)**

"When jurisdiction of Court of Federal Claims is questioned, it is plaintiff's burden to establish court's jurisdiction over subject matter."

[Cincinnati Electronics Corp. v. United States, 32 Fed.Cl. 496 (1994)]

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**Control Data Systems, Inc. v. United States (Dec. 30, 1994)**

"Court of Federal Claims is required, sua sponte, to satisfy itself of proper exercise of its jurisdiction."

"Implied-in-law contracts are not contracts within Court of Federal Claims' Tucker Act jurisdiction. 28 U.S.C.A. §1346."

[Control Data Systems, Inc. v. United States, 32 Fed.Cl. 520 (1994)]

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**Tutor-Saliba Corp. v. United States (Jan. 6, 1995)**

"In interpreting its rules, the Court of Federal Claims looks to the general federal law interpreting analogous provision of the Federal Rules of Civil Procedure."  
 [Tutor-Saliba Corp. v. United States, 32 Fed.Cl. 609 (1995)]

**M & J Coal Co. v. United States (Feb. 15, 1995)**

"Whether Court of Federal Claims properly granted summary judgment is question of law subject to complete and independent review by Court of Appeals and, thus, Court of Appeals reviews record de novo to determine whether any genuine issues of material fact exist, and if not, whether movant is entitled to judgment as matter of law. Fed. Rules Civ.Proc.Rule 56(c), 28 U.S.C.A."

"Property use may be regulated without compensable taking occurring. U.S.C.A.Const.Amend. 5."  
 [M & J Coal Co. v. United States, 47 F.3d. 1148 (Fed.Cir. 1995)]

**Cole v. United States (Feb. 27, 1995)**

"Tucker Act, which defines subject matter jurisdiction of Court of Federal Claims, is jurisdictional statute only and does not create any substantive right enforceable against United States for money damages. 28 U.S.C.A. §1491(a)(1)."

"As party invoking jurisdiction of Court of Federal Claims, plaintiff bears burden of establishing that some statute or regulation mandates .money damages; statutes that merely permit discretionary payment cannot form basis for court's jurisdiction. 28 U.S.C.A. §1491(a)(1)."

On motion for summary judgment movant has initial burden to identify from record absence of material issue of fact. RCFC, Rule 56(c), 28 U.S.C.A."

"On motion for summary judgment, court should, based on standard of proof that would apply at trial, ascertain whether there is sufficient evidence to warrant directed verdict. RCFC, Rule 56(c), 28 U.S.C.A."  
 [Cole v. United States, 32 Fed.Cl. 797 (1995)]

**10.9 U.S. Federal District Court****15 U.S.C. §260a**

"(c) For any violation of the provision of this section the Secretary of Transportation or his duly authorized agent may apply to the district court of the United States for the district in which such violation occurs for the enforcement of this section; and such court shall have jurisdiction to enforce obedience thereto by writ of injunction or by other process, mandatory or otherwise, restraining against further violations of this section and enjoining obedience thereto."  
 [15 U.S.C. §260a]

**28 U.S.C. §1331**

"The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."  
 [28 U.S.C. §1331]

**28 U.S.C. §1361**

"Action to compel an officer of the United States to perform his duty -- The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."  
 [28 U.S.C. §1361]

**Bowen v. Johnston (Jan. 30, 1939)**

"First.--Jurisdiction is conferred upon the District Courts "of all crimes and offenses cognizable under the authority of the

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United States." Judicial Code, §24, 28 U.S. C. A. §41(2).

"Crimes are thus cognizable--

""When committed within or on any lands reserved or acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State....

"The last clause covers cases where exclusive jurisdiction is acquired by the United States pursuant to Article 1, §8, 1 17 of the Constitution."

"hi applying this principle, we have said that the court "has jurisdiction to render a particular judgment only when the offense charged is within the class of offenses placed by the law under its jurisdiction." Re Bonner, 151 U.S. 242, 38 L.Ed. 149, 14 S.Ct. 323, supra. As it is the duty of the District Court, when the prosecution is brought before it, to examine the charge and ascertain whether the offense is of that class, the District Court is thus empowered to pass upon its own jurisdiction. This, under the applicable statute, may require consideration of the place where the offense is alleged to have been committed. The answer to that question may require the examination and determination of questions of fact and law and the determination may be the appropriate subject of appellate review. Thus if, construing a statute, a question of law is determined against the Government on demurrer to the indictment, the case may fall within the provisions of the Criminal Appeals Act. United States v. Sutton, 215 U.S. 291, 54 L.Ed. 200, 30 S.Ct. 116; United States v. Soldana, 246 U.S. 530, 62 L.Ed. 870, 38 S.Ct. 357. Or, if decided against the accused, the question may be reviewed by the Circuit Court of Appeals on appeal from the judgment of conviction."

"And, on removal proceedings, we have observed that in a case where the question "whether the *locus* of the alleged crime was within the exclusive jurisdiction of the United States demands consideration of many facts and seriously controverted questions of law," these matters "must be determined by the court where the indictment was found" and that "the regular course may not be anticipated by alleging want of jurisdiction and demanding a ruling thereon in a *habeas corpus* proceeding." Rodman v. Pothier, 264 U.S. 399, 402, 68 L.Ed. 759, 761, 44 S.Ct. 360. See also Henry v. Henkel, 235 U.S. 219, 229, 59 L.Ed. 203, 206, 35 S.Ct. 54."

"Despite the action of the trial court, the absence of jurisdiction may appear on the face of the record (see Re Snow, 120 U.S. 274, 30 L.Ed. 658, 7 S.Ct. 556, supra; Re Nielsen, supra (131 U.S. p. 183, 33 L.Ed. 120, 9 S.Ct. 672)), and the remedy of *habeas corpus* may be needed to release the prisoner from a punishment imposed by a court manifestly without jurisdiction to pass judgment."

[Bowen v. Johnston, 306 U.S. 19, 83 L.Ed. 455 (1939)]

### **Rothensies v. Ullman (Mar. 15, 1940)**

"A joint bank account held by husband and wife as tenants by entireties, against which warrant of distraint had been issued for husband's income taxes, was "property taken or detained by any officer" and in the "custody of the law" within terms of statute giving federal courts jurisdiction thereof, and hence federal court had jurisdiction to quash the warrant of distraint."

"The Federal District Court had jurisdiction to quash warrant of distraint for husband's income taxes issued against joint bank account held by husband and wife as tenants by entireties, notwithstanding statute prohibiting suits to restrain assessment or collection of tax, where court was not called upon to determine validity of the assessment but only to determine that the account was not subject to seizure for obligation due by husband alone."

"The statute prohibiting suit to restrain assessment or collection of tax was not intended to deprive courts of jurisdiction to restrain revenue officers from illegally collecting taxes out of property which does not belong to the taxpayer."

"Where collector of internal revenue did not within 10 days apply for or obtain supersedeas to suspend operation of order quashing warrant of distraint for husband's income taxes, issued against joint bank account of husband and wife, and husband and wife withdrew funds from the account more than 10 days after entry of such order and long before appeal was taken, there was no subject matter upon which judgment of reviewing court could operate, and appeal from such order must be dismissed."

[Rothensies v. Ullman, 110 F.2d. 590 (3rd Cir. 1940)]

### **Gerth v. United States (June 24, 1955)**

".. owner was a nontaxpayer. Judicial Code provisions, rather than Internal Revenue Code provisions, were applicable and would give Federal District Court jurisdiction regardless of compliance with Internal Revenue Code provisions pertaining to request for institution of proceedings by United States in civil action to clear title to property. Int.Rev.Code 1954, §§7421, 7424; 28 U.S.C.A. §1 et seq."

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[Gerth v. United States, 132 F. Supp. 894 (1955)]

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**Holland v. United States (Dec. 6, 1954)**

"Before proceeding with a discussion of these cases, we believe it important to outline the general problems implicit in this type of litigation. In this consideration we assume, as we must in view of its widespread use, that the Government deems the net worth method useful in the enforcement of the criminal sanctions of our income tax laws. Nevertheless, careful study indicates that it is so fraught with danger for the innocent that the courts must closely scrutinize its use.

"One basic assumption in establishing guilt by this method is that most assets derive from a taxable source, and that when this is not true the taxpayer is in a position to explain the discrepancy. The application of such an assumption raises serious legal problems in the administration of the criminal law. Unlike civil actions for the recovery of deficiencies, where the determinations of the Commissioner have prima facie validity, the prosecution must always prove the criminal charge beyond a reasonable doubt."

"Trial courts should approach such cases in the full realization that the taxpayer may be ensnared in a system which, though difficult for the prosecution to utilize, is equally hard for the defendant to refute. Charges should be especially clear, including, in addition to the formal instructions, a summary of the nature of the net worth method, the assumptions on which it rests, and the inferences available both for and against the accused. Appellate courts should review the cases, bearing constantly in mind the difficulties that arise when circumstantial evidence as to guilt is the chief weapon of a method that is itself only an approximation."

"The Government must still prove every element of the offense beyond a reasonable doubt though not to a mathematical certainty. The settled standards of the criminal law are applicable to net worth cases just as to prosecutions for other crimes. Once the Government has established its case, the defendant remains quiet at his peril. Cf. Yee Hem v. United States, 268 U.S. 178, 185, 69 L.Ed. 904, 906, 45 S.Ct. 470."

[Holland v. United States, 348 U.S. 121, 75 S.Ct. 127, 99 L.Ed. 150 (1954)]

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**Giordinello v. United States (June 30, 1958)**

"Criminal Rules 3 and 4 provide that an arrest warrant shall be issued only upon a written and sworn complaint (1) setting forth "the essential facts constituting the offense charged," and (2) showing "that there is probable cause to believe that [such] an offense has been committed and that the defendant has committed it ...." The provisions of these Rules must be read in light of the constitutional requirements they implement. The language of the Fourth Amendment, that "... no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing ... the persons or things to be seized," of course applies to arrest as well as search warrants. See Ex parte Burford, (US) 3 Cranch 448, 2 L.Ed. 495; McGrain v. Daugherty, 273 U.S. 135, 154-157, 71 L.Ed. 580, 584-586, 47 S.Ct.319, 50 A.L.R. 1. The protection afforded by these Rules, when they are viewed against their constitutional background, is that the inferences from the facts which lead to the complaint ". . . be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime." Johnson v. United States, 333 U.S. 10, 14, 92 L.Ed. 436, 440, 68 S.Ct. 367." [Brackets original.]

[Giordinello v. United States, 357 U.S. 480, 78 S.Ct. 1245, 2 L.Ed.2d. 1503 (1958)]

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**Bullock v. Latham (July 20, 1962)**

"Statutes giving district courts jurisdiction of action under revenue laws and providing that property taken' under revenue laws should be deemed in custody of law and subject only to orders and decrees of federal courts with jurisdiction, conferred jurisdiction of taxpayer's action for declaration that certain property, which tax authorities had applied to liability of plaintiff's corporation, in fact belonged to plaintiff and should have been applied to his own tax liability, although Declaratory Judgment Act excepted actions with respect to federal taxes."

[Bullock v. Latham, 306 F.2d. 45 (2d Cir. 1962)]

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**Kane v. Burlington Savings Bank (July 9, 1963)**

"There is no jurisdictional amount requirement under statute giving district courts original jurisdiction over civil actions arising under revenue statutes."

[Kane v. Burlington Savings Bank, 320 F.2d. 545 (1963)]

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**Greater Boston Television Corporation v. F.C.C. (Nov. 31, 1970)**

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"A reviewing court will not upset an administrative decision because of errors that are not material, there being room for the doctrine of harmless error."

"The function of the court is to assure that the agency has given reasoned consideration to all the material facts and issues. This calls for insistence that the agency articulate with reasonable clarity its reason for decision, and identify the significance of crucial facts, a course that tends to assure that the agency's policies effectuate general standards, applied without unreasonable discrimination."

[Greater Boston T.V. Corp. v. F.C.C., 444 F.2d. 841 (1970)]

### **Hagens v. Lavine (Mar. 25, 1974)**

.. [i]n the absence of diversity of citizenship, it is essential to jurisdiction that a substantial federal question should be presented" [Quoting *Ex parte Poresky*, 290 U.S. 30, 31-32, 54 S.Ct. 3, 4-5, 78 L.Ed. 152 (1933); brackets original.] p. 1379.

"Here, §1343(3) and §1983 unquestionably authorized federal courts to entertain suits to redress the deprivation, under color of state law, of constitutional rights. It is also plain that the complaint formally alleged such a deprivation. The District Court's jurisdiction, a matter for threshold determination, turned on whether the question was too insubstantial for consideration." pp. 415-416.

[Hagens v. Lavine, 415 U.S. 528, 39 L.Ed.2d. 577, 94 S.Ct. 1372 (1974). [Overruled by Gonzalez v. Young, 560 F.2d. 160 (1977).]]

### **Aqua Bar & Lounge v. U.S. Dept. of Treasury (July 7, 1976)**

"Section 1340 of the Judicial Code grants the federal district courts "original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue." Clearly a suit which contests the validity of a federal tax lien falls within its terms. See *United States v. Coson*, 286 F.2d. 453, 455-56 (9th Cir. 1961)."

[Aqua Bar & Lounge v. U.S. Dept. of Treasury, 539 F.2d. 935 (1976)]

### **Gordon v. United States (May 6, 1981)**

"Further, I.R.C. §7426 affords a plaintiff two forms of relief not generally available in this court, i. e., **an injunction against further levy proceedings and the return of the specific property levied on. Plaintiffs seeking these forms of relief will proceed in the district court irrespective of an alternate remedy of money damages in the Court of Claims.**" [Bold added.]

"We treat such suits as based upon a breach of contract implied in fact under which the government agrees to refund to nontaxpayer's property of those persons upon which the government improperly has levied. The doctrine apparently was first announced in *Kirkendall v. United States*, 90 Ct.Cl. 606, 31 F.Supp. 766 (1940). Its rationale was as follows:

"When the government has illegally received money which is the property of an innocent citizen and when this money has gone into the Treasury of the United States, there arises an implied contract on the part of the Government to make restitution to the rightful owner under the Tucker Act and this court has jurisdiction to entertain this suit. 90 Ct.Cl. at 613, 31 F.Supp. at 769."

"An important reason for the *Kirkendall* decision, although not explicitly set forth in the opinion, would appear to be that unless there were such a contract implied in fact, there might be no method by which the nontaxpayer effectively could recover the property the government improperly had taken from him through a levy. With the enactment of section 110(a), however, that situation no longer exists."

[Gordon v. United States, 649 F.2d. 837 (1981)]

### **United States v. Eilertson (May 17, 1983)**

"First, he has asserted that because federal courts are of limited jurisdiction, the courts do not have jurisdiction over crimes enumerated in the IRC because Congress failed to provide a statute within the IRC conferring such jurisdiction. Congress did provide, however, that "[t]he district courts of the United States shall have original jurisdiction ... of all offenses against the laws of the United States;" therefore, the district courts have jurisdiction. 18 U.S.C. §3231 (1976); *United States v. Spurgeon*, 671 F.2d. 1198 (8th Cir.1982)." [Brackets original.]

[United States v. Eilertson, 707 F.2d. 108 (1983)]

### **United States v. Koliboski (Apr. 24, 1984)**

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"District court had subject matter jurisdiction over charges of willful failure to file income tax returns and filing false withholding statements."

"Wages are "income." [The headnote states this, but it is not stated in the published opinion of the court; however, it is stated in a footnote provided below.]

"In prosecution for willful failure to file income tax returns and filing false withholding statements, district court properly instructed jury that willful means "a voluntary, intentional violation of a known legal obligation."

"Sections 7201 through 7210 of Title 26 were enacted pursuant to the power granted Congress by article 1, section 8 of and the sixteenth amendment to the United States Constitution. Title 26 thus defines laws of the United States, suits for violations of which clearly fall within federal district court jurisdiction under Section 3231. *See* 1 U.S.C §112 (1951); *United States v. Eilertson*, 707 F.2d. 108 (4th Cir. 1983)."

[Footnote 1, p. 1329:] "Although not raised in his brief on appeal, the defendant's entire case at trial rested on his claim that he in good faith believed that wages are not income for taxation purposes. Whatever his mental state, he, of course, was wrong, as all of us already are aware. Nonetheless, the defendant still insists that no case holds that wages are income. Let us not put that to rest: WAGES ARE INCOME. Any reading of tax cases by would-be protesters now should preclude a claim of good-faith belief that wages--or salaries--are not taxable."

[*United States v. Koliboski*, 732 F.2d. 1328 (7th Cir. 1984)]

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### **United States v. Ibarra-Alvarez (Sept. 3, 1987)**

"A defendant is entitled to an instruction covering a theory of defense if it has a basis in law and there is some foundation for it in the evidence. *United States v. Hayes*, 794 F.2d. 1348, 1350-51 (9th Cir.1986)...."

[*United States v. Ibarra-Alvarez*, 830 F.2d. 968 (9th Cir.1987)]

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### **United States v. Bailey (Oct. 19, 1987)**

"A trial court's refusal to deliver requested instruction is reversible error if (1) the instruction is substantially correct; (2) it is not covered in the charge actually delivered; and (3) the failure to give it seriously impaired defendant's ability to present an effective defense. *United States v. Walker*, 720 F.2d. 1527, 1541 (11th Cir.1983)."

[*United States v. Bailey*, 830 F.2d. 156 (11th Cir. 1987)]

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### **Schmidt v. King (Sept. 6, 1990)**

"A suit naming the United States as a party may be brought in district court "to quiet title to ... property on which the United States has or claims a mortgage or other lien." 28 U.S.C. §2410(a). If a taxpayer seeks to quiet title to property upon which the United States has a lien, he may bring a quiet title action under §2410(a), without paying the tax. Section 2410(a) waives the United States' sovereign immunity for actual quiet title actions. *See United States v. John Hancock Mut. Life Ins. Co.*, 364 U.S. 301, 81 S.Ct. 1, 5 L.Ed.2d. 1 (1960). Waivers of sovereign immunity under §2410(a) must be read narrowly. *See, e.g., Estate of Johnson*, 836 F.2d. 940, 943-44 (5th Cir.1988).

**"Typically, a taxpayer with a valid quiet title action will admit any assessed taxes are due."** [Bold added.]

"The Taxpayers in this case do not challenge the procedures used to enforce the tax lien. Rather, they attacked the procedures of the assessment and notice and demand and, ultimately, the adjudication of whether they owe taxes. Section 2410 does not extend to challenges for procedural irregularities in assessment or collection of taxes. Thus, the taxpayers were required to pay their taxes first before filing an action in district court."

[*Schmidt v. King*, 913 F.2d. 837 (10th Cir.1990)]

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### **Yeary v. United States (Jan. 8, 1991)**

"Federal Tort Claims Act constitutes limited waiver of sovereign immunity and authorizes suit against United States, making federal government liable in same manner and to same extent as private party would be for certain torts of federal employees acting within scope of their employment. 28 U.S.C.A. §§1346, 2671-2680."

"United States district courts have exclusive jurisdiction of civil actions on claims against United States for money damages caused by negligent or wrongful acts of any employee of government while acting within scope of employment. 28 U.S.C.A. §1346(b)."

"In civil actions on claims against United States for any damages caused by negligent or wrongful act of any employee of government while acting in scope of employment, courts must follow law of state in which allegedly negligent or wrongful act occurred."

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### ***Sovereignty and Freedom Points and Authorities***



[Yeary v. United States, 754 F.Supp. 546 (E.D.Mich. 1991)]

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**United States v. Powell (Feb. 6, 1992)**

"Although a district court may exclude evidence of what the law *is* or *should be*, see *United States v. Poschwatta*, 829 F.2d. 1477, 1483 (9th Cir.1987), *cert. denied*, 484 U.S. 1064, 108 S.Ct. 1024, 98 L.Ed.2d. 989 (1988), it ordinarily cannot exclude evidence relevant to the jury's determination of what a defendant *thought the law* was in §7203 cases because willfulness is an element of the offense. In §7203 prosecutions, statutes or case law upon which the defendant claims to have *actually relied* are admissible to disprove that element if the defendant lays a proper foundation which demonstrates such reliance. See *United States v. Harris*, 942 F.2d. 1125, 1132 (7th Cir.1991); *United States v. Willie*, 941 F.2d. 1384, 1391-99 (10th Cir.1991). Legal materials upon which the defendant does not claim to have relied, however, can be excluded as irrelevant and unnecessarily confusing because only the defendant's subjective belief is at issue: the court remains the jury's sole source of the law."

[United States v. Powell, 955 F.2d. 1206 (9th Cir. 1991)]

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**Rose Acre Farms, Inc. v. Madigan (Feb. 10, 1992)**

"Prevailing party is entitled to advance in support of its judgment all arguments it presented in district court, and it need not and should not file cross appeal just because district judge rejected one of its arguments on way to deciding in its favor."

"It is within subject matter jurisdiction of district court to enjoin enforcement of regulations, thereby eliminating need for damages under regulations, even if it is not empowered to award damages."

[Rose Acre Farms, Inc. v. Madigan, 956 F.2d. 670 (7th Cir. 1992)]

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**United States v. Moore (Apr. 6, 1992)**

"When reviewing an appeal based on the insufficiency of the evidence, the evidence and all reasonable inferences that may be drawn must be viewed in the light most favorable to the verdict. *U.S. v. Lechuga*, 888 F.2d. 1472, 1476 (5th Cir.1989). The evidence is sufficient to sustain the verdict if a reasonable trier of fact could have found that the government proved all of the essential elements of the crime beyond a reasonable doubt. *Id.* The government must prove that the defendant was guilty beyond a reasonable doubt, not merely that he could have been guilty. See *U.S. v. Littrell*, 574 F.2d. 828, 832 (5th Cir.1978); *U.S. v. Sacerio*, 952 F.2d. 860 (5th Cir.1992)."

[United States v. Moore, 958 F.2d. 646 (5th Cir. 1992)]

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**10.10 U.S. Court of Appeals**

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**O'Brien v. Harrington (Apr. 12, 1956)**

"Until order or judgment is entered in civil docket, case is still in District Court, and there is no finality, and there can be no appeal. Fed.Rules Civ.Proc. rules 58, 79(a), 28 U.S.C.A."

[O'Brien v. Harrington, 233 F.2d. 17 (1956)]

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**Goodwin v. United States (June 11, 1991)**

"Appeal of district court's grant of summary judgment to Government in taxpayer's action to quiet title to **property** seized and sold for delinquent payroll taxes was not moot on ground that taxpayer failed to obtain order enjoining sale pending appeal and that the Government had sold the property to a third party, where taxpayer filed notice of lis pendens prior to recording of quitclaim deed to the third party."

"District court's grant of summary judgment and statutory interpretations are reviewed de novo."

"There must be strict compliance with notice requirements of statute governing seizure and sale of property for delinquent taxes, and thus taxpayer does not have burden of demonstrating prejudice from absence of strict compliance."

"Court of Appeals would not apply literal reading of statute that requires a result demonstrably in conflict with drafter's intentions."

"As between taxpayer and the Government, seizure and sale of taxpayer's property for delinquent payroll taxes was invalid where the Government did not provide notice by personal service or leaving written notice at usual place of abode, as

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required by statute, even though notice was served by certified mail and taxpayer had actual notice.

"Taxpayer who obtained determination that Government's seizure and sale of his property for delinquent payroll taxes were invalid for failure to strictly comply with notice requirement was not entitled to fees and costs on ground that the Government's position was not substantially justified, in case in which taxpayer was served by certified mail and had actual notice."

"Although we would not apply a literal reading of a statute that required a result demonstrably in conflict with the drafter's intentions, no such apparent conflict exists here. Congress has set forth precise requirements for notice of seizure and sale of property in tax deficiency situations. "[W]hen the government seeks to enforce the laws, it must follow the steps which Congress has specified." *Reese*, 506 F.2d. at 971. The government did not give Goodwin the notice required by §6335. Accordingly, as between Goodwin and the government, the seizure and sale of the Gladstone property was invalid."

[Brackets original.]

[*Goodwin v. United States*, 935 F.2d. 1061 (9th Cir. 1991)]

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**In re Becraft (Sept. 9, 1989)**

"The Court of Appeals sua sponte issue show cause order requesting tax evasion defendant's counsel to explain why he should not be sanctioned for filing frivolous petition for rehearing. The Court of Appeals held that defense counsel's conduct in filing petition for rehearing, based upon argument that federal tax laws did not apply to resident United States citizens, constituted frivolous conduct warranting imposition of sanctions in amount of \$2,500."

[In re *Becraft*, 885 F.2d. 547 (9th Cir. 1989)]

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**Albun v. Brown (Nov. 22, 1993)**

"When trial court or administrative agency dismisses case for lack of jurisdiction, Court of Appeals for the Federal Circuit has jurisdiction to determine whether jurisdictional ruling of trial court or administrative agency was correct."

[*Albun v. Brown*, 9 F.3d. 1528 (1993)]

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**Perreira v. Secretary of DHHS (Aug. 31, 1994)**

"Court of Appeals reviews decision of Court of Federal Claims under a highly deferential standard."

"Counsel's duty to zealously represent her client does not relieve counsel of her duty to the court to avoid frivolous litigation."

"Expert opinion is no better than the soundness of the reasons supporting it."

"We review the decision of the Court of Federal Claims under a highly deferential standard. "We may not disturb the judgment of the [court] unless we find that judgment to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Munn v. Secretary of Dep't Health & Human Servs.*, 970 F.2d. 863, 870 (Fed.Cir.1992); *see also Phillips v. Secretary of Dep 't Health & Human Servs.*, 988 F.2d. 111, 112 (Fed.Cir.1993)." [Brackets original.]

[*Perreira v. Secretary of DHHS*, 33 F.3d. 1375 (Fed.Cir. 1994)]

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**Penda Corp. v. United States (Dec. 22, 1994)**

"Statute giving Federal Circuit exclusive jurisdiction over appeals from final decision of United States Court of Federal Claims did not allow any person to appeal from final decision of Court of Federal Claims; constitutional standing requirements still applied. U.S.C.A. Const. Art. 3, §1 et seq.; 28 U.S.C.A. §1295(a)(3)."

[*Penda Corp. v. United States*, 44 F.3d. 967 (Fed.Cir. 1994)]

## 11 FAMOUS QUOTES ABOUT RIGHTS AND LIBERTY

The quotes in this section derive from the following authoritative document:

<p><i>Famous Quotes About Rights and Liberty</i>, Form #08.001 <a href="https://sedm.org/Forms/FormIndex.htm">https://sedm.org/Forms/FormIndex.htm</a></p>
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### 11.1 Virtue, Morality, Character and the Supreme Law . . .

"A strict observance of the written laws is doubtless one of the high duties of a good citizen, but it is not the highest. The laws of necessity, of self-preservation, of saving our country when in danger, are of a higher obligation . . . To lose our country by a scrupulous adherence to written law would be to lose the law itself, with life, liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the ends to the means."

[Thomas Jefferson to John B. Colvin, September 20, A. D. 1810]

"A thing moderately good is not so good as it ought to be. Moderation in temper is always a virtue, but moderation in principle is always a vice."

[Thomas Paine, *The Rights of Man* (1791)]

"Most people prefer to believe that their leaders are just and fair, even in the face of evidence to the contrary, because once a citizen acknowledges that the government under which he lives is lying and corrupt, the citizen has to choose what he or she will do about it. To take action in the face of corrupt government entails risks of harm to life and loved ones. To choose to do nothing is to surrender one's self-image of standing for principles. Most people do not have the courage to face that choice. Hence, most propaganda is not designed to fool the critical thinker but only to give moral cowards an excuse not to think at all."

[Michael Rivero (1952 - ) Composer, production engineer]

"It is not the critic who counts, not the man who points out how the strong man stumbled or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena; whose face is marred by dust and sweat and blood; who strives valiantly; who errs and comes short again and again; who knows the great enthusiasms, the great devotions, and spends himself in a worthy cause; who, at best, knows the triumph of high achievement, and who, at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who know neither victory nor defeat."

[Theodore Roosevelt, April 23, 1917]

"By the blessing of God, may our country become a vast and splendid monument, not of oppression and terror, but of wisdom, of peace, and of liberty upon which the world may gaze with admiration forever."

[First Bunker Hill Oration, Daniel Webster [inscribed on a bronze plaque on the quarterdeck of the USS Bunker Hill, CG-52]

"[T]he [federal] government . . . can never be in danger of degenerating into a monarchy, and oligarchy, an aristocracy, or any other despotic or oppressive form so long as there shall remain any virtue in the body of the people. "

[George Washington, *The Writings of George Washington*, John C. Fitzpatrick, editor (Washington: U. S. Government Printing Office, 1939), Vol. XXIX, p. 410. In a letter to Marquis De Lafayette, February 7, 1788]

"It is certainly true that a popular government cannot flourish without virtue in the people."

[Richard Henry Lee, *The Letters of Richard Henry Lee*, James Curtis Ballagh, editor (New York: The MacMillan Company, 1914), Vol. II, p. 411. In a letter to Colonel Mortin Pickett on March 5, 1786]

"Without morals a republic cannot subsist any length of time; they therefore who are decrying the Christian religion, whose morality is so sublime & pure, [and] which denounces against the wicked eternal misery, and [which] insured to the good eternal happiness, are undermining the solid foundation of morals, the best security for the duration of free governments."

[Bernard C. Steiner, *The Life and Correspondence of James McHenry* (Cleveland: The Burrows Brothers, 1907), p. 475. In a letter from Charles Carroll to James McHenry of November 4, 1800.]

“Give up money, give up fame, give up science, give the earth itself and all it contains rather than do an immoral act. And never suppose that in any possible situation, or under any circumstances, it is best for you to do a dishonorable thing, however slightly so it may appear to you. Whenever you are to do a thing, though it can never be known but to yourself, ask yourself how you would act were all the world looking at you, and act accordingly. Encourage all your virtuous dispositions, and exercise them whenever an opportunity arises, being assured that they will gain strength by exercise, as a limb of the body does, and that exercise will make them habitual. From the practice of the purest virtue, you may be assured you will derive the most sublime comforts in every moment of life, and in the moment of death.”

[Thomas Jefferson, *The Writings of Thomas Jefferson*, Albert Bergh, editor (Washington, D.C.: Thomas Jefferson Memorial Assoc., 1903), Vol. 5, pp. 82-83, in a letter to his nephew Peter Carr on August 19, 1785]

"As religion towards God is a branch of universal righteousness (he is not an honest man that is not devout), so **righteousness towards men is a branch of true religion, for he is not a godly man that is not honest**, nor can he expect that his devotion should be accepted; for, 1. **Nothing is more offensive to God than deceit in commerce. A false balance is here put for all manner of unjust and fraudulent practices [of our public dis-servants] in dealing with any person [within the public], which are all an abomination to the Lord, and render those abominable [hated] to him that allow themselves in the use of such accursed arts of thriving. It is an affront to justice, which God is the patron of, as well as a wrong to our neighbour, whom God is the protector of. Men [in the IRS and the Congress] make light of such frauds, and think there is no sin in that which there is money to be got by, and, while it passes undiscovered, they cannot blame themselves for it; a blot is no blot till it is hit, Hos. 12:7, 8. But they are not the less an abomination to God, who will be the avenger of those that are defrauded by their brethren. 2. Nothing is more pleasing to God than fair and honest dealing, nor more necessary to make us and our devotions acceptable to him: A just weight is his delight.** He himself goes by a just weight, and holds the scale of judgment with an even hand, and therefore is pleased with those that are herein followers of him. A balance cheats, under pretence of doing right most exactly, and therefore is the greater abomination to God."

[Matthew Henry's Commentary on the Whole Bible; Henry, M., 1996, c1991, under Prov. 11:1]

“A wise man can see more from the bottom of a well than a fool can from a mountain top.”

[Unknown]

"Finally, brethren, whatever things are true, whatever things are noble, whatever things are just, whatever things are pure, whatever things are lovely, whatever things are of good report, if there is any virtue and if there is anything praiseworthy—meditate on these things."

[[Phil. 4:8](#), Bible, NKJV]

"If you think of yourselves as helpless and ineffectual, it is certain that you will create a despotic government to be your master. The wise despot, therefore, maintains among his subjects a popular sense that they are helpless and ineffectual."

[Frank Herbert, *The Dosadi Experiment*]

"Altruism does not mean mere kindness or generosity, but the sacrifice of the best among men to the worst, the sacrifice of virtues to flaws, of ability to incompetence, of progress to stagnation--and the subordinating of all life and of all values to the claims of anyone's suffering."

[Ayn Rand]

"Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports in vain would that man claim the tribute of patriotism, who should labor to subvert these great pillars of human happiness, these firmest props of the duties of men and citizens."

[George Washington Farewell Address]

"The sum of all is, if we would most truly enjoy the gift of heaven, let us become a virtuous people; then shall we both deserve and enjoy it. While on the other hand, if we are universally vicious and debauched in our manners, though the form of our constitution carries the face of the most exalted freedom, we shall in reality be the most abject slaves."

[Wells, *Life of Samuel Adams*, 1:22-23]

"To suppose that any form of government will secure liberty or happiness without any virtue in the people is a chimerical idea."

[Elliot's Debates, James Madison 3:537]

"Pragmatism is the convenient conclusion reached by those who lack the patience or intelligence to formulate a consistent ideology."

[Mark G. Hanley]

"Only a Virtuous people are capable of freedom. As nations become corrupt and vicious, they have more need of masters."

[Smyth, Writings of Benjamin Franklin. 9:569]

"I believe that justice is instinct and innate, that the moral sense is as much a part of our constitution as that of feeling, seeing, or hearing; as a wise Creator must have seen to be necessary in an animal destined to live in society."

[Thomas Jefferson to John Adams, 1823]

"No people can be bound to acknowledge and adore the invisible hand, which conducts in the affairs of men more than the people of the United States. Every step, by which they have been advanced to the character of an independent nation, seems to have been distinguished by some token of providential agency."

[George Washington]

"Yes, we did produce a near perfect Republic. But will they keep it, or will they, in the enjoyment of plenty, lose the memory of freedom? Material abundance without character is the surest way to destruction."

[Thomas Jefferson]

"[N]either the wisest constitution nor the wisest laws will secure the liberty and happiness of a people whose manners are universally corrupt. He therefore is the truest friend of the liberty of his country who tries most to promote its virtue."

[Samuel Adams]

"A vitiated state of morals, a corrupted public conscience, is incompatible with freedom."

[Patrick Henry]

"And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the gift of God?"

[Thomas Jefferson in "Notes on Virginia".]

"No free government can stand without virtue in the people, and a lofty spirit of patriotism ..."

[Andrew Jackson]

"Indeed, I tremble for my country when I reflect that God is just."

[Thomas Jefferson]

"Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other."

[John Adams; The Works of John Adams, ed. CF Adams, Boston: Little Brown Co., 1851,4:13]

"A nation as a society forms a moral person, and every member of it is personally responsible for his society."

[Thomas Jefferson]

"True law is right reason in agreement with Nature, it is of universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrong-doing by its prohibitions. And it does not lay its commands or prohibitions upon good men in vain, although neither have any effect upon the wicked. It is a sin to try to alter this law, nor is it allowable to attempt to repeal a part of it, and it is impossible to abolish it entirely. We cannot be freed from its obligations by Senate or People, and we need not look outside ourselves for an expounder or interpreter of it. And there will not be different laws at Rome and at Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and for all times, and there will be one master and one rule, that is God, over us all, for He is the author of this law, its promulgator, and its enforcing judge"

[Cicero]

"Liberty will not long survive the total extinction of morals."

[Samuel Adams]

"Religion, morality, and knowledge ... [are] necessary to good government and the happiness of mankind."

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[Northwest Ordinance (1787)]

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## 11.2 Truth, Ignorance, Education, and Deception . .

“One who turns his ear from hearing the law [[God's law](#) or [man's law](#)], even his prayer is an abomination.”  
[[Prov. 28:9](#), Bible, NKJV]

“But this crowd that does not know [and quote and follow and use] the law is accursed.”  
[[John 7:49](#), Bible, NKJV]

“*When I use a word,*” Humpty Dumpty said, in a rather scornful tone, —“*it means just what I choose it to mean – no more no less. The question is,*” said Alice, “*whether you can make words mean so many different things? The question is,*” said Humpty Dumpty, “*which is to be master – that’s all.*”  
[Alice In Wonderland, Lewis Carroll. (Emphasis added)]

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### [equivocation](#)

**EQUIVOCA'TION**, n. Ambiguity of speech; the use of words or expressions that are susceptible of a double signification. Hypocrites are often guilty of equivocation, and by this means lose the confidence of their fellow men. **Equivocation is incompatible with the Christian character and profession.**

[SOURCE: <http://1828.mshaffer.com/d/search/word/equivocation>]

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**Equivocation** ("to call by the same name") is an [informal logical fallacy](#). It is the misleading use of a term with more than one [meaning](#) or [sense](#) (by glossing over which meaning is intended at a particular time). It generally occurs with [polysemic](#) words (words with multiple meanings).

Albeit in common parlance it is used in a variety of contexts, when discussed as a fallacy, equivocation only occurs when the arguer makes a word or phrase employed in two (or more) different senses in an argument appear to have the same meaning throughout.

It is therefore distinct from (semantic) [ambiguity](#), which means that the context doesn't make the meaning of the word or phrase clear, and [amphiboly](#) (or syntactical ambiguity), which refers to ambiguous sentence structure due to [punctuation](#) or [syntax](#).

[Wikipedia topic: Equivocation, Downloaded 9/15/2015; SOURCE: <https://en.wikipedia.org/wiki/Equivocation>]

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“If you know the enemy and know yourself, you need not fear the result of a hundred battles. If you know yourself but not the enemy, for every victory gained you will also suffer a defeat. If you know neither the enemy nor yourself, you will succumb in every battle.”  
[Sun Tzu]

"The moral of the story is that words are mankind's greatest weapon; as shown in this quote: 'There are weapons that are simply thoughts, attitudes, prejudices to be found only in the minds of men.'"  
[Rod Serling, The Monsters Are Due on Maple Street, S01E22 of the TWILIGHT ZONE]

The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools. "By limiting the power of the States to interfere with freedom of speech and freedom of inquiry and freedom of association, the Fourteenth Amendment protects all persons, no matter what their calling. But, in view of the nature of the teacher's relation to the effective exercise of the rights which are safeguarded by the Bill of Rights and by the Fourteenth Amendment, inhibition of freedom of thought, and of action upon thought, in the case of teachers brings the safeguards of those amendments vividly into operation. Such unwarranted inhibition upon the free spirit of teachers . . . has an unmistakable tendency to chill that free

play of the spirit which all teachers ought especially to cultivate and practice; it makes for caution and timidity in their associations by potential teachers." *Wieman v. Updegraff*, [344 U.S. 183, 195](#) (concurring opinion). "Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate . . ." *Sweezy v. New Hampshire*, [354 U.S. 234, 250](#).  
[[Shelton v. Tucker](#), [364 U.S. 479 \(1960\)](#) ]

"The American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted. The Ordinance of 1787 declares: '**Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.**'"  
[*Meyer v. State of Nebraska*, [262 U.S. 390](#) (1923)]

"It is error alone which needs the support of government. Truth can stand by itself."  
[Thomas Jefferson]

"There is no pillow so soft as a clear conscience."  
[French Proverb]

"The only foundation for a useful education in a republic is to be laid in religion. Without this there can be no virtue, and without virtue there can be no liberty, and liberty is the object and life of all republican governments."  
[Benjamin Rush, *Essays, Literary, Moral and Philosophical* (Philadelphia: Thomas and William Bradford, 1806), p. 8; Signer of the Declaration of Independence]

"Our schools have been scientifically designed to prevent overeducation from happening. The average American (should be) content with their humble role in life, because they're not tempted to think about any other role."  
[U.S. Commissioner of Education, William T. Harris, 1889]

"A general State education is a mere contrivance for molding people to be exactly like one another; and as the mold in which it casts them is that which pleases the dominant power in the government, whether this be a monarch, an aristocracy, or a majority of the existing generation; in proportion as it is efficient and successful, it establishes a despotism over the mind, leading by a natural tendency to one over the body."  
[John Stuart Mill, 1859]

"Ideas are more powerful than guns. We would not let our enemies have guns, why should we let them have ideas."  
[Joseph Stalin]

"Contradictions do not exist. Whenever you think that you are facing a contradiction, check your premises. You will find that one of them is wrong."  
[Ayn Rand, *Atlas Shrugged*, Francisco d'Anconia]

"We have to offer up scary scenarios, make simplified dramatic statements, and make little mention of any doubts we may have. Each of us has to decide what the right balance is between being effective and being honest. "  
[Stephen Schneider, environmental activist, in *Discover*, Oct. '89]

"Truth and news are not the same thing."  
[Katharine Graham, owner of *The Washington Post*]

"Ignorance more frequently begets confidence than does knowledge."  
[Charles Darwin (1809-1882) 1871]

"Believing is easier than thinking. Hence so many more believers than thinkers."  
[Bruce Calvert]

"There is nothing so powerful as truth, and often nothing so strange."  
[Daniel Webster]

"The children who know how to think for themselves spoil the harmony of the collective society that is coming, where everyone would be interdependent."

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### ***Sovereignty and Freedom Points and Authorities***

[1899 John Dewey, educational philosopher, proponent of modern public schools]

"Independent self-reliant people would be a counterproductive anachronism in the collective society of the future where people will be defined by their associations."

[1896 John Dewey, educational philosopher, proponent of modern public schools]

"The time is now near at hand which must probably determine whether Americans are to be free men or slaves, whether they are to have any property they can call their own, whether their houses and farms are to be pillaged and destroyed and themselves confined to a state of wretchedness from which no human efforts will deliver them. The fate of unborn millions will now depend, under God, on the courage of this army. Our cruel and unrelenting enemy leaves us only the choice of brave resistance or the most abject submission. We have, therefore, to resolve to conquer or die."

[George Washington]

"As nightfall does not come at once, neither does oppression. In both instances there is a twilight when everything remains seemingly unchanged. And it is in such twilight that we all must be most aware of change in the air - however slight - lest we become unwitting victims of the darkness."

[William O. Douglas, Supreme Court Justice]

"Truth is the most valuable thing we have. Let us economize it."

[Mark Twain (1835-1910)]

"The falsification of history has done more to impede human development than any one thing known to mankind."

[Rousseau]

"In a time of universal deceit, telling the truth is a revolutionary act"

[George Orwell, Author]

"How strangely will the Tools of a Tyrant pervert the plain Meaning of Words!"

[Samuel Adams (1722-1803), letter to John Pitts, January 21, 1776]

"None are more hopelessly enslaved than those who falsely believe they are free."

[Johann W. Von Goethe]

"The more restrictions and prohibitions in the world, the poorer people get, the more experts the country has the more of a mess it's in, the more ingenious the skillful are, the more monstrous their inventions, the louder the call for law and order, the more the thieves and con men multiply."

[Lao Tze, circa. 2300 B.C.]

"Fear can only prevail when victims are ignorant of the facts."

[Thomas Jefferson]

"He who knows nothing is nearer to the truth than he whose mind is filled with falsehoods and errors."

[Thomas Jefferson]

"Any truth is better than make-believe ... rather than love, than money, than fame, give me truth"

[Henry David Thoreau]

"Most people, sometime in their lives, stumble across truth. Most jump up, brush themselves off, and hurry on about their business as if nothing had happened."

[Winston Churchill]

"Strange times are these in which we live when old and young are taught in falsehood's school. And the one man who dares to tell the truth is called at once a lunatic and fool."

[Plato]

"The whole aim of practical politics is to keep the populace alarmed - and hence clamorous to be led to safety - by menacing them with an endless series of hobgoblins, all of them imaginary."

[H.L. Mencken]

"The greatest enemy of the truth is very often not the lie - deliberate, contrived and dishonest - but the myth - persistent, persuasive and unrealistic."

[President John F. Kennedy, at Yale University on June 11, 1962]

"Those who cannot remember the past are condemned to relive it ..."

[George Santayana, Historian]

"The battle of philosophers is a battle for men's minds. The nature of the enemy, those who seek to destroy America, seek to disarm it intellectually and physically. But this is not a political cause. It goes way beyond that. Politics is not the cause, but the last consequence of philosophical ideas."

[Ayn Rand addressing the 1974 graduating class of West Point.]

"Truth is hate to those who hate the truth. And that is the truth."

[Anonymous]

"Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives."

[James Madison (Letter to W.T. Barry, August 4, 1822)]

"The most dangerous man, to any government, is the man who is able to think things out for himself, without regard to the prevailing superstitions and taboos. Almost inevitably he comes to the conclusion that the government he lives under is dishonest, insane and intolerable, and so, if he is romantic, he tries to change it. And even if he is not romantic personally he is very apt to spread discontent among those who are."

[H.L. Mencken, writing in Smart Set magazine, December 1919]

"Not to know what happened before means to remain forever a child "

[Marcus T. Cicero (106-43 BC)]

"If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be."

[Thomas Jefferson]

"I know of no safe depository of the ultimate powers of society but the people themselves, and if we think them not enlightened enough to exercise control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion."

[Thomas Jefferson]

"Prejudices, it is well known, are most difficult to eradicate from the heart whose soil has never been loosened or fertilized by education; they grow there, firm as weeds among stones."

[Charlotte Bronte, 1816-1855]

"Reason obeys itself; and ignorance does whatever is dictated to it."

[Thomas Paine, Rights of Man]

"I tolerate with the utmost latitude the right of others to differ from me in opinion"

[Thomas Jefferson]

"The only new thing in this world is the history you do not know"

[President Harry S. Truman]

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### 11.3 Property, Separation Between Public and Private<sup>75</sup>

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*“The heavens are Yours [God’s], the earth also is Yours[God’s]; The world and all its fullness, You have founded them.”*  
[Psalms 89:11, Bible, NKJV]

*“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the **pursuit of Happiness [PROPERTY]**.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, -“*  
[[Declaration of Independence](#)]

*“**Unalienable**. Inalienable; incapable of being aliened, that is, sold and transferred.”*  
[Black’s Law Dictionary, Fourth Edition, p. 1693]

*“[It is an] essential, unalterable right in nature, engrafted into the British constitution as a fundamental law, and ever held sacred and irrevocable by the subjects within the realm, that what a man has honestly acquired is absolutely his own, which he may freely give, but cannot be taken from him without his consent.”*  
[Samuel Adams, *The Massachusetts Circular Letter, February 11, 1768*; SOURCE:  
<https://founders.archives.gov/documents/Adams/99-02-02-7094>]

*“When the Government has illegally received money which is the property of an innocent citizen and when this money has gone into the Treasury of the United States, there arises an implied contract on the part of the Government to make restitution to the rightful owner under the Tucker Act and this court has jurisdiction to entertain the suit.*  
[90 Ct.Cl. at 613, 31 F.Supp. at 769.”](#)  
[[Gordon v. U. S., 227 Ct.Cl. 328, 649 F.2d. 837 \(Ct.Cl., 1981\)](#)]

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California Civil Code  
Section 2224

*“One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he or she has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.”*

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**“The United States, we have held, cannot, as against the claim of an innocent party, hold his money which has gone into its treasury by means of the fraud of its agent. While here the money was taken through mistake without element of fraud, the unjust retention is immoral and amounts in law to a fraud of the taxpayer’s rights. What was said in the State Bank Case applies with equal force to this situation. ‘An action will lie whenever the defendant has received money which is the property of the plaintiff, and which the defendant is obligated by natural justice and equity to refund. The form of the indebtedness or the mode in which it was incurred is immaterial.’”**  
[[Bull v. United States, 295 U.S. 247, 261, 55 S.Ct. 695, 700, 79 L.Ed. 1421](#)]

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III.

**The final question is whether the Government’s action constituted a “taking” of petitioners’ property interests within the meaning of the Fifth Amendment. Before the United States compelled Rice to transfer the hulls and all materials held for future use in building the boats, petitioners had valid liens under Maine law against both the hulls and whatever unused materials which petitioners had furnished. Before transfer these liens were enforceable by attachment against both the hulls and all materials. After transfer to the United States the liens were still valid, [United States v. Alabama, 313 U.S. 274, 281-282](#), but they could not be enforced because of the sovereign immunity of the Government and its property from suit.[4]The result of this was a destruction of all petitioners’ property rights under their liens, although, as we have pointed out, the liens were valid and had compensable value. Petitioners contend that destruction of [47\\*47](#) their liens under the circumstances here is a “taking.” The United States denies**

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<sup>75</sup> For further details on the subject of this section, see: [Separation Between Public and Private Course](#), Form #12.025; <https://sedm.org/Forms/FormIndex.htm>.



**this, largely on the premise that inability of petitioners to enforce their liens because of immunity of the Government and its property from suit cannot amount to a "taking."**

The Government argues that the *Ansonia* case is dispositive of this Fifth Amendment issue. In that case, the contract between the shipbuilder and the United States provided, as to one of the ships contracted for, the dredge *Benyuard*, that as progress payments were made, the portion of the work paid for should become the property of the United States. Subcontractors claimed liens on the uncompleted vessel under the Virginia supply-lien law. This Court merely held that, as the property had passed to the United States by virtue of the terms of the contract, no lien could be enforced against it. No question was raised as to the rights possessed by the subcontractors prior to the acquisition of title by the United States nor as to whether that event entitled them to just compensation under the Fifth Amendment. There is, to be sure, reason to believe that the subcontractors' liens in that case, like those of petitioners here, did attach as soon as materials were furnished, which would necessarily be prior to the making of a progress payment for the portion of the work incorporating those materials and the consequent passage of title to the United States. See *Hawes & Co. v. Trigg Co.*, 110 Va. 165, 185-186, 199, 65 S. E. 538, 546-547, 551-552. But the Fifth Amendment question was not raised or passed upon. In these circumstances we cannot regard the court's decision as dispositive on the precise point now under consideration, and must proceed to decide that question.<sup>[5]</sup>

**48\*48 We hold that there was a taking of these liens for which just compensation is due under the Fifth Amendment. It is true that not every destruction or injury to property by governmental action has been held to be a "taking" in the constitutional sense. *Omnia Commercial Co. v. United States*, 261 U.S. 502, 508-510. This case and many others reveal the difficulty of trying to draw the line between what destructions of property by lawful governmental actions are compensable "takings" and what destructions are "consequential" and therefore not compensable. See, e. g., *United States v. Central Eureka Mining Co.*, 357 U.S. 155; *United States v. Causby*, 328 U.S. 256; *United States v. General Motors Corp.*, 323 U.S. 373; *United States v. Sponenbarger*, 308 U.S. 256; *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393; *Louisville & Nashville R. Co. v. Mottley*, 219 U.S. 467; *Legal Tender Cases*, 12 Wall. 457, 551.**

**The total destruction by the Government of all value of these liens, which constitute compensable property, has every possible element of a Fifth Amendment "taking" and is not a mere "consequential incidence" of a valid regulatory measure. Before the liens were destroyed, the lienholders admittedly had compensable property. Immediately afterwards, they had none. This was not because their property vanished into thin air. It was because the Government for its own advantage destroyed the value of the liens, something that the Government could do because its property was not subject to suit, but which no private purchaser could have done. Since this acquisition was for a public use, however accomplished, whether with an intent and purpose of extinguishing the liens or not, the Government's action did destroy them 49\*49 and in the circumstances of this case did thereby take the property value of those liens within the meaning of the Fifth Amendment. Neither the boats' immunity, after being acquired by the Government, from enforcement of the liens nor the use of a contract to take title relieves the Government from its constitutional obligation to pay just compensation for the value of the liens the petitioners lost and of which loss the Government was the direct, positive beneficiary.**

The Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole. A fair interpretation of this constitutional protection entitles these lienholders to just compensation here. Cf. *Thibodo v. United States*, 187 F. 2d. 249.

The judgment is reversed and the cause is remanded to the Court of Claims for further proceedings to determine the value of the property taken.

*Reversed and remanded.*

[*Armstrong v. United States*, 364 U.S. 40 (1960)]

[This is a HUGELY important ruling, because it says that the government implicitly waives sovereign immunity when it takes your property of any kind, including for tax collection]

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“We have repeatedly held that, as to property reserved by its owner for private use, *"the right to exclude [others is] `one of the most essential sticks in the bundle of rights that are commonly characterized as property.'"* *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 433 (1982), quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979). “*[Nollan v. California Coastal Comm'n, 483 U.S. 825 (1987)]*

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“In this case, we hold that *the "right to exclude," so universally held to be a fundamental element of the property right,<sup>[11]</sup> falls within this category of interests that the Government cannot take without compensation.*”  
 [Kaiser Aetna v. United States, 444 U.S. 164 (1979) ]

FOOTNOTE:

[11] See, e. g., *United States v. Pueblo of San Ildefonso*, 206 Ct.Cl. 649, 669-670, 513 F.2d. 1383, 1394 (1975) ; *United States v. Lutz*, 295 F.2d. 736, 740 (CA5 1961) . As stated by Mr. Justice Brandeis, "[a]n essential element of individual property is the legal right to exclude others from enjoying it." *International News Service v. Associated Press*, 248 U.S. 215, 250 (1918) (dissenting opinion) .

**“PROPERTY.** Rightful dominion over external objects; ownership; the **unrestricted and exclusive right to a thing; the right to dispose of the substance of a thing in every legal way, to possess it, to use it and to exclude every one else from interfering with it.** **Mackeld. Rom. Law, §265.**

Property is the highest right a man can have to anything; being used for that right which one has to lands or tenements, goods or chattels, which no way depends on another man's courtesy. Jackson ex dem. Pearson v. Housel, 17 Johns. 281, 283.

A right imparting to the owner a power of indefinite user, capable of being transmitted to universal successors by way of descent, and imparting to the owner the power of disposition, from himself and his successors *per universitatem*, and from all other persons who have a *spes successions* under any existing concession or disposition, in favor of such person or series of persons as he may choose, with the like capacities and powers as he had himself, and under such conditions as the municipal or particular law allows to be annexed to the dispositions of private persons. Aust. Jur. (Campbell's Ed.) §1103.

**The right of property is that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe. It consists in the free use, enjoyment and disposal of all a person's acquisitions, without any control or diminution save only by the laws of the land.** **1 Bl.Comm. 138; 2 Bl.Comm. 2, 15.**

The word is also commonly used to denote any external object over which, the right of property is exercised. In this sense it is a very wide term, and includes every class of acquisitions which a man can own or have an interest in. See *Scranton v. Wheeler*, 179 D. S. 141, 21 Sup.Ct. 48, 45 L.Ed. 126; *Lawrence v. Hennessey*, 165 Mo. 659, 65 S. W. 717; *Boston & L. R. Corp. v. Salem & L. R. Co.*, 2 Gray (Mass.), 35; *National Tel. News Co. v. Western Union Tel. Co.*, 119 Fed. 294, 56 C.C.A. 198, 60 L.R.A. 805; *Hamilton v. Rathbone*, 175 U.S. 414, 20 Sup.Ct. 155, 44 L.Ed. 219; *Stanton v. Lewis*, 26 Conn. 449; *Wilson v. Ward Lumber Co.* (C. C.) 67 Fed. 674.

—Absolute property . In respect to chattels personal property is said to be "absolute" where a man has, solely and exclusively, the right and also the occupation of any movable chattels, so permanent, but may at some times subsist and not at other times; such for example, as the property a man may have in wild animals which he has caught and keeps, and which are his only so long as he retains possession of them. 2 BL.Comm. 389.—Real property . A general term for lands, tenements, and hereditaments; property which, on the death of the owner intestate, passes to his heir. Real property is either corporeal or incorporeal. See Code N.Y. §462 — Separate property . The separate property of a married woman is that which she owns in her own right, which is liable only for her own debts, and which she can incur and dispose of at her own will.—Special property. Property of a qualified, temporary, or limited nature; as distinguished from absolute, general, or unconditional property. Such is the property of a bailee in the article bailed, of a sheriff in goods temporarily in his hands under a levy, of the finder of lost goods while looking for the owner, of a person in wild animals which he has caught. *Stief v. Hart*, 1 N.Y. 24; *Moulton v. Witherell*, 52 Me. 242; *Eisendrath v. Knauer*, 64 Ill. 402; *Phelps v. People*, 72 N.Y. 357. [Black's Law Dictionary, Second Edition, p. 955]

**“Property.** That which is peculiar or proper to any person; that which belongs exclusively to one. In the strict legal sense, an aggregate of rights which are guaranteed and protected by the government. *Fulton Light, Heat & Power Co. v. State*, 65 Misc.Rep. 263, 121 N.Y.S. 536. The term is said to extend to every species of valuable right and interest. More specifically,

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ownership; the unrestricted and exclusive right to a thing; the right to dispose of a thing in every legal way, to possess it, to use it, and to exclude everyone else from interfering with it. That dominion or indefinite right of use or disposition which one may lawfully exercise over particular things or subjects. The exclusive right of possessing, enjoying, and disposing of a thing. The highest right a man can have to anything; being used to refer to that right which one has to lands or tenements, goods or chattels, which no way depends on another man's courtesy.

The word is also commonly used to denote everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal, everything that has an exchangeable value or which goes to make up wealth or estate. It extends to every species of valuable right and interest, and includes real and personal property, easements, franchises, and incorporeal hereditaments, and includes every invasion of one's property rights by actionable wrong. *Labberton v. General Cas. Co. of America*, 53 Wash.2d. 180, 332 P.2d. 250, 252, 254.

Property embraces everything which is or may be the subject of ownership, whether a legal ownership. or whether beneficial, or a private ownership. *Davis v. Davis*. TexCiv-App., 495 S.W.2d. 607. 611. Term includes not only ownership and possession but also the right of use and enjoyment for lawful purposes. *Hoffmann v. Kinealy, Mo.*, 389 S.W.2d. 745, 752.

Property, within constitutional protection, denotes group of rights inhering in citizen's relation to physical thing, as right to possess, use and dispose of it. *Cereghino v. State By and Through State Highway Commission*, 230 Or. 439, 370 P.2d. 694, 697.

[Black's Law Dictionary, Fifth Edition, p. 1095]

**“Justice, as a moral habit, is that tendency of the will and mode of conduct which refrains from disturbing the lives and interests [AND PROPERTY] of others, and, as far as possible, hinders such interference on the part of others. This virtue springs from the individual's respect for his fellows as ends in themselves and as his co equals. The different spheres of interests may be roughly classified as follows: body and life; the family, or the extended individual life; property, or the totality of the instruments of action; honor, or the ideal existence; and finally freedom, or the possibility of fashioning one's life as an end in itself. The law defends these different spheres, thus giving rise to a corresponding number of spheres of rights, each being protected by a prohibition. . . . To violate the rights, to interfere with the interests of others, is injustice. All injustice is ultimately directed against the life of the neighbor; it is an open avowal that the latter is not an end in itself, having the same value as the individual's own life. The general formula of the duty of justice may therefore be stated as follows: Do no wrong yourself, and permit no wrong to be done, so far as lies in your power; or, expressed positively: Respect and protect the right.**

[[Readings on the History and System of the Common Law, Second Edition, 1925, Roscoe Pound, p. 2\]](#)

*“Quod meum est sine me auferri non potest.*

*What is mine cannot be taken away without my consent. Jenk. Cent. 251. Sed vide Eminent Domain.*

*Id quod nostrum est, sine facto nostro ad alium transferi non potest.*

*What belongs to us cannot be transferred to another without our consent. Dig. 50, 17, 11. But this must be understood with this qualification, that the government may take property for public use, paying the owner its value. The title to property may also be acquired, with the consent of the owner, by a judgment of a competent tribunal.”*

[*Bouvier's Maxims of Law*, 1856; SOURCE:

<http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviersMaxims.htm>]

*“Nemo dat qui non habet. No one can give who does not possess. Jenk. Cent. 250.*

*Nemo plus juris ad alienum transferre potest, quam ispe habent. One cannot transfer to another a right which he has not. Dig. 50, 17, 54; 10 Pet. 161, 175.*

*Nemo potest facere per alium quod per se non potest. No one can do that by another which he cannot do by himself.*

*Qui per alium facit per seipsum facere videtur. He who does anything through another, is considered as doing it himself. Co. Litt. 258.*

*Quicquid acquiritur servo, acquiritur domino. Whatever is acquired by the servant, is acquired for the master. 15 Bin. Ab. 327.*

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*Quod per me non possum, nec per alium. What I cannot do in person, I cannot do by proxy.* 4 Co. 24.  
*What a man cannot transfer, he cannot bind by articles."*

[[Bouvier's Maxims of Law, 1856](http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviereMaxims.htm); <http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviereMaxims.htm>]

*"Moiety (moy-ə-tee). 1. A half of something (such as an estate). 2. A portion less than half; a small segment. 3. In customs law, a payment made to an informant who assists the seizure of contraband."*

[*Black's Law Dictionary, Seventh Edition, p. 1021*]

"The distinction between public rights and private rights has not been definitively explained in our precedents. Nor is it necessary to do so in the present cases, for it suffices to observe that a matter of public rights must at a minimum arise between the government and others." Ex parte Bakelite Corp., supra, at 451, 49 S.Ct., at 413. In contrast, "the liability of one individual to another under the law as defined," Crowell v. Benson, supra, at 51, 52 S.Ct., at 292, is a matter of private rights. Our precedents clearly establish that only controversies in the former category may be removed from Art. III courts and delegated to legislative courts or administrative agencies for their determination. See Atlas Roofing Co. v. Occupational Safety and Health Review Comm'n, 430 U.S. 442, 450, n. 7, 97 S.Ct. 1261, 1266, n. 7, 51 L.Ed.2d. 464 (1977); Crowell v. Benson, supra, 285 U.S., at 50-51, 52 S.Ct., at 292. See also Katz, Federal Legislative Courts, 43 Harv.L.Rev. 894, 917-918 (1930).FN24 Private-rights disputes, on the other hand, lie at the core of the historically recognized judicial power."

[. . .]

Although Crowell and Raddatz do not explicitly distinguish between rights created by Congress [PUBLIC RIGHTS] and other [PRIVATE] rights, such a distinction underlies in part Crowell's and Raddatz' recognition of a critical difference between rights created by federal statute and rights recognized by the Constitution. Moreover, such a distinction seems to us to be necessary in light of the delicate accommodations required by the principle of separation of powers reflected in Art. III. The constitutional system of checks and balances is designed to guard against "encroachment or aggrandizement" by Congress at the expense of the other branches of government. Buckley v. Valeo, 424 U.S., at 122, 96 S.Ct., at 683. But when Congress creates a statutory right [a "privilege" or "public right" in this case, such as a "trade or business"], it clearly has the discretion, in defining that right, to create presumptions, or assign burdens of proof, or prescribe remedies; it may also provide that persons seeking to vindicate that right must do so before particularized tribunals created to perform the specialized adjudicative tasks related to that right.FN35 Such provisions do, in a sense, affect the exercise of judicial power, but they are also incidental to Congress' power to define the right that it has created. No comparable justification exists, however, when the right being adjudicated is not of congressional creation. In such a situation, substantial inroads into functions that have traditionally been performed by the Judiciary cannot be characterized merely as incidental extensions of Congress' power to define rights that it has created. Rather, such inroads suggest unwarranted encroachments upon the judicial power of the United States, which our Constitution reserves for Art. III courts. [Northern Pipeline Const. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 102 S.Ct. 2858 (1983)]

"As expressed otherwise, the powers delegated to a public officer are held in trust for the people and are to be exercised in behalf of the government or of all citizens who may need the intervention of the officer. 1 Furthermore, the view has been expressed that all public officers, within whatever branch and whatever level of government, and whatever be their private vocations, are trustees of the people, and accordingly labor under every disability and prohibition imposed by law upon trustees relative to the making of personal financial gain from a discharge of their trusts.2 That is, a public officer occupies a fiduciary relationship to the political entity on whose behalf he or she serves.3 and owes a fiduciary duty to the public.4 It has been said that the fiduciary responsibilities of a public officer cannot be less than those of a private individual. 5 Furthermore, it has been stated that any enterprise undertaken by the public official which tends to weaken public confidence and undermine the sense of security for individual [PRIVATE] rights is against public policy."6 [63C American Jurisprudence 2d, Public Officers and Employees, §247 (1999)]

#### FOOTNOTES:

1. State ex rel. Nagle v. Sullivan, 98 Mont. 425, 40 P.2d. 995, 99 A.L.R. 321; Jersey City v. Hague, 18 N.J. 584, 115 A.2d. 8.

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2. Georgia Dep't of Human Resources v. Sistrunk, 249 Ga. 543, 291 S.E.2d. 524. A public official is held in public trust. Madlener v. Finley (1st Dist), 161 Ill.App.3d. 796, 113 Ill.Dec. 712, 515 N.E.2d. 697, app gr 117 Ill.Dec. 226, 520 N.E.2d. 387 and revd on other grounds 128 Ill.2d. 147, 131 Ill.Dec. 145, 538 N.E.2d. 520.
3. Chicago Park Dist. v. Kenroy, Inc., 78 Ill.2d. 555, 37 Ill.Dec. 291, 402 N.E.2d. 181, appeal after remand (1st Dist) 107 Ill.App.3d. 222, 63 Ill.Dec. 134, 437 N.E.2d. 783.
4. United States v. Holzer (CA7 Ill), 816 F.2d. 304 and vacated, remanded on other grounds 484 U.S. 807, 98 L.Ed.2d. 18, 108 S.Ct. 53, on remand (CA7 Ill) 840 F.2d. 1343, cert den 486 U.S. 1035, 100 L.Ed.2d. 608, 108 S.Ct. 2022 and (criticized on other grounds by United States v. Osser (CA3 Pa) 864 F.2d. 1056) and (superseded by statute on other grounds as stated in United States v. Little (CA5 Miss) 889 F.2d. 1367) and (among conflicting authorities on other grounds noted in United States v. Boylan (CA1 Mass), 898 F.2d. 230, 29 Fed.Rules.Evid.Serv. 1223).
5. Chicago ex rel. Cohen v. Keane, 64 Ill.2d. 559, 2 Ill.Dec. 285, 357 N.E.2d. 452, later proceeding (1st Dist) 105 Ill.App.3d. 298, 61 Ill.Dec. 172, 434 N.E.2d. 325.
6. Indiana State Ethics Comm'n v. Nelson (Ind App), 656 N.E.2d. 1172, reh gr (Ind App) 659 N.E.2d. 260, reh den (Jan 24, 1996) and transfer den (May 28, 1996).

*"The [PRIVATE] individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State or to his neighbor to divulge his business, or to open his doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the State, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law, and in accordance with the Constitution. Among his rights are a refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes nothing to the public [including so-called "taxes" under Subtitle A of the I.R.C.] so long as he does not trespass upon their rights."*  
 [Hale v. Henkel, [201 U.S. 43](#), 74 (1906) ]

*"The very purpose of a Bill of Rights [which are PRIVATE property] was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."*  
 [Emphasis added]  
 [West Virginia State Board of Education v. Barnette, 319 U.S. 623]

*"No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. As well said by Judge Cooley: 'The right to one's person may be said to be a right of complete immunity; to be let alone.' Cooley, Torts, 29."*  
 [Union Pac Ry Co v. Botsford, 141 U.S. 250, 11 S.Ct. 1000, 35 L.Ed. 734 (1891) ]

*"The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness... They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone - the most comprehensive of rights and the right most valued by civilized men."*  
 [Emphasis added]  
 [Olmstead v. United States, 277 U.S. 438, 478 (1928); Washington v. Harper, 494 U.S. 210 (1990)]

*"I [God] brought you up from Egypt [slavery] and brought you to the land of which I swore to your fathers; and I said, 'I will never break My covenant with you. And you shall make no covenant [contract or franchise or agreement of ANY kind] with the inhabitants of this [corrupt pagan] land; you shall tear down their [man/government worshipping socialist] altars.' But you have not obeyed Me. Why have you done this?"*

*"Therefore I also said, 'I will not drive them out before you; but they will become as thorns [terrorists and persecutors] in*

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**your side and their gods will be a snare [slavery!] to you."**

So it was, when the Angel of the LORD spoke these words to all the children of Israel, that the people lifted up their voices and wept.

[[Judges 2:1-4](#), Bible, NKJV]

"You shall make no covenant [contract or franchise] with them [foreigners, pagans], nor with their [pagan government] gods [laws or judges]. They shall not dwell in your land [and you shall not dwell in theirs by becoming a "resident" or domiciliary in the process of contracting with them], lest they make you sin against Me [God]. For if you serve their [government] gods [under contract or agreement or franchise], it will surely be a snare to you."

[[Exodus 23:32-33](#), Bible, NKJV]

How to PREVENT conversion of PRIVATE to PUBLIC

"All rights and property are PRESUMED to be EXCLUSIVELY PRIVATE and beyond the control of government or the CIVIL law unless and until the government meets the burden of proving, WITH EVIDENCE, on the record of the proceeding that:

1. A SPECIFIC formerly PRIVATE owner consented IN WRITING to convert said property to PUBLIC property.
2. The owner was either abroad, domiciled on, or at least PRESENT on federal territory NOT protected by the Constitution and therefore had the legal capacity to ALIENATE a Constitutional right or relieve a public servant of the fiduciary obligation to respect and protect the right. Those physically present but not necessarily domiciled in a constitutional but not statutory state protected by the constitution cannot lawfully alienate rights to a real, de jure government, even WITH their consent.
3. If the government refuses to meet the above burden of proof, it shall be CONCLUSIVELY PRESUMED to be operating in a PRIVATE, corporate capacity on an EQUAL footing with every other private corporation and which is therefore NOT protected by official, judicial, or sovereign immunity."

[[Separation Between Public and Private Course](#), Form #12.025; <https://sedm.org/Forms/FormIndex.htm>]

United States Constitution  
Article 4, Section 3, Clause 2

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

"The Constitution permits Congress to dispose of and to make all needful rules and regulations respecting the territory or other property belonging to the United States. This power applies as well to territory belonging to the United States within the States, as beyond them. It comprehends all the public domain, wherever it may be. The argument is, that the power to make 'ALL needful rules and regulations' 'is a power of legislation, 'a full legislative power;' 'that it includes all subjects of legislation in the territory, and is without any limitations, except the positive prohibitions which affect all the powers of Congress. Congress may then regulate or prohibit slavery upon the public domain within the new States, and such a prohibition would permanently affect the capacity of a slave, whose master might carry him to it. And why not? Because no power has been conferred on Congress. This is a conclusion universally admitted. But the power to 'make rules and regulations respecting the territory' is not restrained by State lines, nor are there any constitutional prohibitions upon its exercise in the domain of the United States within the States; and whatever rules and regulations respecting territory Congress may constitutionally make are supreme, and are not dependent on the situs of 'the territory.'"

[*Dred Scott v. Sandford*, 60 U.S. 393, 509-510 (1856)]

"Men are endowed by their Creator with certain unalienable rights, -life, liberty, and the pursuit of happiness; and to 'secure, not grant or create, these rights, governments are instituted. That property [or income] which a man has honestly acquired he retains full control of, subject to these limitations:"

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[1] First, that he shall not use it to his neighbor's injury, and that does not mean that he must use it for his neighbor's benefit [e.g. SOCIAL SECURITY, Medicare, and every other public "benefit"];

[2] second, that if he devotes it to a public use, he gives to the public a right to control that use; and

[3] third, that whenever the public needs require, the public may take it upon payment of due compensation."  
[Budd v. People of State of New York, 143 U.S. 517 (1892) ]

California Civil Code – CIV

DIVISION 3. OBLIGATIONS [1427 - 3272.9]

(Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14. )

PART 3. OBLIGATIONS IMPOSED BY LAW [1708 - 1725]

( Part 3 enacted 1872. )

1708. Every person is bound, without contract, to **abstain from injuring the person or property of another**, or infringing upon any of his or her rights.

(Amended by Stats. 2002, Ch. 664, Sec. 38.5. Effective January 1, 2003.)

### **What is "Property"?**

Keep in mind the following critical facts about "property" as legally defined:

1. The essence of the "property" right, also called "ownership", is the RIGHT TO EXCLUDE others from using or benefitting from the use of the property.

**"We have repeatedly held that, as to property reserved by its owner for private use, "the right to exclude [others is] 'one of the most essential sticks in the bundle of rights that are commonly characterized as property.' "** Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 433 (1982), quoting Kaiser Aetna v. United States, 444 U.S. 164, 176 (1979). "

[Nollan v. California Coastal Comm'n, 483 U.S. 825 (1987)]

**"In this case, we hold that the "right to exclude," so universally held to be a fundamental element of the property right,<sup>[11]</sup> falls within this category of interests that the Government cannot take without compensation."**

[Kaiser Aetna v. United States, 444 U.S. 164 (1979)]

[11] See, e. g., United States v. Pueblo of San Ildefonso, 206 Ct.Cl. 649, 669-670, 513 F.2d. 1383, 1394 (1975); United States v. Lutz, 295 F.2d. 736, 740 (CA5 1961). As stated by Mr. Justice Brandeis, "[a]n essential element of individual property is the legal right to exclude others from enjoying it." International News Service v. Associated Press, 248 U.S. 215, 250 (1918) (dissenting opinion).

2. It's NOT your property if you can't exclude EVERYONE, including the GOVERNMENT from using, benefitting from the use, or taxing the specific property.
3. All constitutional rights and statutory privileges are property.
4. Anything that conveys a right or privilege is property.
5. Contracts convey rights or privileges and are therefore property.
6. All franchises are contracts between the grantor and the grantee and therefore property.

[Government Instituted Slavery Using Franchises, Form #05.030, Section 3.2: What is "Property"; <https://sedm.org/Forms/FormIndex.htm>]

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## 11.4 Corruption<sup>76</sup>

**“When the wicked arise, men hide themselves;**

But when they perish, the righteous increase.”

[Prov. 28:28, Bible, NKJV]

“A prudent man foresees evil and hides himself,

But the simple pass on and are punished.”

[Prov. 22:3, Bible, NKJV]

“A prudent man foresees evil and hides himself; The simple pass on and are punished.”

[Prov. 27:12, Bible, NKJV]

“The simple believes every word,

But the prudent man considers well his steps.

**A wise man fears and departs from evil,**

But a fool rages and is self-confident.”

[Prov. 14:15, Bible, NKJV]

"No servant [or government or biological person] can serve **two masters**; for either he will hate the one and love the other, or else he will be loyal to the one and despise the other. **You cannot serve God and mammon [government].**"

[[Luke 16:13](#), Bible, NKJV]

"In every government on earth is some trace of human weakness, some germ of corruption and degeneracy, which cunning will discover, and wickedness insensibly open, cultivate and improve."

[Thomas Jefferson: Notes on Virginia Q.XIV, 1782. ME 2:207]

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**“These are words of weighty import. They involve consequences of the most momentous character. I take leave to say that if the principles thus announced should ever receive the sanction of a majority of this court, a radical and mischievous change in our system of government will be the result. We will, in that event, pass from the era of constitutional liberty guarded and protected by a written constitution into an era of legislative absolutism.”**

[. . .]

**“This nation is under the control of a written constitution, the supreme law of the land and the only source of the powers which our Government, or any branch or officer of it, may exert at any time or at any place. Monarchical and despotic governments, unrestrained by written constitutions, may do with newly acquired territories what this Government may not do consistently with our fundamental law. To say otherwise is to concede that Congress may, by action taken outside of the Constitution, engraft upon our republican institutions a colonial system such as exists under monarchical governments. Surely such a result was never contemplated by the fathers of the Constitution. If that instrument had contained a word suggesting the possibility of a result of that character it would never have been adopted by the People of the United States. The idea that this country may acquire territories anywhere upon the earth, by conquest or treaty, and hold them as mere colonies or provinces — the people inhabiting them to enjoy only such rights as Congress chooses to accord to them — is wholly inconsistent with the spirit and genius as well as with the words of the Constitution.”**

**“The idea prevails with some — indeed, it found expression in arguments at the bar — that we have in this country substantially or practically two national governments; one, to be maintained under the Constitution, with all its restrictions; the other to be maintained by Congress outside and independently of that instrument, by exercising such powers as other nations of the earth are accustomed to exercise.”** It is one thing to give such a latitudinarian construction

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<sup>76</sup> Detailed information about government corruption can be found at: *Government Corruption*, Form #11.401; <http://sedm.org/home/government-corruption/>.

to the Constitution as will bring the exercise of power by Congress, upon a particular occasion or upon a particular subject, within its provisions. It is quite a different thing to say that Congress may, if it so elects, proceed outside of the Constitution. **The glory of our American system 381\*381 of government is that it was created by a written constitution which protects the people against the exercise of arbitrary, unlimited power, and the limits of which instrument may not be passed by the government it created, or by any branch of it, or even by the people who ordained it, except by amendment or change of its provisions. "To what purpose," Chief Justice Marshall said in Marbury v. Madison, 1 Cranch, 137, 176, "are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation."**

[Downes v. Bidwell, [182 U.S. 244](#) (1901), Justice Harlan, Dissenting]

**"When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner."**

**Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression [sound familiar?].**

**There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals."**

[. . .]

**In what a situation must the poor subject be in those republics! The same body of magistrates are possessed, as executors of the laws, of the whole power they have given themselves in quality of legislators. They may plunder the state by their general determinations; and as they have likewise the judiciary power in their hands, every private citizen may be ruined by their particular decisions."**

[The Spirit of Laws, Charles de Montesquieu, Book XI, Section 6;

SOURCE: [http://famguardian.org/Publications/SpiritOfLaws/sol\\_11.htm](http://famguardian.org/Publications/SpiritOfLaws/sol_11.htm)]

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## 11.5 **Equality and Equal Protection (The Foundation of All of Your Freedom<sup>77</sup>)**

**"[l]aw . . . must be not a special rule for a particular person or a particular case, but . . . the general law . . . so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society."**

[Hurtado v. California, 110 U.S. 516, 535-536 (1884)]

**"No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government."**

[Gulf, C. & S. F. R. Co. v. Ellis, [165 U.S. 150](#) (1897) ]

**"Cursed is the one who perverts the justice due the stranger, the fatherless, and widow." "And all the people shall say, "Amen!"**

[Deut. 27:19, Bible, NKJV]

**"The LORD watches over the strangers; He relieves the fatherless and widow; But the way of the wicked He turns upside down."**

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<sup>77</sup> Detailed information about equality under law is available in: *Requirement for Equal Protection and Equal Treatment*, Form #05.033; <http://sedm.org/Forms/FormIndex.htm>.

[Psalm 146:9, Bible, NKJV]

“Defend the fatherless, Plead for the widow.”

[Isaiah 1:17, Bible, NKJV]

“For if you thoroughly amend your ways and your doings, if you thoroughly execute judgment between a man and his neighbor, if you do not oppress the stranger, the fatherless, and the widow, and do not shed innocent blood in this place, or walk after other gods to your hurt, then I will cause you to dwell in this place, in the land that I gave to your fathers forever and ever.”

[Jer. 7:5-7, Bible, NKJV]

Thus says the LORD: "Execute judgment and righteousness, and deliver the plundered out of the hand of the oppressor. Do no wrong and do no violence to the stranger, the fatherless, or the widow, nor shed innocent blood in this place.”

[Jer. 22:3, Bible, NKJV]

“Do not oppress the widow or the fatherless, The alien or the poor. Let none of you plan evil in his heart Against his brother.”

[Zech. 7:10, Bible, NKJV]

## 11.6 Rights, Freedom, and Liberty<sup>78</sup>

“The Declaration of Independence, which was the first political act of **the American people in their independent sovereign capacity**, lays the foundation of our National existence upon this broad proposition, —That all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.”

[Slaughter-House Cases, 83 U.S. at 116-117 (**Bradley, Justice**, dissenting)]

“We have enjoyed so much freedom for so long that we are perhaps in danger of forgetting how much blood it cost to establish the Bill of Rights.”

[Felix Frankfurter]

“We have repeatedly held that, as to property reserved by its owner for private use, 'the right to exclude [others is] `one of the most essential sticks in the bundle of rights that are commonly characterized as property.' " *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 433 (1982), quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979). “

[Nollan v. California Coastal Comm’n, 483 U.S. 825 (1987)]

“In this case, we hold that the "right to exclude," so universally held to be a fundamental element of the property right,[11] falls within this category of interests that the Government cannot take without compensation.”

[Kaiser Aetna v. United States, 444 U.S. 164 (1979)]

[11] See, e. g., *United States v. Pueblo of San Ildefonso*, 206 Ct.Cl. 649, 669-670, 513 F.2d. 1383, 1394 (1975); *United States v. Lutz*, 295 F.2d. 736, 740 (CA5 1961). As stated by Mr. Justice Brandeis, “[a]n essential element of individual property is the legal right to exclude others from enjoying it." *International News Service v. Associated Press*, 248 U.S. 215, 250 (1918) (*dissenting opinion*).

"[I]f the public are bound to yield obedience to laws to which they cannot give their approbation, they are slaves to those who make such laws and enforce them."

[Candidus, in the Boston Gazette, 1772]

“How little do my countrymen know what precious blessings they are in possession of, and which NO other people on earth enjoy!”

<sup>78</sup> Detailed information about your rights is available in: *Enumeration of Inalienable Rights*, Form #10.002; <http://sedm.org/Forms/FormIndex.htm>.



[Thomas Jefferson]

"The fact is that the average man's love of liberty is nine-tenths imaginary, exactly like his love of sense, justice and truth. He is not actually happy when free; he is uncomfortable, a bit alarmed, and intolerably lonely. Liberty is not a thing for the great masses of men. It is the exclusive possession of a small and disreputable minority, like knowledge, courage and honor. It takes a special sort of man to understand and enjoy liberty - and he is usually an outlaw in democratic societies."

[H.L. Mencken, Baltimore Evening Sun, Feb. 12, 1923]

"No man escapes when freedom fails, The best men rot in filthy jails, And those who cried —Appease! Appease!! Are hanged by those they tried to please."

[SEDM]

"Extremism in defense of liberty is NO vice."

[Barry Goldwater]

"I believe that it is better to tell the truth than a lie. I believe it is better to be free than to be a slave. And I believe it is better to know than to be ignorant."

[H.L. Mencken]

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

[West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S.Ct. 1178 (1943)]

"**Civil liberties.** Personal, natural rights guaranteed and protected by the Constitution; e.g. freedom of speech, press, freedom from discrimination, etc. Body of law dealing with natural liberties, shorn of excesses which invade equal rights of others. Constitutionally, they are restraints on government. *Sowers v. Ohio Civil Rights Commission*, 20 Ohio Misc. 115, 252 N.E.2d. 463, 476. State law may recognize liberty interests more extensive than those independently protected by the Federal Constitution. *Mills v. Rogers*, 457 U.S. 291, 300, 102 S.Ct. 2442, 2449, 73 L.Ed.2d. 16 (1982). See also Bill of Rights, Civil Rights Acts; Fundamental rights."

[Black's Law Dictionary, Sixth Edition, p. 246]

"**Political rights.** Those which may be exercised in the formation or administration of the government. Rights of citizens established or recognized by constitutions which give them the power to participate directly or indirectly in the establishment or administration of the government."

[Black's Law Dictionary, Sixth Edition, p. 1159]

"It would be a palpable incongruity to strike down an act of state legislation which, by words of express divestment, seeks to strip the citizen of rights guaranteed by the federal Constitution, but to uphold an act by which the same result is accomplished under the guise of a surrender of a right in exchange for a valuable privilege which the state threatens otherwise to withhold. It is not necessary to challenge the proposition that, as a general rule, the state, having power to deny a privilege altogether, may grant it upon such conditions as it sees fit to impose. But the power of the state in that respect is not unlimited, and one of the limitations is that it may not impose conditions which require the relinquishment of Constitutional rights. If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out or existence."

[Frost v. Railroad Commission, 271 U.S. 583, 46 S.Ct. 605 (1926)]

"It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution." *Frost & Frost Trucking Co. v. Railroad Comm'n of California*, 271 U.S. 583. "Constitutional rights would be of little value if they could be indirectly denied, *Smith v. Allwright*, 321 US. 649, 644, or manipulated out of existence, *Gomillion v. Lightfoot*, 364 U.S. 339, 345."

[Harman v. Forssenius, 380 U.S. 528 at 540, 85 S.Ct. 1177, 1185 (1965)]

"... Natural rights are those which grow out of the nature of man [the Creator] and depend upon personality, as distinguished

from such as are created by law and depend upon civilized society; or those which are plainly assured by natural law;..." [Black's Law Dictionary, Sixth Edition, p. 1324]

"Now the Lord is the Spirit; and where the Spirit of the Lord is, there is liberty." [2 Cor. 3:17, Bible, NKJV]

"Humble yourselves in the sight of the Lord, and He will lift you up [above your public servants and government]." [James 4:10, Bible, NKJV]

"Among these unalienable rights, as proclaimed in that great document [the Declaration of Independence] is the *right* of men to pursue their happiness, by which is meant, the *right* any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give them their highest enjoyment...It has been well said that, THE PROPERTY WHICH EVERY MAN HAS IN HIS OWN LABOR, AS IT IS THE ORIGINAL FOUNDATION OF ALL OTHER PROPERTY SO IT IS THE *MOST SACRED AND INVIOABLE*... to hinder his employing this strength and dexterity in what manner he thinks proper without injury to his neighbor, is a plain violation of this most sacred property." [Butchers' Union Co. v. Crescent City Co., 111 U.S. 746 (1884)]

The moment the idea is admitted into society, that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence. If "Thou shalt not covet," and "Thou shalt not steal," were not commandments of Heaven, they must be made inviolable precepts in every society, before it can be civilized or made free.

[John Adams, The Works of John Adams, Second President of the United States, Charles Francis Adams, editor (Boston: Charles C. Little and James Brown, 1851), Vol. VI, p. 9.]

**"The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of the individual's domicile.** The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held, except (1) that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States, and (2) that the capacity of a receiver appointed by a court of the United States to sue or be sued in a court of the United States is governed by [Title 28, U.S.C. §§754](#) and [959\(a\)](#)." [Federal Rule of Civil Procedure 17(b)]

**"Similarly, when a person is prevented from leaving his domicile by circumstances not of his doing and beyond his control, he may be relieved of the consequences attendant on domicile at that place.** In *Roboz* (USDC D.C. 1963) [Roboz v. Kennedy, 219 F.Supp. 892 (D.D.C. 1963), p. 24], a federal statute was involved which precluded the return of an alien's property if he was found to be domiciled in Hungary prior to a certain date. It was found that Hungary was Nazi-controlled at the time in question and that the persons involved would have left Hungary (and lost domicile there) had they been able to. Since they had been precluded from leaving because of the political privations imposed by the very government they wanted to escape (the father was in prison there), the court would not hold them to have lost their property based on a domicile that circumstances beyond their control forced them to retain." [Conflicts in a Nutshell, David D. Siegel and Patrick J. Borchers, West Publishing, p. 24]

**"The rights of the individual are not derived from governmental agencies,** either municipal, state or federal, or even from the Constitution. **They exist inherently in every man, by endowment of the Creator, and are merely reaffirmed in the Constitution, and restricted only to the extent that they have been voluntarily surrendered by the citizenship to the agencies of government.** The people's rights are not derived from the government, but the government's authority comes from the people.\*946 The Constitution but states again these rights already existing, and when legislative encroachment by the nation, state, or municipality invade these original and permanent rights, it is the duty of the courts to so declare, and to afford the necessary relief. The fewer restrictions that surround the individual liberties of the citizen, except those for the preservation of the public health, safety, and morals, the more contented the people and the more successful the democracy." [City of Dallas v. Mitchell, 245 S.W. 944 (1922)]

"When a change of government takes place, from a monarchical to a republican government, the old form is dissolved. Those who lived under it, and did not choose to become members of the new, had a right to refuse their allegiance to it, and to retire elsewhere. By being a part of the society subject to the old government, they had not entered into any engagement to become

subject to any new form the majority might think proper to adopt. That the majority shall prevail is a rule posterior to the formation of government, and results from it. It is not a rule upon mankind in their natural state. There, every man is independent of all laws, except those prescribed by nature. He is not bound by any institutions formed by his fellowmen without his consent"

[Cruden v. Neale, 2 N.C., 2 S.E. 70 (1796)]

"The constitutionality and scope of sections 1990 and 5526 present the first questions for our consideration. They prohibit peonage. **What is peonage? It may be defined as a state or condition of compulsory service, based upon the indebtedness of the peon to the master. The basal fact is indebtedness.** As said by Judge Benedict, delivering the opinion in *Jaremillo v. Romero*, 1 N.Mex. 190, 194: 'One fact existed universally; all were indebted to their masters. **This was the cord by which they seemed bound to their masters' service.**' Upon this is based a condition of compulsory service. **Peonage is sometimes classified as voluntary or involuntary, but this implies simply a difference in the mode of origin, but not in the character of the servitude.** The one exists where the debtor voluntarily contracts to enter the service of his creditor. The other is forced upon the debtor by some provision of law. **But peonage, however created, is compulsory service, involuntary servitude.** The peon can release himself therefrom, it is true, by the payment of the debt, but otherwise **the service is enforced.** A clear distinction exists between peonage and **the voluntary performance of labor or rendering of services in payment of a debt.** In the latter case the debtor, though contracting to pay his indebtedness by labor or service, and subject like any other contractor to an action for damages for breach of that contract, can elect at any time to break it, and **no law or force compels performance or continuance of the service."**

[Clyatt v. U.S., 197 U.S. 207 (1905)]

"That it does not conflict with the Thirteenth Amendment, which abolished slavery and involuntary servitude, except as a punishment for crime, is too clear for argument. Slavery implies involuntary servitude—a state of bondage; the ownership of mankind as a chattel, **or at least the control of the labor and services of one man for the benefit of another, and the absence of a legal right to the disposal of his own person, property, and services [in their entirety].** This amendment was said in the *Slaughter House Cases*, 16 Wall, 36, to have been intended primarily to abolish slavery, as it had been previously known in this country, and that it equally forbade Mexican peonage or the Chinese coolie trade, when they amounted to slavery or involuntary servitude and that the use of the word 'servitude' was intended to prohibit the use of **all forms of involuntary slavery, of whatever class or name."**

[Plessy v. Ferguson, 163 U.S. 537, 542 (1896)]

"Waivers of Constitutional rights not only must be voluntary, but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences."

[Brady v. U.S., 397 U.S. 742 (1970)]

"The Government may carry on its operations through conventional executive agencies or through corporate forms especially created for defined ends. See *Keifer & Keifer v. Reconstruction Finance Corp.*, [306 U.S. 381, 390](#), 518. **Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority. The scope of this authority may be explicitly defined by Congress or be limited by delegated legislation, properly exercised through the rule-making power.** And this is so even though, as here, the agent himself may have been unaware of the limitations upon his authority. See, e.g., *Utah Power & Light Co. v. United States*, [243 U.S. 389, 409](#), 391; *United States v. Stewart*, [311 U.S. 60, 70](#), 108, and see, generally, *In re Floyd Acceptances*, 7 Wall. 666."

[*Federal Crop Ins. v. Merrill*, 332 U.S. 380 (1947)]

"The question of a waiver of a federally guaranteed constitutional right is, of course, a federal question controlled by federal law. There is a [presumption](#) against the waiver of constitutional rights, see, e.g. *Glasser v. United States*, 314 U.S. 60, 70-71, 86 L.Ed. 680, 699, 62 S.Ct. 457, and for a waiver to be effective it must be clearly established that there was an 'intentional relinquishment or abandonment of a known right or [privilege.](#)' *Johnson v. Zerbst*, 304 U.S. 458, 464, 82 L.Ed. 1461, 1466, 58 S.Ct. 1019, 146 A.L.R. 357."

[*Brookhart v. Janis*, [384 U.S. 1](#); 86 S.Ct. 1245; 16 L.Ed.2d. 314 (1966)]

"The restrictions that the Constitution places upon the government in its capacity as lawmaker, i.e., as the regulator of private conduct, are not the same as the restrictions that it places upon the government in its capacity as employer. We have recognized this in many contexts, with respect to many different constitutional guarantees. Private citizens perhaps cannot be prevented from wearing long hair, but policemen can. *Kelley v. Johnson*, [425 U.S. 238, 247](#) (1976). Private citizens cannot have their property searched without probable cause, but in many circumstances government employees can. *O'Connor v.*

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Ortega, [480 U.S. 709, 723](#) (1987) (plurality opinion); *id.*, at 732 (SCALIA, J., concurring in judgment). Private citizens cannot be punished for refusing to provide the government information that may incriminate them, but government employees can be dismissed when the incriminating information that they refuse to provide relates to the performance of their job. *Gardner v. Broderick*, [\[497 U.S. 62, 95\]](#) [392 U.S. 273, 277](#) -278 (1968). With regard to freedom of speech in particular: Private citizens cannot be punished for speech of merely private concern, but government employees can be fired for that reason. *Connick v. Myers*, [461 U.S. 138, 147](#) (1983). Private citizens cannot be punished for partisan political activity, but federal and state employees can be dismissed and otherwise punished for that reason. *Public Workers v. Mitchell*, [330 U.S. 75, 101](#) (1947); *Civil Service Comm'n v. Letter Carriers*, [413 U.S. 548, 556](#) (1973); *Broadrick v. Oklahoma*, [413 U.S. 601, 616](#) -617 (1973)."

[*Rutan v. Republican Party of Illinois*, [497 U.S. 62](#) (1990)]

"No language is more worthy of frequent and thoughtful consideration than these words of Mr. Justice Matthews, speaking for this court, in *Yick Wo v. Hopkins*, [118 U.S. 356, 369](#), 6 S.Sup.Ct. 1064, 1071: 'When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power.' The first official action of this nation declared the foundation of government in these words: 'We hold these truths to be self-evident, [\[165 U.S. 150, 160\]](#) that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.' **While such declaration of principles may not have the force of organic law, or be made the basis of judicial decision as to the limits of right and duty, and while in all cases referenced must be had to the organic law of the nation for such limits, yet the latter is but the body and the letter of which the former is the thought and the spirit, and it is always safe to read the letter of the constitution in the spirit of the Declaration of Independence. No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government.**"

[*Gulf, C. & S. F. R. Co. v. Ellis*, [165 U.S. 150](#) (1897)]

"**The rights of individuals and the justice due to them, are as dear and precious as those of states.** Indeed the latter are founded upon the former; and the great end and object of them must be to secure and support the rights of individuals, or else vain is government."

[*Chisholm v. Georgia*, 2 U.S. (2 Dall.) 419, 1 L.Ed. 440 (1793)]

"Every man has a natural right to the fruits of his own labor, is generally admitted; and **no other person can rightfully deprive him of those fruits, and appropriate them against his will...**"

[*The Antelope*, 23 U.S. 66, 10 Wheat 66, 6 L.Ed. 268 (1825)]

"Guard with jealous attention the public liberty. Suspect everyone who approaches that jewel. Unfortunately, nothing will preserve it but downright force. Whenever you give up that force, you are inevitably ruined."

[Patrick Henry]

"I oppose registration for the draft... because I believe the security of freedom can best be achieved by security through freedom."

[Ronald Reagan]

"Is life so dear or peace so sweet as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take, but as for me, give me liberty, or give me death!"

[Patrick Henry]

"The man who produces while others dispose of his product is a slave."

[Ayn Rand]

"The condition upon which God hath given liberty to man is eternal vigilance; which condition if he break, servitude is at once the consequence of his crime and the punishment of his guilt."

[John Philpot Curran, 1790]

"Now what I contend is that my body is my own, at least I have always so regarded it. If I do harm through my experimenting with it, it is I who suffers, not the state."

[Mark Twain]

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"You need only reflect that one of the best ways to get yourself a reputation as a dangerous citizen these days is to go about repeating the very phrases which our founding fathers used in the struggle for independence."

[Charles Austin Beard, historian]

"Don't go around saying the world owes you a living. The world owes you nothing. It was here first."

[Mark Twain]

"The conclusion is thus inescapable that the history, concept, and wording of the Second Amendment to the Constitution of the United States, as well as its interpretation by every major commentator and court in the first half-century after its ratification, indicates that what is protected is an individual right of a private citizen to own and carry firearms in a peaceful manner."

[Report of the Subcommittee on the Constitution of the Committee on the Judiciary, United States Senate, 97th Congress, Second Session ( February 1982 )]

"When they took the fourth amendment, I was silent because I don't deal drugs.  
When they took the sixth amendment, I kept quiet because I know I'm innocent.  
When they took the second amendment, I said nothing because I don't own a gun.  
Now they've come for the first amendment, and I can't say anything at all."

[Tim Freeman, [tsf@cs.cmu.edu](mailto:tsf@cs.cmu.edu)]

"I do not believe that the government should have its long nose poked into the private consensual relationships between people."

[John Anderson, Independent presidential candidate, 1980]

"Manufacturing and commercial monopolies owe their origin not to a tendency imminent in a capitalist economy but to governmental interventionist policy directed against free trade and laissez faire."

[Ludwig Mises, "Socialism" ]

"Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficial ... the greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding."

[Supreme Court, Justice Louis D. Brandeis, 1928]

"Tariffs, quotas and other import restrictions protect the business of the rich at the expense of high cost of living for the poor. Their intent is to deprive you of the right to choose, and to force you to buy the high-priced inferior products of politically favored companies."

[Alan Burris, A Liberty Primer]

"Motion pictures are of course a different medium of expression than the public speech, the radio, the stage, the novel, or the magazine. But the First Amendment draws no distinction between the various methods of communicating ideas."

[William O. Douglas, Supreme Court Justice, 1953]

"The prestige of government has undoubtedly been lowered considerably by the prohibition law. For nothing is more destructive of respect for the government and the law of the land than passing laws which cannot be enforced. It is an open secret that the dangerous increase of crime in this country is closely connected with this."

[Albert Einstein, "My First Impression of the U.S.A.", 1921]

"Let the people decide through the marketplace mechanism what they wish to see and hear. Why is there this national obsession to tamper with this box of transistors and tubes when we don't do the same for Time magazine?"

[Mark Fowler, FCC Chairman]

"The usual road to slavery is that first they take away your guns, then they take away your property, then last of all they tell you to shut up and say you are enjoying it."

[James A. Donald]

"Every friend of freedom must be as revolted as I am by the prospect of turning the United States into an armed camp, by the vision of jails filled with casual drug users and of an army of enforcers empowered to invade the liberty of citizens on slight



evidence."

[Milton Friedman, Nobel Prize-winning economist]

"The high rate of unemployment among teenagers, and especially black teenagers, is both a scandal and a serious source of social unrest. Yet it is largely a result of minimum wage laws. We regard the minimum wage law as one of the most, if not the most, antiblack laws on the statute books."

[Milton Friedman, Nobel Prize-winning economist]

"It does me no injury for my neighbor to say there are twenty gods or no god. It neither picks my pocket nor breaks my leg."

[Thomas Jefferson]

"Prohibition... goes beyond the bounds of reason in that it attempts to control a man's appetite by legislation and makes a crime out of things that are not crimes... A prohibition law strikes a blow at the very principles upon which our government was founded."

[Abraham Lincoln]

"Every man has a property in his own person. This nobody has any right to but himself. The labor of his body and the work of his hands are properly his."

[John Locke, 1690]

"The primary reason for a tariff is that it enables the exploitation of the domestic consumer by a process indistinguishable from sheer robbery."

[Albert Jay Nock]

"Taxation of earnings from labor is on a par with forced labor. Seizing the results of someone's labor is equivalent to seizing hours from him and directing him to carry on various activities."

[Robert Nozick, Harvard philosopher]

"Alcohol didn't cause the high crime rates of the '20s and '30s, Prohibition did. And drugs do not cause today's alarming crime rates, but drug prohibition does."

[US District Judge James C. Paine, addressing the Federal Bar Association in Miami, November, 1991]

"Trying to wage war on 23 million Americans who are obviously very committed to certain recreational activities is not going to be any more successful than Prohibition was."

[US District Judge James C. Paine, addressing the Federal Bar Association in Miami, November, 1991]

"Minimum wage laws tragically generate unemployment, especially among the poorest and least skilled or educated workers... Because a minimum wage, of course, does not guarantee any worker's employment; it only prohibits, by force of law, anyone from being hired at the wage which would pay his employer to hire him."

[Murray N. Rothbard, *For a New Liberty*]

"Decriminalization would take the profit out of drugs and greatly reduce, if not eliminate, the drug-related violence that is currently plaguing our streets."

[Kurt L. Schmoke, Baltimore Mayor]

"They have gun control in Cuba. They have universal health care in Cuba. So why do they want to come here?"

[Paul Harvey 8/31/94]

"Although I am a strong political conservative, I now believe that the costs of our fruitless struggle against illegal drugs are not worth the modest benefits likely to be achieved."

[Prof. Ernest van den Haag, contributing editor, *National Review*]

"Ironically, on the 200th anniversary of our Bill of Rights, we find free speech under assault throughout the United States, including on some college campuses."

[George Bush, 4-May-1991]

"A protective tariff is a typical conspiracy in restraint of trade."

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[Thorstein Veblen, economist]

"Man is free at the moment he wishes to be."

[Voltaire]

"Where is it written in the Constitution, in what section or clause is it contained, that you may take children from their parents and parents from their children, and compel them to fight the battle in any war in which the folly or the wickedness of government may engage it?"

[Daniel Webster]

### 11.7 Requirement for Consent<sup>79</sup>

**“consent.** A concurrence of wills. **Voluntarily yielding the will** to the proposition of another; acquiescence or compliance therewith. Agreement; approval; permission; the act or result of coming into harmony or accord. Consent is an act of reason, accompanied with deliberation, the mind weighing as in a balance the good or evil on each side. **It means voluntary agreement** by a person in the possession and exercise of sufficient mental capacity to make an intelligent choice to do something proposed by another. It supposes a physical power to act, a moral power of acting, and a serious, determined, and free use of these powers. **Consent is implied in every agreement. It is an act unclouded by fraud, duress, or sometimes even mistake.**

Willingness in fact that an act or an invasion of an interest shall take place. Restatement, Second, Torts §10A.

As used in the law of rape "consent" means consent of the will, and submission under the influence of fear or terror cannot amount to real consent. There must be an exercise of intelligence based on knowledge of its significance and moral quality and there must be a choice between resistance and assent. And if a woman resists to the point where further resistance would be useless or until her resistance is overcome by force or violence, submission thereafter is not "consent".

See also Acquiescence; Age of consent; Assent; Connivance; Informed consent;" [voluntary](#)

[Black's Law Dictionary, Sixth Edition, p. 305]

**appearance.** A coming into court as a party to a suit, either in person or by attorney, whether as plaintiff or defendant. The formal proceeding by which a defendant submits himself to the jurisdiction of the court. The **voluntary submission** to a court's jurisdiction.

In civil actions the parties do not normally actually appear in person, but rather through their attorneys (who enter their appearance by filing written pleadings, or a formal written entry of appearance). Also, at many stages of criminal proceedings, particularly involving minor offenses, the defendant's attorney appears on his behalf. See e.g., Federal Rule of Criminal Procedure 43.

An appearance may be either **general** or **special**; the former is a simple and unqualified or unrestricted submission to the jurisdiction of the court, the latter is a submission to the jurisdiction for some specific purpose only, not for all the purposes of the suit. A special appearance is for the purpose of testing or objecting to the sufficiency of service or the jurisdiction of the court over defendant without submitting to such jurisdiction; a general appearance is made where the defendant waives defects of service and submits to the jurisdiction of court. *Insurance Co. of North America v. Kunin*, 175 Neb. 260, 121 N.W.2d. 372, 375, 376.

[Black's Law Dictionary, Sixth Edition, p. 97]

“Voluntati non fit injuria.

He who consents cannot receive an injury. 2 Bouv. Inst. n. 2279, 2327; 4 T. R. 657; Shelf. on mar. & Div. 449.

Consensus tollit errorem.

<sup>79</sup> Detailed information on the subject of consent is available in: *Requirement for Consent*, Form #05.002; <http://sedm.org/Forms/FormIndex.htm>.

Consent removes or obviates a mistake. Co. Litt. 126.

Melius est omnia mala pati quam malo concentire.

It is better to suffer every wrong or ill, than to consent to it. 3 Co. Inst. 23.

Nemo videtur fraudare eos qui sciunt, et consentiunt.

One cannot complain of having been deceived when he knew the fact and gave his consent. Dig. 50, 17, 145.”

[Bouvier’s Maxims of Law, 1856;

SOURCE: <http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviereMaxims.htm>]

“The ideal tyranny is that which is ignorantly self-administered by its victims. The most perfect slaves are, therefore, those which blissfully and unawaredly enslave themselves [[because of their own legal ignorance](#)].”

[Dresden James]

“Consent is implied in every agreement. It is an act unclouded by [fraud](#), [duress](#), or sometimes even mistake.”

[Black’s Law Dictionary, Sixth Edition, p. 305 under “consent”]

“A State does not owe its origin to the Government of the United States, in the highest or in any of its branches. It was in existence [was created] before it. **It derives its authority from the same pure and sacred source as itself: The voluntary and deliberate choice of the people**...A State is altogether exempt from the jurisdiction of the Courts of the United States, or from any other exterior authority, unless in the special instances when the general Government has power derived from the Constitution itself.”

[Chisholm v. Georgia, [2 Dall. \(U.S.\) 419](#) (Dall.) (1793)]

**“As used in the law of rape ‘consent’ means consent of the will, and submission under the influence of fear or terror cannot amount to real consent.** There must be an exercise of intelligence based on knowledge of its significance and moral quality and there must be a [free, uncoerced] choice between resistance and assent. And if a woman resists to the point where further resistance would be useless or until her resistance is overcome by force or violence, submission thereafter is not ‘consent’.”

[Black’s Law Dictionary, Sixth Edition, p. 305, emphasis added]

**“Compact**, n. An agreement or contract between persons, nations, or states. Commonly applied to working agreements between and among states concerning matters of mutual concern. A contract between parties, which creates obligations and rights capable of being enforced and contemplated as such between the parties, in their distinct and independent characters. A mutual consent of parties concerned respecting some property or right that is the object of the stipulation, or something that is to be done or forborne. See also Compact clause; Confederacy; Interstate compact; Treaty.”

[Black’s Law Dictionary, Sixth Edition, p. 281]

**voluntary**. “Unconstrained by interference; unimpelled by another’s influence; spontaneous; acting of oneself. Coker v. State, 199 Ga. 20, 33 S.E.2d. 171, 174. Done by design or intention. Proceeding from the free and unrestrained will of the person. Produced in or by an act of choice. Resulting from free choice, without compulsion or solicitation. The word, especially in statutes, often implies knowledge of essential facts. Without valuable consideration; gratuitous, as a voluntary conveyance. Also, having a merely nominal consideration; as, a voluntary deed.”

[Black’s Law Dictionary, Sixth Edition, p. 1575]

“That to secure these rights, governments are instituted among men, **deriving their just powers from the consent of the governed**.”

[Declaration of Independence]

Consensus facit legem.

Consent makes the law. A contract is a law between the parties, which can acquire force only by consent.

[Bouvier’s Maxims of Law, 1856;

SOURCE: <http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviereMaxims.htm>]

“Waivers of Constitutional rights not only must be voluntary, but must be knowing, intelligent acts done with sufficient

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awareness of the relevant circumstances and likely consequences."

[Brady v. U.S., [397 U.S. 742](#) (1970)]

"SUB SILENTIO. Under silence; without any notice being taken. Passing a thing sub silentio may be evidence of consent"

[Black's Law Dictionary, Fourth Edition, p. 1593]

Qui tacet consentire videtur.

He who is silent appears to consent. Jenk. Cent. 32.

[Bouvier's Maxims of Law, 1856;

SOURCE: <http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviereMaxims.htm>]

Quod meum est sine me auferri non potest.

What is mine cannot be taken away without my consent. Jenk. Cent. 251. Sed vide Eminent Domain.

[Bouvier's Maxims of Law, 1856;

SOURCE: <http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviereMaxims.htm>]

Id quod nostrum est, sine facto nostro ad alium transferri non potest.

What belongs to us cannot be transferred to another without our consent. Dig. 50, 17, 11. But this must be understood with this qualification, that the government may take property for public use, paying the owner its value. The title to property may also be acquired, with the consent of the owner, by a judgment of a competent tribunal.

[Bouvier's Maxims of Law, 1856;

SOURCE: <http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviereMaxims.htm>]

Invito beneficium non datur.

No one is obliged to accept a benefit against his consent. Dig. 50, 17, 69. But if he does not dissent he will be considered as assenting. Vide Assent.

[Bouvier's Maxims of Law, 1856;

SOURCE: <http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviereMaxims.htm>]

Non videtur consensum retinuisse si quis ex praescripto minantis aliquid immutavit.

He does not appear to have retained his consent, if he have changed anything through the means of a party threatening. Bacon's Max. Reg. 33.

[Bouvier's Maxims of Law, 1856;

SOURCE: <http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviereMaxims.htm>]

Voluntati non fit injuria.

He who consents cannot receive an injury. 2 Bouv. Inst. n. 2279, 2327; 4 T. R. 657; Shelf. on mar. & Div. 449.

[Bouvier's Maxims of Law, 1856;

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Consensus tollit errorem.

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One cannot complain of having been deceived when he knew the fact and gave his consent. Dig. 50, 17, 145.

[Bouvier's Maxims of Law, 1856;

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**11.8 Religion<sup>80</sup>**

“Do not be unequally yoked together with unbelievers. For what fellowship has righteousness with lawlessness? And what communion has light with darkness?”

[2 Cor. 6:14, Bible, NKJV]

“The devil always works in baby steps. If you put a frog in hot water, he will immediately jump out. But if you put him in cool water and then gradually raise the temperature over tens or even hundreds of years, then you can boil the frog alive and he won’t even know how it happened.”

[Unknown]

“It is better to trust the Lord than to put confidence in man. It is better to trust in the Lord than to put confidence in princes.”

[Psalm 118:8-9, Bible, NKJV]

“...there is no authority except from God.”

[Romans 13:1, Bible, NKJV]

“...you are complete in Him [Christ], **who is the head of all principality and power.**”

[Colossians 2:10, Bible, NKJV]

**“What right have you to declare My statutes [write man’s vain law], or take My covenant [the Bible] in your mouth, seeing you hate instruction and cast My words behind you? When you saw a thief, you consented with him, and have been a partaker with adulterers. You give your mouth to evil, and your tongue frames deceit. You sit and speak against your brother; you slander your own mother’s son. These things you have done, and I kept silent; you thought that I was altogether like you; but I will reprove you, and set them in order before your eyes. **Now consider this, you who forget God, lest I tear you in pieces, and there be none to deliver: Whoever offers praise glorifies Me; and to him who orders his conduct aright I will show the salvation of God.**”**

[Psalm 50:16-23, Bible, NKJV]

“Adulterers and adulteresses! Do you now know that friendship [and "citizenship"] with the world is enmity with God? **Whoever therefore wants to be a friend [citizen] of the world makes himself an enemy of God.**”

[James 4:4, Bible, NKJV]

“Behold, the nations are as a drop in the bucket, and are counted as the small dust on the scales.”

[Isaiah 40:15, Bible, NKJV]

“All nations before Him are as **nothing**, and they are counted by Him **less than nothing and worthless.**”

[Isaiah 40:17, Bible, NKJV]

“He brings the princes to nothing; He makes the judges of the earth useless.”

[Isaiah 40:23, Bible, NKJV]

“Indeed **they are all worthless; their works are nothing**; their molded images are wind and confusion.”

[Isaiah 41:29, Bible, NKJV]

**“Pure and undefiled religion before God and the Father is this: to visit orphans and widows in their trouble, and **to keep oneself unspotted from the world [and the corrupted governments and laws of the world].**”**

[James 1:27, Bible, NKJV]

“The wicked shall be turned into hell, and all the nations that forget God.”

[Psalm 9:17, Bible, NKJV]

**“Humble yourselves in the sight of the Lord, and He will lift you up [above your government].”**

[James 4:10, Bible, NKJV]

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<sup>80</sup> Detailed information on government idolatry or government establishment of religion is contained in: *Government Establishment of Religion*, Form #05.038; <http://sedm.org/Forms/FormIndex.htm>.



“The most perfect maxims and examples for regulating your social conduct and domestic economy, as well as the best rules of morality and religion, are to be found in the Bible. . . . The moral principles and precepts found in the scriptures ought to form the basis of all our civil constitutions and laws. These principles and precepts have truth, immutable truth, for their foundation. . . . All the evils which men suffer from vice, crime, ambition, injustice, oppression, slavery and war, proceed from their despising or neglecting the precepts contained in the Bible. . . . For instruction then in social, religious and civil duties resort to the scriptures for the best precepts.”

[Noah Webster, *History of the United States*, "Advice to the Young" (New Haven: Durrie & Peck, 1832), pp. 338-340, par. 51, 53, 56]

“Far from being rivals or enemies, religion and law are twin sisters, friends, and mutual assistants. Indeed, these two sciences run into each other. The divine law, as discovered by reason and the moral sense, forms an essential part of both.”

[James Wilson, *The Works of the Honourable James Wilson* (Philadelphia: Bronson and Chauncey, 1804), Vol. I, p. 106; Signer of the Constitution.]

**“Cursed is the one who trusts in man [and by implication, governments made up of men], who depends on flesh for his strength and whose heart turns away from the Lord.** He will be like a bush in the wastelands; he will not see prosperity when it comes. He will dwell in the parched places of the desert, in a salt land where no one lives. But blessed is the man who trusts in the Lord, whose confidence is in Him. He will be like a tree planted by the water that sends out its roots by the stream. It does not fear when heat comes; its leaves are always green. It has no worries in a year of drought and never fails to bear fruit.”

[Jeremiah 17:5-8, Bible, NIV]

“Men, in a word, must necessarily be controlled either by a power within them or by a power without them; either by the Word of God or by the strong arm of man; either by the Bible or by the bayonet.”

[Robert Winthrop, *Addresses and Speeches on Various Occasions* (Boston: Little, Brown & Co., 1852), p. 172 from his "Either by the Bible or the Bayonet."; Former Speaker of the U.S. House of Representatives]

“[I]f we and our posterity reject religious instruction and authority, violate the rules of eternal justice, trifle with the injunctions of morality, and recklessly destroy the political constitution which holds us together, no man can tell how sudden a catastrophe may overwhelm us that shall bury all our glory in profound obscurity.”

[Daniel Webster, *The Writings and Speeches of Daniel Webster* (Boston: Little, Brown, & Company, 1903), Vol. XIII, p. 492. From "The Dignity and Importance of History," February 23, 1852]

“I have lived, Sir, a long time, and the longer I live, the more convincing proofs I see of this truth, that God governs in the affairs of men. And if a sparrow cannot fall to the ground without His notice, is it probable that an empire can rise without his aid? We have been assured, Sir, in the Sacred Writings, that "except the Lord build the House, they labor in vain that build it." I firmly believe this; and I also believe that without His concurring aid we shall succeed in this political building no better, than the Builders of Babel: We shall be divided by our partial local interests; our projects will be confounded, and we ourselves shall become a reproach and bye word down to future ages. And what is worse, mankind may hereafter from tis unfortunate instance, despair of establishing governments by human wisdom and leave it to chance, war and conquest.

“We profess to be republicans, and yet we neglect the only means of establishing and perpetuating our republican forms of government, that is, the universal education of our youth in the principles of Christianity by the means of the Bible. For this Divine Book, above all others, favors that equality among mankind, that respect for just laws, and those sober and frugal virtues, which constitute the soul of republicanism.”

[Benjamin Rush, *Essays, Literary, Moral and Philosophical* (Philadelphia: Printed by Thomas and William Bradford, 1806), pp. 93-94]

“While just government protects all in their religious rights, true religion affords to government its surest support.”

[George Washington, *The Writings of George Washington*, John C. Fitzpatrick, editor (Washington, D.C.: U.S. Government Printing Office, 1932), Vol. XXX, p. 432]

By renouncing the Bible, philosophers swing from their moorings upon all moral subjects. . . . It is the only correct map of

the human heart that ever has been published. . . . All systems of religion, morals, and government not founded upon it [the Bible] must perish, and how consoling the thought, it will not only survive the wreck of these systems but the world itself. "The Gates of Hell shall not prevail against it." [Matthew 1:18]

[Benjamin Rush, *Letters of Benjamin Rush*, L. H. Butterfield, editor (Princeton, NJ: Princeton University Press, 1951), p. 936, to John Adams, January 23, 1807]

"No free government now exists in the world, unless where Christianity is acknowledged, and is the religion of the country." [Pennsylvania Supreme Court, 1824. *Updegraph v. Commonwealth*; 11 Serg. & R. 393, 406 (Sup.Ct. Penn. 1824)]

"[P]ublic utility pleads most forcibly for the general distribution of the Holy Scriptures. The doctrine they preach, the obligations they impose, the punishment they threaten, the rewards they promise, the stamp and image of divinity they bear, which produces a conviction of their truths, can alone secure to society, order and peace, and to our courts of justice and constitutions of government, purity, stability and usefulness. In vain, without the Bible, we increase penal laws and draw entrenchments around our institutions. Bibles are strong entrenchments. Where they abound, men cannot pursue wicked courses, and at the same time enjoy quiet conscience."

[Bernard C. Steiner, *One Hundred and Ten Years of Bible Society Work in Maryland, 1810-1920* (Maryland Bible Society, 1921), p. 14; Signer of the Constitution]

"To the kindly influence of Christianity we owe that degree of civil freedom, and political and social happiness which mankind now enjoys. . . . Whenever the pillars of Christianity shall be overthrown, our present republican forms of government, and all blessings which flow from them, must fall with them."

[Jedediah Morse, Election Sermon given at Charleston, MA, on April 25, 1799; Patriot and father of American geography]

"The doctrines of Jesus are simple, and tend all to the happiness of mankind."

[Thomas Jefferson, *The Writings of Thomas Jefferson*, Albert Bergh, editor (Washington, D. C.: Thomas Jefferson Memorial Assoc., 1904), Vol. XV, p. 383]

"I concur with the author in considering the moral precepts of Jesus as more pure, correct, and sublime than those of ancient philosophers."

[Thomas Jefferson, *The Writings of Thomas Jefferson*, Albert Bergh, editor (Washington, D. C.: Thomas Jefferson Memorial Assoc., 1904), Vol. X, pp. 376-377. In a letter to Edward Dowse on April 19, 1803]

"I therefore beg leave to move that henceforth prayers imploring the assistance of Heaven, and its blessings on our deliberations be held in this Assembly every morning before we proceed to business, and that one of more of the clergy of this city be requested to officiate in that service."

[James Madison, *The Records of the Federal Convention of 1787*, Max Farrand, editor (New Haven: Yale University Press, 1911), Vol. I, pp. 450-452, June 28, 1787]

"To assert that the earth revolves around the sun is as erroneous to claim that Jesus was not born of a virgin"

[Cardinal Belleramine]

"The "establishment of religion" clause of the First Amendment means at least this: **neither a state nor the Federal Government can set up a church.** Neither can pass laws which aid one [state-sponsored political] religion, aid all religions, or prefer one religion over another. Neither can force or influence a person to go to or to remain away from church against his will, or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. **No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.** **Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa.**"

[*Everson v. Bd. of Ed.*, 330 U.S. 1, 15 (1947)]

"**[T]he Establishment Clause is infringed when the government makes adherence to religion relevant to a person's standing in the political community.** Direct government action endorsing religion or a particular religious practice is invalid under this approach, because it sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community"

[*Wallace v. Jaffree*, 472 U.S. 69 (1985)]

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### ***Sovereignty and Freedom Points and Authorities***

“There are three points of doctrine the belief of which forms the foundation of all morality. The first is the existence of God; the second is the immortality of the human soul; and the third is a future state of rewards and punishments. Suppose it possible for a man to disbelieve either of these three articles of faith and that man will have no conscience, he will have no other law than that of the tiger or the shark. The laws of man may bind him in chains or may put him to death, but they never can make him wise, virtuous, or happy.”

[John Quincy Adams, *Letters of John Quincy Adams to His Son on the Bible and Its Teachings* (Auburn: James M. Alden, 1850), pp. 22-23]

“The law given from Sinai was a civil and municipal as well as a moral and religious code; it contained many statutes . . . of universal application—laws essential to the existence of men in society, and most of which have been enacted by every nation which ever professed any code of laws.”

[John Quincy Adams, *Letters of John Quincy Adams, to His Son, on the Bible and Its Teachings* (Auburn: James M. Alden, 1850), p. 61]

“America is like a healthy body and its resistance is three-fold: its patriotism, its morality and its spiritual life. If we can undermine these three areas, America will collapse from within.”

[Joseph Stalin, former dictator of the Soviet Union]

See Paul Mitchell’s Collection of Religious Quotations at the link below for additional religious quotations:

[http://famguardian.org/Subjects/Spirituality/Research/MitchelQuotations/PM\\_INDEX.htm](http://famguardian.org/Subjects/Spirituality/Research/MitchelQuotations/PM_INDEX.htm)

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## 11.9 Self Government<sup>81</sup>

**“All societies of men must be governed in some way or other. The less they may have of stringent State Government, the more they must have of individual self-government. The less they rely on public law or physical force, the more they must rely on private moral restraint.** Men, in a word, must necessarily be controlled, either by a power within them, or by a power without them; either by the Word of God, or by the strong arm of man; either by the Bible, or by the bayonet. It may do for other countries and other governments to talk about the State supporting religion. Here, under our own free institutions, it is Religion which must support the State.”

[Robert Winthrop, To the Annual Meeting of the Massachusetts Bible Society, Boston, Mass; May 28, 1849]

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Then all the elders of Israel gathered together and came to Samuel at Ramah, and said to him, “Look, you are old, and your sons do not walk in your ways. **Now make us a king to judge us like all the nations** [and be OVER them]”.

But the thing displeased Samuel when they said, **“Give us a king to judge us.”** So Samuel prayed to the Lord. **And the Lord said to Samuel, “Heed the voice of the people in all that they say to you; for they have not rejected you, but they have rejected Me [God], that I should not reign over them.** According to all the works which they have done since the day that I brought them up out of Egypt, even to this day—**with which they have forsaken Me and served other gods [Kings, in this case]—so they are doing to you also** [government becoming idolatry]. Now therefore, heed their voice. **However, you shall solemnly forewarn them, and show them the behavior of the king who will reign over them.**”

So Samuel told all the words of the LORD to the people who asked him for a king. And he said, **“This will be the behavior of the king who will reign over you: He will take [STEAL] your sons and appoint them for his own chariots and to be his horsemen, and some will run before his chariots. He will appoint captains over his thousands and captains over his fifties, will set some to plow his ground and reap his harvest, and some to make his weapons of war and equipment for his chariots. He will take [STEAL] your daughters to be perfumers, cooks, and bakers. And he will take [STEAL] the best of your fields, your vineyards, and your olive groves, and give them to his servants. He will take [STEAL] a tenth of your grain and your vintage, and give it to his officers and servants. And he will take [STEAL] your male servants, your female servants, your finest young men, and your donkeys, and put them to his work [as SLAVES]. He will take [STEAL] a tenth of your sheep. And you will be his servants. And you will cry out in that day because of**

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<sup>81</sup> A comprehensive system of self government is described in: *Self Government Federation: Articles of Confederation*, Form #13.002; <http://sedm.org/Forms/FormIndex.htm>.

**your king whom you have chosen for yourselves, and the LORD will not hear you in that day.”**

Nevertheless the people refused to obey the voice of Samuel; and they said, “No, but we will have a king over us, that we also may be like all the nations, and that our king may judge us and go out before us and fight our battles.”

[[1 Sam. 8:4-20](#), Bible, NKJV]

**“The determination of the Framers Convention and the ratifying conventions to preserve complete and unimpaired state [and personal] self-government in all matters not committed to the general government is one of the plainest facts which emerges from the history of their deliberations.** And adherence to that determination is incumbent equally upon the federal government and the states. **State powers can neither be appropriated on the one hand nor abdicated on the other. As this court said in Texas v. White, 7 Wall. 700, 725, ‘The preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government.** The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.’ Every journey to a forbidden end begins with the first step; and the danger of such a step by the federal government in the direction of taking over the powers of the states is that the end of the journey may find the states so despoiled of their powers, or-what may amount to the same thing-so [[298 U.S. 238, 296](#)] relieved of the responsibilities which possession of the powers necessarily enjoins, as to reduce them to little more than geographical subdivisions of the national domain. It is safe to say that if, when the Constitution was under consideration, it had been thought that any such danger lurked behind its plain words, it would never have been ratified. “  
[Carter v. Carter Coal Co., [298 U.S. 238](#) (1936)]

"The care of every man's soul belongs to himself. But what if he neglect the care of it? Well what if he neglect the care of his health or his estate, which would more nearly relate to the state. Will the magistrate make a law that he not be poor or sick? Laws provide against injury from others; but not from ourselves. God himself will not save men against their wills."

[Thomas Jefferson]

"Sometimes it is said that man cannot be trusted with the government of himself. Can he, then, be trusted with the government of others? Or have we found angels in the forms of kings to govern him? Let history answer this question."

[Thomas Jefferson]

"That government is best which governs the least, because its people discipline themselves."

[Thomas Jefferson]

"I never submitted the whole system of my opinions to the creed of any party of men whatever, in religion, in philosophy, in politics or in anything else, where I was capable of thinking for myself. Such an addiction is the last degradation of a free and moral agent. If I could not go to Heaven but with a party, I would not go there at all."

[Thomas Jefferson]

"I swear by my life and my love for it that I will never live for the sake of another man or ask another man to live for mine."

[Ayn Rand, Atlas Shrugged, character “John Galt”]

"We propose a five-word constitutional amendment: There shall be open borders. People are the great resource, and so long as we keep our economy free, more people means more growth, the more the merrier. Study after study shows that even the most recent immigrants give more than they take."

[Wall Street Journal]

“[I]t is impossible that any people of government should ever prosper, where men render not unto God, that which is God's, as well as to Caesar, that which is Caesar's.”

[*Fundamental Constitutions of Pennsylvania*, 1682. Written by William Penn, founder of the colony of Pennsylvania.]

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## 11.10 Government and Politics<sup>82</sup>

"To be governed is to be watched over, inspected, spied on, directed, legislated, regimented, closed in, indoctrinated, preached at, controlled, assessed, evaluated, censored, commanded; all by creatures that have neither the right, nor wisdom, nor virtue . . .

To be governed means that at every move, operation, or transaction one is noted, registered, entered in a census, taxed, stamped, priced, assessed, patented, licensed, authorized, recommended, admonished, prevented, reformed, set right, corrected. Government means to be subjected to tribute, trained, ransomed, exploited, monopolized, extorted, pressured, mystified, robbed; all in the name of public utility and the general good.

Then, at the first sign of resistance or word of complaint, one is repressed, fined, despised, vexed, pursued, hustled, beaten up, garroted, imprisoned, shot, machine-gunned, judged, sentenced, deported, sacrificed, sold, betrayed, and to cap it all, ridiculed, mocked, outraged, and dishonored. That is government, that is its justice and its morality! . . . O human personality! How can it be that you have cowered in such subjection for sixty centuries?"

[Pierre-Joseph Proudhon (born A. D. 1809 - died A. D. 1865)]

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"Keep in mind, all of the Founding Fathers hated democracy – Thomas Jefferson was a partial exception, but only partial. For the most part, they hated democracy. The principles of the Founding Fathers were rather nicely expressed by John Jay, the head of the Constitutional Convention and the first Chief Justice of the Supreme Court. His favorite maxim was, "The people who own the country ought to govern it" -that's the principle on which the United States was founded. The major framer of the Constitution, James Madison, emphasized very clearly in the debates at the Constitutional Convention in 1787 that the whole system must be designed, as he put it, "to protect the minority of the opulent from the majority" -that's the primary purpose of the government, he said."

[Understanding Power, Noam Chomsky, 2002, ISBN 1-56584-703-2, p. 315; SOURCE:

<http://www.ditext.com/chomsky/power.pdf>]

"Politicians prefer unarmed and illiterate peasants!"

[Sovereignty Education and Defense Ministry (SEDM) ]

"POLITICS": (Greek "POLY"= many) + ("TICS"= blood sucking insects)

[Sovereignty Education and Defense Ministry (SEDM) ]

"It [the State] has taken on a vast mass of new duties and responsibilities; it has spread out its powers until they penetrate to every act of the citizen, however secret; it has begun to throw around its operations the high dignity and impeccability of a State religion; its agents become a separate and superior caste, with authority to bind and loose, and their thumbs in every pot. But it still remains, as it was in the beginning, the common enemy of all well-disposed, industrious and decent men."

[Henry L. Mencken, A.D. 1926]

"As long as our government is administered for the good of the people and is regulated by their will, it will be worth defending."

[Andrew Jackson 1829-1837]

"No man is good enough to govern another man without that other's consent."

[Abraham Lincoln]

"The world is governed by far different persons that what is imagined by those not behind the scenes.¶

[Benjamin Disraeli]

But Jesus called them to Himself and said to them, "**You know that those who are considered rulers over the Gentiles lord it over them, and their great ones exercise authority over them. Yet it shall not be so among you; but whoever desires to become great among you shall be your servant. <sup>44</sup> And whoever of you desires to be first shall be slave of all. For even the Son of Man did not come to be served, but to serve, and to give His life a ransom for many.**"

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<sup>82</sup> For detailed information on law and government see: *Law and Government Topic*, Family Guardian Fellowship; <http://famguardian.org/Subjects/LawAndGovt/LawAndGovt.htm>.



[Mark 10:42-45, Bible, NKJV]

“All the powers of the government [[including ALL of its civil enforcement powers](#) against the public] must be carried into operation **by individual agency, either through the medium of public officers, or contracts made with [private] individuals.**”

[Osborn v. Bank of U.S., [22 U.S. 738](#) (1824)]

“Those people who are not governed by GOD will be ruled by tyrants.”

[William Penn (after which Pennsylvania was named)]

"A free people [claim] their rights as derived from the laws of nature, and not as the gift of their chief magistrate."

[Thomas Jefferson: Rights of British America, 1774. ME 1:209, Papers 1:134 ]

"Propitious smiles of heaven can never be expected on a nation that disregards the eternal rules of order and right which heaven itself has ordained."

[George Washington (1732-1799), First Inaugural Address]

"In every government on earth is some trace of human weakness, some germ of corruption and degeneracy, which cunning will discover, and wickedness insensibly open, cultivate and improve."

[Thomas Jefferson: Notes on Virginia Q.XIV, 1782. ME 2:207]

“For where [government] envy and self-seeking [of money they are not entitled to] exist, confusion [and deception] and every evil thing will be there.”

[[James 3:16](#), Bible, NKJV]

"Government is established for the protection of the weak against the strong. This is the principal, if not the sole motive for the establishment of all legitimate government. It is only the weaker party that lose their liberties, when a government becomes oppressive. The stronger party, in all governments are free by virtue of their superior strength. They never oppress themselves. Legislation is the work of this stronger party; and if, in addition to the sole power of legislation, they have the sole power of determining what legislation shall be enforced, they have all power in their hands, and the weaker party are the subjects of an absolute government. Unless the weaker party have a veto, they have no power whatever in the government and...no liberties... The trial by jury is the only institution that gives the weaker party any veto upon the power of the stronger. Consequently it is the only institution that gives them any effective voice in the government, or any guaranty against oppression."

[Lysander Spooner]

"Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence"

[U.S. Supreme Court Justice Tom C. Clark - Mapp vs. Ohio]

“A nation which does not remember what it was yesterday, does not know what it is today, nor what it is trying to do. We are trying to do a futile thing if we do not know where we came from or what we have been about.”

[Woodrow Wilson, President of the United States]

“Americans have the government officials they deserve. Our society openly castigates the Almighty, thus making tolerable judicial pronouncements like that of today (6-26-02, Ninth Circuit Court of Appeals declared the national pledge unconstitutional because it used the phrase “one nation under God”) which banished God from our national pledge. The darkness of night follows the light of day, and similarly when any nation shakes its angry fist at the maker of the universe, it can expect the withdrawal of divine protection. Conditions are now riper for a strike by our national tormenters. Those who disdain our sacred pledge are no better than our enemies.”

[Larry Becraft, Attorney]

“**GOVERNMENT ANNOUNCEMENT April 15, 20** . [Washington, D.C.] The federal government announced today that it is changing its emblem from an eagle to a condom, because that more clearly reflects its political stance. A condom stands up to inflation, halts production, destroys the next generation, protects a bunch of pricks, and gives you a sense of security while it's actually screwing you.”

[Unknown]

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### ***Sovereignty and Freedom Points and Authorities***

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"Corporations are also of all grades, and made for varied objects; **all governments are corporations, created by usage and common consent, or grants and charters which create a body politic for prescribed purposes; but whether they are private, local or general, in their objects, for the enjoyment of property, or the exercise of power, they are all governed by the same rules of law, as to the construction and the obligation of the instrument by which the incorporation is made. One universal rule of law protects persons and property.** It is a fundamental principle of the common law of England, that the term freemen of the kingdom, includes 'all persons, ecclesiastical and temporal, incorporate, politique or natural; it is a part of their magna charta (2 Inst. 4), and is incorporated into our institutions. The persons of the members of corporations are on the same footing of protection as other persons, and their corporate property secured by the same laws which protect that of individuals. 2 Inst. 46-7. 'No man shall be taken, 'no man shall be disseised, without due process of law, is a principle taken from magna charta, infused into all our state constitutions, and is made inviolable by the federal government, by the amendments to the constitution."

[Proprietors of Charles River Bridge v. Proprietors of Warren Bridge, [36 U.S. 420](#) (1837)]

"With all [our] blessings, what more is necessary to make us a happy and a prosperous people? Still one thing more, fellow citizens--**a wise and frugal Government, which shall restrain men from injuring one another, shall leave them otherwise free** to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government, and this is necessary to close the circle of our felicities."

[Thomas Jefferson: 1st Inaugural, 1801. ME 3:320]

"Preach the Word; be prepared in season and out of season [by diligent study of this book and God's Word]; **correct, rebuke and encourage--with great patience and careful instruction. For the time will come when men [in the legal profession or the judiciary] will not put up with sound [legal] doctrine [such as that found in this book]. Instead, to suit their own desires, they [our covetous public dis-servants] will gather around them a great number of teachers [court-appointed "experts", "licensed" government whores called attorneys and CPA's, and educators in government-run or subsidized public schools and liberal universities] to say what their itching ears want to hear. They will turn their ears away from the truth and turn aside to [government and legal-profession] myths[ and fables]. But you [the chosen of God and His servants must], keep your head in all situations, endure hardship, do the work of an evangelist, discharge all the duties of your [God's] ministry.**"

[[2 Tim. 4:2-5](#), Bible, NKJV]

"Those who do not learn from the mistakes of history are doomed to repeat them."

[George Santayana]

"I am interested in politics so that one day I will not have to be interested in politics."

[Ayn Rand]

"Love your country but fear its government."

[N.E. folk wisdom]

"Necessity is the plea for every infringement of human freedom. It is the argument of tyrants; it is the creed of slaves."

[William Pitt, 18 Nov 1783]

"Government is not reason, it is not eloquence, it is force; like fire, a troublesome servant and a fearful master. Never for a moment should it be left to irresponsible action."

[George Washington]

"The moral and constitutional obligations of our representatives in Washington are to protect our liberty, not coddle the world, precipitating no-win wars, while bringing bankruptcy and economic turmoil to our people."

[Congressman Ron Paul, 1987]

"History I believe furnishes no example of a priest-ridden people maintaining a free civil government. This marks the lowest grade of ignorance, of which their political as well as religious leaders will always avail themselves for their own purpose."

[Thomas Jefferson]

"If we were directed from Washington when to sow and when to reap, we would soon want for bread."

[Thomas Jefferson]

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### ***Sovereignty and Freedom Points and Authorities***

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"No man has ever ruled other men for their own good."  
[George D. Herron]

"We find two great gangs of political speculators, who alternately take possession of the state power and exploit it by the most corrupt ends -- the nation is powerless against these two great cartels of politicians who are ostensibly its servants, but in reality dominate and plunder it."  
[Friedrich Engels]

"When goods don't cross borders, soldiers will."  
[Frederic Bastiat, early French economist ]

"I'm a politician, and as a politician I have the prerogative to lie whenever I want."  
[Charles Peacock, ex-director of Madison Guaranty, the Arkansas S&L at center of Whitewatergate]

"America does not go abroad in search of monsters to destroy. She is the well-wisher to freedom and independence of all. She is the champion and vindicator only of her own."  
[John Quincy Adams]

"It's dangerous to be right when the government is wrong."  
[Unknown]

"If CON is the opposite of PRO, does that mean that CONgress is the opposite of PROgress?"  
[Gallagher]

"The politicians don't just want your money. They want your soul. They want you to be worn down by taxes until you are dependent and helpless. "When you subsidize poverty and failure, you get more of both."  
[James Dale Davidson, National Taxpayers Union]

"One of the penalties for refusing to participate in politics is that you end up being governed by your inferiors."  
[Plato]

"In the end more than they wanted freedom, they wanted security. When the Athenians finally wanted not to give to society but for society to give to them, when the freedom they wished for was freedom from responsibility, then Athens ceased to be free."  
[Edward Gibbon (1737-1794)]

"It is often easier for our children to obtain a gun than it is to find a good school."  
[Joycelyn Elders]

"Maybe that's because guns are sold at a profit, while schools are provided by the government."  
[David Boaz]

"When buying and selling are controlled by legislation, the first things to be bought and sold are legislators."  
[P.J. O'Rourke]

"We won't dispassionately investigate or rationally debate which drugs do what damage and whether or how much of that damage is the result of criminalization. We'd rather work ourselves into a screaming fit of puritanism and then go home and take a pill."  
[P.J. O'Rourke]

"We hate our politicians so much that even if they tell us they lied, we don't believe them."  
[Peter Newman]

"Suppose you were an idiot. And suppose you were a member of Congress. But then I repeat myself."  
[Mark Twain]

“I contend that for a nation to try to tax itself into prosperity is like a man standing in a bucket and trying to lift himself up by the handle.”

[Winston Churchill]

“A government which robs Peter to pay Paul can always depend on the support of Paul.”

[George Bernard Shaw]

“A liberal is someone who feels a great debt to his fellow man, which debt he proposes to pay off with your money.”

[G. Gordon Liddy]

“Democracy must be something more than two wolves and a sheep voting on what to have for dinner.”

[James Bovard, *Civil Libertarian* (1994)]

“Foreign aid might be defined as a transfer of money from poor people in rich countries to rich people in poor countries.”

[Douglas Casey, *Classmate of Bill Clinton at Georgetown Univ.*]

“Giving money and power to government is like giving whiskey and car keys to teenage boys.”

[P.J. O'Rourke, *Civil Libertarian*]

“Government is the great fiction, through which everybody endeavors to live at the expense of everybody else.”

[Frederic Bastiat, *French Economist* (1801-1850)]

“Government's view of the economy could be summed up in a few short phrases: If it moves, tax it. If it keeps moving, regulate it. And if it stops moving, subsidize it.”

[Ronald Reagan (1986)]

“I don't make jokes. I just watch the government and report the facts.”

[Will Rogers]

“If you think health care is expensive now, wait until you see what it costs when it's free.”

[P.J. O'Rourke]

“In general, the art of government consists of taking as much money as possible from one party of the citizens to give to the other.”

[Voltaire (1764)]

“Just because you do not take an interest in politics doesn't mean politics won't take an interest in you.”

[Pericles (430 B.C.)]

“No man's life, liberty, or property is safe while the legislature is in session.”

[Mark Twain (1866)]

“Talk is cheap ... except when Congress does it.”

[Unknown]

“The government is like a baby's alimentary canal, with a happy appetite at one end and no responsibility at the other.”

[Ronald Reagan]

“The inherent vice of capitalism is the unequal sharing of the blessings. The inherent blessing of socialism is the equal sharing of misery. “

[Winston Churchill]

“The only difference between a tax man and a taxidermist is that the taxidermist leaves the skin. “

[Mark Twain]

“The ultimate result of shielding men from the effects of folly is to fill the world with fools. “

[Herbert Spencer, *English Philosopher* (1820-1903)]

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### ***Sovereignty and Freedom Points and Authorities***

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“There is no distinctly native American criminal class...save Congress“.....  
[Mark Twain]

“What this country needs are more unemployed politicians. “  
[Edward Langley, Artist (1928 - 1995)]

“A government big enough to give you everything you want, is strong enough to take everything you have“  
[Thomas Jefferson]

"The few who understand the system, will either be so interested in its profits, or so dependent on its favors that there will be no opposition from that class, while on the other hand, the great body of people, mentally incapable of comprehending the tremendous advantages...will bear its burden without complaint, and perhaps without suspecting that the system is inimical to their best interests."

[Rothschild Brothers of London communiqué to associates in New York June 25, 1863]

"The men the American people admire most extravagantly are the greatest liars; the men they detest most violently are those who try to tell them the truth."  
[H.L. Mencken]

“Truth is incontrovertible. Panic may resent it; ignorance may deride it; malice may destroy it; but there it is. “  
[Unknown]

"Men occasionally stumble over the truth, but most of them pick themselves up and hurry off as if nothing happened."  
[Winston Churchill ]

“What luck for rulers that men do not think“  
[Adolf Hitler]

“Nothing is more terrifying than ignorance in action... “  
[Goethe]

“The more corrupt a nation the more numerous are its laws. “  
[Tacitus 95 A.D.]

"My people are destroyed for lack of knowledge"  
[Hosea 4:6. Geneva Bible]

“Don't sacrifice your life or your career for anyone, if it comes down to you or them, send flowers.”  
[Robert Redford, Spy Games]

“Giving money and power to government is like giving whiskey and car keys to teenage boys. “  
[P.J. O'Rourke, Civil Libertarian]

"If we make peaceful revolution impossible, we make violent revolution inevitable."  
[John Fitzgerald Kennedy]

"The only devils in the world are those running around in our own hearts - that is where the battle should be fought."  
[Mahatma Gandhi]

"Man is born free, and everywhere he is in chains."  
[Jean-Jacques Rousseau - (1712-1778) Political philosopher, educationist and essayist -Source: The Social Contract]

"Liberty is rendered even more precious by the recollection of servitude."  
[Marcus Tullius Cicero - (106-43 B.C.) Roman Statesman, Philosopher and Orator]

"No man survives when freedom fails, The best men rot in filthy jails, And those who cry 'appease, appease' Are hanged by



those they tried to please." Hiram Mann "If we fail to check the power of the judiciary, I predict that we will eventually live under judicial tyranny."

[Patrick Henry]

"Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives: "

[James Madison]

"When even one American-who has done nothing wrong-is forced by fear to shut his mind and close his mouth-then all Americans are in peril. "

[Harry S. Truman]

"I am a firm believer in the people. If given the truth, they can be depended upon to meet any national crisis. The great point is to bring them the real facts. "

[Abraham Lincoln]

"Justice will not be served until those who are unaffected are as outraged as those who are."

[Benjamin Franklin]

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"One of the greatest shortcomings in contemporary society is the inability of many to distinguish between right and wrong, between good and evil, as well as the lack of the spirit to fight against injustice. Fundamentally, peace and our humanity must be backed up by the spirit to challenge what is wrong. A peace that acquiesces to rampant iniquity represents the bleak stillness of a spiritual graveyard. Shutting one's eyes to injustice is not tolerance; it is little more than cowardice and apathy. While ignoring wrongdoing may seem the easy way out, in the end it only brings unhappiness to all. The true mission of free speech is to uphold the spirit of justice and challenge inhumanity. "

"Patriotism means to stand by the country. It does not mean to stand by the President save to the degree in which he himself stands by the country. To stand by the country, means to stand by the principles on which our great Republic was founded and honor everyone's rights to self-determination and individualism."

[President Theodore Roosevelt]

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"Aye, fight and you may die, run and you'll live, at least awhile. And dying in your beds many years from now, would you be willing to trade all the days from this day to that, for one chance, just one chance to come back here and tell our enemies that they may take our lives but they'll never take our freedom?"

[William Wallace, "Brave Heart"]

"Power concedes nothing without a demand. It never did, and it never will. Find out just what people will submit to, and you have found out the exact amount of injustice and wrong which will be imposed upon them, and these will continue till they have resisted with either words or blows, or with both. The limits of tyrants are prescribed by the endurance of those whom they suppress."

[Frederick Douglass]

"You have rights antecedent to all earthly governments; rights that cannot be repealed or restrained by human laws; rights derived from the Great Legislator of the Universe."

[John Adams]

"Patriotism means to stand by the country. It does not mean to stand by the President."

[Theodore Roosevelt]

"It is the greatest absurdity to suppose it in the power of one, or any number of men, at the entering into society, to renounce their essential natural rights, or the means of preserving those rights; when the grand end of civil government, from the very nature of its institution, is for the support, protection, and defence of those very rights; the principal of which, as is before observed, are Life, Liberty, and Property. If men, through fear, fraud, or mistake, should in terms renounce or give up any essential natural right, the eternal law of reason and the grand end of society would absolutely vacate such renunciation. The

right to freedom being the gift of God Almighty, it is not in the power of man to alienate this gift and voluntarily become a slave."

[Samuel Adams, The Rights of the Colonists, November 20, 1772; <http://www.foundingfatherquotes.com/father/quotes/2>]

"We must never cease to proclaim in fearless tones the great principles of freedom and the rights of man which are the joint inheritance of the English-speaking world and which through Magna Carta, the Bill of Rights, the Habeas Corpus, trial by jury, and the English common law find their most famous expression in the American Declaration of Independence."

[Sir Winston Churchill, "The Sinews of Peace," address at Westminster College, Fulton, Missouri, March 5, 1946]

"All animals are created equal but some animals are more equal than others"

[George Orwell in "Animal Farm"]

"The lust for power, for dominating others, inflames the heart more than any other passion"

[Tacitus]

"I have never been able to conceive how any rational being could propose happiness to himself from the exercise of power over others."

[Thomas Jefferson to A. L. C. Destutt de Tracy, 1811]

"If ye love wealth better than liberty, the tranquility of servitude better than the animating contest of freedom, go home from us in peace; We ask not your counsels or your arms; Crouch down and lick the hands which feed you; May your chains set lightly upon you, and may posterity forget that ye were our countrymen."

[Samuel Adams]

"... God forbid we should ever be twenty years without such a rebellion. The people cannot be all, and always, well informed. The part which is wrong will be discontented, in proportion to the importance of the facts they misconceive. If they remain quiet under such misconceptions, it is lethargy, the forerunner of death to the public liberty ... And what country can preserve its liberties if its rulers are not warned from time to time, that this people preserve the spirit of resistance? Let them take arms. The remedy is to set them right as to the facts, pardon and pacify them. What signify a few lives lost in a century or two? The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure."

[Thomas Jefferson. Nov. 13. 1787, letter to William S. Smith]

"The strength and power of despotism consists wholly in the fear of resistance."

[Thomas Paine]

"Enslave the liberty of but one human being and the liberties of the world are put in peril."

[William Garrison (1805-1879)]

"The God who gave us life gave us liberty at the same time ..."

[Thomas Jefferson in "A Bill for Establishing Religious Freedom" (1779)]

"You can only protect your liberties in this world by protecting the other man's freedom. You can only be free if I am free."

[Clarence Darrow (1857-1938)]

"God grants liberty only to those who love it and are always ready to guard and defend it."

[Daniel Webster]

"But our rulers can have no authority over such natural rights, only as we have submitted to them. The rights of conscience we never submitted, we could not submit. We are answerable for them to our God. The legitimate powers of government extend to such acts as are injurious to others."

[Thomas Jefferson in "Notes on Virginia"]

"Liberty is one of the most precious gifts which heaven has bestowed on man; with it we cannot compare the treasures which the earth contains or the sea conceals; for liberty, as for honor, we can and ought to risk our lives; and, on the other hand, captivity is the greatest evil that can befall man."

[Miguel De Cervantes (1547-1616)]

"Bad laws are the worst sort of tyranny."  
[Edmund Burke (1729-1797)]

"Freedom hath a thousands charms to show, that slaves however contented never know."  
[William Cowper (1731-1800)]

"The only freedom which deserves the name is that of pursuing our own good, in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it."  
[John Stuart Mill]

"The true danger is when liberty is nibbled away, for expedients, and by parts ... the only thing necessary for evil to triumph is for good men to do nothing."  
[Edmund Burke]

"The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants."  
[Thomas Jefferson]

"Guard with jealous attention the public liberty. Suspect everyone who approaches that jewel. Unfortunately, nothing will preserve it but downright force. Whenever you give up that force, you are ruined."  
[Patrick Henry]

"God grant that not only the love of liberty but a thorough knowledge of the rights of man may pervade all the nations of the earth, so that a philosopher may set his foot anywhere on its surface and say: 'This is my country.'"  
[Benjamin Franklin, letter to David Hartley, December 4, 1789]

"Is life so dear, or peace so sweet, as to be purchased at the price of chains or slavery? Forbid it, Almighty God! I know not what course others may take but as for me; give me liberty or give me death!"  
[Patrick Henry]

"Those who profess to favor freedom, and yet depreciate agitation, are men who want crops without plowing up the ground. They want rain without thunder and lightning. They want the ocean without the awful roar of its waters. This struggle may be a moral one; or it may be a physical one; or it may be both moral and physical; but it must be a struggle! Power concedes nothing without a demand. It never did, and it never will. Find out just what people will submit to, and you have found out the exact amount of injustice and wrong which will be imposed upon them; and these will continue until they are resisted with either words or blows, or with both. The limits of tyrants are prescribed by the endurance of those whom they oppress."  
[Frederick Douglass, August 4, 1857]

"... it does not require a majority to prevail, but rather an irate, tireless minority keen to set brush fires in people's minds ..."  
[Samuel Adams]

"The people who had once bestowed commands, consulships, legions, and all else now longs eagerly for just two things, bread and circus games.."  
[Juvenal, poet, upon observing the decline of the Roman empire]

"The real destroyers of the liberties of any people is he who spreads among them bounties, donation and largesse.."  
[Plutarch, Greek historian]

"Four boxes to be used in defense of liberty: soap, ballot, jury, ammo - use in that order."  
[Ed Howdershelt]

"America will never be destroyed from the outside. If we falter and lose our freedoms, it will be because we destroyed ourselves."  
[Abraham Lincoln]

"Resistance to tyrants is obedience to God."  
[Thomas Jefferson]

"Proclaim liberty throughout all the land unto the inhabitants thereof."  
[Leviticus 25:10 (inscription on the Liberty Bell)]

"The independence and liberty you possess are the work of ... joint efforts, of common dangers, suffering and successes."  
[George Washington]

"They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety."  
[Benjamin Franklin]

"Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."  
[Justice Louis D. Brandeis, dissenting, *Olmstead v. United States*, 277 U.S. 438 (1928)]

"He that would make his own liberty secure must guard even his enemy from oppression; for if he violates this duty he establishes a precedent that will reach to himself."  
[Thomas Paine]

"I often wonder whether we do not rest our hopes too much upon constitutions, upon law and upon courts. These are false hopes, believe me, these are false hopes. Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it. While it lies there it needs no constitution, no law, no courts to save it."  
[Judge Learned Hand, from "The Deficiencies of Trials to Reach the Heart of the Matter", in 3 "Lectures On Legal Topics" 89, 105 (1926), quoted in Fred R. Shapiro, "The Oxford Dictionary Of American Legal Quotations" 304 (1993)]

"The preservation of the sacred fire of liberty and the destiny of the republican model of government are justly considered ... deeply, ... finally, staked on the experiment entrusted to the hands of the American people."  
[George Washington, First Inaugural Address, Apr. 30, 1789]

"The right to freedom being the gift of God, it is not in the power of man to alienate this gift and voluntarily become a slave."  
[Samuel Adams]

"Single acts of tyranny may be ascribed to the accidental opinion of a day. But a series of oppressions, ... pursued unalterably through every change of ministers, too plainly proves a deliberate systematic plan of reducing us to slavery."  
[Thomas Jefferson]

"I believe that there are more instances of the abridgment of the freedom of the people by gradual and silent encroachment of those in power than by violent and sudden usurpations."  
[James Madison]

"I have sworn upon the altar of God, eternal hostility against every form of tyranny over the mind of man."  
[Thomas Jefferson]

"It is when a people forget God that tyrants forge their chains..."  
[Patrick Henry]

"They who say all men are equal speak an undoubted truth, if they mean that all have an equal right to liberty; to their property, and to their protection of the laws. But they are mistaken if they think men are equal in their station and employments, since they are not so by their talents."  
[Voltaire]

"There is no liberty to men who know not how to govern themselves."  
[Henry Ward Beecher]

"Courage, then, my countrymen, our contest is not only whether we ourselves shall be free, but whether there shall be left to mankind an asylum on earth for civil and religious liberty."  
[Samuel Adams]

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### ***Sovereignty and Freedom Points and Authorities***

"Dear Fellow American Patriot, When this country was in its very infancy, our Founding Fathers pledged their fortunes, their sacred honor, indeed their very lives to stand against tyranny. These men and their families led us on to victory. Historians have calculated the total membership of these true heroes to be only 3% of the country at that time. To these men, Liberty was worth more than life itself. The nation that was born from their sacrifices has never since been duplicated in the history of the world. Our nation is once again in peril of losing its very essence to tyrants who would steal from us the life blood that has made our country great. It is by the grace of Almighty God that you have been chosen to join with us in the fight to restore our Nation back to its original greatness; back to a Nation where wo/men are free to believe as they choose, work for themselves and prosper according to their efforts and faith - where Rights are again protected by Law, not ignored or destroyed by the policies of bureaucrats. So welcome brothers and sisters! Knowing that resistance to tyranny is obedience to God, I am honored to call you my countrymen. May God Bless you!"

[Thomas Brissey, St. Simons Island, Georgia, Independent Representative for the Save-A-Patriot Fellowship]

"The evils of tyranny are rarely seen but by him who resists it."

[John Hay, 1872]

"In the beginning of a change, the patriot is a scarce man; brave, hated, and scorned. When his cause succeeds, however, the timid join him, for then it costs nothing to be a patriot."

[Samuel Clemens, author who wrote under the nom de plume, Mark Twain]

"To sin by silence when they should protest makes cowards of men."

[Abraham Lincoln]

"It's the action, not the fruit of the action, that's important. You have to do the right thing. It may not be in your power, it may not be in your time, that there'll be any fruit. But that doesn't mean you stop doing the right thing. You may never know what results come from your action. But if you do nothing, there will be no result."

[Gandhi]

"In Germany, they came first for the Communists, and I didn't speak up because I wasn't a Communist. Then they came for the Jews, and I didn't speak up because I wasn't a Jew. Then they came for the Trade Unionists, and I didn't speak up because I wasn't a Trade Unionist. Then they came for the Catholics, and I didn't speak up because I was a Protestant. Then they came for me, and by that time, no one was left to speak up."

[Rev. Dr. Martin Niemoeller, July 1, 1937; arrested by the Third Reich]

"It will, I believe, everywhere be found, that as the clergy are, or are not what they ought to be, so are the rest of the nation"

[Jane Austen]

"... there is much truth in the Italian saying, 'Make yourselves sheep, and the wolves will eat you.'"

[Benjamin Franklin]

"As life is action and passion, it is required of a man that he be part of the action and passion of his times lest he be judged never to have lived."

[Oliver Wendell Holmes, Jr.]

"A nation can survive its fools, and even the ambitious. But it cannot survive treason from within. An enemy at the gates is less formidable, for he is known and carries his banners openly. But the traitor moves amongst those within the gate freely, his sly whispers rustling through all the alleys, heard in the very halls of government itself. For the traitor appears not a traitor; he speaks in accents familiar to his victims, and he wears their face and their garments, and he appeals to the baseness that lies deep in the hearts of all men. He rots the soul of a nation, he works secretly and unknown in the night to undermine the pillars of a city, he infects the body politic so that it can no longer resist. A murderer is less to be feared"

[Marcus Tullius Cicero 42 BC]

"Do not be afraid of your enemies - in the worst case they can kill you; Do not be afraid of your friends - in the worst case they can betray you; Be afraid of the indifferent ones: it is from their silent blessings that all the evil is happening in the world!"

[Bruno Yasensky, Russian writer.]



"We have it in our power to begin the world again"

[Thomas Paine in "Common Sense" (1776)]

"First they came for the Communists, and I didn't speak up, because I wasn't a Communist. Then they came for the Jews, and I didn't speak up, because I wasn't a Jew. Then they came for the Catholics, and I didn't speak up, because I was a Protestant. Then they came for me, and by that time there was no one left to speak up for me"

[Pastor Martin Neimoller: Concentration camp Survivor]

"In the first place we should insist that if the immigrant who comes here in good faith becomes an American and assimilates himself to us, he shall be treated on an exact equality with everyone else, for it is an outrage to discriminate against any such man because of creed, or birthplace, or origin. But this is predicated upon the man's becoming in very fact an American, and nothing but an American...There can be no divided allegiance here. Any man who says he is an American, but something else also, isn't an American at all. We have room for but one flag, the American flag, and this excludes the red flag, which symbolizes all wars against liberty and civilization, just as much as it excludes any foreign flag of a nation to which we are hostile...We have room for but one language here, and that is the English language...and we have room for but one sole loyalty and that is a loyalty to the American people."

[Theodore Roosevelt 1907]

"The government consists of a gang of men exactly like you and me. They have, taking one with another, no special talent for the business of government; they have only a talent for getting and holding office. Their principal device to that end is to search out groups who pant and pine for something they can't get and to promise to give it to them. Nine times out of ten that promise is worth nothing. The tenth time is made good by looting A to satisfy B. In other words, government is a broker in pillage, and every election is sort of an advance auction sale of stolen goods."

[H.L. Mencken]

"[W]hat more is necessary to make us a happy and prosperous people? ... a wise and frugal government ... which shall leave [men] free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned ... We must make our choice between economy and liberty or profusion and servitude ... If we can prevent government from wasting the labors of the people, under the pretense of caring for them, the people will be happy."

[Thomas Jefferson]

"Governments, whatever their pretensions otherwise, try to preserve themselves by holding the individual down ... Government itself, indeed, may be reasonably defined as a conspiracy against him. Its one permanent aim, whatever its form, is to hobble him sufficiently to maintain itself."

[H.L. Mencken, author ]

"No provision in our Constitution ought to be dearer to man than that which protects the rights of conscience against the power of its public functionaries..."

[Thomas Jefferson in a letter to the Methodist Episcopal Church at New London, Connecticut, Feb. 4, 1809 ]

"I think we have more machinery of government than is necessary, too many parasites living on the labor of the industrious."

[Thomas Jefferson Letter to William Ludlow, 1824 ]

"Government big enough to supply everything you need is big enough to take everything you have ... The course of history shows that as a government grows, liberty decreases."

[Thomas Jefferson]

"We are taxed in our bread and our wine, in our incomes and our investments, on our land and on our property not only for base creatures who do not deserve the name of men, but for foreign nations, complaisant nations who will bow to us and accept our largesse and promise us to assist in the keeping of the peace - these mendicant nations who will destroy us when we show a moment of weakness or our treasury is bare, and surely it is becoming bare! We are taxed to maintain legions on their soil, in the name of law and order and the Pax Romana, a document which will fall into dust when it pleases our allies and our vassals. We keep them in precarious balance only with our gold. Is the heart blood of our nation worth these? Were they bound to us with ties of love, they would not ask our gold. They take our very flesh, and they hate and despise us. And who shall say we are worthy of more? ... When a government becomes powerful it is destructive, extravagant and violent; it is an usurer which takes bread from innocent mouths and deprives honorable men of their substance, for votes with which to perpetuate itself."

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### ***Sovereignty and Freedom Points and Authorities***

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[Cicero, 54 B.C.]

"If ever time should come, when vain and aspiring men shall possess the highest seats in Government, our country will stand in need of its experienced patriots to prevent its ruin."

[Samuel Adams]

"It is not the function of our government to keep the citizen from falling into error; it is the function of the citizen to keep the government from falling into error."

[United States Supreme Court - American Communications Association v. Douds]

"... the intent of the lawmaker is to be found in the language that he has used."

[United States Supreme Court in U.S. v. Goldberg (1897)]

"Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself."

[Louis D. Brandeis, former Supreme Court Justice]

"It is inherent in government's right, if necessary, to lie ... that seems to me basic - basic."

[Arthur Sylvester, former Assistant Secretary of Defense]

"When all government, in little as in great things, shall be drawn to Washington as the Center of all Power, it will render powerless the checks provided of one government on another and will become as venal and oppressive as the government from which we separated."

[Thomas Jefferson (1821) in a letter to Gideon Granger]

"In politics, nothing happens by accident. If it happens, it was planned that way."

[Franklin D. Roosevelt]

"The whole aim of practical politics is to keep the populace alarmed -- and thus clamorous to be led to safety -- by menacing it with an endless series of hobgoblins, all of them imaginary."

[H.L. Mencken]

"I have never seen more Senators express discontent with their jobs ... we have been accomplices to doing something terrible and unforgivable to this wonderful country ... we have given our children a legacy of bankruptcy. We have defrauded our country to get ourselves elected."

[John Danforth, Republican Senator from Missouri, in an interview in The Arizona Republic on April 22, 1992]

"An election is nothing more than the advanced auction of stolen goods.."

[Ambrose Bierce]

"We can no more blame our loss of freedom on congressmen than we can prostitution on pimps. Both simply provide broker services for their customers."

[Dr. Walter Williams]

"When I feel the heat, I see the light."

[Senator Everett Dirksen]

"Politics is the art of seeking trouble, finding it everywhere, diagnosing it incorrectly and applying the wrong remedies."

[Groucho Marx]

"Thank God we don't get all the government we pay for."

[Will Rogers]

"When I was a kid I was told anyone could become President. Now I'm beginning to believe it."

[Will Rogers, 1920's]

"Perhaps the removal of trade restrictions throughout the world would do more for the cause of universal peace than can any political union of peoples separated by trade barriers."  
[Frank Chodorov]

"Politicians are the same all over. They promise to build a bridge where there is no river."  
[Nikita Khrushchev]

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"Frankfurter has been furnishing most of the legal brains for the outfit, and it is said that no legal position of any consequence can be secured by any lawyer in the present administration without it has first had the approval of Frankfurter. And it is a startling fact, in connection with this, that most of the legal advisers, especially in key positions, are Jews. Felix Frankfurter's adept student and protégé, Jerome N. Frank, general counsel of the Agricultural Adjustment Administration, delivered an address before the Association of American Law Schools, thirty-first annual meeting, at Chicago, December 30, 1933, on Experimental Jurisprudence and the New Deal. "

Therefore, in the promulgation of the various codes affecting industry and agriculture throughout the country, they have sought to compel, browbeat, and bulldoze the business interests of this country to engage in private contract so that they would have the power to require the business interests of the Nation to do their wishes regardless of the Constitution.

"The —new-deal lawyers now have no hesitancy in appearing in court and asserting that **private citizens can contract away their constitutional rights**. It has been through this method that they have broken down State lines and invaded the most private affairs of our citizens. It will be through this method, for instance, that the little retailer of the country will be driven out of business and chain-store-system control by them put into operation, just as they are attempting in England."  
[Congressman Louis T. McFadden, Congressional Record, Friday, June 8th, 1934]

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"A reading of this address shows the contempt of the Frankfurter lawyers for the Constitution of the land and an expressed determination to obviate and avoid constitutional barriers in their administration of the Nation's affairs. Those in charge of the plan and its administration in the United States have for years considered methods for accomplishing their ends without regard to the Constitution of the United States. They recognize the fact that the National Industrial Recovery Act did not give them all of the power they desired in order to break down the barriers enacted in our Constitution, preserving certain rights to the various States of the Union, as well as other features.  
[Congressman Louis T. McFadden in Congress; from the Congressional Record, Friday, June 8th, 1934]

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### 11.11 Democracy vs. Republic . . .

"Republican government. **One in which the powers of sovereignty are vested in the people and are exercised by the people, either directly, or through representatives chosen by the people, to whom those powers are specially delegated.**  
In re Duncan, 139 U.S. 449, 11 S.Ct. 573, 36 L.Ed. 219; [Minor v. Happersett, 88 U.S. \(21 Wall.\) 162](#), 22 L.Ed. 627."  
[Black's Law Dictionary Sixth Edition, p. 695]

"Democracy is indispensable to socialism."  
[V.I. Lenin]

"Democracy is the road to socialism."  
[Karl Marx]

"The goal of socialism is communism."  
[V.I. Lenin]

"Do not follow the crowd [majority] in doing wrong. When you give testimony in a lawsuit, do not pervert justice by siding with the crowd, and do not show favoritism to a poor man in his lawsuit."  
[Exodus 23:2, Bible, NIV]

"The great distinction between Monarchies and Republics (at least our Republics) in general is, that in the former the monarch is considered as the sovereign, and each individual of his nation a subject to him, though in some countries with many

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important special limitations: This, I say, is generally the case, for it has not been so universally. **But in a Republic, all the citizens, as such, are equal, and no citizen can rightfully exercise any authority over another, but in virtue of a power constitutionally given by the whole community, and such authority when exercised, is in effect an act of the whole community which forms such body politic.** In such governments, therefore, the sovereignty resides in the great body of the people, but it resides in them not as so many distinct individuals, but in their politic capacity only."

[Penhallow v. Doane's, 3 U.S. 54, 3 Dall. 54, 1 L.Ed. 507 (1795)]

"A democracy is a sheep and two wolves deciding on what to have for lunch. Freedom is a well armed sheep contesting the results of the decision."

[Benjamin Franklin]

"REPUBLICAN GOVERNMENT. A government in the republican form; a government of the people; a government by representatives chosen by the people. Cooley, Const. Law 194."

[Black's Law Dictionary, 1891]

"The legacy of Democrats and Republicans approaches: Libertarianism by bankruptcy."

[Nick Nuessle, 1992]

"A democracy cannot exist as a permanent form of government. It can only exist until the voters discover that they can vote themselves money from the Public Treasury. From that moment on, the majority always votes for the candidate promising the most benefits from the Public Treasury with the result that a democracy always collapses over loose fiscal policy always followed by dictatorship."

["The Decline and Fall of the Athenian Republic", by Alexander Fraser Tytler]

"Democracy is the theory that the common people know what they want, and deserve to get it good and hard."

[H.L. Mencken]

"There is no underestimating the intelligence of the American public."

[H.L. Mencken]

"Democracy is a form of government that cannot long survive, for as soon as the people learn that they have a voice in the fiscal policies of the government, they will move to vote for themselves all the money in the treasury, and bankrupt the nation."

[Karl Marx, 1848 author of "The Communist Manifesto"]

"Democracy will envy all, endeavour to pull down all, and when by chance it happens to get the upper hand, it will be revengeful, bloody and cruel."

[President John Adams]

"If a nation values anything more than freedom, it will lose its freedom; and the irony of it is that if it is comfort or money that it values more, it will lose that too."

[Somerset Maugham, Author]

"Before many can know something, one must know it. I am in revolt against the old lie that the majority is always right."

[Henrik Ibsen]

"The majority is always wrong."

[Donald MacIlvaney, publisher of the MacIlvaney Intelligence Adviser]

"The United States shall guarantee to every State in this Union a republican form of government,"

[United States Constitution, Article IV, Section 4]

"The true foundation of republican government is the equal right of every citizen, in his person and property, and in their management. Try by this, as a tally, every provision of our constitution, and see if it hangs directly on the will of the people ...".

[Thomas Jefferson in "Notes on Virginia"]

"I pledge allegiance to the flag, and to the Republic for which it stands ...."  
[United States Pledge of Allegiance]

"Democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths."  
[James Madison]

"Liberty has never lasted long in a democracy, nor has it ever ended in anything better than despotism."  
[Fisher Ames (1758 - 1808)]

"Every individual necessarily labors to render the annual revenue of society as great as he can. He generally neither intends to promote the public interest, nor knows how much he is promoting it. He intends only his own gain, and he is, in this, as in many other cases, led by an invisible hand to promote an end which was not part of his intention."  
[Adam Smith, *Wealth of Nations*]

"People who object to weapons aren't abolishing violence, they're begging for rule by brute force, when the biggest, strongest animals among men were always automatically 'right.' Guns ended that, and social democracy is a hollow farce without an armed populace to make it work."  
[L. Neil Smith, *The Probability Broach*]

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### 11.12 The Constitution ...

"[W]e have no government armed with power capable of contending with human passions unbridled by morality and religion. . . . Our constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other."  
[John Adams, *The Works of John Adams, Second President of the United States*, Charles Francis Adams, editor (Boston: Little, Brown, and Co. 1854), Vol. IX, p. 229, October 11, 1798]

"An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed."  
[*Norton v. Shelby County*, 118 U.S. 425 p. 442]

"[I]t is religion and morality alone which can establish the principles upon which freedom can securely stand. The only foundation of a free constitution is pure virtue."  
[John Adams, *The Works of John Adams, Second President of the United States*, Charles Francis Adams, editor (Boston: Little, Brown, 1854), Vol. IX, p. 401, to Zabdiel Adams on June 21, 1776.]

"But where the conduct or fact, the existence of which is made the basis of the statutory presumption, itself falls within the scope of a provision of the Federal Constitution, a further question arises. **It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions.** And the state may not in this way interfere with matters withdrawn from its authority by the Federal Constitution, or subject an accused to conviction for conduct which it is powerless to proscribe."  
[*Bailey v. State of Alabama*, 219 U.S. 219 (1911)]

**"Independent of these views, there are many considerations which lead to the conclusion that the power to impair contracts [either the Constitution or the Holy Bible], by direct action to that end, does not exist with the general [federal] government. In the first place, one of the objects of the Constitution, expressed in its preamble, was the establishment of justice, and what that meant in its relations to contracts is not left, as was justly said by the late Chief Justice, in *Hepburn v. Griswold*, to inference or conjecture. As he observes, at the time the Constitution was undergoing discussion in the convention, the Congress of the Confederation was engaged in framing the ordinance for the government of the Northwestern Territory, in which certain articles of compact were established between the people of the original States and the people of the Territory, for the purpose, as expressed in the instrument, of extending the fundamental principles of civil and religious liberty, upon which the States, their laws and constitutions, were erected. By that ordinance it was declared, that, in the just preservation of rights and property, 'no law ought ever to be made, or have force in the said Territory, that shall, in any manner, interfere with or affect private contracts or engagements bona fide and without fraud previously formed.'** The same provision, adds the Chief Justice, found more condensed expression in the prohibition upon

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the States [in Article 1, Section 10 of the Constitution] against impairing the obligation of contracts, which has ever been recognized as an efficient safeguard against injustice; and though the prohibition is not applied in terms to the government of the United States, he expressed the opinion, speaking for himself and the majority of the court at the time, **that it was clear that those who framed and those who adopted the Constitution intended that the spirit of this prohibition should pervade the entire body of legislation, and that the justice which the Constitution was ordained to establish was not thought by them to be compatible with legislation [or judicial precedent] of an opposite tendency.**' 8 Wall. 623. [99 U.S. 700, 765] Similar views are found expressed in the opinions of other judges of this court." [[Sinking Fund Cases, 99 U.S. 700 \(1878\)](#)]

"No interference by Congress with the business of citizens transacted within a state is warranted by the Constitution, except such as is strictly incidental to the exercise of powers clearly granted to the legislature." [License Tax Cases, [72 U.S. 462](#) (1866)]

"In questions of power, then, let no more be said of confidence in man, but bind him down from mischief by the chains of the Constitution."  
[Thomas Jefferson]

"Indeed, the practical interpretation put by Congress upon the Constitution has been long continued and uniform to the effect [182 U.S. 244, 279] that **the Constitution is applicable to territories acquired by purchase or conquest, only when and so far as Congress shall so direct.** Notwithstanding its duty to 'guarantee to every state in this Union a republican form of government' (art. 4, 4), by which we understand, according to the definition of Webster, 'a government in which the supreme power resides in the whole body of the people, and is exercised by representatives elected by them, Congress did not hesitate, in the original organization of the territories of Louisiana, Florida, the Northwest Territory, and its subdivisions of Ohio, Indiana, Michigan, Illinois, and Wisconsin and still more recently in the case of Alaska, to establish a form of government bearing a much greater analogy to a British Crown colony than a republican state of America, and to vest the legislative power either in a governor and council, or a governor and judges, to be appointed by the President. It was not until they had attained a certain population that power was given them to organize a legislature by vote of the people. In all these cases, as well as in territories subsequently organized west of the Mississippi, Congress thought it necessary either to extend to Constitution and laws of the United States over them, or to declare that the inhabitants should be entitled to enjoy the right of trial by jury, of bail, and of the privilege of the writ of habeas corpus, as well as other privileges of the bill of rights.'" [Downes v. Bidwell, [182 U.S. 244](#) (1901)]

"The existing Confederation's great and fundamental defect is the principle of LEGISLATION for STATES in their COLLECTIVE CAPACITIES rather than for the INDIVIDUALS living in the States. Although this principle does not apply to all the powers delegated to the Union, it pervades those on which the effectiveness of the rest depends. **Except for the rule of apportionment, the United States has indefinite discretion to requisition men and money. But it has no authority to raise either directly from individual citizens of America.**" [Emph added]  
[Federalist Paper #15, 15 FP §6:]

"After further consideration, we adhere to that view and accordingly hold that the Sixteenth Amendment does not authorize or support the tax in question." [A direct tax on salary income of a federal judge]  
[Evans v. Gore, 253 U.S. 245 (1920)]

"State officials thus cannot consent to the enlargement of the powers of Congress beyond those enumerated in the Constitution."  
[New York v. United States, [505 U.S. 142](#); 112 S.Ct. 2408; 120 L.Ed.2d. 120 (1992)]

"The illegal we do immediately. The unconstitutional takes a bit longer."  
[Henry Kissinger]

"Since when is "public safety" the root password to the Constitution?"  
[C. D. Tavares]

"The Tenth Amendment is the foundation of the Constitution."  
[Thomas Jefferson]

"The capital and leading object of the constitution was to leave with the States all authorities which respected their own

citizens only, and to transfer to the United States those which respected citizens of foreign or other States; to make us several as to ourselves, but one as to all others."

[Thomas Jefferson in correspondence to Judge William Johnson, June 12, 1823.]

"But even if the Congress itself should make a law which is contrary to the Constitution, must the people obey it? - No."

[Arthur J. Stansbury, Author: "An Elementary Catechism on the Constitution" (1828)]

"Let virtue, honor, the love of liberty ... be ... the soul of this constitution, and it will become the source of great and extensive happiness to this and future generations. Vice, ignorance, and want of vigilance, will be the only enemies able to destroy it."

[John Jay, co-author of the Federalist Papers and, later, Chief Justice of the supreme Court]

"The Constitution is a written instrument. As such its meaning does not alter. That which it meant when adopted, it means now."

[United States Supreme Court in *South Carolina vs. United States* (1905)]

"Let it [the Constitution, etc.] be taught in schools, seminaries and in colleges; let it be written in primers, in spelling books and in almanacs; let it be preached from the pulpit, proclaimed in legislative halls, enforced in courts of justice. In short, let it become the political religion of the nation."

[President Abraham Lincoln]

"I do not believe there are more than a very limited number of persons, perhaps a hundred who really know what is in the Constitution of the United States."

[Dr. John J. Tigert, United States Commissioner of Education, October, 1924]

"Unless we put medical freedom into the Constitution, the time will come when medicine will organize into an undercover dictatorship. To restrict the art of healing to one class of men ... will constitute the Bastille of medical science. All such laws are un-American and despotic."

[Benjamin Rush, signer of Declaration of Independence]

"It is impossible for the man of pious reflection not to perceive in [the Constitution] a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical stages of the revolution."

[James Madison, Father of the Constitution]

"On every question of construction [of the Constitution] let us carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates, and instead of trying what meaning may be squeezed out of the text, or intended against it, conform to the probable one in which it was passed."

[Thomas Jefferson (1743-1826), letter to Judge William Johnson, (from Monticello, June 12, 1823)]

"Unless we put medical freedom into the Constitution, the time will come when medicine will organize into an undercover dictatorship to restrict the art of healing to one class of men and deny equal privileges to others: The Constitution of this Republic should make a special privilege for medical freedom as well as religious freedom."

[Dr. Benjamin Rush, signer of the Declaration of Independence]

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### 11.13 First Amendment and Freedom of Speech

**"...The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books. The right to use the press for expressing one's views is not to be measured by the protection afforded commercial handbills.** It should be remembered that the pamphlets of Thomas Paine were not distributed free of charge. It is plain that a religious organization needs funds to remain a going concern. But an itinerant evangelist, however misguided or intolerant he may be, does not become a mere book agent by selling the Bible or religious tracts to help defray his expenses or to sustain him. **Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way. . ."**

[Murdock v. Pennsylvania, 319 U.S. 105 (1943)]

"Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind." Talley v. California, 362 U.S. 60, 64 (1960). Great works of literature have frequently been produced by authors writing under assumed names. 4 Despite readers' curiosity and the public's interest in identifying the creator of a work of art, an author generally is free to decide whether or not to disclose her true identity. **The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible. Whatever the motivation may be, at least in the field of literary endeavor, the interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry.** 5 **Accordingly, an author's decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment.**

The freedom to publish anonymously extends beyond the literary realm. In Talley, the Court held that the First Amendment protects the distribution of unsigned handbills urging readers to boycott certain Los Angeles merchants who were allegedly engaging in discriminatory employment practices. 362 U.S. 60. Writing for the Court, Justice Black noted that "**[p]ersecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all.**" Id., at 64. Justice Black recalled England's abusive press licensing laws and seditious libel prosecutions, and he reminded us that even the arguments favoring the ratification of the Constitution advanced in the Federalist Papers were published under fictitious names. Id., at 64-65. On occasion, quite apart from any threat of persecution, an advocate may believe her ideas will be more persuasive if her readers are unaware of her identity. **Anonymity thereby provides a way for a writer who may be personally unpopular to ensure that readers will not prejudge her message simply because they do not like its proponent. Thus, even in the field of political rhetoric, where "the identity of the speaker is an important component of many attempts to persuade," City of Ladue v. Gilleo, 512 U.S. 43, 56 (1994) (footnote omitted), the most effective advocates have sometimes opted for anonymity.** The specific holding in Talley related to advocacy of an economic boycott, but the Court's reasoning embraced a respected tradition of anonymity in the advocacy of political causes. 6 This tradition is perhaps best exemplified by the secret ballot, the hard-won right to vote one's conscience without fear of retaliation."

[[McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 115 S.Ct. 1511, 131 L.Ed.2d. 426 \(1995\)](#)]

Moreover, **freedom of thought and expression "includes both the right to speak freely and the right to refrain from speaking at all."** [Wooley v. Maynard, 430 U.S. 705, 714, 97 S.Ct. 1428, 1435, 51 L.Ed.2d. 752 \(1977\)](#) (BURGER, C.J.). We do not suggest this right not to speak would sanction abuse of the copyright owner's monopoly as an instrument to suppress facts. But in the words of New York's Chief Judge Fuld:

"The essential thrust of the First Amendment is to prohibit improper restraints on the *voluntary* public expression of ideas; it shields the man who wants to speak or publish when others wish him to be quiet. There is necessarily, and within suitably defined areas, a concomitant freedom *not* to speak publicly, one which serves the same ultimate end as freedom of speech in its affirmative aspect." [Estate of Hemingway v. Random House, Inc., 23 N.Y.2d. 341, 348, 296 N.Y.S.2d. 771, 776, 244 N.E.2d. 250, 255 \(1968\).](#)

[[Harper & Row Publishers, Inc. v. Nation Enterprises, 471 U.S. 539, 559, 105 S.Ct. 2218, 85 L.Ed.2d. 588 \(1985\)](#)]

"Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent. Anonymity is a shield from the tyranny of the majority"

[[McIntyre v. Ohio Elections Commission, 514 U.S. 334, 115 S.Ct. 1511, 131 L.Ed.2d. 426 \(1995\)](#)]

**[9:525] Constitutional rights:** Irreparable injury is presumed where plaintiff's First Amendment rights are threatened:

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."

[[Elrod v. Burns \(1976\) 427 U.S. 347, 373, 96 S.Ct. 2673, 2690](#)]

[Rutter Group California Practice Guide: Civil Procedure Before Trial, paragraph 9:525, Rev 31 2005]

**Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind.**

Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all. The obnoxious press licensing law of England, which was also enforced on the Colonies was due in part to the knowledge that exposure of the names of printers, writers and distributors would lessen the circulation

of literature critical of the government. The old seditious libel cases in England show the lengths to which government had to go to find out who was responsible for books that were obnoxious [362 U.S. 60, 65] to the rulers. John Lilburne was whipped, pilloried and fined for refusing to answer questions designed to get evidence to convict him or someone else for the secret distribution of books in England. Two Puritan Ministers, John Penry and John Udal, were sentenced to death on charges that they were responsible for writing, printing or publishing books. 6 Before the Revolutionary War colonial patriots frequently had to conceal their authorship or distribution of literature that easily could have brought down on them prosecutions by English-controlled courts. Along about that time the Letters of Junius were written and the identity of their author is unknown to this day. 7 Even the Federalist Papers, written in favor of the adoption of our Constitution, were published under fictitious names. It is plain that anonymity has sometimes been assumed for the most constructive purposes.

We have recently had occasion to hold in two cases that there are times and circumstances when States may not compel members of groups engaged in the dissemination of ideas to be publicly identified. Bates v. Little Rock, 361 U.S. 516; N.A.A.C.P. v. Alabama, 357 U.S. 449, 462. The reason for those holdings was that identification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance. This broad Los Angeles ordinance is subject to the same infirmity. We hold that it, like the Griffin, Georgia, ordinance, is void on its face. [362 U.S. 60, 66] [Talley v. California, 362 U.S. 60 (1960)]

Just as there is freedom to speak, to associate, and to believe, so there is freedom not to speak, associate, or believe. "The right to speak and the right to refrain from speaking are complementary components of the broader concept of 'individual freedom of mind.'" Wooley v. Maynard (1977). Freedom of conscience dictates that no individual be forced to espouse ideological causes with which he disagrees: "[A]t the heart of the First Amendment is the notion that the individual should be free to believe as he will, and that in a free society one's beliefs should be shaped by his mind and by his conscience, rather than coerced by the State." Abood v. Detroit Bd. Of Educ. (1977)  
[First Amendment Law in a Nutshell, Second Edition, pp. 266-267, Jerome A Barron, West Group, 2000; ISBN 0-314-22677-X]

Like freedom of speech and a free press, the right of peaceable assembly was considered by the Framers of our Constitution to lie at the foundation of a government [361 U.S. 516, 523] based upon the consent of an informed citizenry - a government dedicated to the establishment of justice and the preservation of liberty. U.S. Const., Amend. I. And it is now beyond dispute that freedom of association for the purpose of advancing ideas and airing grievances is protected by the Due Process Clause of the Fourteenth Amendment from invasion by the States. De Jonge v. Oregon, 299 U.S. 353, 364; N.A.A.C.P. v. Alabama, 357 U.S. 449, 460.

**Freedoms such as these are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference. Grosjean v. American Press Co., 297 U.S. 233; Murdock v. Pennsylvania, 319 U.S. 105; American Communications Assn. v. Douds, 339 U.S. 382, 402; N.A.A.C.P. v. Alabama, supra; Smith v. California, 361 U.S. 147.** "It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute [an] effective . . . restraint on freedom of association. . . . This Court has recognized the vital relationship between freedom to associate and privacy in one's associations. . . . Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." N.A.A.C.P. v. Alabama, 357 U.S., at 462.

**On this record it sufficiently appears that compulsory disclosure of the membership lists of the local branches of the National Association for the Advancement of Colored People would work a significant interference with the freedom of association of their members.** 9 There was [361 U.S. 516, 524] substantial uncontroverted evidence that public identification of persons in the community as members of the organizations had been followed by harassment and threats of bodily harm. There was also evidence that fear of community hostility and economic reprisals that would follow public disclosure of the membership lists had discouraged new members from joining the organizations and induced former members to withdraw. This repressive effect, while in part the result of private attitudes and pressures, was brought to bear only after the exercise of governmental power had threatened to force disclosure of the members' names. N.A.A.C.P. v. Alabama, 357 U.S., at 463. Thus, the threat of substantial government encroachment upon important and traditional aspects of individual freedom is neither speculative nor remote.

Decision in this case must finally turn, therefore, on whether the cities as instrumentalities of the State have demonstrated so cogent an interest in obtaining and making public the membership lists of these organizations as to justify the substantial

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abridgment of associational freedom which such disclosures will effect. Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling. *N.A.A.C.P. v. Alabama*, [357 U.S. 449](#). See also *Jacobson v. Massachusetts*, [197 U.S. 11](#); *Schneider v. State*, [308 U.S. 147](#); *Cox v. New Hampshire*, [312 U.S. 569, 574](#); *Murdock v. Pennsylvania*, [319 U.S. 105](#); *Prince v. Massachusetts*, [321 U.S. 158](#); *Kovacs v. Cooper*, [336 U.S. 77](#).

[[Bates v. Little Rock](#), [361 U.S. 516 \(1960\)](#)]

Injury to official reputation affords no more warrant for repressing speech that would otherwise be free than does factual error. Where judicial officers are involved, this Court has held that concern for the dignity and [376 U.S. 254, 273] reputation of the courts does not justify the punishment as criminal contempt of criticism of the judge or his decision. *Bridges v. California*, [314 U.S. 252](#). This is true even though the utterance contains "half-truths" and "misinformation." *Pennekamp v. Florida*, [328 U.S. 331, 342](#), 343, n. 5, 345. Such repression can be justified, if at all, only by a clear and present danger of the obstruction of justice. See also *Craig v. Harney*, [331 U.S. 367](#); *Wood v. Georgia*, [370 U.S. 375](#). If judges are to be treated as "men of fortitude, able to thrive in a hardy climate," *Craig v. Harney*, *supra*, [331 U.S., at 376](#), surely the same must be true of other government officials, such as elected city commissioners. <sup>14</sup> Criticism of their official conduct does not lose its constitutional protection merely because it is effective criticism and hence diminishes their official reputations.

[[New York Times v. Sullivan](#), [376 U.S. 254 \(1964\)](#)]

[Elrod v. Burns](#), [427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d. 547 \(1976\)](#) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."); [Sammartano](#), [303 F.3d. at 973](#) ("[A] party seeking preliminary injunctive relief in a First Amendment context can establish irreparable injury sufficient to merit the grant of relief by demonstrating the existence of a colorable First Amendment claim." (internal quotation marks and citation omitted)). We agree that the existence of a colorable First Amendment claim in this case is sufficient to demonstrate irreparable injury. We therefore confine our review to determining whether Faith Center has demonstrated a likelihood of success on the merits of its First Amendment "as applied" challenge.<sup>FN7</sup>

[*Faith Center Church Evangelistic Ministries v. Glover*, [462 F.3d. 1194, \(2006\)](#)]

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us."

[[West Virginia State Board of Education v. Barnette](#), [319 U.S. 624, 63 S.Ct. 1178 \(1943\)](#)]

In the First Amendment, the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. **The press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government. And paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people and sending them off to distant lands to die of foreign fevers and foreign shot and shell.** In my view, far from deserving condemnation for their courageous reporting, the *New York Times*, the *Washington Post*, and other newspapers should be commended for serving the purpose that the Founding Fathers saw so clearly. In revealing the workings of government that led to the Vietnam war, the newspapers nobly did precisely that which the Founders hoped and trusted they would do.

[[New York Times Co. v. United States](#), [403 U.S. 713 \(1970\)](#)]

"The fact that conduct qua expression is "speech" does not mean that it can not at all be regulated or made a crime,<sup>83</sup> but does result in severe limitations on that process. The first amendment by its negative drafting ("Congress shall make no law . . . abridging the freedom of speech. . .") protects conduct qua expression *unless* it can be removed from that protection pursuant to some doctrine judicially recognized as consistent with the first amendment. **Thus, one who challenges the application of a statute to conduct which amounts to expression does not have the burden of bringing his expression within the first amendment. Rather the burden is on his opponent to show that such expression is within one of those narrow areas which by their relation to action partake of the essential qualities of action rather than expression and therefore are carved away from the first amendment.**"

<sup>83</sup> *Cox v. Louisiana*, [379 U.S. 536, 554, 85 S.Ct. 453, 13 L.Ed.2d. 471 \(1965\)](#).



As to any given statute then there is first the *threshold* question whether the statute relates to expression and is therefore governed by first amendment considerations. We look for that answer in reality and not solely in the words of the statute. Thus, if a statute in its impact has or can be expected substantially to involve expression, that must be sufficient, whether or not the words of the statute so provide. There is, secondly, the *removal question*, whether the expressive conduct is so related to action that the expression is therefore carved away from the protection of the first amendment.

[U.S. v. Dellinger, 472 F.2d. 340, (1972)]

Under our Constitution, free speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact. Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots. The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says. We properly read it to permit reasonable regulation of speech-connected activities in carefully restricted circumstances. But we do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom.

[Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503, 89 S.Ct. 733 (1969)]

"Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents. All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups . . . ."

The NAACP is not a conventional political party; but the litigation it assists, while serving to vindicate the legal rights of members of the American Negro community, at the same time and perhaps more importantly, makes possible the distinctive contribution of a minority group to the ideas and beliefs of our society. For such a group, association for litigation may be the most effective form of political association.

But it does not follow that this Court now has only a clear-cut task to decide whether the activities of the petitioner deemed unlawful by the Supreme Court of Appeals are constitutionally privileged. If the line drawn by the decree between the permitted and prohibited activities of the NAACP, its members and lawyers is an ambiguous one, we will not presume that the statute curtails constitutionally protected activity as little as possible. **For standards of permissible statutory vagueness are strict in the area of free expression. See Smith v. California, 361 U.S. 147, 151 ; Winters v. New York, 333 U.S. 507, 509 -510, 517-518; Herndon v. Lowry, 301 U.S. 242 ; Stromberg v. California, 283 U.S. 359 ; United States v. C. I. O., 335 U.S. 106, 142 (Rutledge, J., concurring). Furthermore, the instant decree may be invalid if it prohibits privileged exercises of First Amendment rights whether or not the record discloses that the petitioner has engaged in privileged conduct.** For in appraising a statute's inhibitory effect upon such rights, this Court has not hesitated to take into account possible applications of the statute in other factual contexts besides that at bar. Thornhill v. Alabama, [310 U.S. 88, 97-98](#); Winters v. New York, *supra*, at 518-520. Cf. Staub v. City of Baxley, [355 U.S. 313](#). It makes no difference that the instant case was not a criminal prosecution and not based on a refusal to comply with a licensing requirement. **The [371 U.S. 415, 433] objectionable quality of vagueness and overbreadth does not depend upon absence of fair notice to a criminally accused or upon unchanneled delegation of legislative powers, but upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application. 14 Cf. Marcus v. Search Warrant, 367 U.S. 717, 733 . These freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions. Cf. Smith v. California, *supra*, at 151-154; Speiser v. Randall, 357 U.S. 513, 526 . Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity. Cantwell v. Connecticut, 310 U.S. 296, 311 .**

[NAACP v. Button, 371 U.S. 415 (1963)]

"The presumption against prior restraints is heavier -- and the degree of protection broader -- than that against limits on expression imposed by criminal penalties. Behind the distinction is a theory deeply etched in our law: a free society prefers to punish the few who abuse rights of speech after they break the law than to throttle them and all others beforehand. It is always difficult to know in advance what an individual will say, and the line between legitimate and illegitimate speech is often so finely drawn that the risks of freewheeling censorship are formidable."

[Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 558-559 (1975)]

### ***Sovereignty and Freedom Points and Authorities***

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"It is now well established that the Constitution protects the right to receive information and ideas. 'This freedom [of speech and press] . . . necessarily [408 U.S. 753, 763] protects the right to receive . . .' *Martin v. City of Struthers*, [319 U.S. 141, 143](#) (1943) . . ."  
 [Stanley v. Georgia, [394 U.S. 557, 564](#) (1969)]

"We start with the premise that the rights to assemble peaceably and to petition for a redress of grievances are among the most precious of the liberties safeguarded by the Bill of Rights. These rights, moreover, are intimately connected, both in origin and in purpose, with the other First Amendment rights of free speech and free press. "All these, though not identical, are inseparable." *Thomas v. Collins*, [323 U.S. 516, 530](#) (1945). See *De Jonge v. Oregon*, [299 U.S. 353, 364](#) (1937). The First Amendment would, however, be a hollow promise if it left government free to destroy or erode its guarantees by indirect restraints so long as no law is passed that prohibits free speech, press, petition, or assembly as such. We have therefore repeatedly held that laws which actually affect the exercise of these vital rights cannot be sustained merely because they were enacted for the purpose of dealing with some evil within the State's legislative competence, or even because the laws do in fact provide a helpful means of dealing with such an evil. *Schneider v. State*, [308 U.S. 147](#) (1939); *Cantwell v. Connecticut*, [310 U.S. 296](#) (1940). "  
 [United Mine Workers v. Illinois Bar Association, 389 U.S. 217 (1967)]

"**The public employee** surely can associate and speak freely and petition openly, and he is protected by the First Amendment from retaliation for doing so. See *Pickering v. Board of Education*, [391 U.S. 563, 574-575](#) (1968); *Shelton v. Tucker*, [364 U.S. 479](#) (1960). But the First Amendment does not impose any affirmative obligation on the government to listen, to respond or, **in this context**, to recognize the association and bargain with it."  
 [Smith v. Arkansas State Highway Employees, [441 U.S. 463](#) (1979)]

One may not counsel or advise others to violate the law as it stands. Words are not only the keys of persuasion, but the triggers of action, and those which have no purport but to counsel the violation of law cannot by any latitude of interpretation be a part of that public opinion which is the final source of government in a democratic state. [341 U.S. 572]  
 [Judge Learned Hand in *Masses Publishing Co. v. Patten*, 244 F. 535, 540]

**Nearly half a century of review and refinement of Establishment Clause jurisprudence has distilled one clear understanding: Government may neither promote nor affiliate itself with any religious doctrine or organization, nor may it obtrude itself in the internal affairs of any religious institution.** The application of these principles to the present case mandates the decision reached today by the Court.

**The mixing of government and religion can be a threat to free government, even if no one is forced to participate.** When the government puts its imprimatur on a particular religion, it conveys a message of exclusion to all those who do not adhere to the favored beliefs. {9} A government cannot [505 U.S. 607] be premised on the belief that all persons are created equal when it asserts that God prefers some. Only "[a]nguish, hardship and bitter strife" result "when zealous religious groups struggl[e] with one another to obtain the Government's stamp of approval." *Engel*, 370 U.S. at 429; see also *Lemon*, 403 U.S. at 622-623; *Aguilar v. Felton*, 473 U.S. 402, 416 (1985) (Powell, J., concurring). {10} Such a struggle can "strain a political system to the breaking point." *Walz v. Tax Commission*, 397 U.S. 664, 694 (1970) (opinion of Harlan, J.).

**When the government arrogates to itself a role in religious affairs, it abandons its obligation as guarantor of democracy. Democracy requires the nourishment of dialogue and dissent, while religious faith puts its trust in an ultimate divine authority above all human deliberation. When the government appropriates religious truth, it "transforms rational debate into theological decree."** Nuechterlein, Note, *The Free Exercise Boundaries of Permissible Accommodation Under the Establishment Clause*, 99 *Yale L.J.* 1127, 1131 (1990). Those who disagree no longer are questioning the policy judgment of the elected but the rules of a higher authority who is beyond reproach. [505 U.S. 608]

Madison warned that government officials who would use religious authority to pursue secular ends

*exceed the commission from which they derive their authority, and are Tyrants. The People who submit to it are governed by laws made neither by themselves nor by an authority derived from them, and are slaves.*

Memorial and Remonstrance against Religious Assessments (1785) in *The Complete Madison* 300 (S. Padover, ed.1953). Democratic government will not last long when proclamation replaces persuasion as the medium of political exchange.

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Likewise, we have recognized that "[r]eligion flourishes in greater purity, without than with the aid of Gov[ernment]."<sup>{11}</sup> Id. at 309. To "make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary," *Zorach v. Clauson*, 343 U.S. 306, 313 (1952), the government must not align itself with any one of them. **When the government favors a particular religion or sect, the disadvantage to all others is obvious, but even the favored religion may fear being "taint[ed]" . . . with a corrosive secularism.** *Grand Rapids School Dist. v. Ball*, 473 U.S. 373, 385 (1985). **The favored religion may be compromised as political figures reshape the religion's beliefs for their own purposes; it may be reformed as government largesse brings government regulation.**<sup>{12}</sup> Keeping religion in the hands of private groups minimizes state intrusion on religious choice, and best enables each religion to "flourish according to the [505 U.S. 609] zeal of its adherents and the appeal of its dogma." *Zorach*, 343 U.S. at 313.

It is these understandings and fears that underlie our Establishment Clause jurisprudence. **We have believed that religious freedom cannot exist in the absence of a free democratic government, and that such a government cannot endure when there is fusion between religion and the political regime.** We have believed that religious freedom cannot thrive in the absence of a vibrant religious community, and that such a community cannot prosper when it is bound to the secular. And we have believed that these were the animating principles behind the adoption of the Establishment Clause. To that end, our cases have prohibited government endorsement of religion, its sponsorship, and active involvement in religion, whether or not citizens were coerced to conform.

[[Lee v. Weisman, 505 U.S. 577 \(1992\)](#)]

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This emphasis on equal treatment is, I think, an eminently sound approach. In my view, the Religion Clauses -- the Free Exercise Clause, the Establishment Clause, the Religious Test Clause, Art. VI, cl. 3, and the Equal Protection Clause as applied to religion -- all speak with one voice on this point: absent the most unusual circumstances, one's religion ought not affect one's legal rights or duties or benefits. As I have previously noted,

the Establishment Clause is infringed when the government makes adherence to religion relevant to a person's standing in the political community.

*Wallace v. Jaffree*, 472 U.S. 38, 69 (1985) (O'CONNOR, J., concurring in judgment).

[[Board of Education v. Grumet, 512 U.S. 687 \(1994\)](#)]

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An order issued in the area of First Amendment rights must be couched in the narrowest terms that will accomplish the pinpointed objective permitted by constitutional mandate and the essential needs of the public order. In this sensitive field, the State may not employ [393 U.S. 175, 184] "means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." *Shelton v. Tucker*, 364 U.S. 479, 488 (1960). In other words, the order must be tailored as precisely as possible to the exact needs of the case. The participation of both sides is necessary for this purpose. <sup>11</sup> Certainly, the failure to invite participation of the party seeking to exercise First Amendment rights reduces the possibility of a narrowly drawn order, and substantially imperils the protection which the Amendment seeks to assure.

[[Carroll v. Princess Anne, 393 U.S. 175 \(1968\)](#)]

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**The idea that civil obligations are subordinate to religious duty is consonant with the notion that government must accommodate, where possible, those religious practices that conflict with civil law.**

Second, all agreed that government interference in religious practice was not to be lightly countenanced. Adams & Emmerich 31. Finally, **all shared the conviction that "true religion and good morals are the only solid foundation of public liberty and happiness."** Curry, *The First Freedoms*, at 219 (quoting Continental Congress); see Adams & Emmerich 72 ("**The Founders ... acknowledged that the republic rested largely on moral principles derived from religion**"). To give meaning to these ideas-particularly in a society characterized by religious pluralism and pervasive regulation-there will be times when the Constitution requires government to accommodate the needs of those citizens whose religious practices conflict with generally applicable law.

[*City of Boerne v. Flores*, 521 U.S. 507, 117 S.Ct. 2157 (U.S.Tex.,1997)]

**11.14 Taxation<sup>84</sup>**

“Indeed, in a free government almost all other rights would become worthless if the government possessed power over the private fortune of every citizen.”

[John Marshall; SOURCE: [http://www.searchquotes.com/quotes/author/John\\_Marshall/](http://www.searchquotes.com/quotes/author/John_Marshall/)]

“**Direct taxes bear immediately upon persons, upon the possession and enjoyment of rights;** indirect taxes are levied upon the happening of an event as an exchange.”

[Knowlton v. Moore, 178 U.S. 41 (1900)]

“**A right common in every citizen such as the right to own property or to engage in business of a character not requiring regulation CANNOT,** however, be taxed as a special franchise by first prohibiting its exercise and then permitting its enjoyment upon the payment of a certain sum of money.”

[Stevens v. State, 2 Ark. 291; 35 Am. Dec. 72, Spring Val. Water Works v. Barber, 99 Cal. 36, 33 Pac. 735, 21 L.R.A. 416. Note 57 L.R.A. 416]

“M. Thiers, the great French statesman, says, ‘a tax paid by a citizen to his government is like a premium paid by the insured to the insurance company, and should be in proportion to the amount of property insured in one case and the other to the amount of property protected or defended [or managed] by the government.’”

[44 Cong.Rec. 4959 (1909)]

"It is the duty of a good shepherd to shear his sheep, not to skin them."

[Tiberius Caesar]

"It's a game. We [tax lawyers] teach the rich how to play it so they can stay rich-- and the IRS keeps changing the rules so we can keep getting rich teaching them."

[John Grisham]

“Keeping in mind the well-settled rule that **the citizen is exempt from taxation unless the same is imposed by clear and unequivocal language, and that where the construction of a tax law is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid.**”

[Spreckels Sugar Refining Co. v. McClain, 192 U.S. 397 (1904)]

“The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws...The distinction between persons and things within the scope of the revenue laws and those without is vital.”

[Long v. Rasmussen, 281 F. 236 @ 238(1922)]

“Revenue Laws relate to taxpayers [officers, employees, and elected officials of the Federal Government] and not to non-taxpayers [American Citizens/American nationals not subject to the exclusive jurisdiction of the Federal Government]. The latter are without their scope. No procedures are prescribed for non-taxpayers and no attempt is made to annul any of their Rights or Remedies in due course of law.”

[Economy Plumbing & Heating v. U.S., 470 F.2d. 585 (1972)]

“In the **interpretation of statutes levying taxes** it is the established rule **not to extend their provisions, by implication,** beyond the clear import of the language used, or to enlarge their operations so as to embrace matters **not specifically pointed out.** In case of doubt they are construed most strongly against the government, and **in favor of the citizen.**”

[Gould v. Gould, 245 U.S. 151 (1917)]

“Even if the judgment is deemed to be colored by the nature of the obligation whose validity it establishes, and we are free to re-examine it, and, if we find it to be based on an obligation penal in character, to refuse to enforce it outside the state where rendered, see Wisconsin v. Pelican Insurance Co., [127 U.S. 265](#), 292, et seq. 8 S.Ct. 1370, compare Fauntleroy v.

<sup>84</sup> For detailed information about taxation, see: *Taxation Topic*, Family Guardian Fellowship; <http://famguardian.org/Subjects/Taxes/taxes.htm>.

Lum, [210 U.S. 230](#), 28 S.Ct. 641, **still the obligation to pay taxes is not penal. It is a statutory liability, quasi contractual in nature, enforceable, if there is no exclusive statutory remedy, in the civil courts by the common-law action of debt or indebitatus assumpsit.** *United States v. Chamberlin*, [219 U.S. 250](#), 31 S.Ct. 155; *Price v. United States*, [269 U.S. 492](#), 46 S.Ct. 180; *Dollar Savings Bank v. United States*, 19 Wall. 227; and see *Stockwell v. United States*, 13 Wall. 531, 542; *Meredith v. United States*, 13 Pet. 486, 493. **This was the rule established in the English courts before the Declaration of Independence.** *Attorney General v. Weeks*, Bunbury's Exch. Rep. 223; *Attorney General v. Jewers and Batty*, Bunbury's Exch. Rep. 225; *Attorney General v. Hatton*, Bunbury's Exch. Rep. [296 U.S. 268, 272] 262; *Attorney General v. \_\_\_*, 2 Ans.Rep. 558; see *Comyn's Digest* (Title 'Dett, A, 9); 1 *Chitty on Pleading*, 123; cf. *Attorney General v. Sewell*, 4 M.&W. 77. “

[*Milwaukee v. White*, [296 U.S. 268](#) (1935)]

"Taxes are the sinews of the state."

[Cicero]

“The individual, unlike the corporation, **cannot be taxed for the mere privilege of existing.** The corporation is an artificial entity which owes its existence and charter power to the State, but the individual’s right to live and own property are natural rights for the enjoyment of which **an excise cannot be imposed.**”

[*Redfield v. Fisher*, 292 Oregon 814, 817]

"Let me point this out now. Your income tax is 100 percent voluntary tax, and your liquor tax is 100 percent enforced tax. Now, the situation is as different as night and day. Consequently, your same rules just will not apply..."

[Dwight E. Avis, former head of the Alcohol and Tobacco Tax Division of the IRS, testifying before a House Ways and Means subcommittee in 1953]

“**The great principle is this: because the constitution will not permit a state to destroy, it will not permit a law involving the power to destroy.** [ . . . ] **They decided against the tax; because the subject had been placed beyond the power of the states, by the constitution. They decided, not on account of the subject, but on account of the power that protected it; they decided that a prohibition against destruction was a prohibition against a law involving the power of destruction.**”

[*Providence Bank v. Billings*, 29 U.S. 514 (1830)]

"The provisions of the sixteenth amendment **conferred no new power of taxation**, but simply prohibited [Congress’ original power to tax incomes] from being taken out of the category of **indirect taxation, to which it inherently belonged**, and being placed in the category of direct taxation subject to apportionment."

[*Stanton v. Baltic Mining Co.*, 240 U.S. 103 (1916)]

"**The Sixteenth Amendment...** has no real bearing and may be put out of view. As pointed out in recent decisions, it **does not extend the taxing power to new or excepted subjects...**"

[*William E. Peck & Co. v. Lowe*, [247 U.S. 165](#) (1918)]

“**The States, after they formed the Union, continued to have the same range of taxing power which they had before, barring only duties affecting exports, imports, and on tonnage.** 2 Congress, on the other hand, to lay taxes in order 'to pay the Debts and provide for the common Defence and general Welfare of the United States', Art. 1, Sec. 8, U.S.C.A.Const., can reach every person and every dollar in the land with due regard to Constitutional limitations as to the method of laying taxes.”

[*Graves v. People of State of New York*, [306 U.S. 466](#) (1939)]

“Grant the validity of this law, and all that Congress would need to do, hereafter, in seeking to take over to its control any one of the great number of subjects of public interest, jurisdiction of which the states have never parted with, and which are reserved to them by the **Tenth Amendment**, would be to enact a detailed measure of complete regulation of the subject and **enforce it by a so-called tax** upon departures from it. **To give such magic to the word 'tax' would be to break down all constitutional limitation of the powers of Congress** and completely wipe out the sovereignty of the states.”

[*Bailey v. Drexel Furniture Co.*, 259 U.S. 20 (1922)]

“Rules contained in the Internal Revenue Manual, even if they were codified in Code of Federal Regulations, did not have the force and effect of law, and therefore, district court, in Government’s action to collect assessment, correctly precluded defendant from introducing evidence concerned these provisions.”

[*United States v. Horne*, 714 F.2d. 206 (1983)]



"In *Calder v. Bull*, which was here in 1798, **Mr. Justice Chase said, that there were acts which the Federal and State legislatures could not do without exceeding their authority [from GOD!], and among them he mentioned a law which punished a citizen for an innocent act; a law that destroyed or impaired the lawful private [labor] contracts [and labor compensation, e.g. earnings from employment through compelled W-4 withholding] of citizens; a law that made a man judge in his own case; and a law that took the property from A [the worker], and gave it to B [the government or another citizen, such as through social welfare programs]. 'It is against all reason and justice, he added, 'for a people to intrust a legislature with such powers, and therefore it cannot be presumed that they have done it. They may command what is right and prohibit what is wrong; but they cannot change innocence into guilt, or punish innocence as a crime, or violate the right of an antecedent lawful private [employment] contract [by compelling W-4 withholding, for instance], or the right of private property. To maintain that a Federal or State legislature possesses such powers [of THEFT!] if they had not been expressly restrained, would, in my opinion, be a political heresy altogether inadmissible in all free republican governments.'** 3 Dall. 388."

[[Sinking Fund Cases, 99 U.S. 700 \(1878\)](#)]

"**The grant of the power to lay and collect taxes is, like the power to regulate commerce, made in general terms, and has never been understood to interfere with the exercise of the same power by the State;** and hence has been drawn an argument which has been applied to the question under consideration. But the two grants are not, it is conceived, similar in their terms or their nature. **Although many of the powers formerly [22 U.S. 1, 199] exercised by the States, are transferred to the government of the Union, yet the State governments remain, and constitute a most important part of our system.** The power of taxation is indispensable to their existence, and is a power which, in its own nature, is capable of residing in, and being exercised by, different authorities at the same time. We are accustomed to see it placed, for different purposes, in different hands. Taxation is the simple operation of taking small portions from a perpetually accumulating mass, susceptible of almost infinite division; and a power in one to take what is necessary for certain purposes, is not, in its nature, incompatible with a power in another to take what is necessary for other purposes. **Congress is authorized to lay and collect taxes, &c. to pay the debts, and provide for the common defence and general welfare of the United States. This does not interfere with the power of the States to tax for the support of their own governments; nor is the exercise of that power by the States, an exercise of any portion of the power that is granted to the United States. In imposing taxes for State purposes, they are not doing what Congress is empowered to do. Congress is not empowered to tax for those purposes which are within the exclusive province of the States. When, then, each government exercises the power of taxation, neither is exercising the power of the other. But, when a State proceeds to regulate commerce with foreign nations, or among the several States, it is exercising the very power that is granted to Congress, [22 U.S. 1, 200] and is doing the very thing which Congress is authorized to do. There is no analogy, then, between the power of taxation and the power of regulating commerce."**

[*Gibbons v. Ogden*, [22 U.S. 1](#) (1824)]

"The difficulties arising out of our dual form of government and the opportunities for differing opinions concerning the relative rights of state and national governments are many; **but for a very long time this court has steadfastly adhered to the doctrine that the taxing power of Congress does not extend to the states or their political subdivisions.** The same basic reasoning which leads to that conclusion, we think, requires like limitation upon the power which springs from the bankruptcy clause. *United States v. Butler*, supra."

[*Ashton v. Cameron County Water Improvement District No. 1*, 298 U.S. 513, 56 S.Ct. 892 (1936)]

"We must reject in this case, as we have rejected in cases arising under the Corporation Excise Tax Act of 1909 (*Doyle, Collector, v. Mitchell Brothers Co.*, 247 U.S. 179, 38 Sup. Ct. 467, 62 L. Ed.--), the broad contention submitted on behalf of the government that all receipts—everything that comes in—are income within the proper definition of the term 'gross income, and that the entire proceeds of a conversion of capital assets, in whatever form and under whatever circumstances accomplished, should be treated as gross income. Certainly the term 'income' has no broader meaning in the 1913 act than in that of 1909 (see *Stratton's Independence v. Howbert*, 231 U.S. 399, 416, 417 S., 34 Sup.Ct. 136), and for the present purpose we assume there is not difference in its meaning as used in the two acts."

[*Southern Pacific Co. v. Lowe*, 247 U.S. 330, 335, 38 S.Ct. 540 (1918)]

"Here I close my opinion. I could not say less in view of questions of such gravity that they go down to the **very foundations of the government**. If the provisions of the Constitution can be set aside by an act of Congress, where is the course of usurpation to end?"

The present **assault upon capital** is but the beginning. **It will be but the stepping stone to others larger and more sweeping**, until our political contest will become war of the poor against the rich; a war of growing intensity and bitterness."

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[Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 158 U.S. 601 (1895).]

**"Thus, the Court has frequently held that domicile or residence, more substantial than mere presence in transit or sojourn, is an adequate basis for taxation, including income, property, and death taxes. Since the Fourteenth Amendment makes one a citizen of the state wherein he resides, the fact of residence creates universally reciprocal duties of protection by the state and of allegiance and support by the citizen. The latter obviously includes a duty to pay taxes, and their nature and measure is largely a political matter.** Of course, the situs of property may tax it regardless of the citizenship, domicile, or residence of the owner, the most obvious illustration being a tax on realty laid by the state in which the realty is located."

[Miller Brothers Co. v. Maryland, [347 U.S. 340](#) (1954)]

"...Whatever difficulty there may be about a **precise scientific definition of 'income**, it imports, as used here, something entirely distinct from principal or capital either as a subject of taxation or as a measure of the tax; **conveying rather the idea of gain or increase arising from corporate activities.**"

[Doyle v. Mitchell Brothers Co., 247 U.S. 179, 185, 38 S.Ct. 467 (1918)]

"A fine is a tax for doing something wrong. A tax is a fine for doing something right."

[Unknown]

"To steal from one person is theft. To steal from many is taxation."

[Jeff Daiell]

"It's getting so that children have to be educated to realize that 'Damn' and 'Taxes' are two separate words."

[Unknown]

"Where there's a will, there's an Inheritance Tax."

[Unknown]

"For every benefit you receive a tax is levied."

[Ralph Waldo Emerson]

"Bachelors should be heavily taxed. It is not fair that some men should be happier than others."

[Oscar Wilde]

"They want you to be worn down by taxes until you are dependent and helpless. When you subsidize poverty and failure, you get more of both."

[James Dale Davidson]

"Income has been taken to mean the same thing as used in the Corporation Excise Tax Act of 1909 (36 Stat. 112) in the 16<sup>th</sup> Amendment, and in the various revenue acts subsequently passed."

[Bowers v. Kerbaugh-Empire Co., [271 U.S. 170](#), 174, (1926)]

"As repeatedly pointed out by this court, the Corporation Tax Law of 1909..**imposed an excise or privilege tax, and not in any sense, a tax upon property or upon income merely as income.** It was enacted in view of the decision of Pollock v. Farmers' Loan & T. Co., 157 U.S. 429, 29 L.Ed. 759, 15 Sup.St.Rep. 673, 158 U.S. 601, 39 L.Ed. 1108, 15 Sup. Ct. Rep. 912, which held the income tax provisions of a previous law to be unconstitutional because amounting in effect to a direct tax upon property within the meaning of the Constitution, and because not apportioned in the manner required by that instrument."

[U.S. v. Whiteridge, 231 U.S. 144, 34 S.Sup.Ct. 24 (1913)]

"An income tax is neither a property tax nor a tax on occupations of common right, but is an EXCISE tax...The legislature may declare as 'privileged' and tax as such for state revenue, those pursuits not matters of common right, but it has no power to declare as a 'privilege' and tax for revenue purposes, occupations that are of common right."

[Simms v. Ahrens, 271 S.W. 720]

"Our system of taxation is based upon voluntary assessment and payment, not distraint."

[Flora v. U.S., 362 U.S. 145 (1960)]

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### ***Sovereignty and Freedom Points and Authorities***

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"I think the terror most people are concerned with is the IRS."  
[Malcolm Forbes, when asked if he was afraid of terrorism]

"Our forefathers made one mistake. What they should have fought for was representation without taxation."  
[Fletcher Knebel, historian]

"I guess you will have to go to jail. If that is the result of not understanding the Income Tax Law I shall meet you there. We shall have a merry, merry time, for all our friends will be there. It will be an intellectual center, for no one understands the Income Tax Law except persons who have not sufficient intelligence to understand the questions that arise under it."  
[Senator Elihu Root, 1913 debate regarding the first eighty-eight page income tax act]

"Considering that senior officials at the Internal Revenue Service are fully aware of the fact that there is no law currently in existence making a U.S. citizen liable for or required to pay either the income tax or the social security employment tax, only a truly generous citizen would, upon discovering this, continue to voluntarily donate these taxes to the government by allowing them to be withheld from his paycheck on a 100% voluntary W-4 withholding agreement. But, then again, the IRS would be dead in the water without the "voluntary (and docile) compliance" of employers and employees and has said so all along."  
[William Cash, IRS Senior Manager, <http://www.irs.faithweb.com>]

"As stated by Judge [157 U.S. 429, 602] Cooley in his work on the Principles of Constitutional Law: 'The power to tax, whether by the United States or by the states, is to be construed in the light of and limited by the fact that the states and the Union are inseparable, and that the constitution contemplates the perpetual maintenance of each with all its constitutional powers, unembarrassed and unimpaired by any action of the other. The taxing power of the federal government does not therefore extend to the means or agencies through or by the employment of which the states perform their essential functions; since, if these were within its reach, they might be embarrassed, and perhaps wholly paralyzed, by the burdens it should impose. 'That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, in respect to those very measures, is declared to be supreme over that which exerts the control,-are propositions not to be denied.' It is true that taxation does not necessarily and unavoidably destroy, and that to carry it to the excess of destruction would be an abuse not to be anticipated; but the very power would take from the states a portion of their intended liberty of independent action within the sphere of their powers, and would constitute to the state a perpetual danger of embarrassment and possible annihilation. The constitution contemplates no such shackles upon state powers, and by implication forbids them.'"  
[Pollock v. Farmers' Loan and Trust, 157 U.S. 429 (1895)]

"The difference between death and taxes is death doesn't get worse every time Congress meets."  
[Will Rogers, 1920's]

"In a recent conversation with an official at the Internal Revenue Service, I was amazed when he told me that 'If the taxpayers of this country ever discover that the IRS operates on 90% bluff, the entire system will collapse!'"  
[Henry Bellmon, U.S. Senator (1969)]

"... the key question is: can we define 'income' in a fair and reasonably straightforward manner? Unfortunately, we have not yet succeeded in doing so."  
[Shirley Peterson, former IRS Commissioner, April 1993]

"Our federal tax system is, in short, utterly impossible, utterly unjust and completely counterproductive ... [it] reeks with injustice and is fundamentally un-American ... it has earned a rebellion and it's time we rebelled."  
[President Ronald Reagan, May 1983, Williamsburg, VA]

"If no information or return is filed, [the] Internal Revenue Service cannot assess you."  
[Gary Makovski, Special IRS Agent, testifying under oath in U.S. v. Lloyd]

"Our tax system is based upon voluntary assessment and payment, not upon distraint."  
[United States Supreme Court, in *Flora v. United States*]

"Our tax system is based on individual self-assessment and voluntary compliance."  
[Mortimer Caplin, former Commissioner of Internal Revenue, Internal Revenue Audit Manual (1975)]

"The United States has a system of taxation by confession."  
[Hugo Black, Supreme Court Justice, in U.S. v. Kahriger]

"Only the rare taxpayer would be likely to know that he could refuse to produce his records to IRS agents ... Who would believe the ironic truth that the cooperative taxpayer fares much worse than the individual who relies upon his constitutional rights."  
[U.S. Federal Judge Cummings, in U.S. v. Dickerson (7th Circuit 1969)]

"Let me point this out now: Your income tax is 100 percent voluntary tax, and your liquor tax is 100 percent enforced tax. Now, the situation is as different as night and day. Consequently, your same rules just will not apply ...."  
[Dwight E. Avis, former head of the Alcohol and Tobacco Tax Division of the IRS, testifying before a House Ways and Means subcommittee in 1953; <http://sedm.org/Exhibits/EX1016.pdf>]

"The purpose of the IRS is to collect the proper amount of tax revenues at the least cost to the public, and in a manner that warrants the highest degree of public confidence in our integrity, efficiency and fairness. To achieve that purpose, we will encourage and achieve the highest possible degree of voluntary compliance in accordance with the tax laws and regulations ...."  
[Internal Revenue Manual, Chapter 1100, section 1111.1]

"A hand from Washington will be stretched out and placed upon every man's business; the eye of the federal inspector will be in every man's counting house....The law will of necessity have inquisitorial features, it will provide penalties, it will create complicated machinery. Under it, men will be hauled into courts distant from their homes. Heavy fines imposed by distant and unfamiliar tribunals will constantly menace the taxpayer. An army of federal inspectors, spies, and detectives will descend upon the state."  
[Virginia House Speaker Richard E. Byrd, 1910, predicting what would happen if a federal income tax became law]

"Fear is the key element for the IRS in achieving its mission. Without fear, the IRS would have a difficult time maintaining our so-called system of voluntary compliance ...". "Given the opportunity, the IRS will take the easy way out and grab whatever it can ... the IRS does not really care about you and what your future ... may be."  
[Santo Presti, former IRS Criminal Investigation Agent and author of "IRS In Action"]

"The IRS is an extraordinary example of the end justifying the means. The means of this agency is growth. It is interesting that the revenue officers within the IRS refer to taxpayers as 'inventory'. The IRS embodies the political realities of the selfish human desire to dominate others. Thus the end of this gigantic pretense of officialdom is power, pure and simple. The meek may inherit the earth, but they will never receive a promotion in an agency where efficiency is measured by the number of seizures of taxpayers' property and by the number of citizens and businesses driven into bankruptcy."  
[George Hansen, Congressman and author of "To Harass Our People"]

"I have sat on many a promotion panel where the first question of panel members was 'How many seizures have you made?'.  
[Joseph R. Smith, eighteen-year IRS agent, testifying before Congress]

"The agency that is so strict on the way Americans keep their books cannot even pass a financial audit."  
[Ted Stevens, Republican Senator from Alaska]

"Eight decades of amendments ... to [the] code have produced a virtually impenetrable maze ... The rules are unintelligible to most citizens ... The rules are equally mysterious to many government employees who are charged with administering and enforcing the law."  
[Shirley Peterson, former IRS Commissioner, April 14, 1993 at Southern Methodist University]

"... some techniques can be used only in connection with a full-scale program due to the nature of the tax situation and the need to avoid unnecessary taxpayer reaction. An example would be income tax returns compliance efforts aimed at the nonbusiness taxpayer."  
[Internal Revenue Service Manual, section 5221 "Returns Compliance Programs"]

"This [audit] was made extremely difficult because [IRS] existing systems were not designed to provide ... reliable financial information ... on their operations."

[Comptroller Bowsher, Government Accounting Office, on the first-ever audit of the IRS in 1993]

"The wages of the average American worker, after inflation and taxes, have decreased 17% since 1973, the only Western industrial nation to so suffer."

[Martin Gross, author of "The Tax Racket: Government Extortion From A to Z"]

"The Constitution prohibits any direct tax, unless in proportion to numbers as ascertained by the census ... [and] ... prohibits Congress from laying a direct tax on the revenue from property of the citizen without regard to state lines ...."

[United States Supreme Court in *Pollack v. Farmers' Loan & Trust Company* (1895)]

"... [the 16th Amendment] conferred no new power of taxation ... [and] ... prohibited the ... power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged ...."

[United States Supreme Court in *Stanton v. Baltic Mining* (1916)]

"To lay with one hand the power of government on the property of the citizen, and with the other to bestow it on favored individuals ... is none the less robbery because it is ... called taxation."

[United States Supreme Court in *Loan Association v. Topeka* (1874)]

"In the interpretation of statutes levying taxes it is the established rule not to extend their provisions by implication beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out. In case of doubt, they are construed most strongly against the government and in favor of the citizen."

[U.S. Supreme Court in *Gould v. Gould*, 245 U.S. 151]

"... 100% of what is collected is absorbed solely by interest on the Federal Debt ... all individual income tax revenues are gone before one nickel is spent on the services taxpayers expect from government."

[Grace Commission report submitted to President Ronald Reagan on January 15, 1984]

"I am not among those who fear the people. They, and not the rich, are our dependence for continued freedom. And to preserve their independence, we must not let our rulers load us with perpetual debt. We must make our election between economy and liberty, or profusion and servitude. If we run into such debts, as that we must be taxed in our meat and our drink, in our necessities and our comforts, in our labors and our amusements, for our callings and our creeds, as the people of England are, our people, like them, must come to labor sixteen hours in the twenty-four, give the earnings of fifteen of those to the government for their debts and daily expenses; and the sixteenth being insufficient to afford us bread, we must live, as they do now, on oatmeal and potatoes; have no time to think, no means of calling the mismanagers to account; but be glad to obtain subsistence by hiring ourselves to rivet their chains on the necks of our fellow-sufferers."

[Thomas Jefferson, letter to Samuel Kercheval, July 12, 1816]

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### 11.15 Sovereignty and Separation of Powers<sup>85</sup>

"We of this mighty western Republic have to grapple with the dangers that spring from popular self-government tried on a scale incomparably vaster than ever before in the history of mankind, and from an abounding material prosperity greater also than anything which the world has hitherto seen.

As regards the first set of dangers, it behooves us to remember that men can never escape being governed. Either they must govern themselves or they must submit to being governed by others. If from lawlessness or fickleness, from folly or self-indulgence, they refuse to govern themselves then most assuredly in the end they will have to be governed from the outside. They can prevent the need of government from without only by showing they possess the power of government from within. A sovereign cannot make excuses for his failures; a sovereign must accept the responsibility for the exercise of power that

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<sup>85</sup> Additional information about sovereignty can be found at:

1. *Sovereignty and Freedom Topic*, Family Guardian Fellowship; <http://famguardian.org/Subjects/Freedom/Freedom.htm>.

2. Sovereignty Education and Defense Ministry (SEDM); <http://sedm.org>



inheres in him; and where, as is true in our Republic, the people are sovereign, then the people must show a sober understanding and a sane and steadfast purpose if they are to preserve that orderly liberty upon which as a foundation every republic must rest.”

[President Theodore Roosevelt; Opening of the Jamestown Exposition; Norfolk, VA, April 26, 1907]

“It will be sufficient to observe briefly that the **sovereignities** in Europe, and particularly in England, **exist on feudal principles**. That system considers the Prince as the sovereign, and the people as his subjects; it regards his person as the object of allegiance, and excludes the idea of his being on an equal footing with a subject, either in a court of justice or elsewhere. That system contemplates him as being the fountain of honor and authority, and from his grace and grant derives all franchises, immunities and privileges; it is easy to perceive that such a sovereign could not be amenable to a court of justice, or subjected to judicial controul and actual constraint. It was of necessity, therefore, that suability became incompatible with such sovereignty. Besides, the Prince having all the Executive powers, the judgment of the courts would, in fact, be only monitory, not mandatory to him, and a capacity to be advised is a distinct thing from a capacity to be sued. The same feudal ideas run through all their jurisprudence, and constantly remind us of the distinction between the Prince and the subject. No such ideas obtain here; **at the Revolution, the sovereignty devolved on the people, and they are truly the sovereigns of the country**, but they are sovereigns without subjects (unless the African slaves among us may be so called), and have none to govern but themselves; the citizens of America are equal as fellow citizens, and as joint tenants in the sovereignty.”

[Chisholm v. Georgia, 2 U.S. 419, 471-472 (1793) (Jay, Chief Justice)]

“I shall notice one idea more in defense of the act, and only one. It is the appeal made in the preamble to the sovereign power of the State. I do not admit that there is any sovereign power, in the literal meaning of the terms, to be found anywhere in our system of government. The people possess, as it regards their governments, a revolutionary sovereign power: but so long as the governments remain which they have instituted, to establish justice and —to secure the enjoyment of the rights of life, liberty and property, and of pursuing happiness,” sovereign power, or, which I take to be the same thing, power without limitation, is nowhere to be found in any branch or department of the government, either state or national, nor indeed of all of them put together. The Constitution of the United States expressly forbids the passage of any bill of attainder, or ex post facto law, or the granting of any title of nobility, by the general or the state government. The same instrument likewise limits the powers of the general government to those expressly granted, and places many other restrictions upon the power of state governments. The constitutions of the different States likewise contain many prohibitions and limitations of power. The tenth article of our State constitution, consisting of twenty-eight sections, is made up of restrictions and prohibitions upon legislative and judicial power, and concludes with the emphatic declaration, —that everything in this article is excerpted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto, or contrary to this constitution, shall be void.”

“These numerous limitations and restrictions prove that the idea of sovereignty in government was not tolerated by the wise founders of our systems. ‘Sovereign State’ are cabalistic words not understood by the disciple of liberty who has been in our constitutional schools. It is an appropriate phrase when applied to an absolute despotism. I firmly believe that the idea of sovereign power in the government of a republic is incompatible with the existence and permanent foundation of civil liberty and the rights of property. The history of man in all ages shown the necessity of the strongest checks upon power, whether it be exercised by one man, a few, or many. Our revolution broke up the foundations of sovereignty in government, and our written constitutions have carefully guarded against the baneful influence of such an idea henceforth and forever. I cannot, therefore, recognize the appeal to the sovereignty of the States as a justification of the act in question.¶ - Id. at 500-501 (**Underwood, J.**)”

[*Gaines v. Buford*, 31 Ky. (1 Dana) 481 (1833)]

“The idea of sovereignty, which obtained at the time of the Revolution, regarded as the essential attributes of sovereignty, inequality and unlimited power. Inequality and personal superiority were repudiated by the Declaration of Independence. What was substituted in its stead? Certainly, so far as this question is concerned, they acted upon an entirely different principle. I may add, upon one never before practiced in any country, viz.: The one just mentioned, that power is never to be exercised as of personal right. The doctrine of representation was not of recent origin: **the doctrine of consent was at the basis of English law, although Blackstone seems to have omitted to notice the decisions of the judges of England upon those questions:**” *Middleton v. Cross*, 2 Atkyns, 65; *Matthews v. Burdette*, 2 Salk. 672.

[James DeWitt Andrews, *The Works of James Wilson* 569 (Vol. II, 1896)]

“Nothing in the world can take the place of persistence. Talent will not: nothing is more common than unsuccessful men with talent. Genius will not: unrewarded genius is almost a proverb. Education alone will not: the world is full of educated derelicts. Persistence and determination alone are omnipotent.”

[Calvin Coolidge]

"The question is not what power the federal government ought to have, but what powers, in fact, have been given by the people... **The federal union is a government of delegated powers. It has only such as are expressly conferred upon it, and such as are reasonably to be implied from those granted. In this respect, we differ radically from nations where all legislative power, without restriction or limitation, is vested in a parliament or other legislative body subject to no restriction except the discretion of its members.**" (Congress)

[[U.S. v. William M. Butler, 297 U.S. 1 \(1936\)](#) ]

“Derativa potestas non potest esse major primitiva. The power which is derived cannot be greater than that from which it is derived.”

[Bouvier’s Maxims of Law, 1856;

SOURCE: <http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviereMaxims.htm>]

"These all died in faith, not having received the promises, but having seen them afar off were assured of them, embraced them and confessed that they were strangers and pilgrims on the earth."

[Hebrews 11:13]

"Beloved, I beg you as sojourners and pilgrims, abstain from fleshly lusts which war against the soul..."

[1 Peter 2:1]

"**For our citizenship is in heaven [and not earth]**, from which we also eagerly wait for the Savior, the Lord Jesus Christ"

[[Philippians 3:20](#), Bible, NKJV]

"And Mr. Justice Miller, delivering the opinion of the court [legislating from the bench, in this case], in analyzing the first clause [of the [Fourteenth Amendment](#)], observed that **“the phrase ‘subject to the jurisdiction thereof’ was intended to exclude from its operation children of ministers, consuls, and citizens or subjects of foreign states**, born within the United States."

[U.S. v. Wong Kim Ark, [169 U.S. 649](#), 18 S.Ct. 456; 42 L.Ed. 890 (1898) ]

"**For God is the King of all the earth**; Sing praises with understanding."

[[Psalm 47:7](#), Bible, NKJV]

"For the LORD is our Judge, the LORD is our Lawgiver, the LORD is our King; He will save [and protect] us."

[[Isaiah 33:22](#), Bible, NKJV]

**“Sovereignty.** The supreme, absolute, and **uncontrollable power by which any independent state is governed**; supreme political authority; paramount control of the constitution and frame of government and its administration; self sufficient source of political power, from which all specific political powers are derived; the **international independence of a state**, combined with the right and **power of regulating its internal affairs without foreign dictation**; also a political society, or state, which is sovereign and independent. Chisholm v. Georgia, 2 Dall. 455, 1 L.Ed. 440; Union Bank v. Hill, 3 Cold., Tenn 325; Moore v. Shaw, 17 Cal. 218, 79 Am.Dec. 123; State v. Dixon, 66 Mont. 76, 213 P. 227.”

[Black’s Law Dictionary, Fourth Edition (1951), p. 1568]

**“It should never be held that Congress intends to supersede or by its legislation suspend the exercise of the police powers of the States**, even when it may do so, unless its purpose to effect that result is clearly manifested.”

[Reid v. Colorado, [187 U.S. 137](#), 148 (1902)]

"If Congress is authorized to act in a field, it should manifest its intention clearly. **It will not be presumed that a federal statute was intended to supersede the exercise of the power of the state unless there is a clear manifestation of intention to do so. The exercise of federal supremacy is not lightly to be presumed.**"

[[Schwartz v. Texas, 344 U.S. 199](#), 202-203 (1952)]

“Servants, be submissive to your masters with all fear, not only to the good and gentle, but also to the harsh. “

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[1 Peter 2:18, Bible, NKJV]

"The people of this State, as the successors of its former sovereign, are entitled to all the rights which formerly belonged to the King by his prerogative. **Through the medium of their Legislature they may exercise all the powers which previous to the Revolution could have been exercised either by the King alone**, or by him in conjunction with his Parliament; subject only to those restrictions which have been imposed by the Constitution of this State or of the U.S."  
[Lansing v. Smith, 21 D. 89, 4 Wendel 9 (1829) (New York)]

"Remember the word that I said to you: '**A servant is not greater than his master.**'"  
[John 15:20, Bible, NKJV]

"Servants, obey in all things your masters according to the flesh, not with eyeservice, as men-pleasers, but in sincerity of heart, fearing God. And whatever you do, do it heartily, as to the Lord and not to men, knowing that from the Lord you will receive the reward of the inheritance; for you serve the Lord Christ. But he who does wrong will be repaid for the wrong which he has done, and there is no partiality."  
[Col. 3:22-25, Bible, NKJV]

**"Dual citizenship.** Citizenship in two different **countries**. Status of citizens of United States who reside within a state; i.e., person who are born or naturalized in the U.S. are citizens of the U.S. and the state wherein they reside. "  
[Black's Law Dictionary, Sixth Edition, page 498]

**"It is impossible** to construe the words 'subject to the jurisdiction thereof, in the opening sentence, as less comprehensive than the words 'within its jurisdiction, in the concluding sentence of the same section; or **to hold that persons 'within the jurisdiction' of one of the states of the Union are not 'subject to the jurisdiction of the United States**\*\*\*\*.'"   
[U.S. v. Wong Kim Ark, [169 U.S. 649](#), 18 S.Ct. 456; 42 L.Ed. 890 (1898), emphasis added]

"An agreement [consent] obtained by duress, coercion, or intimidation is invalid, since the party coerced is not exercising his free will, and the test is not so much the means by which the party is compelled to execute the agreement as the state of mind induced.<sup>86</sup> Duress, like fraud, rarely becomes material, except where a contract or conveyance has been made which the maker wishes to avoid. As a general rule, duress renders the contract or conveyance voidable, not void, at the option of the person coerced,<sup>87</sup> and it is susceptible of ratification. Like other voidable contracts, it is valid until it is avoided by the person entitled to avoid it.<sup>88</sup> However, duress in the form of physical compulsion, in which a party is caused to appear to assent when he has no intention of doing so, is generally deemed to render the resulting purported contract void.<sup>89</sup>"  
[American Jurisprudence 2d, Duress, §21 (1999)]

**"The citizen cannot complain, because he has voluntarily submitted himself to such a form of government.** He owes allegiance to the two departments, so to speak, and within their respective spheres must pay the penalties which each exacts for disobedience to its laws. In return, he can demand protection from each within its own jurisdiction."  
[United States v. Cruikshank, [92 U.S. 542](#) (1875) (emphasis added)]

**"Residents, as distinguished from citizens, are aliens who are permitted to take up a permanent abode in the country.** Being bound to the society by reason of their [intention of] dwelling in it, they are subject to its laws so long as they remain there, and, being protected by it, they must defend it, although they do not enjoy all the rights of citizenship. They have only certain privileges which the law, or custom, gives them. Permanent residents are those who have been given the right of perpetual residence. They are a sort of citizen of a less privileged character, and are subject to the society without enjoying all its advantages. Their children succeed to their status; for the right of perpetual residence given them by the State passes to their children."

<sup>86</sup> Brown v. Pierce, 74 U.S. 205, 7 Wall 205, 19 L.Ed. 134

<sup>87</sup> Barnette v. Wells Fargo Nevada Nat'l Bank, 270 U.S. 438, 70 L.Ed. 669, 46 S.Ct. 326 (holding that acts induced by duress which operate solely on the mind, and fall short of actual physical compulsion, are not void at law, but are voidable only, at the election of him whose acts were induced by it); Faske v. Gershman, 30 Misc.2d. 442, 215 N.Y.S.2d. 144; Glenney v. Crane (Tex Civ App Houston (1st Dist)) 352 S.W.2d. 773, writ ref n r e (May 16, 1962); Carroll v. Fetty, 121 W.Va. 215, 2 S.E.2d. 521, cert den 308 U.S. 571, 84 L.Ed. 479., 60 S.Ct. 85.

<sup>88</sup> Faske v. Gershman, 30 Misc.2d. 442, 215 N.Y.S.2d. 144; Heider v. Unicume, 142 Or. 416, 20 P.2d. 384; Glenney v. Crane (Tex Civ App Houston (1st Dist)) 352 S.W.2d. 773, writ ref n r e (May 16, 1962)

<sup>89</sup> Restatement 2d, Contracts §174, stating that if conduct that appears to be a manifestation of assent by a party who does not intend to engage in that conduct is physically compelled by duress, the conduct is not effective as a manifestation of assent.

[[The Law of Nations](#), p. 87, E. De Vattel, Volume Three, 1758, Carnegie Institution of Washington; emphasis added.]

**“Allegiance and protection are, in this connection, reciprocal obligations. The one is a compensation for the other; allegiance for protection and protection for allegiance.”**

[Minor v. Happersett, 88 U.S. (21 Wall.) 162, 166-168 (1874)]

"By the surrender, the inhabitants passed under a temporary allegiance to the British government and were bound by such laws and such only as it chose to recognize and impose. **From the nature of the case, no other laws could be obligatory upon them, for where there is no protection or allegiance or sovereignty, there can be no claim to obedience.**"

[Hanauer v. Woodruff, [82 U.S. \(15 Wall.\) 439](#) (1872)]

"There is a clear distinction in this particular case between an individual and a corporation, and that the latter has no right to refuse to submit its books and papers for an examination at the suit of the State. The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no such duty to the State, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law, and in accordance with the constitution. Among his rights are a refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes nothing to the public so long as he does not trespass upon their rights."

[Hale v. Henkel, 201 U.S. 43, 74 (1906)]

**“Income Subject to Tax: Income from sources outside the United States [District of Columbia, pursuant to 26 U.S.C. §7701(a)(9) and (a)(10)] that is not effectively connected with a trade or business [“public office” in the U.S. government, pursuant to 26 U.S.C. §7701(a)(26)] in the United States is not taxable if you receive it while you are a nonresident alien.** The income is not taxable even if you earned it while you were a resident alien or if you became a resident alien or a U.S. citizen after receiving it and before the end of the year. “

[IRS Publication 519, Year 2000, p. 26]

“In the United States, sovereignty resides in the people...the Congress cannot invoke sovereign power of the People to override their will as thus declared.”

[Perry v. U.S., 294 U.S. 330 (1935)]

"There is no such thing as a power of inherent sovereignty in the government of the United States .... In this country sovereignty resides in the people, and Congress can exercise no power which they have not, by their Constitution entrusted to it: All else is withheld."

[Juilliard v. Greenman, 110 U.S. 421 (1884)]

**“Dulocracy.** A government where servants and slaves have so much license and privilege that they domineer.”

[Black’s Law Dictionary, Sixth Edition, p. 501]

“The Government urges that **the Power Company is estopped to question the validity of the Act creating the Tennessee Valley Authority**, and hence that the stockholders, suing in the right of the corporation, cannot [297 U.S. 323] maintain this suit. .... **The principle is invoked that one who accepts the benefit of a statute cannot be heard to question its constitutionality. Great Falls Manufacturing Co. v. Attorney General, 124 U.S. 581; Wall v. Parrot Silver & Copper Co., 244 U.S. 407; St. Louis Casting Co. v. Prendergast Construction Co., 260 U.S. 469.**“

[Ashwander v. Tennessee Valley Auth., 297 U.S. 288 (1936)]

“...when a State willingly accepts a substantial benefit from the Federal Government, it waives its immunity under the Eleventh Amendment and consents to suit by the intended beneficiaries of that federal assistance.”

[Papasan v. Allain, 478 U.S. 265 (1986)]

“...The states are separate sovereigns with respect to the federal government.”

[Heath v. Alabama, 474 U.S. 82]

“In Europe, the executive is synonymous with the sovereign power of a state...where it is too commonly acquired by force or fraud, or both...In America, however the case is widely different. **Our government is founded upon compact [consent expressed in a written contract called a Constitution or in positive law]. Sovereignty was, and is, in the people [as**

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**individuals: that's you! ] .”**

[Glass v. The Sloop Betsy, 3 (U.S.) Dall 6]

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**“I take leave to say that, if the principles thus announced should ever receive the sanction of a majority of this court, a radical and mischievous change in our system of government will result. We will, in that event, pass from the era of constitutional liberty guarded and protected by a written constitution into an era of legislative absolutism..**

[. . .]

“The idea prevails with some, indeed it has found expression in arguments at the bar, that **we have in this country substantially two national governments; one to be maintained under the Constitution, with all of its restrictions; the other to be maintained by Congress outside the independently of that instrument, by exercising such powers [of absolutism] as other nations of the earth are accustomed to..**

[. . .]

**It will be an evil day for American liberty if the theory of a government outside the supreme law of the land finds lodgment in our constitutional jurisprudence. No higher duty rests upon this court than to exert its full authority to prevent all violation of the principles of the Constitution.”**

[Downes v. Bidwell, [182 U.S. 244](#) (1901), Justice Harlan, Dissenting]

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**“If we are to survive as the United States, the balance between the powers of the nation and those of the states must be maintained. There is grave danger in permitting it to dip in either direction, danger-if there were no other-in the precedent thereby set for further departures from the equipoise. The threat implicit in the present encroachment upon the administrative functions of the states is that greater encroachments, and encroachments upon other functions, will follow. . . .For the foregoing reasons, I think the judgment below should be reversed.”**

[Steward Machine Company v. Davis, 301 U.S. 548 (1937)]

"In common usage, the term 'person' does not include the sovereign, and statutes employing the word are ordinarily construed to exclude it."

[Wilson v. Omaha Indian Tribe, [442 U.S. 653](#), 667 (1979)]

"Now, a grant of corporate existence is a grant of special privileges to the incorporators, enabling them to act for certain designated purposes as a single individual, and exempting them (unless otherwise specifically provided) from individual liability. The corporation being the mere creation of local law, can have no legal existence beyond the limits of the sovereignty where created. As said by this court in Bank of Augusta v. Earle, 'It must dwell in the place of its creation and cannot migrate to another sovereignty.' The recognition of its existence even by other States, and the enforcement of its contracts made therein, depend purely upon the comity of those States—a comity which is never extended where the existence of the corporation or the exercise of its powers are prejudicial to their interests or repugnant to their policy."

[Paul v. Virginia, 8 Wall (U.S.) 168, 19 L.Ed. 357 (1868)]

"A corporation is a citizen, **resident**, or inhabitant of the state or country by or under the laws of which it was created, and of that state or country only."

[19 Corpus Juris Secundum (C.J.S.), Corporations, §886; Legal encyclopedia]

"We have said that Congress may regulate not only "Commerce... among the several states," U.S. Const., Art. I, 8, cl. 3, but also anything that has a "substantial effect" on such commerce... [I]t seems to me that the power to regulate "commerce" can by no means encompass authority over mere gun possession, any more than it **empowers the Federal Government** to regulate marriage, littering, or cruelty to animals, **throughout the 50 States**. Our Constitution quite properly **leaves such matters to the individual States**, notwithstanding these activities' effects on interstate commerce. Any interpretation of the Commerce Clause that even suggests that Congress could regulate such matters is in need of reexamination."

[U.S. v. Lopez, 415 U.S. 549 (1995)]

"In common usage, the term `person' does not include the sovereign and statutes employing it will ordinarily not be construed to do so."

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***Sovereignty and Freedom Points and Authorities***

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[U.S. v. United Mine Workers of America, [330 U.S. 258](#), 67 S.Ct.677 (1947)]

**“Inhabitant.** One who reside actually and permanently [permanent residence=“domicile”] in a given place, and has his domicile there. Ex parte Shaw, 145 U.S. 444, 12 S.Ct. 935, 36 L.Ed. 786.”  
[Black’s Law Dictionary, Sixth Edition, p. 782]

“Since in common usage the term ‘person’ does not include the sovereign, statutes employing that term are ordinarily construed to exclude it.”  
[U.S. v. Cooper, [312 U.S. 600](#), 604, 61 S.Ct. 742 (1941)]

“Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people [WE THE PEOPLE!], by whom and for whom all government exists and acts.”  
[Yick Wo v. Hopkins, 118 U.S. 356, 6 S.Ct. 1064 (1886)]

“...at the Revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are sovereigns without subjects...with none to govern but themselves; the citizens of America are equal as fellow citizens, and as joint tenants in the sovereignty.”  
[Chisholm v. Georgia, [2 Dall. \(U.S.\) 419](#), 454, 1 L.Ed. 440, 455 @DALL 1793 pp. 471-472]

**“Foreign Laws:** The laws of a foreign country or sister state.”  
[Black’s Law Dictionary, Sixth Edition, p. 647]

**“Foreign States:** Nations outside of the United States...Term may also refer to another state; i.e. a sister state. The term ‘foreign nations’, ...should be construed to mean all nations and states other than that in which the action is brought; and hence, one state of the Union is foreign to another, in that sense.”  
[Black’s Law Dictionary, Sixth Edition, p. 648]

**“The Government of the United States, therefore, can claim no powers which are not [explicitly] granted to it by the Constitution,** and the powers actually granted must be such as are expressly given, or given by necessary implication.”  
[Buffington v. Day, 11 Wall. 113, [78 U.S. 122](#) (1871)]

**“No servant can serve two masters;** for either he will hate the one and love the other, or else he will be loyal to the one and despise the other. You cannot serve God and mammon.”  
[Jesus [God] speaking in the Bible, Luke 16:13]

“A canon of construction which teaches that of Congress, unless a contrary intent appears, is meant to apply **only within the territorial jurisdiction of the United States.**”  
[U.S. v. Spelar, [338 U.S. 217](#) at 222 (1949)]

“The law of Congress in respect to those matters do not extend into the territorial limits of the states, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government.”  
[Caha v. United States, [152 U.S. 211](#) (March 5, 1894)]

“The United States government is a foreign corporation with respect to a state.”  
[N.Y. re: Merriam, 36 N.E. 505, 141 N.Y. 479, Affirmed 16 S.Ct. 1973, 41 L.Ed. 287]

“The term ‘United States’ may be used in any one of several senses. [1] It may be merely the name of a **sovereign\*** occupying the position analogous to that of other sovereigns in the family of nations. [2] **It may designate the territory over which the sovereignty of the United States\*\* extends,** or [3] it may be the collective name of the states\*\*\* which are united by and under the Constitution.”  
[Hooven & Allison Co. v. Evatt, [324 U.S. 652](#) (1945)]

“The several States of the Union are not, it is true, in every respect independent, many of the right and powers which originally belonged to them being now vested in the government created by the Constitution. **But, except as restrained and limited by that instrument, they possess and exercise the authority of independent States, and the principles of public law to which we have referred are applicable to them. One of these principles is, that every State possesses exclusive**

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### ***Sovereignty and Freedom Points and Authorities***

**jurisdiction and sovereignty over persons and property within its territory.** As a consequence, every State has the power to determine for itself the civil status [e.g. citizenship] and capacities of its inhabitants; to prescribe the subjects upon which they may contract, the forms and solemnities with which their contracts shall be executed, the rights and obligations arising from them, and the mode in which their validity shall be determined and their obligations enforced; and also the regulate the manner and conditions upon which property situated within such territory, both personal and real, may be acquired, enjoyed, and transferred. The other principle of public law referred to follows from the one mentioned; that is, that **no State can exercise direct jurisdiction and authority over persons or property without its territory.** Story, Confl. Laws, c. 2; Wheat. Int. Law, pt. 2, c. 2. **The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others.**  
 [Pennoyer v. Neff, 95 U.S. 714 (1877)]

“Every State or nation possesses an exclusive sovereignty and jurisdiction within her own territory, and her laws affect and bind all property and persons residing within it. It may regulate the manner and circumstances under which property is held, and the condition, capacity, and state of all persons therein, and also the remedy and modes of administering justice. And **it is equally true that no State or nation can affect or bind property out of its territory, or persons not residing within it.** No State therefore can enact laws to operate beyond its own dominions, and if it attempts to do so, it may be lawfully refused obedience. Such laws can have no inherent authority extraterritorially. This is the necessary result of the independence of distinct and separate sovereignties.”

Now it follows from these principles that whatever force or effect the laws of one State or nation may have in the territories of another must depend solely upon the laws and municipal regulations of the latter, upon its own jurisprudence and polity, and upon its own express or tacit consent.”  
 [Dred Scott v. John F.A. Sanford, [60 U.S. 393](#) (1856)]

“The power to "legislate generally upon" life, liberty, and property, as opposed to the "power to provide modes of redress" against offensive state action, was "repugnant" to the Constitution. Id., at 15. See also United States v. Reese, [92 U.S. 214, 218](#) (1876); United States v. Harris, [106 U.S. 629, 639](#) (1883); James v. Bowman, [190 U.S. 127, 139](#) (1903). Although the specific holdings of these early cases might have been superseded or modified, see, e.g., Heart of Atlanta Motel, Inc. v. United States, [379 U.S. 241](#) (1964); United States v. Guest, [383 U.S. 745](#) (1966), their treatment of Congress' §5 power as corrective or preventive, not definitional, has not been questioned.”  
 [[City of Boerne v. Flores, Archbishop of San Antonio, 521 U.S. 507](#) (1997)]

“It is clear that Congress, as a legislative body, exercise two species of legislative power: the one, limited as to its objects, but extending all over the Union: the other, an absolute, exclusive legislative power over the District of Columbia. The preliminary inquiry in the case now before the Court, is, by virtue of which of these authorities was the law in question passed?”  
 [[Cohens v. Virginia, 19 U.S. 264, 6 Wheat. 265; 5 L.Ed. 257](#) (1821)]

“§79. This sovereignty pertains to the people of the United States as national citizens only, and not as citizens of any other government. There cannot be two separate and independent sovereignties within the same limits or jurisdiction; nor can there be two distinct and separate sources of sovereign authority within the same jurisdiction. The right of commanding in the last resort can be possessed only by one body of people inhabiting the same territory, and can be executed only by those intrusted with the execution of such authority.”  
 [Treatise on Government, Joel Tiffany, p. 49, Section 78;  
 SOURCE: <http://famguardian.org/Publications/TreatiseOnGovernment/TreatOnGovt.pdf>]

“If the time shall ever arrive when, for an object appealing, however strongly, to our sympathies, the dignity of the States shall bow to the dictation of Congress by conforming their legislation thereto, **when the power and majesty and honor of those who created shall become subordinate to the thing of their creation, I but feebly utter my apprehensions when I express my firm conviction that we shall see 'the beginning of the end.'**”  
 [Steward Machine Co. v. Davis, 301 U.S. 548 (1937)]

“...when the United States enters into commercial business it abandons its sovereign capacity and is treated like any other corporation...”  
 [91 Corpus Juris Secundum (C.J.S.), United States, §4 (2003)]

We start with first principles. The Constitution creates a Federal Government of enumerated powers. See U.S. Const., Art. I,

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### ***Sovereignty and Freedom Points and Authorities***

8. As James Madison wrote, "[t]he powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." The Federalist No. 45, pp. 292-293 (C. Rossiter ed. 1961). **This constitutionally mandated division of authority "was adopted by the Framers to ensure protection of our fundamental liberties."** *Gregory v. Ashcroft*, [501 U.S. 452, 458 \(1991\)](#) (internal quotation marks omitted). **"Just as the separation and independence of the coordinate branches of the Federal Government serves to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front."**  
[*U.S. v. Lopez*, [514 U.S. 549 \(1995\)](#)]

"The words 'people of the United States' and 'citizens, are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the government through their representatives. They are what we familiarly call the 'sovereign people, and every citizen is one of this people, and a constituent member of this sovereignty. ...'"  
[*Boyd v. State of Nebraska*, [143 U.S. 135 \(1892\)](#)]

"It is again to antagonize Chief Justice Marshall, when he said: 'The government of the Union, then (whatever may be the influence of this fact on the case), is emphatically and truly a government of the people. In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them and for their benefit. This government is acknowledged by all to be one of enumerated powers.' 4 Wheat. 404, 4 L.Ed. 601."  
[*Downes v. Bidwell*, [182 U.S. 244 \(1901\)](#)]

"The ultimate authority...resides in the people alone..."  
[*James Madison, Federalist Paper No. 46*]

"Sovereignty itself is, of course, not subject to law, for it is the author and source of law...While sovereign powers are delegated to...the government, sovereignty itself remains with the people."  
[*Yick Wo v. Hopkins*, [118 U.S. 356 \(1886\)](#)]

"This court has declined to take jurisdiction of suits between states to compel the performance of obligations which, if the states had been independent nations, could not have been enforced judicially, but only through the political departments of their governments. Thus, in *Kentucky v. Dennison*, 24 How. 66, where the state of Kentucky, by her governor [[127 U.S. 265, 289](#)] applied to this court, in the exercise of its original jurisdiction, for a writ of mandamus to the governor of Ohio to compel him to surrender a fugitive from justice, this court, while holding that the case was a controversy between two states, decided that it had no authority to grant the writ." [State of Wisconsin v. Pelican Insurance Company, [127 U.S. 265 \(1888\)](#)]

"The question in *Bonaparte v. Tax Court*, [104 U.S. 592](#), was whether the registered public debt of one state, exempt from taxation by that state, or actually taxed there, was taxable by another state, when owned by a citizen of the latter, and it was held that there was no provision of the constitution of the United States which prohibited such taxation. The states had not covenanted that this could not be done, whereas, **under the fundamental law, as to the power to borrow money, neither the United States, on the one hand, nor the states on the other, can interfere with that power as possessed by each, and an essential element of the sovereignty of each.**"  
[*Pollock v. Farmers' Loan and Trust*, [157 U.S. 429 \(1895\)](#)]

"It is no longer open to question that **the general government, unlike the states**, *Hammer v. Dagenhart*, [247 U.S. 251, 275](#), 38 S.Ct. 529, 3 A.L.R. 649, Ann.Cas.1918E 724, **possesses no inherent power in respect of the internal affairs of the states; and emphatically not with regard to legislation.**"  
[*Carter v. Carter Coal Co.*, [298 U.S. 238](#), 56 S.Ct. 855 (1936)]

"In *Calder v. Bull*, which was here in 1798, **Mr. Justice Chase said, that there were acts which the Federal and State legislatures could not do without exceeding their authority, and among them he mentioned** a law which punished a citizen for an innocent act; a law that destroyed or impaired the lawful private [labor] contracts [and labor compensation, e.g. earnings from employment through compelled W-4 withholding] of citizens; a law that made a man judge in his own case; and **a law that took the property from A [the worker], and gave it to B [the government or another citizen, such as through social welfare programs]. 'It is against all reason and justice, he added, 'for a people to intrust a legislature with such powers, and therefore it cannot be presumed that they have done it. They may command what is right and prohibit what is wrong; but they cannot change innocence into guilt, or punish innocence as a crime, or violate the right of an antecedent lawful private [employment] contract [by compelling W-4 withholding, for instance], or the**

**right of private property. To maintain that a Federal or State legislature possesses such powers [of THEFT!] if they had not been expressly restrained, would, in my opinion, be a political heresy altogether inadmissible in all free republican governments.' 3 Dall. 388.**  
[\[Sinking Fund Cases, 99 U.S. 700 \(1878\)\]](#)

“This provision authorizes the United States to be and become a land-owner, and prescribes the mode in which the lands may be disposed of, and the title conveyed to the purchaser. Congress is to make the needful rules and regulations upon this subject. The title of the United States can be divested by no other power, by no other means, in no other mode, than that which congress shall sanction and prescribe. It cannot be done by the action of the people or legislature of a territory or state.' And he supported this conclusion by a review of all the acts of congress under which states had theretofore been admitted. Mr. Webster said that **those precedents demonstrated that 'the general idea has been, in the creation of a state, that its admission as a state has no effect at all on the property of the United States lying within its limits;' and that it was settled by the judgment of this court in Pollard v. Hagan, 3 How. 212, 224, 'that the authority of the United States does so far extend as, by force of itself, Proprio vigore, to exempt the public lands from taxation when new states are created in the territory in which the lands lie.'** 21 Cong. Globe, 31st Cong. 1st Sess. p. 1314; 22 Cong. Globe, pp. 848 et seq., 960, 986, 1004; 5 Webst. Works, 395, 396, 405.”  
[\[Van Brocklin v. State of Tennessee, 117 U.S. 151 \(1886\)\]](#)

“**The jurisdiction of the nation within its own territory is [169 U.S. 649, 684] necessarily exclusive and absolute.** It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. **All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source.** This consent may be either express or implied. In the latter case, it is less determinate, exposed more to the uncertainties of construction; but, if understood, not less obligatory.”  
[\[The Exchange, 7 Cranch 116 \(1812\)\]](#)

“**A State does not owe its origin to the Government of the United States, in the highest or in any of its branches. It was in existence before it. It derives its authority from the same pure and sacred source as itself: The voluntary and deliberate choice of the people...**A State is altogether exempt from the jurisdiction of the Courts of the United States, or from any other exterior authority, unless in the special instances when the general Government has power derived from the Constitution itself.”  
[\[Chisholm v. Georgia, 2 Dall. \(U.S.\) 419 \(Dall.\) \(1793\)\]](#)

“Of the privileges and immunities of the citizens of the United States and of the privileges and immunities of the citizens of a state...it is only the former which is placed by the clause (the second clause of the 14th Amendment) under the protection of the Federal Constitution, and that the latter, whatever they may be, are not intended to have any additional protection by this paragraph of the Amendment...the latter must rest for their security and protection where they have heretofore rested, for they are not embraced by this paragraph of the Amendment...”

“**But with...exceptions...few...the entire domain of the privileges and immunities of citizens of the state, as above defined, lay within the constitutional and legislative power of the state and without that of the Federal Government. Was it the purpose of the 14th Amendment...to transfer the security and protection of all the civil rights which we have mentioned from the states to the Federal Government? And . . . was it intended to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the States?”**

[. . .]

“**We are convinced that no such results were intended by the Congress which proposed these amendments, nor by the legislatures of the States which ratified them.**”

“Having shown that the privileges and immunities relied on in the argument are those which belong to citizens of the States as such, and that they are left to the State governments for security and protection, and not by this article placed under the special care of the Federal government, we may hold ourselves excused from defining the privileges and immunities of citizens of the United States which no State can abridge, until some case involving those privileges may make it necessary to do so.”

[\[Slaughter-House Cases, 83 U.S. 36 \(1872\)\]](#)

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**11.16 Justice and Judgment**<sup>90</sup>**Unjust Judgments Rebuked.**

A Psalm of Asaph.

God stands in the divine assembly;  
He judges among the gods (divine beings).

How long will you judge unjustly  
And show partiality to the wicked? Selah. [stop and think about it]

Vindicate the weak and fatherless;  
Do justice and maintain the rights of the afflicted and destitute.

**Rescue the weak and needy;  
Rescue them from the hand of the wicked.**

**The rulers do not know nor do they understand;  
They walk on in the darkness [of complacent satisfaction];  
All the foundations of the earth [the fundamental principles of the administration of justice] are shaken.**

**I said, “You are gods;**  
Indeed, all of you are sons of the Most High.

**“Nevertheless you will die like men  
And fall like any one of the princes.”**

**Arise, O God, judge the earth!**  
**For to You belong all the nations.**  
[Psalm 82, Bible, Amplified Version]

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“Persons are the subject of rights and duties; and, as a subject of a right, the person is the object of a correlative duty, and conversely. The subject of a right has been called by Professor Holland, the person of inherence; the subject of a duty, the person of incidence. “Entitled” and “bound” are the terms in common use in English and for most purposes they are adequate. Every full citizen is a person; other human beings, namely, subjects who are not citizens, may be persons. But not every human being is necessarily a person, for a person is capable of rights and duties and there may well be human beings having no legal rights, **as was the case with slaves (feudal serfs) in English law.** It includes women.”  
[Bouvier’s Law Dictionary, Rawles Revision, Volume III, p. 2575 (1914)]

“Do not strive with a man without cause, **if he has done you no harm.**”  
[Prov. 3:30, Bible, NKJV]

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For the commandments, “You shall not commit adultery,” “You shall not murder,” “You shall not steal,” “You shall not bear false witness,” “You shall not covet,” and if there is any other commandment, are all summed up in this saying, namely, “You shall love your neighbor as yourself.”

**Love does no harm to a neighbor; therefore love is the fulfillment of the law.**  
[Romans 13:9-10, Bible, NKJV]

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<sup>90</sup> For details on corruption of the federal courts, see: *What Happened to Justice?*, Form #06.012; <http://sedm.org/Forms/FormIndex.htm>.



“**You shall not follow a crowd to do evil**; nor shall you testify in a dispute so as to turn aside after many to pervert justice.”  
[Exodus 23:2, Bible, NKJV]

“**He [God] loves righteousness and justice**;  
The earth is full of the goodness of the LORD. ”  
[Psalm 33:5, Bible, NKJV]

“**Justice** — is rendering to every one [equally, whether citizen or alien] that which is his due. It has been distinguished from equity in this respect, that while **justice means merely the doing [of] what positive law demands**, equity means the doing of what is fair and right in every separate case. “  
[Easton’s Bible Dictionary, 1996]

"For the LORD loves **justice**, and does not forsake His saints; They are preserved forever, But the descendants of the wicked shall be cut off."  
[Psalm 37:28, Bible, NKJV]

“**The mouth of the righteous speaks wisdom,  
And his tongue talks of justice.**  
The law of his God is in his heart;  
None of his steps shall slide. “  
[Psalm 37:30-31, Bible, NKJV]

"Righteousness and **justice** are the foundation of Your [God's] throne; Mercy and truth go before Your face."  
[Psalm 89:14, Bible, NKJV]

"Blessed are those who keep **justice**,  
And he who does righteousness at all times! "  
[Psalm 106:3, Bible, NKJV]

"Better is a little with righteousness, Than vast revenues without **justice**. "  
[Prov. 16:8, Bible, NKJV]

"Is this not the fast that I [God] have chosen:  
To loose the bonds of wickedness,  
To undo the heavy burdens,  
To let the oppressed go free,  
And that you break every yoke?"  
[Isaiah 58:6, Bible, NKJV]

"**Justice is the end of government.** It is the end of civil society. It ever has been, and ever will be pursued, until it be obtained, or until liberty be lost in the pursuit."  
[James Madison, Federalist Paper #51, 1788]

"That no free Government, or the blessing of liberty, can be preserved to any people but by a firm adherence to **justice**..."  
[George Mason, Virginia Declaration of Rights (1776)]

"The best antidote for crime is **justice**. The irony we often fail to appreciate is that the more **justice** people enjoy, the fewer crimes they commit. Crime is the natural offspring of an unjust society."  
[Gerry Spence "With Justice For None" p.124]

“**Keep justice, and do righteousness**, for My salvation is about to come, and My righteousness is revealed. Blessed is the man who does this, and the son of man who lays hold of it; who keeps from defiling the Sabbath, and keeps his hand from doing any evil.”  
[Isaiah 56:1-2, Bible, NKJV]

"The lips of the righteous nourish many, but **fools die for lack of judgment.**"  
[Prov. 10:21, Bible, NKJV]

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### ***Sovereignty and Freedom Points and Authorities***

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"Judge not according to appearance, but **judge righteous judgment.**"

[Jesus speaking in [John 7:24](#), Bible, NKJV]

"The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of any of their number is self-protection."

[John Stuart Mill, 1859]

"Woe to those who decree unrighteous decrees, who write misfortune, which they have prescribed to rob the needy of justice, and to take what is right from the poor of My people. That widows may be their prey, and that they may rob the fatherless. What will you do in the day of punishment, and in the desolation which will come from afar? To whom will you flee for help? And where will you leave your glory? Without Me they shall bow down among the prisoners, and they shall fall among the slain. For all this His anger is not turned away, but His hand is stretched out still."

[Isaiah 10:1-4, Bible, NKJV]

"Cursed is the one who perverts the justice due the stranger, the fatherless, and widow." "And all the people shall say, "Amen!"

[Deut. 27:19, Bible, NKJV]

"The LORD watches over the strangers; He relieves the fatherless and widow; But the way of the wicked He turns upside down."

[Psalm 146:9, Bible, NKJV]

"Defend the fatherless, Plead for the widow."

[Isaiah 1:17, Bible, NKJV]

"For if you thoroughly amend your ways and your doings, if you thoroughly execute judgment between a man and his neighbor, if you do not oppress the stranger, the fatherless, and the widow, and do not shed innocent blood in this place, or walk after other gods to your hurt, then I will cause you to dwell in this place, in the land that I gave to your fathers forever and ever."

[Jer. 7:5-7, Bible, NKJV]

"Thus says the LORD: 'Execute judgment and righteousness, and deliver the plundered out of the hand of the oppressor. Do no wrong and do no violence to the stranger, the fatherless, or the widow, nor shed innocent blood in this place.'"

[Jer. 22:3, Bible, NKJV]

"Do not oppress the widow or the fatherless, The alien or the poor. Let none of you plan evil in his heart Against his brother."

[Zech. 7:10, Bible, NKJV]

"There is no crueller tyranny than that which is perpetrated under the shield of law and in the name of justice."

[Montesquieu, 1742]

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### 11.17 Law, Lawyers, Judges, and Jury Nullification...<sup>91</sup>

"When we consider the nature and theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. **And the law is the definition and limitation of power.**"

[Downes v. Bidwell, 182 U.S. 244 (1901) ]

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<sup>91</sup> For additional information on lawyers, see: *Who Were the Pharisees and Saducees?*, Form #05.047; <http://sedm.org/Forms/FormIndex.htm>.

Municipal law, thus understood, is properly defined to be "a rule of civil conduct prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong."

[. . .]

It is also called a rule to distinguish it from a compact or agreement; **for a compact is a promise proceeding from us, law is a command directed to us.** The language of a compact is, "I will, or will not, do this"; that of a law is, "thou shalt, or shalt not, do it." It is true there is an obligation which a compact carries with it, equal in point of conscience to that of a law; but then the original of the obligation is different. **In compacts we ourselves determine and promise what shall be done, before we are obliged to do it; in laws, we are obliged to act without ourselves determining or promising anything at all.** Upon these accounts law is defined to be "a rule."

[Readings on the History and System of the Common Law, Second Edition, Roscoe Pound, 1925, p. 4]

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I've had it with you! You're hopeless, you religion scholars, you Pharisees [lawyers within a theocracy]! Frauds! Your lives are roadblocks to God's kingdom. You refuse to enter, and won't let anyone else in either.

"You're hopeless, you religion scholars and Pharisees [lawyers within a theocracy]! Frauds! You go halfway around the world to make a convert, but once you get him you make him into a replica of yourselves, double-damned.

"You're hopeless! What arrogant stupidity! You say, 'If someone makes a promise with his fingers crossed, that's nothing; but if he swears with his hand on the Bible, that's serious.' What ignorance! Does the leather on the Bible carry more weight than the skin on your hands? And what about this piece of trivia: 'If you shake hands on a promise, that's nothing; but if you raise your hand that God is your witness, that's serious'? What ridiculous hairsplitting! What difference does it make whether you shake hands or raise hands? A promise is a promise. What difference does it make if you make your promise inside or outside a house of worship? A promise is a promise. God is present, watching and holding you to account regardless.

"You're hopeless, you religion scholars and Pharisees[lawyers within a theocracy]! Frauds! You keep meticulous account books, tithing on every nickel and dime you get, but on the meat of God's Law, things like fairness and compassion and commitment—the absolute basics!—you carelessly take it or leave it. Careful bookkeeping is commendable, but the basics are required. Do you have any idea how silly you look, writing a life story that's wrong from start to finish, nitpicking over commas and semicolons?

"You're hopeless, you religion scholars and Pharisees[lawyers within a theocracy]! Frauds! You burnish the surface of your cups and bowls so they sparkle in the sun, while the insides are maggoty with your greed and gluttony. Stupid Pharisee! Scour the insides, and then the gleaming surface will mean something.

"You're hopeless, you religion scholars and Pharisees[lawyers within a theocracy]! Frauds! You're like manicured grave plots, grass clipped and the flowers bright, but six feet down it's all rotting bones and worm-eaten flesh. People look at you and think you're saints, but beneath the skin you're total frauds.

"You're hopeless, you religion scholars and Pharisees[lawyers within a theocracy]! Frauds! You build granite tombs for your prophets and marble monuments for your saints. And you say that if you had lived in the days of your ancestors, no blood would have been on your hands. You protest too much! You're cut from the same cloth as those murderers, and daily add to the death count.

"Snakes! Reptilian sneaks! Do you think you can worm your way out of this? Never have to pay the piper? It's on account of people like you that I send prophets and wise guides and scholars generation after generation—and generation after generation you treat them like dirt, greeting them with lynch mobs, hounding them with abuse.

"You can't squirm out of this: Every drop of righteous blood ever spilled on this earth, beginning with the blood of that good man Abel right down to the blood of Zechariah, Barachiah's son, whom you murdered at his prayers, is on your head. All this, I'm telling you, is coming down on you, on your generation.

“Jerusalem! Jerusalem! Murderer of prophets! Killer of the ones who brought you God’s news! How often I’ve ached to embrace your children, the way a hen gathers her chicks under her wings, and you wouldn’t let me. And now you’re so desolate, nothing but a ghost town. What is there left to say? Only this: I’m out of here soon. The next time you see me you’ll say, ‘Oh, God has blessed him! He’s come, bringing God’s rule!’”

[Peterson, E. H. (2005). *The Message: the Bible in contemporary language* (Mt 23:13–39). Colorado Springs, CO: NavPress.]

“Power and law are not synonymous. In truth, they are frequently in opposition and irreconcilable. There is God’s Law from which all equitable laws of man emerge and by which men must live if they are not to die in oppression, chaos and despair. Divorced from God’s eternal and immutable Law, established before the founding of the suns, man’s power is evil no matter the noble words with which it is employed or the motives urged when enforcing it. Men of good will, mindful therefore of the Law laid down by God, will oppose governments whose rule is by men, and if they wish to survive as a nation they will destroy the government which attempts to adjudicate by the whim of venal judges.”

[Marcus Tullius Cicero, 106-43 B.C.]

"Laws don't work unless they merely codify generally accepted behavior, in which case they are probably unnecessary."  
[Sovereignty Education and Defense Ministry (SEDM)]

"True Law is right reason in agreement with Nature, it is of universal application, unchanging and everlasting; it summons to duty by its commands and averts from wrong-doing by its prohibitions. And it does not lay its commands or prohibitions upon good men in vain, although neither have any effect upon the wicked. It is a sin to try to alter this law, nor is it allowable to try to repeal a part of it, and it is impossible to abolish it entirely. We cannot be freed from its obligations by Senate or People, and we need not look outside ourselves for an expounder or interpreter of it. And there will not be different laws at Rome or at Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all times and all nations, and there will be one master and one rule, that is God, for He is the author of this law, its promulgator, and its enforcing judge."

[Cicero]

“The Law and Charity: You say: "There are persons who have no money," and you turn to the law, but the law is not a breast that fills itself with milk. Nor are the lacteal veins of the law supplied with milk from a source outside the society. Nothing can enter the public treasury for the benefit of one citizen or one class unless other citizens and other classes have been forced to send it in. **If every person draws from the treasury the amount that he has put in it, it is true that the law then plunders nobody. But this procedure does nothing for the persons who have no money. It does not promote equality of income. The law can be an instrument of equalization only as it takes from some persons and gives to other persons. When the law does this, it is an instrument of plunder.**”

[Frederic Bastiat, *The Law*; <http://famguardian.org/Publications/TheLaw/TheLaw.htm>]

“Law Is a Negative Concept: The harmlessness of the mission performed by law and lawful defense is self-evident; the usefulness is obvious; and the legitimacy cannot be disputed.

As a friend of mine once remarked, this negative concept of law is so true that the statement, the purpose of the law is to cause justice to reign, is not a rigorously accurate statement. It ought to be stated that **the purpose of the law is to prevent injustice from reigning**. In fact, it is injustice, instead of justice, that has an existence of its own. Justice is achieved only when injustice is absent.

**But when the law, by means of its necessary agent, force, imposes upon men a regulation of labor, a method or a subject of education, a religious faith or creed - then the law is no longer negative; it acts positively upon people. It substitutes the will of the legislator for their own initiatives. When this happens, the people no longer need to discuss, to compare, to plan ahead; the law does all this for them. Intelligence becomes a useless prop for the people; they cease to be men; they lose their personality, their liberty, their property.**

Try to imagine a regulation of labor imposed by force that is not a violation of liberty; a transfer of wealth imposed by force that is not a violation of property. If you cannot reconcile these contradictions, then you must conclude that the law cannot organize labor and industry without organizing injustice.”

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[Frederic Bastiat, *The Law*; <http://famguardian.org/Publications/TheLaw/TheLaw.htm>]

“Men do not make laws. They do but discover them. Laws must be justified by something more than the will of the majority. They must rest on the eternal foundation of righteousness. That state is most fortunate in its form of government which has the aptest instruments for the discovery of law.”

[Calvin Coolidge, to the Massachusetts State Senate, January 7, 1914]

NATURAL LAW: A rule of conduct arising out of natural relations of human beings, established by the Creator, and existing prior to any positive precept. Webster. The foundation of this law is placed by the best writers in the will of God, discovered by reason, and aided by divine revelation: and its principles, when applicable, apply with equal obligation to individuals and to nations. 1 Kent. Comm. 2, note: Id. 4, note. See Jus Naturale.

The rule and dictate of right reason showing the moral deformity of moral necessity there is in any act, according to its suitability or unsuitability to a reasonable nature. Tayl. Civil Law, 99.

This expression, “natural law,” or jus naturale, was largely used in the philosophical speculations of the Roman jurists of the Attonine age, and was intended to denote a system of rules and principles for the guidance of human conduct which, independently of enacted law or of the systems peculiar to any one people, might be discovered by the rational intelligence of man, and would be found to grow out of and conform to his nature, meaning by that word his whole mental, moral, and physical constitution. The point of departure for this conception was the Stoic doctrine of a life ordered “according to nature,” which in its turn rested upon the purely suppositious existence, in primitive times, of a “state of nature;” that is, a condition of society in which men universally were governed solely by a rational and consistent obedience to the needs, impulses, and promptings of their true nature, such nature being as yet undefaced by dishonesty, falsehood, or indulgence of the baser passions. See Maine, Anc. Law, 50 et seq.

**We understand all laws to be either human or divine, according as they have man or God for their author; and divine laws are of two kinds, that is to say: (1) Natural laws; (2) positive or revealed laws.**

A natural law is deemed to [Burlamaqui](#) to be “a rule which so necessarily agrees with the nature and state of man that, without observing its maxims, the peace and happiness of society can never be preserved.” And he says that these are called “natural laws” because a knowledge of them may be attained merely by the light of reason, from the fact of their essential agreeableness with the constitution of human nature; while, on the contrary, positive or revealed laws are not founded upon the general constitution of human nature, but only upon the will of God; though in other respects such law is established upon very good reason, and procures the advantage of those to whom it is sent. The ceremonial or political laws of the Jews are of this latter class. Borden v. State, 11 Ark. 527, 44 Am. Dec. 217.

[Bouvier’s Maxims of Law, 1856;

SOURCE: <http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviereMaxims.htm>]

**“Shall the throne of iniquity, which devises evil by law, have fellowship with You? They gather together against the life of the righteous, and condemn innocent blood. But the Lord has been my defense, and my God the rock of my refuge. He has brought on them their own iniquity, and shall cut them off in their own wickedness; the Lord our God shall cut them off.”**

[Psalm 94:20-23, Bible, NKJV]

"The more corrupt the state, the more numerous the laws."

[Tacitus, Roman historian 55-117 A.D.]

“Sometimes the law defends plunder and participates in it. Thus the beneficiaries are spared the shame and danger that their acts would otherwise involve... But how is this legal plunder to be identified? Quite simply. See if the law takes from some persons what belongs to them and gives it to the other persons to whom it doesn't belong. See if the law benefits one citizen at the expense of another by doing what the citizen himself cannot do without committing a crime. Then abolish that law without delay ... No legal plunder; this is the principle of justice, peace, order, stability, harmony and logic”

[The Law, Frederic Bastiat]

**“Expressio unius est exclusio alterius.** A maxim of statutory interpretation meaning that **the expression of one thing is**

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**the exclusion of another.** *Burgin v. Forbes*, 293 Ky. 456, 169 S.W.2d. 321, 325; *Newblock v. Bowles*, 170 Okl. 487, 40 P.2d. 1097, 1100. Mention of one thing implies exclusion of another. **When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred.** Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded.”

[Black’s Law Dictionary, Sixth Edition, p. 581]

“His [the attorney’s] first duty is to the courts and the public, not to the client, and wherever the duties to his client conflict with those he owes as an officer of the court in the administration of justice, the former must yield to the latter. “

[7 *Corpus Juris Secundum* (C.J.S.), *Attorney and Client*, §4 (2003)]

“When words lose their meaning, people will lose their liberty.”

[Confucius (551-479 B.C., *The Analects*, XIII, 3)]

"There is no Federal Common Law, and Congress has no power to declare substantive rules of Common Law applicable in a state. Whether they be local or general in their nature, be they commercial law or a part of the Law of Torts"

[*Erie Railroad v. Tompkins*, [304 U.S. 64](#) (1938)]

"A sure sign of a genius is that all of the dunces are in a confederacy against him."

[Frank Lloyd Wright]

“Every man is supposed to know the law. A party who makes a contract with an officer [of the government] without having it reduced to writing is knowingly accessory to a violation of duty on his part. Such a party aids in the violation of the law."

[*Clark v. United States*, 95 U.S. 539 (1877) ]

**It is one of the fundamental maxims of the common law that ignorance of the law excuses no one. If ignorance of the law could in all cases be the foundation of a suit in equity for relief, there would be no end of litigation, and the administration of justice would become in effect impracticable.** There would be but few cases in which one party or the other would not allege it as a ground for exemption from legal liability, and the extent of the legal knowledge of each individual suitor would be the material fact on which judgment would be founded. Instead of trying the facts of the case and applying the law to such facts, the time of the court would be occupied in determining whether or not the parties knew the law at the time the contract was made or the transaction entered into. The administration of justice in the courts is a practical system for the regulation of the transactions of life in the business world. It assumes, and must assume, that all persons of sound and mature mind know the law, otherwise there would be no security in legal rights and no certainty in judicial investigations.”

[*Daniels v. Dean*, 2 Cal.App. 421, 84 P. 332 (1905)]

"Regulation - which is based on force and fear - undermines the moral base of business dealings. It becomes cheaper to bribe a building inspector than to meet his standards of construction. A fly-by-night securities operator can quickly meet all the S.E.C. requirements, gain the inference of respectability, and proceed to fleece the public. In an unregulated economy, the operator would have had to spend a number of years in reputable dealings before he could earn a position of trust sufficient to induce a number of investors to place funds with him. Protection of the consumer by regulation is thus illusory."

[Alan Greenspan]

"The constitution, on this hypothesis, is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please. It should be remembered, as an axiom of eternal truth in politics, that whatever power in any government is independent, is absolute also; in theory only, at first, while the spirit of the people is up, but in practice, as fast as that relaxes. Independence can be trusted nowhere but with the people in mass. They are inherently independent of all but moral law."

[Thomas Jefferson, letter to Judge Spencer Roane, September 6, 1819. "The Writings of Thomas Jefferson," edited by Andrew A. Lipscomb, vol. 15, p. 213 (1904)]

"If the jury feels the law is unjust, we recognize the undisputed power of the jury to acquit, even if its verdict is contrary to the law as given by a judge, and contrary to the evidence ... and the courts must abide by that decision."

[*U.S. v. Moylan*, 4th Circuit Court of Appeals, 1969, 417 F.2d. at 1006]

"Banning Assault Weapons to fight crime is as stupid as banning condoms to prevent rape."

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[Unknown]

"The germ of destruction of our nation is in the power of the judiciary, an irresponsible body - working like gravity by night and by day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief over the field of jurisdiction, until all shall render powerless the checks of one branch over the other and will become as venal and oppressive as the government from which we separated."

[Thomas Jefferson, 1821]

"All the extravagance and incompetence of our present government is due, in the main, to lawyers ... They are responsible for nine-tenths of the useless and vicious laws that now clutter the statute books, and for the evils that go with the vain attempt to enforce them ..."

[H.L. Mencken]

"... ours is a sick profession marked by incompetence, lack of training, misconduct and bad manners. Ineptness, bungling, malpractice, and bad ethics can be observed in court houses all over this country every day ... these incompetents have a seeming unawareness of the fundamental ethics of the profession. ... the harsh truth is that ... we may well be on our way to a society, overrun by hordes of lawyers, hungry as locusts, and brigades of judges in numbers never before contemplated."

[Chief Justice of the United States Warren Burger]

"Lawyers are being graduated from our law schools by the thousands who have little knowledge of the Constitution. When organizations seek a lawyer to instruct them on the Constitution, they find it nearly impossible to secure one competent."

[Report of the Committee on American Citizenship, presented at the meeting of the American Bar Association, Denver, Colorado, July 14-16, 1926]

"To consider the judges as the ultimate arbiters of all constitutional questions is a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy."

[Thomas Jefferson]

"If a jury have not the right to judge between the government and those who disobey its laws, the government is absolute, and the people are slaves."

[Lysander Spooner]

"Jurors should acquit even against the judge's instructions ... if exercising their judgment with discretion and honesty they have a clear conviction that the charge of the court is wrong."

[Alexander Hamilton]

"... You will recollect that before the Revolution, Coke Littleton was the universal elementary book of law students, and a sounder Whig never wrote, nor a profounder learning in the orthodox doctrines of the British constitution, or in what were called English liberties. You will remember also that our lawyers were then all Whigs. But when his black-letter text, and uncouth but cunning learning got out of fashion, and the honeyed Mansfieldism of Blackstone became the students' hornbook, from that moment, that profession (the nursery of our Congress) began to slide into toryism, and nearly all the young brood of lawyers now are of that hue. They suppose themselves, indeed to be Whigs, because they no longer know what Whigism or republicanism means."

[Thomas Jefferson, just months before his death in a February 17, 1826 letter to James Madison, lamenting the sad state of the bar and discussing why the University of Virginia Law School which he founded and Madison took a part in operating, would improve that state]

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### 11.18 Money, Banking, Usury, Debt and Inflation...<sup>92</sup>

"The only honest dollar is a dollar of stable, debt-paying, purchasing power. The only honest dollar is a dollar which repays the creditor the value he lent and no more, and requires the debtor to pay the value borrowed and no more."

[Senator Robert L. Owen, (Okla.) 1913]

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<sup>92</sup> For detailed information on money, banking, usury, debt, etc. see: *Money, Banking, and Credit Topic*, Family Guardian Fellowship; <http://famguardian.org/Subjects/MoneyBanking/MoneyBanking.htm>.

“The money power preys upon the nation in times of peace, and conspires against it in times of adversity. It is more despotic than monarchy, more insolent than autocracy, more selfish than bureaucracy. It denounces, as public enemies, all who question its methods or throw light upon its crimes.”

[Abraham Lincoln]

“We have stricken the (slave) shackles from four million human beings and brought all laborers to a common level, not so much by the elevation of former slaves as by practically reducing the whole working population, white and black, to a condition of serfdom. While boasting of our noble deeds, we are careful to conceal the ugly fact that by our iniquitous money system we have nationalized a system of oppression which, though more refined, is no less cruel than the old system of chattel slavery.”

[Horace Greeley]

"Very soon, every American will be required to register their biological property (that's you and your children) in a national system designed to keep track of the people and that will operate under the ancient system of pledging. By such methodology, we can compel people to submit to our agenda, which will affect our security as a charge back for our fiat paper currency. Every American will be forced to register or suffer being able to work and earn a living. They will be our chattels (property) and we will hold the security interest over them forever, by operation of the lawmerchant under the scheme of secured transactions. Americans, by unknowingly or unwittingly delivering the bills of lading (Birth Certificate) to us will be rendered bankrupt and insolvent, secured by their pledges. They will be stripped of their rights and given a commercial value designed to make us a profit and they will be none the wiser, for not one man in a million could ever figure our plans and, if by accident one or two should figure it out, we have in our arsenal plausible deniability. After all, this is the only logical way to fund government, by floating liens and debts to the registrants in the form of benefits and privileges. This will inevitably reap us huge profits beyond our wildest expectations and leave every American a contributor to this fraud, which we will call "Social Insurance." Without realizing it, every American will unknowingly be our servant, however begrudgingly. The people will become helpless and without any hope for their redemption and we will employ the high office (presidency) of our dummy corporation(USA) to foment this plot against America."

[Colonel Edward Mandell House, stated in a private meeting with Woodrow Wilson(President 1913 - 1921)]

“In the absence of the gold standard, (H.J.R. 192 June 5th 1933) there is no way to protect savings from confiscation through inflation. There is no safe store of value. If there were, the government would have to make its holding illegal, as was done in the case of gold. If everyone decided, for example, to convert all his bank deposits to silver or copper or any other good, and thereafter declined to accept checks as payment for goods, bank deposits would lose their purchasing power and government-created bank credit would be worthless as a claim on goods. The financial policy of the welfare state requires that there be no way for the owners of wealth to protect themselves. This is the shabby secret of the welfare statist's tirades against gold. Deficit spending is simply a scheme for the confiscation of wealth. Gold stands in the way of this insidious process. It stands as a protector of property rights. If one grasps this, one has no difficulty in understanding the statist's antagonism toward the gold standard.”

[Alan Greenspan in 1966]

"That is simple - in the Colonies, we issue our own money. It is called Colonial Script - we issue it in proper proportion to the demands of trade and industry."

[Benjamin Franklin in London, answering an agent of the Rothschild house who asked him how he accounted for the prosperous condition of the Colonies]

"In one year [1765] the conditions were so reversed that the era of prosperity ended, a depression set in, to such an extent that the streets of the Colonies were filled with unemployed. The Bank of England refused to give more than 50 per cent of the face value of the Script when turned over as required by law. The circulating medium of exchange was thus reduced by half ... the Colonies would gladly have born the little tax on tea and other matters had it not been that England took away from the Colonies their money, which created unemployment and dissatisfaction."

[Benjamin Franklin]

"The final battle for Christianity will be over the money problem, and until that is solved there can be no universal application of Christianity"

[Honoré de Balzac]

"There is no proletarian movement, not even a Communist one, which does not operate in the interests of money, in the direction indicated by money, and for the period permitted by money, and all this without the idealist in its ranks having any

suspicion of the fact".

[Oswald Spengler in "The Decline Of The West"]

"An Usurer is a three-fold thief and murderer ... he not only robs and steals, but also commits murder as he starves and utterly destroys one."

[Martin Luther (1519)]

"If all bank loans were paid ... there would not be a dollar of coin or currency in circulation. Someone has to borrow every dollar we have in circulation. We are absolutely without a permanent money system.."

[Robert Hemphill, Federal Reserve Bank in Atlanta, in foreword to "100% Money" by Irving Fisher]

"No scheme of amelioration [of our ills] has the least chance of success unless and until the money to be the master and becomes the servant of mankind, thus that no financial barrier is ever again interposed between man and his ability to create wealth."

[Abraham Lincoln]

"No State shall ... coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts ...."

[United States Constitution, Article 1, Section 10, Clause 1]

"... bank records are not the depositor's private papers and having given the information to the bank, the depositor has no legitimate expectation of continued privacy ... Records of an individual's accounts with ... banks are not the individual's private papers protected against compulsory production by the 4th Amendment, but instead are the business records of the banks."

[United States Supreme Court in U.S. v. Miller]

"As long as you have your wealth in the form of paper claims, you are prey to swindlers and con men, both those who work through government and those who work outside the law. Since almost all of the manipulation, subterfuge, and theft of your wealth occurs while it is in paper claims, you have a simple and obvious defense; keep your wealth in real goods instead of paper claims. The only safe, rational investment program for the average person in today's turbulent economy is to eliminate the intermediate step. Instead of converting labor into money, money into investments, investments back into money, and money into real goods, simply stated, invest your savings in those real things that you will be consuming in the future. Save only real wealth."

[John A. Pugsley in "The Alpha Strategy"]

"Of all contrivances for cheating the laboring classes of mankind, none has been more effective than that which deludes them with paper money."

[Daniel Webster]

"All the perplexities, confusion and distress in America rise, not from defects in their Constitution or Confederation, not from want of honor or virtue, so much as from downright ignorance of the nature of coin, credit and circulation."

[John Adams, in a letter to Thomas Jefferson in 1787]

"No thing in use by man, for power or ill, can equal money."

[Sophocles]

"The final battle for Christianity will be over the money problem, and until it is solved there can be no universal application of Christianity."

[Honore de Balzac]

"Those who omit the influence of the money power, omit the one thing which renders their judgment worthless."

[Hillaire Belloc]

"No scheme of amelioration [of our ills] has the least chance of success unless and until the money ceases to be the master and becomes the servant of mankind, thus that no financial barrier is ever again interposed between man and his ability to create wealth."

[President Abraham Lincoln]

"Gold is still the ultimate store of wealth. It's the world's only true money. And there isn't much of it to go around. All of it ever mined would fit into a small building - a 56 foot cube. The annual world production would fit into a 14 foot cube, roughly the size of an ordinary living room. If each Chinese citizen were to buy just one ounce, it would take up the annual supply for the next 200 years."

[Mark Nestmann, author of "How To Achieve Personal And Financial Privacy In A Public Age"]

"I see in the near future a crisis approaching. It unnerves me and causes me to tremble for the safety of my country ... the Money Power of the country will endeavor to prolong its reign by working upon the prejudices of the people, until the wealth is aggregated in a few hands and the Republic is destroyed."

[Abraham Lincoln, just after the passage of the National Banking Act of 1863]

"... the privilege of creating and issuing money ... is the government's greatest creative opportunity ... [saving] the taxpayers immense sums of money ...."

[Abraham Lincoln]

"Paper money has had the effect in your state that it will ever have, to ruin commerce, oppress the honest, and open the door to every species of fraud and injustice."

[George Washington, in a letter to J. Bowen, Rhode Island, Jan. 9, 1787]

"Madison, agreeing with the journal of the convention, records that the grant of power to emit bills of credit was refused by a majority of more than four to one. The evidence is perfect; no power to emit paper money was granted to the legislature of the United States."

[George Bancroft in "A Plea for the Constitution" (1886)]

"If the American people ever allow private banks to control the issue of their currency, first by inflation and then by deflation, the banks and corporations that will grow up around them will deprive the people of all property until their children will wake up homeless on the continent their fathers conquered."

[Thomas Jefferson in 1802 in a letter to then Secretary of the Treasury, Albert Gallatin]

"Paper money eventually returns to its intrinsic value - zero."

[Voltaire (1694-1778)]

"Banks have done more injury to the religion, morality, tranquility, prosperity, and even wealth of the nation than they can have done or ever will do good."

[John Adams, President, United States 1819]

"The monetary managers are fond of telling us that they have substituted 'responsible money management' for the gold standard. But there is no historic record of responsible paper money management ... The record taken as a whole is one of hyperinflation, devaluation and monetary chaos."

[Henry Hazlitt]

"The value of paper money is precisely the value of a politician's promise, as high or low as you put that; the value of gold is protected by the inability of politicians to manufacture it."

[Sir William Rees-Mogg]

"We are in danger of being overwhelmed with irredeemable paper; more paper, representing not gold nor silver; no sir, representing nothing but broken promises, bad faith, bankrupt corporations, cheated creditors, and a ruined people."

[Daniel Webster]

"The guillotine follows the paper money press, the two machines are complimentary one to the other."

[Old French saying]

"I sincerely believe ... that banking establishments are more dangerous than standing armies, and that the principle of spending money to be paid by posterity under the name of funding is but swindling futurity on a large scale."

[Thomas Jefferson to John Taylor, 1816]

"I hope we shall ... crush in its birth the aristocracy of our moneyed corporations, which dare already to challenge our



government to a trial of strength and bid defiance to the laws of our country."  
[Thomas Jefferson to George Logan, 1816]

"Give me control over a nation's currency and I care not who makes its laws."  
[Baron M.A. Rothschild (1744 - 1812)]

"Under the surface, the Rothschilds long had a powerful influence in dictating American financial laws. The law records show that they were powers in the old Bank of the United States [abolished by Andrew Jackson]."  
[Gustav Myers, author of "History of the Great American Fortunes"]

"... You are a den of vipers and thieves. I intend to rout you out, and by the grace of the Eternal God, I will rout you out."  
[President Andrew Jackson, upon evicting a delegation of international bankers from the Oval Office]

"If Congress has the right under the Constitution to issue paper money, it was given to be used by themselves, not to be delegated to individuals or corporations."  
[Andrew Jackson]

"The few who can understand the system will either be so interested in its profits, or so dependent on its favors, that there will be no opposition from that class, while on the other hand, the great body of the people, mentally incapable of comprehending the tremendous advantages that capital derives from the system, will bear its burdens without complaint and perhaps without even suspecting that the system is inimical to their interests."  
[John Sherman, protege of the Rothschild banking family, in a letter sent in 1863 to New York Bankers, Ikleheimer, Morton, and Gould, in support of the then proposed National Banking Act]

".. we conclude that the [Federal] Reserve Banks are not federal ... but are independent, privately owned and locally controlled corporations ... without day to day direction from the federal government.."  
[Lewis v. United States, 9th Circuit Court, June 24, 1982]

"Some people think the Federal Reserve Banks are U.S. government institutions. They are not ... they are private credit monopolies which prey upon the people of the U.S. for the benefit of themselves and their foreign and domestic swindlers, and rich and predatory money lenders. The sack of the United States by the Fed is the greatest crime in history. Every effort has been made by the Fed to conceal its powers, but the truth is the Fed has usurped the government. It controls everything here and it controls all our foreign relations. It makes and breaks governments at will."  
[Congressman Charles McFadden, Chairman, House Banking and Currency Committee, June 10, 1932]

"When you or I write a check there must be sufficient funds in our account to cover that check, but when the Federal Reserve writes a check, it is creating money."  
[Boston Federal Reserve Bank in a publication titled "Putting It Simply"]

"We make money the old fashioned way. We print it."  
[Art Rolnick, former Chief Economist, Minneapolis Federal Reserve Bank]

"Historically, the United States has been a hard money country. Only [since 1913] has the United States operated on a fiat money system. During this period, paper money has depreciated over 87%. During the preceding 140 year period, the hard currency of the United States had actually maintained its value. Wholesale prices in 1913 ... were the same as in 1787."  
[Kenneth Gerbino, former chairman of the American Economic Council]

"About all a Federal Reserve note can legally do is wipe out one debt and replace it with itself, another debt, a note that promises nothing. If anything's been paid, the payment occurs only in the minds of the parties ...."  
[Tupper Saucy, author of "The Miracle On Main Street"]

"By a continuing process of inflation, governments can confiscate, secretly and unobserved, an important part of the wealth of their citizens. There is no subtler, no surer means of overturning the existing basis of society than to debauch the currency. The process engages all the hidden forces of economic law on the side of destruction, and does it in a manner which not one man in a million is able to diagnose ... If, however, a government refrains from regulations and allows matters to take their course, essential commodities soon attain a level of price out of the reach of all but the rich, the worthlessness of the money becomes apparent, and the fraud upon the public can be concealed no longer."

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***Sovereignty and Freedom Points and Authorities***

[John Maynard Keynes, economist and author of "The Economic Consequences Of The Peace" (1920)]

"The law of supply and demand is not to be conned. As the supply of money (of claims) increases relative to the supply of tangible assets in the economy, prices must eventually rise. Thus, the earnings saved by the productive members of the society lose value in terms of goods. When the economy's books are finally balanced, one finds that this loss in value represents the goods purchased by the government for welfare or other purposes with the money proceeds of the government bonds financed by bank credit expansion."

[Greenspan, Alan: "Gold and Economic Freedom;" in Rand, Ayn; *Capitalism: the Unknown Ideal*; Signet Books, 1967; pp. 96-101]

"... the gold standard is incompatible with chronic deficit spending (the hallmark of the welfare state)."

[Greenspan, Alan; "Gold and Economic Freedom", Rand, Ayn; *Capitalism: the Unknown Ideal*; Signet Books, 1967; pp. 96-101. See full text in FAME's FedWatch section [www.fame.org](http://www.fame.org)]

"The truly unique power of a central bank, after all, is the power to create money, and ultimately the power to create is the power to destroy."

[Pringle, Robert; and Deane, Marjorie: *The Central Banks*; Viking, 1994, page viii]

"... a fiat money is a medium of exchange composed of some intrinsically valueless substance which the issuer does not promise to redeem in a commodity or a fiduciary money. Because a fiat money has no direct legal connexion to a commodity money (in terms of redemption) and, therefore, no real economic cost to its production, the supply of a fiat money can never be self-limiting; and the value of a fiat money is always largely a matter of public confidence in the economic or political stability of the issuer. For these reasons, historically almost all fiat monies have self-destructed in what is popularly called "hyperinflation" (that is, extreme decreases in the purchasing-power) caused by either unlimited increases in the supply of those fiat monies by the issuers or accelerating loss of public confidence in the continued value of the money or economic or political fortunes of their issuers, or both."

[Vieira, Edwin Jr., "The Federal Reserve System: A Fatal Parasite on the American Body Politic"; National Alliance for Constitutional Money, Manassas, Virginia; Monograph #4. Full text is available on FAME's Internet website: [www.fame.org](http://www.fame.org).]

"If the holders of these promises to pay started in to demand gold the first comers would get gold for a few days and they would amount to about one twenty-fifth of the holders of the securities and the currency. The other twenty-four people out of twenty-five, who did not happen to be at the top of the line, would be told politely that there was no more gold left. We have decided to treat all twenty-five in the same way in the interest of justice and the exercise of the constitutional powers of this government. We have placed every one on the same basis in order that the general good may be preserved."

[Radio Address of the President, May 7, 1933; *Outlining the New Deal Program - Fireside Chat #2*]

"Inflation has now been institutionalized at a fairly constant 5% per year. This has been scientifically determined to be the optimum level for generating the most revenue without causing public alarm. A 5% devaluation applies, not only to the money earned this year, but to all that is left over from previous years. At the end of the first year, a dollar is worth 95 cents. At the end of the second year, the 95 cents is reduced again by 5%, leaving its worth at 90 cents, and so on. By the time a person has worked 20 years, the government will have confiscated 64% of every dollar he saved over those years. By the time he has worked 45 years, the hidden tax will be 90%. The government will take virtually everything a person saves over a lifetime."

[G. Edward Griffin, historian and author of "The Creature From Jekyll Island"]

"The real truth of the matter is, and you and I know, that a financial element in the large centers has owned the government of the U.S. since the days of Andrew Jackson. History depicts Andrew Jackson as the last truly honorable and incorruptible American president."

[President Franklin Delano Roosevelt, November 23, 1933 in a letter to Colonel Edward Mandell House]

"The Founding Fathers of this great land had no difficulty whatsoever understanding the agenda of bankers, and they frequently referred to them and their kind as, quote, "friends of paper money. They hated the Bank of England, in particular, and felt that even were we successful in winning our independence from England and King George, we could never truly be a nation of freemen, unless we had an honest money system. Through ignorance, but moreover, because of apathy, a small, but wealthy, clique of power brokers have robbed us of our Rights and Liberties, and we are being raped of our wealth. We are paying the price for the near-comatose levels of complacency by our parents, and only God knows what might become

of our children, should we not work diligently to shake this country from its slumber! Many a nation has lost its freedom at the end of a gun barrel, but here in America, we just decided to hand it over voluntarily. Worse yet, we paid for the tyranny and usurpation out of our own pockets with "voluntary" tax contributions and the use of a debt-laden fiat currency!." [Peter Kershaw, author of the 1994 booklet "Economic Solutions"]

"Those who create and issue money and credit direct the policies of government and hold in the hollow of their hands the destiny of the people." [Rt. Hon. Reginald McKenna, former Chancellor of Exchequer, England]

"Bankers own the earth. Take it away from them, but leave them the power to create money and control credit, and with a flick of a pen they will create enough to buy it back." [Sir Josiah Stamp, former President, Bank of England]

"Money is the most important subject intellectual persons can investigate and reflect upon. It is so important that our present civilization may collapse unless it is widely understood and its defects remedied very soon." [Robert H. Hemphill, former credit manager, Federal Reserve Bank of Atlanta]

"Banks lend by creating credit. They create the means of payment out of nothing." [Ralph M. Hawtrey, former Secretary of Treasury, England]

"Whoever controls the volume of money in any country is absolute master of all industry and commerce." [President James A. Garfield]

"Emitting bills of credit, or the creation of money by private corporations, is what is expressly forbidden by Article 1, Section 10 of the U.S. Constitution." [U.S. Supreme Court in *Craig v. Missouri*, 4 Peters 410]

"The actual process of money creation takes place in commercial banks. As noted earlier, demand liabilities of commercial banks are money." [Federal Reserve Bank of Chicago in "Modern Money Mechanics"]

"Commercial banks create checkbook money whenever they grant a loan, simply by adding new deposit dollars in accounts on their books in exchange for a borrower's IOU." [Federal Reserve Bank of New York, "I Bet You Thought"]

"Without the confidence factor, many believe a paper money system is liable to collapse eventually." [Federal Reserve Bank of Philadelphia in "Gold"]

"You have to choose [as a voter] between trusting to the natural stability of gold and the natural stability of the honesty and intelligence of the members of the Government. And, with due respect for these gentlemen, I advise you, as long as the Capitalist system lasts, to vote for gold." [George Bernard Shaw]

"We are in danger of being overwhelmed with irredeemable paper, mere paper, representing not gold nor silver; no sir, representing nothing but broken promises, bad faith, bankrupt corporations, cheated creditors and a ruined people." [Daniel Webster, speech in the Senate, 1833]

"The distress and alarm which pervaded and agitated the whole country when the Bank of the United States waged war upon the people in order to compel them to submit to its demands can not yet be forgotten....Yet, if you had not conquered, the Government would have passed from the hands of the many to the hands of the few, and this organized money power from its secret conclave would have dictated the choice of your highest officers and compelled you to make peace or war, as best suited their own wishes. The forms of your Government might for a time have remained, but its living spirit would have departed from it. The distress and sufferings inflicted on the people by the bank are some of the fruits of that system of policy which is continually striving to enlarge the authority of the Federal Government beyond the limits fixed by the Constitution....The power which moneyed interest can exercise, when concentrated under a single head and with our present system of currency, was sufficiently demonstrated in the struggle made by the Bank of the United States....The paper-money system and its natural associations - monopoly and exclusive privileges - have already struck their root too deep in the soil,

and it will require all your efforts to check its further growth and to eradicate the evil. The men who profit by the abuses and desire to perpetuate them will continue to besiege the halls of legislation in the General Government...and will seek by every artifice to mislead and deceive the public servants...."

[Andrew Jackson, March 4, 1837, in his Farewell Address]

"The decrease in purchasing power incurred by holders of money due to inflation imparts gains to the issuers of money ... ."

[St. Louis Federal Reserve Bank in "Review", Nov. 1975]

"We repeat, and respectfully submit, that in view of the foregoing facts, it is clearly established that Hungary did not cause and did not bring about the last World War (WWI). The responsibility for the last World War rests solely upon the shoulders of international bankers. It is they upon whose head the blood of millions of dead and millions of dying rests."

[From the March 3, 1923 Congressional Record, 67th Congress, 4th Session, Senate Document No. 346 titled "Justice For Hungary" by Senator LaFollette"]

As quickly as you start spending federal money in large amounts, it looks like free money."

[President Dwight D. Eisenhower, February 9, 1955]

"Mr. Speaker, we are now in Chapter 11 ... Members of Congress are official trustees presiding over the greatest reorganization of any bankrupt entity in world history."

[James Traficant, Congressman, March 17, 1993 in the Congressional Record]

"The creation of money exclusively as debt is the critical, destabilizing flaw in the American Economy".

[Author Theodore R. Thoren explains The Truth In Money Book]

"The budget should be balanced, the treasury should be refilled and the public debt should be reduced. The arrogance of public officialdom should be tempered and controlled. And the assistance to foreign lands should be curtailed, lest we become bankrupt."

[Cicero, 63 B.C.]

"It is a cruel thought, that, when we feel ourselves standing on the firmest ground in every respect, the cursed arts of our secret enemies, combining with other causes, should effect, by depreciating our money, what the open arms of a powerful enemy could not."

[Thomas Jefferson to Richard Henry Lee, 1779. ME 4:298, Papers 2:298]

"Paper money has had the effect in your state that it will ever have, to ruin commerce, oppress the honest, and open the door to every species of fraud and injustice." -- George Washington, in a letter to J. Bowen, Rhode Island, Jan. 9, 1787

"Of all contrivances for cheating the laboring classes of mankind, none has been more effective than that which deludes them with paper money."

[Daniel Webster]

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The conditions of the loan seem to us to touch very nearly the administrative independence of China itself; and this administration does not feel that it ought, even by implication, to be a party to those conditions. The responsibility on its part which would be implied in requesting the bankers to undertake **the loan might conceivably go to the length, in some unhappy contingency, of forcible interference in the financial, and even the political, affairs of that great Oriental state**, just now awakening to a consciousness of its power and of its obligations to its people.

The conditions include not only the pledging of particular taxes, **some of them antiquated and burdensome**, to secure the loan but also **the administration of those taxes by foreign agents**. The responsibility on the part of our government implied in the encouragement of a loan thus secured and administered is plain enough and is obnoxious to the principles upon which the government of our people rests.¶

[Repudiation of Dollar Diplomacy, Woodrow Wilson, American Journal of International Law, Vol. VII, pp. 338-399]

**11.19 The Militia and the Right to Bear Arms ...**<sup>93</sup>

"What, Sir, is the use of a militia? It is to prevent the establishment of a standing army, the bane of liberty. ... Whenever Governments mean to invade the rights and liberties of the people, they always attempt to destroy the militia, in order to raise an army upon their ruins."

[Rep. Elbridge Gerry of Massachusetts, spoken during floor debate over the Second Amendment, I Annals of Congress at 750, August 17, 1789]

"Firearms stand next in importance to the Constitution itself. They are the American people's liberty teeth and keystone under independence. From the hour the Pilgrims landed, to the present day, events, occurrences and tendencies prove that to ensure peace, security and happiness, the rifle and pistol are equally indispensable. The very atmosphere of firearms everywhere restrains evil interference - they deserve a place of honor with all that's good."

[George Washington, Commanding General of the Continental Army, Father of Our Country and First President of the United States in a speech to Congress, January 7, 1790]

"1935 will go down in history. For the first time, a civilized nation has full gun registration. Our streets will be safer, our police more efficient, and the world will follow our lead into the future."

[Adolf Hitler]

"While some want to pass new protections for gun manufacturers, to shield them from lawsuits, I will work to get guns off the streets, out of the schools and away from children and criminals."

[Vice President, Al Gore, announcing his candidacy for President, 6/16/99]

"A free people ought not only to be armed, but disciplined; to which end a uniform and well-digested plan is requisite; and their safety and interest require that they should promote such manufactories as tend to render them independent of others for essential, particularly military, supplies ..."

[George Washington, in his First Annual Address, January 8, 1790]

"Gun Control? It's the best thing you can do for crooks and gangsters. I want you to have nothing. If I'm a bay guy, I'm always gonna' have a gun. Safety locks? You pull a trigger with a lock on, and I'll pull the trigger. We'll see who wins."

[Former mobster Sammy "The Bull" Gravano, who testified against John Gotti (his former boss), admitted to killing nineteen people, and is now living under the Witness Protection Program]

"If you take out the killings, Washington actually has a very low crime rate."

[Marion Barry, four-time mayor of Washington, D.C.]

"I am convinced that we can do to guns what we've done to drugs: create a multi-billion dollar underground market over which we have absolutely no control."

[George L. Roman]

"The strongest reason for the people to retain the right to keep and bear arms is, as a last resort, to protect themselves against tyranny in government."

[Thomas Jefferson]

**11.20 Franchises, Benefits, Welfare State**<sup>94</sup>

**FRANCHISE. A special privilege conferred by government on individual or corporation, and which does not belong to citizens of country generally of common right.** Elliott v. City of Eugene, 135 Or. 108, 294 P. 358, 360. **In England it is defined to be a royal privilege in the hands of a subject.**

<sup>93</sup> For detailed information about gun control, see: *Gun Control Topic*, Family Guardian Fellowship; <http://famguardian.org/Subjects/GunControl/GunControl.htm>;

<sup>94</sup> For detailed information about franchises, benefits, and the welfare state, see:

1. *Government Instituted Slavery Using Franchises*, Form #05.030; <http://sedm.org/Forms/FormIndex.htm>.
2. *The Government "Benefits" Scam*, Form #05.040; <http://sedm.org/Forms/FormIndex.htm>.



A "franchise," as used by Blackstone in defining quo warranto, (3 Com. 262 [4th Am. Ed.] 322), had reference to a royal privilege or branch of the king's prerogative **subsisting in the hands of the subject, and must arise from the king's grant, or be held by prescription**, but today we understand a franchise to be some special privilege conferred by government on an individual, natural or artificial, which is not enjoyed by its citizens in general. *State v. Fernandez*, 106 Fla. 779, 143 So. 638, 639, 86 A.L.R. 240.

**In this country a franchise is a privilege or immunity of a public nature, which cannot be legally exercised without legislative grant. To be a corporation is a franchise.** The various powers conferred on corporations are franchises. The execution of a policy of insurance by an insurance company [e.g. **Social Insurance/Socialist Security**], and the issuing a bank note by an incorporated bank [**such as a Federal Reserve NOTE**], are franchises. *People v. Utica Ins. Co.*, 15 Johns. (N.Y.) 387, 8 Am.Dec. 243. But it does not embrace the property acquired by the exercise of the franchise. *Bridgeport v. New York & N.H. R. Co.*, 36 Conn. 255, 4 Am.Rep. 63. Nor involve interest in land acquired by grantee. *Whitbeck v. Funk*, 140 Or. 70, 12 P.2d. 1019, 1020. **In a popular sense, the political rights of subjects and citizens are franchises, such as the right of suffrage. etc. Pierce v. Emery, 32 N.H. 484; State v. Black Diamond Co., 97 Ohio.St. 24, 119 N.E. 195, 199, L.R.A. 1918E, 352.**

Elective Franchise. The right of suffrage: the right or privilege of voting in public elections.

Exclusive Franchise. See Exclusive Privilege or Franchise.

General and Special. The charter of a corporation is its "general" franchise, while **a "special" franchise consists in any rights granted by the public to use property for a public use but-with private profit.** *Lord v. Equitable Life Assur. Soc.*, 194 N.Y. 212, 87 N.E. 443, 22 L.R.A. (N.S.) 420.

Personal Franchise. A franchise of corporate existence, or one which authorizes the formation and existence of a corporation, is sometimes called a "personal" franchise. as distinguished from a "property" franchise, which authorizes a corporation so formed to apply its property to some particular enterprise or exercise some special privilege in its employment, as, for example, to construct and operate a railroad. See *Sandham v. Nye*, 9 Misc.Rep. 541, 30 N.Y.S. 552.

Secondary Franchises. The franchise of corporate existence being sometimes called the "primary" franchise of a corporation, its "secondary" franchises are the special and peculiar rights, privileges, or grants which it may, receive under its charter or from a municipal corporation, such as the right to use the public streets, exact tolls, collect fares, etc. *State v. Topeka Water Co.*, 61 Kan. 547, 60 P. 337; *Virginia Canon Toll Road Co. v. People*, 22 Colo. 429, 45 P. 398 37 L.R.A. 711. The franchises of a corporation are divisible into (1) corporate or general franchises; and (2) "special or secondary franchises. The former is the franchise to exist as a corporation, while the latter are certain rights and privileges conferred upon existing corporations. *Gulf Refining Co. v. Cleveland Trust Co.*, 166 Miss. 759, 108 So. 158, 160.

Special Franchisee. See Secondary Franchises, supra.  
[Black's Law Dictionary, Fourth Edition, pp. 786-787]

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"Of all tyrannies, a tyranny sincerely exercised for the good of its victims may be the most oppressive. It would be better to live under robber barons than under omnipotent moral busybodies. The robber baron's cruelty may sometimes sleep, his cupidity may at some point be satiated; but those who torment us for our own good will torment us without end for they do so with the approval of their own conscience."

[C.S. Lewis]

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"Cujus est commodum ejus debet esse incommodum.  
He who receives the benefit should also bear the disadvantage."

Invito beneficium non datur.

No one is obliged to accept a benefit against his consent. Dig. 50, 17, 69. But if he does not dissent he will be considered as assenting. Vide Assent.

Potest quis renunciare pro se, et suis, juri quod pro se introductum est.

A man may relinquish, for himself and his heirs, a right which was introduced for his own benefit. See 1 Bouv. Inst. n. 83. [Bouvier's Maxims of Law, 1856;

SOURCE: <http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviersMaxims.htm>]

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"The words "privileges" and "immunities," like the greater part of the legal phraseology of this country, have been carried over from the law of Great Britain, and recur constantly either as such or in equivalent expressions from the time of Magna Charta. For all practical purposes they are synonymous in meaning, and originally signified a peculiar right or private law conceded to particular persons or places **whereby a certain individual or class of individuals was exempted from the rigor of the common law.** Privilege or immunity is conferred upon any person when he is invested with a legal claim to the exercise of special or peculiar rights, authorizing him to enjoy some particular advantage or exemption."

[The Privileges and Immunities of State Citizenship, Roger Howell, PhD, 1918, pp. 9-10;

SOURCE:

[http://famguardian.org/Publications/ThePrivAndImmOfStateCit/The\\_privileges\\_and\\_immunities\\_of\\_state\\_c.pdf](http://famguardian.org/Publications/ThePrivAndImmOfStateCit/The_privileges_and_immunities_of_state_c.pdf)]

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**"We can hardly find a denial of due process in these circumstances, particularly since it is even doubtful that appellee's burdens under the program outweigh his benefits. It is hardly lack of due process for the Government to regulate that which it subsidizes."**

[Wickard v. Filburn, 317 U.S. 111, 63 S.Ct. 82 (1942)]

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**"You shall make no covenant [contract or franchise] with them [foreigners, pagans], nor with their [pagan government] gods [laws or judges].** They shall not dwell in your land [and you shall not dwell in theirs by becoming a "resident" or domiciliary in the process of contracting with them], lest they make you sin against Me [God]. For if you serve their [government] gods [under contract or agreement or franchise], it will surely be a snare to you."

[Exodus 23:32-33, Bible, NKJV]

"Awake, awake, O Zion, clothe yourself with strength. Put on your garments of splendor, O Jerusalem, the holy city. The uncircumcised and defiled will not enter you again. **Shake off your dust; rise up, sit enthroned, O Jerusalem [Christians]. Free yourself from the chains [contracts and franchises] on your neck, O captive Daughter of Zion. For this is what the LORD says: "You were sold for nothing [free government cheese worth a fraction of what you had to pay them to earn the right to "eat" it], and without money you will be redeemed."**

[Isaiah 52:1-3, Bible, NKJV]

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"I [God] brought you up from Egypt [slavery] and brought you to the land of which I swore to your fathers; and I said, 'I will never break My covenant with you. And **you shall make no covenant [contract or franchise or agreement of ANY kind] with the inhabitants of this [corrupt pagan] land; you shall tear down their [man/government worshipping socialist] altars.**' But you have not obeyed Me. Why have you done this?"

"Therefore I also said, **'I will not drive them out before you; but they will become as thorns [terrorists and persecutors] in your side and their gods will be a snare [slavery!] to you.'**"

So it was, when the Angel of the LORD spoke these words to all the children of Israel, that the people lifted up their voices and wept.

[Judges 2:1-4, Bible, NKJV]

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'For among My [God's] people are found wicked [covetous public servant] men; **They lie in wait as one who sets snares; They set a trap; They catch men.** As a cage is full of birds, **So their houses are full of deceit.** Therefore they have become great and grown rich. They have grown fat, they are sleek; Yes, they surpass the deeds of the wicked; They do not plead the cause, The cause of the fatherless [or the innocent, widows, or the nontaxpayer]; Yet they prosper, And the right of the needy

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they do not defend. **Shall I not punish them for these things?’ says the Lord. ‘Shall I not avenge Myself on such a nation as this?’**

**“An astonishing and horrible thing Has been committed in the land: The prophets prophesy falsely, And the priests [judges in franchise courts that worship government as a pagan deity] rule by their own power; And My people love to have it so. But what will you do in the end?”**

[Jer. 5:26-31, Bible, NKJV]

"The taxpayer-- that's someone who works for the federal government but doesn't have to take the civil service examination."

[President Ronald W. Reagan]

"In the matter of taxation, every privilege is an injustice."

[Voltaire]

“The more you want [privileges], the more the world can hurt you.”

[Confucius]

“The Lord is well pleased for His righteousness’ sake; **He will exalt the law and make it honorable. But this is a people robbed and plundered! All of them are snared in [legal] holes [by the sophistry of greedy government lawyers], and they are hidden in prison houses; they are for prey, and no one delivers; for plunder, and no one says, “Restore!”**

**Who among you will give ear to this? Who will listen and hear for the time to come? Who gave Jacob for plunder, and Israel to the robbers? Was it not the Lord, He against whom we have sinned? For they would not walk in His ways, nor were they obedient to His law,** therefore He has poured on him the fury of His anger and the strength of battle; it has set him on fire all around, yet he did not know; and it burned him, yet he did not take it to heart.”

[Isaiah 42:21-25, Bible, NKJV]

“Invito beneficium non datur.

No one is obliged to accept a benefit against his consent. Dig. 50, 17, 69. But if he does not dissent he will be considered as assenting. Vide Assent.

Non videtur consensum retinuisse si quis ex praescripto minantis aliquid immutavit.

He does not appear to have retained his consent, if he have changed anything through the means of a party threatening.

Bacon's Max. Reg. 33.”

[Bouvier’s Maxims of Law, 1856;

SOURCE: <http://famguardian.org/Publications/BouvierMaximsOfLaw/BouviereMaxims.htm>]

## 11.21 **Socialism (Communism in Slow Motion) ...**<sup>95</sup>

### 11.21.1 **Secular Quotes**

[TITLE 50](#) > [CHAPTER 23](#) > [SUBCHAPTER IV](#) > Sec. 841.

[Sec. 841. - Findings and declarations of fact](#)

<sup>95</sup> For detailed information about socialism, see:

1. *Socialism: The New American Civil Religion*, Form #05.016; <http://sedm.org/Forms/FormIndex.htm>.

For detailed information about Social Security, see:

2. *Communism, Socialism, Collectivism Page*, Family Guardian Fellowship; <https://famguardian.org/Subjects/Communism/Communism.htm>.

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The Congress finds and declares that the Communist Party of the United States [*consisting of the IRS, DOJ, and a corrupted federal judiciary*], although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the [de jure] Government of the United States [*and replace it with a de facto government ruled by the judiciary*]. It constitutes an *authoritarian dictatorship [IRS, DOJ, and corrupted federal judiciary in collusion]* within a [*constitutional*] *republic*, demanding for itself the rights and [*FRANCHISE*] *privileges* [including immunity from prosecution for their wrongdoing in violation of *Article 1, Section 9, Clause 8 of the Constitution*] accorded to political parties, but *denying to all others the liberties [Bill of Rights] guaranteed by the Constitution [Form #10.002]*. Unlike political parties, which evolve their policies and programs through public means, by the reconciliation of a wide variety of individual views, and submit those policies and programs to the electorate at large for approval or disapproval, the policies and programs of the Communist Party are secretly [*by corrupt judges and the IRS in complete disregard of, Form #05.014, the tax franchise "codes", Form #05.001*] prescribed for it by the foreign leaders of the world Communist movement [*the IRS and Federal Reserve*]. Its members [*the Congress, which was terrorized to do IRS bidding by the framing of Congressman Traficant*] have no part in determining its goals, and are not permitted to voice dissent to party objectives. Unlike members of political parties, members of the Communist Party are recruited for indoctrination [in *the public FOOL system* by homosexuals, liberals, and socialists] with respect to its objectives and methods, and are organized, instructed, and disciplined [by the IRS and a corrupted judiciary] to carry into action slavishly the assignments given them by their hierarchical chieftains. *Unlike political parties, the Communist Party [thanks to a corrupted federal judiciary] acknowledges no constitutional or statutory limitations upon its conduct or upon that of its members [ANARCHISTS!, Form #08.020]*. The Communist Party is relatively small numerically, and gives scant indication of capacity ever to attain its ends by lawful political means. *The peril inherent in its operation arises not from its numbers, but from its failure to acknowledge any limitation as to the nature of its activities, and its dedication to the proposition that the present constitutional Government of the United States ultimately must be brought to ruin by any available means, including resort to;force and violence [or using income taxes]. Holding that doctrine, its role as the agency of a hostile foreign power [the Federal Reserve and the American Bar Association (ABA)] renders its existence a clear present and continuing danger to the security of the United States. It is the means whereby individuals are seduced [illegally KIDNAPPED via identity theft!, Form #05.046] into the service of the world Communist movement [using FALSE information returns and other PERJURIOUS government forms, Form #04.001], trained to do its bidding [by FALSE government publications and statements that the government is not accountable for the accuracy of, Form #05.007], and directed and controlled [using FRANCHISES illegally enforced upon NONRESIDENTS, Form #05.030] in the conspiratorial performance of their revolutionary services. Therefore, the Communist Party should be outlawed*

[50 U.S.C. §841: Findings and Declarations of Fact]

Mr. Logan: "...Natural laws can not be created, repealed, or modified by legislation. Congress should know there are many things which it can not do..."

"It is now proposed to make the Federal Government the guardian of its citizens. If that should be done, the Nation soon must perish. There can only be a free nation when the people themselves are free and administer the government which they have set up to protect their rights. Where the general government must provide work, and incidentally food and clothing for its citizens, freedom and individuality will be destroyed and eventually the citizens will become serfs to the general government..."

[Congressional Record-Senate, Volume 77- Part 4, June 10, 1933, Page 12522

SOURCE: <http://famguardian.org/TaxFreedom/CitesByTopic/Sovereignty-CongRecord-Senate-JUNE101932.pdf>

"The great object was to get rid of Christianity and to convert our churches into halls of science... the plan was not to make open attacks upon religion - although we might belabor the clergy and bring them into contempt where we could ... but to establish a system of state - we said national - schools... from which all religion would be excluded and to which all parents were to be compelled by law to send their children."

[US Congressman in the 1840's Robert Dale Owen, known as the father of socialism]

"The mouth which eats [government handouts] does not talk [or complain]."

[Chinese proverb]

"Men are endowed by their Creator with certain unalienable rights, 'life, liberty, and the pursuit of happiness;' and to 'secure, not grant or create, these rights, governments are instituted. **That property [or income] which a man has honestly acquired**

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**he retains full control of, subject to these limitations: First, that he shall not use it to his neighbor's injury, and that does not mean that he must use it for his neighbor's benefit; second, that if he devotes it to a public use, he gives to the public a right to control that use; and third, that whenever the public needs require, the public may take it upon payment of due compensation.**

[Budd v. People of State of New York, 143 U.S. 517 (1892)]

"Give me your four year-olds and in a generation I will build a socialist state ... destroy the family and the society will collapse."

[Vladimir Lenin]

"...You cannot help the poor by destroying the rich. You cannot lift the wage earner by pulling down the wage payer..."

[Abraham Lincoln]

"It stands to reason that where there's sacrifice, there's someone collecting sacrificial offerings. Where there is service, there is someone being served. The man who speaks to you of sacrifice speaks of slaves and masters. And intends to be master."

[Ayn Rand]

"It's illegal to say to a voter "Here's \$100, vote for me." So what do the politicians do? They offer the \$100 in the form of Health Care, Social Security, Unemployment Insurance, Food Stamps, tobacco subsidies, grain payments, NEA payments, and jobs programs."

[Don Farrar - average guy, age 51]

"For every new mouth to feed, there are two hands to produce."

[Peter T. Bauer]

"The state is the great fictitious entity by which everyone seeks to live at the expense of everyone else."

[Fredric Bastiat, early French economist]

"Socialism is not in the least what it pretends to be. It is not the pioneer of a better and finer world, but the spoiler of what thousands of years of civilization have created. It does not build, it destroys. For destruction is the essence of it. It produces nothing, it only consumes what the social order based on private ownership in the means of production has created."

[Ludwig von Mises ("Socialism", 1922)]

"It's no longer an issue of contention that privatization is a solution. You can always rely on government to make the right decision, but only after it has exhausted every other conceivable alternative."

[E. S. Savas, a management professor at Baruch College in New York who advised Giuliani during the campaign.]

"The war against illegal plunder has been fought since the beginning of the world. But how is ... legal plunder to be identified? Quite simply. See if the law takes from some persons what belongs to them, and gives it to other persons to whom it does not belong. See if the law benefits one citizen at the expense of another by doing what the citizen himself cannot do without committing a crime. Then abolish this law without delay ... If such a law is not abolished immediately, it will spread, multiply and develop into a system."

[Frederic Bastiat, French author of "The Law" (1848)]

"But why, you might ask, should the richest people in the world promote a socialistic system? The answer appears to be that under socialism the state owns everything, and these people intend, quite simply, to own the state. It is the neatest and completest way of bagging the lot!"

[W.D. Chalmers in "The Conspiracy Of Truth"]

"I don't like the income tax. Every time we talk about these taxes we get around to the idea of 'from each according to his capacity and to each according to his needs'. That's socialism. It's written into the Communist Manifesto. Maybe we ought to see that every person who gets a tax return receives a copy of the Communist Manifesto with it so he can see what's happening to him.."

[T. Coleman Andrews, Commissioner of Internal Revenue, May 25, 1956 in U.S. News & World Report]

"In 1833, a small group of Socialists met in London, announcing their intentions of converting the British economic system from capitalism to socialism. This group chose the name "Fabian Society". One of the leading members of the Fabian Society,



author George Bernard Shaw, perhaps summed it up best when he said, quote: "... Socialism means equality of income or nothing ... under socialism you would not be allowed to be poor. You would be forcibly fed, clothed, lodged, taught, and employed whether you like it or not. If it were discovered that you had not character enough to be worth all this trouble, you might possibly be executed in a kindly manner; but whilst you were permitted to live you would have to live well."  
[Edgar Wallace Robinson in his 1980 booklet titled "Rolling Thunder"]

"We cannot expect the Americans to jump from Capitalism to Communism, but we can assist their elected leaders in giving Americans small doses of Socialism, until they suddenly awake to find they have Communism."  
[Nikita Krushchev, Premiere of the former Soviet Union, 3-1/2 months before his first visit to the United States]

"The American people will never knowingly adopt socialism. But, under the name of "liberalism", they will adopt every fragment of the socialist program, until one day America will be a socialist nation, without knowing how it happened."  
[Norman Thomas, for many years the U.S. Socialist Party presidential candidate]

"America is like a healthy body and its resistance is three-fold: its patriotism, its morality and its spiritual life. If we can undermine these three areas, America will collapse from within."  
[Joseph Stalin, former dictator of the Soviet Union]

"We will first take Eastern Europe, then the masses of Asia. We will surround the United States, which will be the last bastion of Capitalism. We will not have to attack. It will fall like overripe fruit into our hands."  
[Lenin]

"The welfare state reduces a citizen to a client, subordinates them to a bureaucrat, and subjects them to rules that are anti-work, anti-family, anti-opportunity and anti-property... Humans forced to suffer under such anti-human rules naturally develop pathologies. The evening news is the natural result of the welfare state."  
[Unknown]

"A policy of subsidizing failures will end in an economy strewn with capital-guzzling industries long past their time of profitability - old companies that cannot create jobs themselves, but can stand in the way of job creation."  
[George Gilder, *Wealth and Poverty*]

### **11.21.2 Virginia Church Service Economic Stimulus Sermon**

#### **VIRGINIA CHURCH SERVICE - STIMULUS SERMON**

Very little has changed in 4,000 years.

Good morning, brothers and sisters; It's always a delight to see the pews crowded on Sunday morning, and so eager to get into God's Word. Turn with me in your Bibles, if you will to the 47th chapter of Genesis, we'll begin our reading at verse 13, and go through verse 27.

Brother Ray, would you stand and read that great passage for us? .....(reading)... Thank you for that fine reading, Brother Ray.

So we see that economic hard times fell upon Egypt, and the people turned to the government of Pharaoh to deal with this for them. And Pharaoh nationalized the grain harvest, and placed the grain in great storehouses that he had built. So the people brought their money to Pharaoh, like a great tax increase, and gave it all to him willingly in return for grain. And this went on until their money ran out, and they were hungry again.

So when they went to Pharaoh after that, they brought their livestock - their cattle, their horses, their sheep, and their donkey - to barter for grain, and verse 17 says that only took them through the end of that year. But the famine wasn't over, was it?

So the next year, the people came before Pharaoh and admitted they had nothing left, except their land and their own lives. "There is nothing left in the sight of my lord but our bodies and our land. Why should we die before your eyes, both we and our land? Buy us and our land for food, and we with our land will be servants to Pharaoh." So they surrendered their homes, their land, and their real estate to Pharaoh's government, and then sold themselves into slavery to him in return for grain.

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What can we learn from this, brothers and sisters? That turning to the government instead of to God to be our provider in hard times only leads to slavery? Yes! That the only reason government wants to be our provider is to also become our master? Yes!

But look how that passage ends, brothers and sisters! Thus Israel settled in the land of Egypt, in the land of Goshen. And they gained possessions in it, and were fruitful and multiplied greatly." God provided for His people, just as He always has! They didn't end up giving all their possessions to government, no, it says they gained possessions!

But I also tell you a great truth today, and an ominous one. We see the same thing happening today - the government today wants to "share the wealth" once again, to take it from us and redistribute it back to us. It wants to take control of healthcare, just as it has taken control of education, and ration it back to us, and when government rations it, then government decides who gets it, and how much, and what kind. And if we go along with it, and do it willingly, then we will wind up no differently than the people of Egypt did four thousand years ago - as slaves to the government, and as slaves to our leaders.

What Mr. Obama's government is doing now is no different from what Pharaoh's government did then and it will end the same. And a lot of people like to call Mr. Obama a "Messiah," don't they? Is he a Messiah? A savior? Didn't the Egyptians say, after Pharaoh made them his slaves, "You have saved our lives; may it please my lord, we will be servants to Pharaoh"? Well, I tell you this - I know the Messiah; the Messiah is a friend of mine; and Mr. OBAMA IS NO MESSIAH! No, brothers and sisters, if Mr. Obama is a character from the Bible, then he is Pharaoh.

Bow with me in prayer, if you will...

*"Lord, You alone are worthy to be served, and we rely on You, and You alone. We confess that the government is not our deliverer, and never rightly will be. We read in the eighth chapter of 1 Samuel, when Samuel warned the people of what a ruler would do, where it says "And in that day you will cry out because of your king, whom you have chosen for yourselves, but the LORD will not answer you in that day.."*

*"And Lord, we acknowledge that day has come. We cry out to you because of the ruler that we have chosen for ourselves as a nation."*

*Lord, we pray for this nation. We pray for revival, and we pray for deliverance from those who would be our masters. Give us hearts to seek You and hands to serve You, and protect Your people from the atrocities of Pharaoh's government."*

In God We Trust...Everyone from the government, legal, and political professions we distrust and investigate. Amen.

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### 11.21.3 Catholic Doctrine on Socialism and Communism



**PIUS IX (1846-1878)**

#### **The Overthrow of Order**

“You are aware indeed, that the goal of this most iniquitous plot is to drive people to overthrow the entire order of human affairs and to draw them over to the wicked theories of this Socialism and Communism, by confusing them with perverted teachings.”

[Encyclical *Nostis et Nobiscum*, December 8, 1849]

**LEO XIII (1878-1903)****Overthrow is Deliberately Planned**

“... For, the fear of God and reverence for divine laws being taken away, the authority of rulers despised, sedition permitted and approved, and the popular passions urged on to lawlessness, with no restraint save that of punishment, a change and overthrow of all things will necessarily follow. Yea, this change and overthrow is deliberately planned and put forward by many associations of communists and socialists.”

[Encyclical *Humanum Genus*, April 20, 1884, n. 27]

**Debasing the Natural Union of Man and Woman**

“They [socialists, communists, or nihilists] debase the natural union of man and woman, which is held sacred even among barbarous peoples; and its bond, by which the family is chiefly held together, they weaken, or even deliver up to lust.

[Encyclical *Quod Apostolici Muneris*, December 28, 1878, n. 1]

**The Harvest of Misery**

“...there is need for a union of brave minds with all the resources they can command. The harvest of misery is before our eyes, and the dreadful projects of the most disastrous national upheavals are threatening us from the growing power of the socialistic movement.”

[Encyclical *Graves de Communi Re*, January 18, 1901, n. 21]

**SAINT PIUS X (1903-1914)****The Dream of Re-Shaping Society will Bring Socialism**

“But stranger still, alarming and saddening at the same time, are the audacity and frivolity of men who call themselves Catholics and dream of re-shaping society under such conditions, and of establishing on earth, over and beyond the pale of the Catholic Church, ‘the reign of love and justice’ ... What are they going to produce? ... A mere verbal and chimerical construction in which we shall see, glowing in a jumble, and in seductive confusion, the words Liberty, Justice, Fraternity, Love, Equality, and human exultation, all resting upon an ill-understood human dignity. It will be a tumultuous agitation, sterile for the end proposed, but which will benefit the less Utopian exploiters of the people. Yes, we can truly say that the Sillon, its eyes fixed on a chimera, brings Socialism in its train.”

[Apostolic Letter *Notre Charge Apostolique* ("Our Apostolic Mandate") to the French Bishops, August 15, 1910, condemning the movement *Le Sillon*]

**BENEDICT XV (1914-1922)****Never Forget the Condemnation of Socialism**

“It is not our intention here to repeat the arguments which clearly expose the errors of Socialism and of similar doctrines. Our predecessor, Leo XIII, most wisely did so in truly memorable Encyclicals; and you, Venerable Brethren, will take the greatest care that those grave precepts are never forgotten, but that whenever circumstances call for it, they should be clearly expounded and inculcated in Catholic associations and congresses, in sermons and in the Catholic press.”

[Encyclical *Ad Beatissimi Apostolorum*, November 1, 1914, n. 13]

**PIUS XI (1922-1939)****Socialism Cannot Be Reconciled with Catholic Doctrine**

“We make this pronouncement: Whether considered as a doctrine, or an historical fact, or a movement, Socialism, if it remains truly Socialism, even after it has yielded to truth and justice on the points which we have mentioned, cannot be reconciled with the teachings of the Catholic Church because its concept of society itself is utterly foreign to Christian truth.”

[Encyclical *Quadragesimo Anno*, May 15, 1931, n. 117]

**Catholic Socialism is a Contradiction**

“[Socialism] is based nevertheless on a theory of human society peculiar to itself and irreconcilable with true Christianity. Religious socialism, Christian socialism, are contradictory terms; no one can be at the same time a good Catholic and a true socialist.” (Ibid. n. 120)

**PIUS XII (1939-1958)****The Church Will Fight Socialism to the End**

“[The Church undertook] the protection of the individual and the family against a current threatening to bring about a total socialization which in the end would make the specter of the 'Leviathan' become a shocking reality. The Church will fight this battle to the end, for it is a question of supreme values: the dignity of man and the salvation of souls.”

[“Radio message to the Katholikentag of Vienna,” September 14, 1952 in *Discorsi e Radiomessaggi*, vol. XIV, p. 314]

**The All-Powerful State Harms True Prosperity**

"To consider the State as something ultimate to which everything else should be subordinated and directed, cannot fail to harm the true and lasting prosperity of nations."

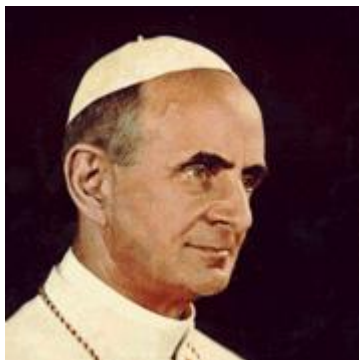
[Encyclical *Summi Pontificatus*, October 20, 1939, n. 60]

**JOHN XXIII (1958-1963)**

“No Catholic could subscribe even to moderate socialism”

“Pope Pius XI further emphasized the fundamental opposition between Communism and Christianity, and made it clear that no Catholic could subscribe even to moderate Socialism. The reason is that Socialism is founded on a doctrine of human society which is bounded by time and takes no account of any objective other than that of material well-being. Since, therefore, it proposes a form of social organization which aims solely at production; it places too severe a restraint on human liberty, at the same time flouting the true notion of social authority.”

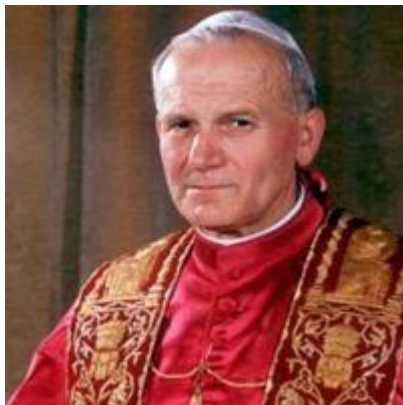
[Encyclical *Mater et Magistra*, May 15, 1961, n. 34]

**PAUL VI (1963-1978)****Christians Tend to Idealize Socialism**

“Too often Christians attracted by socialism tend to idealize it in terms which, apart from anything else, are very general: a will for justice, solidarity and equality. They refuse to recognize the limitations of the historical socialist movements, which remain conditioned by the ideologies from which they originated.”

[Apostolic Letter *Octogesima Adveniens*, May 14, 1971, n. 31]



**JOHN PAUL II (1978-2005)****Socialism: Danger of a "simple and radical solution"**

"It may seem surprising that 'socialism' appeared at the beginning of the Pope's critique of solutions to the 'question of the working class at a time when 'socialism' was not yet in the form of a strong and powerful State, with all the resources which that implies, as was later to happen. However, he correctly judged the danger posed to the masses by the attractive presentation of this simple and radical solution to the 'question of the working class.'"

[Encyclical *Centesimus Annus* - On the 100th anniversary of Pope Leo XIII's *Rerum Novarum*, May 1, 1991, n. 12]

**BENEDICT XVI (2005-2013)****We do not Need a State which Controls Everything**

"The State which would provide everything, absorbing everything into itself, would ultimately become a mere bureaucracy incapable of guaranteeing the very thing which the suffering person - every person - needs: namely, loving personal concern. We do not need a State which regulates and controls everything, but a State which, in accordance with the principle of subsidiarity, generously acknowledges and supports initiatives arising from the different social forces and combines spontaneity with closeness to those in need. ... In the end, the claim that just social structures would make works of charity superfluous masks a materialist conception of man: the mistaken notion that man can live 'by bread alone' (Mt 4:4; cf. Dt 8:3) - a conviction

that demeans man and ultimately disregards all that is specifically human."

[Encyclical *Deus Caritas Est*, December 25, 2005, n. 28]

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**11.21.4 LDS Doctrine on Socialism and Communism<sup>96</sup>**

We at SEDM are Christians and not Latter Day Saints. However, the Latter Day Saints (LDS) faith has lots of church doctrine proving that socialism and communism are religions that may be useful to our members. We include it here for reference for those of our readers who are LDS.

The content of this section was presented to senior members of the LDS church by a concerned reader. In attendance was also a tax professional in private practice. Their response:

1. They could not disprove any of these authorities.
2. They could provide no proof or legal evidence proving that any of these church and scriptural authorities had been rescinded or repealed or superceded.
3. They absolutely refused to speak about these issues and implement them in their own local church, even though they are still valid doctrine.
4. They terminated excommunication proceedings against the member originated because they accused the member of establishing their own church in competition with the LDS church. In fact, it was THEY who were establishing and protecting and perpetuating a religion in contradiction to the teachings of their own church.
5. They told the member who revealed these authorities that they were not allowed to speak publicly in front of the church on any of these subjects, as if to censor the member and prevent the congregagion from hearing about the misdeeds and violations of God's laws by the local pastors. HYPOCRITES!

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<sup>96</sup> Written by Christopher Holloman Hansen, author of *Testament of Sovereignty*, Form #13.010; <http://sedm.org/Forms/FormIndex.htm>.

The following are selected quotes concerning the doctrine of The Church of Jesus Christ of Latter-day Saints concerning socialism, communism, fascism, nazism, etc. are religions and that they are the counterfeit doctrine of Satan established for the purpose of conflicting with Christ's work.

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*We heard Brother Taylor's exposition of what is called Socialism this morning. What can they do? Live on each other and beg. It is a poor, unwise and very imbecile people who cannot take care of themselves.*

President Brigham Young, Journal of Discourses, Vol. 14, p. 21

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*"One of the fundamental doctrines of revealed truth is that ... God endowed men with free agency (see Moses 7:32). The preservation of this free agency is more important than the preservation of life itself. ... Everything which militates against man's enjoyment of this endowment persuades not to believe in Christ, for he is the author of free agency.*

*"Now the world today is in the throes of a great social and political revolution. In almost every department of society laws and practices are being daily proposed and adopted which greatly alter the course of our lives. Indeed, some of them are literally shaking the foundations of our political and social institutions. If you would know truth from error in this bitterly contested arena, apply Mormon's test to these innovations [as recorded in Moro. 7:16-18]. Do they facilitate or restrict the exercise of man's divine endowment of free agency? Tested by this standard, most of them will fall quickly into their proper category as between good and evil."*

[President Marion G. Romney, Council of the Twelve; (Speeches of the Year, Brigham Young University Press, 1957, pp. 10-11.)]

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*"Besides the preaching of the Gospel, we have another mission, namely, the perpetuation of the free agency of man and the maintenance of liberty, freedom, and the rights of man. ... We have a right to liberty—that was a right that God gave to all men; and if there has been oppression, fraud or tyranny in the earth, it has been the result of the wickedness and corruptions of men and has always been opposed to God and the principles of truth."*

[President John Taylor (Journal of Discourses, 23:63.)]

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*"May we take a moment from some of the side issues and from some of the irrelevant celebration, and clear our thoughts and humble our hearts and get down on our knees and simply, fervently, thank God for freedom—and then get on our feet with a firm resolve to preserve it against all who secretly or openly would set it aside.*

*"Thank God for freedom—and for the Founding Fathers who reaffirmed to a new nation, an eternal, timeless truth: that the right of choice—that the free agency of man—is a God-given inalienable right, and is essential to the peace and growth and progress and salvation of the very soul.*

*"This truth has been challenged again and again, and will yet be challenged again and again. It was challenged in the heavens before time began, by the brilliant but rebellious Lucifer. There was war in heaven—for freedom. And anyone who seeks to enslave men in*

*any sense, in mind, in spirit, in thought—anyone who seeks to enslave the minds, the hearts, the spirits of men is essentially in league with Satan himself—for “where the Spirit of the Lord is, there is liberty”*  
[2 Cor. 3:17].

*“Thank God for the Constitution of our country, which was brought into being by the ‘hands of wise men whom [the Lord God] raised up unto this very purpose’ [D&C 101:80]. Thank God for the promise that in this choice land, men ‘shall be free from bondage, and from captivity, and from all other nations under heaven, if they will but serve’ God [Ether 2:12].*

*“Thank God for the right of choice, for the right to become whatever we can become in a free and provident land that, despite its imperfections, has proved to be more efficient for progress and human happiness than any society founded on the false philosophies that would seek to enslave the minds and souls of men.*

*“God grant that we may repent wherever we have departed from the principles of freedom—that we may preserve the right to fail and the incentive to succeed, and live, as did the Founding Fathers, knowing that there are no acceptable substitutes for freedom.”*

[Elder Richard L. Evans, Quorum of the Twelve Apostles that he gave in conjunction with an Independence Day celebration. The title of Elder Evans’s brief address is “Thank God for Freedom.” (From the Crossroads, New York: Harper & Brothers, 1955, p. 45.)]

*The plain and simple issue now facing us in America is freedom or slavery. . . .*

*Our real enemies are communism and its running mate, socialism. . . .*

*And never forget for one moment that communism and socialism are state slavery. World conquest has been, is now, and ever will be its ultimate goal. . . .*

*One thing seems sure, we will not get out of our present difficulties without trouble, serious trouble. Indeed, it may well be that our government and its free institutions will not be preserved except at the price of life and blood.*

J. Reuben Clark, Jr., First Counselor in the First Presidency, in Deseret News, “Church Section,” 25 September 1949, pp. 2, 15.

*Responding to your letter of July 24, may I suggest that you acquire a copy of Brother Cleon Skousen’s book *The Naked Capitalist* which treats much this same field. Also the book *The Great and Abominable Church of the Devil* by Verlan Anderson. Both of these are available at the Deseret Book Company, I believe, and seem to substantiate in large measure what Gary Allen has said in *None Dare Call it Conspiracy*.*

Ezra Taft Benson, letter to Elder Bremer, 1 Aug. 1972

*Of course, members of the dynastic banking families had been financing the Russian-oriented revolutionists for many years. Trotsky, in his biography, refers to some of these loans from British financiers going back as far as 1907. By 1917 the major subsidies for the revolution were being arranged by Sir George Buchanan and Lord Alfred Milner (of*

*the Morgan-Rothschild-Rhodes confederacy). Milner, it will be recalled, was the founder of England's secret "Round Table" group which started the Royal Institute for International Affairs in England and the Council on Foreign Relations in the United States. One American source gave Trotsky, Lenin and the other Communist leaders around twenty million dollars for the final triumph of Bolshevism in Russia. This was Jacob Schiff of Kuhn, Loeb and Company.*

W. Cleon Skousen, *The Naked Capitalist* (Salt Lake City, 1970), pp. 40–41

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*I have talked face-to-face with the godless Communist leaders. It may surprise you to learn that I was host to Mr. Khrushchev for a half day, when he visited the United States. Not that I'm proud of it – I opposed his coming then and I still feel it was a mistake to welcome this atheistic murderer as a state visitor. But according to President Eisenhower, Khrushchev had expressed a desire to learn something of American agriculture, and after seeing Russian agriculture I can understand why.*

*As we talked face-to-face, he indicated that my grandchildren would live under Communism. After assuring him that I expected to do all in my power to assure that his, and all other grandchildren, would live under freedom, he arrogantly declared, in substance:*

*You Americans are so gullible. No you won't accept Communism outright, but we'll keep feeding you small doses of socialism until you'll finally wake up and you find you already have Communism. We won't have to fight you. We'll so weaken your economy until you fall like over-ripe fruit into our hands.*

*And they are ahead of schedule in their devilish scheme.*

*For the entire speech go to: <http://www.latterdayconservative.com/ezra-taft-benson/our-immediate-responsibility/>*

Former Secretary of Agriculture Ezra Taft Benson at a BYU Devotional, October 25, 1966 entitled "Our Immediate Responsibility."

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*Our civilization and our people are seemingly afraid to be revolutionary. We are too 'broadminded' to challenge what we do not believe in. We are afraid of being thought intolerant, uncouth, ungentlemanly. We have become lukewarm in our beliefs. And for that we perhaps merit the bitter condemnation stated in Revelation 3:16: "So then because thou art lukewarm, and neither cold nor hot, I will spue thee out of my mouth."*

*This is a sad commentary on a civilization which has given to mankind the greatest achievements and progress ever known. But it is an even sadder commentary on those of us who call ourselves Christians, who thus betray the ideals given to us by the Son of God himself.*

Ezra Taft Benson, former Secretary of Agriculture under Eisenhower, October 1960

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*We are placed on this earth to work and the earth will give us a living. . . . It is our duty to strive to till the earth, subdue matter, conquer the glebe, take care of the flocks and the herds. It is the government's duty to see that you are protected in it, and no other man has*

*the right to deprive you of any of your privileges. But it is not the government's duty to support you.*

*I shall raise my voice as long as God gives me sound or ability, against the communistic idea that the government will take care of us all, and that everything belongs to the government. . . .*

*It is wrong! No wonder in trying to perpetuate that idea, that men become anti-Christ, because those teachings strike directly at the doctrines of the Savior.*

*No government owes you a living. . . . You get it yourself by your own acts—never by trespassing upon the rights of your neighbor, never by cheating him. You put a blemish upon your character the moment you do.*

David O. McKay, Church News, 14 Mar. 1953, pp. 4, 15.

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*I fear this, that under existing conditions we are gradually drifting toward a paternal government, a government which will so intrench itself that the people will become powerless to disrupt it, in which the lives and liberty of the people at large may be jeopardized. They are pouring millions of dollars in this time of need into sources for the benefit of the people and it is a great benefit and perhaps salvation, but it is going to result in this--I am going to make this statement--that if the present policy is continued it will not be long until the government will be in the banking business, it will be in the farming business, it will be in the cattle and sheep business, for many of these debts will never be paid. That will mean the appointment of innumerable agencies. The government now is overloaded with commissions and agencies, some of them administering the very laws that Congress itself has enacted. Someone else should be administering those laws. If you want to save yourselves from the bondage of debt and political influences which are not of your own choosing I ask you to think of what I have said.*

President Anthony W. Ivins, General Conference, October 1932

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*In a despotism, an absolute monarchy, where the king rules, and the people only submit, great is the obligation of the king, but the individual citizen's obligation is correspondingly less. In our own government, where the people rule, each individual citizen is a ruler in the nation and great is his responsibility; great are the obligations that rest upon him by reason of that citizenship, for he himself is a ruler, a sovereign, and helps to form and fashion the government of which he is one of its rulers. If we have good government it is because the individual citizens are good. If we have a bad government it is because the individual citizens are bad. That applies not only to the nation at large, but to the state, to the county and to the city.*

Elder Rulon S. Wells, General Conference, October 1921

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*Secularism also produced an artificial sense of security. A good example of this is what has happened to our Social Security system in America. Principles gave way to political promises, and the secular theology with its cast your care upon Social Security has now exposed its hollowness like the billboard outside Chicago ten years ago that read, Borrow enough from us to get completely out of debt. Sad as it is to say it, the hard choices ahead for the nation regarding our Social Security system could pit the young against the old and*



*the middle class against the poor. The system is scarcely social in such a setting; likewise, the financial unsoundness of the system scarcely deserves the word Security. What we have is thus neither social nor security. Ahead of us are additional days of reckoning besides the one noted many times in the Bible.*

Neal A. Maxwell, Ensign, October 1978; The Prohibitive Costs of a Value-free Society

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*"Teach them the beauty of freedoms - the marvelous freedoms established by the Bill of Rights, the first ten amendments to the Constitution of this nation.....In leadership, in standing for principle, there is loneliness. But men and women of integrity must live with their convictions. Unless they do so, they are miserable.....Never in the history of the world has there been a more profound need for leaders of principle to step forward. Never before, at least not in our generation, have the forces of evil been so blatant, so brazen, so aggressive as they are at the present time.....We are involved in an intense battle. It is a battle between right and wrong, between truth and error, between the design of the Almighty on the one hand and that of Lucifer on the other. For that reason we desperately need men and women who, in their individual spheres of influence, will stand for truth in a world of sophistry. I have lived long enough to know that many political campaigns, for example, are the same. I have heard again and again the sweet talk that leads to victory but never seems to be realized thereafter. We need moral men and women, people who stand on principle, to be involved in the political process. Otherwise, we abdicate power to those whose designs are almost entirely selfish.....We don't have the luxury of retreating to our private cloisters and pursuing only our special private interests. Strong voices are needed. The weight of our stance may be enough to tip the scales in the direction of truth and right."*

President Gordon B. Hinckley from his book "Standing for Something" (In the year 2000 written and published and soared to the top of the charts and even made it to the New York Times Bestseller list, it was titled, Standing for Something; 10 Neglected Virtues That Will Heal our Hearts and Homes. Gordon B. Hinckley, president of The Church of Jesus Christ of Latter Day Saints)

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*One of the surest and most certain signs of the times is the near-omnipresence of false prophets. "There shall also arise . . . false prophets," saith the holy word. (JS-M 1:22.) It is now almost as though every fool or near-fool, and every person filled with self-conceit and a desire to be in the spotlight of adulation, fancies himself a prophet of religion or politics, or what have you. On every hand there are those who suppose they know how to save society, to save nations, to save souls. They preach all sorts of gospels—a social gospel; a racial gospel; a gospel of freedom or communism, of socialism or free enterprise, of military preparedness or reliance upon the wispy promises of foreign foes; a gospel of salvation by grace alone, or of this or that doctrine.*

Apostle Bruce R. McConkie, A NEW WITNESS FOR THE ARTICLES OF FAITH, p. 626, 1985

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*However, above all else, strive to support good and conscientious candidates of either party who are aware of the great dangers inherent in communism and who are truly dedicated to the Constitution in the tradition of our founding fathers. They should also pledge their sincere fealty to our way of liberty—a liberty which aims at the preservation of both personal and property rights. Study the issues, analyze the candidates on these grounds, and then exercise your franchise as free men and women. Never be found guilty of exchanging your birthright for a mess of pottage!*

President David O. McKay, General Conference, October 1962

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*The position of this Church on the subject of Communism has never changed. We consider it the greatest satanical threat to peace, prosperity, and the spread of God's work among men that exists on the face of the earth. . . .*

*The entire concept and philosophy of Communism is diametrically opposed to everything for which the Church stands—belief in Deity, belief in the dignity and eternal nature of man, and the application of the gospel to efforts for peace in the world. Communism is militantly atheistic and is committed to the destruction of faith wherever it may be found.*

*The Russian Commissar of Education wrote: "We must hate Christians and Christianity. Even the best of them must be considered our worst enemies. Christian love is an obstacle to the development of the revolution. Down with love for one's neighbor. What we want is hate. Only then shall we conquer the universe."*

*On the other hand, the gospel teaches the existence of God as our Eternal and Heavenly Father and declares: ". . . him only shalt thou serve." (Matt. 4:10.)*

*Communism debases the individual and makes him the enslaved tool of the state, to which he must look for sustenance and religion. Communism destroys man's God-given free agency...*

David O. McKay, Conference Report, April 9, 1966, pp. 109-10. Highlighted section in original.

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*May I assure you that communism is not merely an economic program. It is a total philosophy of life, atheistic and utterly opposed to all we hold dear as a great Christian nation. While we might effectively bridle or destroy every so-called communist within our own borders, we shall not vanquish this political virus, and its common forerunner, state socialism, so long as people are determined to achieve security through state-imposed materialistic schemes rather than through righteous living and wholesome activity as free men.*

Elder Ezra Taft Benson, *So Shall Ye Reap*. 361 pages of selected addresses from 1960 AD.

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*Sad as it may be, almost the entire history of mankind is an account of false worship, false gods, and all the ills that attend such a course. Communism is in reality a form of religion in which men deny the God of the Bible and worship the gods of compulsion and power and war. Philosophy in all its forms and varieties is a way of worship. It is an attempt by reason and without revelation to explain existence, ethical principles in general, and the whence, why, and whither of life.*

Elder Bruce R. McConkie 1985, *A New Witness for the Articles of Faith*, p. 54

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*Atheism, like theism, is divided into many sects: communism, agnosticism, skepticism, humanism, pragmatism, and others.*

*The atheist proclaims his own dishonesty in accepting pay to teach psychology, sociology, history, or English, while he is indeed preaching his atheistic religious philosophy to his students.*

Elder Boyd K. Packer, 1975, Teach Ye Diligently, p. 225

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*Communist leaders have steadily insisted that communism cannot live in just one country. Just as we fought to make 'the world safe for democracy, so they are fighting to make the world safe for communism. They are fighting this fight today. Every country must become communistic, according to their idea. So they have sent out missionaries...*

*Do not let advocates of communism mislead you in their attempt to denounce capitalism. Fundamental in the belief and promulgation of communism is the denial of the existence of God and the desire to substitute for the belief confidence in the state. The state is not an organization to suppress people. The state should have no power but that which the people give it; and when the state becomes a director, a controller of the individual, it becomes despotism; and human nature has fought that since man was created; and man will continue to fight that false ideal.*

*Individual freedom is innate in the human soul. God has given us our free agency, and next to life itself that is our greatest gift from heaven, and you red-blooded men and women know that is true because of your own love of liberty.*

Apostle David O. McKay, Gospel Ideals, p. 304-305

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*There are some who may regard the acknowledgment of spiritual power as a stigma of weakness, that the humility which is essential to the acceptance of divine power is incompatible with strength of manhood and self-determination. That was in large measure the doctrine of Hitler and is today the philosophy of communism. I hope there are not many who adopt such a philosophy of life.*

*Now I know that there are many in Christian nations and many in prominent places who accede to this taboo on religion in the consideration of national and world affairs. They seem to think that they can fight aggressive, atheistic communism without uttering a word in defense and exposition of divinely-given concepts, and without even seeking divine aid in the preservation of divine principles for the race. I do not pretend to qualify or speak as an expert on international affairs, but I am sure that I voice the sentiment and feeling of millions of God-loving people over the world when I assert that the sooner the issues now confronting the nations are recognized as a moral conflict between right and wrong, between truth and error, between Christ and anti-Christ, the sooner will come the solution and peace. I know that this is and has always been the position of this Church. There are prophecies, ancient and modern, statements and declarations, and experience to support this position.*

Practical Usage of Religion, Elder Stephen L Richards Of the Council of the Twelve Apostles Conference Report, October 1947, pp. 131-137.

For the entire talk go to <http://scriptures.byu.edu/gettalk.php?ID=692>

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*This message defines religion. It interprets all phases of a man's existence in terms of religion. There is no part of living not influenced by it. Our thoughts, our environment, our education, our companionships and associations, our health, our concepts of wealth, government, and society in the scope of this message are all religious considerations. Religion therefore becomes not a philosophy apart from life to be held up for scrutiny, criticism, and debate. Rather, it is an integrated way of life, a system and program of individual and community living under eternal law which man did not make and cannot change...*

*There are some who may regard the acknowledgment of spiritual power as a stigma of weakness, that the humility which is essential to the acceptance of divine a power is incompatible with strength of manhood and self-determination. That was in large measure the doctrine of Hitler and is today the philosophy of Communism. I hope there are not many who adopt such a philosophy of life.*

*There are some who seem to feel that their liberties are circumscribed by the acceptance and acknowledgment of spiritual forces and that they are much freer and better off to make no profession of faith whatever. Considered in the light of a deterrent to wrongdoing, perhaps they are right, but such a concept is really an abandonment of the underlying principles of righteousness and good character.*

*Then there are those, constituting perhaps the largest portion of that group within the Church who seem ashamed of the gospel of Christ, who are just too weak to stand up under all circumstances and conditions for the right and the truth as they know it to be.*

Be "Not Ashamed of the Gospel of Christ" President Stephen L Richards, First Counselor in the First Presidency, Conference Report, April 1954, pp. 31-35.

For the entire talk go to: <http://scriptures.byu.edu/gettalk.php?ID=315>

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*But as those affluent years slipped by, voices were heard in the land, singing the siren songs of socialism. And many Americans tapped their feet to the beat of the music. Politicians were already promising something for nothing, that elusive free lunch. Thus, gradually the people let the government infringe upon their precious freedoms, and the preliminary signs of decay began to appear in our young republic.*

Ezra Taft Benson, *This Nation Shall Endure*, p. 93, published 1977 AD

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*As Americans, we have marched a long way down the soul-destroying road of socialism, atheism, and totalitarianism. It is the price we pay when we turn away from God and turn to government to do everything for us. It is the formula by which nations become enslaved by their own leaders.*

*As England's Lord Acton so succinctly put it, "Power tends to corrupt—and absolute power corrupts absolutely." (Essays on Freedom and Power, p. 364.)*

*Increasing numbers of Americans are subscribing to the myth that you can get something for nothing—as long as the government is footing the bill. In fact, they believe it is the duty of government to take care of them, from the womb to the tomb.*

*There is no such thing as a free lunch. Everything we get from the government, we pay for in debilitating taxes. Everything the government gives to the people, it must first take from the people. This is something few Americans appear to understand.*

Ezra Taft Benson, *This Nation Shall Endure*, p. 94, published 1977 AD

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*Three of the major devices that have led men to reject the truth concerning God have been and still are*

- (1) apostate Christianity,*
- (2) the theory of biological evolution, and*
- (3) communism.*

Marion G. Romney, 1977, *Learning For The Eternities*, p. 2.

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*But whenever the God of heaven reveals His gospel to mankind, Satan, the archenemy to Christ, introduces a counterfeit.*

*Communism introduced into the world a substitute for true religion. It is a counterfeit of the gospel plan. The false prophets of Communism predict a utopian society. This, they proclaim, will only be brought about as capitalism and free enterprise are overthrown, private property abolished, the family as a social unit eliminated, all classes abolished, all governments overthrown, and a communal ownership of property in a classless, stateless society established.*

*President Marion G. Romney, in the First Presidency Message in the September 1979 Ensign, wrote: "Communism is Satan's counterfeit for the gospel plan, and ... it is an avowed enemy of the God of the land. Communism is the greatest anti-Christ power in the world today and therefore the greatest menace not only to our peace but to our preservation as a free people. By the extent to which we tolerate it, accommodate ourselves to it, permit ourselves to be encircled by its tentacles and drawn to it, to that extent we forfeit the protection of the God of this land" (p. 5).*

President Ezra Taft Benson *Of the Council of the Twelve, A Witness and a Warning*

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*In distinguishing communism from the United Order, President David O. McKay said that communism is Satan's counterfeit for the gospel plan, and that it is an avowed enemy of the God of the land. Communism is the greatest anti-Christ power in the world today and therefore the greatest menace not only to our peace but to our preservation as a free people. By the extent to which we tolerate it, accommodate ourselves to it, permit ourselves to be encircled by its tentacles and drawn to it, to that extent we forfeit the protection of the God of this land.*

*Relying on that part of the First Amendment to the Constitution of the United States which reads, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof," the **United States Supreme Court has ruled against Bible reading and prayer in public schools. By so doing, said President David O. McKay, "the Supreme Court of the United States severs the connecting cord between the public schools of the United States and the source of divine intelligence, the Creator himself,"** who, of course, is the God of this land (Relief Society Magazine, Dec. 1962, p. 878).*



*Now, of course, we all believe and wholeheartedly support the separation of church and state; but we must not let this wresting of the First Amendment, nor communism, nor atheism, nor any other anti-Christ influence, weaken our conviction that Jesus Christ is the God of this land nor diminish our determination to obey his laws.*

President Marion G. Romney Second Counselor in the First Presidency, *The Message: America's Promise*, New Era, Mar 1980, p.4.

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*"You were given a great message by Elder Marion G. Romney which was inspiring and profound. He compared socialism with the United Order. I encourage you to study carefully that message. He gave much of the basic theory, the principles, the similarities and the differences between these two basically conflicting systems. As I accept his premises, logic, and conclusions, with your permission, at this time, I would like to use his message as a springboard for my own. The basic principle in his message is the same principle in mine, as already discussed – the principle of the Law of the Harvest – As a Man Sows, So Shall He Reap.*

*"From my own experience in business and as a lawyer and church worker, and from my firsthand observations in this country and other countries of the world, there appears to me to be a trend to shift responsibility for life and its processes from the individual to the state. In this shift there is a basic violation of the law of the harvest, or the law of justice. The attitude of "something for nothing" is encouraged. The government is often looked to as the source of wealth. There is a feeling that the government should step in and take care of one's needs, one's emergencies, and one's future. Just as my friend actually became a slave to his own ignorance and bad habits by refusing to accept the responsibility for his own education and moral growth, so, also, can an entire people be imperceptibly transferred from individuals, families, and communities to the federal government...*

Howard W. Hunter, Quorum of the Twelve Apostles, (Speeches of the Year 1965-1966, pp. 1-11, "The Law of the Harvest." Devotional Address, Brigham Young University, 8 March 1966.)

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*"Wo unto you poor men, whose hearts are not broken, whose spirits are not contrite, and whose bellies are not satisfied, and whose hands are not stayed from laying hold upon other men's goods, whose eyes are full of greediness, and who will not labor with your own hands!"*

Doctrine and Covenants 56:17.

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#### *False Political Isms*

*We again warn our people in America of the constantly increasing threat against our inspired Constitution and our free institutions set up under it. The same political tenets and philosophies that have brought war and terror in other parts of the world are at work amongst us in America. The proponents thereof are seeking to undermine our own form of government and to set up instead one of the forms of dictatorships now flourishing in other lands. These revolutionists are using a technique that is as old as the human race—a fervid but false solicitude for the unfortunate over whom they thus gain mastery and then enslave them.*

*They suit their approaches to the particular group they seek to deceive. Among the Latter-day Saints they speak of their philosophy and their plans under it as an ushering in of the United Order. Communism and all other similar isms bear no relationship whatever to the*

*United Order. They are merely the clumsy counterfeits which Satan always devises of the gospel plan. Communism debases the individual and makes him the enslaved tool of the state to whom he must look for sustenance and religion; the United Order exalts the individual, leaves him his property, "according to his family, according to his circumstances and his wants and needs," (D&C 51:3) and provides a system by which he helps care for his less fortunate brethren; the United Order leaves every man free to choose his own religion as his conscience directs. Communism destroys man's God-given free agency; the United Order glorifies it. Latter-day Saints can not be true to their faith and lend aid, encouragement, or sympathy to any of these false philosophies. They will prove snares to their feet.*

First Presidency Message, in Conference Report, Apr. 1942 as found on [LDS.org](http://LDS.org) in 2012 AD.

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*...Assume that you become the world leader of Socialism and in it have marked success, but through your devotion to it you fail to live the gospel. Where are you then? Is anything worthwhile which will estrange you from your friends, your Church membership, your family, your eternal promises, your faith? You might say that such estrangement is not necessarily a result of your political views, but truthfully hasn't your overpowering interest in your present views already started driving a wedge?*

President Spencer W. Kimball, Teachings, pp. 408-409

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*No true Latter-day Saint and no true American can be a socialist or a communist or support programs leading in that direction.*

President Ezra Taft Benson, Title of Liberty, p. 190

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*The gift of the Atonement of Jesus Christ provides us at all times and at all places with the blessings of repentance and forgiveness.*

*Satan tries to counterfeit the work of God, and by doing this he may deceive many. To make us lose hope, feel miserable like himself, and believe that we are beyond forgiveness, Satan might even misuse words from the scriptures that emphasize the justice of God, in order to imply that there is no mercy.*

Apostle Dieter F. Uchtdorf, "Point of Safe Return," Ensign, May 2007, 99-101

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*Some of Satan's most appealing lines are "Everyone does it"; "If it doesn't hurt anybody else, it's all right"; "If you feel all right about it, it's OK"; or "It's the 'in' thing to do." These subtle entreaties make Satan the great imitator, the master deceiver, the arch counterfeiter, and the great forger.*

*Agency—Our Alternative: Our agency, given us through the plan of our Father, is the great alternative to Satan's plan of force. With this sublime gift, we can grow, improve, progress, and seek perfection. Without agency, none of us could grow and develop by learning from our mistakes and errors and those of others.*

James E. Faust, Second Counselor in the First Presidency, "The Forces That Will Save Us," Liahona, Jan 2007, 2-7

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***There seems to be developing a new civil religion. The civil religion I refer to is a secular religion. It has no moral absolutes. It is nondenominational. It is nontheistic. It is politically focused. It is antagonistic to religion. It rejects the historic religious traditions of America. It feels strange. If this trend continues, nonbelief will be more honored than belief. While all beliefs must be protected, are atheism, agnosticism, cynicism, and moral relativism to be more safeguarded and valued than Christianity, Judaism, and the tenets of Islam, which hold that there is a Supreme Being and that mortals are accountable to him? If so, this would, in my opinion, place America in great moral jeopardy.***

***For those who believe in God, this new civil religion fosters some of the same concerns as the state religions that prompted our forefathers to escape to the New World. Nonbelief is becoming more sponsored in the body politic than belief.***

Elder James E. Faust of the Quorum of the Twelve, "A New Civil Religion," *Ensign*, Oct. 1992, 69A New Civil Religion. For the entire wonderful talk go to: <https://www.lds.org/ensign/1992/10/a-new-civil-religion>

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*Elder Marion G. Romney of the Quorum of the Twelve taught: "Latter-day Saints know that there is a God. With like certainty, they know that Satan lives, that he is a powerful personage of spirit, the archenemy of God, of man, and of righteousness" (Ensign, June 1971, page 35). President Joseph F. Smith described one of Satan's methods: "Satan is a skillful imitator, and as genuine gospel truth is given the world in ever-increasing abundance, so he spreads the counterfeit coin of false doctrine" (ibid., page 36).*

Apostle Dallin H. Oaks, "Our Strengths Can Become Our Downfall," *Liahona*, May 1995, 10

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*"President Harold B. Lee said, 'Today you are witnessing the fulfillment [of a prophecy concerning Satan's dominion. Today is the day when the devil has power over his own dominion.; (Harold B. Lee, Decisions for Successful Living, Deseret Book Co., 1973, p. 221.) That is a prophetic statement from a prophet of God. He also said, "**[Satan] is the master of deceit, adulteration and counterfeit.**"*

Elder Bernard P. Brockbank Assistant to the Council of the Twelve, "Hearken Unto the Voice of God," *Ensign*, May 1974, 11

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*We know that there is available to each of us the gift of the Holy Ghost—the power of revelation which embraces the gift of discernment by which we may unerringly detect the devil and the counterfeits he is so successfully foisting upon this gullible generation. Our course is clear and certain. It is to strictly obey the commandments of the Lord, as they are recorded in the scriptures and as they are being given by the living prophets.*

Elder Marion G. Romney, Of the Council of the Twelve, "Satan—The Great Deceiver," *Ensign*, Jun 1971, 35

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*If we really did our homework and approached the Book of Mormon doctrinally, we could expose the errors and find the truths to combat many of the current false theories and philosophies of men, including socialism, humanism, organic evolution, and others.*

President Ezra Taft Benson, President of the Council of the Twelve “Jesus Christ—Gifts and Expectations,” New Era, May 1975, 16

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*We have accepted a frightening degree of socialism in our country. The question is, how much? The amount of freedom depends upon the amount of federal control and spending. A good measurement is to determine the amount, or percentage, of income of the people that is taken over and spent by the state.*

Ezra Taft Benson, This Nation Shall Endure

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*The "communist manifesto" drafted by Karl Marx and Friedrich Engels, for the Communist League . . . in . . . 1848 is generally regarded as the starting point of modern socialism.*

*No, socialism is not the United Order. Distinguishing between these two systems need be no more difficult than solving the problem of the farmer who could not tell one of his horses from the other. They weighed the same, pulled the same load, ran at the same speed; from the looks of their teeth they were the same age. Finally, as a last resort, he measured them, and, sure enough, the white horse was six hands higher than the black one.*

*Now, not forgetting our duty to eschew socialism and support the just and holy principles of the Constitution, as directed by the Lord, I shall conclude these remarks with a few comments concerning what we should do about the United Order.*

President Marion G. Romney, Socialism and the United Order Compared

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*Under Communism you lose your liberties immediately and perhaps your life. Under Socialism, you lose your liberties a little more slowly but just as surely.*

Attributed to President David O. McKay... (Original source could not be found)

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*"I attended a second lecture on Socialism, by Mr. Finch; and after he got through, I made a few remarks... I said I did not believe the doctrine."*

The Prophet Joseph Smith (History of the Church 6:33)

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*"We believe that our real threat comes from within and not from without, and it comes from that underlying spirit common to Nazism, Fascism, and Communism, namely, the spirit which would array class against class, which would set up a socialistic state of some sort, which would rob the people of the liberties which we possess under the Constitution..."*

First Presidency 1941 (Heber J. Grant, J. Reuben Clark, Jr., David O. McKay in a Letter to the Treasury from the LDS First Presidency in 1941 AD)

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*Concerning the United States, the Lord revealed to his prophets that its greatest threat would be a vast, worldwide “secret combination” which would not only threaten the United States but also seek to “overthrow the freedom of all lands, nations, and countries.” (Ether 8:25.) . . .*

*In connection with attack on the United States, the Lord told the Prophet Joseph Smith there would be an attempt to overthrow the country by destroying the Constitution. Joseph Smith predicted that the time would come when the Constitution would hang, as it were, by a thread, and at that time “this people will step forth and save it from the threatened destruction.” . . .*

*One of the most urgent, heart-stirring appeals made by Moroni as he closed the Book of Mormon was addressed to the gentile nations of the last days. He foresaw the rise of a great world-wide secret combination among the gentiles which “. . . seeketh to overthrow the freedom of all lands, nations, and countries; . . .” (Ether 8:25. Italics added.) He warned each gentile nation of the last days to purge itself of this gigantic criminal conspiracy which would seek to rule the world.*

*The prophets, in our day, have continually warned us of these internal threats in our midst—that our greatest threat from socialistic-communism lies within our country. Brethren and sisters, we don’t need a prophet—we have one—we need a listening ear. And if we do not listen and heed, then, as the Doctrine and Covenants states, “. . . the day cometh that they who will not hear the voice of the Lord, neither the voice of his servants, neither give heed to the words of the prophets and apostles, shall be cut off from among the people.” (D&C 1:14.)*

*The prophets have said that these threats are among us. The Prophet Moroni, viewing our day, said,*

*“Wherefore the Lord commandeth you, when ye shall see these things come among you that ye shall awake to a sense of your awful situation.”  
(Ether 8:24)*

*Unfortunately our nation has not treated the socialistic-communist conspiracy as “treasonable to our free institutions,” as the First Presidency pointed out in a signed 1936 statement. If we continue to uphold communism by not making it treasonable, our land shall be destroyed, for the Lord has said that “. . . whatsoever nation shall uphold such secret combinations, to get power and gain, until they shall spread over the nation, behold they shall be destroyed; . . .” (D&C 8:22.)...*

*The world-wide secret conspiracy which has risen up in our day to fulfill these prophecies is easily identified. President McKay has left no room for doubt as to what attitude Latter-day Saints should take toward the modern “secret combinations” of conspiratorial communism. In a lengthy statement on communism, he said:*

*“. . . Latter-day Saints should have nothing to do with the secret combinations and groups antagonistic to the constitutional law of the land, which the Lord ‘suffered to be established, and which ‘should be maintained for the rights and protection of all flesh according to just and holy principles.’” (Gospel Ideals, by David O. McKay, p. 306. Italics added.) . . .*

Ezra Taft Benson of the Quorum of the Twelve Apostles, in Conference Report, October 1961, p. 69–72



*This feeling of communism and nihilism, aimed at the overthrow of rulers and men in position and authority, arises from a spirit of diabolism, which is contrary to every principle of the Gospel of the Son of God. But then do not the Scriptures say that these things shall occur? Yes. Do not the scriptures say that men shall grow worse and worse, deceiving and being deceived? Yes. Do not the scriptures tell us that thrones shall be cast down and empires destroyed and the rule and government of the earth be trodden under foot? Yes. But I cannot help but sympathize with those who suffer from their influences; while these afflictions are the result of wickedness and corruption, yet we cannot shut our eyes to the fact that those who engage in these pernicious practices are exceedingly low, brutal, wicked and degraded. I would say "my soul come not thou into their secret; unto their assembly, mine honor, be not thou united." . . .*

*I feel more profoundly moved that deeds of this description can occur in a free, liberal and enlightened government like this. We might expect such things in some of the European nations where the principles of nihilism exist to so great an extent, and where there seems a disposition to subvert all rule and government and place the people and nations in the hands of irresponsible mobs, and of low, brutal, murderous men, without any regard to the principles of law, order, justice, equity and righteousness. I could account for some of these things taking place there. It is really astonishing to see what efforts are being made to accomplish the overthrow of rule and government in Russia, Austria, Germany, Spain, England, Italy, France, Turkey, etc. These things are beginning to spread among and permeate the nations of the earth. Do we expect them? Yes. These secret combinations were spoken of by Joseph Smith, years and years ago. I have heard him time and time again tell about them, and he stated that when these things began to take place the liberties of this nation would begin to be bartered away. We see many signs of weakness which we lament, and we would to God that our rulers would be men of righteousness, and that those who aspire to position would be guided by honorable feelings—to maintain inviolate the Constitution and operate in the interest, happiness, well-being, and protection of the whole community. But we see signs of weakness and vacillation. We see a policy being introduced to listen to the clamor of mobs and of unprincipled men who know not of what they speak, nor whereof they affirm, and when men begin to tear away with impunity one plank after another from our Constitution, by and by we shall find that we are struggling with the wreck and ruin of the system which the forefathers of this nation sought to establish in the interests of humanity.*

John Taylor, President of the Church, 3 July 1881, *Journal of Discourses*, vol. 22, pp. 142–144

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*And speaking of anti-Christ, if you want to get some idea of how we are flaunting the Constitution, see how the Constitution defines treason. Then observe what we are doing to build up the enemy, this totally anti-Christ conspiracy. If we continue on this tragic course of aid and trade to the enemy, the Lord has warned us of the consequences that will follow in chapter 8 of Ether in the Book of Mormon.*

Apostle Ezra Taft Benson, President of the Quorum of the Twelve Apostles, "Jesus Christ—Gifts and Expectations," *New Era*, vol. 5, no. 5, May 1975), p. 19

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*We condemn the outcome which wicked and designing men are now planning, namely: the worldwide establishment and perpetuation of some form of Communism on the one side, or of some form of Nazism or Fascism on the other. Each of these systems destroys liberty, wipes out free institutions, blots out free agency, stifles free press and free speech, crushes out freedom of religion and conscience. Free peoples cannot and do not survive under these systems. Free peoples the world over will view with horror the establishment of either Communism or Nazism as a worldwide system. Each system is fostered by those who deny*

*the right and the ability of the common people to govern themselves. We proclaim that the common people have both this right and this ability.*

First Presidency Statement, in Conference Report, October 1942, p. 15

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*Latter-day Saints should have nothing to do with secret combinations and groups antagonistic to the Constitutional law of the land, which the Lord "suffered to be established," and which "should be maintained for the rights and protection of all flesh, according to just and holy principles..."*

President David O. McKay, General Conference, October 1939

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*For you know when the Rothschilds and the great bankers among the Jewish nation shall return back to their own land to rebuild the city of Jerusalem, carrying their capital with them, it will almost ruin some of the nations, and the latter will go up against Jerusalem to take a spoil.*

Apostle Orson Pratt, 10 March 1872, in Journal of Discourses, vol. 14, p. 353

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*I have been preaching against Communism for twenty years. I still warn you against it, and I tell you that we are drifting toward it more rapidly than some of us understand and I tell you that when Communism comes, the ownership of the things which are necessary to feed your families is going to be taken away from us. I tell you freedom of speech will go, freedom of the press will go, and freedom of religion will go.*

*I have warned you against propaganda and hate. We are in the midst of the greatest exhibition of propaganda that the world has ever seen, and all directed toward one end. Just do not believe all you read.*

J. Reuben Clark, Jr., First Counselor in the First Presidency, in Conference Report, October 1941, p. 16

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*If we do not vigorously fight for our liberties, we shall go clear through to the end of the road and become another Russia, or worse.*

J. Reuben Clark, Jr., First Counselor in the First Presidency, in Deseret News, "Church Section," 25 Sept. 1949, pp. 2, 15

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*Let us have no blind devotion to the communist-dominated United Nations.*

Apostle Ezra Taft Benson, BYU Address, 10 Dec. 1963

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*Above all else, strive to support good and conscientious candidates of either party who are aware of the great dangers inherent in communism and who are truly dedicated to the Constitution in the tradition of our founding fathers. They should also pledge their sincere fealty to our way of liberty—a liberty which aims at the preservation of both personal and*

*property rights. Study the issues, analyze the candidates on these grounds, and then exercise your franchise as free men and women. Never be found guilty of exchanging your birthright for a mess of pottage!*

President David O. McKay, in Conference Report, October 1962, p. 8

*[W]hen you see government invading any of these realms of freedom which we have under our Constitution, you will know that they are putting shackles on your liberty, and that tyranny is creeping upon you, no matter who curtails these liberties or who invades these realms, and no matter what the reason and excuse therefore may be.*

J. Reuben Clark, Jr., First Counselor in the First Presidency, *The Improvement Era*, vol. 43, no. 7 (July 1940), p. 444

*Which of the two main political parties in the United States is closest to the vision of the founders of the United States? Neither.*

Truman G. Madsen, patriarch of the Provo Utah Sharon East Stake in *The Presidents of the Church*, p. 372

*In the United States and in the old countries, they are divided into six or seven hundred different religious denominations, all disagreeing with each other; besides political and a thousand other kinds of divisions and differences, such as whiggery, democratism, socialism, which, in short, may all be summed up under the term, Devilism. This is not the policy of the Latter-day Saints.*

Heber C. Kimball, First Counselor in the First Presidency, 13 Aug. 1853, in *Journal of Discourses*, vol. 2, p. 105

*The paths we are following, if we move forward thereon, will inevitably lead us to socialism or communism, and these two are as like as two peas in a pod in their ultimate effect upon our liberties...*

*We may first observe that communism and socialism—which we shall hereafter group together and dub Statism—cannot live with Christianity nor with any religion that postulates a Creator such as the Declaration of Independence recognizes. The slaves of Statism must know no power, no authority, no source of blessing, no God, but the State. . .*

*This country faces ahead enough trouble to bring us to our knees in humble honest prayer to God for the help which He alone can give to save us. . . .*

*Do not think that all these usurpations, intimidations, and impositions are being done to us through inadvertency or mistake, the whole course is deliberately planned and carried out; its purpose is to destroy the Constitution and our Constitutional government; then to bring chaos out of which the new Statism, with its Slavery, is to arise, with a cruel, relentless, selfish, ambitious crew in the saddle, riding hard with whip and spur, a red-shrouded band of night riders for despotism. . . .*

*If we do not vigorously fight for our liberties, we shall go clear through to the end of the road and become another Russia, or worse. . . .*

*We have largely lost the conflict so far waged. But there is time to win the final victory, if we can sense our danger, and fight.*

J. Reuben Clark, Jr., First Counselor in the First Presidency, in Deseret News, "Church Section," 25 September 1949, pp. 2, 15

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*"No true Latter-day Saint can be a Communist or a Socialist because Communist principles run counter to the revealed word of God and to the Constitution of this land which was established by men whom the God of Heaven raised up unto that very purpose [D&C 101:80]."*

Elder Ezra Taft Benson, "A Four-Fold Hope", May 24, 1961

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*"President McKay has said a lot about our tragic trends towards socialism and communism and the responsibilities liberty-loving people have in defending and preserving our Constitution. (See Conference Report, Apr 1963, pp. 112-13.) Have we read these words from God's mouthpiece and pondered on them?"*

Elder Ezra Taft Benson, "Be Not Deceived"

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*"Dr. V. Orval Watts, noted political economist, has described this socialist system which I fear-and I have but suggested a very few evidences. Here are his words: 'Socialism... is the theory and practice of coercive collectivism. It is the evil fruit of greed for other men's possessions and greed for control over other men's labor.'"*

Elder Ezra Taft Benson December 10 1963. A Race Against Time.

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*"We have moved a long way – and are now moving further and more rapidly down the soul-destroying road of socialism. The evidence is clear – shockingly clear for all to see..."*

*"Now we should all be opposed to Socialistic-Communism, for it is our mortal and spiritual enemy – the greatest evil in the world today. But the reason many liberals don't want the American people to form study groups to really understand and than fight Socialistic-Communism is that once the American people get the facts they will begin to realize that much of what these liberals advocate is actually helping the enemy.*

*"The liberals hope you'll believe them when they tell you how anti-Communist they are. But they become alarmed if you really inform yourself on the subject of Socialistic-Communism. For after you inform yourself you might begin to study the liberal voting record. And this study would show you how much the liberals are giving aid and comfort to the enemy and how much the liberals are actually leading America towards Socialism itself.*

*"For Communism is just another form of socialism, as is fascism. So now you can see the picture. These liberals want you to know how much they are doing for you – with your tax money of course. But they don't want you to realize that the path they are pursuing is socialistic, and that socialism is the same as communism in its ultimate effect on our liberties. When you point this out they want to shut you up – they accuse you of maligning*

*them, of casting aspersions, of being political. No matter whether they label their bottle as liberalism, progressivism, or social reform – I know the contents of the bottle is poison to this Republic and I'm going to call it poison."*

Elder Ezra Taft Benson. Stand Up For Freedom. Assembly Hall at Temple Square, Feb 11, 1966. Given to The Utah Forum for the American Idea

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*"What is the real cause of this trend toward the welfare state, toward more socialism? In the last analysis, in my judgment, it is personal unrighteousness. When people do not use their freedoms responsibly and righteously, they will gradually lose these freedoms..."*

*"If man will not recognize the inequalities around him and voluntarily, through the gospel plan, come to the aid of his brother, he will find that through "a democratic process" he will be forced to come to the aid of his brother. The government will take from the "haves" and give to the "have nots." Both have lost their freedom. Those who "have," lost their freedom to give voluntarily of their own free will and in the way they desire. Those who "have not," lost their freedom because they did not earn what they received. They got "something for nothing," and they will neither appreciate the gift nor the giver of the gift.*

*"Under this climate, people gradually become blind to what has happened and to the vital freedoms which they have lost."*

Howard W. Hunter, Quorum of the Twelve Apostles, (Speeches of the Year 1965-1966, pp. 1-11, "The Law of the Harvest." Devotional Address, Brigham Young University, 8 March 1966.)

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*Latter-day Saints cannot be true to their faith and lend aid, encouragement, or sympathy to false ideologies such as socialism and communism. The official Church position on communism remains unchanged since it was first promulgated in 1936: "We call upon all Church members completely to eschew Communism. The safety of our divinely inspired Constitutional government and the welfare of our Church imperatively demand that Communism shall have no place in America."*

Message from the First Presidency, Improvement Era, August 1936, p. 488.

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*THE NEW BARBARISM. During the first half of the twentieth century we have traveled far into the soul-destroying land of socialism and made strange alliances through which we have become involved in almost continuous hot and cold wars over the whole of the earth. In this retreat from freedom the voices of protesting citizens have been drowned by raucous shouts of intolerance and abuse from those who led the retreat and their millions of gullible youth, who are marching merrily to their doom, carrying banners on which are emblazoned such intriguing and misapplied labels as social justice, equality, reform, patriotism, social welfare.*

President David O. McKay, Selections from the Discourses of David O. McKay (Gospel Ideals, p. 273)

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*In things that pertain to celestial glory there can be no forced operations. We must do according as the Spirit of the Lord operates upon our understandings and feelings. We cannot be crowded into matters, however great might be the blessing attending such*

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*procedure. We cannot be forced into living a celestial law; we must do this ourselves, of our own free will. And whatever we do in regard to the principle of the United Order, we must do it because we desire to do it ...The United Order is not French Communism.*

President Lorenzo Snow, Journal of Discourses, Vol. 19, p. 346, 349-350

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*Consider the condition in the world, the number who are determined to take from the rich man not what belongs to themselves, but that which belongs to the others. God has permitted men to get wealth, and if they obtained it properly, it is theirs, and he will bless them in its use if they will use it properly ...*

*We must not fall into the bad habits of other people. We must not get into the frame of mind that we will take what the other man has. Refer back to the ten commandments, and you will find one short paragraph, "Thou shalt not covet." That is what is the matter with a good many people today.*

*They are coveting what somebody else has, when as a matter of fact, many of them have been cared for and provided with means to live by those very ones from whom they would take property.*

President George Albert Smith, Prophets, Principles and National Survival, p. 343 [compiled by Jay Newquist], CR-10/49:171-2)

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*God gave this nation the Constitution. No nation in the world has a constitution that was given to it by our Heavenly Father except the United States of America. I wonder if we appreciate that. The Lord gave us a rule of life for this great nation, and as far as we have lived up to it and taken advantage of it, the nation has grown, and the people have been blessed. But there are many people who prefer, or at least they seem to prefer something else.*

*As one man said to me, "Why not try what Russia has tried and what Germany has tried?" And my answer to him was, "Why try something that has already failed? Why not hold on to what the Lord has given?"*

President George Albert Smith, The Teachings of George Albert Smith, Bookcraft, Salt Lake City, [1996], p. 171

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*...the world have generally made great mistakes upon these points. They have started various projects to try to unite and cement the people together without God; but they could not do it. Fourierism (authors note: Francois Fourier was a French socialist and writer), Communism — another branch of the same thing and many other principles of the same kind have been introduced to try and cement the human family together. And then we have had peace societies, based upon the same principles; but all these things have failed, and they will fail, because, however philanthropic, humanitarian, benevolent, or cosmopolitan our ideas, it is impossible to produce a true and correct union without the Spirit of the living God,*

John Taylor, Journal of Discourses, Vol. 18, p. 137

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*I was speaking, a while ago, about the people there being divided into three classes. One of them you may call infidel, under the head of socialism, fourierism, and several other isms. Communism is a specimen of the same thing, ...*

President John Taylor, Journal of Discourses, Vol. 1, p. 23, August 22, 1852

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*We must keep the people informed that collectivism, another word for socialism, is a part of the communist strategy. Communism is essentially socialism.*

President Ezra Taft Benson, This Nation Shall Endure, p. 90, Deseret Book Company

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*I am confident that it was out of what he saw, the bitter fruit of dictatorship that he developed his strong feelings, almost hatred for communism and socialism. That distaste grew through the years as he witnessed the heavy handed oppression and suffering of the peoples of eastern europe under what he repeatedly described as godless communism. These experiences further strengthened his love for the land of his birth...*

*Benson never got over his boyhood love for freedom. Rather, it grew within him. Nurtured by what he saw of oppression in other lands, and by what he observed first hand of a growing dominance of government in this land over the lives of the people.*

President Gordon B. Hinckley, Talk given at the funeral of Ezra Taft Benson, June 4, 1994

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*At heart communism is atheistic, and fascism is equally antagonistic to freedom and to other Christian principles—even denying the divinity of Jesus Christ and the existence of God.*

David O. McKay, General Conference, October 1951, pp. 10-11

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*A ruthless dialectical battle is being waged against the Christian way of life against political liberty, against individual freedom, and it is being waged in the name of Freedom. Black becomes White; Tyranny becomes Freedom; The Forced Labor Camp stands for Liberty; The Slave State is represented as Democracy. This is the deadly challenge of Communism. And in this challenge those who put their emphasis upon man as an economic being -- and there are plenty in every so-called free country in the world today who do just that -- those who explain man in terms of scientific and chemical facts and the accident of circumstance, those who treat human beings as so many 'bodies, those who deny man's spiritual and individual existence -- each of them aids and hastens the destruction of the political institutions on which our free society rests, and whether he knows it or not, supports the dialectics and the aims of International Communism.*

President David O. McKay, General Conference 1962, The Deadly Challenge of Communism

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*The Church is prospering and growing. Yet in undiminished fury, and with an anxiety that his time is short—and it is—Satan, that great adversary to all men, is attempting to destroy all we hold dear. The greatest system of slavery ever devised by the forces of evil—*

*communism*—has been imposed on over one billion of the earth's inhabitants. We constantly hear or read of wars and rumors of wars. Atheism, agnosticism, immorality, and dishonesty are flaunted in our society.

President Ezra Taft Benson, President of the Quorum of the Twelve Apostles "Prepare Yourself for the Great Day of the Lord," New Era, May 1982, 44

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*Religion and the free exercise thereof, the right to worship God according to one's own conscience—how precious and treasured a boon it is. How necessary that it be safeguarded. Established religion becomes the guardian of the conscience of the people, the teacher of moral values, the defender of belief in the Almighty, the bridge between God and man. No people will live for long in freedom without it. The history of communism, whose founding father declared religion to be the opiate of the people, speaks with harshness and suffering concerning this basic matter.*

*Congress shall not abridge "the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."*

*The history of tyrants is a history of the muzzling of free expression and the denial of assembly. ("The Bill of Rights," Bonneville International Corporation "Gathering of Eagles," June 20, 1991.)*

President Gordon B. Hinckley, Teachings of Gordon B. Hinckley, p. 232 – 233

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*The voices I hear are persuasive, seductive, fascinating, and confusing. Speaking across the earth, they are part of a mighty battle that is being waged for the minds of men. They are aimed at persuasion in political philosophy. There are voices of democracy competing with voices of communism, and each is winning converts according to the discernment and the judgment of listeners. The stakes are high, the weapons are sophisticated, the methods are clever.*

President Gordon B. Hinckley, Teachings of Gordon B. Hinckley, p. 407

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*Modern **communism, fascism, nazism, socialism, and other related systems, are all the same in essential theory. They oppose religion, except as they themselves claim to be revelations**, and they reject Christian morality. They prohibit free speech and action; eliminate private ownership and initiative; hold without exception the state above the individual; regiment the people; allow the strong to dominate the weak; they take government out of the hands of the governed, and place it in the hands of a self-appointed, selfish, self-styled, super-group, and they culminate in dictatorships. The free agent has no place in their systems. Their claim that they believe in human equality, as shown by their tyrannical behavior, is false. Force and terrorism are their weapons. All that makes for human security and happiness is destroyed.*

Elder John A. Widtsoe, Evidences And Reconciliations

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*[A]s a nation we ignored the warning signals which preceded the great depression; we were also unready to face the onrushing realities of **Fascism and Communism—whereas***

**today many are blind to the dangers of self-oppression, the chains we put on ourselves, which is the real tyranny of our time.**

Elder Neal A. Maxwell, 1972

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*We hear the voice of one false Christ, echoing from the camps of **communism**, expounding the **devil-devised declaration that religion** is the opiate of the people. We hear another such voice when races alien to Israel acclaim that the one God has no need for a Son to mediate between himself and fallen man.*

*Next Moroni turns the key so that all who have ears to hear can understand what the secret combination is and can identify those who build it up. "For it cometh to pass," he says, "that whoso buildeth it up seeketh to overthrow the freedom of all lands, nations, and countries." This is a worldwide conspiracy. It is now entrenched in many nations, and it seeks dominion over all nations. It is Godless, atheistic, and operates by compulsion. It is communism. "And it bringeth to pass the destruction of all people, for it is built up by the devil, who is the father of all lies; even that same liar who beguiled our first parents, yea, even that same liar who hath caused man to commit murder from the beginning; who hath hardened the hearts of men that they have murdered the prophets, and stoned them, and cast them out from the beginning.*

Apostle Bruce R. McConkie, THE MILLENNIAL MESSIAH, 1982, 66

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*We must keep the people informed that collectivism, another word for socialism, is a part of the communist strategy. Communism is essentially socialism.*

President Ezra Taft Benson, This Nation Shall Endure, p. 90, Deseret Book Company

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**Latter-day Saints should have nothing to do with secret combinations** and groups antagonistic to the constitutional law of the land, which the Lord "suffered to be established," and which "should be maintained for the rights and protection of all flesh according to just and holy principles."

**Fundamental in the belief and promulgation of communism is the denial of the existence of God** and the desire to substitute for the belief confidence in the state. The state is not an organization to suppress people. The state should have no power but that which the people give it; and when the state becomes a director, a controller of the individual, it becomes despotism; and human nature has fought that since man was created; and man will continue to fight that false ideal.

*Individual freedom is innate in the human soul. God has given us our free agency, and next to life itself that is our greatest gift from heaven, and you red-blooded men and women know that is true because of your own love of liberty.*

David O. McKay, Selections from the Discourses of David O. McKay, 1952

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*On the one side the direction which is to make an end of all nations, is through communism; on the other side it is being reached through Fascism and Nazism. While these two forces*

*are apparently arrayed against each other, nevertheless the goal to be reached by them eventually is the same.*

Joseph Fielding Smith, 1936, *The Progress of Man*, p. 397

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*Can **communism, socialism, fascism**, the so-called welfare state, or any other coercive system provide these priceless blessings which flow to us as a part of our American way of life? **The common denominator of all these systems is the curtailment of individual liberty.***

Ezra Taft Benson, 1960, *So Shall Ye Reap*

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#### 11.21.4.1 Quotes on Social Security

*We have accepted a frightening degree of socialism in our country. The question is, how much? The amount of freedom depends upon the amount of federal control and spending. A good measurement is to determine the amount, or percentage, of income of the people that is taken over and spent by the state. In Russia, the individual works almost wholly for the state, leaving little for his own welfare. Scandinavia takes about 65 to 70 percent of the income of the people, England some 60 percent. The United States is now approximately 44 percent.*

*The chief weapon used by the federal government to achieve this equality is through so-called transfer payments. This is a term that simply means that the federal government collects from one income group and transfers payments to another by the tax system. These payments are made in the form of Social Security benefits, housing subsidies, Medicaid, food stamps, to name a few.*

*Today, total cost of such programs exceeds \$150 billion dollars. That represents about 42 percent of the total of all government federal spending, or about one dollar out of every seven dollars of personal income. (See U.S. News and World Report, August 4, 1975, pp. 32-33.)*

*Our present Social Security program has been going in the hole at the rate of \$12 billion a year. Recognizing that the present program will be insolvent by 1985, President Carter has now recommended that Social Security be funded out of the general tax funds. Charges were made in the last election campaign that the Social Security program was going bankrupt. These charges were denied. Now the truth is out. The President's recommendation must be regarded as an admission of the failure of the present system and as a calculated policy to take this country into full-scale socialism.*

*Our major danger is that we are currently—and have been for forty years—transferring responsibility from the individual, local, and state governments to the federal government.*

President Ezra Taft Benson, *This Nation Shall Endure*, Deseret Book Company, 1977.

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*“We have on, at the present time, a great political campaign (1936), and I want to say to the Saints that I hope they will not allow their political affiliations, their regard for political affairs, to cause feelings of ill-will towards one another. I have had some of the most*



*insulting letters that ever came to me, condemning me for not being in favor of the Townsend Plan (Social Security), and that I must be ignorant of the plan. I am not ignorant of the plan. I have not read every word of it, but I have asked one of my secretaries to read every word of the plan and to give me the important points, and to my mind it is in direct opposition to everything I have quoted from Brigham Young and from the revelations of the Lord. The idea of allowing every man and woman who has reached the age of sixty years and wishes to retire from working to get two hundred dollars a month from the government! There is nothing truer than Brigham Young's statement, that we should give nothing to people, unless they are not able to work, without requiring them to do something for it.*

President Heber J. Grant, General Conference October, 1936: 13.

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*To protect this base we must protect the soul of America -- we must return to a love and respect for the basic spiritual concepts upon which this nation has been established. We must study the Constitution and the writings of the founding fathers.*

*Yes, we **must protect the Lord's base of operations by moving away from unsound economic policies which encourage creeping socialism** and its companion, insidious, atheistic communism. If we are to protect this important base we must as a nation live within our means, balance our budgets, and pay our debts. We must establish sound monetary policies and take needed steps to compete in world markets.*

Ezra Taft Benson, CR, April 1962, p.105-106

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#### 11.21.4.2 **Quotes on Secular Religion**

*Satan's attacks on the family: The ultimate purpose of the adversary, who has "great wrath, because he knoweth that he hath but a short time," (1) is to disrupt, disturb, and destroy the home and the family. Like a ship without a rudder, without a compass, we drift from the family values which have anchored us in the past. Now we are caught in a current so strong that unless we correct our course, civilization as we know it will surely be wrecked to pieces. Moral values are being neglected and prayer expelled from public schools on the pretext that moral teaching belongs to religion. At the same time, atheism, the secular religion, is admitted to class, and our youngsters are proselyted to a conduct without morality.*

Elder Boyd K. Packer, Official Report of the 164th Annual General Conference April, 1994.

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*Thus, as we have seen, **civil control of religion is Lucifer's way of enforcing an enduring state of apostasy and of darkness upon all who are subject to such control.** Thus also, as long as government controls our way of worship, Lucifer is in control, and we have no hope except to await the day when the chains will be broken and the bondage will cease.*

*10. Atheism, a Fatal Belief—"During the Reign of Terror, the French were declared by the National Assembly to be a nation of atheists; but a brief experience convinced them that a nation of atheists could not long exist. Robespierre then 'proclaimed in the convention, that belief in the existence of God was necessary to those principles of virtue and morality upon which the republic was founded; and on the 7th of May [1794], the national*

*representatives, who had so lately prostrated themselves before the Goddess of Reason, voted by acclamation that the French people acknowledged the existence of the Supreme Being, and the immortality of the soul."* Students' France, 27, 6.

Bruce R McConkie, A New Witness for the Articles of Faith, Deseret Book Company 1985.

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### *The Religion of Atheism*

*Some years ago in the United States a plaintiff prospered in her grievance concerning the saying of prayers in public schools. The practice was declared unconstitutional by the Supreme Court. That decision was partial to one ideology, for the effect, regardless of the intent, was to offer great encouragement to those who would erase from our society every trace of reference to the Almighty.*

**There is a crying need for the identification of atheism for what it is, and that is, a religion albeit a negative one. Atheism is a religious expression; it is one extreme end of religious philosophy.**

*One group of so-called believers in God teach in substance that He is man-made. That is, they admit, with tongues in cheeks, that there is a God. But, in the same breath, they explain that God is always a product of the human mind. Early peoples, they say, worshipped tribal Gods, of stock and stone. As the people developed, their conceptions changed, until, in time, God became a Being of spirit. This simply means that God is made by man, and in the image of man; instead of man being made in the image of God. Such colossal self-sufficiency is of the impudent order of King Canute defying the tides of the ocean. **The notion of a man-made God is a variation of atheism.***

Elder Boyd K Packer, TEACH YE DILIGENTLY, 1975.

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### *A Government Designed For All Mankind*

*The coming of Columbus to this continent was not a thing of chance. It had been foreseen and foretold by the prophets of God. The coming of the Pilgrim fathers to New England, of the Dutch to New York, and the cavaliers of the Old World to Virginia, was not a thing of chance, it was just the chosen combination of men and women who were calculated to make up the composite government which was established at the time of the adoption of the Constitution of the United States. They were prayerful people, they were people who had faith in God, they prayed to him and their prayers were answered; and, as stated in the scripture which the President has read, it was under the Lord's inspiration that these men were moved upon to give us this government under which we have so rapidly and wonderfully developed. It was not to be a government of Englishmen, nor of Dutchmen, nor of royalty represented in the cavaliers, nor of French people who were in Louisiana, and to the north of us, in Canada, but a government designed for the benefit of all mankind, a government which was to make all people equal under the law.*

President Anthony W. Ivins, General Conference, October 1927.

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### *Priesthood of this Church the responsibility*

*We should at all times be willing to sustain the great Bill of Rights in our own country, to sustain and uphold the laws here. I firmly believe that Brigham Young was a prophet of Almighty God. I think that he spoke under the inspiration of the Lord's Spirit. I want to read to you an excerpt from one of his sermons, wherein he laid upon the shoulders of the Priesthood of this Church some very definite responsibilities relative to the fundamental law of our country. He said:*

*I expect to see the day when the Elders of Israel will protect and sustain civil and religious liberty, and every constitutional right bequeathed to us by our fathers.*

*He said these rights would go out in connection with the Gospel for the salvation of all nations, and added:*

*"I shall see this whether I live or whether I die. I do not lift up my voice against the great and glorious government guaranteed to every citizen by our Constitution, but against those administrators who trample the Constitution and just laws under their feet."*

*We see from this prophecy, uttered by a prophet of God that there will yet devolve upon the Priesthood of this Church the responsibility of protecting the rights and the Constitution of our great country.*

Elder Joseph L. Wirthlin , General Conference, October 1938.

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#### *Warning Against False Impressions*

*War has now broken out. Most of the sanctities that were used by the one side or the other to hallow the World War are again coming forth to hallow this one. Many were false then; they are false now. We should not be disturbed, misled, or blinded by any of them. Look at each of them squarely; most of them will wilt under your gaze. There are always deceit, lying, subterfuge, treachery, and savagery, in war, on both sides. There was in the World War. It is not always the other power that commits atrocities.*

President J. Reuben Clark, Jr, General Conference, October 1939.

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#### *Compelling Concepts*

*Among these elemental concepts is the love of freedom; it is found in man not only, but even in the brutes. Man and beast rebel against slavery. They yield to it only under compelling force.*

*Another elemental eternal concept is belief in God, which may ripen into a knowledge of God. Normal man ultimately demands this belief to make mortality tolerable.*

*Modern communism as explained by communists who are in places where they speak their real minds, deny God, declare that other men are beasts that must be tamed and worked as beasts. This is an enemy that threatens us within and without. This is not a Godless world.*

*But men cannot be led indefinitely, nor driven by a savage despotism, down this road to an intellectual and moral abyss. They may follow along for a generation or two. But they will one day rebel against the rule of liquidation. No group can permanently maintain itself by murder, as history proves from the days of the hideous proscription lists of Sulla till now.*

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#### **Sovereignty and Freedom Points and Authorities**

*Fear and ruthless cruelty can rule for a time, but the spirit of liberty ultimately breaks forth and sweeps away everything that lies in its path.*

*So it will be with communism, which now on a world scale may well be only doing the work of the Paris mobs in the French Revolution, for there are fields of human endeavor where the power of birth and station still afflict man's growth and development.*

President J. Reuben Clark Jr., Stand Fast by Our Constitution.

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*May I add again an admonition: Live within your means. Get out of debt. Keep out of debt. Lay by for a rainy day which has always come and will come again. Practice and increase your habits of thrift, industry, economy, frugality. Remember that the parable of the ten virgins, the five that were wise and the five that were foolish, can be just as applicable to matters of the temporal world as those of the spiritual.*

President J. Reuben Clark, Jr.

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*God Have Mercy On Us*

*What strength, what value will there be in any law, even in that law which protects us in our property rights, if we degenerate to such a degree that the law breaker has to be arrested by a man who is equally guilty of breaking the law; that when he who is guilty is brought before the bar, that bar which is supposed to be a bar of justice, he has as his prosecutor a district, a city or a county attorney who is himself as guilty as the one he is to prosecute? What an unfortunate condition will prevail if we reach such a situation that the individuals who constitute the jury are as guilty of law breaking as is the man whose guilt they are expected to discover. And then finally, if in addition to all of this, the judge or the justice who occupies the exalted place upon the bench does not himself have respect enough for the law to live in accordance with its provisions, God have mercy on us, for when this condition prevails government of the people, referred to by Abraham Lincoln, will surely be perishing from the earth.*

Elder Richard R. Lyman, General Conference, October 1932.

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*Man: His Origin and Destiny*

*Parents are commanded by revelation to teach their children these principles of the gospel... Then they go to school and find these glorious principles ridiculed and denied by the doctrines of men founded on foolish theories which deny that man is the offspring of God... These theories so dominate the secular education of our youth. They are constantly published in our newspapers, in magazines and other periodicals, and those who believe in God and his divine revelations frequently sit supinely by without raising a voice of protest. Under these conditions, is it any wonder the student is confused? He does not know whether to believe what his parents and the Church have taught him, or to believe what the teacher says and is written in the textbook. Naturally, students have confidence in their teachers and as confidence increases, there comes a lack of confidence in the doctrines of the Church and the parental instruction.*

President Joseph Fielding Smith, Man: His Origin and Destiny, pp. 2-3.

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*Fundamentals Of Constitution God-given*

*One of the most important things that we can do for the Church is to stand behind the Constitution of the United States. That does not mean, and no reasoning person would suppose that it meant, that that Constitution may not from time to time be changed as the needs of the people would seem to require. But it does mean that that Constitution should be changed only under the urge of great necessity, and then only in accordance with its great underlying concepts. It does mean that the great fundamental elements of the Constitution are God-given, for he said so. It does mean to me as an individual that the Constitution of the United States and my adherence to it and support of it is a part of my religion.*

*I have about the Constitution that same sort of conviction that I have about the other doctrines that we are taught, for I believe its precepts are among the doctrines of the Church, and I believe that the Lord will change and modify from time to time those details of its provisions which are ancillary to its great principles; he will cause us--those who live under it--to modify it in accordance with our needs; but the fundamental principles of it we may not sacrifice.*

President J. Reuben Clark, Jr, General Conference, April 1935.

*[We] shall see in our time a maximum if indirect effort made to establish irreligion as the state religion. It is actually a new form of paganism.... Brothers and sisters, irreligion as the state religion would be the worst of all combinations. Its orthodoxy would be insistent and its inquisitors inevitable. Its paid ministry would be numerous beyond belief. Its Caesars would be insufferably condescending. ... Your discipleship may see the time come when religious convictions are heavily discounted. M.J. Sobran also observed, "A religious conviction is now a second-class conviction, expected to step deferentially to the back of the secular bus, and not to get uppity about it." This new irreligious imperialism seeks to disallow certain of people's opinions simply because those opinions grow out of religious convictions.*

Neal A. Maxwell, "Meeting the Challenges of Today," BYU Devotional, October 10, 1978.

**11.22 Social Security ...<sup>97</sup>**

**"Make it your ambition to lead a quiet life, to mind your own business and to work with your hands, just as we told you, so that your daily life may win the respect of outsiders and so that you will not be dependent on anybody."**  
[1 Thess. 4:9-12, Bible, NIV]

"There remain for consideration the contentions that the state act is invalid because its enactment was coerced by the adoption of the Social Security Act, and that it involves an unconstitutional surrender of state power. **Even though it be assumed that the exercise of a sovereign power by a state, in other respects valid, may be rendered invalid because of the coercive effect of a federal statute enacted in the exercise of a power granted to the national government, such coercion is lacking here. [301 U.S. 495, 526] It is unnecessary to repeat now those considerations which have led to our decision in the Chas. C. Steward Machine Co. Case, that the Social Security Act has no such coercive effect. As the Social Security Act is not coercive in its operation, the Unemployment Compensation Act cannot be set aside as an**

<sup>97</sup> For detailed information about Social Security, see:

1. *Social Security: Mark of the Beast*, Form #11.407; <http://sedm.org/Forms/FormIndex.htm>.

2. *Communism, Socialism, Collectivism Page*, Family Guardian Fellowship; <https://famguardian.org/Subjects/Communism/Communism.htm>.



**unconstitutional product of coercion.** The United States and the State of Alabama are not alien governments. They coexist within the same territory. Unemployment within it is their common concern. Together the two statutes now before us embody a cooperative legislative effort by state and national governments for carrying out a public purpose common to both, which neither could fully achieve without the cooperation of the other. The Constitution does not prohibit such cooperation."  
[\[Carmichael v. Southern Coal and Coke Co., 301 U.S. 495 \(1937\)\]](#)

"When you pay social security taxes, you are in no way making provision for your own retirement. You are paying the pensions of those who are already retired. Once you understand this, you see that whether you will get the benefits you are counting on when you retire depends on whether Congress will levy enough taxes, borrow enough, or print enough money ...."  
 [W. Allen Wallis, former Chairman of the 1975 Advisory Council on Social Security, May 27, 1976]

"There is no prospect that today's younger workers will receive all the Social Security and Medicare benefits currently promised them."  
 [Dorcas Hardy, former Social Security Commissioner and author of "Social Insecurity", quoted in the December 1995 Reader's Digest]

"All we have to do now is to inform the public that the payment of social security taxes is voluntary and watch the mass exodus."  
 [Walter E. Williams, John M. Olin Distinguished Professor of Economics at George Mason University in Fairfax, VA, January 24, 1996]

"... the long-held fiction that there is a Social Security Trust Fund. A trust fund suggests an account that is separate from other streams of revenue. But all revenues - whether from income, corporate or payroll taxes - go into the U.S. Treasury."  
 [The New York Post, September 29, 1999]

"We have rights, as individuals, to give as much of our own money as we please to charity; but as members of Congress we have no right so to appropriate a dollar of public money."  
 [David Crockett, Congressman 1827-35]

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### 11.23 Privacy and Government Intrusion...

"The right to be let alone is indeed the beginning of all freedom."  
 [Justice William O. Douglas]

"As every man goes through life, he fills in a number of forms for the record, each containing a number of questions. There are thus hundreds of little threads radiating from every man, millions of threads in all, and if these threads were to suddenly become visible, the whole sky would look like a spider's web. They are not visible, they are not material, but every man is constantly aware of their existence."  
 [Alexander Solzhenitsyn in "Cancer Ward".]

"The American people must be willing to give up a degree of personal privacy in exchange for safety and security."  
 [FBI Director Louis Freeh (1993) -- from the National Review, October 24, 1994]

"We can't be so fixated on our desire to preserve the rights of ordinary Americans ...".  
 [William Jefferson Clinton, March 11, 1993 in USA Today]

"When we got organized as a country ... we wrote a fairly radical Constitution with a radical Bill of Rights, giving a radical amount of individual freedom to Americans ... A lot of people say there's too much personal freedom. When personal freedom's being abused, you have to move to limit it."  
 [William Jefferson Clinton, March 22, 1994 on MTV (Music Television)]

"The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. **They conferred, as against the Government, the right to be let alone - the most comprehensive of rights and the right most valued by civilized men.**"

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### ***Sovereignty and Freedom Points and Authorities***

[Olmstead v. United States, [277 U.S. 438, 478](#) (1928) (Brandeis, J., dissenting); see also Washington v. Harper, [494 U.S. 210](#) (1990)]

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#### **11.24 The New World Order Conspiracy: The Council On Foreign Relations, Secret Societies and Emerging World Government...**

"To achieve world government, it is necessary to remove from the minds of men, their *individualism*, loyalty to family traditions, national patriotism and *religious* dogmas."

[Brock Chisholm, former Director of the U.N. World Health Organization]

"The world is governed by very different personages from what is imagined by those who are not behind the scenes."

[Benjamin Disraeli, first Prime Minister of England, in a novel he published in 1844 called *Coningsby, the New Generation*]

"It is our true policy to steer clear of entangling alliances with any portion of the foreign world. The great rule of conduct for us in regard to foreign nations is, in extending our commercial relations, to have with them as little political connection as possible."

[George Washington]

"... Within the next hundred years ... nationhood as we know it will be obsolete; all states will recognize a single, global authority. A phrase briefly fashionable in the mid-20th century -- 'citizen of the world' -- will have assumed real meaning by the end of the 21st."

[Deputy Secretary of State Strobe Talbott in the July 20, 1992 issue of TIME magazine]

"The CFR [Council On Foreign Relations, New York City] is the American Branch of a society which originated in England and believes national directives should be obliterated and one-world rule established. I know of the operations of this network because I have studied it for twenty years, and was permitted in the early 1960's to examine its papers and secret records ... I believe its role in history is significant enough to be known."

[Dr. Carroll Quigley, Professor of International Relations, Georgetown University Foreign Service School, Washington, D.C., author of the epic "Tragedy & Hope", advocate of one-world government and personal mentor of President William Clinton (who acknowledged Professor Quigley during his 1992 presidential inauguration speech)]

"We shall have world government whether or not we like it. The only question is whether World government will be achieved by conquest or consent."

[Statement by Council on Foreign Relations (CFR) member James Warburg to The Senate Foreign Relations Committee on February 17th, 1950]

"Even the most Bush-happy, flag suckling jack-arse knows deep-down inside that something is wrong. America is over and everyone knows it. The New World Order has a dying empire odor and changing the channel ain't going to make this go away."

[Jello Biafra]

"Who controls the present controls the future; who controls the present controls the past".

[George Orwell in "1984"]

"We are not going to achieve a new world order without paying for it in blood as well as in words and money."

[Arthur Schlesinger, Jr., in Foreign Affairs (July/August 1995)]

"Today, America would be outraged if U.N. troops entered Los Angeles to restore order [referring to the 1991 LA Riot]. Tomorrow they will be grateful! This is especially true if they were told that there were an outside threat from beyond [i.e., an "extraterrestrial" invasion], whether real or \*promulgated\* [emphasis mine], that threatened our very existence. It is then that all peoples of the world will plead to deliver them from this evil. The one thing every man fears is the unknown. When presented with this \*scenario\*, individual rights will be willingly relinquished for the guarantee of their well-being granted to them by the World Government."

[Dr. Henry Kissinger, Bilderberger Conference, Evians, France, 1991]

"The drive of the Rockefellers and their allies is to create a one-world government combining supercapitalism and Communism under the same tent, all under their control.... Do I mean conspiracy? Yes I do. I am convinced there is such a

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#### ***Sovereignty and Freedom Points and Authorities***

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plot, international in scope, generations old in planning, and incredibly evil in intent."

[Congressman Larry P. McDonald, 1976, killed in the Korean Airlines 747 that was shot down by the Soviets]

"The idea was that those who direct the overall conspiracy could use the differences in those two so-called ideologies [marxism/fascism/socialism v. democracy/capitalism] to enable them [the Illuminati] to divide larger and larger portions of the human race into opposing camps so that they could be armed and then brainwashed into fighting and destroying each other."

[Myron Fagan]

"No one will enter the New World Order unless he or she will make a pledge to worship Lucifer. No one will enter the New Age unless he will take a Luciferian Initiation."

[David Spangler, Director of Planetary Initiative, United Nations]

"The world can therefore seize the opportunity [Persian Gulf crisis] to fulfill the long-held promise of a New World Order where diverse nations are drawn together in common cause to achieve the universal aspirations of mankind."

[President George Herbert Walker Bush]

"In the next century, nations as we know it will be obsolete; all states will recognize a single, global authority. National sovereignty wasn't such a great idea after all."

[Strobe Talbot, President Clinton's Deputy Secretary of State, as quoted in Time, July 20th, 1992]

[The United Nations not only failed to give] "even a remote hope for lasting peace, it adds to the dangers of wars which now surround us. The disintegrating forces in the United Nations are the Communist Nations in its membership."

[Former President Herbert Hoover as quoted in the Houston Press on August 10, 1962]

"Since I entered politics, I have chiefly had men's views confided to me privately. Some of the biggest men in the United States, in the Field of commerce and manufacture, are afraid of something. "... our system of credit is concentrated ... in the hands of a few men ... they know that there is a power somewhere so organized, so subtle, so watchful, so interlocked, so complete, so pervasive, that they better not speak above their breath when they speak in condemnation of it. We have come to be ... completely controlled ... by ... small groups of dominant men."

[President Woodrow Wilson, The New Freedom (1913)]

"Every child in American who enters school with an allegiance toward our elected officials, toward our founding fathers, toward our institutions, toward the preservation of this form of government ... all of this proves the children are sick, because the truly well individual is one who has rejected all of those things and is what I would call the true international child of the future."

[Chester M. Pierce, Harvard University psychiatrist, at a 1973 International Education Seminar, as quoted in "Educating For The New World Order" by B.K. Eakman]

"The individual is handicapped by coming face to face with a conspiracy so monstrous he cannot believe it exists."

[J. Edgar Hoover, former head of the FBI]

"From the days of Spartacus, Wieskhopf, Karl Marx, Trotsky, Rosa Luxemburg, and Emma Goldman, this world conspiracy has been steadily growing. This conspiracy played a definite recognizable role in the tragedy of the French revolution. It has been the mainspring of every subversive movement during the 19th century. And now at last this band of extraordinary personalities from the underworld of the great cities of Europe and America have gripped the Russian people by the hair of their head and have become the undisputed masters of that enormous empire."

[Winston Churchill, stated to the London Press, in 1922]

"We are at present working discreetly with all our might to wrest this mysterious force called sovereignty out of the clutches of the local nation states of the world."

[Professor Arnold Toynbee, in a June 1931 speech before the Institute for the Study of International Affairs in Copenhagen]

"The government of the Western nations, whether monarchical or republican, had passed into the invisible hands of a plutocracy, international in power and grasp. It was, I venture to suggest, this semioccult power which....pushed the mass of the American people into the cauldron of World War I."

[British military historian Major General J.F.C. Fuller, 1941]

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"Fifty men have run America, and that's a high figure."

[Joseph Kennedy, father of JFK, in the July 26th, 1936 issue of The New York Times]

"Today the path of total dictatorship in the United States can be laid by strictly legal means, unseen and unheard by the Congress, the President, or the people. Outwardly we have a Constitutional government. We have operating within our government and political system, another body representing another form of government - a bureaucratic elite."

[Senator William Jenner, 1954]

"The case for government by elites is irrefutable"

[Senator William Fulbright, Former chairman of the U.S. Senate Foreign Relations Committee, stated at a 1963 symposium entitled: The Elite and the Electorate - Is Government by the People Possible?]

"The Trilateral Commission is intended to be the vehicle for multinational consolidation of the commercial and banking interests by seizing control of the political government of the United States. The Trilateral Commission represents a skillful, coordinated effort to seize control and consolidate the four centers of power political, monetary, intellectual and ecclesiastical. What the Trilateral Commission intends is to create a worldwide economic power superior to the political governments of the nation states involved. As managers and creators of the system ,they will rule the future."

[U.S. Senator Barry Goldwater in his 1964 book: With No Apologies]

"The powers of financial capitalism had another far reaching aim, nothing less than to create a world system of financial control in private hands able to dominate the political system of each country and the economy of the world as a whole. This system was to be controlled in a feudalist fashion by the central banks of the world acting in concert, by secret agreements, arrived at in frequent private meetings and conferences. The apex of the system was the Bank for International Settlements in Basle, Switzerland, a private bank owned and controlled by the worlds' central banks which were themselves private corporations. The growth of financial capitalism made possible a centralization of world economic control and use of this power for the direct benefit of financiers and the indirect injury of all other economic groups."

[Tragedy and Hope: A History of The World in Our Time (Macmillan Company, 1966,) Professor Carroll Quigley of Georgetown University, highly esteemed by his former student, William Jefferson Blythe Clinton]

"The Council on Foreign Relations is "the establishment." Not only does it have influence and power in key decision-making positions at the highest levels of government to apply pressure from above, but it also announces and uses individuals and groups to bring pressure from below, to justify the high level decisions for converting the U.S. from a sovereign Constitutional Republic into a servile member state of a one-world dictatorship."

[Former Congressman John Rarick 1971]

"The directors of the CFR (Council on Foreign Relations) make up a sort of Presidium for that part of the Establishment that guides our destiny as a nation."

[The Christian Science Monitor, September 1, 1961]

"The New World Order will have to be built from the bottom up rather than from the top down...but in the end run around national sovereignty, eroding it piece by piece will accomplish much more than the old fashioned frontal assault."

[CFR member Richard Gardner, writing in the April 1974 issue of the CFR's journal, Foreign Affairs]

"The planning of UN can be traced to the 'secret steering committee' established by Secretary [of State Cordell] Hull in January 1943. All of the members of this secret committee, with the exception of Hull, a Tennessee politician, were members of the Council on Foreign Relations. They saw Hull regularly to plan, select, and guide the labors of the [State] Department's Advisory Committee. It was, in effect, the coordinating agency for all the State Department's postwar planning."

[Professors Laurence H. Shoup and William Minter, writing in their study of the C.F.R., "Imperial Brain Trust: The CFR and United States Foreign Policy." (Monthly Review Press, 1977).]

"The most powerful clique in these (CFR) groups have one objective in common: they want to bring about the surrender of the sovereignty and the national independence of the U.S. They want to end national boundaries and racial and ethnic loyalties supposedly to increase business and ensure world peace. What they strive for would inevitably lead to dictatorship and loss of freedoms by the people. The CFR was founded for "the purpose of promoting disarmament and submergence of U.S. sovereignty and national independence into an all-powerful one-world government."

[Harpers, July 1958]

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"The old world order changed when this war-storm broke. The old international order passed away as suddenly, as unexpectedly, and as completely as if it had been wiped out by a gigantic flood, by a great tempest, or by a volcanic eruption. The old world order died with the setting of that day's sun and a new world order is being born while I speak, with birth-pangs so terrible that it seems almost incredible that life could come out of such fearful suffering and such overwhelming sorrow."

[Nicholas Murray Butler, in an address delivered before the Union League of Philadelphia, Nov. 27, 1915]

"The peace conference has assembled. It will make the most momentous decisions in history, and upon these decisions will rest the stability of the new world order and the future peace of the world."

[M. C. Alexander, Executive Secretary of the American Association for International Conciliation, in a subscription letter for the periodical International Conciliation (1919)]

"If there are those who think we are to jump immediately into a new world order, actuated by complete understanding and brotherly love, they are doomed to disappointment. If we are ever to approach that time, it will be after patient and persistent effort of long duration. The present international situation of mistrust and fear can only be corrected by a formula of equal status, continuously applied, to every phase of international contacts, until the cobwebs of the old order are brushed out of the minds of the people of all lands."

[Dr. Augustus O. Thomas, president of the World Federation of Education Associations (August 1927), quoted in the book International Understanding: Agencies Educating for a New World (1931)]

"... when the struggle seems to be drifting definitely towards a world social democracy, there may still be very great delays and disappointments before it becomes an efficient and beneficent world system. Countless people ... will hate the new world order ... and will die protesting against it. When we attempt to evaluate its promise, we have to bear in mind the distress of a generation or so of malcontents, many of them quite gallant and graceful-looking people."

[H. G. Wells, in his book entitled The New World Order (1939)]

"The term Internationalism has been popularized in recent years to cover an interlocking financial, political, and economic world force for the purpose of establishing a World Government. Today Internationalism is heralded from pulpit and platform as a 'League of Nations' or a 'Federated Union' to which the United States must surrender a definite part of its National Sovereignty. The World Government plan is being advocated under such alluring names as the 'New International Order, 'The New World Order, 'World Union Now, 'World Commonwealth of Nations, 'World Community, etc. All the terms have the same objective; however, the line of approach may be religious or political according to the taste or training of the individual."

[Excerpt from A Memorial to be Addressed to the House of Bishops and the House of Clerical and Lay Deputies of the Protestant Episcopal Church in General Convention (October 1940)]

"In the first public declaration on the Jewish question since the outbreak of the war, Arthur Greenwood, member without portfolio in the British War Cabinet, assured the Jews of the United States that when victory was achieved an effort would be made to found a new world order based on the ideals of 'justice and peace.'"

[Excerpt from article entitled "New World Order Pledged to Jews," in The New York Times (October 1940)]

"If totalitarianism wins this conflict, the world will be ruled by tyrants, and individuals will be slaves. If democracy wins, the nations of the earth will be united in a commonwealth of free peoples, and individuals, wherever found, will be the sovereign units of the new world order."

[The Declaration of the Federation of the World, produced by the Congress on World Federation, adopted by the Legislatures of North Carolina (1941), New Jersey (1942), Pennsylvania (1943), and possibly other states.]

"New World Order Needed for Peace: State Sovereignty Must Go, Declares Notre Dame Professor"

[Title of article in The Tablet (Brooklyn) (March 1942)]

"Undersecretary of State Sumner Welles tonight called for the early creation of an international organization of anti-Axis nations to control the world during the period between the armistice at the end of the present war and the setting up of a new world order on a permanent basis."

[Text of article in The Philadelphia Inquirer (June 1942)]

"The statement went on to say that the spiritual teachings of religion must become the foundation for the new world order



and that national sovereignty must be subordinate to the higher moral law of God."

[American Institute of Judaism, excerpt from article in *The New York Times* (December 1942)]

"There are some plain common-sense considerations applicable to all these attempts at world planning. They can be briefly stated: 1. To talk of blueprints for the future or building a world order is, if properly understood, suggestive, but it is also dangerous. Societies grow far more truly than they are built. A constitution for a new world order is never like a blueprint for a skyscraper."

[Norman Thomas, in his book *What Is Our Destiny?* (1944)]

"He [John Foster Dulles] stated directly to me that he had every reason to believe that the Governor [Thomas E. Dewey of New York] accepts his point of view and that he is personally convinced that this is the policy that he would promote with great vigor if elected. So it is fair to say that on the first round the Sphinx of Albany has established himself as a prima facie champion of a strong and definite new world order."

[Excerpt from article by Ralph W. Page in *The Philadelphia Bulletin* (May 1944)]

"Alchemy for a New World Order"

[Article by Stephen John Stedman in *Foreign Affairs* (May/June 1995)]

"The United Nations, he told an audience at Harvard University, 'has not been able--nor can it be able--to shape a new world order which events so compellingly demand.' ... The new world order that will answer economic, military, and political problems, he said, 'urgently requires, I believe, that the United States take the leadership among all free peoples to make the underlying concepts and aspirations of national sovereignty truly meaningful through the federal approach.'"

[Gov. Nelson Rockefeller of New York, in an article entitled "Rockefeller Bids Free Lands Unite: Calls at Harvard for Drive to Build New World Order" -- *The New York Times* (February 1962)]

"The developing coherence of Asian regional thinking is reflected in a disposition to consider problems and loyalties in regional terms, and to evolve regional approaches to development needs and to the evolution of a new world order."

[Richard Nixon, in *Foreign Affairs* (October 1967)]

"He [President Nixon] spoke of the talks as a beginning, saying nothing more about the prospects for future contacts and merely reiterating the belief he brought to China that both nations share an interest in peace and building 'a new world order.'"

[Excerpt from an article in *The New York Times* (February 1972)]

"If instant world government, Charter review, and a greatly strengthened International Court do not provide the answers, what hope for progress is there? The answer will not satisfy those who seek simple solutions to complex problems, but it comes down essentially to this: The hope for the foreseeable lies, not in building up a few ambitious central institutions of universal membership and general jurisdiction as was envisaged at the end of the last war, but rather in the much more decentralized, disorderly and pragmatic process of inventing or adapting institutions of limited jurisdiction and selected membership to deal with specific problems on a case-by-case basis ... In short, the 'house of world order' will have to be built from the bottom up rather than from the top down. It will look like a great 'booming, buzzing confusion, to use William James' famous description of reality, but an end run around national sovereignty, eroding it piece by piece, will accomplish much more than the old-fashioned frontal assault."

[Richard N. Gardner, in *Foreign Affairs* (April 1974)]

"The existing order is breaking down at a very rapid rate, and the main uncertainty is whether mankind can exert a positive role in shaping a new world order or is doomed to await collapse in a passive posture. We believe a new order will be born no later than early in the next century and that the death throes of the old and the birth pangs of the new will be a testing time for the human species."

[Richard A. Falk, in an article entitled "Toward a New World Order: Modest Methods and Drastic Visions," in the book *On the Creation of a Just World Order* (1975)]

"My country's history, Mr. President, tells us that it is possible to fashion unity while cherishing diversity, that common action is possible despite the variety of races, interests, and beliefs we see here in this chamber. Progress and peace and justice are attainable. So we say to all peoples and governments: Let us fashion together a new world order."

[Henry Kissinger, in address before the General Assembly of the United Nations, October 1975)]

"At the old Inter-American Office in the Commerce Building here in Roosevelt's time, as Assistant Secretary of State for

Latin American Affairs under President Truman, as chief whip with Adlai Stevenson and Tom Finletter at the founding of the United Nations in San Francisco, Nelson Rockefeller was in the forefront of the struggle to establish not only an American system of political and economic security but a new world order."

[Part of article in *The New York Times* (November 1975)]

"A New World Order"

[Title of article on commencement address at the University of Pennsylvania by Hubert H. Humphrey, printed in the *Pennsylvania Gazette* (June 1977)]

"Further global progress is now possible only through a quest for universal consensus in the movement towards a new world order."

[Mikhail Gorbachev, in an address at the United Nations (December 1988)]

"We believe we are creating the beginning of a new world order coming out of the collapse of the U.S.-Soviet antagonisms."

[Brent Scowcroft (August 1990), quoted in *The Washington Post* (May 1991)]

"We can see beyond the present shadows of war in the Middle East to a new world order where the strong work together to deter and stop aggression. This was precisely Franklin Roosevelt's and Winston Churchill's vision for peace for the post-war period."

[Richard Gephardt, in *The Wall Street Journal* (September 1990)]

"If we do not follow the dictates of our inner moral compass and stand up for human life, then his lawlessness will threaten the peace and democracy of the emerging new world order we now see, this long dreamed-of vision we've all worked toward for so long."

[President George Bush (January 1991)]

"But it became clear as time went on that in Mr. Bush's mind the New World Order was founded on a convergence of goals and interests between the U.S. and the Soviet Union, so strong and permanent that they would work as a team through the U.N. Security Council."

[Excerpt from A. M. Rosenthal, in *The New York Times* (January 1991)]

"I would support a Presidential candidate who pledged to take the following steps: ... At the end of the war in the Persian Gulf, press for a comprehensive Middle East settlement and for a 'new world order' based not on Pax Americana but on peace through law with a stronger U.N. and World Court."

[George McGovern, in *The New York Times* (February 1991)]

"... it's Bush's baby, even if he shares its popularization with Gorbachev. Forget the Hitler 'new order' root; F.D.R. used the phrase earlier."

[William Safire, in *The New York Times* (February 1991)]

"How I Learned to Love the New World Order"

[Article by Sen. Joseph R. Biden, Jr. in *The Wall Street Journal* (April 1992)]

"How to Achieve The New World Order"

[Title of book excerpt by Henry Kissinger, in *TIME* magazine (March 1994)]

"The Final Act of the Uruguay Round, marking the conclusion of the most ambitious trade negotiation of our century, will give birth - in Morocco - to the World Trade Organization, the third pillar of the New World Order, along with the United Nations and the International Monetary Fund."

[Part of full-page advertisement by the government of Morocco in *The New York Times* (April 1994)]

"New World Order: The Rise of the Region-State"

[Title of article by Kenichi Ohmae, political reform leader in Japan, in *The Wall Street Journal* (August 1994)]

"The new world order that is in the making must focus on the creation of a world of democracy, peace and prosperity for all."

[Nelson Mandela, in *The Philadelphia Inquirer* (October 1994)]

"The renewal of the nonproliferation treaty was described as important "for the welfare of the whole world and the new world order."

[President Hosni Mubarak of Egypt, in The New York Times (April 1995)]

"For a long time I felt that FDR had developed many thoughts and ideas that were his own to benefit this country, the United States. But, he didn't. Most of his thoughts, his political ammunition, as it were, were carefully manufactured for him in advanced by the Council on Foreign Relations-One World Money group. Brilliantly, with great gusto, like a fine piece of artillery, he exploded that prepared "ammunition" in the middle of an unsuspecting target, the American people, and thus paid off and returned his internationalist political support. The UN is but a long-range, international banking apparatus clearly set up for financial and economic profit by a small group of powerful One-World revolutionaries, hungry for profit and power. The depression was the calculated 'shearing' of the public by the World Money powers, triggered by the planned sudden shortage of supply of call money in the New York money market....The One World Government leaders and their ever close bankers have now acquired full control of the money and credit machinery of the U.S. via the creation of the privately owned Federal Reserve Bank."

[Curtis Dall, FDR's son-in-law as quoted in his book, My Exploited Father-in-Law]

"The governments of the present day have to deal not merely with other governments, with emperors, kings and ministers, but also with the secret societies which have everywhere their unscrupulous agents, and can at the last moment upset all the governments' plans. "

[British Prime Minister Benjamin Disraeli, 1876]

"What is important is to dwell upon the increasing evidence of the existence of a secret conspiracy, throughout the world, for the destruction of organized government and the letting loose of evil."

[Christian Science Monitor editorial, June 19th, 1920]

"Today Americans would be outraged if U.N. troops entered Los Angeles to restore order; tomorrow they will be grateful! This is especially true if they were told there was an outside threat from beyond, whether real or promulgated, that threatened our very existence. It is then that all people of the world will plead with world leaders to deliver them from this evil. The one thing every man fears is the unknown. When presented with this scenario, individual rights will be willingly relinquished for the guarantee of their well being granted to them by their world government."

[Henry Kissinger in an address to the Bilderberg meeting at Evian, France, May 21, 1992. Transcribed from a tape recording made by a Swiss delegates in attendance.]

"To achieve world government, it is necessary to remove from the minds of men, their individualism, loyalty to family traditions, national patriotism and religious dogmas."

[Brock Chisholm, former Director of the U.N. World Health Organization]

"The main purpose of the Council on Foreign Relations is promoting the disarmament of U.S. sovereignty and national independence and submergence into an all powerful, one world government."

[Chester Ward, Rear Admiral and former Navy Judge Advocate 1956 - 1960 and CFR member for 15 years]

"You had me on (before) to talk about the new world order ... I talk about it all the time ... It's one world now ... The council (Council on foreign Relations) can find, nurture and begin to put people in the kinds of jobs this country needs. And that's going to be one of the major enterprises of the Council under me.."

[New CFR president Les Celb (former editor of The New York Times), May 4, 1993 on the "Charlie Rose Show"]

"That the CFR has been in control of the foreign policy of the United States for some time should now be beyond question.."

[Richard Harwood, Oct. 30, 1993, on the op-ed page of the Washington Post]

"The real rulers in Washington are invisible and exercise power from behind the scenes"

[Felix Frankfurter, United States Supreme Court Justice]

"We operate here under directives from the White House .. [to] use our grant making power to alter life in the U.S. so that we can comfortably be merged with the Soviet Union."

[Rowan Gaither, former president of the Ford Foundation, in a 1954 statement to Norman Dodd regarding Congressional investigations of the un-American activities of tax-exempt foundations operating in the U.S.]

"Gentlemen, Comrades, do not be concerned about all you hear about glasnost and perestroika and democracy in the coming years. These are primarily for outward consumption. There will be no significant internal change within the Soviet Union, other than for cosmetic purposes. Our purpose is to disarm the Americans and let them fall asleep."

[Mikhail Gorbachev, former President of the Soviet Union, to the Politburo in November of 1987]

"If their art can be applied to set aside the ordinary maxims of society and introduce policies of disobedience to government, while keeping its true aims secret, it must be obvious that such science and such societies may be perverted to all the ill purposes which have been suspected."

[George Washington, December 25, 1798, in the Salem (Mass.) Gazette, speaking of the known presence of the Illuminati in America at that time]

"The real menace of our Republic is the Invisible Government, which, like a great octopus, spreads its slimy length over the City, State, and Nation. And at the head of this octopus is the small group of Banking Houses, generally referred to as the International Bankers."

[Mayor John F. Hyland of New York, speaking in Chicago on March 26, 1922]

"I believe that if the people of this nation fully understood what Congress has done to them over the past forty-nine years, they would move on Washington. It adds up to a preconceived plan to destroy the economic and social independence of the United States."

[Senator George Malone of Nevada, speaking before Congress in 1957]

"If their art can be applied to set aside the ordinary maxims of society and introduce policies of disobedience to government, while keeping its true aims secret, it must be obvious that such science and such societies may be perverted to all the ill purposes which have been suspected."

[George Washington, December 25, 1798, in the Salem (Mass.) Gazette, speaking of the known presence of the Illuminati in America at that time]

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### **11.25 The Allegedly "Free" and So-Called "Watchdog" Press...**

"I love America more than any other country in this world; and, exactly for this reason, I insist on the right to criticize her perpetually."

[James Baldwin]

"In March, 1915, the J.P. Morgan interests, the steel, shipbuilding, and powder interest, and their subsidiary organizations, got together 12 men high up in the newspaper world and employed them to select the most influential newspapers in the United States and sufficient number of them to control generally the policy of the daily press....They found it was only necessary to purchase the control of 25 of the greatest papers. An agreement was reached; the policy of the papers was bought, to be paid for by the month; an editor was furnished for each paper to properly supervise and edit information regarding the questions of preparedness, militarism, financial policies, and other things of national and international nature considered vital to the interests of the purchasers."

[U.S. Congressman Oscar Callaway, 1917]

"News is what someone wants to suppress. Everything else is advertising."

[Former NBC news president Rubin Frank]

"An independent press does not exist in America except perhaps in small country towns; journalists know it and I know it; not one of them dares to express a sincere opinion; if they do so, they know beforehand that it will never be printed. I am paid 150 dollars monthly in order that I should not put my ideas in the newspaper for which I write and that I should keep them to myself. Others are paid similar salaries for a similar service. If I succeeded in having my opinions published in a single issue of my news-paper, I should lose my post in twenty-four hours. The man who would be insane enough to give frank expression to his thoughts would soon find himself in the streets on the look-out for another occupation. It is the duty of New York journalists to lie, to threaten, to bow down to the feet of Mammon, and to sell their country and their race for their salary, that is to say, for their daily bread ... We are the tools and the vassals of the rich who keep in the background; we are puppets; they pull the strings and we dance. Our time, our talent, our life, our abilities, all are the property of these men. We are intellectual prostitutes."

[John Swinton, former chief of staff for the New York Times, when asked in 1953 to give a simple toast before the New York Press Club, stunned a roomful of admiring peers into total silence with the preceding remarks (as reported in the January,

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### ***Sovereignty and Freedom Points and Authorities***

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1993 issue of *The National Educator*, and also quoted in the book "Pure Sociology" by Professor Lester T. Ward)]

"The People cannot be safe without information. When the press is free, and every man is able to read, all is safe."  
[Thomas Jefferson]

"We are grateful to the Washington Post, the New York Times, Time Magazine and other great publications whose directors have attended our meetings and respected their promise of discretion for almost forty years ... It would have been impossible for us to develop our plan for the world if we had been subject to the bright lights of publicity during those years. But, the world is now more sophisticated and prepared to march towards a world government. The supranational sovereignty of an intellectual elite and world bankers is surely preferable to the national auto-determination practiced in past centuries."  
[David Rockefeller, in an address given to Catherine Graham, publisher of *The Washington Post* and other media luminaries in attendance in Baden Baden, Germany at the June 1991 annual meeting of the world elite Bilderberg Group]

"We are going to impose our agenda on the coverage by dealing with issues and subjects that we choose to deal with."  
[Richard M. Cohen, former Senior Producer of CBS political news]

"Our job is to give people not what they want, but what we decide they ought to have."  
[Richard Salant, former President of CBS News]

". . . this vast right-wing conspiracy conspiring against my husband since the day he announced for President. A few journalists have kind of caught on to it and explained it, but it has not yet been fully revealed to the American public."  
[Hillary Clinton on NBC's "Today Show" (Jan. 27, 1998)]

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### 11.26 Importance of Voting

"We electors have an important constitutional power placed in our hands: we have a check upon two branches of the legislature, as each branch has upon the other two; the power I mean of electing at stated periods, one branch, which branch has the power of electing another. It becomes necessary to every subject then, to be in some degree a statesman: and to examine and judge for himself of the tendencies of political principles and measures. "  
[John Adams, *The Papers of John Adams*, Robert J. Taylor, ed. (Cambridge: Belknap Press, 1977), Vol. 1, p. 81]

"Let each citizen remember at the moment he is offering his vote that he is not making a present or a compliment to please an individual--or at least that he ought not so to do; but that he is executing one of the most solemn trusts in human society for which he is accountable to God and his country. "  
[Samuel Adams, *The Writings of Samuel Adams*, Harry Alonzo Cushing, editor (New York: G.P. Putnam's Sons, 1907), Vol. IV, p. 256]

"Nothing is more essential to the establishment of manners in a State than that all persons employed in places of power and trust be men of unexceptionable characters. The public cannot be too curious concerning the character of public men."  
[Samuel Adams, *The Writings of Samuel Adams*, Harry Alonzo Cushing, editor (New York: G.P. Putnam's Sons, 1907), Vol. III, p. 236-237]

"Look well to the characters and qualifications of those you elect and raise to office and places of trust. "  
[Matthias Burnett, Pastor of the First Baptist Church in Norwalk, *An Election Sermon, Preached at Hartford, on the Day of the Anniversary Election, May 12, 1803* (Hartford: Printed by Hudson & Goodwin, 1803), p. 27]

"Now more than ever the people are responsible for the character of their Congress. If that body be ignorant, reckless, and corrupt, it is because the people tolerate ignorance, recklessness, and corruption."  
[James Garfield, "A Century of Congress" published in *Atlantic*, July 1877]

"A share in the sovereignty of the state, which is exercised by the citizens at large, in voting at elections is one of the most important rights of the subject, and in a republic ought to stand foremost in the estimation of the law. "  
[Alexander Hamilton, *The Papers of Alexander Hamilton*, Harold C. Syrett, ed. (New York, Columbia University Press, 1962), Vol III, pp. 544-545]

"Providence has given to our people the choice of their rulers, and it is the duty, as well as the privilege and interest of our Christian nation , to select and prefer Christians for their rulers. "

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### ***Sovereignty and Freedom Points and Authorities***



[John Jay, *The Correspondence and Public Papers of John Jay*, Henry P. Johnston, ed. (New York: G.P. Putnam's Sons, 1890), Vol. IV, p. 365]

"The Americans are the first people whom Heaven has favored with an opportunity of deliberating upon and choosing the forms of government under which they should live. "

[John Jay, *The Correspondence and Public Papers of John Jay*, Henry P. Johnston, ed. (New York: G.P. Putnam's Sons, 1890), Vol. I, p. 161]

"Every male citizen of the commonwealth, liable to taxes or to militia duty in any county, shall have a right to vote for representatives for that county to the legislature. "

[Thomas Jefferson, *The Jeffersonian Cyclopaedia*, John P. Foley, ed. (New York: Funk & Wagnalls Company, 1900), p. 842]

"Should things go wrong at any time, the people will set them to rights by the peaceable exercise of their elective rights. "

[Thomas Jefferson, *The Jeffersonian Cyclopaedia*, John P. Foley, ed. (New York: Funk & Wagnalls Company, 1900), p. 842]

"The elective franchise, if guarded as the ark of our safety, will peaceably dissipate all combinations to subvert a Constitution, dictated by the wisdom, and resting on the will of the people. "

[Thomas Jefferson, *The Jeffersonian Cyclopaedia*, John P. Foley, ed. (New York: Funk & Wagnalls Company, 1900), p. 842]

"The rational and peaceable instrument of reform, the suffrage of the people. "

[Thomas Jefferson, *The Jeffersonian Cyclopaedia*, John P. Foley, ed. (New York: Funk & Wagnalls Company, 1900), p. 842]

"Impress upon children the truth that the exercise of the elective franchise is a social duty of as solemn a nature as man can be called to perform; that a man may not innocently trifle with his vote; that every elector is a trustee as well for others as himself and that every measure he supports has an important bearing on the interests of others as well as on his own. "

[Daniel Webster, *The Works of Daniel Webster* (Boston: Little, Brown, and Company, 1853), Vol. II, p. 108]

"In selecting men for office, let principle be your guide. Regard not the particular sect or denomination of the candidate--look to his character. "

[Noah Webster, *Letters to a Young Gentleman Commencing His Education to Which is Subjoined a Brief History of the United States* (New Haven: S. Converse, 1823), p. 18]

"When a citizen gives his suffrage to a man of known immorality he abuses his trust; he sacrifices not only his own interest, but that of his neighbor, he betrays the interest of his country. "

[Noah Webster, *Letters to a Young Gentleman Commencing His Education to which is subjoined a Brief History of the United States* (New Haven: S. Converse, 1823), p. 19]

"When you become entitled to exercise the right of voting for public officers, let it be impressed on your mind that God commands you to choose for rulers, "just men who will rule in the fear of God." The preservation of government depends on the faithful discharge of this duty; if the citizens neglect their duty and place unprincipled men in office, the government will soon be corrupted; laws will be made, not for the public good so much as for selfish or local purposes; corrupt or incompetent men will be appointed to execute the laws; the public revenues will be squandered on unworthy men; and the rights of the citizens will be violated or disregarded. If a republican government fails to secure public prosperity and happiness, it must be because the citizens neglect the divine commands, and elect bad men to make and administer the laws."

[Noah Webster, *History of the United States* (New Haven: Durrie & Peck, 1832), pp. 336-337]

"The people in general ought to have regard to the moral character of those whom they invest with authority either in the legislative, executive, or judicial branches. "

[John Witherspoon, *The Works of John Witherspoon* (Edinburgh: J. Ogle, 1815), Vol. IV, p. 267]

"Those who wish well to the State ought to choose to places of trust men of inward principle, justified by exemplary conversation. "

[John Witherspoon, *The Works of John Witherspoon* (Edinburgh: J. Ogle, 1815), Vol. IV, p. 266]

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**11.27 Additional Sources for Quotes**

The following resources provide additional quotes that you may find useful:

1. Family Guardian Website, Sovereignty Forms and Instructions: Cites By Topic  
<http://famguardian.org/TaxFreedom/FormsInstr-Cites.htm>
2. Family Guardian Website: Wisdom and Philosophy Topic  
<http://famguardian.org/Subjects/Wisdom/Wisdom.htm>
3. Founding Father Quotes  
<http://www.foundingfatherquotes.com/>
4. Thomas Jefferson on Politics and Government  
<http://famguardian.org/Subjects/Politics/ThomasJefferson/jeffcont.htm>
5. Brainy Quote  
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6. The Quotations and Sayings Database  
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<http://thinkexist.com/>
8. Wikiquote  
[http://en.wikiquote.org/wiki/Main\\_Page](http://en.wikiquote.org/wiki/Main_Page)
9. Motivational Quotes  
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