

Extraterritoriality

What is it? Why deny it?

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“It is a recognized principle of modern international law that every independent and sovereign State possesses absolute and exclusive jurisdiction over all persons and things within its own territorial limits. This jurisdiction is not qualified by differences of nationality, and extends to the persons and property of subjects and foreigners alike.” (Opening lines of Liu 1925)ⁱ

Following a habit of questioning things, we have today come to this so-called principle of *territoriality*, and the absolute and exclusive power of these territorial States. In doing this, we have to take into account the risk of being called things like radical, idealistic, naïve and even utopian, all of the words used in a very negative sense. Curiously, the more educated people think they are the more eager they seem to be calling you things like this.

Why is that, do you think? Well, first of all, most people seem to take for granted that *territoriality* always have been the guiding principle in such human affairs. This premise is simply wrong. But secondly, we also have to ask ourselves why people react so negatively when you question this principle of *territoriality*?

In this article I will tell you about another principle, the principle of *extraterritoriality*. But I will also share with you what seems to me to be the three major reasons for the almost absolute refusal to questioning the principle of *territoriality* - one based on a kind of ignorance or poor reasoning, another based on power and yet another based on selfishness.

Part 1 –Accepting Extraterritoriality as a Real Thing

The guiding principle behind the judicial system we have today, worldwide, we can refer to as ‘territoriality’ (or perhaps ‘territorial governance’). This means that the territorially sovereign states of today claim absolute political authority within their respective fixed territories. Wherever you are in the world today, you basically have to yield to the laws and government of that particular territory, regardless of their contents or whether you approve of them or not.

We could contrast the current system with a system of ‘extraterritoriality’ (or perhaps ‘non-territorial governance’). In such a system, the laws are not bound to the territory, but rather to the person. This has also been referred to as ‘Personal Law’ or ‘Personality of Laws’. Thus, in one and the same place, it is possible for people to submit to various systems of laws. It is also possible for an individual to change government, i.e. the governments are in a way competing in best serving people’s needs, or start a new in case desired.

It seems that the guiding principles behind such a system of extraterritoriality is so distinct from the present system of exclusive territoriality that, in fact, the two systems cannot be regarded as anything else but opposites, mutually exclusive, or principally totally different in nature.

To much surprise to far too many, there was a time when the kind of territorially sovereign governments we see today were unheard of. As one reporter from the past tells us, Bishop Agobard (779–840), 'it often happens that five men, each under a different law, would be found walking or sitting together.' We can see the remnants of this system in the consular jurisdictions, embassies, and how ships entering foreign harbours still carry and submit to the flag of their choice. There are abundant written traces of extraterritoriality in Africa, Europe, and Asia. Most likely, the principle is as old as mankind and has existed everywhere.

Extraterritorial Tolerance in Ancient Times

For example, there are records of this principle of extraterritoriality available from ancient Sparta, Greece, Egypt and Rome. The 'perioeci' enjoyed Spartan protection as well as the right to manage their communities. In Greece, special magistrates, '*xenodikai*', were instituted for trying cases in which non-citizens were involved. In the Roman republic as well as in the early empire, there was a similar magistrate, '*praetor peregrinus*'. The '*peregrine*', were not true foreigners; they were free inhabitants and subjects of Rome but neither citizens nor Latins. Thus, there were people that had the right to manage their own communities and live by their own laws within the same territory.

In Rome, the system of extraterritoriality was abandoned as citizenship was extended to all people within Roman territories. During the empire, political centralism, monopolism and territorialism gained ground. But after the fall of Rome, however, the principle of extraterritoriality really flourished. It was at this time that Bishop Agobard (779–840) filed a report to us about those five men sitting peacefully together at one spot while living under different laws. Romans, Lombards, Goths, Franks, Burgundians, Alemanns etc. all lived by their own laws for centuries, regardless of where they happened to stay geographically. People could and actually did change their allegiance to laws and governments. This is why it is often referred to as 'Personal Law' or 'Personality of Laws'.

One important ingredient of Muslim laws (Sharia), originating in the Quranⁱⁱ, is the so-called 'dhimmi' system, or later, in the Ottoman Empire, the 'millet' system. Liu (1925) provides several early examples of extraterritoriality outside of Europe in Muslim regions. He mentions two seventh century documents giving privileges to Christians in Syria and in relation to these Liu makes the following important remark:

"It is a remarkable fact that all these Capitulations [i.e. the extraterritorial rights] are unilateral or one-sided, dispensing favors without exacting any consideration. The explanation is again to be sought in the exuberant zeal for commercial development or nowhere. The object of the Capitulations was to regulate the conditions under which Europeans were to do business in the Levant; the interests of the Mussulman, whether at sea or abroad in a Christian country, were ignored in the scramble for the benefit of European commerce at home. Thus, the element of reciprocity was conspicuously absent, but its absence, though conspicuous, ought not to betray any derogation from sovereignty on the part of the proud Saracens. The fact is that during the period under examination, the notion of exclusive sovereignty was still unborn, and it is highly improbable that much attention could have been paid to it by the negotiators on either side" (p. 56-57).

Thus, the Muslims seems to have invited foreign merchants to come and trade with them by giving them the rights to live by their own laws, i.e. unilateral extraterritoriality voluntarily granted for mutual benefit. But even more clear evidence is available; there was an important religious aspect of extraterritoriality as well. Liu (1925) also cites another scholar explaining the meaning of that passage in the following way:

"The Mussulman law was not made for the foreigner, since he is a non-Mussulman; it is necessary that he remain subject to his own law. The Mussulman law can neither protect him nor judge him nor punish him, since it protects, judges and punishes only Mussulmans; it is necessary that he be protected, judged and punished by his own law." (p. 57-58, footnote 3)

Liu also mentions 9th century extraterritorial rights of the Frankish merchants in Jerusalem ("Frankish" more or less meant Christian or European).

Another example was the famous *Convivencia* in Medieval Spain where Jews, Muslims and Christians for a long period of time - dates referred to are often 711-1492 AD – lived and prospered together in harmony, at least by today's standards. Although also a kind of *dhimmi*' or 'millet' system, this period is often referred to as a 'golden age' of religious and ethnic tolerance and interfaith harmony between Muslims, Christians and Jews.ⁱⁱⁱ

The principle of extraterritoriality was also present in the great Mediterranean trading cities, like Florence, Venice and Genoa, places often referred to as the cradle of modern Western wealth creation.

There are also early traces of extraterritoriality in Asia. For example, "a Mussulman was charged by the Emperor of China with the power to decide the disputes which arose among the men of the Mohammedan religion in the ninth century" (Liu, p.50). This was during the Tang Dynasty, the shiniest historic period in China's history, where in Chang'an (currently Xian) you could openly discuss something like twelve major religions. Founded in 618 and ending in 907, the Tang Dynasty became the most powerful and prosperous country in the world. In this period, the economy, politics, culture and military strength reached an unparalleled advanced level. So the principle of extraterritoriality was important in most parts of the world at that time, at some of the most important places in human history.

Barbarian Tolerance

Edward Gibbon, in his tome *The Decline And Fall Of The Roman Empire*^{iv}, wrote the following in reference to the 'Laws of the Barbarian' of the fifth and sixth centuries:

"[T]he laws of the barbarians were adapted to their wants and desires, their occupations and their capacity; and they all contributed to preserve the peace, and promote the improvements, of the society for whose use they were originally established. The Merovingians, instead of imposing a uniform rule of conduct on their various subjects, permitted each people, and each family, of their empire freely to enjoy their domestic institutions; nor were the [remaining] Romans excluded from the common benefits of this legal toleration."

In a footnote to this section, Gibbon argued with our friend Bishop Agobard, saying that he "*foolishly* proposes to introduce an uniformity of law as well as of faith" (emphasis added).

Indeed, it seems just as foolish to propose uniformity of law as uniformity of faith. For how come tolerance is good in one sphere of life, and not in others? Why stop at religious tolerance? Just as religious tolerance rejects uniformity of faith, the medieval kind of non-territorial governance rejected the uniformity of laws (and thus also uniformity of faith). After all, it remains to be explained how tolerance can be good only one sphere of life, and not in others. Extraterritoriality does not stop at religious tolerance but extends it to all spheres of life; while this was a tolerant feature of the so-called barbarian laws, it seems to be a missing feature of the territorial monopolist states of today. Who are really the true barbarians?

Liu (p.76) also makes an interesting point about later lack of extraterritorial rights in Asia, and about the connection between religious tolerance and tolerance in a broader meaning:

As is well known, Confucianism and Buddhism, the dominant systems of philosophy and religion in the Far East, make no discriminating distinctions between the native and the alien. They teach tolerance and indulgence to all alike.

Thus, to the extent Liu is correct, a larger degree of tolerance could be present anyway. After all, it is tolerance that is the important thing, not extraterritorial rights *per se*.

One thing is clear, such worldwide extraterritorial rights did not originate in late European Imperialism or because of poor foreign judicial systems, as is often believed. In relation to this, Liu makes the important observation that historical records like those mentioned above are sufficient to "*throw overboard the theory that extraterritoriality was in any way intended to derogate from the sovereignty of the State granting it, inasmuch as the notion of territorial sovereignty was as yet unknown when extraterritoriality took its root.*" (p. 32). Thus, extraterritorial right were not intended to derogate State sovereignty, since State sovereignty simply was unheard of! Instead, these impositions were later ingredients, imposed by already territorially sovereign, often European, governments in a very imperialist manner indeed.

Thus, it seems that extraterritoriality has existed both in Africa, Europe, the Levant and the Far East, indeed, in all the places Liu studied. And I suppose you will find the same story wherever you look in world history.

The Rise of Territorial Intolerance

But when, how and why did the principle of territoriality really gain ground and when did the territorially sovereign states of today really arise? It seems that the year 1648 is important in this regard. This was the year of the Peace of Westphalia, which ended the Thirty Years War in Europe. In these treaties the idea of exclusive territorial sovereignty basically replaced the principle of extraterritoriality and the personality of laws as the fundamental principle of international intercourse. However, the race for colonial possessions and similar territorialism had already started. Thus, territorialism didn't follow from the peace treaties but instead the idea of territorialism, i.e. a strong will to impose uniform laws and faith within a certain territory, seems to have been an important reason for the Thirty Years War to begin with.

How was extraterritoriality technically replaced by territorial sovereign states? There were six major ways: (1) by passing under the sovereignty of States which do not recognize or grant the right of exemption from local jurisdiction; (2) by passing under the temporary jurisdiction of such a State; (3) by breaking off from a State in which the extraterritorial system exists; (4) by becoming a protectorate of a State which does not concede rights of extraterritoriality; (5) by unilateral cancellation; and (6) by diplomatic negotiation leading to a mutual agreement on the abolition or preliminaries to it.

The technical details of each and every case in which extraterritoriality was abolished are very interesting, but what's really interesting are the reasons put forward why territorial sovereignty was to be preferred. This makes the last two categories of special interest, since they involve statements defending the changes.

For example, we have the treaty between Turkey and Soviet Government in Russia in 1921, ending the extraterritorial rights in Turkey:

"The Government of the R.S.F.S.R. [Russian Socialist Federated Soviet Republic] considers the Capitulatory régime [i.e. the extraterritorial rights] to be incompatible with the free national development and with the sovereignty of any country; and it regards all the rights and acts relating in any way to this régime as annulled and abrogated" (Liu 1925, p. 185, citing the Soviet/Turkey treaty).

It seems non-territorial governance indeed is incompatible with 'free national development' and territorial state sovereignty. We all know the results of 'free national development' in Leninist Russia and Turkey of that time, with the atrocities conducted by these sovereign states against people within their territory.

Another example involved Persia and the Soviet government:

"[T]he R.S.F.S.R formally affirms once again that it definitely renounces the tyrannical policy carried out by the colonizing governments of Russia which has been overthrown by the will of the workers and peasants of Russia. // Inspired by this principle and desiring that the Persian people should be happy and independent and should be able to dispose freely of its patrimony, The Russian Republic declares the whole body of treatises and conventions concluded with Persia by the Tsarist Government, which crushed the rights of the Persian people, to be null and void" (Liu 1925, p. 198, citing the Soviet/Persia treaty).

A quote like this makes sense only if one replaces 'the Persian people' by 'the Persian people in power', i.e. those running the territorially sovereign state. The power of the state seems to have been the main idea of the day. Is it really much different today?

Often the extraterritorial rights were said to give rise to 'governments in the Government' (or 'States within States' as is a more common expression), as if this would be a problem, whereas the truth is that various kinds of governments could and did peacefully coexist in the same territory. But it's indeed a problem for the government seeking to be a territorially sovereign monopolist. It dislikes the competition and obviously tries to abolish it, perhaps by picturing itself as some kind of mother-government with numerous wild children running around wildly – not very convincing, nor very true.

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I wrote above that most people seem to take for granted that *territoriality* always have been the guiding principle in human affairs. I hope this premise has been fully exploded by this short lesson in human history. Granted, this historical expose doesn't prove that *extraterritoriality* was the only guiding principle in human affairs, but it is absolutely clear that *territoriality* has NOT always been the guiding principle in human affairs. But there is no doubt that the principle of extraterritoriality has been an important principle in the past. It also appears far more tolerant, in many ways like religious tolerance but extended to all spheres of life.

Part 2 – Understanding the Refusal to Accepting Extraterritoriality as a Real Thing

Interestingly, it isn't very hard to gain knowledge about the principle of extraterritoriality and accepting that *territoriality* has NOT always been the guiding principle in human affairs. Why then do so few people question the principle of territoriality?

Reason #1 – 'The Survival of the Fittest' Scare

The first possible reason seems to be that when people start thinking about any alternative to the absolute and exclusive power of the territorial state they believe that the alternative would be something like 'the survival of the fittest', or perhaps violent anarchy. That is, they believe that once two parties ended up with conflicting views, the views held by the stronger party would win. By 'stronger' is implied the use or threat of use of physical force. According to this view, only the stronger would survive. And as such a terrifying absurdity isn't even worth thinking about. Hence there is, allegedly, no need to question the principle of territoriality. End of story, they seem to think.

There is a related type of argument that also concludes that it is absurd to question the principle of territoriality. Here's one example:

"Instead of a single, monopolistic government, [...], there should be a number of different governments in the same geographical area, competing for the allegiance of the individual citizens, with every citizen free to "shop" and to patronize whatever government he chooses." (Ayn Rand, *The Nature of Government*, in *The Virtue of Selfishness*)

This situation is described by the same author as an absurdity, "devoid of any contact with or reference to reality", and this is supposedly proven by the following example:

"Suppose Mr. Smith, a customer of Government A, suspects that his next-door neighbor, Mr. Jones, a customer of Government B, has robbed him; a squad of Police A proceeds to Mr. Jones' house and is met at the door by a squad of Police B, who declare that they do not accept the validity of Mr. Smith's complaint and do not recognize the authority of Government A. What happens then? You take it from there." (Ayn Rand, *The Nature of Government*, in *The Virtue of Selfishness*)

Thus, once again we see, allegedly, that it is absurd to question the principle of territoriality.

But we have already seen that in history we actually have had "a number of different governments in the same geographical area" and that people could and actually did change their allegiance to laws and governments while still in the same territory. So how then were conflicts solved in the past when there were no territorial sovereign states?

Conflict Solving and Extraterritoriality - Actor Sequitur Forum Rei

We have already cured the ignorance about alternatives to our territoriality and have learnt some historical facts about extraterritoriality. Now it is time to learn some historical facts about important principles of conflict solving that were rather common under extraterritoriality.

Because, as Maitland (1898) noted, "a system of personal laws implies rules by which a 'conflict of laws' may be appeased".

The most straight-forward way to solve such conflict of laws would perhaps be a mixed court, such as the famous historical examples of the old mixed courts of Egypt or Shanghai. Furthermore, as Liu (p.59) points out, "in mixed cases, the principle *actor sequitur forum rei* was generally adopted, but not without vagueness and confusion at times."^v What does this principle of conflict solving mean? Liu informs us:

"It is noteworthy that under a régime of personal jurisdiction, the law applied was that of the defendant, except in cases of serious crime, in which the law of the injured party or plaintiff prevailed. A connection might be established between this rule and the principle *actor sequitur forum rei*, one of the basic formulae of modern [i.e. 1920's] extraterritorial jurisdiction, under which the plaintiff follows the defendant into his court." (p. 29, emphasis in original)

It turns out that the principle of *actor sequitur forum rei* [i.e. the plaintiff follows the defendant into his court] assumes a different meaning in combination with territoriality than in combination with extraterritoriality. Today, the territory in which the conflict arises, and its exclusive laws, determines the competent court for the case. This means that the plaintiff must bring suit against the defendant in the state of his domicile, habitual residence, or principal place of business. Thus, in line with territorialism, this has become a territorial principle. However, in combination with extraterritoriality, the accuser follows the defendant into his court, i.e. the defendant is judged according to the laws he adheres to.

Gibbon confirms this principle of *actor sequitur forum rei* (ch. 38, Laws of the Barbarian):

"The children embraced the law of their parents, the wife that of her husband, the freedman that of his patron; and *in all causes where the parties were of different nations, the plaintiff or accuser was obliged to follow the tribunal of the defendant, who may always plead a judicial presumption of right or innocence.* A more ample latitude was allowed, if every citizen, in the presence of the judge, might declare the law under which he desired to live, and the national society to which he chose to belong. Such an indulgence would abolish the partial distinctions of victory: and the Roman provincials might patiently acquiesce in the hardships of their condition, since it depended on themselves to assume the privilege, if they dared to assert the character, of free and warlike barbarians." (emphasis added)

Thus, according to the old, and most likely the original meaning of the principle, the plaintiff follows the defendant into his court of choice. This 'ample latitude' of extraterritoriality seems to be both a natural and tolerant way of solving conflicts. Simply imagine the opposite and this becomes evident; this would imply that other people are demanded to follow the way of living that you prefer, a demand not very tolerant and contradicting the personality of laws.^{vi}

Maitland (1898) provided some further concrete examples of old rules for conflict resolution under extraterritoriality and personal laws:

"We may see, for example, that the law of the slain, not that of the slayer, fixes the amount of the wergild [i.e. fine], and that the law of the grantor prescribes the

ceremonies with which land must be conveyed. We see that legitimate children take their father's, bastards their mother's law. We see also that the churches, except some which are of royal foundation, are deemed to live Roman law, and in Italy, though not in Frankland, the rule that the individual cleric lives Roman law seems to have been gradually adopted."

At first thought, one might assume that in case of a crime committed against a member of another personal law community the more severe law should be applied. However, that would immediately imply a risk that the defendant would have to follow the plaintiff to his court, i.e. the opposite principle. It would thus in such cases imply that the law of others is imposed on you, i.e. in a very intolerant manner. Hence, there would be well-founded objections to that kind of system since there would at least have to be some amount of coercion involved.

However, for really serious crimes, like murder, "the law of the slain, not that of the slayer" would most likely decide, as both Liu and Maitland often was the case in the past. Exactly what crimes were to be regarded as serious enough to nullify the principle *actor sequitur forum rei* were perhaps stipulated in advance, and this is one likely reason why many ancient laws are so concrete when it comes to crimes and punishment. There were also cases, like in medieval Iceland, where the plaintiff could sell his claim, and most probably the buyer would be someone within the same system of law as the defendant^{vii}.

But make no mistake, when it comes to conflict solving, there will always be unjust outcomes, or of "vagueness and confusion at times", as Liu put it. That's simply a fact of life that no human design of laws cannot possibly avoid.

What about the scary scenario of the "the survival of the fittest"? Well, it seems that it is far from evident that the scary scenario of the "the survival of the fittest" is more likely to occur in the absence of the absolute and exclusive power of the territorial state. Quite the contrary, because in what ways are the weaker party helped by having to accept the laws imposed by the stronger? Wouldn't it be much more secure for the weaker party if they could be judged by their laws instead of those of the stronger party? It seems kind of obvious when you think about it, doesn't it? And what would you choose; an unjust verdict of a just law or a just verdict of an unjust law? I would certainly be happier with what I believe to be good laws accompanied by a poor court system than having to settle with what I believe are bad laws accompanied by a great court system.

Governments have existed alongside each other in the same territory peacefully in the past and there were many more tolerant and peaceful ways of solving conflicts than most people seem able to imagine. Hopefully, we know about this historical fact as well by now. To sum up, it seems ignorance of the past and some really poor reasoning are a possible reason for the refusal to question the principle of territoriality.

Reason #2 – Power Extending and Manifesting Itself

The second possible reason seems to be that when people start thinking about any alternative to the absolute and exclusive power of the territorial state is that most of us are somehow rather involved in the activities of this absolute and exclusive power.

No matter if you like it or not, it is a fact that the absolute and exclusive power of the territorial state has grown into almost every aspect of our lives. There are so many such aspects that you are not aware of but a fraction of them and those you are actually aware of you kind of take for granted. These different aspects affect the daily lives of every person on this planet and this also means that an ever increasing share of the population work for this absolute and exclusive power of the territorial state, directly or indirectly. Even though we find many cases of ordinary people and civil servants that are courageous enough to challenge some aspects of this power that they don't like, there is a more dominant effect present as well. It is the not so courageous tendency to go with the flow, to do your job no matter what it implies. And as this effect is multiplied by millions and millions of ordinary people and civil servants, the imposition of the propaganda, false premises and misinformation is massive. Little by little the absolute and exclusive power of the territorial state expands.

At the time of the rise of the principle of territoriality and its intolerance, a process of such power abuse started. Liu (p.103) explains:

“With the growth of the territorial theory of law, States fettered with the anomaly of extraterritoriality have labored again and again to throw it off. Little by little, the statesmen of these countries have awakened to the fact that what had once been a normal practice had become a distinct limitation and derogation of their sovereignty.”

And little by little the absolute and exclusive power of the territorial state has expanded to unprecedented levels. Such states have been attacking extraterritorial rights within their own territory in order to expand their powers at home, also ending their own extraterritorial rights abroad in order to help other friends in power to expand their powers in their home territory, like with the Soviets above. But such states have at times also been eager try to impose such rights on others in a kind of imperial fashion, mostly in Asia during the 18th and 19th centuries^{viii}.

Unfortunately, because of such injustices, they have given rise to a countermovement that mistakenly denounces extraterritoriality in general, not only the imposed version, thus having the unfortunate result of serving to discredit the original meaning of extraterritoriality and further advancing the idea of territoriality.

One 20th century example of this was the May Fourth Movement in China, starting in 1919. It was a reaction to among other things the way their European Allies at the end of WWI and the Versailles Peace Conference's, instead of ending them, handed over German extraterritorial rights in China to Japan. One of consequences of this was the birth of the Chinese communist party that years later took over the absolute and exclusive power of the territorial state, with some familiar and not so pleasant passages of history. Thus, this was a case where extraterritoriality in general was mistakenly discredited and the idea of the absolute and exclusive power of the territorial state further advanced.

There is no reason to delve any more into this. An absolute and exclusive power also has an absolute and exclusive power to further its agenda. Thus, it seems that since most of us are somehow rather involved in the activities of this absolute and exclusive power of the territorial state we tend not to question the principle of territoriality.

Reason #3 – Selfishness and the ‘Impose-and-Forbid-Scheme’

This might come as a surprise to many, but there is reason to believe that a kind of selfishness is among the reasons for not questioning territoriality. Or rather, the principle of territoriality sort of breeds the worst kind of selfishness in people. To see this, ponder the following quote from Oscar Wilde:

“Selfishness is not living as one wishes to live, it is asking others to live as one wishes to live.”

It isn't really a bad thing to wish to live your way. But if everybody within a territory more or less has to live in the same way, as is stipulated by the principle of territoriality, the only way you can live as you wish is if everybody else does so as well. This implies that to have it your way, you somehow have to impose your way on others. This could of course be made in a peaceful manner, but since it is impossible in any larger communities that everyone will wish to live the same way, the peaceful manner will not do. Thus, if you wish to live your way, you have to impose it on other by more or less non-peaceful means. This makes people act selfish where there's really no need to. The principle of territoriality breeds selfishness, of the worst non-peaceful kind.

Moreover, the principle of territoriality does not only make you want to impose your way on others, it also makes you want to oppose other people's way of live, even in a non-peaceful manner. Because if other people have it their way, it must also be the way you will have to live. Thus, you not only aggressively want to impose your will on others but also want to stop everybody else from having their will come through. This we could dub the ‘Impose-and-Forbid-Scheme’. And here you have what seems to be a third reason for not questioning the principle of territoriality.

The political monopolism imbedded in the principle of territoriality make many people afraid of discussing other ways of life since if one particular way of life gains ground this means that everybody would have to change in that direction, including you. This tends to make even a simple debate about different ways of life really superficial since almost everyone really only wants to further their own agenda and is extremely unwilling to grant anyone else the right to live their way of life. It is in such climate the political debate of today is conducted, or rather, not conducted.

Why Did Such Rights Exist?

Let's contrast this situation with extraterritoriality again. Now, when one thinks of it, the origins of extraterritoriality perhaps aren't that strange at all. For most of our common history, people have lived as nomads in small hunter-gather societies or in territorially dispersed communities of low average population density where strict borders were not claimed or upheld. In such societies they developed their own set of moral standards and laws (but perhaps mostly not yet written but memorized legislation). It became only natural that the laws followed the persons, not the territory. When encountering people from other such extraterritorial communities, it would seem only natural to expect that those others lived by different moral standards and laws.

Furthermore, in order to avoid conflict, it would be best not to try to impose one's own moral standards and laws on others. To avoid that others try this, it only seems natural to abstain from it oneself. In case conflict arises, the best way to avoid further conflict would be to let the defendant be judged by his laws. Hence, the common question on a stranger's origins related to his law and customs, not only to his place of birth and ethnicity. Extraterritoriality thus presents itself as a more tolerant and peaceful solution.

Territorialism, Major Warfare and Mass-Murder

What might happen if we would let power and selfishness breed under the principle of territoriality? Well, you would want to impose your way of life on others and stop others from having their way of life. This has created two terrible habits of territorially sovereign monopolist governments, since the people in power also tend to follow the selfish 'impose-and-forbid-scheme'.

First of all, they tend to create disputes with other territorial monopolists. Now, the creation of disputes is far from only a territorialist notion. However, what makes disputes between territorial sovereigns so dreadful is that it becomes very easy to make people believe that the people living on the other side of the border are really different from people on this side of the border. The monopoly on the legal right to use force makes it easy to suppress any nonconformists, dissidents and opponents – and provide the false impression of unity. This ends any discrimination between the really bad guys and ordinary people. This allows for total war involving whole populations. It provides motives, targets, finance, conscripts, and 'culprits' according to the principle of 'collective responsibility'. All those taxed, conscripted or otherwise victimized by such a territorial government are all supposed to be its supporters.

Thus, territorial claims are a major source of war, especially large-scale war. Just think of the fighting at WWI Verdun, with 700,000 casualties, mostly conscripts, in a territory of not even ten square miles. Just think of the indiscriminate killings of hundreds of thousands of civilian innocents whenever weapons of mass destruction are used - who are the true barbarians when such savage acts are committed?

Secondly, territorially sovereign monopolist governments have also the terrible habit of waging war on its own population, or selected parts of it. Once again we see the selfish 'impose-and-forbid-scheme' at work. The monopoly on the legal right to use force makes it easy to persecute people without meeting any major resistance. Genocide committed by territorially sovereign states like in Soviet Russia, National-Socialist Germany, China, Cambodia, etc., could reach terrible proportions, with some 170 millions killed in the twentieth century alone, mainly because those governments could carry on their misdeeds without meeting any strong domestic counter-forces.

Modern major warfare and mass-murder is essentially a consequence of territorially sovereign governments. We should, however, not be led into believing that extraterritoriality would eliminate all abuses; everything can be abused and those 'good-old-days' of extraterritoriality perhaps weren't all too good. Extraterritoriality can be established in both tolerant and intolerant ways, as history clearly shows. It is also a fact that former and in some regards more tolerant extraterritoriality was transformed into more intolerant territorial authoritarianism. Nevertheless, by eliminating any claims to territorial sovereignty, or curbing any early seeds to such claims, the

major warfare and mass-murder of territorialism seem far less likely to occur again, while at the same time this would instigate a move towards greater tolerance.

Panarchy In Our Time

An essential part of *panarchy* is the full political freedom of choosing *and* having the desired government (or no government), with as much political, economic and religious freedom as desired, regardless of where you are geographically. A central part of panarchy is extraterritoriality, in the original meaning of the term. Extraterritoriality has existed practically everywhere in the past and there is nothing saying that this cannot be the case again. Maybe one day it will once again be perfectly natural, on the encounter of a stranger, to ask: *Qua lege vivis?* According to what law are you living?

Instead of ignoring extraterritoriality, instead of more or less aggressively and selfishly seeking to impose your will on others, and instead of seeking to stop everybody else from having their will come through, I suggest we challenge not only the principle of territoriality, but also the 'impose-and-forbid-scheme'.

I suggest that we should start trying to follow a new principle, a principle that in Latin reads *Do ut des*, or "I give, so that you may give". This means that if we want our full political freedom of choosing *and* having the desired government (or no government), i.e. if we really want panarchy in our time, we better start doing the opposite of we have been doing so far. That is, we have to start giving other people a chance to have their way of life, helping them in achieving their kind of freedom, even if we don't like it and perhaps even if they are intolerant in many ways towards others. We must give people their freedom if we want to have ours.

But how can we spread this message? Confucius gives us a hint at what we are up against:

"By three methods we may learn wisdom: First, by reflection, which is noblest; second, by imitation, which is easiest; and third by experience, which is the bitterest."

By challenging not only the principle of territoriality, but also the 'impose-and-forbid-scheme', hopefully we can open up a new course of political debate. However, very few will realize the benefits of extraterritoriality and panarchy on their own, even with the help of billions of texts and books. We also need positive real life examples, examples that people can imitate. And those that still don't get it will eventually appear as ignorant, selfish and intolerant as they really are, or radical, idealistic, naïve and even utopian in the most negative sense. They will have to change the bitter way.

Let's avoid ignorance, selfishness and intolerance. Let's help the ignorant, selfish and intolerant territorialists have their way of life, their governments, their laws and their kind of freedom. And we will hopefully have our, we will hopefully have Panarchy In Our Time.

Endnotes:

ⁱ The full reference is: Shih Shun Liu (1925), *Extraterritoriality: Its Rise and Its Decline*, New York. Columbia University Press, 1925, 235 p.

ⁱⁱ From Quran, Sura six: "Say: O ye unbelievers! // I worship not what ye worship, // And ye are not worshippers of what I worship; // And I am not a worshipper of what ye have worshipped, // And ye are not worshippers of what I worship. // To you your religion; and to me my religion."

ⁱⁱⁱ Vivian Mann, *et al.*, eds. *Convivencia: Jews, Muslims, and Christians in Medieval Spain*. George Braziller: 1992.

^{iv} See Chapter 38, <http://www.amazon.com/exec/obidos/ASIN/0679423087/lewrockwell/>.

^v Some of those considering personal or totally private law today seem to be unaware of the principle *actor sequitur forum rei*. For example, Benson (1990) believes that arbitration would be the likely solution, "likened to formal or informal extradition treaties among political entities" (p. 32). This even seems to be the exact opposite of the principle at hand. Also Friedman (1973) seems to be unaware of this principle. He means that there are three ways in which a conflict between laws could be handled, none being the principle at hand: "The most obvious and least likely is direct violence – a mini-war between my agency, attempting to arrest the burglar, and his agency attempting to defend him from arrest. A somewhat more plausible scenario is negotiation. Since warfare is expensive, agencies might include in the contracts they offer their customers a provision under which they are not obliged to defend customers against legitimate punishments for their actual crimes. When a conflict occurs, it would then be up to the two agencies to determine whether the accused customer of one will or will not be deemed guilty and turned over to the other. // A still more attractive and more likely solution is advance contracting between the agencies. Under this scenario, any two agencies that faced a significant probability of such clashes would agree on an arbitration agency to settle them - a private court. Implicit or explicit in their agreement would be the legal rules under which such disputes were to be settled." Hence, they seem to have no knowledge about the perhaps most important principle in this regard, i.e. *actor sequitur forum rei*.

^{vi} Moreover, it isn't plausible to demand that others should keep themselves informed of the details and changes in the law under which you live, and they don't.

^{vii} For discussions of things like this, see for example Benson (1990), Long (1994) and Friedman (1973).

^{viii} There are people advocating such rights openly today on behalf of the US Government and, in fact, many steps in that direction have taken place kind of by stealth in the last decades alone, especially when it comes to financial accounting, auditing and corporate governance (like the Sarbanes-Oxley Act of 2002).