

# To the Monopolists of All Parties

[first published at LewRockwell.com on Feb 8, 2005]

I suppose most columnists and adherents of this forum are used to being called things like radical, idealistic, naïve and even utopian, all of the words used in a very negative sense. The perhaps most fundamental reason for this kind of behavior is that Mr. Rockwell et al. oppose the idea of a government with a monopoly on the use of force. Abolishing this monopoly is, allegedly, at best utopian. Alas, and this might come as a surprise to all too many, for most of mankind's history, there were no such monopolies.

Thus, before you call people names again, you really should learn more about how we used to organize our governance, or else you might come across as historically ignorant. Learn more about it, and perhaps you agree that the time is ripe for a return to the way we all used to organize our governance?

## Territorial vs. Non-Territorial Governance

The guiding principle behind the system of governance we have today, worldwide, we can refer to as 'territoriality' or '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 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 'non-territorial governance.' In such a system, the laws don't follow the territory, but rather the person. 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 system, i.e. the systems 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 this system of non-territorial governance is so distinct from the present system of exclusive territorial governance that, in fact, the two systems cannot be regarded as anything else but opposites, mutually exclusive, or principally totally different in nature.

As I have written [elsewhere](#), there was a time when the kind of territorially sovereign governments we see today were unknown. As one reporter from the past tells us, 'it often happens that five men, each under a different law, would be found walking or sitting together.' We can even see the remnants of this system in the consular jurisdictions, embassies, and how ships entering foreign harbors still carry and submit to the chosen flag.

## Non-Territorial Tolerance in Ancient Times

There are records of this system of non-territorial governance available from ancient Greece, Sparta, Egypt and Rome. For example, the *'perioeci'* enjoyed Spartan protection as well as the right to manage their own 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.

The examples are abundant. One important ingredient of Muslim laws (Sharia), originating in the Quran,<sup>1</sup> is the so-called *'dhimmi'* system, or later, in the Ottoman Empire, the *'millet'* system. There is also evidence of Muslim non-territorial rights in ninth-century China.

In Rome, the system of non-territorial governance was abandoned as citizenship was extended to all people within Roman territories. After the fall of Rome, however, the system 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 be geographically. People could and did change their allegiance to laws. This is often referred to as the Personality of Laws.

This system was also present in the great Mediterranean trading cities, like Florence, Venice and Genoa, and these places are often referred to as the cradle of our modern wealth creation.

## Barbarian Tolerance

Edward Gibbon, in his tome *The Decline and Fall of the Roman Empire* (ch. 38), 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 indeed 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. Non-territorial governance 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 monopolies of today.

## Conflict Solving

One intuitive concern in relation to non-territorial systems of laws would be how cases of conflict between members of different laws are to be treated. It turns out that conflicts were treated according to the principle of *actor sequitur forum rei* [i.e. plaintiff follows forum of the case, that is, the law of the defender or accused, not that of the accuser].

This principle has assumed a different meaning under the territorial governance of today than under non-territorial. 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, under non-territorial governance, and most likely according to the original meaning, the accuser follows the defendant into his court, i.e. the defendant is judged according to the laws he adheres to.

This seems to be both a natural and tolerant solution to conflicts. Simply imagine the opposite and this becomes evident – it 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. However, for really serious crimes, like murder, "the law of the slain, not that of the slayer" would most likely indicate the competent forum. Exactly what crimes are to be regarded as serious enough to nullify the principle *actor sequitur forum rei* could be agreed upon or stipulated in advance else be open to arbitration (this is also a reason for why those old laws were so concrete when it comes to crimes and punishment). Another way this used to be solved was by the use of mixed courts, i.e. courts capable of handling disputes between different laws.

## Why Did Such Rights Exist?

Now, when one thinks of it, the origins of non-territorial governance 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 non-territorial communities, it would seem only natural to expect that those others lived by different moral standards and laws. To avoid conflict, it would be best not to try to impose one's own moral standards and laws on those 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. Non-territorial governance thus presents itself as the tolerant and peaceful solution.

There are abundant written traces of non-territorial systems of governance in Africa, Europe, and Asia. Most likely, the system is as old as mankind and has existed everywhere. One thing is clear, such worldwide non-territorial rights did not originate in late European Imperialism or

because of poor foreign judicial systems, as is often believed. These were later ingredients, imposed by already territorially sovereign, often European, governments in a very imperialist manner indeed.

## The Rise of Territorial Intolerance

But when, how and why did these territorially sovereign states arise? It seems that the year 1648 is important in this regard. This was the year of the Peace of Westphalia, that ended the Thirty Years War. In these treatises the idea of exclusive territorial sovereignty basically replaced the theory of 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 seems to have been an important reason for the Thirty Years' War to begin with.

How was non-territorial governance technically replaced by territorial sovereign states? There were 6 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 non-territorial rights in Turkey:

"The Government of the R.S.F.S.R. considers the Capitulatory régime [i.e. the non-territorial 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).<sup>ii</sup>

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. 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 treaties 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).

The quote makes sense only if one replaces 'the people' by 'the people in power', i.e. those running the territorially sovereign state. Power of the state seems to have been the words of the day. Is there really much difference today?

Often the non-territorial rights were said to give rise to 'governments in the Government' (or 'States within States' as is a more common expression), whereas the truth is that various kinds of governments peacefully coexist in the same territory. That's indeed a problem for a 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.

## **Territorialism, Major Warfare and Mass-Murder**

Territorially sovereign monopolist governments have two terrible habits. 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 a 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 in Hiroshima, Nagasaki or Dresden, or those elsewhere that simply are referred to as 'collateral damage'. '—All Germans are bad and must be bombed, all Japanese are bad and must be bombed'; 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. 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 non-territorial governance would eliminate all abuses; everything can be abused and those 'good-old-days' of non-territorial governance perhaps weren't all too good. Non-territorial governance 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 non-territorial governance 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.

## Qua lege vivis?

Thus, to the monopolists of all parties, there is a new message: It is time to reject the monopolist government indoctrination and learn about our past! The idealistic, naïve and intolerant territorialists have had their say – they have been the true utopians. It is time to reject the mother of all monopolies, and its warfare, mass-murders and political intolerance. It is time to once again consider the non-territorial tolerance.

Maybe one day we will once again have a system of governance where each and every one has the full political freedom of choosing *and* having the desired government, with as much economic freedom as desired. This is not naïve or utopian, but rather a very tolerant, humane and civilized. Maybe one day it will once again be perfectly natural "that five men, *each under a different law*, would be found walking or sitting together." 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?

## Endnotes

---

<sup>i</sup> From Quran, Sura cix: "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."

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