

The Constitution, The Government,
and
The Doctrine of Social Contract

by

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The Constitution, The Government, and The Doctrine of Social Contract

Introduction

The *Declaration of Independence* was allegedly motivated by a desire of the American colonists to free themselves from control by the authorities in England. Arguments for the change were made in terms of the rights of the people, and by references to the principles that are a part of the Doctrine of Social Contract. The veracity of the various arguments might be open to question. The actual motives might well have had more to do with commercial profit and local authority.

By the time that the U.S. constitution was written, thirteen years later, a new government, the Continental Congress, had been pursuing its own vested interests, and securing its own authority. As a result, the writing of the U.S. constitution was driven by a different agenda than was the writing of the *Declaration of Independence*. The rights of the people, and even the Doctrine of Social Contract, fell by the wayside in favor of a powerful central government and a centrally regulated economy. In this essay, I resurrected those lost concerns, and reviewed the U.S. constitution and its government, from the point of view of the Doctrine of Social Contract. It would be useful to understand that doctrine before reading this present essay. I recommend first reading my essay *The Long And Winding Doctrine: Social Contract*, and then reading this one. That essay is available in *Pharos*.

In the world as it is today, it's literally impossible for governments to comply with the most important principle of the Doctrine of Social Contract. That principle is that the legitimate boundaries of lawful government are not geographical. They are contractual. So far, the idea of the Doctrine of Social Contract has been used mostly to give a false appearance of legitimacy to governments that are actually as despotic today as governments have ever been. In some places, today, the methods of oppression and control used by governments are more cosmetically appealing than has often been the case, but only so long as people stay in line. Governments today still rely on force and the fear of punishment to oppress and control their people. A gilded cage is, as they say, still a cage.

As previously noted, it's literally impossible, today, for governments to entirely comply with the Doctrine of Social Contract. In this essay, I evaluated the present government of the United States of America, and the constitution by which it's created, against two of the secondary principles that are contained in the doctrine.

1. A constitution must authorize for its government only powers and jurisdictions that are delegated by the people.

Corollary 1. The people cannot delegate powers or jurisdictions, and the government cannot exercise powers or jurisdictions, that the people do not have.

Corollary 2. The people do not lose their powers when they delegate them.

2. A government is illegitimate if it fails to comply with its constitution.

Compliance with those two conditions is as close as it's possible, in today's world, for a constitution and its government to get to the Doctrine of Social Contract.

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The Bill of Rights

We usually think of legitimate governments as being created by constitutions. We think of constitutions as being written under the auspices of the people, but that isn't necessarily true. A constitution might be written by any despot. Such a constitution might

despotism, *n.* 1. Absolute power; authority unlimited and uncontrolled by constitution or laws, and depending alone on the will of the ruler....

—*Webster's Universal Dictionary of the English Language*, 1910

specify the forms and functions of the government while having nothing whatsoever to do with rights, or with the will of the people. The U.S. constitution is exactly such a constitution. Note, for example, that the word *rights* is mentioned only once, in the entire original U.S. constitution, and that's with regard to patents and copyrights. Those aren't rights of the people. They're monopolies, enforced by government, for the benefit of a privileged few, and the detriment of everybody else. The U.S. constitution doesn't address rights at all.

The *Bill of Rights*, appended to the U.S. constitution as an afterthought, is advertised as a limitation of the powers of the government. In fact, most of the limits imposed by the *Bill of Rights* have exceptions that operate at the discretion of the government, or loopholes that otherwise defeat the alleged limitation. The Third Amendment is a good example.

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

—Amendment 3

The Third Amendment doesn't prevent the quartering of soldiers in houses. It defines the rules whereby soldiers can be quartered in houses. In time of peace, soldiers can be quartered in a house with the consent of the owner. Given enough carefully arranged incentives, people will consent to a lot of things that they don't want to do. In time of war, the method need only be prescribed by legislation. Both provisions should be viewed in terms of Article 1, Section 8, clause 18, to be discussed later. By that clause, the Congress can enact whatever legislation it believes to be necessary and proper to arrange for the quartering of soldiers in houses, either in time of peace or in time of war. The Third Amendment is a typical example of the backward delegation of power, pretending to limit a power while actually specifying how that power can be exercised.

Most amendments in the *Bill of Rights* embody some such phoney limitation of power. Another example is the power of eminent domain. It exists because of the Fifth Amendment, not in spite of it.

eminent domain.... In the United States, the power of eminent domain is founded in both the federal (Fifth Amend.) and state constitutions....

—*Black's Law Dictionary*, 1979

More generally, see my essay *In Search of the Supreme Flaw of the Land: The Bill of Rights*. It's available in *Pharos*.

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Identity Crisis

The U.S. constitution doesn't have a title. Instead, it begins at the Preamble, without any heading at all, title or otherwise. The Preamble refers to the document as "this Constitution for the United States of America". That isn't a title. Worse yet, the statement can't be construed so as to ensure that the constitution that contains it is the only such constitution in existence. It's only "this" constitution. The word *this* might designate one thing among several others. Thus, "this Constitution for the United States of America" could be one of several other constitutions. Bouvier's comment on contracts applies equally as well to constitutions as it does to any other contract. Words, in constitutions as in other contracts, are to be taken, if possible, in their comprehensive and common sense.

CONTRACT.... Words are to be taken, if possible, in their comprehensive and common sense....

—*Bouvier's Law Dictionary*, 1889

Why is that important? It's important because sources, references, and so forth that are used in legal proceedings must be cited accurately and unambiguously. That's true of all legal proceedings, such as court cases, treaties, declarations of war, legislation, and so forth. So, what

CONTRACT.... The intention of the parties is the pole-star of construction; but their intention must be found expressed in the contract and be consistent with rules of law. The court will not make a new contract for the parties....

—*Bouvier's Law Dictionary*, 1889

about those proceedings that formally refer to or inherently rely for their validity on a document called "The Constitution of the United States of America"? That alleged title doesn't even agree with the one that appears in the Preamble. It's different by an article and a preposition. In either case, there isn't any original document in existence with either title. Any alleged copy of the U.S. constitution that bears either of those titles isn't a true and accurate copy of the original. Any reference to such a document is invalid.

Even if the U.S. constitution had a title, various other errors and irregularities in its origin and pedigree prevent it from having any credibility or legitimacy. I discussed those flaws in my essay *In Search of the Supreme Flaw of the Land: Perpetual Union*. It's available in *Pharos*.

All of that considered, this examination of the U.S. constitution is probably nothing more than an academic exercise. However, since the U.S. constitution is passed off as a legitimate basis for the present U.S. government, the exercise is probably worth the trouble.

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Powers and Status

It's easy to find, in the U.S. constitution, delegations of powers to the government. The most extensive single delegation of power is to the Congress.

[The Congress shall have power] to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.
—Article 1, Section 8, clause 18

This delegation of power is important because of the other powers that it enables the government to execute, and because it's a *carte blanche* to enact enabling legislation. Many of the powers delegated in the U.S. constitution are very general, and there are a lot of them. There are, in the U.S. constitution, 55 clauses that delegate powers to the Congress. Three additional clauses delegate to the government powers exercisable during emergencies. Eight clauses delegate powers to the House of Representatives. Nine clauses delegate powers to the Senate. One clause delegates a power to Senators. Eight clauses delegate powers to the President. Two clauses delegate powers to the Executive Branches of state governments, six clauses delegate powers to the state legislatures, and six clauses delegate powers to the states. One clause delegates powers to the judges of the United States. One clause delegates powers to a combination of the Vice President and a majority of Principle Officers. At the end of this essay are tables in which I summarized many of those powers.

The range of the powers delegated in the U.S. constitution is enormous and, by Article 1, Section 8, clause 18, the Congress has the power to do whatever it takes to execute them. The only limits are that the resulting legislation must be necessary and proper, and that is entirely at the discretion of the Congress. Changes in the membership of the Congress by way of elections are irrelevant. The institution, itself, is continuous. See Hermann Goering's comment.

Naturally, the common people don't want war; neither in Russia nor in England nor in America nor, for that matter, in Germany. That is understood. But, after all, it is the leaders of the country who determine the policy and it is always a simple matter to drag the people along, whether it is a democracy or a fascist dictatorship or a Parliament or a Communist dictatorship.... [V]oice or no voice, the people can always be brought to the bidding of the leaders. That is easy. All you have to do is tell them they are being attacked and denounce the pacifists for lack of patriotism and exposing the country to danger. It works the same way in any country.

—Hermann Goering
Hitler's Reich-Marshall

The U.S. constitution provides other justifications for enacting legislation. Consider the following for example.

The Congress shall have 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....
—Article 1, Section 8, clause 1

Who dares to oppose the defense of the country? Again, see Hermann Goering's comment. Common defense and general welfare are versatile and emotive concepts with which any tax can be justified. Opposition to such tenets is a thankless task and leaves the opponent vulnerable to attack and defamation. What politician is brave

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enough to oppose a few extra dollars to help the starving unemployed, the suffering sick, the hobbling handicapped, and all of those doddering old people? It leaves the Congress largely unopposed in its ability to decide what's necessary and proper.

The significance of the powers delegated in the U.S. constitution is further enhanced by the Supremacy Clause. The main importance of that clause is its definition of the supreme law of the land.

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.... —Article 6, Section 2
<underling added>

By that clause, all legislation made in pursuance of the U.S. constitution, and all treaties, whether or not they are made in pursuance of the U.S. constitution, are coequal with the U.S. constitution as the supreme law of the land. The legislation and the treaties extend the jurisdictions of the U.S. government beyond those established by the U.S. constitution.

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...
—from the *Fourteenth Amendment*, Section 1

Thus, the people are placed within additional jurisdictions, and are subject to more powers, than just those delegated by the U.S. constitution. The people are governed as much by the U.N. charter, and by all other treaties, as they are by the U.S. constitution.

Jurisdictions

The U.S. constitution doesn't specify jurisdictions very clearly, but several appear to exist, at least by implication. They are:

1. an exclusive legislative jurisdiction,
2. a jurisdiction of the Congress over territory and other property of the United States,
3. a jurisdiction of the U.S. constitution over various individuals,
4. jurisdictions of the U.S. government over various individuals,
5. a judicial jurisdiction,
6. other constraints on the judges,
7. a commercial jurisdiction, and
8. a military jurisdiction.

Since the jurisdictions aren't always clearly defined, they most often must be deduced from the powers delegated. Other students of the U.S. constitution might discover a different set of jurisdictions. I consider this ambiguity to be a serious deficiency in the U.S. constitution.

CONTRACT.... Words are to be taken, if possible, in their comprehensive and common sense....
—*Bowyer's Law Dictionary*, 1889

Exclusive Legislative Jurisdiction

[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, 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....

—Article 1, Section 8, clause 17

This is a jurisdiction over certain geographical regions in which the Congress has exclusive legislative authority in all cases whatsoever. Other legislative authority is excluded from such regions while within them the Congress has authority over anything at all, without limitation. The geographical regions to which this jurisdiction can extend are limited only by the ability of the U.S. government to purchase land, as provided in Article 1, Section 8, clause 17.

There isn't any wording in this clause that prohibits the Congress from exercising legislative authority outside of this jurisdiction. The Tenth Amendment might be alleged to limit the jurisdiction of the Congress to the boundaries of these regions, by generally prohibiting the exercise of powers not specifically delegated. However, at least one other jurisdiction over other geographical regions is delegated in the U.S. constitution, so the Tenth Amendment cannot have such an effect.

Jurisdiction of the Congress Over Territory or Other 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;....

—Article 4, Section 3, clause 2

This is a very extensive jurisdiction. There might possibly be some overlap in the meanings of *territory* and *property* but the use of both words in the same clause indicates an intention to encompass their various meanings. Lacking any limiting quali-

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fier, *property* must be construed in the most general sense that is meaningful in the context.

property, 5.... that which is owned; that to which a person has the legal title, whether it is in his possession or not....

6. A thing wanted for and applied to a particular purpose; an implement;....

Personal property; see under *Personal*.

Private property; any property, real or personal, which the owner has the right to control, use, and dispose of as he wills....

—*Webster's Universal Dictionary of the English Language*, 1910

Territory has a special meaning in constitutional law.

TERRITORY.... In American Law.... 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....

—*Bowyer's Law Dictionary*, 1889

Thus, the territory or other property mentioned in Article 4, Section 3, clause 2 might include the district and other places mentioned in Article 1, Section 8, clause 17, as well as other kinds of property.

The other places (Article 1, Section 8, clause 17) are within the boundaries of the states. Territory isn't. The district and other places were also limited with respect to their method of acquisition and intended use. No such limits were placed on either the territory or the other property of Article 4, Section 3, clause 2. That clause therefore provides a jurisdiction that can be extended to any property or territory of the United States, wherever it might be, whether or not it was ceded by a state legislature, and without any consideration of its intended use. Any property and any territory falls within this jurisdiction merely by the acquisition of ownership of the territory or property.

Methods are provided in the U.S. constitution for the acquisition of title to property. One method of acquiring title to real property owned by states is provided in Article 1, Section 8, clause 17, previously quoted. That isn't the only method of acquiring title to property. The U.S. constitution also allows the federal government to acquire title to private property. That provision is part of the Fifth Amendment.

eminent domain...The power to take private property for public use by the state, municipalities, and private persons or corporations authorized to exercise functions of public character....

In the United States, the power of eminent domain is founded in both the federal (Fifth Amend.) and state constitutions....

—*Black's Law Dictionary*, 1979

...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

<underline added>

The Fifth Amendment has been advertised as a protection of a person's property. Actually, it's a statement of the method by which property and private property can be taken, and placed under the jurisdiction of the U.S. government. It says that property may be taken using any method prescribed by legislation and that private

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property may be taken so long as just compensation is provided. That means that the Congress can pass any legislation that it considers to be necessary and proper (Article 1, Section 8, clause 18) to take property or private property. It's ironic that the U.S. government's power of eminent domain derives from the Fifth Amendment. If the *Bill of Rights* had never been adopted, then property might have been a lot safer from the government.

The only test of this jurisdiction is whether or not the property or territory belongs to the United States. This might appear to be a good test for violation of the Doctrine of Social Contract. For example, IRS seizures of bank accounts and DEA seizures of yachts might appear to be examples of the government exercising power over property that it doesn't own, or outside of its proper geographical jurisdiction. Unfortunately, it isn't quite that simple. As with the jurisdiction previously discussed, there isn't any wording that prohibits the Congress from exercising authority in other jurisdictions besides this one. The clause only specifies that powers **can** be exercised **within** the specified jurisdiction.

Jurisdiction of the U.S. constitution Over Various Individuals

The writers of the U.S. constitution gave the U.S. constitution jurisdiction over certain individuals. One such group is the various public officers.

The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution....
—Article 6, Section 3

All categories of people mentioned in that provision are required to support the U.S. constitution. That includes the Supremacy Clause, Article 6, Section 2.

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 law of any State to the contrary notwithstanding.
—Article 6, Section 2

Thus, they must support all of the legislation and treaties of the United States before their own state legislation and constitutions. That effectively supersedes any local jurisdictions over them and is the primary legal reason for the lack of any state or local sovereignty under the present union.

The members of the military jurisdiction (discussed later) are also under the jurisdiction of the U.S. constitution because of their oaths. I included two examples of such oaths near the end of this essay. I'm not aware of any constitutional requirement that military personnel must take such oaths, although there might be one, but they do take the oaths and thereby come under the jurisdiction.

The jurisdiction of the U.S. constitution is imposed upon the judges by the Supremacy Clause, without regard to the taking of an oath. The jurisdiction is explicitly established without regard to any geographical or other restrictions. It applies not only to

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federal judges but also to the judges in every State, any other legislation or constitution to the contrary notwithstanding.

The jurisdiction of the U.S. constitution over individuals has discernible boundaries. It's limited to specific officers named in the U.S. constitution and to anyone who takes an oath of allegiance to the U.S. constitution. The jurisdiction doesn't apply beyond those boundaries. It's the only bounded jurisdiction that I've discovered. To the extent that participation is voluntary, the jurisdiction is a good enactment of the Doctrine of Social Contract. However, there are many instances of non-voluntary participation, the draft being a good example. Whenever anyone is coerced into this jurisdiction, then the government departs from the Doctrine of Social Contract and becomes a despotism.

Jurisdiction of the U.S. Government Over Various Individuals

The jurisdiction of the U.S. government is established by different clauses and oaths than is the jurisdiction of the U.S. constitution.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States....
— Fourteenth Amendment

This amendment says that a citizen is subject to the jurisdiction of the U.S. government. This is important because if someone is within the jurisdiction, then the government has legitimate authority over him. How does one get to be a citizen? The government schools teach that people are automatically citizens, and most people never question it.

Many people who are adults today were compelled, as children, to pledge allegiance to the flag of the United States of America, and to the republic for which it stands. The pledge was normally executed possibly before witnesses, by a licensed agent of the state (the school teacher), with solemn formality. No such oath should ever be administered to children who, in any case, aren't competent to bind themselves into such an obligation.

Such oaths continue to exist today, in more legally binding forms. For example, the Immigration Reform and Control Act of 1986 required anyone who wanted to be employed to complete an INS Form I-9. That form contained an attestation, under penalty of perjury, of citizenship. Presumably that form, or its successor, still does. That oath is even more coerced than the childhood pledge, because there's little alternative to employment. The difference is that adults are competent to bind themselves, and the Form I-9 can be produced in court. The requirement has the effect of compelling people into the jurisdiction of the U.S. government, whether or not they want to be in that jurisdiction.

citizen... "Citizens" are members of a political community 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 collective rights. —*Black's Law Dictionary*, 1979

There are a few other ways in which an individual can come under the jurisdiction of the U.S. government. One way is by registering to vote. I was living in California

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when I first wrote this essay, so that's the example that I used. Some of the details might have changed, since then, but the principles will be the same today.

A United States citizen 18 years of age and resident in this state may vote.

—*Constitution of California*
Article 2, Section 2

In California, anybody who wanted to vote was required to complete an Affidavit of Registration. It wasn't a "Voter's Registration Form", as it was commonly called. It was an affidavit, a legal document. See the definition of *affidavit*, in the glossary. When someone completed the Affidavit of Registration, he was required to certify under penalty of perjury that he was a citizen of the United States. Under the California Penal Code, section 126, perjury was punishable by imprisonment in a state prison for two, three, or four years. Thus, if someone wanted to vote in California, he was required to submit to the jurisdiction of the U.S. government. I assume that equivalent requirements still exist in California today, and in every other state as well.

People also submit to the jurisdiction by the execution of some contract which includes in its provisions, at least by implication, an obligation to some jurisdiction of the government. Marriage licenses, driver's licenses, and business licenses are examples of such contracts. A marriage license might seem like an innocuous thing to get but there are serious implications to licensing a marriage under the jurisdiction of the state. The main reason for this is the difficulty of being partially within the jurisdiction of the government. I have an example.

A friend of mine had, for several years, avoided getting a driver's license because he didn't want to submit to the jurisdiction of the California Vehicle Code. One day his car had a dead battery. When he tried to push the car out of its parking place, it scraped the side of the adjacent car. He arranged to pay for the damage himself, but his wife's insurance company was informed of the incident. When the insurance company learned that he was driving the car, and didn't have a driver's license, problems developed. Although the insurance policy, the loan on the other family car, and the registration of both cars were in his wife's name, the insurance company insisted that my friend had to get a driver's license because he was married to the insured party. They threatened to cancel the insurance policy, or convert it to an assigned risk policy, at double the cost, if he refused. Since the other car, a new car for which they were still making payments, was also insured on the policy, the loan company got involved. If the policy was canceled, the loan company intended to provide other, more expensive insurance for the new car, and charge it to my friend and his wife. Finally, his only choices were to either get a divorce or to get a driver's license. Suggesting a divorce to his wife, no matter how meekly he did it, only made things worse. He got a driver's license. It isn't certain that his wife could have kept her insurance, even divorced.

There's a lesson in the story. His wife's driving privilege, licensed under the jurisdiction of the state, compelled her into a contract with the insurance company because

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insurance is mandatory for licensed drivers. The terms and conditions of the insurance contract were regulated under the jurisdiction of the state. If caught driving without insurance, she could lose her car, be forced to pay a penalty, spend time in jail, and (believe it or not) lose her driver's license. His marriage, licensed under the jurisdiction of the state, was used to compel him to get a driver's license so that his wife could keep the insurance that the state compelled her to have.

If participation in this network of privileges is voluntary, then the resulting jurisdictions accrue without duress, and must be respected. However, voluntary is a very slippery concept. If the choices are arranged properly, then people will voluntarily do a lot of things that they don't want to do. I voluntarily joined the Naval Reserve, to avoid getting drafted. People will voluntarily complete an INS Form I-9, if starvation is the alternative. People will voluntarily jump from the top of a building, if the building happens to be burning under them. My friend voluntarily got his driver's license, just like he voluntarily got his marriage license.

The jurisdictions of the government over individuals are unavoidable. They're enforced by legislation, by regulations, by the policies of corporations and franchises, and by the behavior of the courts. They're even enforced by the people themselves. For a sorry instance of that, see my memoir *Linda Sue Avants*, in *Pharos*. The boundaries of these jurisdictions are impossible to discern. There isn't any way that they can be viewed as either limited or voluntary. Inarguably, they defeat the legitimacy of the U.S. government as an example of the Doctrine of Social Contract.

The Judicial Jurisdiction

A special judicial jurisdiction is delegated according to subject matter. It applies without any restriction of geography, or other limitation.

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.

—Article 3, Section 2, clause 1

When an individual appears as a party to any subject matter, either before the Supreme Court or before an inferior court, that individual voluntarily submits to the jurisdiction of the court.

There are other ways to fall under a judicial jurisdiction. An example was revealed to me by the final documents issued by the court after my divorce from my first wife. One of those documents, the Judgment of Dissolution of Marriage, contained the following paragraph:

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....

—*Black's Law Dictionary*, 1979

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“2. The court acquired jurisdiction of the respondent on (date):

Respondent was served with process. Respondent appeared”

That was the first time that I realized that the court didn’t automatically have jurisdiction over me but, instead, had to acquire that jurisdiction somehow. Few people are aware that the courts don’t have jurisdiction over them. They innocently submit to the jurisdiction without ever realizing that they’re doing it, by appearing in court. The judge doesn’t inform them of that circumstance until they’ve appeared (if he does so at all) and, by then, its too late. They’ve already appeared, and voluntarily submitted to the jurisdiction. This seems to be, in theory at least, a voluntary jurisdiction. An individual who simply refuses to accept the service of process, or who refuses to appear, can easily avoid the jurisdiction. Bitter experience reveals otherwise. For years, I made myself unavailable for that sort of thing. I have, occasionally, succeeded in refusing to cooperate. However, I eventually discovered that the government need not be bound by propriety.

Sometime during 1991, the Santa Clara County (California) District Attorney, Family Support Division, allegedly served a summons on me. Actually, I was unavailable, so they served it on my next door neighbor, a renter, a non-citizen, and a temporary resident. They asked him for ID, handed the summons to him, and he signed for it. There wasn’t any guarantee whatsoever that I’d ever receive the summons. Nevertheless, they proceeded with their case against me. Subsequently, the Deputy District Attorney (Jack S. Cardinale) claimed in writing, in at least two letters, that the summons had been personally served to me. In spite of my repeated demands, they never admitted their fraudulent behavior. On February 26, 1992, they filed a default Judgment and Order, alleging that I’d been duly served and had failed to appear. I didn’t fail to appear. I refused to appear. There’s a difference. Failure implies an obligation that I didn’t have. Eventually, they encumbered my home with a lien. I continued to make myself unavailable. Eventually, they waited until I left the house and arrested me at gun point. My so-called lawyer (Kevin Veltfort) assured me that the authorities would keep me in jail forever if I refused to cooperate. I couldn’t find anywhere a lawyer who’d argue my case on its merits. I was afraid to do it myself. If I’d told the judge what I thought, then I really would have been in jail forever. I was forced to voluntarily sell my home and give them the funds. Today, I don’t own a house.

My attempt to stay outside of the jurisdiction of the court was utterly ignored and I was placed in the jurisdiction against my will. The entire story is available in my memoir *The Rise and Fall of Mere Keep*, in *Pharos*. Clearly, participation in this jurisdiction is far from voluntary and it fails the test of the Doctrine of Social Contract.

Other Constraints on the Judges

There are constraints placed upon the judges that are not necessarily jurisdictions but that nevertheless are authoritative.

... The Judges, both of the Supreme and Inferior Courts, shall hold their offices during good behavior....
—Article 3, Section 1

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Since the inferior courts are ordained and established by the Congress (Article 3, Section 1), it's reasonable to suppose that the Congress has an authority to review the judges' behavior. The judges are therefore subject to disciplinary action. This might constitute a jurisdiction of the Congress over the judges whereby the judges might be obliged to perform their jobs as directed by any "necessary and proper" legislation.

District Judge Wyzanski reminded us, while apologetically ruling in favor of the IRS, that discipline imposed upon the judges isn't limited to that of the Congress. This is a *de facto* jurisdiction that has resulted from the operation of the executive agencies. It might not be a lawful jurisdiction but the careers, reputations, and private lives of the judges are vulnerable to it.

More than once the judges of a court have been indirectly reminded that they personally are taxpayers. No sophisticated person is unaware that even in this very Commonwealth the Internal Revenue Service has been in possession of facts with respect to public officials which it has presented or shelved in order to serve what can only be called political ends, be they high or low. And a judge who knows the score is aware that every time his decisions offend the Internal Revenue Service he is inviting a close inspection of his own returns....

—Donald R. LORD et al. v. Alvin M. KELLY et al.
Civ. A. No. 63-932., United States District Court D
Massachusetts, April 13, 1965

The Commercial Jurisdiction

The U.S. constitution also contains the delegation of a considerable jurisdiction over commercial matters in the United States. The powers in this jurisdiction are delegated mostly in Article 1, Section 8, and are given to the Congress. Among them are the powers to regulate commerce among the several states (clause 3), to establish legislation governing bankruptcies (clause 4), to coin money and regulate its value, and establish standard weights and measures (clause 5), to punish counterfeiters (clause 6), and to issue patents and copyrights (clause 8).

This jurisdiction might seem innocuous but people probably don't realize the extent to which they're regulated by it. The Congress has delegated extensive powers under this jurisdiction. A look at a list of some of the executive agencies that are busily exercising powers in this jurisdiction might be useful.

1. Civil Aeronautics Board
2. Commodity Futures Trading Commission
3. Consumer Product Safety Commission
4. Environmental Protection Agency
5. Federal Communications Commission
6. Federal Labor Relations Authority
7. Federal Mediation and Conciliation Service
8. Federal Reserve System
9. Federal Trade Commission
10. Interstate Commerce Commission
11. National Capital Planning Commission
12. National Credit Union Administration
13. National Labor Relations Board
14. National Mediation Board
15. National Transportation Safety Board
16. Nuclear Regulatory Commission
17. Occupational Safety and Health Review Commission
18. Pension Benefit Guaranty Corporation
19. Securities and Exchange Commission
20. Small Business Administration
21. and others.

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I took that list from the 1984 edition of *The United States Government Manual*. It isn't current, but I think that it's close enough. Since then, things will only have gotten worse. For the purposes of this essay, the significant feature of the commercial jurisdiction is the unquestioned (and enforced) assumption that it applies to all commercial activity. Such an assumption isn't necessarily true. The commercial activities of citizens, of public officers, of people who have licensed their businesses with the government, of businesses located on territory or property owned by the United States, and of individuals or businesses who are parties to some judicial action, might be under some jurisdiction of the U.S. government, or of the U.S. constitution. The commercial jurisdiction shouldn't extend to commercial activity outside of those other jurisdictions. If it does, then any trivial transaction, even buying a pack of chewing gum, compels an individual into the commercial jurisdiction, especially if he buys it with legal tender. In that case, the only way to avoid the jurisdiction and survive is to do so by charity or by theft. I don't believe that such a jurisdiction can possibly be consistent with the Doctrine of Social Contract. This jurisdiction alone, as it's presently enforced, reveals the U.S. government as a despotism.

The Military Jurisdiction

It isn't surprising that a military jurisdiction exists. Critics of the military-industrial complex might find it interesting that the commercial jurisdiction and the military jurisdiction are both delegated to the Congress, and that both are delegated in the same section of the U.S. constitution.

The military jurisdiction is delegated mostly in Article 1, Section 8. It includes the powers to define and punish piracies and felonies committed on the high seas (clause 10), to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water (clause 11), to raise and support armies (clause 12), to provide and maintain a navy (clause 13), to make rules for the government and regulation of the land and naval forces (clause 14), to provide for calling forth the militia (clause 15), and to provide for organizing, arming, and disciplining the militia, and for governing it when it's employed in the service of the United States (clause 16). In Article 2, Section 2, clause 1, the President is made the commander-in-chief of the Army and Navy of the United States, and of the militia of the several states when it's in the actual service of the United States.

Members of the Army, the Navy, and the militia are under the military jurisdiction. Presumably, members of the Air Force are as well, although I'm not aware of how the jurisdiction is extended to them. They certainly aren't mentioned in the U.S. constitution. The military jurisdiction is a jurisdiction that could easily comply with the Doctrine of Social Contract. According to the oaths included near the end of this essay, participation and allegiance is voluntary. However, mandatory registration with the Selective Service System has the effect of compelling people into the jurisdiction whether or not they want to be there. Again, duress reveals despotism and the U.S. government fails the test.

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As I See It

A general failure of the U.S. constitution appears in Section 1 of the Fourteenth Amendment. That provision declares that citizens are under the jurisdiction (power and control) of the U.S. government. The status of citizens is confirmed in *Black's Law Dictionary*. Such dominion of a government over the people is a direct violation of the doctrine expressed in the *Declaration of independence*, whereby the people have the right to alter or to abolish the government. They can't do that if they're under its jurisdiction (power and control). The Fourteenth Amendment contains an undeniable violation of the Doctrine of Social Contract.

...that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it...

—from the *Declaration of Independence*, 1776

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...

—from the *Fourteenth Amendment*, 1868

<underline added>

citizen.... “Citizens” are members of a political community 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 collective rights.

—*Black's Law Dictionary*, 1979

<underline added>

There are various failures of the principle that a constitution should limit the powers and jurisdictions of its government. The legislative jurisdictions of the Congress over property and territory are limited only by the government's ability to acquire property. A look at a state map of someplace like Idaho or Oregon will provide a healthy respect for that ability. With regard to the acquisition of property, it would be interesting to read my essay, *They Can Fool Too Many Of The People Too Much Of The Time*. That essay shows that, as a consequence of fractional reserve banking, the Federal Reserve System potentially has an unlimited power to force foreclosures on mortgages, regardless of the integrity of the borrower. In combination with the taxing powers, the Federal Reserve System, the banking regulations, and so forth, the legislative jurisdictions over property are without limit.

The jurisdictions of the U.S. constitution and the U.S. government over individuals, including the commercial jurisdiction, are so compelling that not a fraction of a percent of the people could avoid them, even if they tried. Most people don't even try. Since public education is mandatory, and is regulated by the government, everyone is conditioned from childhood to mindlessly comply. See my article *Enemies of Liberty*, in the April 2011 *Frontiersman*.

The commercial jurisdiction is imposed upon everyone by the requirement of permits and licenses, all of which are enforced by the impositions of penalties, confiscations of inventory, seizures of businesses, imprisonment, etc. In general, if somebody's denied access to something, due to lack of some sort of compliance, then it never even occurs to him to challenge the requirement. Instead, he simply tries to get the documentation. Such documentation always places the applicant within the jurisdiction of the government.

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The military jurisdiction could be voluntary, but it isn't.

Because of the limitless powers, mandatory jurisdictions, and sovereignty of the government, the U.S. government must be viewed as a despotism, sweetened only by the lavish availability of privileges. The absolute control of access to the privileges is used to lure people into the jurisdictions, but the legitimate purpose of government (assuming that there is a legitimate purpose) isn't to sell privileges, but to secure rights.

Of course, anybody may disagree with me, and even try to prove me wrong. Such a person could do so by renouncing the jurisdictions established by the U.S. constitution, remaining within the geographical boundaries claimed by the U.S. government, and openly disregarding its powers. If such an effort succeeds, then I'd like to know how the person did it. Hopefully, I can be reached at the address at the bottom of this page. If the effort doesn't succeed, then QED.

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A Summary of the Powers Delegated to the Congress

<u>The power of the Congress to...</u>	<u>...is delegated in...</u>
pass laws to direct the manner of conducting the census	Article 1, Section 2, Clause 3
pass laws to alter the times and manner of holding elections for Senators and Representatives	Article 1, Section 4, Clause 1
pass laws to appoint a different day on which to assemble (Now superseded)	Article 1, Section 4, Clause 2
lay and collect taxes, duties, imposts and excises	Article 1, Section 8, Clause 1
borrow money on the credit of the United States	Article 1, Section 8, Clause 2
regulate commerce with foreign nations, and among the several States, and with the Indian tribes	Article 1, Section 8, Clause 3
establish a uniform rule of naturalization	Article 1, Section 8, Clause 4
establish uniform laws on the subject of bankruptcies throughout the United States	Article 1, Section 8, Clause 4
coin money, regulate the value thereof, and of foreign coin	Article 1, Section 8, Clause 5
fix the standard of weights and measures	Article 1, Section 8, Clause 5
provide for the punishment of counterfeiting the securities and current coin of the United States	Article 1, Section 8, Clause 6
establish post offices and post roads	Article 1, Section 8, Clause 7
regulate patents and copyrights	Article 1, Section 8, Clause 8
constitute tribunals inferior to the Supreme Court	Article 1, Section 8, Clause 9 (See Article 3, Section 1)
define and punish piracies and felonies committed on the high seas, and offenses against the law of nations	Article 1, Section 8, Clause 10
declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water	Article 1, Section 8, Clause 11
raise and support armies	Article 1, Section 8, Clause 12
provide and maintain a navy	Article 1, Section 8, Clause 13
make rules for the government and regulation of the land and naval forces	Article 1, Section 8, Clause 14
provide for calling forth the militia	Article 1, Section 8, Clause 15
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	Article 1, Section 8, Clause 16
prescribe the discipline for training the militia	Article 1, Section 8, Clause 16
exercise exclusive legislation in all cases whatsoever over Washington, D.C. and the federal enclaves	Article 1, Section 8, Clause 17
make all laws that are necessary and proper for executing all powers vested by the Constitution in the Government of the United States, or in any department or officer thereof	Article 1, Section 8, Clause 18
give consent for the acceptance by public officers of presents, emoluments, offices, or titles, from a King, Prince, or foreign State	Article 1, Section 9, Clause 8
give consent for States to lay imposts or duties on imports or exports	Article 1, Section 10, Clause 2

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give consent for States to lay duties of tonnage, keep troops, or ships of war in time of peace, enter into agreements or compacts with other States, or with foreign powers, or engage in war	Article 1, Section 10, Clause 3
determine the time of choosing the Presidential and Vice Presidential Electors, and the day on which they shall give their votes	Article 2, Section 1, Clause 4
provide for the case of removal, death, resignation or inability of the Vice President and of removal, death or resignation of the President	Article 2, Section 1, Clause 6
establish officers of the United States whose appointments are not provided for in the Constitution	Article 2, Section 2, Clause 2
vest the appointment of such officers in the President alone, in the courts of law, or in the heads of departments	Article 2, Section 2, Clause 2
establish courts inferior to the Supreme Court	Article 3, Section 1 (See Article 1, Section 8, Clause 9)
review the behavior of the judges	Article 3, Section 1
make exceptions to and regulate the appellate jurisdiction of the Supreme Court	Article 3, Section 2, Clause 2
designate the locations of trials for crimes not committed within any State	Article 3, Section 2, Clause 3
declare the punishment of treason	Article 3, Section 3, Clause 3
prescribe the manner in which public acts, records, and judicial proceedings of every state shall be proved, and the effect thereof	Article 4, Section 1
admit new States to the union	Article 4, Section 3, Clause 1
approve the admission to the union of new States formed by the junction of two or more States or parts of States	Article 4, Section 3, Clause 1
dispose of and make all needful rules and regulations respecting the territory or property belonging to the United States	Article 4, Section 3, Clause 2
propose one or the other mode of ratification of amendments	Article 5
prescribe by law the manner in which soldiers may, in time of war, be quartered in any house	Amendment 3
determine the due process of law whereby a person may be deprived of life, liberty, or property	Amendment 5
determine by law the districts of judicial jurisdiction within the States	Amendment 6
enforce by appropriate legislation the prohibition against slavery and involuntary servitude	Amendment 13, Section 2
remove disability imposed by Section 3 of the Fourteenth Amendment	Amendment 14, Section 3
prevent any state from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States	Amendment 14, Section 5
prevent any state from depriving any person of life, liberty, or property, without due process of law	Amendment 14, Section 5
prevent any state from depriving any person within its jurisdiction of the equal protection of the laws	Amendment 14, Section 5
reduce the basis for representation of a state whenever voting rights are denied in that State	Amendment 14, Section 5

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enforce payment of the debts of the United States, and prevent payment of the debts of the Confederacy	Amendment 14, Section 5
prevent the United States or any state from abridging or denying the right of any citizen to vote	Amendment 15, Section 2
lay and collect taxes on incomes	Amendment 16
enforce the prohibition of intoxicating liquors (revised by the Twenty First Amendment)	Amendment 18, Section 2
prevent the United States or any state from denying or abridging, on the basis of sex, the right to vote	Amendment 19, Section 2
appoint the day when Congress shall assemble	Amendment 20, Section 2
provide for the case wherein neither a President-elect nor a Vice-President-elect shall have qualified	Amendment 20, Section 3
provide for the case of the death of any of the persons from whom the House of Representatives may choose a President, and of any of the persons from whom the Senate may choose a Vice President	Amendment 20, Section 4
pass laws prohibiting intoxicating liquors	Amendment 21, Section 2
direct the manner of appointment of the electors for the District constituting the seat of government of the United States	Amendment 23, Section 1
enforce the appointment of the electors for the District constituting the seat of government of the United States, and enforce the performance of their duties	Amendment 23, Section 2
prevent the abridgment or denial, due to failure to pay any tax, of the right to vote	Amendment 24, Section 2
confirm the president's nominee for vice president	Amendment 25, Section 2
provide by law which body is empowered to declare the president unable to discharge the powers and duties of his office	Amendment 25, Section 4
determine, when notified, whether or not the president is able to discharge the powers and duties of his office	Amendment 25, Section 4
prevent the denial or abridgment, based on age, of the right to vote	Amendment 26, Section 2

A Summary of the Powers Delegated to the Senate

<u>The power to...</u>	<u>...is delegated in...</u>
try all impeachments	Article 1, Section 3, Clause 6
judge the elections, returns and qualifications of its own members	Article 1, Section 5, Clause 1
compel the attendance of absent members	Article 1, Section 5, Clause 1
determine the rules of its proceedings, and punish or expel members	Article 1, Section 5, Clause 2
exclude from its Journal any information that the members judge to require secrecy	Article 1, Section 5, Clause 3
consent to adjourn for more than three days, or to another place than that in which the two Houses are sitting	Article 1, Section 5, Clause 4
propose or concur with amendments to revenue bills	Article 1, Section 7, Clause 1
initiate an over-ride of a presidential veto of a bill	Article 1, Section 7, Clause 2
initiate an over-ride of a presidential veto of an order, resolution, or vote to which the concurrence of the Senate may be necessary	Article 1, Section 7, Clause 3
provide advice and consent to treaties and nominations	Article 2, Section 2, Clause 2

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A Summary of the Powers Delegated to the House of Representatives

<u>The power...</u>	<u>...is delegated in...</u>
to choose its Speaker and other officers	Article 1, Section 2, Clause 5
of impeachment	Article 1, Section 2, Clause 5
to judge the elections, returns and qualifications of its own members	Article 1, Section 5, Clause 1
to compel the attendance of absent members	Article 1, Section 5, Clause 1
to determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member	Article 1, Section 5, Clause 2
to exclude from its Journal any information which the members judge to require secrecy	Article 1, Section 5, Clause 3
to consent to adjourn for more than three days or to any other place than that in which the two Houses are sitting	Article 1, Section 5, Clause 4
to originate bills for raising revenue	Article 1, Section 7, Clause 1
to over-ride a presidential veto of a bill	Article 1, Section 7, Clause 2
to over-ride a presidential veto of an order, resolution, or vote to which the concurrence of the House of Representatives may be necessary	Article 1, Section 7, Clause 3

A Summary of the Powers Delegated to the President

<u>The power to...</u>	<u>...is delegated in...</u>
approve or disapprove bills	Article 1, Section 7, Clause 2
approve or disapprove orders, resolutions, or votes to which the concurrence of the Senate and House of Representatives may be necessary	Article 1, Section 7, Clause 3
exercise the executive power vested by the Constitution	Article 2, Section 1, Clause 1
act as commander-in-chief of the Army and Navy of the United States, and of the militia of the several States, when they are called into the actual service of the United States	Article 2, Section 2, Clause 1
require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices	Article 2, Section 2, Clause 1
grant reprieves and pardons for offenses against the United States, except in cases of impeachment.	Article 2, Section 2, Clause 1
make treaties	Article 2, Section 2, Clause 2
nominate and appoint ambassadors, other public ministers and consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not otherwise provided for in the Constitution	Article 2, Section 2, Clause 2
fill up all vacancies that may happen during the recess of the Senate	Article 2, Section 2, Clause 3
on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper	Article 2, Section 3

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transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, and resume the powers and duties of his office	Amendment 25, Section 4
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A Summary of the Emergency Powers of the U.S. Government

<u>The power...</u>	<u>...is delegated in...</u>
of the Congress to call forth the militia	Article 1, Section 8, Clause 15
to suspend the writ of habeas corpus	Article 1, Section 9, Clause 2
to hold a person to answer for a capital, or otherwise infamous crime without a presentment or indictment of a grand jury	Amendment 5

A Summary of the Powers Delegated to the States

<u>The power of the state legislatures to...</u>	<u>...is delegated in...</u>
prescribe the times, places and manner of holding elections for Senators and Representatives	Article 1, Section 4, Clause 1
direct the manner in which electors shall be appointed	Article 2, Section 1, Clause 2
apply to the federal government for protection from domestic violence	Article 4, Section 4
apply to the Congress to call a convention for proposing amendments to the Constitution	Article 5
ratify proposed amendments to the Constitution	Article 5
empower the executive of the state to make temporary appointments to fill vacancies	Amendment 17, Section 2
direct the elections to fill vacancies	Amendment 17, Section 2
prohibit intoxicating liquors	Amendment 21, Section 2
<u>The power of the state executives to...</u>	<u>...is delegated in...</u>
apply to the United States (when the Legislature cannot be convened) for protection against domestic violence	Article 4, Section 4
issue writs of election to fill vacancies in the representation of the state in the Senate or to make temporary appointments to fill such vacancies	Amendment 17, Section 2
<u>The power of the states to...</u>	<u>...is delegated in...</u>
appoint the officers of the militia, and train the militia	Article 1, Section 8, Clause 16
consent to the purchase by the United States of places wherein the Congress shall have exclusive legislative jurisdiction	Article 1, Section 8, Clause 17
call conventions to ratify proposed amendments to the Constitution	Article 5
ratify the Constitution	Article 7, Clause 1
exercise powers not delegated to the United States, nor prohibited to the states	Amendment 10
enforce prohibition	Amendment 18, Section 2

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Oaths

Army Officer's Oath

"I, _____ having been appointed an officer in the Army of the United States, as indicated above in the grade of _____ do solemnly swear (*or affirm*) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic, that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office upon which I am about to enter; SO HELP ME GOD." —from the Army Officer's Guide

Enlisted Men's Oath

I, _____, do hereby acknowledge to have voluntarily enlisted under the conditions prescribed by law, this ____ day of _____, 19____, in the _____ for a period of _____ years unless sooner discharged by proper authority; and I do solemnly swear (*or affirm*) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations, and the Uniform Code of Military Justice. So help me God.

—from the Enlistment Contract
Armed Forces of the United States

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Glossary

AFFIDAVIT (Lat.). **In Practice.** A statement or declaration reduced to writing, and sworn or affirmed to before some officer who has authority to administer an oath or affirmation.

It differs from a deposition in this, that in the latter the opposite party has an opportunity to cross-examine the witness, whereas an affidavit is always taken *ex parte*; Gresley, Eq. Ev. 413; 3 Blatch. 456.

An affidavit includes the oath, and may show what facts the affiant swore to, and thus be available as an oath, although unavailable as an affidavit; 28 Wis. 460.

By general practice, affidavits are allowable to present evidence upon the hearing of a motion, although the motion may involve the very merits of the action; but they are not allowable to present evidence on the trial of an issue raised by the pleadings. Here the witnesses must be produced before the adverse party. They are generally required on all motions to open defaults or to grant delay in the proceedings and other applications by the defendant addressed to the favor of the court.

Formal parts.-An affidavit must intelligibly refer to the cause in which it is made. The strict rule of the common law is that it must contain the exact title of the cause. This, however, is not absolutely essential; 80 Ill. 307. The place where the affidavit is taken must be stated, to show that it was taken within the officer's jurisdiction; 1 Barb. Ch. Pr. 601. The deponent must sign the affidavit at the end; 11 Paige, Ch. 173. The jurat must be signed by the officer with the addition of his official title. In the case of some officers the statutes conferring authority to take affidavits require also his seal to be affixed.

In general, an affidavit must describe the deponent sufficiently to show that he is entitled to offer it; for example, that he is a party, or agent or attorney of a party, to the proceeding; 7 Hill, 177; 4 Denio, 71, 258; and this matter must be stated, not by way of recital or as mere description, but as an allegation in the affidavit; 3 N. Y. 41; 8 *id.* 158. —*Bouvier's Law Dictionary*

Allegiance.... Obligation of fidelity and obedience to government in consideration for protection that government gives. *U. S. v. Kuhn*, D.C.N.Y., 49 F.Supp. 407, 414. See also **Oath of allegiance**.

Acquired allegiance, is that binding a naturalized citizen.

Local or actual allegiance, is that measure of obedience due from a subject of one government to another government, within whose territory he is temporarily resident. From this are excepted foreign sovereigns and their representatives, naval and armed forces when permitted to remain in or pass through the country or its waters.

Natural allegiance. In English law, that kind of allegiance which is due from all men born within the king's dominions, immediately upon their birth, which is intrinsic and perpetual, and cannot be divested by any act of their own. In American law, the allegiance due from citizens of the United States to their native country, and also from naturalized citizens, and which cannot be renounced without the permission of government, to be declared by law.

—*Black's Law Dictionary*

Appearance. A coming into court as 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. Also, at many stages of criminal proceedings, particularly involving minor offenses, the defendant's attorney appears on his behalf. See *e.g.* Fed.R.Crim.P. 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 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 the sufficiency of service or the jurisdiction of the court; a general appearance is made where the defendant waives defects of service and submits to the jurisdiction. *Insurance Co. of North America v. Kunin*, 175 Neb. 260, 121 N.W.2d 372, 375, 376.

See also **General appearance**; **Notice to appear**.

Appearance by attorney. An act of an attorney in prosecuting an action on behalf of his client. Document filed in court in which attorney sets forth fact that he is representing a party to the action.

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Appearance docket. A docket kept by the clerk of the court in which appearances are entered, containing also a brief abstract of all the proceedings in the cause.

Common law classifications. At common law an appearance could be either *compulsory* or *voluntary*, the former where it was compelled by process served on the party, the latter where it was entered by his own will or consent, without the service of process, though process may be outstanding. Also, *optional* when entered by a person who intervened in the action to protect his own interests, though not joined as a party; *conditional*, when coupled with conditions as to its becoming or being taken as a general appearance; *gratis*, when made by a party to the action, but before the service of any process or legal notice to appear; *de bene esse*, when made provisionally or to remain good only upon a future contingency; or when designed to permit a party to a proceeding to refuse to submit his person to the jurisdiction of the court unless it was finally determined that he had forever waived that right; *subsequent*, when made by a defendant after an appearance had already been entered for him by the plaintiff; *corporal*, when the person was physically present in court.

Initial appearance. A court proceeding for a defendant charged with a felony, during which the judge advises the defendant to the charges against him and of his right, decides upon bail and/or other conditions of release, and sets the date for a preliminary hearing. See *e.g.* Fed.R.Crim. P. 5.

Notice of appearance. A notice given by defendant to a plaintiff that he appears in the action in person or by attorney.

—*Black's Law Dictionary*

Citizen. One who, under the Constitution and laws of the United States, or of a particular state, is a member of the political community, owing allegiance and being entitled to the enjoyment of full civil rights. 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. U.S. Const., 14th Amend.

The term may include or apply to children of alien parents born in United States, *Von Schwerdtner v. Piper*, D.C.Md., 23 F.2d 862, 863; *U. S. v. Minoru Yasui*, D.C.Or., 48 F.Supp., 40, 54; children of American citizens born outside United States, *Haaland v. Attorney General*

of United States, D.C.Md., 42 F.Supp. 13, 22; *Indians, United States v. Hester*, C.C.A.Okl., 137 F.2d 145, 147; *State v. McAlhaney*, 220 N.C. 387, 17 S.E.2d 352, 354; national banks, *American Surety Co. v. Bank of California*, C.C.A.Or., 133 F.2d 160, 162; nonresident who has qualified as administratrix of estate of deceased resident, *Hunt v. Noll*, C.C.A.Tenn., 112 F.2d 288, 289. However, neither the United States nor a state is as citizen for purposes of diversity jurisdiction. *Skandia American Reinsurance Corp. v. Schenck*, 441 F.Supp. 715; *Jizemerjian v. Dept. of Air Force*, 457 F.Supp. 820. On the other hand, municipalities and other local governments are deemed to be citizens. *Rieser v. District of Columbia*, 563 F.2d 462. A corporation is not a citizen for purposes of privileges and immunities clause of the Fourteenth Amendment, *D. D. B. Realty Corp. v. Merrill*, 232 F.Supp. 629, 637.

“Citizens” are members of a political community 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 collective rights. *Herriott v. City of Seattle*, 81 Wash.2d 48, 500 P.2d 101,109.

—*Black's Law Dictionary*

CONSTITUTION. The fundamental law of a state, directing the principles upon which the government is founded, and regulating the exercise of the sovereign powers, directing to what bodies or persons those powers shall be confided and the manner of their exercise.

Constitution, in the former law of the European continent, signified as much as decree, -a decree of importance, especially ecclesiastical decrees. The decrees of the Roman emperors referring to the *jus circa sacra*, contained in the Code of Justinian, have been repeatedly collected and called the Constitutions. The famous bull *Unigenitus* was usually called in France the Constitution. Comprehensive laws or decrees have been called constitutions; thus, the *Constitutio Criminalis Carolina*, which is the penal code decreed by Charles V. for Germany, the Constitutions of Clarendon (*q.v.*). In political law the word constitution came to be used more and more for the fundamentals of a government, - the laws and usages which give it its characteristic feature. We find, thus, former English writers speak of the constitution of the Turkish empire. These fundamental laws and customs appeared to our race especially important where they lim-

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ited the power and action of the different branches of government; and it came thus to pass that by constitution was meant especially the fundamental law of a state in which the citizen enjoys a high degree of civil liberty; and, as it is equally necessary to guard against the power of the executive in monarchies, a period arrived - namely, the first half of the present century - when Europe, and especially on the continent, the term constitutional government came to be used in contradistinction to absolutism.

We now mean by the term constitution, in common parlance, the fundamental law of a free country, which characterizes the organism of the country and secures the rights of the citizen and determines his main duties as a freeman. Sometimes, indeed, the word constitution has been used in recent times for what otherwise is generally called an organic law. Napoleon I. styled himself Emperor of the French by the Grace of God and the Constitutions of the Empire.

Constitutions were generally divided into written and non-written constitutions, analogous to *leges scriptæ* and *non scriptæ*. These terms do not indicate the distinguishing principle; Lieber, therefore, divides political constitutions into accumulated or cumulative constitutions and enacted constitutions. The constitution of ancient Rome and that of England belong to the first class. The latter consists of the customs, statutes, common laws, and decisions of fundamental importance. The Reform act is considered by the English a portion of the constitution as much as the trial by jury or the representative system, which have never been enacted, but correspond to what Cicero calls *leges natæ*. Our constitutions are enacted; that is to say, they were, on a certain day and by a certain authority, enacted as a fundamental law of the body politic. In many cases enacted constitutions cannot be dispensed with, and they have certain advantages which cumulative constitutions must forego; while the latter have some advantages which the former cannot obtain. It has been thought, in many periods, by modern nations, that enacted constitutions and statutory law alone are firm guarantees of rights and liberties. This error has been exposed in Lieber's Civil Liberty. Nor can enacted constitutions dispense with the "grown law" (*lex nata*). For the meaning of much that an enacted constitution establishes can only be found by the grown law on which it is founded, just as the British Bill of Rights (an enacted por-

tion of the English constitution) rests on the common law.

Enacted constitutions may be either *octroyed*, that is, granted by the presumed full authority of the grantor, the monarch; or they may be enacted by a sovereign people prescribing high rules of action and fundamental laws for its political society, such as ours is; or they may rest on contracts between contracting parties, - for instance, between the people and a dynasty, or between several states. We cannot enter here into the interesting inquiry concerning the points on which all modern constitutions agree, and regarding which they differ, - one of the most instructive inquiries for the publicist and jurist. See Hallam's Constitutional History of England; Story on the Constitution; Sheppard's Constitutional Text-Book; Elliot's Debates on the Constitution, etc.; Lieber's article (Constitution), in the Encyclopædia Americana; Rotteck's article Constitution, in the Staats-Lexicon, 2d ed.

—*Bouvier's Law Dictionary*

despotism, n. 1. Absolute power; authority unlimited and uncontrolled by constitution or laws, and depending alone on the will of the ruler.

2. An arbitrary government; the rule of a despot; absolutism; autocracy.

3. Figuratively, absolute power or influence of any kind.

Such is the *despotism* of the imagination over uncultivated minds. -Macaulay.

—*Webster's Universal Dictionary
of the English Language*

Eminent domain.... The power to take private property for public use by the state, municipalities, and private persons or corporations authorized to exercise functions of public character. Housing Authority of Cherokee National of Oklahoma v. Langley, Okl., 555 P.2d 1025, 1028 Fifth Amendment, U.S. Constitution.

In the United States, the power of eminent domain is founded in both the federal (Fifth Amend.) and state constitutions. However, the Constitution limits the power to taking for a public purpose and prohibits the exercise of the power of eminent domain without just compensation to the owners of the property which is taken. The process of exercising the power of eminent domain is commonly referred to as "condemnation", or, "expropriation".

The right of eminent domain is the right of the state, through its regular organization, to reas-

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sert, either temporarily or permanently, its dominion over any portion of the soil of the state on account of public exigency and for the public good. Thus, in time of war or insurrection, the proper authorities may possess and hold any part of the territory of the state for the common safety; and in time of peace the legislature may authorize the appropriation of the same to public purposes, such as the opening of roads, construction of defenses, or providing channels for trade or travel. Eminent domain is the highest and most exact idea of property remaining in the government, or in the aggregate body of the people in their sovereign capacity. It gives a right to resume the possession of the property in the manner directed by the constitution and the laws of the state, whenever the public interest requires it.

See also Adequate compensation; Condemnation; Constructive taking; Damages; Expropriation; Fair market value; Just compensation; Larger parcel; Public use; Take.

Expropriation. The term “expropriation” (used e.g. in Louisiana) is practically synonymous with the term “eminent domain”. Tennessee Gas Transmission Co. v. Violet Trapping Co., La.App., 200 So.2d 428, 433.

Partial taking. The taking of part of an owner’s property under the laws of eminent domain. Compensation must be based on damages or benefits to the remaining property, as well as the part taken. See **Condemnation**.

—*Black’s Law Dictionary*

EXCLUSIVE.... Shutting out; debarring from participation. Shut out; not included.

An exclusive right or privilege, as a copyright or patent, is one which may be exercised and enjoyed only by the person authorized, while all others are forbidden to interfere.

When an act is to be done within a certain period from a particular time, as, for example, within ten days, one day is to be taken inclusive and the other exclusive. See Hob. 139; Cowp. 714; Dougl. 463; 2 Mod. 280; 3 Penn. 200; 1 S. & R. 43; 3 B. & Ald. 581; 3 East, 407; Comyns, Dig. *Estates* (G8) *Temps* (A); 2 Chitty, Pract. 69, 147.

—*Bouvier’s Law Dictionary*

Lawful.... Further, the word “lawful” more clearly implies an ethical content than does “legal.” The latter goes no further than to denote compliance, with positive, technical, or formal rules; while the former usually imports a moral substance or ethical permissibility....

—*Black’s Law Dictionary*

Pursuant. A following after or following out. To execute or carry out in accordance with or by reason of something. To do in consequence or in prosecution of anything. “Pursuant to” means “in the course of carrying out: in conformance to or agreement with: according to” and, when used in a statute, is a restrictive term. Knowles v. Holly, 82 Wash.2d 694, 513 P.2d 18, 23.

—*Black’s Law Dictionary*

TERRITORY. A part of a country separated from the rest and subject to a particular jurisdiction.

The word is derived from *terreo*, and is said to be so called because the magistrate within his jurisdiction has the power of inspiring a salutary fear. *Dictum est ab eo quod magistratus intra fines ejus terendi jus habet.* Henrion de Pansy, Auth. Judiciaire, 98. In speaking of the ecclesiastical jurisdictions, Fancis 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 Eccles. Minist. lib. 1, cap. 4.

In American law. 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. 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.

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. 511. See the articles on the various territories; STATE. As to whether a territory is a *state* under the judiciary act, see STATE.

—*Bouvier’s Law Dictionary*

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