The Sovrien

An Exploration of the Right to Be Stateless

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Polyspire
Vineyard Haven, Massachusetts

Polyspire
PO Box 4594
Vineyard Haven, MA 02568

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Preface

United States citizenship was assigned to me at birth. Twenty-three years later, I relinquished that status without acquiring subsequent citizenship elsewhere. I chose to be stateless.

I made this choice, and maintain it today, for three reasons. First, I feel inwardly compelled. The demands of state membership often conflict with principles I struggle to live by—nonviolence, compassion, forgiveness, personal responsibility, consensus-based decision making, and fairness. In a nutshell, I cannot uphold a political system which effectively abandons the opinions and concerns of many minority factions. I cannot support military and police force, which are essential ingredients of most states. And I cannot support a system which imposes rules on people and then punishes, imprisons, and occasionally executes them for violating those rules. Because my conscience is troubled by these ingredients of citizenship, I cannot in good faith maintain status as a citizen. Second, I enjoy the challenges and opportunities of living outside the status quo of the citizen-state relationship—especially in a culture where comfort and security are reigning values. Third, because I want to

live in a more free and responsible society, I feel I must work to be more free and responsible myself. I believe that a society cannot change significantly unless the individuals who constitute that society change significantly.

The path of intentional statelessness is not well-traveled. I stumble along it with many questions. When must I stand firm in my beliefs, and when must I compromise them? Is maintaining my integrity more important to me than my comfort and security? Should I abandon certain principles if doing so might help me to reduce the suffering of others? What would the world be like if everyone acted as I act? In light of these uncertainties, I regard my practice of being intentionally stateless as an experiment—a cautious adventure of discerning, testing, and refining principles which seem to me to bear some kernel of truth.

On September 1, 1985, I submitted my formal statement of expatriation to the United States government. When I read that essay now, I am amused by my youthful certainty. In the ensuing years, I have become much more tentative about many of the fundamental questions in life, including how we might best arrange our sociopolitical endeavors. While my choice to be stateless and my rationale have not changed, they have become tempered. The present work enjoys the benefit of an additional seventeen years of discussion, research, and reflection on the matter of intentional statelessness. I hope it surpasses my previous comments by providing the reader with a more thoughtful and balanced review of the issues.

As a matter of style, I occasionally use *she* and *her* as generic third-person singular pronouns. I do this because the masculine alternatives are overused and because consistent use of our gender-neutral options (*one*, *one's*, *they*, *their*) is awkward and often confusing. The reader who is concerned that it might be unfair to characterize an intentionally stateless person as a woman will note that many women have vigorously pursued the notion of life apart from the state. April Carter observes that "feminists have often been at the forefront of cosmopolitan movements and critiques of nationalism, and some feminist theorists have seen it as women's destiny to be citizens of the world by virtue of their gender."[1] Upon concluding that war and its patriotic fervor are particularly masculine concerns, Virginia

Woolf argued: "[A]s a woman, I have no country. As a woman I want no country. As a woman my country is the whole world."[2] The occasional feminine pronoun, therefore, will appear throughout the text.

This work would not have been possible without the kindness and moral support of my family and friends. My gratitude to them is deepened by the fact that, despite the odd nature of the path I have chosen, they have graciously tolerated my exploration. I am especially indebted to Vicky Hanjian, Armen Hanjian, Adam Hanjian, Tim Hanjian, Elain Christensen, and Betsy Smith. Illusions of independence aside, I am thankful for the web that sustains our lives together.

Clark Hanjian
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[1] Carter 2001, 214.
[2] Woolf 1938, 109.

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Introduction

A. Overview

To be stateless is to be a citizen of no country, a subject of no government, a member of no state. The existence of statelessness is generally abhorred, and the suggestion that human beings have a right to be stateless is almost unheard-of. The global community regards statelessness as "obnoxious,"[1] "productive of friction,"[2] an "offensive anomaly,"[3] and "at best . . . an unhappy lot for the individual, a vexatious problem for the nation, and an undesirable phenomenon in modern civilization."[4] People who involuntarily become stateless are pitied. Their status is seen as "a cause of embarrassment for the individuals concerned,"[5] "an evil,"[6] and "a fate worse than death."[7] People who choose statelessness are viewed with derision. They are deemed nothing less than "a serious danger,"[8] "flotsam,"[9] "international vagabonds,"[10] and the "driftwood of humanity."[11]

The stateless individual stands at the intersection of several significant and competing claims—claims regarding social order, state sovereignty, moral obligations, and fundamental hu-

man rights. For this reason, statelessness is characterized as "a baffling phenomenon in the international legal order."[12] Over the past century, scholars, legislators, jurists, and international organizations, including the United Nations, have attempted to resolve some of the conflicts that statelessness produces,[13] but many concerns remain outstanding. Notably, the question of whether or not human beings have a right to be stateless has received little attention.

Among the many treatises, laws, and decisions, that deal with statelessness, few authorities entertain the possibility that human beings have a right to be stateless. Those who take up the issue generally conclude that such a right *does not* exist. This conclusion is curious, since one would expect that, as a simple matter of personal liberty, human beings have a prima facie right to decline membership in any and all states. The most rudimentary outlines of human rights suggest that human beings should be free from compulsion and should not be forced into unwanted associations. Thus, it is reasonable to conclude that one should not be compelled to be a member of a nation-state. In other words, it appears that a right to be stateless *does* exist.

Do human beings have a right to be stateless? The answer to this question is critical. If we affirm that individuals have such a right, we might jeopardize the sovereign rule of nations, disrupt social order, and abandon basic moral obligations. But, if we determine that individuals have no right to be stateless, we clear the way for serious violations of fundamental human rights. Due to such potential dangers, this question deserves careful analysis.

The primary purpose of this essay is to examine the arguments both for and against the existence of a right to be stateless. I shall conclude that, despite some worthy concerns, all human beings have a fundamental right to be stateless. My secondary purpose is to examine related issues, including: the potential advantages and disadvantages of being intentionally stateless, the process of exercising one's right to be stateless, government attempts to restrict the right to be stateless, and the rights and responsibilities of intentionally stateless individuals. I will not provide more than a brief overview of statelessness in general since this broad topic is competently surveyed else-

where.[14] Rather, my goal is to catalog and analyze the issues that pertain specifically to the right to be stateless.

B. What is Statelessness?

To be stateless is to be a citizen of no state. This short definition is generally accepted because it provides wide latitude for interpretation. Once we begin to investigate the meaning of citizenship, the authority to establish citizenship, and the authority to dissolve it, the definition of statelessness becomes more difficult to specify. For example, if we were to regard citizenship as a human right, statelessness could be viewed as a human rights violation. If we were to regard citizenship as an obligation, statelessness could be viewed as a contractual breach or moral offense.

To avoid confusion, we must clarify our understanding of the word *citizenship*. The term is commonly used in three ways. First, the term is used to designate social identity. At a minimum, it refers to the fact that one is a native or resident of a particular geographic area. More commonly, it refers to one's ongoing participation in a certain community, or one's social connection with a certain population. Second, the term is used to designate civic activity, specifically: public mindedness, participation in community affairs, and contribution to the common good. Third, the term is used to designate political status, specifically, an individual's formal relationship with a state. This relationship between an individual and a state is variously identified as an innate quality, a right, an obligation, a status which can be imposed, and a mutual agreement. Because these three distinct facets of *citizenship* frequently overlap and cause misunderstanding, we must distinguish our usage.

In this essay, I do not use the word *citizenship* to mean social identity or civic activity. Rather, I use the term exclusively to designate political status.[15] I define citizenship as a formal contractual relationship between an individual and a state which requires the express consent of both parties. The individual must consent to the authority of the state, agree to pay allegiance to the state, and agree to support the work of the state with labor,

goods, or taxes. In return, the state must consent to provide basic protection and services to the individual (e.g., military defense, police protection, a judicial system, health care, education, and employment assistance).

With this understanding of citizenship, we can expand our short definition of statelessness. If no state consents to provide basic protection and services to a certain individual, that individual would be stateless. Even if that individual offers allegiance and support to a particular state, if that state does not agree to reciprocate, citizenship would not exist and the individual would remain stateless. Likewise, if an individual does not consent to the authority of at least one certain state, that individual would be stateless. Even if some state offers that individual the basic protection and services which it provides to all its citizens, if that individual does not agree to reciprocate, citizenship would not exist and the individual would remain stateless. Hence, an individual is stateless if she has no agreement with any state regarding the exchange of individual allegiance and support for state protection and services. Statelessness is no violation, breach, or offense—it is merely the absence of a mutual agreement.

The United Nations offers an alternative perspective. In its primary document regarding this matter, the *Convention Relating to the Status of Stateless Persons*, the UN asserts that "the term 'stateless person' means a person who is not considered as a national by any State under the operation of its law."[16] This definition, while frequently cited, is noticeably skewed in the interest of states. It presumes that citizenship and statelessness are regulated exclusively by states and have nothing to do with the will or consent of individuals. According to this definition, an individual can become stateless only if no state lays claim to her. Conversely, this definition implies that if any state does claim an individual as one of its citizens, then that individual must be regarded as a citizen. In sum, the UN definition presumes that an individual's citizenship status depends solely on whether or not some state considers that individual as one of its own. The will and consent of the individual are irrelevant. Only the will of the state is recognized.

These different perspectives demonstrate that a precise definition of statelessness—one which elucidates the source, character, and parameters of the status—is shaped by one's theory of citizenship.

The concept of statelessness has always been amplified by negative connotations. The woeful descriptions noted above represent the aura which surrounds this topic. Catheryn Seckler-Hudson, author of one of the most comprehensive works on this subject, observes that:

> Historically speaking, stateless members of society have existed at all times in most countries and their situation has always been made abnormal. . . .
>
> The condition of statelessness is considered everywhere with disapproval, since the presence of individuals who cannot participate in the work of the state is undesirable. The idea of stateless members of society is not in harmony with public order or welfare and the exceptional situation of stateless individuals being attached to no one state is abnormal and perplexing.[17]

Oppenheim compares stateless individuals to "vessels on the open sea not sailing under the flag of a State."[18] Other authorities describe the stateless individual as "*res nullius*"[19] (the property of nobody), a "*tertium quid* [a third party of ambiguous status] whose home is presumably somewhere between all other countries,"[20] and a "*caput lupinum*"[21] (literally a wolf's head and figuratively an outlawed felon who might be knocked on the head like a wolf). Hannah Arendt, in her classic *The Origins of Totalitarianism*, offers a sobering account of the rise of mass statelessness during the first half of the twentieth century. Writing in the context of world wars and refugee misery, Arendt provides the paradigm for equating statelessness with rightlessness.[22] Chief Justice Earl Warren of the US Supreme Court reveals, more plainly than any other, the anxiety surrounding statelessness:

> [The stateless individual is subject] to a fate of ever-increasing fear and distress. He knows not what discriminations may be established against him, what proscriptions may be directed against him, and when and for what cause his existence in his native land may be terminated. He may be subject to banishment, a fate universally decried by civilized people. He is stateless, a condition deplored in the international community of democracies.[23]

> Citizenship *is* man's basic right for it is nothing less than the right to have rights. Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen.[24]

Not all characterizations of stateless individuals are negative, but the image of the abandoned or outcast refugee dominates the popular view. The notion that a stateless person might be a non-aligned free agent or a sovereign entity is rarely considered. This essay, however, entertains the possibility.

C. How Statelessness Occurs

An individual becomes stateless due to any of four circumstances: (1) the individual never enters a citizen-state relationship; (2) the state ceases to exist, leaving the individual devoid of a citizen-state relationship; (3) the state withdraws its consent to the citizen-state relationship; and (4) the individual withdraws her consent to the citizen-state relationship.

The individual never enters a citizen-state relationship. If one never becomes a citizen of any state then one is necessarily stateless. This situation occurs for either of the following reasons. First, an individual might never enter a citizen-state relationship because she chooses never to consent to such a relationship. If we accept Locke's assessment that a human being is "born a subject of no country or government,"[25] then an individual will always be stateless unless she subsequently consents to enter into a citizen-state relationship. If that individual never

establishes such a mutual agreement, citizenship will never exist. The result is statelessness.

Second, an individual might never enter a citizen-state relationship because no state ever consents to participate in such a relationship with her. Again, if we begin with the assumption that human beings in their natural condition are stateless, then an individual will always remain stateless unless some state subsequently consents to enter into a citizen-state relationship with her. If no state ever establishes such a mutual agreement with that individual, citizenship will never exist. The result, again, is statelessness.

Even if one subscribes to the widely held view that states may unilaterally commit newborns into citizen-state relationships, one must acknowledge that the global web of nationality laws contains gaps. In other words, even if one asserts that states have a right to impose citizenship on individuals, circumstances still exist where certain individuals might remain unclaimed by any state. The criteria by which nations impose citizenship are diverse, uncoordinated, and often inconsistent.[26] Some states use a *jus soli* theory of citizenship, where children are assigned citizenship based on the "soil," place of birth, or land in which they were born. States that employ this theory differ on whether the parents' homeland or the actual land of a child's birth determines a child's citizenship. Other states use a *jus sanguinis* theory of citizenship, where children are assigned citizenship based on the "blood," lineage, or citizenship of the parents. States that employ this theory differ on whether the mother, the father, or either parent serves as the operative parent in determining a child's citizenship. Some states use a combination of both theories. Because of such variable criteria, citizenship might never be assigned to certain individuals.[27]

For example, a child born in a *jus sanguinis* state to an operative parent who is unknown, missing, alien, or stateless might never be assigned citizenship. A strict interpretation of *jus sanguinis* theory could even deny citizenship to an "illegitimate" child whose unwed biological parents are both full-fledged citizens. Similarly, if parents who are citizens of a *jus soli* state give birth to a child while in a foreign land, on the high seas, or in neutral airspace, that child might also never be assigned citizen-

ship. Children whose place of birth and parentage are either unknown or unregistered are especially susceptible to statelessness. However, due to international agreements and ongoing revisions to domestic nationality laws, the likelihood of these situations resulting in statelessness is diminishing.[28]

The state ceases to exist, leaving the individual devoid of a citizen-state relationship. If a state ceases to exist, any citizen-state relationship which that state was party to is effectively null and void. In other words, if a state disappears from the citizen-state equation, the abandoned citizen no longer maintains a mutual agreement regarding the exchange of individual allegiance and support for state protection and services. Unless that individual happens to maintain citizenship elsewhere, she is rendered stateless.

From time to time, states (or parts of states) cease to exist for reasons such as war, legislative act, or treaty. States collapse, merge, shrink, and expand. They can be dissolved, annexed, ceded, sold, divided, emancipated, and overthrown. If treaties and other agreements related to these situations are unclear or inadequate, individuals living in the relevant territories could become stateless.[29] Naturally, people cannot be citizens of a state that does not exist. If no arrangements are made for these individuals to acquire subsequent citizenship in some new or alternate state, mass statelessness could result.[30]

The state withdraws its consent to the citizen-state relationship. If a state withdraws its consent to a citizen-state relationship with a particular individual, that individual, by definition, may no longer be regarded as a citizen of that state. Unless this person happens to maintain citizenship elsewhere, she is rendered stateless. When a state takes this action, it exercises its fundamental right to back out of a free association. Except for any explicit conditions that a state may have negotiated with an individual regarding the dissolution of their relationship, or any restraints (in the form of law) that a state might have imposed upon itself regarding such a situation, a state is free to dissolve its relationship with any citizen whenever and for whatever reason it pleases. Since this procedure is viewed as a state depriving or stripping an individual of her citizenship status, it is known as *denationalization*. When this procedure is applied to

naturalized citizens, it is referred to as *denaturalization*. Logically, a state may withdraw its consent to a citizen-state relationship—and thereby cause statelessness—for any reason. The five most common reasons are as follows.

First, a state might attempt to denationalize one of its citizens when it believes that it has reasonable evidence to prove that the citizen has withdrawn her allegiance and support from the state. In other words, if the citizen defaults on her obligations in the citizen-state relationship, the state may feel justified in dissolving that relationship. Traditionally, states have suggested that acts such as the following are evidence that a citizen has withdrawn allegiance: acquisition of citizenship in a foreign state, an oath of allegiance made to a foreign state, voting in a political election in a foreign state, holding a policy-making office in a foreign state, holding a civilian government position in a foreign state, holding a military position in a foreign state, prolonged residence abroad, failure to register with a consulate while staying abroad, commission of treasonous acts, desertion of a military position, evasion of military conscription, and marriage to an alien.

Second, a state might attempt to denaturalize one of its citizens when the state believes that the citizen obtained her naturalization illegally. For example, the United States government reserves the right to denaturalize a person if the statutory requirements for naturalization were not fully and properly met or if naturalization was procured by willful misrepresentation or concealment of material facts with intent to deceive the government.[31]

Third, a state might attempt to denationalize one of its female citizens on the grounds of marriage. Many states have held—allegedly for the sake of family unity—that the nationality of a wife should follow that of her husband. Typically in such states, if a woman married a man who was not a fellow citizen, the woman would be automatically denationalized so that she could acquire the nationality of her husband. Of course, if the husband were stateless, or if the husband's state did not automatically naturalize the wife, the woman would be rendered stateless. Similarly, if a husband relinquished or was stripped of his citizenship status, the wife would be denationalized accord-

ingly. Due to increasing recognition of the principle that a woman should not be denationalized on the grounds of marriage, this source of statelessness is decreasing.[32]

Fourth, a state might attempt to denationalize one of its citizens in order to punish the individual. Typically, such punishment is imposed on a citizen who engages in political activities or who maintains political connections that are offensive to the state. Withdrawal of allegiance, as evidenced by the acts listed above, can also be regarded as a political offense worthy of punishment. In states minimally committed to respecting human rights, any illegal activity or political dissent could provide sufficient cause for denationalization. Denationalization as a punishment, particularly when it results in statelessness, is regarded as severe. Chief Justice Warren described such an act as "the total destruction of the individual's status in organized society. It is a form of punishment more primitive than torture."[33] One observer notes that the US Supreme Court has been willing to accept the execution but not the denationalization of military deserters.[34]

Fifth, states have been known to denationalize not just individuals but entire peoples based on racist and xenophobic policies. For example, racial, ethnic, and religious discrimination have resulted in mass denationalizations of Jews under Nazi Germany, Armenians under Kemalist Turkey, Koreans in postwar Japan, and blacks under white-ruled South Africa.[35] Manley Hudson notes that, "Probably the greatest number of cases of statelessness has been created by collective denationalization on political, racial or religious grounds."[36]

The individual withdraws her consent to the citizen-state relationship. If an individual withdraws her consent to a citizen-state relationship with a particular state, that individual, by definition, may no longer be regarded as a citizen of that state. Unless this person happens to maintain citizenship elsewhere, she becomes stateless. When an individual takes this action, she exercises her fundamental right to back out of a free association. This procedure is known as expatriation. Since expatriation is an essential component of the right to be stateless, this topic will be analyzed in greater detail below.

In review, statelessness occurs in four ways: when an individual never becomes a citizen anywhere; when a state ceases to exist, leaving an individual devoid of citizenship; when a state denationalizes an individual, leaving that individual devoid of citizenship; and when an individual expatriates into statelessness. Since this essay is concerned with the individual's right to forgo citizenship, our attention will focus on the fourth option: expatriation into statelessness.

D. The Right to Expatriate

Expatriation is the voluntary renunciation or abandonment of nationality and allegiance.[37] It is the individual's withdrawal of consent to the citizen-state relationship. It is a throwing off of one's citizenship. If one is a citizen anywhere, one must expatriate in order to become stateless. Whereas most people in the world are citizens of at least one state, any discussion of a fundamental right to be stateless must acknowledge a prerequisite right to expatriate.

The right to expatriate has been recognized throughout history.[38] David Maxey notes that, "In Roman law, the right of a citizen to renounce his allegiance was indisputably established."[39] Peter Mutharika observes that, "In many countries, it has long been accepted that nationality is a free relationship between the state and the national which may be dissolved at the instance of either party."[40] One notable exception to this tradition was the early British doctrine of perpetual allegiance.[41] This doctrine required that once an individual became a citizen of the Commonwealth, she could never sever that relationship for any reason. After extensive controversy, the British Parliament finally revoked this doctrine with the Naturalization Act of 1870.[42]

The British doctrine of perpetual allegiance, a blatant denial of the right to expatriate, was one reason why the founders of the United States sought to declare their independence from England.[43] Despite their official displeasure with this doctrine, many legislators, executives, and jurists habitually upheld the concept in their development and application of US law.[44] Although this longstanding tradition would not pass easily from

the Anglo-American psyche, its demise was inevitable. As Thomas Jefferson argued during his presidency:

> I hold the right of expatriation to be inherent in every man by the laws of nature, and incapable of being rightfully taken from him even by the united will of every other person in the nation. . . .
>
> . . . Congress may by the Constitution "establish an uniform rule of naturalization," that is, by what rule an alien may become a citizen. But they cannot take from a citizen his natural right of divesting himself of the character of a citizen by expatriation.[45]

By the mid-1800's, the US government realized that it would need to officially deny the doctrine of perpetual allegiance and recognize the right to expatriate. At that time, the United States was being populated quickly with immigrants from around the world. These immigrants could not be naturalized legally if they all were obliged to maintain perpetual allegiance to their respective states of origin. To naturalize people who where still citizens of other nations would be an offense against the sovereignty of those nations. Thus, the US government was forced to choose between suffering foreign claims of allegiance on its naturalized citizenry (which, at the time, was a significant percentage of its total citizenry), or recognizing the right of individuals to expatriate freely.[46] The preferred option was stated bluntly by US Attorney General Black in 1859:

> [T]he general right, in one word, of expatriation, is incontestable. . . . Among writers on public law the preponderance in weight of authority, as well as the majority in numbers, concur with Cicero, who declares that the right of expatriation is the firmest foundation of human freedom . . . . Here, in the United States, the thought of giving it [the right of expatriation] up cannot be entertained for a moment. Upon that principle this country was populated. We owe to it our existence as a nation.[47]

After several unsuccessful attempts to officially recognize the right to expatriate,[48] the US Congress finally affirmed this right when it passed the Expatriation Act of 1868. The act proclaims:

> Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness . . . Therefore,
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any declaration, instruction, opinion, order, or decision of any officers of this government which denies, restricts, impairs, or questions the right of expatriation, is hereby declared inconsistent with the fundamental principles of this government.[49]

Although this act was passed primarily to deal with the problem of foreign claims of allegiance on US citizens, Attorney General Williams, in 1873, interpreted this act as protecting the rights of US citizens to abandon their US citizenship as well.[50] Subsequent domestic legislation has continued to recognize the right of US citizens to expatriate.[51]

Today, the right to expatriate is generally recognized. Common sense suggests that citizenship ought not be imposed and that human beings should be free to withdraw from citizen-state relationships as they see fit.[52] Oppenheim observes that the denial of the right to expatriate "is offensive alike to individual freedom and to the dignity of the State insisting on the retention of a grudging allegiance."[53] The *Universal Declaration of Human Rights*, while not specifically naming a right to expatriate, logically upholds the existence of such a right when it declares that "No one shall be . . . denied the right to change his nationality."[54] (As one authority notes, "The right to renounce nationality—'voluntary expatriation'—is of course an indispensable component of the right to change it.")[55] Even Chief Justice Warren, who disdained statelessness, argued that, "There is no question that citizenship may be voluntarily relinquished."[56] McDougal, Lasswell, and Chen conclude, "it appears that in in-

creasing degree strong community expectations support the individual's right of voluntary expatriation."[57] This essay, therefore, will presuppose the existence of the right to expatriate, a central component of the right to be stateless.

E. Intentional versus Unintentional Statelessness

Any discussion about a right to be stateless implies that at least some people genuinely desire that status. As we shall see, even though statelessness is generally scorned, some individuals have understandable, if not compelling, reasons to forgo membership in a state. In order to navigate through the range of strong and divergent opinions on this topic, we must clarify at the outset the distinction between intentional and unintentional statelessness.

A person who is stateless, but who does not desire to be so, is *unintentionally stateless*. Among the multitude of legal and scholarly materials dealing with issues of statelessness, attention is devoted almost exclusively to the unintentional type. This situation exists for two reasons. First, most known instances of statelessness involve individuals who do not desire that status. Second, unintentional statelessness is regarded as catastrophic. Due to the variety of international, domestic, and personal concerns brought about by unintentional statelessness, most analysts view the status as unequivocally problematic. As one international jurist declared, it "should never be forgotten" that "statelessness was an evil, and was generally recognized as such."[58] The reader must remain aware that most treatments of statelessness are concerned solely with the unintentional type.

A person who is stateless, and who desires to be so, is *intentionally stateless*. Significant references to intentional statelessness are difficult to find. This situation exists for reasons similar to those just mentioned. First, instances of individuals intentionally becoming or remaining stateless are rare.[59] Second, intentional statelessness is summarily presumed to be nonsensical and of interest to no one. Legal authorities typically reject the notion of intentional statelessness as absurd and unworthy of consideration. Derogatory comments, as we have seen, are not

uncommon. Exceptions to this rule include Schuck and Smith[60] and McDougal, Lasswell and Chen,[61] all of whom acknowledge that intentional statelessness must remain a permissible option in a free society. Unfortunately, their analyses go no further than brief reference to this "intriguing question."[62] Beyond traditional legal sources, the genre of anarchist literature is full of scholars and commentators who support the principle of intentional statelessness. In its fullest sense of "life without the state," intentional statelessness is a foundation block of anarchist philosophy and practice. While an intentionally stateless person need not subscribe to an anarchist perspective, we can expect that an anarchist would pursue intentional statelessness.

In light of the fact that few authorities have distinguished intentional from unintentional statelessness, and that substantial attention has been given to the latter, the reader is alerted that this essay deals solely with intentional statelessness. Our concern here is the individual who desires to be a citizen of no state, and whether or not she has a fundamental right to fulfill that desire.

F. The Sovrien

Because intentional statelessness has received little attention, no convenient label for the intentionally stateless person has emerged. Since this essay focuses exclusively on intentional statelessness, I take this opportunity to introduce a new word for our lexicon: *sovrien* (pronounced SOV-ree-in). This word is a hybrid of *sovereign* and *alien*. It means an intentionally stateless person; one who chooses to be a citizen of no state.

I offer the word *sovrien* for four reasons. First, *sovrien* is a unique word for a unique status—there is no other word that means "an intentionally stateless person." Second, the source words remind us of two essential characteristics of the intentionally stateless person. Since the sovrien chooses to retain all of her political rights—rather than relinquish some for the sake of establishing a citizen-state relationship—she is the quintessential sovereign. Simultaneously, in this political milieu where almost every person on earth is formally a member of some state, the

sovrien bears no such membership status—she is the quintessential alien. Third, by referring to a person as a *sovrien* rather than as a *stateless person*, one avoids the incorrect implication that a state-less person is somehow lacking an essential attribute. Fourth, *sovrien* functions well as both a noun and an adjective, and it is similar in form to the related words *citizen* and *alien*.

The sovrien must be distinguished from her ideological cousin—the cosmopolitan. The cosmopolitan, also known as a citizen of the world or a global citizen, dates back at least to Socrates (circa 400 BCE) and appears in the works of Cicero, Seneca, Plutarch, Lucian, and Diogenes Laertius.[63] Cosmopolitanism has played a vibrant role in the history of political thought, from the Stoics, through the Enlightenment, to the contemporary period of "globalization."[64] The cosmopolitan notion of global citizenship (now also known as transnational or postnational citizenship) is enjoying a renaissance due to several modern phenomena:

- The unique benefits of citizenship have been slowly eroding. Specifically, the degree to which the legal rights of citizens are extended to aliens has been increasing and, thus, the value of national citizenship has been declining.
- Due to the growing observance of fundamental human rights, and to the existence of more nongovernmental organizations working to protect such rights, the value of national citizenship is diminished.
- The expansion of individual allegiances to non-state groups is eroding the role of national identity. Allegiance previously devoted to the state is now being pledged to ethnic, cultural, social, religious, and academic groups, diaspora communities, social movements, and transnational corporations.
- The spread of political activity via nongovernmental organizations and transnational social movements is challenging the primacy of nation-based politics.
- The increasing ease of international travel and communication, and the growth of multinational business concerns—the modern developments typically associated with global-

ization—are making the logistics of global citizenship more tenable.
- The European Union's experiment with formal supranational citizenship is shedding new light on all aspects of global citizenship.

For these reasons, cosmopolitanism is once again a matter of significant interest.[65]

The cosmopolitan can be characterized in two ways. First, a cosmopolitan can be understood literally as a citizen of some global state. Of course, no such state presently exists, and many argue that the development of such a supranational institution would be a logistical nightmare, would result in a loss of cultural diversity, and would not serve the cause of democracy.[66] Although the legal attributes of cosmopolitanism remain undeveloped, the evolution of both human rights theory and the individual's position in international law have established, to some extent, a foundation for a legal status of "world citizen." While many people desire such a status—with specific rights, obligations, and institutions—the existence of formal world citizenship is not yet a reality. In other words, although this characterization of cosmopolitanism reflects a genuine aspiration of many people, the status is presently theoretical.

Second, a cosmopolitan can be understood as one who is global-minded. From this non-legal perspective, the cosmopolitan is one who typically:

- Feels a sense of world community.
- Believes that social and political relationships are not constrained by state boundaries.
- Offers respect and tolerance for people of other cultures and beliefs.
- Believes that civic responsibility extends beyond the limits of any particular group or community.
- Feels obliged to assist others in need, regardless of their culture or beliefs.
- Believes that human beings have a responsibility to protect the global environment.
- Observes fundamental human rights.

- Believes that all human beings should be free to communicate and travel across the globe without constraint.
- Promotes the use of nonviolent means of conflict resolution.

While specific traits will vary from cosmopolitan to cosmopolitan, this characterization is not theoretical and can be applied to real people in today's world. We should note that cosmopolitans, in this non-legal sense, may or may not desire formal legal status as global citizens. [67]

In light of cosmopolitanism, we can now clarify what it means to be a sovrien. In the legal sense, one cannot be both a sovrien and a cosmopolitan. The categories are mutually exclusive. The sovrien maintains citizenship with no state. She forgoes citizenship in all states regardless of their scope—including any supranational state or world government. The cosmopolitan, on the other hand, is a formal citizen of a global state. She has legal rights and duties which are contingent upon her relationship with that state. Naturally, one cannot be free from all citizen-state relationships and simultaneously be a legal citizen obligated to a government.

In the broader sense, where cosmopolitanism is understood as global-mindedness, the sovrien and the cosmopolitan overlap. A sovrien is extremely likely to bear the cosmopolitan spirit. The global perspective of the cosmopolitan is a natural foundation for the stateless perspective of the sovrien. Moreover, there is little incentive for one to risk the disadvantages associated with sovrien life if the cosmopolitan spirit is absent. As we shall see, the rights, responsibilities, and advantages of being a sovrien are better suited to cosmopolitans than to those bearing a more parochial mindset. Conversely, while a sovrien is likely to be a cosmopolitan, a cosmopolitan will not necessarily be interested in the sovrien life. Many people with highly developed cosmopolitan sensibilities feel that—in order for their cosmopolitan values to be expressed fully and with integrity—they must participate in their respective nation-states as responsible citizens. From this perspective, national identity and service are viewed as essential elements of a functioning global community. Thus, even though we can expect a certain overlap among sovriens and cosmopolitans, the two categories remain distinct.

Intentional statelessness, as a concrete option, has always been overshadowed by the more ethereal possibilities of world citizenship. This neglect of the sovrien option is curious because conflicts between social order and human rights perpetually oblige each of us to answer the question: "Should I maintain status as a full-fledged member of a state, or not?" As we shall see, the sovrien option is inevitable in political discourse, and the extreme language which marks this topic indicates that intentional statelessness deserves more attention than it has received. Aristotle observed:

> [H]e who by nature and not by mere accident is without a state, is either a bad man or above humanity; he is like the 'Tribeless, lawless, hearthless one,' whom Homer denounces—the natural outcast is forthwith a lover of war; he may be compared to an isolated piece at draughts. . . .
>
> . . . [H]e who is unable to live in society, or who has no need because he is sufficient for himself, must be either a beast or a god: he is no part of a state.[68]

I intend to show that the sovrien is neither above humanity nor below it. Such a person is neither a beast nor a god. My hope in this essay is to establish that intentional statelessness, while the choice of only a few, may be a reasonable, legitimate, and perhaps worthy option.

Notes

[1] Dean Rusk, Discussion, *in* Ulman 1973, 126.
[2] UN International Law Commission 1954, Preamble.
[3] Lauterpacht 1945, 126.
[4] Seckler-Hudson 1934, 253.
[5] Ibid., 244.
[6] Hersch Lauterpacht, *cited in* UN International Law Commission 1953, 171 (Meeting 211).
[7] Aleinikoff 1986, 1499 (describing the US Supreme Court's view of statelessness).
[8] Valery 1918, 987.
[9] Weis 1962, 1073.
[10] A. De Lapradelle and J.P. Niboyet, eds. 1930, *Repertoire de Droit International* (Paris) 8:558, *quoted in* Seckler-Hudson 1934, 15.
[11] Seckler-Hudson 1934, 265.
[12] Lauterpacht 1945, 126.
[13] See: Donner 1994 (providing a detailed historical review of efforts to regulate nationality in general and statelessness in particular); Mutharika 1989 (providing a concise historical review of efforts to regulate statelessness and an extensive collection of related documents); Oppenheim 1992, § 398 at 887-890 (summarizing historical UN actions concerning statelessness); Engstrom and Obi 2001 (summarizing the current status of UN activities and plans relating to the regulation of statelessness).
[14] See: Mutharika 1989; McDougal, Lasswell, and Chen 1980, 888-941; Weis 1979; Hudson 1952; Arendt 1973, Chapter 9; UN Department of Social Affairs 1949; Seckler-Hudson 1934.
[15] Linda Bosniak argues that, although recent scholarship has focused largely on citizenship as social identity and civic activity, the role of citizenship as political status is substantial and warrants similar attention. Bosniak 2000b.
[16] *Convention Relating to the Status of Stateless Persons* 1954, Article 1.1. The reader will note that the words *national* and *citizen* are often used interchangeably. See: Weis 1979, 3-7 (discussing the synonymous relationship of these terms); *Immigration*

Law and Procedure 2002, § 91.01[3][b] (discussing the subtle distinction between these terms in US law).

[17] Seckler-Hudson 1934, 14-15 (notes omitted).

[18] Oppenheim 1955, § 312 at 668.

[19] Schwarzenberger and Brown 1976, 115.

[20] E.F.W. Gey Van Pittius 1930, *Nationality Within the British Commonwealth of Nations* (London) 132-133, *quoted in* Seckler-Hudson 1934, 12.

[21] Lauterpacht 1945, 126.

[22] Arendt 1973, chapter 9.

[23] *Trop v. Dulles*, 356 US 86, 102 (1958) (note omitted).

[24] *Perez v. Brownell*, 356 US 44, 64 (1958) (Warren et al. dissenting). The US Supreme Court issued three decisions on the same day, March 31, 1958, relevant to expatriation and statelessness: *Perez v. Brownell*, 356 US 44; *Trop v. Dulles*, 356 US 86; *Nishikawa v. Dulles*, 356 US 129. *Perez v. Brownell* was overruled by *Afroyim v. Rusk*, 387 US 253 (1967).

[25] Locke 1952, ¶ 118 at 67.

[26] For a review of nationality laws from around the world, see: Mutharika 1989; UN Secretariat 1954; UN Secretariat 1952.

[27] McDougal, Lasswell, and Chen 1980, 922-923.

[28] See, e.g., *Convention on the Reduction of Statelessness* 1961.

[29] See: Weis 1979, 135-160; Donner 1994, 247-311 (both discussing the variety of ways in which a state's rule over a territory can change and how such territorial transfers affect citizenship).

[30] See Mutharika 1989, 5-8 (providing specific historical examples of mass statelessness).

[31] 8 USC § 1451 (2002).

[32] Walker 1981, 113-114, 120.

[33] *Trop v. Dulles*, 356 US 86, 101 (1958). See ibid. at note 33, and accompanying text, for additional support of this view.

[34] Aleinikoff 1986, 1499 note 112.

[35] Mutharika 1989, 11-12; Aleinikoff 1986, 1475 note 16 and accompanying text; Weis 1979, 119-120.

[36] Hudson 1952, 19.

[37] *Words and Phrases: Permanent Edition* (St. Paul: West Group, 1950 and supplement 2001), s.v., "expatriation."

[38] For a concise review of the general history of expatriation, see Maxey 1962, 153-158. For the definitive history of expatriation in the United States, see Tsiang 1942. Noteworthy and more recent analyses of expatriation in the US include: *Immi-*

gration Law and Procedure 2002 § 100; Endelman 1996; James 1990; Griffith 1988; Aleinikoff 1986; Abramson 1984; Gordon 1965; Roche 1950.

[39] Maxey 1962, 153 (note omitted).

[40] Mutharika 1989, 2 (note omitted).

[41] For brief reviews of the development and demise of this doctrine, see: Tsiang 1942, 11-24; Maxey 1962, 153-155.

[42] Maxey 1962, 155.

[43] James 1990, 861; Tsiang 1942, 110.

[44] See: *Perez v. Brownell*, 356 US 44, 67 notes 12-14 and accompanying text (1958); *Afroyim v. Rusk*, 387 US 253, 257-258 notes 8-10 and accompanying text (1967).

[45] Thomas Jefferson to Albert Gallatin, June 26, 1806 *in* Gallatin 1879, Vol. 1 at 301-302.

[46] See generally Tsiang 1942 (providing a thorough review of the issues and developments surrounding expatriation during this period of US history).

[47] *Opinions of the Attorneys General* 1859, 9:356, 358-359. For information regarding the allusion to Cicero, see Maxey 1962, 153 note 13 and accompanying text.

[48] See *Afroyim v. Rusk*, 387 US 253, 257 note 8 and accompanying text (1967).

[49] Act of July 27, 1868, Chapter 249, 15 Stat 223 (1868) (codified at Rev Stat § 1999 and retained in the current code at 8 USC § 1481 note (Right of Expatriation) (2002)).

[50] *Opinions of the Attorneys General* 1873, 14:295, 296.

[51] See Act of March 2, 1907, Chapter 2534, 34 Stat 1228 (1907), and its legislative evolution into the current US expatriation statutes found in 8 USC §§ 1481-1489 (2002).

[52] For a more state-oriented perspective, see Bauböck 1994, 122-147 (arguing for significant restrictions on the right to expatriate).

[53] Oppenheim 1955, § 296a, at 649.

[54] UN General Assembly 1948, Article 15.2.

[55] McDougal, Lasswell, and Chen 1980, 889. See also Donner 1994, 217.

[56] *Perez v. Brownell*, 356 US 44, 66 (1958) (Warren et al. dissenting).

[57] McDougal, Lasswell, and Chen 1980, 894.

[58] Hersch Lauterpacht, *cited in* UN International Law Commission 1953, 171 (Meeting 211).

[59] "The number of cases of statelessness resulting from voluntary renunciation is . . . negligible." Mutharika 1989, 3. "Stateless-

ness rarely results from renunciation of nationality." Hudson 1952, 21.

[60] Schuck and Smith 1985, 124.

[61] McDougal, Lasswell, and Chen 1980, 930.

[62] Ibid.

[63] Smith [1926] 1970, 29-30 note 14; Nussbaum et al. 1996, 6-11; Carter 2001, 12-14, 24 notes 37-38 and accompanying text.

[64] See generally: Carter 2001 (providing a thorough review of cosmopolitanism, in theory, practice, literature, and history); Nussbaum et al. 1996; Hutchings and Dannreuther 1999; Falk 1993.

[65] For detailed analyses of these phenomena, see: Bosniak 2000a (reviewing the recent literature of global citizenship); Carter 2001; Spiro 1999; Jacobson 1997; Miller 1995, 155-165; Soysal 1994.

[66] For a variety of critiques of this formal view of cosmopolitanism, see generally: Carter 2001; Nussbaum et al. 1996; Hutchings and Dannreuther 1999.

[67] Martha Nussbaum, in her prominent essay "Patriotism and Cosmopolitanism" (and in her subsequent "Reply" to critics), provides one of the most persuasive contemporary arguments for the development of this type of global-mindedness. Her critics provide ample evidence that a cosmopolitan outlook does not necessarily lead to a desire for formal global citizenship. Nussbaum et al. 1996.

[68] Aristotle 1988, § 1253a, at 3-4, note omitted. The phrase "an isolated piece at draughts" refers to the game of checkers. An earlier rendering of this idiom characterized the sovrien as "a bird which flies alone." Benjamin Jowett 1885, *The Politics of Aristotle, translated into English* (Oxford) 4, *quoted in* Seckler-Hudson 1934, 244 .

2

Arguments in Defense of the Right to Be Stateless

A. Introduction

Does every person have a fundamental right to be stateless? Many argue that such a right is precluded by other competing rights and obligations. We will investigate these arguments shortly, but first we must understand why anyone would even suggest that a right to be stateless exists. In this chapter, I offer two distinct arguments in support of this claim. First, the *Fundamental Human Right Argument* posits: whereas the liberty to be stateless meets the essential criteria used to establish the existence of a fundamental human right, the liberty to be stateless can reasonably be regarded as a fundamental human right. Second, the *Consent Argument* posits: whereas citizenship is a relationship contingent upon the consent of the individual, human beings necessarily retain the liberty to be stateless.

B. The Fundamental Human Right Argument

The first argument in defense of the right to be stateless asserts that the liberty to be stateless can reasonably be regarded as a fundamental human right because that liberty meets the criteria by which fundamental human rights are defined. The line of reasoning is simple:

> *Premise 1*—Specific criteria exist by which we can determine whether or not the liberty to perform a certain act can reasonably be regarded as a fundamental human right.
> *Premise 2*—If the liberty to perform a certain act meets the aforementioned criteria, then that liberty can reasonably be regarded as a fundamental human right.
> *Premise 3*—The liberty to be stateless meets the aforementioned criteria.
> *Conclusion*—The liberty to be stateless can reasonably be regarded as a fundamental human right.

In order to support this conclusion, I will defend each premise.

Defense of Premise 1

Premise 1 asserts that specific criteria exist by which we can determine whether or not the liberty to perform a certain act can reasonably be regarded as a fundamental human right. Human rights theory, unfortunately, is a speculative field with many critical matters disputed. Notably, the very existence of fundamental human rights is not even a matter of agreement. Some assert that the notion arises from Western religious, philosophical, and cultural belief systems and, as such, it does not constitute an ethical principle which can be applied universally. Arguments for and against the general existence of fundamental human rights are beyond the scope of this essay. I shall assume

that such rights, as a class, do exist. Readers who assume otherwise will not be persuaded by this first argument.

I further assume that if fundamental human rights exist in any useful or meaningful way, they must be established on the basis of some specific and knowable criteria. Among those who agree that fundamental human rights exist, this set of criteria remains in dispute. Despite this problem, trends among theorists are apparent. I offer my extrapolation below.

I suggest that the following nine criteria fairly represent the primary parameters which define fundamental human rights. These criteria could be re-stated in many ways with many subtle variations. My intent here is not to cast in stone a precise testing mechanism, but to outline the key elements which characterize a fundamental human right. I do not suggest that these criteria constitute a definitive checklist by which one can authoritatively identify a fundamental human right. Instead, I suggest that if the liberty to perform a certain act fails to meet one or more of these criteria, then the claim that that liberty is a fundamental human right requires reconsideration. Conversely, if the liberty to perform a certain act meets all of these criteria, then that liberty could reasonably be regarded as a fundamental human right. The criteria are:

1. It must be logically possible that the liberty in question could be universally exercised.

The liberty to perform a particular act cannot reasonably be regarded as a fundamental human right unless it is logically possible that every human being could exercise that liberty. In other words, if everyone cannot, at least in theory, exercise the liberty in question, then one would be hard-pressed to classify the liberty as a right which is fundamentally human. For example, it is logically impossible that every human being could exercise the liberty to live forever (no one is physically capable of doing this), consume more than one's proportionate share of the earth's resources (a mathematical impossibility), or be an above-average cook (the qualification "above-average," by definition, requires that some people be at and below average). Thus, none of these acts could reasonably be regarded as a fundamental hu-

man right. It is a logical possibility, however, that all human beings could exercise the liberty to eat, breathe, sleep, sing, work, have personal beliefs, and have friends. These liberties, thus, might qualify as fundamental human rights.

2. One qualifies to exercise the liberty in question solely by virtue of one's humanity.

The liberty to perform a particular act cannot reasonably be regarded as a fundamental human right unless the liberty to perform that act exists for every human being in the world solely on the grounds that he or she is a human being. This liberty is not earned, deserved, or attained for any other reason. One cannot be disqualified from exercising this liberty on grounds such as gender, skin color, place of birth, time of birth, sexual preference, creed, religion, state affiliation, economic status, political beliefs, social status, or any circumstance devised by or dependent on other human beings.

3. The rationale used to establish the liberty in question as a fundamental human right does not require one to subscribe to a particular religious, philosophical, or cultural belief system.

The liberty to perform a particular act cannot reasonably be regarded as a fundamental human right if that liberty can only be justified by subscribing to a particular religious, philosophical, or cultural belief system. Any principle, doctrine, or view of reality which is used to justify the existence of a fundamental human right must be universally true and applicable. If a rationale stands true only for those who subscribe to a particular belief system, then the rationale is not useful for making a universal claim. This criterion protects against the arbitrary imposition of a particular belief system upon individuals who do not subscribe to that belief system.

For example, some suggest that the liberty to exercise moral interference is a fundamental human right. In particular, they suggest that every human being has a fundamental right to interfere in the life of another when he or she believes that the other must be stopped from doing something immoral. This

claim is used to justify actions such as killing a potential murderer, waging war on a brutal dictator, imprisoning a person who deviates from social norms, and blockading a plant that produces hazardous wastes. However, in order to establish this liberty as a fundamental human right, we would need to accept tenets such as: (a) the existence of specific moral standards (e.g., "murder is wrong," "we must tell the truth," "pollution is immoral"); (b) the usefulness of interference as a tactic (e.g., "interference in this situation will please God," "interference here will bring justice"); and (c) the nature of one's legitimate authority to interfere in the lives of others (e.g., interference is permissible because "might makes right," or because "it is God's will," or because "we are morally superior"). These tenets are not universal truths. Rather, they are elements of particular religious, philosophical, or cultural belief systems, and they stand true only if one subscribes to such belief systems. Region-specific, culture-specific, and religion-specific truths may justify certain actions between individuals who mutually consent to such truths, but these limited truths cannot be imposed on all human beings. One cannot reasonably claim, therefore, that something like the liberty to exercise moral interference is a fundamental human right. If a right is to be established as fundamentally human, it cannot rely on principles that are true only for certain people.

4. If we were to restrict an individual from exercising the liberty in question, we would interfere with some essential aspect of that individual's humanity (e.g., one's body, thought, expression, movement, or associations).

The liberty to perform a particular act might reasonably be regarded as a fundamental human right if, in restricting someone from exercising that liberty, we would interfere with some essential aspect of his or her humanity. These essential aspects—an individual's body, thought, expression, movement, and associations—deserve extraordinary protection and respect. This claim is an axiom, but it does not appear to rely on any particular religious, philosophical, or cultural belief system. All human beings have essential interests in freedom from physical harm and compulsion, freedom of thought and conscience, free-

dom of expression, freedom of movement, and freedom of association. These interests protect the defining aspects of our humanity. If we cannot maintain the integrity and liberty of our bodies, thoughts, expressions, movements, and associations, then we lose that which is central to our nature. We become less than human. Our daily experience, individually and collectively, verifies that immense human suffering accompanies interference with any of the defining aspects of our humanity. With a principle of non-interference, parameters exist which allow human life to perpetuate in some meaningful way. Without such a principle, the human species would quickly expire, since there would be no balancing dynamic to protect the essential physical, psychological, and social integrity of individual human beings. Even cultures that value the community over the individual must recognize some meager principle of non-interference. Without it, the alleged community is nothing more than an assemblage of slaves or automatons. If fundamental human rights exist at all, one would expect a right to non-interference to be at the top of the list. This criterion rests on the axiom that non-interference is a critical and universal human interest.[1]

Minimally, non-interference with one's body means that one could live without being murdered, assaulted, raped, enslaved, physically tortured, forced to perform any action, or prevented from pursuing means of subsistence. Non-interference with one's thought means that one could live without being brainwashed, forced into a particular religious tradition, or subjected to psychological torture. Non-interference with one's expression means that one could live without being silenced, restricted in one's style of communication, or forced to act against one's conscience. Non-interference with one's movement means that one could enjoy freedom of movement throughout the world without being bodily constrained (e.g., by chains, straight-jacket, physical grip) and without being confined to a specific space (e.g., a prison cell, a house, a region, a country). Non-interference with one's associations means that one could live without being forced to participate in or abandon any particular relationship. If, in restricting a liberty, we were to interfere with an individual's life in any of the ways just listed, this

would indicate that the liberty might qualify as a fundamental human right.

For example, if we were to restrict someone from praying, we would interfere with her freedom of thought and expression. Because our restriction of the liberty to pray means that we would interfere with essential aspects of another's humanity, we can reasonably say that the liberty to pray might qualify as a fundamental human right. On the other hand, if we were to restrict someone from watching soap operas on television, it would be difficult to reasonably claim that such a restriction would interfere with some essential aspect of the viewer's humanity. Because our restriction of the liberty to watch soap operas does not appear to interfere with essential aspects of another's humanity, we could argue that this liberty, while perhaps universally permissible, does not warrant protective designation as a fundamental human right.

5. An individual's exercise of the liberty in question would not inherently interfere with some essential aspect of another's humanity.

The liberty to perform a particular act cannot reasonably be regarded as a fundamental human right if one's exercise of that liberty would necessarily interfere with another's body, thought, expression, movement, or associations. For example, exercising the liberty to murder inherently interferes with another's body—thus, the liberty to murder could not reasonably be regarded as a fundamental human right. The liberty to commit suicide, on the other hand, might qualify as a fundamental human right under this criterion. The liberty to engage in hate speech might also qualify, but the liberty to enslave another clearly would not.

6. If the liberty in question were a right, it would not impose on others a corresponding obligation that would interfere with some essential aspect of their humanity.

By definition, every right bears some corresponding obligation. (For example, if one has a right to live, then others have

an obligation not to murder that person. If one has a right to engage in public protest, then others have an obligation to tolerate and not interfere with that protest.) The liberty to perform a particular act cannot reasonably be regarded as a fundamental human right if its corresponding obligation would amount to interference with some essential aspect of another's humanity. For example, I could not reasonably claim a fundamental human right to receive comprehensive medical care whenever I need it because such a right would compel certain others to give me their attention, labor, and resources when I require and to the extent that I require. Such an obligation clearly would interfere with their essential human interest to be free from compulsion. Likewise, I could not reasonably claim a fundamental human right to be a citizen of at least one state because such a right would oblige certain others to associate with me regardless of their essential human interest in freedom of association. On the other hand, the liberty to live my life without being enslaved might qualify as a fundamental human right because it only obliges others to never enslave me. Such an obligation clearly would not interfere with some essential and defining aspect of another's humanity. Similarly, the liberty to worship my own god might qualify as a fundamental human right because such a right would only oblige others not to impose their religious beliefs on me. Such an obligation might frustrate the ardent proselytizer, but it would not interfere with some essential aspect of his or anyone else's humanity.

7. The liberty in question would not inherently conflict with an existing right which is reasonably regarded as more significant.

The liberty to perform a particular act cannot reasonably be regarded as a fundamental human right if it inherently conflicts with an existing right which is reasonably regarded as more significant. This criterion presupposes that we have some acceptable means to determine the relative significance of specific rights and liberties. Unfortunately, there is no consensus on which means should be used. Widespread opinion is often cited as a standard, but magnitude of support is not a function of the reasonableness of an assessment. Likewise, religious, political,

and philosophical authorities are often cited, but the universal applicability of any particular authority may be invalidated by those who do not submit to that authority. The use of a mutually agreed upon arbiter, who weighs the merits of specific competing claims, may provide an acceptable standard, but only on a case-by-case basis. Even though a reasonable standard for assessing the relative significance of specific rights and liberties is not established, the practice of weighing such items is commonplace and not disagreeable—especially on a case-by-case basis.[2]

For example, one might suggest that the liberty to report in the media intimate details of a celebrity's life is a fundamental human right. But, if we could show that this liberty inherently conflicted with an existing right to privacy, and that the right to privacy is reasonably regarded as more significant than the liberty in question, then the claim that this liberty bears status as a fundamental human right would not be persuasive. However, if one were to suggest that the liberty to compose poetry is a fundamental human right, the claim might be persuasive because this liberty does not appear to inherently conflict with any existing right.

8. The liberty in question would not inherently conflict with a universal moral obligation.

The liberty to perform a particular act cannot reasonably be regarded as a fundamental human right if it inherently conflicts with some universal moral obligation, i.e., some moral standard to which every human being is obliged to adhere. This criterion presupposes that universal moral obligations can exist in some meaningful way. However, in order to justify the existence of such an obligation, one cannot simply allege the existence of some ontological standard cast in the elusive legislation of divine or natural law. Contemporary principles of reason do not permit such an unverifiable claim. One could cite a persuasive moral authority, but the applicability of any such authority extends only over those who freely submit to that authority. To suggest otherwise is to condone oppression. Similarly, one could justify the existence of a universal moral obligation simply by noting that a certain people or society collectively recognizes a

particular moral norm. But few would agree that a community is at liberty to impose its particular standards on everyone else in the world. Even if some moral norm enjoyed widespread recognition, such a norm could not be converted into a universal obligation without imposing unwarrantable restrictions on those individuals who genuinely did not view that norm as valid.

Ultimately, a universal moral obligation can be justified only if it is recognized unanimously by every human being in the world. Of course, in light of the diverse cultural, educational, and religious milieus that span the world, the likelihood of achieving global consensus regarding the existence of some specific moral norm is improbable. Even the most fundamental moral norms, such as prohibitions against murder and theft, can only claim widespread recognition at best. In sum, any claim regarding the existence of a universal moral obligation is doubtful. Nonetheless, the existence of universal moral obligations is theoretically possible and, since claims about such obligations are commonplace, this criterion may stand.

While strict conditions on this criterion may appear desirable to those who are skeptical of moral standards, such a rational approach comes at a price. By requiring that a moral obligation be universally recognized, certain liberties will meet this criterion despite widespread sentiment to the contrary. For example, if it cannot be proved that human beings have a universal moral obligation to intercede when one person is treating another cruelly, then the liberty to ignore human cruelty will meet this standard for consideration as a fundamental human right. For better or worse, if one wants to disqualify a liberty from consideration as a fundamental human right on the basis of some competing universal moral obligation, one bears the all-but-impossible burden of proving that the alleged obligation is universally recognized.

9. If the liberty in question were a right, it would not inherently entitle one to more than one's proportionate share of social power, political power, economic power, or available resources.

The liberty to perform a particular act cannot reasonably be regarded as a fundamental human right if it would inherently

entitle one to more than one's proportionate share of the world's power or resources. This standard emerges from two points. First, it is a concrete application of our first criterion. If every human being cannot, at least in theory, exercise the liberty in question, then that liberty cannot be classified as a right which is fundamentally human. By extension, since it is logically impossible for every human being to be entitled to more than one's proportionate share of the world's power or resources, one cannot have a fundamental human right to such entitlement. The math is simple. If only ten people lived in the world, it would not be possible for each of those ten people to be inherently entitled to more than one-tenth of any available resource. Such entitlement would require the impossible existence of more than ten tenths. Since every human being cannot be entitled to more than his or her proportionate share, no human being can claim a fundamental human right to such entitlement. The second source of this criterion is that human beings appear to have an essential interest in fairness.[3] To the extent that this axiom does not rely on some particular religious, philosophical, or cultural belief system, we can reasonably claim that disproportionate entitlement would disqualify a liberty from consideration as a fundamental human right.

Several liberties typically classified as fundamental rights in Western culture fail to meet this criterion. In light of this standard, one could not reasonably claim a right to possess more than one's proportionate share of the world's economic wealth, a right to consume more than one's proportionate share of the world's food supply, a right to exercise control over more than one's proportionate share of the world's land, or a right to rule over more than one's proportionate share of the world's people (i.e., a right to rule over any one other than one's self).

We may note that this criterion does not require that inequalities be abolished in society. Some cultures permit and even encourage certain inequalities for purposes such as adherence to religious beliefs or pursuit of "the common good." Such practices could be consistent with this criterion as long as (a) those who are disadvantaged freely agree to accept their status, and (b) those who are disadvantaged are fully aware that their status is not permanent or inherent, but merely temporary and contingent

upon their continued consent. Disproportionate entitlement may exist by consent, but not by right.

In sum, these nine criteria mark the broad parameters of fundamental human rights. If any one of these criteria seems too exclusive, it could be moderated or deleted without detriment to the current argument: less stringent criteria would only simplify the task of classifying the liberty to be stateless as a fundamental human right. Of course, suggestions for more stringent or different criteria would need to be assessed on a case-by-case basis. In light of these nine criteria, I suggest that Premise 1—the claim that specific criteria exist by which we can determine whether or not the liberty to perform a certain act can reasonably be regarded as a fundamental human right—is justified.

Defense of Premise 2

Premise 2 states that if the liberty to perform a certain act meets the aforementioned criteria, then that liberty can reasonably be regarded as a fundamental human right. In other words, if a particular liberty satisfies all the conditions for being reasonably regarded as a fundamental human right, then that liberty can indeed be regarded as a fundamental human right. This tautologous statement requires no justification.

Defense of Premise 3

Premise 3 asserts that the liberty to be stateless meets the criteria which permit us to reasonably regard a liberty as a fundamental human right. This claim is significant and requires inspection. Above, I outlined the nine criteria which will serve as our standard. Here, I will apply each of these criteria to the liberty to be stateless.

1. It must be logically possible that the liberty in question could be universally exercised.

There is no logical impediment that would prevent every human being in the world from exercising the liberty to be

stateless. Although some claim that such a circumstance would be undesirable, universal exercise of this liberty is a logical possibility. In other words, no human being would be disqualified from exercising this liberty simply because one or more other human beings were exercising it. Thus, the liberty to be stateless meets this criterion for consideration as a fundamental human right.

2. One qualifies to exercise the liberty in question solely by virtue of one's humanity.

Every human being qualifies to exercise the liberty to be stateless solely because he or she is a human being and without regard to any additional qualifications. The liberty to be stateless is not earned, deserved, or attained. As we shall see, it simply requires an act of volition. One cannot legitimately be disqualified from choosing to be stateless on grounds such as gender, skin color, place of birth, time of birth, sexual preference, creed, religion, state affiliation, economic status, political beliefs, social status, or any circumstance devised by or dependent on other human beings. Thus, the liberty to be stateless meets this criterion for consideration as a fundamental human right.

3. The rationale used to establish the liberty in question as a fundamental human right does not require one to subscribe to a particular religious, philosophical, or cultural belief system.

In order to justify the liberty to be stateless as a fundamental human right, it does not appear that one must rely on a principle, doctrine, or view of reality which is particular to some religious, philosophical, or cultural belief system. The essential principle which undergirds the fundamental human right to be stateless is the principle of non-interference: every human being deserves to be free of interference with the essential aspects of one's humanity, namely, one's body, thoughts, expressions, movements and, notably, one's associations. If this principle were a construct of some particular belief system and, thus, not universally true and applicable, then the liberty to be stateless might not qualify as a fundamental human right. However, if, as

I have described above, non-interference is a universal human interest, then the liberty to be stateless qualifies as a fundamental human right under this criterion.

4. If we were to restrict an individual from exercising the liberty in question, we would interfere with some essential aspect of that individual's humanity (e.g., one's body, thought, expression, movement, or associations).

When a state restricts an individual from exercising the liberty to be stateless, it, in effect, imposes citizenship status on that individual. An individual who is forced to participate in a citizen-state relationship suffers interference in all essential aspects of her humanity. States commonly compel citizens to provide civilian or military labor. But, to require such labor of one who does not consent to being a citizen is to interfere with that person's liberty to be free from compulsion. States commonly punish citizens who fail to comply with laws—arrest and imprisonment are widespread, and torture and execution are sanctioned by many governments. But, to impose such punishment on one who does not consent to being a citizen is to interfere with that person's liberty to be free from physical harm inflicted by others. States commonly indoctrinate citizens and demand allegiance. But, to impose such practices on one who does not consent to being a citizen is to interfere with that person's freedom of thought. States commonly restrict political dissent, sexual and reproductive practices, religious practices, and media operations. But, to impose such restrictions on one who does not consent to being a citizen is to interfere with that person's freedom of expression. States commonly restrict citizen passage across international borders and they occasionally restrict domestic movement as well. But, to impose such restrictions on one who does not consent to being a citizen is to interfere with that person's freedom of movement.

Most significantly, the imposition of citizenship status interferes with an individual's freedom of association. One's freedom to determine which individuals and communities one would like to ally with is an essential characteristic of being human. It is a necessary element for determining the arc of one's

life and the manner in which one will pursue happiness. One cannot be compelled to marry a particular individual, to join a particular religion, or to become a member of a particular association, without one's integrity being violated. If one is compelled to be a member of a state, the violation is equally unacceptable. As the United Nations *Universal Declaration of Human Rights* asserts, "No one may be compelled to belong to an association."[4] Presumably, this dictum includes those associations we call states. Furthermore, the freedom to associate naturally entails the freedom to refrain from association and the freedom to opt out of association, both of which are integral to the liberty to be stateless. The imposition of citizenship violates one's freedom of association in all these forms.

The individual who is denied the liberty to be stateless is effectively denied the freedom to live without compulsion, the freedom to act according to one's conscience, and the freedom of self-determination. In response to this broad degree of interference, McDougal, Lasswell, and Chen suggest: "In keeping with the overriding policy of honoring freedom of choice, there would appear no reason why an individual should not be allowed to render himself stateless, if the decision is freely made, with full appreciation of the resultant consequences."[5] In sum, if we were to restrict an individual from exercising the liberty to be stateless, we would interfere with some, if not all, essential aspects of that individual's humanity. Thus, the liberty to be stateless meets this criterion for consideration as a fundamental human right.

5. An individual's exercise of the liberty in question would not inherently interfere with some essential aspect of another's humanity.

If any given individual were to exercise the liberty to be stateless, it does not appear that such an action would inherently interfere with the essential aspects of another's humanity. One's choice to be stateless would not, by nature, cause another human being to be physically harmed, brainwashed, indoctrinated, silenced, forced to perform certain actions, restricted in her means of communication or expression, restricted from living according

to her conscience, restricted from moving, forced to move, restricted from associating, forced to associate, restrained, imprisoned, or otherwise confined. If an individual chose to become or remain stateless, there is no reason to expect that this action would interfere with anyone else's body, thought, expression, movement, or associations. Thus, the liberty to be stateless meets this criterion for consideration as a fundamental human right.

6. If the liberty in question were a right, it would not impose on others a corresponding obligation that would interfere with some essential aspect of their humanity.

If the liberty to be stateless were a right, then everyone would necessarily have a corresponding obligation to tolerate and not interfere with an individual's exercise of that right. Specifically, if the liberty to be stateless were a right, all human beings would be obliged to refrain from restricting any individual's act of expatriation, to refrain from imposing citizenship status on any individual, and to refrain from imposing on any stateless individual those restrictions and requirements that can only justifiably be imposed on citizens. These corresponding obligations may appear burdensome to those who are invested in the power and growth of the state, but such obligations do not interfere with any individual's body, thought, expression, movement, or associations. If one's right to be stateless meant that another person would have, for example, some corresponding obligation to join a particular association, to move to a new land, or to abandon one's citizenship, then the status of this right would be called into question. But, the corresponding obligation that a right to be stateless ultimately entails is the obligation not to interfere with an individual's freedom of association, and this obligation cannot reasonably be regarded as interference in some essential aspect of one's humanity. Thus, the liberty to be stateless meets this criterion for consideration as a fundamental human right.

7. The liberty in question would not inherently conflict with an existing right which is reasonably regarded as more significant.

This criterion is the foundation for three of the primary arguments against the right to be stateless. These arguments allege that certain rights exist (namely, the right to social order, the right to territorial sovereignty, and the right to establish and operate states), that the liberty to be stateless conflicts with these alleged rights, and that these alleged rights are reasonably regarded as more significant than the liberty to be stateless. These arguments are analyzed in Chapter 4, and each argument fails to be persuasive on one or more of the following counts: (1) the alleged right does not qualify to be classified as a right (or it qualifies only under such limited circumstances as to render the related argument impotent); (2) the liberty to be stateless does not conflict with the alleged right; and (3) the alleged right cannot convincingly be shown to be more significant than the liberty to be stateless, especially in light of the liberty's undergirding principles of self-determination, freedom from compulsion, and freedom of association. Whereas the liberty to be stateless does not appear to be outweighed by any competing right, it meets this criterion for consideration as a fundamental human right.

8. The liberty in question would not inherently conflict with a universal moral obligation.

This criterion is the foundation for three of the primary arguments against the right to be stateless. These arguments allege that certain universal moral obligations exist (namely, the obligations of individuals to submit to the authority of the state, to support their respective communities, and to avoid self-threatening situations), and that the liberty to be stateless conflicts with these alleged obligations. These arguments are analyzed in Chapter 4, and each argument fails to be persuasive on one or both of the following counts: (a) the alleged obligation cannot reasonably be shown to exist, and (b) the liberty to be stateless does not inherently conflict with the alleged obligation. Whereas the liberty to be stateless does not appear to be quashed by any universal moral obligation, it meets this criterion for consideration as a fundamental human right.

9. If the liberty in question were a right, it would not inherently entitle one to more than one's proportionate share of social power, political power, economic power, or available resources.

If the liberty to be stateless were a right, every human being would be entitled to their full and proportionate share of political power—i.e., the exclusive power to represent oneself, to act in one's own behalf, and, ultimately, to rule over oneself. A right to be stateless would not create disproportionate entitlement, rather it would protect the possibility of proportionate entitlement. One who chooses to be stateless does not somehow deserve more than her share of the world's power and resources; she simply refrains from relinquishing to any state her own political power. A right to be stateless might frustrate those who desire to secure more than their share of political power, but such a right would not create an unfair distribution of power or resources. In the absence of any disproportionate entitlement, the liberty to be stateless meets this criterion for consideration as a fundamental human right.

Now that we have examined the criteria which help us determine whether or not a liberty can reasonably be regarded as a fundamental human right, and we have applied these criteria to the liberty to be stateless with satisfactory results, we can fairly justify Premise 3: the liberty to be stateless meets all the criteria for consideration as a fundamental human right.

Analysis of Conclusion

The conclusion to this argument—that the liberty to be stateless can reasonably be regarded as a fundamental human right—is now supported. While this argument might not be exhaustive, it is weighty. Even though the criteria for defining fundamental human rights remain fluid and are not formulated into a generally recognized body, we can distill principles, such as those outlined in Premise 1, which offer guidance in assessing the status of any liberty. Whereas the liberty to be stateless appears to meet each of these criteria, our conclusion is justified. Unless the liberty to be stateless can be shown to meaningfully

conflict with one or more of the stated criteria or with some additional criterion which warrants inclusion on this list, we can reasonably regard the liberty to be stateless as a fundamental human right.

C. The Consent Argument

The second argument in defense of the right to be stateless asserts that the consensual nature of citizenship necessarily permits individuals the freedom to be stateless. The line of reasoning flows as follows:

> *Premise 1*—If citizenship is a relationship contingent upon the consent of the individual, then the individual necessarily retains the liberty to be stateless.
> *Premise 2*—Citizenship is a relationship contingent upon the consent of the individual.
> *Conclusion*—The individual necessarily retains the liberty to be stateless.

Defense of Premise 1

Premise 1 verges on tautology and, thus, is unlikely to meet any serious objection. Nonetheless, a brief explanation is in order.

Consent means to agree voluntarily. Consent is predicated upon one's free will, feelings, intention, and volition. It is an action reserved solely to the jurisdiction of the individual. One cannot be compelled or obliged to consent. (One may be forced to perform actions that feign consent—e.g., a torture victim beaten into delirium or a prisoner given psychoactive drugs may be forced to state that she agrees with the principles of her captors. However, because one's free will, feelings, intention, and volition do not undergird such actions, consent does not in fact exist.) Due to the strictly voluntary nature of consent, the individual always and necessarily has the liberty to either grant

or withhold her consent in every instance where consent could be granted.

Since the definition of consent dictates that the individual always and necessarily has the liberty to either grant or withhold her consent in every instance where consent could be granted, then, by simple application of this principle, we can claim that the individual always and necessarily has the liberty to withhold her consent in every instance where a state seeks her consent for the purpose of establishing or perpetuating that individual's citizenship. This fact is inconsequential if citizenship can somehow exist without the consent of the individual. However, if the premise is true that citizenship is a relationship contingent upon the consent of the individual, then the fact that an individual has the absolute liberty to withhold her consent to citizenship in every instance would mean that the individual retains the absolute liberty to prevent herself from being party to any citizen-state relationship. In other words, the individual necessarily would retain the liberty to be stateless.

In sum, this first premise asserts that: if citizenship requires the individual's consent, but the individual is always free to withhold her consent, then the individual is always free to be stateless. Few would deny the strictly voluntary nature of consent, and, likewise, the simple logic of this premise. However, the antecedent—that citizenship is indeed a relationship contingent upon the consent of the individual—is a subject of great debate.

Defense of Premise 2

Premise 2 asserts that citizenship is a relationship contingent upon the consent of the individual. This assertion is simultaneously assumed and denied. It is assumed because the fundamental human rights to self-determination and freedom of association protect an individual from coerced membership in any association. It is denied because the social, economic, and political advantages that many people enjoy can be maintained only by obedience of the masses to the state, and if citizenship were admittedly contingent upon the consent of the individual, such obedience might quickly wither away. Although common

sense suggests that citizenship cannot exist without the consent of the individual, one must concede with Hume:

> Were you to preach, in most parts of the world, that political connexions are founded altogether on voluntary consent or a mutual promise, the magistrate would soon imprison you, as seditious, for loosening the ties of obedience; if your friends did not before shut you up as delirious, for advancing such absurdities.[6]

The role consent plays in the citizen-state relationship is a matter of ongoing dispute.[7] On one end of the spectrum, it is argued that individual consent *cannot* be a prerequisite to the establishment of a citizen-state relationship. This claim presumes that if individuals were free to decline or opt out of citizen-state relationships at will, then international relations would fall into disarray, domestic bureaucracies would be disrupted, individuals would unwittingly subject themselves to threatening situations, reciprocal responsibilities between communities and individuals would be abandoned, and states would be unable to maintain the desired scope of their rule. As we shall see, this perspective cannot be sustained. On the other end of the spectrum, it is argued that individual consent *must be* a prerequisite to the establishment of a citizen-state relationship. This claim is supported by the principle that individual consent, whether tacit or express, is the linchpin upon which all state power and authority rest. In other words, political institutions and relationships are impotent without the willful participation and voluntary support of individuals.[8] These two perspectives frame the debate over the role of consent in the citizen-state relationship.

The premise that citizenship is contingent upon the consent of the individual is justified by five specific reasons. First, citizenship cannot reasonably be regarded as innate. Second, citizenship cannot reasonably be regarded as a fundamental human right. Third, citizenship cannot reasonably be regarded as an obligation. Fourth, citizenship cannot reasonably be imposed. Fifth, citizenship without mutual consent is self-defeating. These five reasons, by process of elimination and by show of absurdity,

necessitate that citizenship be contingent upon the mutual consent of both the state and, notably, the individual. In order to justify this premise, I will substantiate each of these five assertions.

1. Citizenship cannot reasonably be regarded as innate.

The claim that citizenship is innate implies that citizenship is strictly a function of the inevitable circumstances of one's birth. In other words, at the moment an individual exits her mother's womb she automatically and involuntarily becomes a citizen of a certain state. Local custom might rely on one's lineage (via a *jus sanguinis* principle) or on one's place of birth (via a *jus soli* principle) to identify the particular state to which one is related, but the very existence of citizenship status allegedly relies only on the fact that one is born. In this view, citizenship is not imposed or obliged, it is simply a naturally occurring characteristic. Just as one's astrological sign, family ancestry, geographical origin, and cultural lineage all derive from the circumstances surrounding one's birth, so one's citizenship is alleged to be a similar fact of life. This is the view that citizenship is innate.

The claim that citizenship is innate is faulty on two counts. First, observation and reason both indicate that the citizen-state relationship is not a characteristic associated with birth. At the moment of birth, the only human relationships we can strictly regard as existent are the biological ones: nature dictates that we must be sons, daughters, brothers, sisters, grandchildren, etc. Of course, every human being is born into some social milieu and, thus, is likely to relate to some sort of extended family, neighborhood, or other community. However, we cannot fairly regard these social relationships as innate because they are not inherently and physiologically connected to the fact of birth. An adopted, abandoned, or kidnapped newborn, for instance, always retains innate characteristics (such as her DNA code), but she does not carry along with her those social relationships she would have had if she remained with her biological parents.

Moreover, social relationships that inherently require some element of volition on the part of the individual clearly

cannot be regarded as innate. Relationships with friends, spouses, businesses, organizations, and associations only arise as we proceed through life. Such social connections are neither present at birth nor dictated by some genetic map. Rather, they are relationships which must be developed over time and with intention. In particular, the relationship an individual has with a state does not lend itself to being classified as an innate characteristic. States are temporary associations of individuals: they are relatively recent institutions in the span of human history, they have not always existed, they rise and fall for various reasons, they regularly change their character, and their future is not assured. To assert that the biological fact of birth necessarily bears with it membership in some temporal political association is absurd. If any sociopolitical status is innate, it is not citizenship but statelessness. In our natural condition, we are not members of political associations—we are merely inhabitants of the earth. As Locke argued, "It is plain, then, by the practice of governments themselves as well as by the law of right reason, that a child is born a subject of no country or government."[9]

The second fault with the claim that citizenship is innate is that it obliges one to abandon certain characteristics of the status that are typically regarded as essential. Specifically, one must abandon the notion that citizenship requires some degree of individual support for the state, if not some degree of commitment, or even allegiance. Even those who do not concede that citizenship is a relationship contingent upon the consent of the individual will typically acknowledge that citizenship requires at least some modicum of allegiance or support on the part of the individual. To assert otherwise is to define citizenship merely as an indicator of one's lineage or one's birthplace. The establishment of a citizen-state relationship would be no mutual agreement or intentional political alliance—it would merely be "an unplanned event or an accident of birth."[10] The value of citizenship would be reduced to that of a mole or a birthmark. The concept of citizenship warrants more substance than this line of reasoning supplies.

Some will argue that citizenship is indeed a circumstance of birth and that this circumstance is all that is required to define where one's allegiance and political commitment should

go. Thus, it is alleged, one who is born within the territory claimed by Mexico is obliged to offer her allegiance and support to the state of Mexico. Or, one who is born to parents who are Russian citizens is obliged to offer her allegiance and support to the state of Russia. This argument bears no weight in civilized society. To dictate where an individual's political allegiance and support must go, especially on the grounds of such random criteria as lineage or birthplace, is to unabashedly deny individual liberty, self-determination, and freedom of association.

In sum, observation and reason indicate that citizenship is not a characteristic associated with birth. If any sociopolitical status is innate, it is statelessness not citizenship. Moreover, the claim that citizenship is innate stands in direct opposition to the generally accepted view that this status requires at least some modicum of individual commitment to the state. In light of these facts, the assertion that citizenship is innate is not persuasive.

2. Citizenship cannot reasonably be regarded as a fundamental human right.

Many people argue that citizenship is so critical to an individual's existence that possession of this status must be a fundamental human right. Specifically, they argue that every human being has a fundamental right to participate in a citizen-state relationship with at least one state in this world. This sentiment is epitomized by Chief Justice Warren's declaration that, "Citizenship *is* man's basic right for it is nothing less than the right to have rights."[11] Warren's rhetorical flourish is, no doubt, overstated: presumably he would not have denied that every human being possesses certain fundamental rights which exist regardless of whether or not one participates in a citizen-state relationship. Nonetheless, Warren's primary assertion, that citizenship is a basic human right, is widely accepted. Even the United Nations *Universal Declaration of Human Rights* plainly declares, "Everyone has the right to a nationality."[12]

At best, citizenship lends itself to being classified as a legal right. An individual can claim a legal right to citizenship if at least one state obligates itself by law to participate in a citizen-state relationship with that individual. For example, the United

States government obligates itself to participate in a citizen-state relationship with any individual who is born to parents who are US citizens. Thus, we can say that such individuals have a legal right to be US citizens. A legal right, of course, is not necessarily a natural right. Even though states offer certain categories of individuals the legal right to citizenship, we cannot logically deduce from this fact that there is some fundamental human right to citizenship.

When we examine citizenship in the broader context of fundamental human rights, it is reasonable to claim that every human being has a fundamental right to participate in a citizen-state relationship whenever he or she has the opportunity to do so. In other words, whenever certain people choose to associate as a state, if these people consent to some individual joining their association as a fellow citizen, then that individual is at liberty to become a citizen. Since freedom of association is a fundamental human right, one has the right to associate as a citizen of a state whenever one is presented with the opportunity.

The difficulty with regarding citizenship as a fundamental human right arises when one of the aforementioned claims is unduly expanded. Although it is reasonable to assert that citizenship exists as a legal right under specific circumstances, or that one has a fundamental human right to associate as a citizen of a state whenever one is offered the opportunity to do so, it is not justifiable to expand either of these claims into the more substantial claim that one has a fundamental human right to be a citizen. This broader assertion bears two significant problems.

First, a right to citizenship cannot be regarded as fundamentally human because it would require the existence of uncertain historical circumstances: for every human being there would need to exist at least one state with which he or she could associate as a citizen. This means that one could not claim a right to be a citizen simply on the grounds that one is a human being. Such a claim bears the additional necessary condition that at least one state exists in the time and place in which one lives. Throughout the greater part of human history, states and citizenship did not exist at all, or they did not exist in any form similar to that which we currently know. Even during this current era in

which states happen to exist, they have not always been established in every populated land on the planet. As we look ahead, it is not unrealistic to consider that states and citizenship might someday diminish in scope or might even cease to exist.

Because states have not existed during much of human history, because they have not always existed in places where human beings have lived, and because they are not necessarily going to exist for the duration of human history, we cannot reasonably claim that every human being has a fundamental human right to participate in a citizen-state relationship. If, for whatever reason, an individual lives in a time or place in which a state capable of participating in a citizen-state relationship does not exist, then the notion of citizenship as a fundamental right disintegrates. (Note, in comparison, that the liberty to be stateless does not rely on the existence of any conditional circumstance such as the existence of another party. Any human being can exercise the liberty to be stateless at any time in human history and at any place in the human venue.) In sum, states are conditional circumstances on the canvas of human history. Consequently, human beings cannot have any certain or ongoing expectation that they can participate in a citizen-state relationship whenever they so desire. Thus, the claim that citizenship is a fundamental human right is not tenable.

The second problem with claiming that citizenship is a fundamental human right is that such a right would create several unacceptable corresponding obligations. For example, since citizenship cannot exist without states, if one had a right to citizenship, then certain others would be obliged to associate in order to form states. In other words, if every human being had the right to participate in a citizen-state relationship with at least one state, then at least some human beings would be obliged to associate for the purpose of maintaining a state to which individuals could relate as citizens. A right to citizenship, therefore, would oblige certain others to form states, even if they had no desire to do so. This corresponding obligation directly conflicts with the principle of freedom of association and, thus, it is unacceptable.

Similarly, if a fundamental right to citizenship existed, then at least one state (and, thus, certain individuals) would be obliged to associate with people who claim this right. In other

words, if every human being had the right to participate in a citizen-state relationship with at least one state, then certain human beings (those who have associated to form states) would be obliged to associate with other human beings (those who claim the alleged right to citizenship) regardless of the interests of the associators or the qualifications of the prospective citizens. To require any group of individuals who have formed a state to accept another individual as one of its citizens is a blatant breech of that group's legitimate sovereignty and a violation of the right of that community of individuals to associate freely with whomever it pleases. If a certain state were obliged to protect and serve some individual regardless of the desires of the people who constitute that state, then these people would be compelled to associate with others against their will. This corresponding obligation violates the principle of freedom of association and, thus, it is unacceptable.

If a fundamental right to citizenship existed, the corresponding obligation likely to be most unacceptable, in light of contemporary political sensibilities, would be the state's obligation to maintain a citizen-state relationship with an individual even when that individual clearly fails to meet reasonable minimum standards which define citizenship. In other words, if every human being had a right to participate in a citizen-state relationship with at least one state, then any state that desired to denationalize a particular citizen for failing to meet reasonable minimum standards would not be able to do so unless some other state were willing to enter into a relationship with that spurned individual. If no other state agreed to accept this individual as one of its citizens, then the current state would be obliged to maintain its relationship with this so-called citizen because this individual allegedly has a fundamental right to citizenship.

A clear example of this absurd scenario exists in the United States. The US government, for all intents and purposes, maintains that citizenship is a fundamental human right. Warren's opinion that "citizenship is man's basic right" is reflected in statutory and case law which strictly limit the circumstances under which the US government can denationalize a citizen. Specifically, US law requires that the government cannot dena-

tionalize one of its citizens unless it can prove that the citizen has performed one of several statutory expatriating acts both voluntarily and with the intention of relinquishing US citizenship.[13] If any of these conditions cannot be proved, the government is obliged to continue recognizing the individual as one of its citizens. The acts (in broad summary) are: acquiring citizenship in a foreign state; taking an oath of allegiance to a foreign state; holding a military position in a foreign state; holding certain government positions in a foreign state; formally renouncing US citizenship in a foreign state before a US diplomatic officer; formally renouncing US citizenship in the United States when the US is at war; and being convicted of a treasonous act against the US government.[14]

In addition to these specific limits on denationalization, the US Supreme Court further holds that in such cases "the facts and the law should be construed as far as is reasonably possible in favor of the citizen"[15] and that "evidentiary ambiguities are not to be resolved against the citizen."[16] In sum, because the US government believes that citizenship is a fundamental human right, it has strictly limited the circumstances under which it will consider denationalization of a citizen. Notably, by predicating denationalization on a citizen's voluntary action and clear intention of relinquishing citizenship, the US government effectively maintains that it cannot denationalize a citizen without his or her consent. Alexander Aleinikoff suggests, "The Supreme Court has all but eliminated the power of Congress to terminate U.S. citizenship without the consent of the citizen."[17]

Because the US government holds this extreme view, it not only forgoes elements of self-determination and freedom of association, but it also places itself in several foolish predicaments. I will digress briefly to consider three dilemmas which arise from this view that citizenship is a fundamental right.

The first and obvious predicament the US government faces is that it cannot denationalize individuals who plainly fail to meet reasonable minimum standards for citizenship. Consider the many "citizens" who do not pay taxes, do not vote, do not perform jury duty, do not support the principles of the Constitution, do not obey the laws made by their official representatives, do not pledge allegiance to the state, or do not support the mili-

tary endeavors of the state. Some of these individuals refuse allegiance and support because they categorically oppose the business of the state. Others refuse these things because they are apathetic. Many try to limit or avoid these obligations simply as a matter of self-interest. Despite the fact that these people offer little or no allegiance and support to the state, the US has obligated itself to retain them all as citizens. Only in the rare case where one of these individuals happens to voluntarily commit one of the statutory expatriating acts with the intent to relinquish citizenship is the government then free to denationalize her. In short, the US government grants citizenship status to many individuals who, by any reasonable standard, should not be regarded as citizens.

This predicament is exacerbated by the fact that the US government simultaneously imposes stringent standards of allegiance on aliens who desire to become citizens while permitting existing citizens to be free from such standards. For example, US law requires any alien who wishes to attain US citizenship to prove that she meets a variety of minimum standards, including that she is "attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States."[18] Also, US law prohibits naturalization of any alien who subscribes to an anarchist position. Specifically, "no person shall hereafter be naturalized as a citizen of the United States . . . who advocates or teaches, or who is a member of or affiliated with any organization that advocates or teaches, opposition to all organized government."[19] This includes writing, printing, publishing, distributing, and displaying any materials that advocate or teach opposition to all organized government.[20] Moreover, US law requires any alien who desires to acquire US citizenship to take the following oath in a public ceremony as the final requirement for citizenship:

> I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against

> all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.[21]

One only needs to be slightly aware of popular culture to know that the United States is peopled with many citizens who are not favorably disposed to the good order and happiness of the United States, or who openly advocate and teach anarchist principles, or who, under no circumstances, would agree to take any oath such as the one specified above. Insofar as the US government maintains that such people—who fail to meet the minimum standards for acquiring US citizenship—still deserve to be regarded as full-fledged citizens, the government treats unfairly the many other citizens and aspiring citizens who strive to meet or exceed such standards. From a broad view, the US government appears foolish for failing to apply any consistent minimum standard of allegiance as a mark of US citizenship. This predicament is one result of the view that citizenship is a fundamental human right.

The second predicament the US government faces is that it cannot denationalize an individual who voluntarily performs a statutory expatriating act so long as the individual can persuasively show that she did not intend to relinquish her citizenship at the time she performed the act.[22] Authorities suggest that even if a citizen is convicted of committing treason against the US government, if the citizen can persuasively show that she had no intent to relinquish her citizenship, then the government would be obliged to continue regarding her as a full partner in a citizen-state relationship.[23] This predicament is moderated by the government's cautious willingness to assess intent not only on the basis of a citizen's statements but also on the basis of "a fair inference from proved conduct,"[24] particularly any conduct which suggests a citizen's abandonment of allegiance to the United

States.[25] Nonetheless, the general rule—that the US government cannot dissolve a citizen-state relationship with an individual who performs an expatriating act unless the individual intends to relinquish citizenship—is absurd. It unnecessarily restricts the state's legitimate freedom of association and it insults the many citizens who strive to meet or exceed minimum reasonable standards for citizenship.

The third predicament is that the US government cannot denationalize an individual who clearly intends to expatriate yet who is unwilling to perform one of the statutory expatriating acts. This scenario is most likely to occur in the case of an individual who desires to become a sovrien, since such a person may have no interest in performing any of the statutory expatriating acts. Most of these acts involve establishing an official relationship with some foreign state, and one who desires to become a sovrien would refuse to do this. Some of these acts involve making a formal declaration of expatriation under the restrictive terms and conditions imposed by the US government. However, any person who disagrees with such limits is unlikely to cooperate with these demands. For example, the average person would likely refuse to remove herself from her homeland, and an anarchist would likely refuse to comply with bureaucratic formalities. One of the statutory acts requires being convicted of treason or sedition. But, if an individual is committed to nonviolent forms of social change or sees no use in wielding brute force, she would not perform some convictable act of treason or sedition.

Because the US government persists in the view that citizenship is a fundamental human right, the list of statutory expatriating acts is surprisingly brief and uncomprehensive. One could refuse to perform all of these acts yet still have a strong and clear intent to relinquish one's citizenship. Curiously, in addition to such intent, one could even refuse to pay taxes, refuse to vote, refuse to perform jury duty, refuse to perform military service, disobey all types of laws, reject the principles of the constitution, and withhold all allegiance to the state—all the while maintaining full standing as a citizen of the United States. Unless this individual performs one of the statutory acts, the US government has obligated itself to continue recognizing her as a

full-fledged citizen. This absurd conflict, which arises directly from the state's persistence that citizenship is a right, only serves to make the state look foolish.

Our digression has examined three predicaments which arise from the US government's view that citizenship is a fundamental human right. These situations illustrate how a state, in maintaining such a view, can be foolish in regard to its own interests and unfair to others. Specifically, if a state believes that a fundamental human right to citizenship exists, then it is obliged to maintain citizen-state relationships with many so-called citizens who clearly fail to meet reasonable minimum standards for citizenship. When a state forgoes its legitimate prerogative to denationalize these individuals, it not only snubs the many current and potential citizens who strive to meet or exceed such standards, but it abandons its legitimate rights to self-determination and freedom of association.

In summary, there are two problems with the claim that citizenship is a fundamental human right. First, insofar as states are merely conditional circumstances in human history, their limited and uncertain presence prevents us from asserting that every human being will have the opportunity to be a citizen. If we cannot even claim that citizenship is a fundamental human opportunity, then we must deny the assertion that citizenship is a fundamental human right. Second, if citizenship were a right, it would bear several corresponding obligations which are unacceptable because they violate the principles of self-determination and freedom of association, specifically: (a) the obligation of certain individuals to associate for the purpose of establishing and operating states, regardless of their desire to do so; (b) the obligation of certain states to enter into citizen-state relationships with individuals, regardless of state interests; and (c) the obligation of states to maintain citizen-state relationships with individuals who clearly fail to meet minimum standards for citizenship. In light of these problems, citizenship cannot reasonably be regarded as a fundamental human right. Aleinikoff suggests, "Citizenship is not a *right* held *against* the state; it is a *relationship with* the state or, perhaps, a *relationship among* persons in the state."[26] As we move away from the view that citizenship is a right and toward the view that citizenship is a

relationship based on mutual consent, the problems outlined above disappear.

3. Citizenship cannot reasonably be regarded as an obligation.

Citizenship is often regarded as an obligation. Proponents of this position claim that every human being is obliged to participate in a citizen-state relationship with at least one state in this world. Allegedly, this obligation exists for one or more of the following reasons: (a) people have a right to social order, (b) states have a right to territorial sovereignty, (c) people have a right to establish and operate states, (d) everyone has a moral obligation to submit to state authority, (e) everyone has a moral obligation to support his or her community, and (f) everyone has a moral obligation to avoid self-threatening situations. These alleged rights and moral obligations are significant and deserve thorough consideration. They are in fact the primary arguments leveled against the right to be stateless. Chapter 4 provides a detailed analysis of these arguments, and it concludes that each of the alleged rights and obligations either does not exist or does not preclude a right to be stateless. In other words, these arguments fail to prove that human beings have any obligation to participate in citizen-state relationships.

The claim that citizenship is an obligation not only lacks sufficient justification but it bears an inherent structural flaw as well. If one claims that citizenship is a fundamental human obligation—not simply a legal or contractual obligation, but an obligation to which every human being is naturally subject—then one faces the same historical difficulties that arise when one attempts to justify citizenship as a fundamental human right. Specifically, if citizenship were a fundamental obligation, then at least one state would need to exist in the time and place in which every human being lives. However, insofar as states have not existed during much of human history, they have not always existed in places where human beings have lived, and they are not necessarily going to exist for the duration of human history, one cannot fairly claim that every human being has a fundamental obligation to participate in a citizen-state relationship. States are conditional circumstances in human history and, thus, it is im-

possible that every human being has an inherent obligation to lay her allegiance and support before such ephemeral institutions.

The assertion that citizenship is an obligation thrives on two dynamics which further impair the claim's plausibility. The first dynamic is a common but erroneous step in reasoning. Because the alleged right to citizenship is so widely accepted, highly valued, and vigorously defended, it only takes a dash of patriotic fervor for many people to unwittingly transform the alleged right into an obligation. Despite the unproved existence of a fundamental human right to citizenship, and despite the unjustifiable conversion of a right into an obligation, this dynamic sways many minds. A *right* to place one's allegiance and support where one desires is categorically distinct from an *obligation* to place one's allegiance and support where someone else demands. Nonetheless, this distinction is often obscured by nationalistic zeal.

The second dynamic is that states have a vested interest in perpetuating the notion that citizenship is an obligation. By nature, a state intends to wield sovereign rule over every individual within the territory it claims. This goal is most easily achieved if each individual within the territory is a citizen of the state and, thus, is one who owes allegiance to the state. From the state's point of view, if citizenship were merely an option for an individual (i.e., if the citizen-state relationship depended upon the consent of the individual), then the state would risk having many individuals opt to live beyond the scope of state rule. On the other hand, if citizenship were imposed upon the entire population, then the state would risk mass non-cooperation or revolt. If, however, individuals could somehow be persuaded to feel obliged to be citizens, then they would submit to state rule on their own free will. Although, the process of persuading people that they are obliged to be citizens is not likely the result of some strategic plan, the practice of implying obligation is commonplace. The most obvious form of persuasion is when government stakeholders—in the course of political rhetoric, legislation, and judicial opinion—suggest that an individual has some sort of fundamental or moral obligation to be a citizen. This is usually accomplished by advancing one or more of the six aforementioned arguments.

A stronger form of persuasion is when states create the illusion of a contractual relationship. When a state unilaterally assigns the title of "citizen" to an individual, and when it offers the individual at least token protection and services, the individual is apt to feel an obligation to reciprocate—even if she did not request, expect, or enter into an agreement to secure such status or privileges. In other words, the individual is likely to feel obliged to fulfill her end of a deal, even though a deal was never made. Since the state—via its legislative, administrative, and judicial arms—clearly demands cooperation with its restrictions and requirements, the individual is fully aware of what the state regards as an acceptable reciprocal response. If third parties (e.g., community, religious, and business leaders) are convinced of this illusion, even more weight bears on the individual to feel some reciprocal duty. Although this alleged contractual obligation is a myth, the state assumes that many individuals will be unwary. Unfortunately, many people in this situation do not reject the imposition of citizenship. Rather, they are persuaded that the imposed status is valid, and they feel obliged to obey the restrictions and requirements which the state sets forth. By subtly encouraging individuals to feel obliged to be citizens, states acquire the willing allegiance and support of people over whom they desire to wield sovereign rule.

As we shall see in Chapter 4, each of the primary arguments used to support the claim that citizenship is an obligation is faulty and unpersuasive. Moreover, insofar as citizenship is not an option universally available to human beings in all times and in all places, the claim that citizenship is a fundamental human obligation cannot be defended. Lastly, whereas patriotic fervor and vested state interests both unduly cause individuals to feel obliged to be citizens, one should be particularly wary of any claim that an obligation to citizenship exists. For these reasons, citizenship cannot reasonably be regarded as an obligation.

4. Citizenship cannot reasonably be imposed.

Citizenship is imposed when: (a) a state unilaterally insists that an individual bear status as one of its citizens, and the individual neither consents to such status nor regards such status

as valid; (b) the state offers certain protection and services to an individual, and the individual does not request or expect to receive such aid; (c) the state requires the individual to provide allegiance and support, and the individual does not consent to such demands; and (d) the state coerces or punishes the individual if she refuses to comply with state restrictions and requirements. The essential question is: are there any conditions under which a state can legitimately and fairly impose citizenship? In light of the above definition, if a state imposes citizenship on an individual, it necessarily violates the individual's fundamental human rights to self-determination, freedom from compulsion, and freedom of association. On this count alone, it appears that citizenship cannot reasonably be imposed. Nonetheless, many assert that there are acceptable grounds for imposing citizenship. This assertion rests on two distinct beliefs.

The first belief is that every person has an obligation to be a citizen, and if one refuses to meet that obligation voluntarily then citizenship may be imposed. However, as we have seen in the previous section, citizenship cannot reasonably be regarded as an obligation. This first belief, therefore, provides no basis for imposition.

The second belief is that if a state possesses one or more specific qualities, then it may legitimately and fairly impose citizenship on an individual. These qualities can be categorized as follows: (a) brute force, (b) majority rule, (c) divine right, (d) altruistic motives, (e) utilitarian motives, (f) inherent authority, and (g) collegial support. This section will examine each of these defenses for the imposition of citizenship.

(a) Brute force. Some suggest that state-imposed citizenship is justifiable whenever the individuals who rule a state can muster sufficient brute force to coerce non-citizens to comply with their restrictions and requirements. Brute force is the threat or use of physical power (e.g., restraint, confinement, injury, infliction of pain, execution, or the destruction or seizure of personal property). To the extent that a group wishes to acquire disproportionate wealth, exercise undue power over others, create a sense of self-importance, enjoy the fruits of others' labor, guard certain natural resources for their own exploitation, or protect

unscrupulous but profitable interests, the possibility of imposing citizenship by brute force is attractive.

A state's use of brute force to impose citizenship blatantly violates an individual's fundamental human rights to self-determination, freedom from coercion, and freedom of association. International law reflects this fact on a larger scale by asserting that it is not acceptable for a state to extend the scope of its rule by means of brute force. Ian Brownlie notes, "the rule has become established that the use or threat of force by states to settle disputes or otherwise to effect a territorial gain is illegal"[27] and "modern law prohibits conquest and regards a treaty of cession imposed by force as a nullity."[28] The United Nations *Charter* states plainly, "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state."[29] Unfortunately, current state practice blatantly disregards these principles. It has long been accepted that the people of a given state can legitimately impose their rule on others if those people can wield sufficient brute force to coerce the others to comply. One contemporary publicist asserts this position bluntly:

> [I]f one sovereign state is coveted by another, and that other is willing to put the matter to a physical test, it is upon relative physical strength that the outcome will depend. . . . Ultimately, therefore, a sovereign state's existence or continued existence will depend upon its ability to keep its enemies physically at bay. The ultimate point is rarely reached but, if it is, the legal claim to sovereignty will be as nothing in the absence of an ability to defend it by force of arms.[30]

Despite this popular view, the principle that a state should not impose its rule by means of brute force remains the professed ideal toward which civilized society aspires. The archaic notion that "might makes right" plainly violates fundamental human rights and, as a defense for the act of imposing citizenship, is without merit.

(b) Majority rule. Some suggest that state-imposed citizenship is justifiable whenever a majority of individuals who

constitute a state deem that such an imposition is desirable. Despite its touted virtues, the notion of "majority rule" is only a slightly qualified rendering of "might makes right." Specifically, compulsion of others by threat of brute force is alleged to be a legitimate practice whenever a majority sanctions it. If 49% of a populace decided to impose its will by threat of force on the remaining 51%, the imposition would be decried as tyranny. But if 51% of a populace decided to impose its will by threat of force on the remaining 49%, the imposition would be hailed as democracy in action. Regardless of what percentage of people are doing the imposing, those who are subject to the imposition recognize that their fundamental human rights are being violated. Even if a million people who constituted a state decided to impose citizenship status on one other person in their midst, the act of imposition would still rely on the notion of "might makes right" and it would still violate that individual's fundamental rights to self-determination, freedom from compulsion, and freedom of association. Thus, justification by majority rule is not reasonable.

Thomas Jefferson supported this view by arguing that the right to expatriate—the freedom to release oneself at any time from the bonds of citizenship—is not subject to the principle of majority rule. He declared: "I hold the right of expatriation to be inherent in every man by the laws of nature, and incapable of being rightfully taken from him even by the united will of every other person in the nation."[31]

(c) Divine right. Some suggest that state-imposed citizenship is justifiable because states are "divine institutions" and because political leaders wield power by "divine right." In other words, state authority over individuals is alleged to be a specific manifestation of some universal divine authority. The inherent unverifiability of this claim, especially in light of the rampant human rights violations which have accompanied its use throughout human history, renders this justification wholly unpersuasive.

(d) Altruistic motives. Some suggest that state-imposed citizenship is justifiable whenever the individuals who constitute a state have altruistic motives for making such an imposition. In other words, if a state acts solely to benefit the interests of the

individual, with no taint of state interest at stake, then, it is alleged, citizenship may legitimately be imposed. This altruistic defense takes shape in several forms. For example, it is commonly suggested that citizenship may be imposed if the state believes (1) the individual is not capable of making a well-reasoned choice regarding her sociopolitical associations, (2) the individual would not have essential needs met without the assistance of the state (e.g., food, shelter, medical care), or ironically, (3) the individual would not be able to adequately defend herself against human rights violations without the assistance of the state. Three reasons exist why such rationale do not justify state-imposed citizenship.

First, if an altruistic act is imposed on its beneficiary, the altruistic nature of the act must be called into question. In other words, we are rightly suspicious if a "good deed" must be forced upon someone. If, for whatever reason, an intended beneficiary does not desire an alleged benefit, why would a benefactor force the alleged benefit on the individual against her will? If the act is truly altruistic, whether or not the intended beneficiary accepts the alleged benefit should not be a matter of consequence for the benefactor and, thus, the benefactor should have no reason to impose the alleged benefit upon the individual. If the benefactor does impose the alleged benefit, one must logically assume some ulterior and non-altruistic motive. In context, if a state offers citizenship status to an individual solely because it desires to benefit the individual, the state should have no qualm if the individual rejects the offer. If the state does have a problem with such rejection and, thus, it imposes citizenship status, then we must conclude that the claim of an altruistic motive is only a veil for some other motive.

Second, most states have great difficulty providing the minimal services they promise to their citizens. Consequently, most states strictly limit the services they are willing to offer to non-citizens. The suggestion that a state might impose citizenship for purely altruistic reasons is, thus, suspicious. This factor, coupled with a state's inherent desire to impose restrictions and requirements on every individual within its sphere of influence, renders any altruistic defense doubtful. If a state defends the imposition of citizenship on the grounds that it only desires to pro-

tect and serve the individual, we must ask several questions. Would the state refrain from imposing citizenship if it could be shown that the state is not capable of adequately delivering the services and protection it promises? Would the state refrain from imposing citizenship if it could be shown that the individual has alternative and adequate means of meeting her essential needs (e.g., personal resources, assistance from family, friends, associates, communities, private businesses, nongovernmental organizations, etc.)? Would the state refrain from imposing citizenship if the individual, for whatever reason, desired to exercise her fundamental human right to freedom of association by declining all services and protection from the state? If a state answers "no" to any of these questions, then it would be hard-pressed to justify the imposition of citizenship as an altruistic act.

Third, even if a state imposed citizenship for genuinely altruistic reasons, such altruism still fails to provide adequate justification for the violation of fundamental human rights. A generous spirit or an intent to do a good deed does not, by any reasonable standard, permit one to violate the fundamental rights of another. For example, if a physician felt that it would be good to provide life-saving treatment to a dying patient, the physician's admirable intent to help the patient would not override the patient's fundamental right to forbid other people from tampering with his or her body. Likewise, even if a state genuinely desired to improve the life of an individual, such an admirable goal would not license the state to impose citizenship and thereby violate the individual's rights to self-determination, freedom from compulsion, and freedom of association. A state is quite free to offer citizenship status to anyone it pleases, but it has no legitimate authority to impose such status. For these reasons, any altruistic defense of state-imposed citizenship is not reasonable.

An example of how altruistic intentions fail to justify state-imposed citizenship appears in the discourse of international law. Paul Weis, a respected authority in nationality law, warns that stateless individuals are at great risk in the international arena:

> Since . . . nationality is the principle link between the individual and international law, and since "the rules of international law relating to diplomatic protection are based on the view that nationality is the essential condition for securing to the individual the protection of his rights in the international sphere," there cannot be any doubt that statelessness is undesirable.[32]

Weis views this undesirable condition with a humanitarian eye. His genuine concern for the rights of stateless people leads him to suggest that:

> [N]ationality may be conferred by operation of law, without the consent of the individuals concerned and even against their will in those cases where no State entitled to exercise diplomatic protection exists, *i.e.*, in the case of *stateless persons*.[33]
>
> From the point of view of international law as it exists at present, the compulsory conferment of its nationality by a State on stateless persons coming within its territorial jurisdiction is, in the view of the present writer, admissible.[34]

In sum, Weis argues that a state is adequately justified in imposing citizenship on a stateless individual because doing so will allegedly benefit the individual. This is a plain instance of altruistic justification of state-imposed citizenship.

Curiously, Weis simultaneously argues that an individual's consent is a necessary condition for citizenship to exist. He claims:

> [T]he acquisition of a new nationality must contain an element of voluntariness on the part of the individual acquiring it . . . it must not be conferred against the will of the individual.[35]
>
> By the compulsory imposition of nationality, violence is done to the individual's rights just as if he were arbitrarily arrested or forced to marry.[36]

Weis cites William Edward Hall's position as "broadly correct:"[37]

> [A]part from the assent of the individual privileges alone can be conferred; a State has no right to impose the obligations of nationality . . . .[38]

And, in a footnote to Hall, Weis refers us to Mervyn Jones:

> The general principle underlying nationality is the voluntary choice by an individual of a particular nationality. There is evidence from the practice of States that to impose nationality upon individuals against their will, either collectively or individually . . . is a departure from the accepted principle of international law . . . .[39]

Ultimately, Weis fails to resolve this conflict. On one hand, he argues that citizenship can legitimately be imposed on stateless people because such people allegedly need state protection and because such an imposition would not infringe on any state rights in the context of international law. On the other hand, he argues that the imposition of citizenship would violate an individual's fundamental rights. This example shows that even a genuine, well-considered, altruistic justification for state-imposed citizenship bears critical flaws. Weis's humanitarian interest in providing government protection to stateless people could easily be met if governments simply offered, rather than imposed, citizenship status. This approach would allow states to achieve their altruistic goals without the violations that accompany the imposition of citizenship.

(e) Utilitarian motives. Some suggest that state-imposed citizenship is justifiable whenever the individuals who constitute a state have utilitarian motives for making such an imposition. In other words, it is alleged that a state may legitimately impose citizenship on an individual if the state intends to provide the greatest good to the greatest number of people. For example, if a state believed that it could improve social order for many by imposing citizenship on some, then, it is argued, the state would have legitimate authority to do so. The notion that individual

rights may be violated in order to benefit "the common good" is popular. Nonetheless, the utilitarian defense for state-imposed citizenship is rendered unpersuasive by several defects.

Most notably, a state's vested interest in social control means that any claim a state makes to rule in accordance with utilitarian principles must be viewed with a wary eye. By definition, "state interests" and "the common good" are two distinct categories. Occasionally they overlap—often they do not. The state can easily further its interests by persuading the public that there is no distinction between these categories. For example, state rhetoric regarding the need for domestic order sounds appealing when social conflicts exist. Such rhetoric, however, can mask human rights violations which, while furthering state interests, plainly fail to benefit the common good. (Consider the restrictions on freedom of expression, freedom of association, and freedom of movement which government officials impose when their power is threatened.) The espousal of utilitarian principles, whether genuine or not, can serve as a veil for social control. Thus, the suggestion that states should be permitted to impose citizenship in order to improve the common good always warrants scrutiny.

Even if a state genuinely claims utilitarian motives for imposing citizenship, we must consider the ethical dimensions of this rationale. Improvement of the common good is an admirable goal. However, we cannot reasonably accept the utilitarian assumption that any action which achieves the greatest good for the greatest number of people is permissible. This principle is debilitated not only by the infamous problem of how one would determine the quantity or quality of "good" an act produces, but also by the ethical concern that benefits for some would legitimately rest on the coercion, restriction, and suffering of others. In practice, this popular perspective reduces to a version of "majority rule." Since the greatest good is not reliably calculable, the principle is commonly truncated to a more manageable maxim: an action's legitimacy rises in direct proportion to the number of people who feel they will benefit by the action. This stance, of course, is weak. Potential improvement of the common good does not provide sufficient cause to violate fundamental human rights. Moreover, the quantity of good that might

be achieved by human rights violations is drastically reduced, if not eliminated, by the significant detriment to the common good which is inherently wrought by such violations. In the end, the utilitarian argument for imposing citizenship is unpersuasive because whatever meager social stability the larger populace might achieve by such action pales in comparison to the human rights violations that would result.

The following hypothetical scenario depicts how even the most genuine utilitarian intentions fail to justify state-imposed citizenship. Imagine receiving the following notice:

> We are pleased to inform you that, effective immediately, you are a full member of the Association to Redistribute Wealth. Our goal is to improve the well-being of everyone in our national community by redistributing individual wealth more fairly. Specifically, we intend to take assets from our members who posses more than their share of the nation's wealth—members like you—and disburse these assets to others around the land who have less.
>
> We understand your concern that you might not benefit personally from membership in the Association, but our projections show that this plan will indeed achieve the greatest good for the greatest number of people. Naturally, when the community-at-large benefits, you will benefit as well. We assure you that the assets we take will ultimately benefit you many times over via the establishment of a more sustainable economy, greater economic fairness, and reduced social tension throughout the land.
>
> As a member of the Association, you have two responsibilities. (1) Pay the full amount of your assessed dues in a timely manner. We will notify you regarding what percentage of your assets you must submit annually. (2) Cooperate with our administrators. Please know that we do not expect you to agree with all of

> our principles and procedures. We only require that you do not disrupt the smooth administration of our program.
>
> As a token of our appreciation, the Association intends to provide you with health insurance and a modest retirement income (finances permitting). Of course, your greatest reward will be the knowledge that you have done your part to insure social order and justice.
>
> We know that you did not request to become a member of the Association to Redistribute Wealth, and that you might not consent to bearing member status, but please be assured we are acting solely for the betterment of the entire community. Moreover, we have decided, on the basis of a free, democratic, and majority vote of our current members that your induction is necessary in order for us to meet this inherently valuable goal. Thank you for your cooperation. We will bill you shortly.

The average person receiving such a notice would regard it as ludicrous. "How could some association simply decide to make me a member? And what makes them think I would cooperate for a moment with their plan to redistribute my assets? Just because their plan, on the whole, will benefit the common good doesn't mean they can demand my resources. And the fact that their current membership democratically decided to make me a member is irrelevant. I do not want to associate with them." Even a sympathetic recipient would likely respond: "I agree wholeheartedly with the ideals of this association. I may even contribute a significant amount to their efforts. But they cannot force me to be a member or to cooperate with their demands." Regardless of the utilitarian merit of the Association to Redistribute Wealth, it would be difficult for anyone to view such imposed membership and corresponding responsibilities as valid.

The question arises, therefore, if it is not reasonable for some association (with the best utilitarian intentions and the most democratic means) to impose membership and corre-

sponding responsibilities on an individual, then how can it be reasonable for a state (with the best utilitarian intentions and the most democratic means) to impose citizenship and corresponding obligations on an individual? With all pertinent factors substantially the same, the only element that enables a state to impose the requirements of citizenship—yet prevents some other association from imposing the requirements of membership—is the fact that the state has garnered sufficient police and military power to threaten punishment for non-cooperators. However, if we reject the principle that "might makes right," the state is no more justified in imposing citizenship than the Association to Redistribute Wealth is justified in imposing membership. A utilitarian motive does not legitimize involuntary association or the absurd notion of imposed membership.

We should note that if a state chooses *not* to impose citizenship, the common good would bear little if any detriment. This is apparent for several reasons. First, if participation in a citizen-state relationship truly is to the benefit of most people, then we could expect that most people would voluntarily be citizens. Only a small percentage would be likely to forgo citizenship status, and it would be difficult for that number to have any significant detrimental impact on the common good simply on the basis of their standing as non-citizens. Second, if a state chooses not to impose citizenship on every individual within its sphere of influence, it would still be able to maintain reasonable international relations, communities would still be able to exert social control, and individuals would still be able to establish and operate states. As shown in Chapter 4, the existence of a right to be stateless does not meaningfully disrupt any existing social order. Third, and most notably, a state might improve the common good by allowing some breathing room and variety in the social order it seeks to create. Political wisdom suggests that a state is more likely to edify the common good by flexible interaction with its opponents rather than by violation of fundamental human rights.

In brief, the admirable goal of achieving the greatest good for the greatest number of people does not bear sufficient ethical or logical weight to warrant the violation of fundamental human rights. If a state believes it can improve the common

good by acquiring more citizens, it is free to persuade individuals to become citizens, but it is not justified in imposing citizenship status.

(f) Inherent authority. Some suggest that state-imposed citizenship is justifiable whenever the individuals who constitute a state are inherently authorized by some exclusive qualification to impose their will on others. This alleged authority is said to derive from a characteristic such as gender, race, wealth, age, lineage, education, wisdom, spiritual development, or some similar discriminatory factor. Reliance upon this principle is widespread. Whenever a state alleges that it has inherent authority to rule over individuals against their will, the state claims some exclusive qualification to justify its actions.

This defense is starkly apparent when an apartheid state claims that lighter-skinned people are inherently authorized to impose their will on darker-skinned people. Likewise, in patriarchal states men claim that, merely on account of their gender, they are inherently authorized to impose their will upon women. The defense of inherent authority is also operative, though perhaps less obviously, in the justifications for state rule which we have discussed above. For example, a state that imposes its will on the grounds of brute force asserts that individuals with more physical or military strength are inherently authorized to rule over individuals who are weaker. A state that imposes its will on the grounds of majority rule asserts that individuals who constitute a simple majority on any matter are inherently authorized to impose their will on individuals who do not agree with this majority. A state that imposes its will on the grounds of divine right asserts that the state's theology supersedes any other belief system and inherently authorizes those who currently wield political power to rule over others. A state that imposes its will on the grounds of altruistic motives asserts that individuals who intend to act solely in the interests of others are inherently authorized to impose their will on those others. A state that imposes its will on the grounds of utilitarian motives asserts that individuals who intend to provide the greatest good for the greatest number of people are inherently authorized to impose their will on anyone in the community.

The notion that certain individuals could possess exclusive qualifications which inherently authorize them to impose their will on others bears a fatal flaw: no competent arbiter exists to determine what qualifications might inherently authorize any group of individuals to impose their will on others. If the individuals who constitute a state claim that they have a right to impose their will on others (e.g., by imposing citizenship), we would fairly ask, "On what grounds do you claim this right?" They would respond, "We claim this right on the grounds that our race (or gender, or brute strength, or majority opinion, or utilitarian motive, etc.) inherently qualifies us to impose our will on others." At which point we must ask, "And *who* has determined that this specific characteristic grants you inherent authority to rule over others?" Here, the defense quickly deteriorates.

If the imposers claim that *they themselves* have determined that one of their own characteristics grants them authority to impose their will on others, the charade ends abruptly. Any reasonable standard of fairness would disqualify such a conflict of interest. If we recognize any sort of logical or ethical backdrop to our human existence, a group cannot legitimately authorize itself to violate the fundamental human rights of others.

If the imposers claim that their authority was determined by *those whom they impose upon*, then one party is either mistaken or lying. If those who are imposed upon did not in fact grant the imposers legitimate authority to rule in their lives, then the alleged authority of the imposers does not exist. On the other hand, if those who are imposed upon did in fact grant the imposers legitimate authority to rule in their lives, then the alleged imposition does not exist. One cannot grant another legitimate authority to rule over one's life and simultaneously claim that such rule is an imposition—the two circumstances are mutually exclusive. Thus, if those who impose their will on others claim that their authority was determined by those whom they impose upon, then either the alleged imposition fails to exist, or the alleged legitimate authority fails to exist. Either way, the defense is moot.

Lastly, if the imposers claim that some *third party* has determined that they possess certain characteristics which grant them authority to impose their will on others, the imposers merely beg the question of legitimacy. Naturally, we must ask how this third party acquired legitimate authority to determine what characteristics qualify someone to impose his or her will upon others—and the circle of questioning continues. Because no competent arbiter exists to determine what qualifications might inherently authorize a state to impose its will on others, the suggestion that a state might possess such authority to impose citizenship is not persuasive.

(g) Collegial support. Some suggest that state-imposed citizenship is justifiable whenever the state that does the imposing enjoys the support, or at least the toleration, of its partner states in the international community. This collegial support is typically expressed by states via their establishment of multilateral agreements and their mutual observance of principles in international law relating to the acquisition and loss of nationality. The argument asserts that if the larger community of states agrees that, under certain circumstances, a state is free to impose citizenship status on certain individuals, then—by virtue of this collegial agreement—such imposition is legitimate and fair.

The justification of state-imposed citizenship by reference to standards on which states mutually agree is commonplace. The process, however, bears an inherent flaw which is routinely ignored. States have a vested interest in possessing the ability to impose citizenship—they necessarily benefit by maintaining the option to bring people within their regulatory sphere. Thus, regardless of potential impediments to imposing citizenship (e.g., an individual's right to freedom of association), states can be expected to support each other in this practice. In light of this vested interest, collegial support provides no justification for the imposition of citizenship status. It only reflects a level of mutual interest and cooperation among states. More broadly, the consensus of those who have a vested interest in violating an individual's fundamental human rights is not proof that such a violation is legitimate. It is only proof that the potential violators give more weight to their own interests than to the rights of the

individual. State-imposed citizenship, therefore, is not justified by the fact that states generally find the practice acceptable.

We should note that international law is inconsistent in its approach to the matter of imposed citizenship. Any sampling of the international community's specific laws and customs regarding the acquisition and loss of nationality reveals that states routinely claim the prerogative to impose citizenship status. On the other hand, when the issue is broached in theory, most authorities declare that citizenship cannot be imposed. Ruth Donner, in *The Regulation of Nationality in International Law*, concludes, "Under international law nationality may not be imposed on a person without his consent and laws purporting to do this are not binding on third States."[40] Although this wording is imprecise—since imposition, by definition, precludes the existence of consent—the intent is clear: state-imposed citizenship is not acceptable.

In summary, seven defenses are used to justify the imposition of citizenship: brute force, majority rule, divine right, altruistic motives, utilitarian motives, inherent authority, and collegial support. As we have seen, these defenses are persuasive only if one permits deceit, conflict of interest, unfair treatment, poor reasoning, and the violation of fundamental human rights. Thus, citizenship cannot reasonably be imposed. This conclusion does not mean that all states intend to oppress or exploit individuals when they impose citizenship. Without a doubt, a state may have fine motivations for such an imposition—the desire to improve an individual's life or the life of a community, for example, is certainly admirable. However, as we have seen, good intentions do not legitimize human rights violations.

To conclude this section, let us recall an ongoing example of state-imposed citizenship—the United States government's practice of imposing US citizenship on Native Americans. In 1924, the US Congress passed a law ordering that "all non-citizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States."[41] This law persists today. This example is noteworthy not only because of its immense scope—the sheer number of aboriginal people upon which the US government has

imposed citizenship status—but also because the motives and justifications for this imposition are diverse. (We must acknowledge that many Native Americans gladly accept US citizenship and, by definition, citizenship is not imposed in such instances. This discussion pertains to those who do not consent to bear US citizenship status.) At one end of the spectrum, this policy of state-imposed citizenship is defended by altruistic motives. For example, some would say, "the US government merely wants to help those in need" or, "the US government merely wants to welcome everyone into its culture." Such good-willed intent is lost, however, when citizenship is imposed rather than simply offered. When the offer to welcome one into a culture transforms into a requirement for assimilation, any altruistic motives are quashed by latent and more selfish interests.

On the other end of the spectrum, less-than-altruistic motives are also offered in defense of this policy. Ardent theocrats defend this policy on the grounds that it helps "save souls." Ardent racists defend this policy on the grounds that it helps "civilize savages." Imperialists who embrace the notion of "might makes right" defend this policy on the grounds that the US government has more police and military power than the Native Americans and, since the US *can* impose its will, it is justified in imposing its will. Imperialists who embrace a more democratic stance defend this policy on the grounds that, since a majority of US citizens agree that it is acceptable to impose their will on these non-citizens, then such an act must be legitimate. If none of the aforementioned defenses are palatable, the US government will remind us that this practice has the support of other states in the international community. In this example, the common defenses of brute force, majority rule, divine right, altruistic motives, utilitarian motives, inherent authority, and collegial support all intermingle—yet all fail to meet the standards of legitimacy and fairness.

In the end, the claim that citizenship can legitimately be imposed is not persuasive. This conclusion may be distasteful because it requires us occasionally to turn aside some genuine humanitarian intentions. However, if we ultimately value self-determination, freedom of association, freedom from compulsion, and fairness, then we cannot force individuals to participate

in citizen-state relationships against their will. As the United Nations bluntly declares in its *Universal Declaration of Human Rights*, "No one may be compelled to belong to an association."[42] There is no good reason why the associations we call states should be exempt from this principle. All factors considered, we must conclude that citizenship cannot reasonably be imposed.

5. Citizenship without mutual consent is self-defeating.

The final element in support of Premise 2 is the fact that citizenship without mutual consent is self-defeating. Presumably, the citizen-state relationship is intended to serve as something more than a veil for oppression and tyranny. Advocates of this relationship typically claim that it is intended to protect human rights and improve the quality of life. If such goals are genuine, then the citizen-state relationship must rest on the consent of both the state and the individual. Without this mutual consent, such goals would be thwarted in several significant ways.

First, if a citizen-state relationship existed without the consent of the individual (e.g., if citizenship were innate, obliged, or imposed), then the individual would suffer. Specifically, she would lose the freedom to direct her allegiance, commitment, and support where she desires. She would lose the freedom to associate (and to refrain from association) with others as she desires. And, because of the restrictions and requirements laid upon her, she would lose the freedom of self-determination. If citizenship existed without the consent of the individual, these critical rights would be violated rather than protected and, consequently, the quality of life would be impaired rather than improved.

Second, if a citizen-state relationship existed without the consent of the state (e.g., if citizenship were innate, a fundamental human right, or if it were imposed on the state by some third party such as a world court), then the individuals who constitute the state would suffer. Specifically, these individuals would lose the freedom to define and regulate the nature and function of their community. They would lose the freedom to associate (and to refrain from association) with others as they

desire. And, because they would be obliged to serve and protect any number of "citizens" charged to their care, they would lose the freedom of self-determination. If a citizen-state relationship existed without the consent of the state, these critical rights would be violated rather than protected and, again, the quality of life would be impaired rather than improved.

Third, if a citizen-state relationship existed without the mutual consent of the state and the individual, then the relationship, by design, would work against its alleged goals. It is an elementary principle of human psychology that when one consents to participate in a relationship one is more likely to: feel committed to making the relationship work, accept responsibilities that are inherent to proper functioning of the relationship, make good-faith attempts to resolve conflicts within the relationship, and show respect to the other party in the relationship. Conversely, when one does not consent to participate in a relationship, but is forced to do so, one is more likely to: feel no commitment to making the relationship work, reject responsibilities that one allegedly bears as party to the relationship, make no effort to perpetuate the relationship, and make every effort to dissolve the relationship. Thus, if either party to a citizen-state relationship did not consent to participate in that relationship, the union would be destined to dysfunction and eventual failure. Under such circumstances, any hope of protecting human rights would be, at best, irrelevant, and the quality of life for any non-consenting party would clearly be impaired rather than improved.

The only way in which citizenship without mutual consent would not be self-defeating would be if one wholly dismissed significant interests and rights of the non-consenting party. Of course, if one takes this view, then one cannot genuinely claim that the citizen-state relationship is intended to protect human rights or improve the quality of life. In sum, if a citizen-state relationship is not founded on the mutual consent of the state and the individual, the relationship would inherently be unable to serve its alleged goals.

The defense of Premise 2 can be summarized briefly. We have seen that: (1) citizenship cannot reasonably be regarded

as innate, (2) citizenship cannot reasonably be regarded as a fundamental human right, (3) citizenship cannot reasonably be regarded as an obligation, (4) citizenship cannot reasonably be imposed, and (5) citizenship without mutual consent is self-defeating. By process of elimination and by show of absurdity, we can now conclude that citizenship, if it is to exist in any meaningful form, requires the consent of both the state and the individual. Thus, our less-encompassing premise can be stated with certainty: citizenship is a relationship contingent upon the consent of the individual.

Analysis of Conclusion

Let us review the main argument:

Premise 1—If citizenship is a relationship contingent upon the consent of the individual, then the individual necessarily retains the liberty to be stateless.
Premise 2—Citizenship is a relationship contingent upon the consent of the individual.
Conclusion—The individual necessarily retains the liberty to be stateless.

Whereas both premises have been substantiated and the logical form is elementary, our conclusion is now supported. We must acknowledge that the Consent Argument does not directly prove that a fundamental human right to be stateless exists. The argument does prove, however, that if citizenship is established or perpetuated in any meaningful and legitimate manner, the individual must possess the liberty to be stateless. Although this liberty, which exists due to logical necessity, is not the same as a fundamental human right, the result is identical: the individual is free to be intentionally stateless whenever he or she so chooses. In sum, if one believes that individual consent is not a necessary element of the citizen-state relationship, then one should refer to such a relationship as slavery, tyranny, or oppression. If one accepts that individual consent is integral to the citizen-state relationship, then the conclusion—that individuals necessarily retain

the liberty to be stateless—is inescapable and is, in effect, equivalent to a right.

D. Conclusion

In this chapter, we examined two arguments which support the claim that a right to be stateless exists. The *Fundamental Human Right Argument* asserts: whereas the liberty to be stateless meets the essential criteria used to establish the existence of a fundamental human right, the liberty to be stateless can reasonably be regarded as a fundamental human right. The *Consent Argument* asserts: whereas citizenship is a relationship contingent upon the consent of the individual, human beings necessarily retain the liberty to be stateless. On the basis of these two arguments, I claim that every person has a fundamental human right to be stateless.

Notes

[1] See Carter 2001, 205-214 (assessing the challenges of cultural diversity to universal principles such as human rights).
[2] See Rawls 1971, 34-45 (discussing the use of intuitive judgements in assessing the relative significance of competing principles of justice).
[3] See generally Rawls 1971.
[4] UN General Assembly 1948, Article 20.2.
[5] McDougal, Lasswell, and Chen 1980, 930.
[6] Hume 1907, Vol. 1, Essay 12 at 447.
[7] Schuck and Smith 1985, Chapter 1, especially pages 36-41.
[8] A persuasive defense of this principle, with many historical examples, is Gene Sharp's classic treatise, *The Politics of Nonviolent Action.* Sharp 1973, Chapter 1, especially pages 25-32.
[9] Locke 1952, ¶ 118 at 67.
[10] Aleinikoff 1986, 1488.
[11] *Perez v. Brownell*, 356 US 44, 64 (1958) (Warren et al. dissenting).
[12] UN General Assembly 1948, Article 15.1.
[13] See: 8 USC § 1481 (2002); *Afroyim v. Rusk*, 387 US 253 (1967); *Vance v. Terrazas*, 444 US 252 (1980).
[14] 8 USC § 1481 (2002).
[15] *Schneiderman v. United States*, 320 US 118, 122 (1942). See also *Nishikawa v. Dulles*, 356 US 129, 134 (1958).
[16] *Nishikawa v. Dulles*, 356 US 129, 136 (1958).
[17] Aleinikoff 1986, 1471.
[18] 8 CFR § 316.2(a)(7) (2002). See 8 USC § 1443(a) (2002).
[19] 8 USC § 1424(a)(1) (2002).
[20] 8 USC § 1424(a)(5-6) (2002).
[21] 8 CFR § 337.1(a) (2002). See 8 USC § 1448 (2002).
[22] See: 8 USC § 1481(a) (2002); *Afroyim v. Rusk*, 387 US 253 (1967); *Vance v. Terrazas*, 444 US 252 (1980).
[23] See: *Opinions of the Attorneys General* 1969, 42:397 (No.34); Department of State Airgram of May 16, 1969 (*Interpretations of the Immigration and Naturalization Service*, Section 349, Appendix B), reprinted in *Immigration Law and Procedure* 2002, Vol. 15 at 469.
[24] *Vance v. Terrazas*, 444 US 252, 260 (1980).

[25] See US Department of State 2002, *Foreign Affairs Manual*, Vol. 7 § 1218.1 (providing a list of indicators which the US government uses to help assess an individual's intent to relinquish citizenship).
[26] Aleinikoff 1986, 1488.
[27] Brownlie 1998, 126.
[28] Ibid., 166.
[29] United Nations 1945, *Charter*, Article 2.4.
[30] James 1986, 41.
[31] Thomas Jefferson to Albert Gallatin, June 26, 1806 *in* Gallatin 1879, Vol. 1 at 301.
[32] Weis 1979, 162 (notes omitted).
[33] Ibid., 113.
[34] Ibid., 115 (note omitted).
[35] Ibid., 110.
[36] Ibid., 112 (note omitted).
[37] Ibid., 111.
[38] William Edward Hall 1894, *The Foreign Powers and Jurisdiction of the British Crown* (Oxford) 46-47, *quoted in* Weis 1979, 111.
[39] Mervyn J. Jones 1956, *British Nationality Law and Practice* (Oxford) 15, *quoted in* Weis 1979, 111 note 98.
[40] Donner 1994, 181.
[41] Act of June 2, 1924, Chapter 233, 43 Stat 253 (1924) (current version at 8 USC § 1401(b) (2002)).
[42] UN General Assembly 1948, Article 20.2.

3

Advantages of Being a Sovrien

A. Introduction

Why would anyone in their right mind choose to be stateless? Even though human beings have a fundamental right to be stateless, the sovrien life bears a host of potentially significant disadvantages. Seckler-Hudson summarily dismisses any potential advantage, remarking that "[Statelessness] is so frequently a cause of embarrassment for the individuals concerned that any merit which may be claimed for it is of relative unimportance."[1] In regard to unintentionally stateless people, this comment may be true, but in regard to intentionally stateless people it is false. This chapter describes five potential advantages for the sovrien: integrity, adventure, political freedom, formal neutrality, and social transformation.

(Some suggest that statelessness could result in economic gain because this status would enable one to legally avoid taxation. This idea is occasionally promoted by scam-artists and ultraconservatives with strained interpretations of federal laws. In light of the broad taxation powers which states wield, and in

light of the many disadvantages which sovriens face, one cannot expect that statelessness would be economically advantageous in this or any other way. If one is seeking monetary wealth, one is apt to fair better as a citizen who participates in the capitalist ventures typically encouraged and protected by states.)[2]

B. Integrity

The first potential advantage a sovrien can enjoy is the opportunity to live with greater integrity. To live with integrity is to live consistently with one's conscience and one's moral, religious, philosophical, and political beliefs. For some people, integrity is a minor concern which has little bearing on the quality or course of their lives. For others, integrity is a life and death issue: to live without integrity is so unacceptable that one may as well be dead—and to live with integrity is to have a quality of life unsurpassed by physical comfort, fame, love, or fortune. If one cannot in good conscience participate in a citizen-state relationship, then one can opt to be a sovrien in order to better integrate one's sociopolitical life with one's personal beliefs.

There are many moral, religious, philosophical, and political principles which potentially conflict with participation in a citizen-state relationship. For example, if one believes that unacceptable social behavior is best addressed with forgiveness, education, and generosity, then one might not be able to support a state's use of arrest, adversarial court proceedings, and imprisonment as means of social control. If one believes that consensus-based decision making provides the best solutions for community planning, then one might not be able to support government by minority or majority rule. If one believes that people are morally obliged to take personal responsibility for the welfare of others in need, then one might not be able to support state assumption of such responsibilities. If one believes that a community best evolves when its leaders model and encourage individual responsibility, then one might not be able to support state-imposed restrictions and requirements. If one believes that conflicts are best resolved with compassionate, nonviolent, and collaborative means, then one might not be able to support the

state's use of police and military force. If one cannot, in good conscience, support these activities which citizens are typically required to support, then one can opt not to be a citizen. In other words, if one substantially opposes essential means and ends of state rule, then one may become a sovrien in order to live with some degree of integrity.

McDougal, Lasswell, and Chen suggest that "The status of statelessness entails a most severe and dramatic deprivation of the power of an individual."[3] If one relies on citizenship as a source of personal power, this statement may be true. However, if one feels that citizenship is an impediment to a life of greater integrity, this statement is profoundly false. In such a case, the status of statelessness permits one to live more consistently with one's ideals and beliefs and, thus, it is eminently empowering.

For some, the right to be stateless offers no significant opportunity to live with greater integrity. For others, exercising the right to be stateless would actually violate their integrity. For a few, however, the right to be stateless provides a meaningful way to better integrate conscience and action and, thus, the choice to be a sovrien is advantageous.

C. Adventure

The second potential advantage a sovrien can enjoy is adventure. A sense of stability and security are the main attractions of being a citizen. Presumably, a citizen can depend on her partner state to maintain a certain social order, to provide police and military protection in times of danger, and to provide financial and material assistance in times of need. For the sake of adventure, however, one may part with this status quo of citizen comforts by choosing to be stateless.

The motivations for such a peculiar adventure are not unique. Adventures, in general, are desirable because they provide:

- The pleasure of living with less predictability.
- The visceral thrill of risk.
- The greater likelihood of experiencing serendipities.

- The chance to gain a broader view of human existence.
- The chance to take advantage of presently unknown opportunities.
- The chance to experience some limited sense of independence in this mortal life which is primarily a dependent and interdependent existence.
- The opportunity to develop one's ability to contend with the variety of challenges which life sends our way.

For these reasons, an individual might desire to live without the alleged security and safety of citizenship. If one views the risks and uncertainties associated with intentional statelessness as adventuresome terrain—as challenges and opportunities—then the choice to be a sovrien may be regarded as advantageous.

D. Political Freedom

The third potential advantage a sovrien can enjoy is political freedom. When an individual claims her right to be stateless, she becomes entitled to several political freedoms to which citizens are not entitled. Specifically, a sovrien has the exclusive rights to be treated as a sovereign entity, to withhold allegiance from all states, to withhold support from all states, and to be free from all state-imposed restrictions, requirements, and brute force.[4]

Given our contemporary political milieu, no one should expect that any state will respect these rights. In other words, even though a sovrien is legitimately entitled to enjoy such political freedoms, states are unlikely to recognize them. Whereas states desire to exercise sovereign rule over all individuals within their sphere of influence, and whereas they wield significant police and military power in support of this desire, noncitizens in general, and sovriens in particular, can expect their political rights to be violated. Because a sovrien may be regarded not only as an alien but also as traitorous, antisocial, immoral, or evil, she must be prepared for violations beyond those imposed on people who are simply foreign nationals. Moreover, sovriens who are otherwise subject to discrimination because of

their gender, skin-color, education, sexual preference, financial status, etc., can expect recognition of the aforementioned political freedoms to be particularly elusive. In brief, despite the legitimate political freedoms a sovrien is entitled to enjoy, anyone who exercises their right to be stateless can assume that states will violate these freedoms—possibly with a vengeance.

Nonetheless, the claim that sovriens can enjoy the aforementioned political freedoms remains meaningful for two reasons. First, a sovrien may enjoy the psychological freedom of having no obligation to any state. An essential component of a state's ability to wield power over a populace is the individual's belief that she is somehow obliged to submit to state rule and interference in her life. A state simply does not have adequate resources to ensure that everyone within its sphere of influence will submit to its rule. So, for every person a state can persuade to feel obliged to submit, the state saves resources for enforcing submission elsewhere. The notion of citizenship serves this function effectively: because a state promises certain benefits and protection to citizens, citizens typically feel obliged to submit to state rule. However, since a sovrien does not consent to being a citizen, she enjoys the psychological freedom of knowing that she has no legal, moral, or contractual obligation to submit to such rule. In other words, she enjoys having no obligation to relinquish her sovereignty, to provide allegiance or support to any state, or to submit to the restrictions, requirements, and brute force which any state attempts to impose. Insofar as the human experience of freedom is largely psychological in nature, the sovrien may enjoy the absence of any responsibility to submit to state rule.

Second, a sovrien may enjoy the psychological freedom of not participating in her own oppression. An essential component of a state's ability to wield power over a populace is the individual's willingness to cooperate with rules even when she feels that those rules are wrong. To the extent that a state can instill fear of noncompliance, individuals are more likely to cooperate with state demands. For example, citizens who oppose government restrictions on commerce or the media, or citizens who oppose government requirements to pay war taxes or perform national service, will generally cooperate with such restric-

tions and requirements despite their beliefs to the contrary. Similarly, prisoners generally cooperate with a multitude of human right violations despite their interests to the contrary. A state achieves these astounding feats by means of fear—particularly by threatening to harass, detain, fine, imprison, banish, torture, or execute any individual who refuses to cooperate. Because a state simply does not have adequate resources to impose such punishments on everyone within its sphere of influence, the state cultivates and exploits natural human fears in order to substantially expand its influence. By threatening confinement, loss, and pain, the state secures widespread cooperation from otherwise unwilling subjects. However, to the extent that a sovrien regards such threats as tolerable or avoidable, she can exercise her legitimate political rights and refuse to cooperate with a state's restrictions and requirements. In such situations, the sovrien enjoys the freedom of not participating in her own oppression.

In sum, the political freedoms which a sovrien has a right to enjoy are substantial—they permit complete liberty from state interference in one's life. The extent to which a sovrien can, in fact, enjoy these freedoms is limited by state violations of fundamental human rights. However, if a sovrien does not consent to being treated as a citizen, if she feels no obligation to submit to state rule, if she refuses to participate in her own oppression, if she exercises her individual sovereignty at every opportunity, and if she defends her rights even against the worst odds, then she will enjoy at least some of the political freedoms which accompany intentional statelessness. The sovrien can also find some pleasure, or at least some consolation, in the fact that by standing up for her fundamental rights, her continued resistance against state infringements may eventually bear fruit—if not for herself, then perhaps for future generations.

E. Formal Neutrality

The fourth potential advantage a sovrien can enjoy is formal neutrality in international relations. This benefit manifests itself in several distinct ways. Most obviously, the sovrien

is free to engage in international affairs as her conscience and interests dictate. Unlike citizens, the sovrien has no obligation to support any particular state, and no obligation to take sides in any international conflict. The sovrien does not have to stand behind politicians who do not represent her point of view, and she has no obligation to the principle of national unity. The sovrien is free to form alliances as she sees fit, and she does not have to participate in wars that she feels are not worth fighting. The sovrien has the option to remain formally neutral in all conflicts since she is not a member of any state.

A sovrien may also enjoy a degree of personal safety on account of her status. Because a sovrien cannot be regarded as a member of any state involved in an international conflict, she retains the option to remain politically independent and nonaligned. This neutrality may afford the sovrien a limited degree of physical and legal immunity during hostilities, especially if she resides in or travels through conflict zones. However, since warring parties often view neutrals with suspicion, this potential benefit is far from certain.

Lastly, a sovrien enjoys a unique credential for providing neutral service in international affairs: since the sovrien is subject to no state, her formal neutrality is an asset when interstate relations require unbiased third-party assistance. For example, a sovrien could serve as a neutral election monitor, a human rights monitor, or a relief worker in volatile conflicts with international players. Nongovernmental and multilateral organizations alike could benefit by employing sovriens for intermediary responsibilities. Donner notes that "statelessness is no legal bar to participation in the international civil service."[5] She also observes that a small number of stateless persons have been employed by the United Nations throughout its history and, although UN policy has not favored the hiring of stateless persons, there are no legal prohibitions on such employment.[6]

A sovrien is also well-positioned to serve as a neutral mediator or arbitrator in international conflicts. For example, Eberhard Deutsch has suggested, in a proposal that has received notable attention, that the International Court of Justice be comprised of judges who are, in effect, sovriens. He argues:

> The most important single way, therefore, by which the independence and integrity of the International Court of Justice could be assured, is to provide for the "internationalization" of its judges; and so the revised Statute of the Court requires that each member of the Court upon his accession should renounce his allegiance to the country of which he was a national when elected and is to be deemed to have become, for his natural lifetime, a citizen of the United Nations.[7]

Deutsch cites several noted international jurists who have supported the notion that judges in international courts would be better qualified if they did not maintain allegiance to any particular state. Hersch Lauterpacht, for example, remarked that impartiality of international judges "presupposes on their part the consciousness of being citizens of the world."[8] We may note that even under the current statute of the International Court of Justice, "it is not the case that a stateless person is ineligible for appointment to the Court."[9]

In sum, a sovrien can enjoy formal neutrality in international relations, thereby having: freedom to engage in international affairs as her conscience and interests dictate, an option for personal safety, and an opportunity to provide neutral service in international conflicts.

F. Social Transformation

The fifth potential advantage a sovrien can enjoy is participating in the development of a more free and responsible society. A sovrien helps create a more free society by exercising her right to be treated as a sovereign entity, her right to withhold allegiance from states, and her right to be free from state-imposed restrictions and requirements.[10] A sovrien helps create a more responsible society by exercising exceptional self-regulation regarding her fundamental human obligations and social affairs.[11] A society grows to be more free and responsible only to the extent that individuals in that society grow to be more

free and responsible. When an individual faithfully exercises her right to be stateless, she directly contributes to this social transformation.

In the unlikely event that a sovrien lived in a community where significant numbers of people decided to exercise their right to be stateless, she would also share in a social transformation akin to revolution. To the extent that any community withdraws its support from a government which attempts to rule over it, the functional power of that government dwindles. As such a government recedes from power, sovriens would have more space, energy, and resources available to develop community structures based on principles of their own choosing. While such drastic social transformation appears unlikely anytime in the foreseeable future, the possibility exists and deserves to be noted.

The sovrien's role in social transformation is likely to be indiscernable—similar to the proverbial drip on a rock. Nonetheless, if a new society shaped by a cosmopolitan vision is ever to emerge, common people throughout the world will need to engage in some form of personal transformation. The sovrien approaches this task by faithfully exercising the right to be stateless.

G. Conclusion

Weis declared, "[T]here cannot be any doubt that statelessness is undesirable."[12] This analysis is false. As we have seen, one may desire to be stateless for the sake of integrity, adventure, political freedom, formal neutrality, and social transformation. These desires cannot be dismissed as petty. Each one has significant bearing on quality of life.

The United Nations Department of Social Affairs declared, "The fact that the stateless person has no nationality places him in an abnormal and inferior position which reduces his social value and destroys his own self-confidence."[13] In regard to the sovrien, this analysis is also false. One who is willing to face the risks of statelessness in order to foster greater integrity, to live more adventurously, to achieve greater political free-

dom, to achieve formal neutrality, or to share in the development of a free and responsible society is hardly lacking self-confidence or social value. The sovrien's position in society may indeed be abnormal, but it should not be regarded as any less worthy than that of a citizen.

Boudin declared, "Only a singularly thoughtless citizen would surrender his citizenship without securing another."[14] On the contrary, it appears that only a singularly thoughtful person would do so. Although the potential advantages and disadvantages of being a sovrien are certainly matters of importance—perhaps matters of life and death—it is not unrealistic that one might conclude that the advantages outweigh the disadvantages. The benefits outlined above show that one can choose to be stateless for sane, legitimate, and perhaps worthy reasons.

Notes

[1] Seckler-Hudson 1934, 244.

[2] Dorothy Jean Walker identifies several instances of individuals who were regarded as stateless and who enjoyed certain economic benefits as a result of that status. In each case, the stateless person was subject to a court decision in a state other than the one of his former nationality. In each case, the court recognized the individual as a stateless person rather than as a citizen of a belligerent nation and, thus, the court afforded greater property rights to the individual than it would have if the individual were deemed a citizen of the belligerent nation. Walker 1981, 115-116.

[3] McDougal, Lasswell, and Chen 1980, 920.

[4] See Chapter 8, Section E.

[5] Donner 1994, 388.

[6] Ibid., 355-356.

[7] Deutsch 1977, 30.

[8] Hersch Lauterpacht 1933, *The Function of Law in the International Community* 238-239, *quoted in* Deutsch 1977, 30.

[9] Donner 1994, 333 (note omitted).

[10] See Chapter 8, Section E.

[11] See Chapter 9, Sections C and D.

[12] Weis 1979, 162 (note omitted).

[13] UN Department of Social Affairs 1949, 11.

[14] Boudin 1960, 1515.

4

Arguments Against the Right to Be Stateless

A. Introduction

Does every person have a fundamental right to be stateless? Many argue that this freedom does not or should not exist. The purpose of this chapter is to examine systematically the primary arguments that are used to deny the existence of a right to be stateless. Most arguments against this right come in the form of very brief polemics, inserted incidentally into broader discussions of statelessness and citizenship. These arguments are loosely constructed and occasionally flippant. Those who forward such arguments appear to believe that the nonexistence of a right to be stateless is self-evident.[1] In order to give these arguments the benefit of the doubt, I have attempted to consolidate and refine them to their best advantage.

Arguments against the right to be stateless reduce to six basic claims. Each claim asserts that some competing right or moral obligation outweighs the liberty to be stateless and, thus, denies any right to be stateless. The claims are: (1) the competing right to social order, (2) the competing right to territorial

sovereignty, (3) the competing right to establish and operate states, (4) the moral obligation to submit to the authority of the state, (5) the moral obligation to support one's community, and (6) the moral obligation to avoid self-threatening situations. In this chapter, I examine each of these claims by analyzing their component premises.

B. The Competing Right to Social Order

The first argument suggests that the right of individuals to social order outweighs the conflicting liberty of individuals to be stateless. Thus, a fundamental human right to be stateless cannot exist. The reasoning flows as follows:

> *Premise 1*—If the liberty to perform an act would inherently conflict with an existing right which is reasonably regarded as more significant, then that liberty cannot reasonably be regarded as a fundamental human right.
> *Premise 2*—Individuals have a right to social order.
> *Premise 3*—A right to be stateless would disrupt social order.
> *Premise 4*—The right to social order is reasonably regarded as more significant than the liberty to be stateless.
> *Conclusion*—The liberty to be stateless cannot reasonably be regarded as a fundamental human right.

Premise 1 is recognized as one of the criteria that must be met before the liberty to exercise a particular act may be regarded as a fundamental human right.[2] Despite the difficulty of establishing a standard for determining the relative significance of competing rights and liberties, the practice of weighing such items is commonplace and not disagreeable, especially on a case-by-case basis. Thus, some rendering of this premise is an

acceptable prelude to an argument against the right to be stateless.

Premise 2 asserts that individuals have a right to social order. The term social order generally refers to one or more of the following circumstances:

- Low rates of antisocial and violent behavior.
- Broad agreement on and observance of fundamental human rights.
- The existence of humane and effective means to resolve conflict.
- Facility in travel, commerce, and communication.
- The development and maintenance of large-scale projects to meet common interests and needs (especially projects which require extensive cooperation, strategic planning, and pooled resources).

Few people would deny the desirability of such order, but the claim that individuals have some full-fledged right to social order is overreaching. This alleged entitlement can be viewed in three ways.

First, a right to social order can mean a right to *cultivate* the ends described above. In other words, one is at liberty to pursue these ends by contributing ideas and resources to the community and by exercising cooperation and self-regulation within the community. For example, a religious leader mediating an urban conflict, a businessperson developing a regional communications network, a nongovernmental organization educating to reduce global overpopulation, and a state unilaterally opting to forgo nuclear weapons all exercise the right to cultivate social order. This interpretation is reasonable because it meets qualifying criteria for consideration as a fundamental human right. For example, the liberty to cultivate social order can be exercised by anyone, it does not inherently interfere with some essential aspect of another's humanity (e.g., one's body, thought, expression, movement, or associations), and the only obligation it creates for others is that they not interfere with its exercise. While the right to social order is easily defensible if interpreted in this way, most interpretations claim far greater entitlement.

Second, a right to social order can mean a right to *experience* the ends described above, or a right to dwell in a society which provides such benefits. This interpretation is not reasonable because it fails to meet an essential criterion for consideration as a fundamental human right: the right would impose a corresponding obligation that interferes with essential aspects of another's humanity. Specifically, an individual's right to experience social order would always require some other person or group to create and maintain that order, regardless of their willingness or ability to do so. This significant infringement eliminates the possibility that all people have a fundamental right to experience the ends described above. The *Universal Declaration of Human Rights* provides an example of this view when it asserts that, "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."[3] If this right truly existed, then some person or group—regardless of their interests and resources—would be obliged to create and maintain such order. We are at liberty to experience social order if we create it ourselves or if the opportunity presents itself, but we cannot oblige others to provide such order for us.

Third, a right to social order can mean a right to *impose* restrictions and requirements for the purpose of achieving the ends described above. This interpretation is typically used by individuals who desire to "maintain order" and who believe they are legitimately entitled (via possession of brute force, divine right, commendable motives, some inherent trait, or a percentage of popular support) to do so.[4] Although this interpretation is common, it is difficult to defend because it fails to meet several criteria for consideration as a fundamental human right: (1) the liberty to impose social order cannot be universally exercised; (2) the liberty to impose social order, when exercised, interferes with essential aspects of others' lives; (3) if the liberty to impose social order were a right, the imposers inherently would be entitled to more than their proportionate share of the world's power and resources; and (4) if the liberty to impose social order were a right, then certain people would bear a corresponding obligation to cooperate with significant interference in their own lives—one

person's right to impose order would be another person's obligation to conform.

In sum, the assertion that individuals have a right to social order is weak. The only defensible interpretation of this claim is the one that is rarely used: an individual has a right to *cultivate* the social order she desires without coercing others to conform to her ideals. The suggestion that one has a right to *experience* social order places an unjustifiable burden on others, and the claim that one has a right to *impose* social order is the seed of totalitarianism. An improved social order is certainly desirable, but not if it requires the systematic violation of fundamental human rights. The preservation of rights permits a chaos of conflicting concerns, uncontrollable choices, and, occasionally, undesirable behaviors. The imposition of order might relieve some of this chaos, but only at a cost to our humanity. If we value liberty, creativity, conscience, and self-determination, our evolution toward order must be voluntary. Thus, the claim that individuals have a right to social order is not persuasive.

Premise 3 declares that a right to be stateless would disrupt social order. This view is based on seven concerns.

First, a concern exists that a right to be stateless would deprive a community of its ability to exert social control. Specifically, it is feared that if a sovrien engaged in antisocial or violent behavior, the community would be powerless to exert control over that person. This concern arises because, at first glance, the community has no satisfactory options for response. Typically, a community exerts control by imposing its police and judicial systems on an individual. This exercise of legal authority is legitimate if the offender is a citizen, since citizens broadly consent to submit to such control. The sovrien, however, does not provide this consent and, thus, the community bears no legitimate authority to impose its forces on the individual. In other words, the community has no legal jurisdiction over the sovrien.

If the offender were a foreign national, the community could deport the individual back to her home state. The sovrien, of course, has no home state and no state is obliged to receive her—not even the state where she was born, the state where she has resided most often, or the state where she has resided most

recently. A community that wishes to deport a sovrien must find some state that will knowingly and willingly receive the stateless deportee. Otherwise, the deportation will be regarded as an offense to the receiving state's sovereignty. Thus, a community has limited power to deport a sovrien who offends.

If a community can neither deport nor exercise legal authority over sovriens who are disruptive, many assume that the only remaining option is for the community to endure these people within the fabric of society until they die or move away. Seckler-Hudson comments, "[These individuals] must be counted as a part of the 'driftwood of humanity' which must be tolerated here until they naturally pass from the picture."[5] Toleration of malefactors, however, is rarely acceptable.

The concern regarding lack of social control might be justified if toleration, deportation, and the exercise of legal authority were the only options a community had to contend with disruptive sovriens. However, since communities have many more tools at their disposal, this concern is of little account. Historically, the means of exerting social control are varied and numerous and can be employed by individuals and communities alike.

The spectrum begins with the extra-legal application of brute force (e.g., execution, captivity, restraint, and torture) to prevent or compel certain acts. This option is inhumane and morally repugnant—but no less so than the legal application of such force, which is widely practiced and condoned. (The scant protections which states offer against the "improper" use of legalized brute force can easily be matched or exceeded by communities that feel compelled to use extra-legal force.) Other methods of social control which rely on brute force include: brainwashing; banishment to frontiers, such as the high seas or outer space; and behavior modification techniques which employ negative reinforcement, including the full range of physical and psychological punishments. The middle of the spectrum includes more palatable but no less coercive tactics such as the use of guilt, threat, and fear to deter or prompt certain behavior. Social control may be exerted through public embarrassment, ridicule, or reprimand of the nonconformist. Social isolation techniques,

such as non-communication, non-interaction, and non-cooperation, may also be effective.

On the more humane side of the spectrum, social control can be achieved through behavior modification techniques employing positive reinforcement, including the full range of incentives, benefits, and awards. The most widely used techniques for social control are moral persuasion, rational persuasion, and education by example. At the far end of the spectrum, where the desire for social control evolves into the desire for social edification, techniques such as mediation, compromise, diplomacy, and similar means of dispute resolution are useful for dealing with community conflicts. In this atmosphere, the community's goal is no longer to control, eliminate, or merely tolerate those who challenge community standards, rather, its goal is to establish reasonable procedures by which conflicting parties can create mutually agreeable solutions to improve their lives together. In light of these many options, the claim that a right to be stateless would deprive a community of its ability to exert social control is unfounded.

Second, a concern exists that a right to be stateless would increase rates of antisocial and violent behavior. This includes obvious offenses such as murder, rape, assault, theft, fraud, property destruction, and terrorism, as well as any activity which significantly disrupts, harms, or offends the community. Writers who bear this concern often couch their worries in a tentative manner. For example, Dean Rusk, former US Secretary of State, remarks: "I do not believe that any person has a human right voluntarily to become stateless. That status has in it some remnants of the old notion of outlawry."[6] Jules Valery, on the other hand, minces no words in expressing his apprehension: "[T]hese men without a country are a serious danger for the nations in which they live. From them spies, incendiaries, and all the others needed for dirty work are naturally recruited."[7]

This concern is founded on the faulty assumption that a sovrien is more likely than a citizen to engage in antisocial and violent behavior. Specifically, it is feared that because a sovrien is rightfully independent of the police and judicial systems which exercise authority over citizens, the sovrien would be more apt than a citizen to cause problems in the community.

This fear is difficult to justify for several reasons. First, independence from state-imposed controls has no bearing on common sense. Many social norms are reasonable conventions for improving social order. Sovriens have no more motivation than citizens to violate such norms. Second, independence from state-imposed controls is not likely to cause an individual to abandon moral beliefs, ethical principles, or tenets of social responsibility. These behavior regulators are deeply ingrained in one's psyche and are not generally subject to the demands or absence of state force. Again, sovriens have no more motivation than citizens to abandon or significantly ease the principles and values which guide their lives. Third, independence from state-imposed controls does not motivate individuals to engage in antisocial and violent behavior. Such freedom certainly leaves room for poor judgement and irresponsible actions, but it does not cause or inspire such problems. Rather, one's environment, upbringing, economic status, mental health, education, and moral beliefs are the primary factors that provide the impulse for antisocial and violent behavior. Thus, a sovrien is no more likely to feel moved to such behavior than a citizen under the same circumstances.

Even though sovriens are rightfully independent of state-imposed controls, they still face substantial deterrents against engaging in antisocial and violent behavior, namely, the full range of social controls available to a community as described above. It is common knowledge that communities generally refuse to permit antisocial and violent behavior to proceed freely, regardless of the citizenship status of the offender. Sovriens have no advantage over citizens or foreign nationals as far as enjoying some exemption from a community's power to squelch disruption. Moreover, since sovriens are ultimately entitled to no legal rights within state-controlled police and judicial systems, the sovrien has additional incentive to exercise self-control: if a community feels compelled to resort to extra-legal means to rein in a sovrien, such means may well be more harsh or vindictive than the legal means that would be applied to citizens.

For these reasons, a sovrien has no more incentive or motivation than a citizen to engage in antisocial or violent be-

havior. Thus, the concern that a right to be stateless would increase rates of such behavior is weak.

Third, a concern exists that a right to be stateless would obstruct the development and maintenance of large-scale community-oriented projects. This concern is based on two assumptions. One assumption is that if a right to be stateless were fully recognized then substantial numbers of people would choose to be stateless. The other assumption is that such widespread statelessness would preclude the implementation of major undertakings for the common good. Specifically, the fear is that the type of projects which states sometimes pursue—projects intended to meet common interests and needs and which require extensive cooperation, strategic planning, and pooled resources—would not be possible if states experienced a significant exodus of citizens.

The possibility that substantial numbers of people would choose to be stateless appears small. In light of the political and social advantages that most individuals enjoy by being citizens, mass expatriation into statelessness is improbable. Also, to the extent that expatriation into statelessness could be a life-changing act with significantly detrimental consequences, few people are likely to consider the option. Most people prefer the steadiness which accompanies pervasive government control rather than the free, yet uncertain, life of statelessness. Moreover, the minute possibility of mass expatriation into statelessness is apt to increase only if the existing network of states becomes so dysfunctional that it provokes a popular movement to abandon the current system in pursuit of a more viable social structure. Barring this extreme circumstance, it is not reasonable to expect that full recognition of the right to be stateless would result in widespread statelessness.

Even if mass expatriation into statelessness were to occur, the claim that this situation would obstruct the development and maintenance of large-scale community-oriented projects is not justifiable. The human desire to act without state control is clearly distinct from the human interest in developing cooperative associations and coordinated strategies for the purpose of improving social order. Consider the massive network of non-governmental organizations, nonprofit organizations, and even

commercial enterprises devoted to meeting the interests and needs of local, regional, and global communities. Every area of community life is addressed by cooperative non-state ventures: education, conflict resolution, public safety, preservation and management of natural resources, medical care, scientific research, arts, consumer protection, roads, sanitation, utilities, and so on. Even if states ceased to exist, there is no reason to believe that human beings would stop cooperating or investing in major undertakings for the common good. Thus, even in the unlikely event that a significant percentage of people chose to become stateless, thereby depleting states of their ability to implement major social projects, such projects could be expected to arise under other auspices.[8] A certain social order might result from state activity, but state activity is not a necessary condition for social order. Thus, the concern that a right to be stateless would hinder the development and maintenance of large-scale community-oriented projects is not persuasive.

Fourth, a concern exists that a right to be stateless would obstruct humane and effective means to resolve conflict. Since sovriens have no obligation to submit to traditional state-imposed methods of conflict resolution (e.g., police coercion, fines, imprisonment, and court orders), it is feared that conflicts involving such people would not be able to be resolved by humane and effective means.

This concern is based on three faulty assumptions: (1) the assumption that traditional state-imposed methods of conflict resolution are in fact humane and effective—many argue that such attempts to resolve conflict via fear, coercion, violence, revenge, and punishment are neither humane nor effective; (2) the assumption that no humane and effective means to resolve conflict are available other than traditional state-imposed methods—this view neglects proven methods such as collaborative negotiation, mediation, compromise, forgiveness, voluntary restitution, and rational and moral persuasion; and (3) the assumption that sovriens would prefer not to use humane and effective means to resolve conflict—this claim is without basis. Because there is no reason to believe that a sovrien inherently has less interest than a citizen in humane and effective means of resolving conflict, and because such means exist which do not

require the intervention of states, the concern that a right to be stateless would obstruct appropriate conflict resolution is weak.

Fifth, a concern exists that a right to be stateless would disrupt social order by permitting individuals to live without state protection and assistance. Whereas a certain percentage of any population is likely to be people with critical needs for protection and assistance, and whereas sovriens with such needs would not be entitled to the care of any state, a fear exists that sovriens in need would suffer alone and that this suffering would disrupt community life.

This concern is weak for several reasons. For example, one cannot assume that a sovrien in need would have no access to assistance from others simply because no state is obliged to help her. Parties other than the state—e.g., family, friends, associates, local communities, private businesses, and nongovernmental organizations—may be willing and able to help a sovrien in need. Moreover, there is nothing to prevent a state from offering protection or assistance to a sovrien. If the people who constitute a state have the desire, they are at liberty to help anyone—citizen or not. Conversely, the assumption that a state cannot ignore the suffering of some in the community (e.g., sovriens) while assisting others (e.g., citizens) is unfounded. Selective caring is commonplace: states regularly provide assistance to some citizens in need but not to other citizens in need, and apparently for arbitrary if not discriminatory reasons. Furthermore, whereas most states are consistently unable to provide substantive protection and service to large portions of their citizenries, the possibility that some people might choose to live without a right to such help should cause little worry. Finally, this concern is relieved by the fact that sovriens—who, by definition, feel so strongly about being unrelated to a state that they choose the precarious status of statelessness—are unlikely to expect or demand state assistance, even in situations of extreme suffering. For these reasons, the suggestion that a sovrien's ineligibility to receive state help would disrupt social order is not persuasive.

Sixth, a concern exists that a right to be stateless would disrupt social order by weakening international border controls. One fear is that sovriens could not be prevented from entering or

departing from any state-controlled territory because no state could claim legitimate authority to restrain such people. Moreover, it is feared that if sovriens were afforded the right to travel freely, then any state which admitted such a person into its claimed territory would do so at the risk of having to tolerate that person's presence indefinitely. This condition exists because sovriens have no legal "fatherland," that is, they have no state with which they bear citizenship status and, thus, no state to which they can be deported. Any attempt by one state to remove a stateless person to another state without the second state's consent would cause international friction. Thus, if a right to be stateless were recognized, states could expect greater difficulty maintaining control of their alleged borders.

The crux of this concern is that certain individuals and communities might feel vulnerable by such a weakening of border controls. Specifically, those who have accumulated disproportionate levels of wealth, resources, or power might feel exposed and threatened by the freedom of movement which sovriens would retain. Those who feel vulnerable are apt to claim that any threat to their alleged territorial sovereignty is a threat to social order. To a limited extent, this perspective is correct: the social order of the rich and powerful will always be disrupted by accessibility—including the freedom of movement which the right to be stateless affords.

On the other hand, if we understand social order in a less parochial context, the threat of relaxed border control fades. An essential element of social order is facility in travel, commerce, and communication. Since state restrictions on border passage plainly cause more difficulty than facility in these endeavors, we can expect that relief from such restrictions would serve to enhance social order. From this perspective, the effects of recognizing a right to be stateless should pose little concern.

Sadly, current political sensibilities reject this perspective for a more canine one: we mark our territory, we bark at potential intruders, and we chase out or devour those who enter without submitting to our terms. The *Universal Declaration of Human Rights* only asserts that "Everyone has the right to freedom of movement and residence within the borders of each State. Everyone has the right to leave any country, including his

own, and to return to his country."[9] However, neither the Declaration nor any other standard in international law recognizes a human's right to move freely across the planet. As global communication, transportation, commerce, and relations develop, a full right to freedom of movement may eventually be established. Until that time, any challenge to international border control is likely to invoke fear and resistance. The claim that social order is enhanced by restricting the fundamental human right to freedom of movement is absurd. Only with greater facility in travel—such as the right to be stateless permits—can we expect to create a more fair and sustainable social order.

Seventh, a concern exists that a right to be stateless would disrupt social order by placing an overwhelming administrative burden on governments. States have established procedures for interacting with citizens, foreign nationals, other states, and even unintentionally stateless people, but recognition of a right to be stateless would require states to acknowledge a new and distinct class. Sovriens simply do not fit into traditional legal and administrative categories.

States naturally experience aggravation in dealing with individuals over whom they have no control. The United Nations International Law Commission's *Draft Convention on the Elimination of Future Statelessness* declared that, "statelessness is frequently productive of friction between States."[10] Dean Rusk put the matter more bluntly: "[T]he condition of statelessness is obnoxious to international law and to international relations."[11] In light of the many measures which states have taken to eliminate statelessness, one cannot expect that states will readily accept the administrative burden of recognizing a right to be stateless.

Specifically, states would need to develop new laws and procedures to ensure their appropriate interaction with sovriens. States would need to determine what rights, services, and protection they would extend to such people, as well as what rights, services, and protection they would withhold. Means for identifying sovriens, as distinct from citizens or foreign nationals, would need to be integrated into the morass of government procedures. Likewise, methods for segregating sovriens from citizens and aliens would need to be devised for the purpose of

limiting sovrien access to services and protection to which they are not due. States would even need to determine what degree of extra-legal force they might exercise over sovriens and under what circumstances. Entire regulatory areas encompassing immigration, emigration, and travel policies, would require revision. In sum, if states were to fully recognize a right to be stateless, they would need to determine how to treat sovriens as sovereign entities.

The process of recognizing the right to be stateless clearly would require a host of changes in a state's bureaucracy. However, the claim that a right to be stateless would cause an overwhelming administrative burden—one that would meaningfully disrupt social order—is not persuasive. States currently maintain diverse standards for relating appropriately with their citizens, with foreign nationals, and with other states. Each of these distinct standards demands unique laws, bureaucratic structures, and a certain level of social, economic, and political commitment. The process of developing an additional standard for relating appropriately with sovriens would undoubtedly require another layer of law, bureaucracy, and commitment. However, there is no evidence to suggest that states would be incapable of developing this additional administrative standard, or that the creation of such a standard would break the bureaucratic camel's back. States concerned with how they might deal with a sovrien could examine existing situations which share similarities. For example, states routinely welcome sovereign entities (or their agents)—e.g., foreign ships and their crews, foreign military forces participating in joint operations, refugee and exile governments, foreign heads of state, foreign diplomats, and embassy staff—into their claimed territories, sometimes for indefinite periods. How a state relates to such entities is a starting point for considering how that state might relate to sovriens. In short, even though the recognition of the right to be stateless would place an administrative burden on states—and potentially a heavy burden during the initial period of transition—maintenance of the additional standard should be as sustainable as maintenance of the existing ones.

Only governments with little commitment to observing fundamental human rights will find recognition of the right to be

stateless to be an overwhelming administrative burden. This burden is not the result of an undoable quantity of work posed by the demand for new laws, procedures, and bureaucracies. Rather, the burden is the result of the lack of time, energy, and resources that accompanies disinterest in recognizing a liberty. Recognition of the right to be stateless may well disrupt the social order of a tyrannical state, but states that reasonably respect fundamental human rights should have little difficulty in accommodating sovriens.

Finally, we must note that administrative difficulties, regardless of their complexity or extent, are immaterial in determining the existence of a fundamental human right. The existence of such a right is a function of one's humanity—it is not a function of any bureaucratic desire for less work. Thus, the concern that a right to be stateless would disrupt social order by creating an overwhelming administrative burden is not only implausible—it is irrelevant.

In summary, the premise that a right to be stateless would disrupt social order has significant weaknesses: (1) the claim that a community would be deprived of its ability to exert social control is false; (2) the presumption that rates of antisocial and violent behavior would increase is without basis; (3) the fear that mass expatriation into statelessness would obstruct the development and maintenance of large-scale community-oriented projects is unfounded; (4) the claim that humane and effective means to resolve conflict would be obstructed is incorrect; (5) the suggestion that a sovrien's ineligibility to receive state protection and assistance would disrupt social order is implausible; (6) the claim that weakening of border controls and increasing recognition of the right to freedom of movement would impede the development of a sustainable social order lacks justification; and (7) the claim that recognition of a right to be stateless would place an overwhelming administrative burden on governments is both doubtful and irrelevant. Granted, if a right to be stateless were fully recognized, certain difficulties would arise. The conceivable nature and extent of these difficulties, however, do not suggest mayhem. Oppenheim may have intended a bit of scholarly sarcasm and understatement when he

assessed statelessness as merely "a source of inconvenience to governments."[12] Upon analysis, however, this moderate claim seems accurate—and the larger claim, that a right to be stateless would disrupt social order, is simply not persuasive.

Premise 4 asserts that the right to social order is reasonably regarded as more significant than the liberty to be stateless. Absent the existence of any universal standard for assessing the relative significance of specific rights and liberties, we must weigh these competing claims on the basis of particulars. Two considerations are noteworthy. First, the fundamental human rights which undergird the liberty to be stateless—including the rights to self-determination, freedom from compulsion, and freedom of association—are substantial and are rarely, if ever, overridden by other concerns. The desire of some people to impose their vision of social order on others is patently insufficient rationale to outweigh rights which are fundamentally human. Second, as we have seen above, the existence of a right to social order can barely be justified, especially in the traditional sense that one might have a right to experience or impose such order. For these reasons, this premise remains doubtful.

Upon analysis, the conclusion, that the liberty to be stateless cannot reasonably be regarded as a fundamental human right, is inadequately supported. The argument's central premises—that individuals have a right to social order, that a right to be stateless would disrupt social order, and that the alleged right to social order is more significant than the liberty to be stateless—all contain critical deficiencies. Thus, the argument that a competing right to social order denies the existence of a right to be stateless is not persuasive.

C. The Competing Right to Territorial Sovereignty

The second argument suggests that the right of states to territorial sovereignty outweighs the conflicting liberty of individuals to be stateless. Thus, a fundamental human right to be stateless cannot exist. The reasoning flows in this manner:

Premise 1—If the liberty to perform an act would inherently conflict with an existing right which is reasonably regarded as more significant, then that liberty cannot reasonably be regarded as a fundamental human right.

Premise 2—States have a right to territorial sovereignty.

Premise 3—A right to be stateless would interfere with a state's ability to exercise territorial sovereignty.

Premise 4—A state's right to territorial sovereignty is reasonably regarded as more significant than an individual's liberty to be stateless.

Conclusion—The liberty to be stateless cannot reasonably be regarded as a fundamental human right.

Premise 1, again, offers an acceptable test for the establishment of a fundamental human right.

Premise 2 asserts that states have a right to territorial sovereignty.[13] In order to evaluate this premise fairly, we must first clarify several terms. *Sovereignty* is the supreme, autonomous, and legitimate authority to rule within a defined sphere. *Individual sovereignty* is the supreme, autonomous, and legitimate authority of every individual to rule over herself and to determine her own will, intentions, beliefs, actions, and guiding principles. In other words, individual sovereignty is the fundamental right of every individual to exercise self-determination. Individual sovereignty is the archetypal example of sovereign power because it is the only natural occurrence of such power in the human realm. All other instances of human sovereignty—such as the various types of institutional sovereignty—are derived from individual sovereignty.

Institutional sovereignty is the supreme, autonomous, and legitimate authority of organizations and associations to rule over their members on specific matters. This type of sovereignty exists when individuals relinquish specific sovereign powers to

the leadership of an institution in order to achieve a specific purpose. For example, musicians relinquish certain sovereign powers to a conductor in order to create symphonic sound. Soldiers relinquish such powers to a commander in order to maximize the effect of their brute force. Employees relinquish such powers to an executive in order to maximize the performance of a corporation. Institutional sovereignty is limited in scope (to the members of the institution), in extent (to the specific sovereign powers which the individual members choose to relinquish), and in duration (to the period during which an individual chooses to relinquish her sovereign powers to the institution).

Territorial sovereignty (sometimes referred to as territorial supremacy) is a variant of institutional sovereignty typically claimed by states. When a state—which is an institution—claims a right to territorial sovereignty, it claims that it has the supreme, autonomous, and legitimate authority to exercise governmental powers over every individual within the defined geographic area claimed by the state. When a state asserts this right, it claims the authority to: (1) create laws which apply to every person within the state's claimed territory, (2) enforce these laws by whatever power it deems appropriate, and (3) evaluate and revise these laws and means of enforcement solely on the basis of standards which the state itself determines. Territorial sovereignty is a curious mutation of institutional sovereignty because it asserts that a state's sovereignty is not limited in scope, extent, or duration the way the sovereign powers of other institutions are. On the contrary, states claim authority to govern people who are not their members and they claim the right to rule over individuals who have not relinquished any sovereign powers.

Because the claim that states have a right to territorial sovereignty is far-reaching and appears to exceed reasonable limits, we must analyze the justifications for this claim in order to assess it fairly. Justifications for a state's right to territorial sovereignty can be classified in nine categories: (1) brute force, (2) majority rule, (3) divine right, (4) altruistic motives, (5) utilitarian motives, (6) inherent authority, (7) collegial support, (8) habitual residence, and (9) aboriginal occupation. The first seven justifications are the same as the ones used to defend the imposition of citizenship. Since these justifications for state

rule have been debunked above, they will be treated here concisely.

(1) Brute force. Some suggest that a state has a right to territorial sovereignty whenever it can muster sufficient brute force to coerce a significant portion of individuals within its claimed geographic area to comply with its restrictions and requirements. This defense has long been recognized in international law as valid. James Crawford notes that "how a State *became* a State was a matter of no importance to traditional international law."[14] The fact that a state established its claim to territorial sovereignty on belligerence, occupation, colonization, or other means of coercion previously was not an issue. The international community was more concerned with the extent to which the state could impose its rule effectively and the degree to which the state would cooperate with other states in the international sphere. Contemporary international law asserts—in principle—that claims to territorial sovereignty cannot be founded on brute force.[15] Nonetheless, the practice of states still reflects the earlier barbaric view. For example, Brownlie suggests that a state's effective occupation of a territory constitutes a right to territorial sovereignty: "Concrete acts of appropriation, or a display of state activity consonant with sovereignty, are the vital constituents of title."[16]

Brownlie also suggests that one of the contemporary means by which a state may justify a claim to territorial sovereignty is if such a right is established by a joint decision of the victor states at the conclusion of a war.[17] In other words, international law currently permits the winners of a war to decide who will have territorial sovereignty over the land which was originally claimed by the losers. Brownlie notes that, "The existence of this power of disposition or assignment is recognized by jurists, but they find it difficult to suggest, or to agree upon, a satisfactory legal basis for it."[18] I assert that an acceptable basis for this practice is elusive because people are embarrassed to admit that the underlying principle for this practice is "might makes right." As we have already noted, government established on the basis of brute force, rather than on the consent of the governed, is bound to violate a variety of human rights. For this rea-

son alone, brute force is not a persuasive defense for the right to territorial sovereignty.

(2) Majority rule. Some suggest that a state has a right to territorial sovereignty whenever a majority of individuals who constitute the state decide to exercise such power within the state's claimed geographic area. The principle of "majority rule" is only a slightly qualified rendering of "might makes right:" regulation by brute force in a specific area is alleged to be legitimate if a majority of individuals in that area sanctions it. As we have seen in Chapter 2, this defense for coercion is not reasonable because a state's authority extends only over those who consent to it. No percentage of people in any geographic area who consent to a state's authority has the necessary power to extend that state's authority over the remaining people in that area. To do so would violate a variety of human rights. Thus, the principle of majority rule fails to adequately justify a right to territorial sovereignty.

(3) Divine right. Some suggest that a state has a right to territorial sovereignty because states are divine institutions and because political leaders wield power by divine right. In other words, state authority over a geographic area is alleged to be a specific manifestation or extension of some divine authority. This defense of territorial sovereignty falters on two counts. First, many theological traditions, especially aboriginal ones, conclude that humans are not capable of staking any meaningful—let alone exclusive—claim to some portion of the created order. Concepts such as land ownership and territorial sovereignty are not part of many world views. The belief that certain human beings have divine authority to dominate portions of the earth is not universal. Second, the inherent unverifiability of the claim to divine right, especially in light of the rampant human rights violations which have accompanied its use throughout human history, renders this justification wholly unpersuasive.

(4) Altruistic motives. Some suggest that a state has a right to territorial sovereignty whenever the individuals who constitute the state have altruistic motives for exercising such power. In other words, if a state acts solely to benefit the interests of all the individuals within its claimed territory, with no taint of state interest, then, it is alleged, the state may legiti-

mately exercise territorial sovereignty. This defense is appealing because of its claim to selfless service for the common good. However, as we have seen, critical flaws persist. Notably, if an altruistic act must be imposed on its intended beneficiaries, the altruistic nature of the act must be called into question. We are rightly suspicious if a "good deed" must be forced upon people. Moreover, altruism fails to provide adequate justification for the violation of fundamental human rights. Even if a state genuinely desires to improve the lives of all the individuals within its claimed territory, such an admirable goal does not license the state to violate individual rights to self-determination, freedom from compulsion, and freedom of association. In sum, a right to territorial sovereignty cannot emerge simply from good intentions.

(5) Utilitarian motives. Some suggest that a state has a right to territorial sovereignty whenever the individuals who constitute the state have utilitarian motives for exercising such power. In other words, if a state intends to provide the greatest good to the greatest number of people within its claimed geographic area, then, it is alleged, the state may legitimately exercise governmental powers over every individual within that area. This defense appeals to our desires for social order. However, as we have seen, this justification bears two critical flaws. First, a state's vested interest in social control raises a reasonable concern that any claim a state makes regarding utilitarian motives might be disingenuous and intended only as a veil for social control. Since individuals and institutions who benefit directly by maximizing social control typically couch their plans in the terminology of "the common good," any state espousal of utilitarian principles warrants concern.

Second, even if a state genuinely claims utilitarian motives as a justification for exercising territorial sovereignty, issues of fairness remain. Since no one can reliably determine the quantity or quality of "good" any act produces, a claim regarding the relative utility of territorial sovereignty provides scant rationale for the human rights violations that such power would entail. Also, utilitarianism raises the ethical concern that benefits for some would legitimately rest on the coercion, restriction, and suffering of others. In brief, potential improvement of the com-

mon good does not provide sufficient cause to violate individual rights to self-determination, freedom from compulsion, and freedom of association. Thus, the claim that territorial sovereignty is legitimized by utilitarian motives is not persuasive.

(6) Inherent authority. Some suggest that a state has a right to territorial sovereignty whenever the individuals who constitute the state are inherently authorized by some exclusive qualification to impose their will on others. For example, some allege that those of a certain gender, race, lineage, or economic class are exclusively qualified and, thus, inherently authorized, to rule over those who do not bear such characteristics. Others allege that majorities are authorized to rule over minorities, that physically powerful groups are authorized to rule over weak groups, or that those with long historical ties to a particular territory are authorized to rule over groups with shorter historical ties. As we have noted above, the inherent authority defense bears a fatal flaw: no competent arbiter exists to determine what qualifications might inherently authorize any group of individuals to impose their will on others. If a state authorizes itself to exercise territorial sovereignty, a blatant conflict of interests exists which violates all standards of fairness. If certain residents in the state's claimed territory determine that the state is qualified to exercise sovereign rule in their lives, then the state's authority is not inherent but contingent upon continuing consent, and the state's scope of rule is not territorial but restricted to the consenting individuals. Even if some third party authorizes the state to exercise territorial sovereignty, the essential question—How did this party acquire legitimate authority to authorize certain people to impose their will on others?—still begs for a satisfactory answer. Because no competent arbiter exists to determine what qualifications might inherently authorize a state to impose its will on others, the suggestion that a state could be inherently authorized to exercise territorial sovereignty is not persuasive.

(7) Collegial support. Some suggest that a state has a right to territorial sovereignty whenever it enjoys the support, or at least the toleration, of its partner states in the international community. In other words, it is alleged that if the larger community of states agrees that a certain state is free to impose its will on all the individuals within its claimed territory, then such

territorial sovereignty is legitimate and fair. Although this practice of collegial approval is commonplace under the rubric of international law, such action fails to be more than a sign of mutual interest and inter-state cooperation. Since states have a vested interest in exercising territorial sovereignty, there is no reason to believe that they would not support each other in their attempts to wield such power. Because the consensus of those who have a vested interest in imposing their will on others provides no proof that such imposition is legitimate or fair, a state's claim to territorial sovereignty is not justified by the predictable support it will receive from other states.

(8) Habitual residence. Some suggest that a state has a right to territorial sovereignty because everyone who habitually resides within the territory claimed by a state allegedly consents to that state's rule by virtue of their continued presence. In other words, habitual residence is regarded as de facto consent to a state's claim to sovereignty. The relationship between one's place of habitual residence and a state's right to territorial sovereignty has long been observed in popular culture. The notion that one should either submit to the rule of the governing state or move to another land is prevalent. Consider the billboard sentiment "America. Love it or leave it."

In order to evaluate habitual residence as a justification for territorial sovereignty, we must first acknowledge the legitimate roots of this argument. An essential requirement which states typically set for the establishment of citizenship status is that the individual must have some close connections to the land and the community over which the state rules. For example, birth within the territory, birth to parents who are already citizens, employment within the territory, knowledge of the local culture, ability to speak the local language and, of course, habitual residence within the territory all indicate one's affinity to the land and people over which the state claims to rule. Broadly, states are free to set any requirements they desire to regulate the acquisition of citizenship status. This principle is widely accepted in international law and, as a manifestation of the fundamental human right to freedom of association, the practice is justifiable. Any association is free to determine its standards for admitting new members. Specifically, states are at liberty to set member-

ship standards as they see fit, and the common practice of conditioning citizenship status on an individual's close connections with a particular territory and community is legitimate and fair.

While the above standard is acceptable, its inverse is not: a state may require an individual to bear close connections to a territory and a community as a prerequisite for citizenship status, but the mere existence of such connections does not mean that an individual is obliged to be subject to the state. As we have seen in Chapter 2, obligation to a state—especially in the form of a citizen-state relationship—is contingent upon the consent of the individual. By any reasonable standard, the fact that one intentionally maintains close connections to a certain people and to a certain place on the earth has nothing to do with whether or not one consents to participate in a citizen-state relationship with a state that attempts to rule over that particular people and that particular place. We develop close connections to communities and places for many reasons other than the desire to participate in a citizen-state relationship. Where we are born, where our family and friends live, and where we establish our employment are critical factors which determine our place of habitual residence. We generally prefer to live among people who understand our language and who share our cultural perspectives, preferences, and practices. Some of us are tied to a place because of its historical or spiritual significance. Others of us feel compelled to stay where we are because of family commitments or economic pressures. All of these factors demonstrate that one's habitual residence within a certain territory may well be motivated by concerns other than one's political interests or affiliations. Thus we cannot reasonably conclude that habitual residence is proof of one's consent to submit to state rule.

Donner offers a clear example of the popular assumption that habitual residence implies consent to state rule:

> Under international law nationality may not be imposed on a person without his consent and laws purporting to do this are not binding on third States. This consent must be given at the time of naturalization, or there must be an act constituting express or implied consent at some time after the imposition in

> order to render it valid under international law. An example of implied consent to a forcible naturalization is shown where there is a strong factual tie between the State and the national. There must be ordinary residence in the territory and the social bond of attachment to the "body politic" of the State of the new nationality.[19]

Despite such claims, social and geographic connections are insufficient to generate any individual obligation to a state. While a state may require an individual to develop certain connections as prerequisites for citizenship, one's habitual residence in some part of the world cannot reasonably be construed as a sign of one's consent to submit to state rule. In sum, a state's claim to territorial sovereignty is not justified by the fact that people continue to reside within the territory over which the state desires to rule.

(9) Aboriginal occupation. Some suggest that a state has a right to territorial sovereignty if the individuals who constitute the state can prove that they are the original occupants (or their rightful successors) of the territory in question.[20] This principle goes beyond the simple claim that the first occupants of a land should be entitled to live there: it asserts that the first occupants are entitled to exercise sovereign rule over any subsequent occupants. This defense bears two critical problems.

First, if, as I have shown, the right of one party to rule over another is strictly dependent on the latter's consent, then the particular portion of the earth which each party occupies has no bearing on one's right to rule over the other. The fact that one party occupied or claimed a certain territory before another did is not sufficient to create a right for the first party to rule over the second. Social or moral customs might encourage certain forms of shared occupation of the territory, but neither party acquires a fundamental right to rule over the other. Simply put, the party who can claim "We were here first" is not justified in concluding "therefore, this is our land and we have the right to rule over every person within it." The principle of government-by-consent precludes the principle of government-by-whoever-arrived-here-first.

The second problem with justifying a right to territorial sovereignty on the basis of aboriginal occupation is that the criteria for determining the first occupants of a land are not certain. For example, the first occupants could be: the first party ever to stake a public claim to the land; the first party ever to use the land (e.g., for residence, business, or leisure); or the first party ever to rule over the land by threat or use of brute force. These criteria raise questions which cast doubt over this entire line of reasoning.

- Which, if any, of these criteria is to be used to determine the first occupants? Who has the legitimate authority to decide this matter?
- If the first party to actually meet some such criterion cannot be determined, on what grounds could a substitute party be named? Who has legitimate authority to name a substitute?
- Must the first occupants of a territory necessarily be human? Some argue that other members of the animal kingdom are rightfully regarded as the first occupants of any given territory and, thus, humans have no claim to territorial sovereignty.
- Even if the first occupants of a land could be reliably determined, how would their rightful successors be determined? Who has legitimate authority to decide this matter? In this modern era, the blood descendants of the original inhabitants of any land are likely to be so dispersed geographically and diluted genetically as to render fair adherence to the principle of biological succession logistically impossible. On the other hand, if rightful succession is based simply on the principle of legal transfer of title (e.g., sale, gift, treaty, legislative act, judicial decision, or act of war), then we are faced with a conflict of interests—states cannot claim the authority to determine what constitutes rightful succession and simultaneously claim to be rightful successors.

Because the criteria for determining the first occupants of a land (and their rightful successors) are uncertain, because

there exists no impartial authority to establish definitive criteria, and because the principle of government-by-whoever-arrived-here-first denies the principle of government-by-consent, a claim based on aboriginal occupancy is not useful for establishing a right to territorial sovereignty.

In summary, Premise 2, asserts that states have a right to territorial sovereignty. This claim arises from arguments founded on brute force, majority rule, divine right, altruistic motives, utilitarian motives, inherent authority, collegial support, habitual residence, and aboriginal occupation. As we have seen, not one of these justifications is persuasive.

The claim that states have a right to territorial sovereignty not only lacks convincing evidence, but it raises a broader question, whose answer alone may invalidate this claim. Can a state have any fundamental rights at all, apart from the aggregate entitlement of the fundamental human rights of the individuals who constitute the state? Specifically, can a state have a fundamental right to territorial sovereignty that differs from the aggregate entitlement of the sovereignty rights of the individual members of the state? A state, like any other association of individuals, has no existence apart from the individuals who constitute it. Thus, a state's right to anything is nothing more than a composite right, derived from individuals choosing to exercise their personal rights en masse. In other words, a state has no natural rights except for those fundamental human rights which individual members of the state choose to exercise in association. Individuals may choose to associate in order to maximize the effective implementation of certain rights (e.g., a right to self defense), but the act of association does not somehow broaden the aggregate entitlement of the associating individuals.

For example, if human beings had a fundamental human right to use one bucket of water per day, then 100 human beings would have an aggregate entitlement to use 100 buckets of water per day. If these 100 individuals chose to associate as a state, I suggest that they would, as a state, still be entitled to use only 100 buckets of water per day. These folks, of course, would be at liberty to distribute the water amongst themselves as they see fit, but their statehood would not somehow entitle them to use, say,

200 buckets per day or to have unlimited use of the local spring. Thus, because states are nothing more than associations of individuals, a state has no fundamental right to territorial sovereignty in excess of the aggregate entitlement of the rights to territorial sovereignty of the individuals who constitute the state.

In light of this circumstance, the question then arises: do individuals have any fundamental human right to territorial sovereignty and, if so, what are its parameters? I suggest that if such a right exists at all, it is extremely limited. Individuals are the essential units of sovereign power. As noted above, every human being has the supreme, autonomous, and legitimate authority to rule over herself and to determine her own will, intentions, beliefs, actions, and guiding principles. Individual sovereignty is the fundamental human right of every person to exercise self-determination. At minimum, this right to rule over oneself includes sovereignty over one's body. But does the physical area over which one has authority to rule extend beyond the limits of one's skin? If it does, I suggest that the area cannot fairly exceed the mobile square meter within which each of us must stand or sit (or perhaps two square meters if we are laying down). The liberty to exercise territorial sovereignty over such a limited area could reasonably be regarded as a fundamental human right because it appears to meet all of the criteria for such status. For example, it is logically possible that this liberty could be universally exercised, restrictions on this liberty would inherently interfere with essential aspects of one's humanity, and the exercise of this liberty would not inherently cause such interference in the lives of others. In other words, it is reasonable to claim that each of us has the right to exercise territorial sovereignty over the mobile square meter in which we have no choice but to exist. Wherever our body happens to be, there we can claim legitimate authority to rule over the space which immediately surrounds our flesh and blood.

A right to sovereign rule over any additional space, however, is not warranted. If an individual's liberty to territorial sovereignty extended beyond her mobile square meter, it would quickly fail to meet essential criteria for consideration as a fundamental human right. For example, if every individual had a right to exercise territorial sovereignty over one square kilome-

ter, we could hardly go about the tasks of daily life without interfering in the lives of others and without suffering interference ourselves. Moreover, as the area of individual entitlement increases, the constraints of population density reduce the likelihood that the liberty to territorial sovereignty could be exercised either universally or equitably. Thus, if individuals have a fundamental human right to exercise territorial sovereignty at all, the physical space over which an individual would be entitled to rule could not reasonably exceed the immediate area surrounding one's body.

In light of an individual's extremely limited right to territorial sovereignty, and in light of a state's inability to reasonably claim rights in excess of the aggregate entitlement of the rights of the individuals who constitute the state, a state's right to territorial sovereignty is also extremely limited. At most, a state can reasonably claim the right to exercise sovereign rule only over the small area which immediately surrounds each of its members. Any broader claim would unduly interfere in the lives of people who have no obligation to the state.

This conclusion does not prevent a state from ruling over its citizens. It only prevents a state from claiming blanket authority to rule over anyone who happens to be in the territory which the state hopes to control. A state has a legitimate right to exercise sovereign rule over specific individuals (namely, those who consent to its authority) but it does not have a right to rule over classes of individuals (e.g., those of certain ethnic descent or those residing in a certain geographic area). Any claim to exercise sovereignty over a class of individuals stands in direct opposition to the principle of government by consent and the right to self-determination. Of course, states disregard this conclusion. Brownlie, in his *Principles of Public International Law*, discusses the ways in which states establish their right to territorial sovereignty. He remarks frankly, "At present most claims are made in terms which do not include a condition as to due consultation of the population concerned."[21] Despite this indefensible practice, our conclusion stands: a state can reasonably claim the right to exercise sovereign rule only over the small area which immediately surrounds each of its members. Any broader claim would unduly interfere in the lives of people who

have no obligation to the state. For this reason, and because there are no persuasive arguments to justify the claim that states have a right to territorial sovereignty, we must regard Premise 2 as invalid.

Premise 3 suggests that a right to be stateless would interfere with a state's ability to exercise territorial sovereignty. If a state's right to territorial sovereignty is regarded broadly—encompassing an area beyond the aggregate entitlement of the state's members, and encompassing individuals who do not consent to the authority of the state—then a right to be stateless would undeniably interfere with a state's ability to rule. However, this broad interpretation of territorial sovereignty is not justifiable. If, as I have shown, a state's right to territorial sovereignty is strictly limited to the small area which immediately surrounds each of its members, a right to be stateless would not cause interference. The legitimate scope of a state's territorial sovereignty, by definition, would not encompass a stateless person or the area which immediately surrounds her. Moreover, the right of an individual to be a sovrien would not impinge on a state's ability to rule over the area which is naturally linked to each of its members. Thus, to the limited extent that a state can be said to have a right to territorial sovereignty, this power would not be disturbed by the existence of a right to be stateless.

We may note here with irony that, despite major international efforts to reduce and eliminate statelessness,[22] and despite the varied arguments against a right to be stateless, statelessness has *not* been prohibited by international law because to do so would require the systematic violation of legitimate aspects of state sovereignty. States realize that any effort to legislate the policies necessary to eliminate statelessness would inevitably result in mutual infringement of each other's sovereignty. For example, to the extent that statelessness results from denationalization, statelessness would be difficult to eliminate unless states agreed to relinquish or strictly limit their rights to denationalization. Such a restriction, however, would violate a state's fundamental right to withdraw from a citizen-state relationship at will. To the extent that statelessness results from the world's variety of uncoordinated citizenship and naturalization requirements, statelessness would be difficult to eliminate unless

states agreed to relax and standardize their requirements. Specifically, states would need to naturalize more readily immigrants of all sorts, including refugees, deportees, asylum seekers, and unintentionally stateless individuals. Such a relaxation of policies, however, would violate a state's fundamental right to regulate the size and constitution of its membership. To the extent that statelessness is the result of individual choice, statelessness would be difficult to eliminate unless states agreed to compulsorily naturalize their fair share of individuals who do not consent to the authority of any state. Such an act, however, would violate a state's fundamental right to freedom of association. In light of these threats to state sovereignty, statelessness has not been prohibited by international law.[23]

In sum, the claim that a right to be stateless would interfere with a state's ability to exercise territorial sovereignty is invalidated by the fact that an individual's choice to be stateless does not disturb a state's ability to rule over the aggregate territorial entitlement of its citizens. This claim is also mitigated by the ironic predicament that any step to eliminate statelessness is likely to cause state sovereignty violations of other types.

Premise 4 asserts that a state's right to territorial sovereignty is reasonably regarded as more significant than an individual's liberty to be stateless. Again, absent the existence of any universal standard for assessing the relative significance of specific rights and liberties, we must weigh these competing claims on the basis of particulars. Two considerations are noteworthy. First, the fundamental human rights which undergird the liberty to be stateless are substantial and are rarely, if ever, overridden. The desire of some people to extend the scope of a state's institutional sovereignty into the lives of people who do not consent to the state's authority is patently insufficient rationale to outweigh rights which are fundamentally human. Second, as we have seen above, a state's right to territorial sovereignty (as the concept is traditionally understood) cannot be justified in any meaningful way. For these reasons, this premise is not sustainable.

The conclusion, that the liberty to be stateless cannot reasonably be regarded as a fundamental human right, is once again inadequately supported. The argument's core premise, that

states have a right to territorial sovereignty, can be justified only under such limited circumstances that it is functionally invalid. The premise that a right to be stateless would interfere with a state's legitimate exercise of territorial sovereignty is unfounded. And the premise that a state's right to territorial sovereignty is more significant than an individual's liberty to be stateless is dubious. For these reasons, the argument—that a state's right to territorial sovereignty denies the existence of an individual's right to be stateless—is not persuasive.

D. The Competing Right to Establish and Operate States

The third argument suggests that the right of individuals to establish and operate states outweighs the conflicting liberty of individuals to be stateless. Thus, a fundamental human right to be stateless cannot exist. The reasoning is similar to that of the previous competing right arguments:

> *Premise 1*—If the liberty to perform an act would inherently conflict with an existing right which is reasonably regarded as more significant, then that liberty cannot reasonably be regarded as a fundamental human right.
>
> *Premise 2*—Individuals have a right to establish and operate states.
>
> *Premise 3*—A right to be stateless would interfere with the ability of individuals to establish and operate states.
>
> *Premise 4*—The right to establish and operate states is reasonably regarded as more significant than the liberty to be stateless.
>
> *Conclusion*—The liberty to be stateless cannot reasonably be regarded as a fundamental human right.

Premise 1, again, offers an acceptable test for the establishment of a fundamental human right.

Premise 2 asserts that individuals have a right to establish and operate states. When people claim this right, they are, in essence, claiming one or more of the following: a right to associate, a right to independence, a right to govern, or a right to territorial sovereignty. In order to assess the validity of this premise, we will briefly evaluate each of these tenets.

A right to associate. The right of people to associate freely is acknowledged as a fundamental human right and, thus, does not threaten the validity of Premise 2. A state is simply an association of individuals whose purpose is to provide its members with certain protection and services which might be difficult for the members to acquire individually. The claim that individuals have a right to establish and operate states is acceptable to the extent that it means that people have the right to associate freely for the purpose of pursuing their common sociopolitical goals.

A right to independence. The right of associations to independence is an extension of the right of individuals to self-determination and, thus, it can likewise be acknowledged as a fundamental human right. Again, Premise 2 is not threatened. Insofar as a state is a free association of individuals, there is no reason why such an association should not retain the exclusive right to control its own affairs. Just as an individual is not obliged to submit to the control of another entity unless she so consents, so an association of individuals has no obligation to submit to external control without its consent. The claim that individuals have the right to establish and operate states is acceptable to the extent that it means that people have a right to exercise control over the associations that they have created.

A right to govern. The liberty to govern others is not a fundamental human right. If anything, we appear to have a fundamental human obligation to refrain from interfering in the lives of others. The only legitimate way an individual or group can secure a right to govern others is to secure the explicit consent of every individual over whom they intend to exercise control. Any other basis for government, as we have seen, cannot reasonably be justified. If an association of individuals claims a

right to establish and operate a state—meaning that they claim authority to create rules for others and to enforce these rules as they see fit—this right can exist only if every individual to be governed has explicitly consented to this arrangement. Premise 2, therefore, is strictly limited: a right to establish and operate states is acceptable only to the extent that there is government by consent.

A right to territorial sovereignty. As shown above, a right to territorial sovereignty cannot reasonably be justified. If the right to establish and operate states is intended to mean that a right to territorial sovereignty somehow exists, Premise 2 must be rejected.

In sum, the premise that individuals have a right to establish and operate states is valid only if it means: (1) people have a right to associate freely for the purpose of pursuing their shared sociopolitical goals, or (2) any such association has an exclusive right to exercise control over its own affairs, or (3) any such association has a right to govern individuals who explicitly consent to its rule. This premise is not valid if it means that a state is at liberty to impose its rule on individuals who have not explicitly consented to such government. Because there are no meaningful rights to either territorial sovereignty or government without consent, only the narrower interpretation of Premise 2 is acceptable.

Premise 3 suggests that a right to be stateless would interfere with the ability of individuals to establish and operate states. If this ability is understood as the power to govern others without their consent or the power to exercise territorial sovereignty, then Premise 3 is true. Since a right to be stateless would permit an individual to be free from the rule of any government, such a right would nullify claims to territorial sovereignty or other forms of government without consent. However, since such claims are not legitimate, the potential interference that a right to be stateless would pose is irrelevant.

On the other hand, if the ability to establish and operate states is understood as the power of people to associate freely, to control their own affairs, or to govern those who explicitly consent to such rule, then Premise 3 is false. A right to be stateless

would not interfere with the ability of others to engage in any of these activities.

A primary concern driving this argument, and this premise in particular, is that a right to be stateless, if exercised by a significant number of people, might diminish or dissolve an existing state. In other words, it is feared that if a critical number of people in any given land chose to be stateless, the operation of a state in that land might be impossible. The implication that mass intentional statelessness might deny the legitimate right of a state to exist is not true. As we have seen, people are at liberty to operate a state so long as that state is founded on the free association of consenting individuals. Regardless of how many individuals in any particular land choose to become or remain stateless, no state is denied its legitimate right to exist there. If one billion people on a continent chose to be stateless, their choice would not deny the legitimate right of two remaining people to associate as a state. Provided that these two people agreed to associate for the purpose of maintaining a state, and that they did not attempt to govern anyone against their will, this two-citizen state would maintain its legitimate right to exist. This state may wish to wield greater power than it has legitimate authority to wield—a common desire among states—but any such expansion of jurisdiction clearly would not be warranted.

Any state genuinely founded on the consent and will of its citizenry has no concern with perpetuation or dissolution. Whether individuals choose to continue or cease their association is irrelevant to such a state because there are no state interests apart from the will of the people. Under these circumstances, a right to be stateless poses no threat. Even if the widespread exercise of a right to be stateless led to the diminishment or dissolution of the state, that state would in no way be denied its legitimate right to exist.

We can think of a state as a sports team—a free association of individuals, with an exclusive right to control their internal affairs, and with such a commitment to a particular purpose that each individual member explicitly consents to being governed by the team's leadership. One's right to not be a member of this or any other team (i.e., one's right to be stateless) only means that a sports team cannot legitimately force one to be a

team member or to play by that team's rules. This right to forgo participation in all sports teams does not interfere with the right of other individuals to establish or operate teams as they wish.

In sum, one's right to political independence does not interfere with the right of others to associate or self-govern. While a right to be stateless might threaten the establishment and operation of certain states—namely those states that desire to exercise territorial sovereignty or other forms of government without consent—such a right does not interfere with states that function within the legitimate parameters of statehood.

The concern that a right to be stateless might interfere with the establishment and operation of states is further minimized by this irony: a sovrien meets all the traditional criteria for the establishment and operation of a state by possessing a population, a government, a territory, and independence.[24] Insofar as a state is expected to have a population, a sovrien can claim a population of one. Small states exist[25] and writers on international law suggest that no minimum limit on a state's population is prescribed.[26] Insofar as a state is expected to have an ability to govern its population, a sovrien can easily demonstrate the ability to exercise control over herself. A sovrien can even prove that she has the unanimous and explicit consent of the governed—a mark of legitimacy that traditional states fail to meet. Insofar as a state is expected to have a territory over which it can extend its rule, a sovrien can stake a legitimate claim to the mobile square meter in which she has no choice but to exist. It is generally held that the size of a state's territory has no bearing on the legitimacy of a state's sovereignty. Writers on international law also suggest that no minimum area for a state is prescribed and that the borders of a state need not always be fully delimited and defined.[27] Insofar as a state is expected to possess a legitimate right to independence, a sovrien can claim the fundamental human rights to self-determination and freedom from interference. This irony—that a sovrien should, at least in principle, qualify for recognition as a state—weakens the premise that a right to be stateless would interfere with the establishment and operation of states.

Premise 4 asserts that the right to establish and operate states is reasonably regarded as more significant than the liberty

to be stateless. Once again, absent the existence of any universal standard for assessing the relative significance of specific rights and liberties, we must weigh these competing claims on the basis of particulars. Two considerations are noteworthy. First, if the right to establish and operate states means government without consent, then the liberty to be stateless is easily deemed more significant. The fundamental human rights which undergird the liberty to be stateless are substantial and are rarely, if ever, overridden. The desire of some people to govern others without their consent is patently insufficient rationale to outweigh rights which are fundamentally human. Second, if the right to establish and operate states means simply the freedom of people to associate, to control their own affairs, and to govern with consent, we can regard this right as no more and no less significant than the liberty to be stateless. Both circumstances rest on the fundamental human rights to self-determination, freedom from compulsion, and freedom of association. The only difference is that citizens exercise these rights en masse, and sovriens exercise these rights individually. For these reasons, this premise remains doubtful.

The conclusion, that the liberty to be stateless cannot reasonably be regarded as a fundamental human right, is once again inadequately supported. The premise that individuals have a right to establish and operate states—when interpreted to mean that some people have a right to govern others without their consent—is not valid. If this premise is merely intended to mean that people have the rights to associate freely, to control their own affairs, and to govern with consent, then the liberty to be stateless poses no conflict. The liberty to be stateless may prevent the establishment and operation of certain states if a critical number of people in any given land chose to be stateless. However, this circumstance would not interfere with the right of those who wished to establish and operate states within the legitimate parameters of statehood. Finally, the notion that the right to establish and operate states can be regarded as more significant than the liberty to be stateless is doubtful. For these reasons, the argument—that the right to establish and operate states denies the existence of an individual's right to be stateless—is not persuasive.

E. The Moral Obligation to Submit to the Authority of the State

The fourth argument suggests that the moral obligation of individuals to submit to the authority of the state supercedes the conflicting liberty of individuals to be stateless. Thus, a fundamental human right to be stateless cannot exist. The reasoning proceeds as follows:

> *Premise 1*—If the liberty to perform an act would inherently conflict with a universal moral obligation, then that liberty cannot reasonably be regarded as a fundamental human right.
>
> *Premise 2*—A universal moral obligation exists that obliges every individual to submit to the authority of the state that claims sovereign power over him or her.
>
> *Premise 3*—A right to be stateless would conflict with a universal moral obligation that obliges every individual to submit to the authority of the state that claims sovereign power over him or her.
>
> *Conclusion*—The liberty to be stateless cannot reasonably be regarded as a fundamental human right.

Premise 1, like the first premise of the competing right arguments, is frequently cited as one of the criteria that must be met before the liberty to perform a given act may be regarded as a fundamental human right.[28] However, as we have seen, any argument that invokes the force of some universal moral obligation bears the onerous task of justifying the existence of that obligation. Although the existence of universal moral obligations is unlikely, their presence is theoretically possible. We can accept this premise, but only with a wary eye.

Premise 2 asserts that a universal moral obligation exists that obliges every human being to submit to the authority of the state that claims sovereign power over him or her. Typically, this assertion is founded on one of three arguments.

The first argument posits that states are divine institutions and, as such, their sovereign power should be obeyed by all human beings. In expanded form, the argument proceeds something like this: whereas sovereign powers must be obeyed, and whereas God is the supreme sovereign power of the universe, and whereas states have been instituted by God for the purpose of exercising God's sovereign rule in the world, therefore, all human beings have a moral obligation to submit to the authority of their respective states. Typically, this argument also suggests that any individual who disobeys God's sovereign rule will be subject to divine judgement and possibly eternal damnation. Thus, it is argued, human beings are not only obliged to submit to state authority, but they have a vital personal interest in submitting to state authority as well. This theocratic perspective, which is common in many religious traditions, is expressed bluntly in Christian theology by the apostle Paul: "Let every person be subject to the governing authorities; for there is no authority except from God, and those authorities that exist have been instituted by God. Therefore whoever resists authority resists what God has appointed, and those who resist will incur judgement."[29]

Politicians and other state advocates may be eager to allude to, if not actively perpetuate, this world view since the fear of God can be an effective means for maintaining public support and obedience. The theocratic argument, however, does not adequately prove the existence of a universal moral obligation. Many people in the world do not believe in the existence of God, or at least not in the existence of a god who can wield supreme rule over human activity. Furthermore, even among those who acknowledge some divine authority, the concept of states as divine institutions is not well-established. Despite the genuine belief of many religious adherents that states are divine institutions, their personal beliefs do not reasonably justify the imposition of a moral obligation on individuals who do not happen to share such beliefs. In other words, one's personal beliefs, re-

gardless of their sincerity and strength, do not legitimize the imposition of a moral obligation on others.

The second argument posits that the intrinsic value of social order is so great that human beings are morally obliged to submit to the authority of states. In full form, the argument proceeds something like this: whereas human beings are morally obliged to pursue supreme values (e.g., love, peace, justice, etc.), and whereas social order is a supreme value, and whereas the sovereign rule of states is a necessary condition for achieving social order, therefore human beings are morally obliged to submit to the sovereign rule of states. This argument, of course, has significant weaknesses. First, the assumption that human beings have some prior obligation to pursue supreme values lacks adequate justification. Not only is the determination of what constitutes a supreme value essentially subjective, but a universal moral obligation to pursue any such value would be almost impossible to prove. Second, the assumption that social order is a supreme value, while potentially true, is strictly limited by the extent to which such order is voluntarily established. Imposed order violates enough fundamental human rights that it could not reasonably be regarded as a supreme value. Third, the assumption that the sovereign rule of states is a necessary condition for achieving social order is, as we have seen, false. Thus, regardless of how valuable social order might be, such value does not reasonably justify the imposition of a universal moral obligation to submit to state authority.

The third argument suggests that if an individual has consented to participate in a citizen-state relationship then, by definition, that individual has a moral obligation to submit to the authority of his or her respective state. The argument continues by asserting that every human being has in fact consented to participate in a citizen-state relationship. Hence, it is argued, every human being is obliged to submit to the authority of his or her respective state. The first assumption is not unreasonable: if one freely and knowingly enters into a citizen-state relationship, one bears at least a simple contractual obligation if not a genuine moral obligation to fulfill a citizen's reciprocal responsibilities to the state. The suggestion, however, that every human being in the world has in fact consented to participate in a citizen-state

relationship is patently false. Thus, the conclusion that every human being has a moral obligation to submit to the authority of his or her respective state is unfounded.

In sum, not one of these three arguments adequately justifies the existence of a universal moral obligation to submit to state authority. Moreover, the consensus that such an obligation would require is clearly lacking: the supreme authority of the state is denied by at least some people in every land. Thus, the premise that a universal moral obligation exists that obliges every individual to submit to the authority of the state that claims sovereign power over him or her cannot be substantiated.

Premise 3 declares that a right to be stateless would conflict with a universal moral obligation to submit to state authority. If such an obligation existed, a right to be stateless would indeed conflict with it. However, as we have just seen, no such obligation can be shown to exist. Thus, a right to be stateless poses no conflict.

Upon analysis, the conclusion, that the liberty to be stateless cannot reasonably be regarded as a fundamental human right, is inadequately supported. Admittedly, a right to be stateless would conflict with a universal moral obligation to submit to state authority. The existence of *any* universal moral obligation, however, is so unlikely, and the weight of arguments against the existence of this particular obligation is so great, that any appeal to this obligation is without merit. Thus, the argument—that the moral obligation of individuals to submit to the authority of the state denies the existence of a right to be stateless—is not persuasive.

F. The Moral Obligation to Support One's Community

The fifth argument suggests that the moral obligation of individuals to support their respective communities supercedes the conflicting liberty of individuals to be stateless. Thus a fundamental human right to be stateless cannot exist. The reasoning is similar to that of the previous argument:

Premise 1—If the liberty to perform an act would inherently conflict with a universal moral obligation, then that liberty cannot reasonably be regarded as a fundamental human right.

Premise 2—A universal moral obligation exists that obliges every individual to support the communities on which he or she relies.

Premise 3—A right to be stateless would conflict with a universal moral obligation that obliges every individual to support the communities on which he or she relies.

Conclusion—The liberty to be stateless cannot reasonably be regarded as a fundamental human right.

Premise 1, again, is an acceptable test for the establishment of a fundamental human right. However, insofar as the existence of any universal moral obligation is highly improbable, the usefulness of this premise is strictly limited.

Premise 2 asserts that a universal moral obligation exists that obliges every human being to support the communities on which he or she relies. On first appearance, this premise seems acceptable. The expectation that reciprocal support should exist between a community and its individual members is a widely recognized moral norm. If a particular community enables an individual to live in this world, that community can reasonably expect the individual to provide reciprocal support and cooperation. Especially if the individual directly depends on the services of the community, most people would agree that the individual has a moral obligation to contribute to the continued well-being of that community. Regardless of a community's specific nature, be it familial, social, municipal, national, religious, geographic, economic, or otherwise, the principle of reciprocal support is generally upheld. However, unless one could prove that the expectation of reciprocal support between an individual and a

community is a matter of universal consensus, a universal moral obligation to provide such support would be difficult to justify.

Premise 3 declares that a right to be stateless would conflict with a universal moral obligation that obliges every individual to support the communities on which he or she relies. Specifically, this premise suggests that every human being relies on at least one national community (i.e, a state), and if human beings had a right to be stateless then any person who exercised that right would be unable to fulfill her obligation to provide reciprocal support to the national community on which she relies. This view is based on two problematic assumptions.

First, the assumption that every human being relies on a state is incorrect. Many people who adhere to strict principles of political independence do not rely on states. For example, anarchists, members of certain religious traditions, and members of various politically oppressed groups routinely refuse to depend on states for any protection or services. The mere fact that a state might offer to such people protection and services in no way creates a moral obligation for these people to provide reciprocal support. (Of course, if such people enjoyed the benefit of certain state services, even though they did not rely on the state for the ongoing delivery of those services, some reciprocal consideration would be in order.)[30] Because an individual need not rely on any state at all, the possibility exists that one could exercise a right to be stateless and simultaneously honor any alleged moral obligation to support the communities on which he or she does rely.

Second, the assumption that any person who exercises a right to be stateless would be unable to fulfill her obligation to provide reciprocal support to a state or national community that she might happen to rely on is false. If a moral obligation to provide reciprocal support existed, an individual's citizenship status would be immaterial. If, for whatever reason, a sovrien chose to rely on a state or national community for some particular support, the individual's status as a sovrien would in no way prohibit her from offering reciprocal support to that community. One need not be a citizen in order to support and cooperate with a state. Sovriens can give back to their communities via financial means and personal labor. They can cooperate with their com-

munities by helping to achieve community goals, sharing in local customs, and tending to all the responsibilities that are part of any human being's life on this planet. Thus, even if the existence of some universal moral obligation regarding reciprocal support could be established, the existence of a right to be stateless would not preclude the fulfillment of that obligation.

In light of the critical problems with each of the above assumptions, Premise 3 remains unfounded.

The source of this premise, and indeed the source of this entire argument, is the popular fear that non-citizens might enjoy certain privileges that have been paid for by citizens and intended for the exclusive enjoyment of citizens. Seckler-Hudson notes, "These people without a country are sometimes adjudged as deserving of little consideration since they are usually regarded as persons who enjoy the benefits of citizenship without assuming a share of its obligations, and they are even considered at times as 'international vagabonds.'"[31] Among the sovriens who choose to rely on a state for certain services, some, no doubt, will also choose to withhold reciprocal support. Such reliance on the state without reciprocity is morally unsound. Curiously, however, the countless bona fide citizens in any given state who freely consent to provide reciprocal support to that state yet who consistently shirk their civic obligations (or at least attempt to avoid such obligations by all legitimate and illegitimate means—consider the popular pastime of under-calculating the full assessment of taxes due) are rarely charged with anything but apathy. The fear that some unscrupulous sovrien might enjoy undue benefits from a state is moderated, therefore, by the widespread toleration of irresponsible citizenship.

Again, the conclusion, that the liberty to be stateless cannot reasonably be regarded as a fundamental human right, is inadequately justified. Admittedly, the expectation that reciprocal support should exist between a community and its individual members is a widely recognized moral norm. Nonetheless, the claim that reciprocal support is a universal moral obligation lacks adequate evidence. Furthermore, even if every person had such a moral obligation, the exercise of a right to be stateless would in no way preclude the fulfillment of that obligation. Thus, the argument—that the moral obligation of individuals to

support their respective communities denies the existence of a right to be stateless—is not persuasive.

G. The Moral Obligation to Avoid Self-Threatening Situations

The sixth argument suggests that the moral obligation of individuals to avoid self-threatening situations supercedes the conflicting liberty of individuals to be stateless. Thus, a fundamental human right to be stateless cannot exist. Those who view statelessness as an evil, or as a fate worse than death, condemn the choice to be stateless as an affront to human dignity. From this perspective, such a choice is not worthy of designation as a human right. The reasoning behind this argument flows as follows:

> *Premise 1*—If the liberty to perform an act would inherently conflict with a universal moral obligation, then that liberty cannot reasonably be regarded as a fundamental human right.
> *Premise 2*—A universal moral obligation exists that obliges every individual to avoid self-threatening situations.
> *Premise 3*—A right to be stateless would conflict with a universal moral obligation that obliges every individual to avoid self-threatening situations.
> *Conclusion*—The liberty to be stateless cannot reasonably be regarded as a fundamental human right.

Premise 1, again, is an acceptable test for the establishment of a fundamental human right. However, insofar as the existence of any universal moral obligation is highly improbable, the usefulness of this premise is strictly limited.

Premise 2 asserts that a universal moral obligation exists that obliges every human being to avoid self-threatening situations. In other words, it is argued, every human being has a moral obligation to refrain from placing oneself (or permitting oneself to be placed) in a situation that could endanger one's body or severely restrict one's freedom. This claim arises from a variety of popular moral norms, both religious and secular, that require adherents to exercise self-respect. Even in contemporary Western culture, where danger and fun are equated, the notion has taken hold that one must generally protect one's body and freedom at all cost.

The implausibility of this premise is evident on two counts. First, a universal moral obligation to avoid self-threatening situations is unlikely to exist because many well-established moral norms require individuals to enter self-threatening situations in order to live in accordance with these norms. For example, the honoring of commitments, the pursuit of justice, the practice of compassion, the adherence to truth, the observance of nonviolence, and the offering of service all regularly require individuals to enter self-threatening situations. Many people feel morally obliged to engage in these practices regardless of risk to body or freedom. An obligation to avoid self-threatening situations would, however, prohibit people from fully engaging in these practices. Ironically, such an obligation would require many people to act against their wills or in violation of their consciences, thereby resulting in a lack of integrity and ultimately denying the self-respect that this obligation intends to preserve.

Second, a universal moral obligation to avoid self-threatening situations is unlikely to exist because it conflicts with the fundamental human right to self-determination—i.e., the right to assess the potential advantages and disadvantages of any particular action and, all other things being equal, the right to perform or refrain from that action based on the results of such assessment. The fact that certain actions bear risks, including threats to body and freedom, cannot reasonably deny one's liberty to pursue such actions. The freedom to take calculated risks in pursuit of some benefit is essential to our humanity. Everyday, people around the world choose to enter self-threatening

situations because they have deemed that the potential benefits of a certain action outweigh the potential risks. In search of adventure, people push their bodies to physical limits and embark into unknown territories and circumstances. For example, travel, contact sports, outdoor adventures, and warfare are self-threatening activities that attract wide participation. In search of wealth, people not only risk the full spectrum of dangerous work conditions and stress, but they consent to all varieties of submission, conformity, and restriction. In search of physical pleasure, people widely disregard the well-known threats of drinking, smoking, drug abuse, gluttony, and promiscuity. In search of moral integrity, people are willing to endure all manner of adversity, and some even welcome it. In a nutshell, to require anyone to avoid self-threatening situations would be to deny that person's right to be human. If one is not permitted to take calculated risks in pursuit of a better life, one may as well be dead.

Whereas a universal moral obligation to avoid self-threatening situations would conflict not only with the fundamental human right to self-determination but also with many traditional moral norms, and whereas the consensus that would be required to establish such a moral obligation is clearly lacking, the premise that such an obligation exists is without merit.

Premise 3 declares that a right to be stateless would conflict with a universal moral obligation to avoid self-threatening situations. Undeniably, a person who becomes a sovrien risks threat to body and freedom. A sovrien is susceptible to excessive violations of human rights, and she can expect no government to protect these rights. A sovrien is not entitled to the financial, medical, and other assistance that a state typically offers to its citizens in need. She may be subject to all manner of government interference in her life and to social discrimination in general. She may experience great difficulty maintaining a permanent residence, and she can expect obstacles in international travel. Furthermore, status as a sovrien may be permanent. If a universal moral obligation to avoid self-threatening situations existed, the exercise of a right to be stateless would certainly pose a conflict. However, since no such obligation exists, a right to be stateless poses no conflict.

In light of the natural human desire to avoid self-threatening situations, a sovrien may still be expected to justify her toleration of the aforementioned risks. In response, a sovrien would argue that she has weighed these risks against the known advantages of statelessness and she has determined that such risks are tolerable when compared to the potential benefits. She may even argue that the advantages of statelessness and the disadvantages of citizenship are so significant that the choice to become a sovrien is ultimately a matter of maintaining one's freedom, integrity, and self-respect.

The conclusion, that the liberty to be stateless cannot reasonably be regarded as a fundamental human right, once again, is inadequately supported. The argument's central premise, that we are obliged to avoid self-threatening situations, cannot be justified. Even in light of the general human inclination to avoid self-threatening situations, one would be hard-pressed to deny the right to risk threats to body and freedom in pursuit of higher values. Thus, the argument—that the moral obligation of individuals to avoid self-threatening situations denies the existence of a right to be stateless—is not persuasive.

H. Conclusion

Milton Lorenz asserts that "Statelessness has drawn the scorn and condemnation of nearly every enlightened government at some time or another."[32] I suggest that the primary reason for this repugnance is that governments understand full well that they have no legitimate authority to exercise sovereign rule over stateless individuals. In order to protect the interests of those who desire to wield undue political power, the existence of a fundamental human right to be stateless must be denied. Having systematically examined the broad arguments that evolved for this purpose, we can draw two principle conclusions.

First, we must conclude that the central arguments against the existence of the right to be stateless are flawed and unpersuasive. There are six primary claims against the right to be stateless: (1) the competing right to social order, (2) the competing right to territorial sovereignty, (3) the competing right to

establish and operate states, (4) the moral obligation to submit to the authority of the state, (5) the moral obligation to support one's community, and (6) the moral obligation to avoid self-threatening situations. Each of these claims fails to deny the right to be stateless for at least one of the following reasons: (a) the alleged right or obligation does not exist, (b) the alleged right or obligation does not conflict with the right to be stateless, and (c) the alleged right or obligation does not outweigh the fundamental human rights which undergird the right to be stateless. On account of these faults, the perennial conclusion—that the liberty to be stateless cannot be regarded as a fundamental human right—is invalid.

Second, we can acknowledge that if a right to be stateless were recognized, a state could expect some sociopolitical disruption. Recognition of this right would oblige a state to abandon its efforts to exercise sovereign rule over every individual present within its claimed territory. Specifically, the state would need to cease imposing restrictions, requirements, and brute force on sovriens. It would need to revise laws and bureaucratic procedures to recognize the sovrien's right to be treated as a sovereign entity. And it would need to determine how it would restrict sovriens from receiving the protection and services which a state may legitimately reserve for its member citizens. The social disruptions which are most commonly feared, however, are the least likely to arise. A state's recognition of the right to be stateless would be unlikely to increase the occurrence of immorality, irresponsibility, criminal activity, or social disintegration. Likewise, recognition of the right to be stateless would not prevent people from joining in cooperative ventures for self-regulation, mutual aid, physical protection, and societal improvement.

We have now investigated the primary arguments both for and against the existence of a right to be stateless. While we can acknowledge a variety of concerns surrounding this option, none of these concerns translate into an effective argument denying the right's existence. In light of the Fundamental Human Right Argument and the Consent Argument, our accumulated

findings give substantial weight to one conclusion: all human beings have a fundamental right to be stateless.

Notes

[1] An example of the gross assumption that a right to be stateless does not exist is found in the early proceedings of the United Nations International Law Commission. Roberto Córdova, Special Rapporteur to the Commission, proposed in his *Draft Convention on the Elimination of Future Statelessness* that "No renunciation of nationality by a person shall be effective unless such person, at the time of renunciation, acquires another nationality." Córdova 1953, 179. This proposal was intended to deny any right to be stateless. Córdova simply argued: "Renunciation of a nationality may occur without connexion with any application for another nationality. This situation, which in fact has happened, will produce statelessness. This kind of renunciation is precisely aimed at producing that effect, because a person may wish to become a so-called 'citizen of the world.' The Special Rapporteur believes that this practice should not be allowed and therefore suggests the adoption of [this proposal]." Córdova 1953, 184. No greater rationale was offered or requested, and the Commission—a thoughtful and detail-oriented assemblage—adopted this proposal without comment. See UN International Law Commission 1953, 170-345 (Meetings 211-234, especially Meeting 213). Thus, the notion that a right to be stateless should not exist was perpetuated without examination or doubt. Ultimately, this proposal was incorporated into Article 7 of the *Convention on the Reduction of Statelessness* where it stands today as an impediment to full recognition of the right to be stateless.

[2] See Chapter 2, Section B.

[3] UN General Assembly 1948, Article 28.

[4] See Chapter 2, Section C.4.

[5] Seckler-Hudson 1934, 265.

[6] Dean Rusk, Discussion, *in* Ulman 1973, 126.

[7] Valery 1918, 987.

[8] Peter Spiro argues that if the role of the state declines in the coming years, it is not unrealistic to foresee non-national communities, such as those found in civil society, bearing greater roles in the protection of human rights, the peaceable management

of inter-group differences, and economic redistribution to assist people in need. Spiro 1999, 630-638.

[9] UN General Assembly 1948, Article 13.

[10] UN International Law Commission 1954, Preamble.

[11] Dean Rusk, Discussion, *in* Ulman 1973, 126.

[12] Oppenheim 1992, § 398 at 887.

[13] See generally: Hinsley 1986 (surveying the historical and theoretical development of the concept of state sovereignty); James 1986 (reviewing many of the variables and disputed questions in efforts to define and establish the existence of state sovereignty); Brownlie 1998 (reviewing the perspective of international law on state sovereignty).

[14] Crawford 1976-1977, 98.

[15] See: Chapter 2, notes 27-29 and accompanying text; Crawford 1976-1977, 123-129.

[16] Brownlie 1998, 138. See generally ibid. at 136-142.

[17] Ibid., 133-134.

[18] Ibid., 133-134 (note omitted).

[19] Donner 1994, 181.

[20] See Brownlie 1998, 136-137, 150-158.

[21] Ibid., 167.

[22] See generally Mutharika 1989.

[23] Weis 1979, 162, 243.

[24] See: Brownlie 1998, 70-77; Crawford 1976-1977, 111-143 (both reviewing the traditional criteria for statehood).

[25] E.g., Monaco, Liechtenstein, San Marino, Tuvalu, Nauru, and Vatican City.

[26] See: Crawford 1976-1977, 114; James 1986, 40, 43, 111-115.

[27] See: Donner 1994, 4-5; Brownlie 1998, 71, 83; Crawford 1976-1977, 111-114, 127.

[28] See Chapter 2, Section B.

[29] Romans 13:1-2 (New Revised Standard Version).

[30] See Chapter 9, Section D.

[31] Seckler-Hudson 1934, 15 (note omitted).

[32] Lorenz 1972, 989 (note omitted).

5

Disadvantages of Being a Sovrien

A. Introduction

The sovrien faces particular risks to life, liberty, security, and happiness. As the United Nations International Law Commission has noted, "statelessness often results in suffering and hardship shocking to conscience and offensive to the dignity of man."[1] Unintentionally stateless people can expect many of these risks to be minimized by the intervention of concerned states,[2] but intentionally stateless people must be prepared to face these risks directly.

We must be clear from the outset that the potential disadvantages of being a sovrien do not disprove the existence of the right to be stateless. As we have seen, the existence of a right cannot reasonably be denied simply because the exercise of that right might pose some threat to the acting individual.[3] The right to self-determination, for example, bears a multitude of risks, but few people would suggest that such risks provide adequate reason to deny the existence of that right. We must remember, therefore, that while the potential disadvantages of being a sov-

rien are worthy of consideration, such concerns do not carry the logical force necessary to deny the existence of the right to be stateless.

We must also be clear that the potential disadvantages of being a sovrien are exacerbated for people who are consistently subject to discrimination and oppression. The risks associated with sovrien life, like most risks, are reduced significantly for individuals for whom a society is structured to benefit. For example, those who are fair-skinned, heterosexual, able-bodied, educated, and male have access to a wide variety of privileges and resources. The power and options which such people enjoy significantly alleviate the magnitude of most risks in life, including the risks associated with being a sovrien. In contrast, people who are consistently discriminated against and oppressed can expect most risks, including the risks associated with sovrien life, to be amplified rather than alleviated. In short, women, people of color, and others whose access to power is unfairly limited, face the dangers of statelessness with fewer resources, privileges, and options than white men. This bias is significant and exacerbates every potential disadvantage described herein. Thus, the real threat of any risk associated with sovrien life can be assessed only in the context of an individual's particular circumstances.

The risks which a sovrien must face are often cited in piecemeal fashion, without precision, and with apocalyptic overtones. One writer declares that "statelessness has come to mean an individual's reduction to anonymity."[4] Phrases such as "the perils of statelessness,"[5] and "the evils of statelessness"[6] are not uncommon. Allusions to unbridled torture, loss of fundamental human rights, and banishment to uninhabitable frontiers punctuate the literature. In light of these fears, the purpose of this chapter is to identify systematically and calmly the potential disadvantages of being a sovrien. The risks can be classified in seven categories: (1) no government protection of human rights, (2) no government assistance, (3) government interference, (4) discrimination, (5) difficulty maintaining a permanent residence, (6) difficulty in international travel, and (7) permanence of status.

B. No Government Protection of Human Rights

The first potential disadvantage a sovrien faces is that she is entitled to no government protection of her human rights. Citizens, by definition, are due reasonable human rights protection from their respective states. This protection is one of the touted benefits of citizenship. Even those citizens who commit heinous crimes are entitled, by mere virtue of their citizenship, to at least minimal state protection of such rights. Sovriens, however, have no government of recourse. Whereas a sovrien provides no support or allegiance to any state, no state is obliged to reciprocate with its protective powers. Even if a sovrien's fundamental human rights are seriously threatened or violated, she is not entitled to call on the protective powers of any state. As a simple matter of reciprocity, no state is obliged to protect or defend anyone who is not one of its citizens. In the words of Earl Warren, the stateless person "has no lawful claim to protection from any nation, and no nation may assert rights on his behalf."[7] Even under international law, the sovrien cannot expect to receive protection from any particular government. Hersch Lauterpacht declares that "A stateless person does not enjoy the international protection of any State."[8] Oppenheim suggests:

> To the extent to which individuals are not directly subjects of international law, nationality is the link between them and international law. It is through the medium of their nationality that individuals can normally enjoy benefits from international law. . . .
>
> Since stateless individuals do not possess a nationality, the principle link by which they could derive benefits from international law is missing. They may, therefore, lack the possibility of diplomatic protection or of international claims being presented in respect of harm suffered by them at the hands of a state.[9]

Mutharika concludes that "International Law has traditionally accorded benefits to the individual only through the medium of

his state of nationality. Nationality is therefore the essential requisite for protection in the international legal order."[10] Logically, the sovrien cannot expect to have her human rights protected by any government.

Specifically, a sovrien cannot expect any state to apply its laws in her behalf. Her legal position is "precarious."[11] As the United States Supreme Court has suggested, a stateless person is "fair game for the despoiler at home and the oppressor abroad."[12] She cannot expect any state to guarantee the protection of fair criminal procedure, due process of law, or opportunity for appeal. She cannot expect judicial relief or even access to judicial forums. The sovrien is not entitled to call on the brute force of any state, even though she might need this force in order to coerce certain actions, to prevent other actions, or to defend against attack. She is not entitled to depend on the police, the prisons, or the military to protect her freedom and safety. A state may offer to provide any or all of these services to a sovrien, but it has no contractual or reciprocal obligation to do so.

This unprotected status may leave a sovrien vulnerable to commonplace human rights violations and, under extreme circumstances, it may invite serious violations by malicious or opportunistic perpetrators. The possibility that states could violate a sovrien's human rights without fear of intervention or repercussion is of particular concern. Consider this sampling of opinions. Oppenheim notes that

> Such individuals as do not possess any nationality enjoy, in general, only limited protection, since if they are aggrieved by a state there is no national state which is competent to take up their case. As far as international law is concerned, there is, apart from obligations (now quite extensive) expressly laid down by treaty . . . no restriction upon a state maltreating such stateless individuals.[13]

Warren asserts that the stateless person's "very existence is at the sufferance of the state within whose borders he happens to be."[14] Similarly, Lauterpacht suggests that the stateless person "may be treated according to discretion by the State in which he resides."[15] The Special Claims Commission between the United

States and Mexico argued that "A State . . . does not commit an international delinquency in inflicting an injury upon an individual lacking nationality, and consequently, no State is empowered to intervene or complain on his behalf either before or after the injury."[16] Seckler-Hudson remarks bluntly that "The state may inflict maltreatment at its discretion and those destitute of nationality have no remedy."[17] In sum, these authorities suggest that, because no state is necessarily obliged to observe or protect a stateless person's human rights, such a person is particularly vulnerable to the full range of human rights violations, including harassment, coercion, expulsion, torture, imprisonment, and even murder. In the opinion of the US Supreme Court, the stateless person has "lost the right to have rights."[18]

We must assume that the Supreme Court, in making such an outlandish comment, was casting a rhetorical flourish rather than stating some moral or legal truth. The existence of fundamental human rights—rights that every human being possesses by virtue of his or her humanity, regardless of the action or existence of any state—is widely accepted, and the significance of such rights in US history is well-known. The court's suggestion that stateless people have lost the right to have rights, therefore, cannot be taken seriously. Furthermore, the severity of all the preceding opinions must be tempered by contemporary developments in human rights theory and the corresponding evolution of international law. As Weis concedes:

> While nationality is still the primary link between the individual and international law, it is no longer the only link. There is an increasing tendency to provide the rights of individuals . . . with the safeguards of international law by the conclusion of plurilateral or multilateral treaties for the protection of human rights. There is, moreover, an increasing tendency to regulate, by the conclusion of multilateral agreements relating to the status of refugees and stateless persons, the status of persons devoid of diplomatic protection, in international law. Such tendencies may to a certain extent reduce the importance of nationality in the international sphere . . . .[19]

Ultimately, even if a state is not contractually obliged to protect an individual's fundamental human rights, this does not mean that the individual is devoid of such rights, nor does it mean that the state is free to violate such rights. The distinction between a stateless person's contractual rights, which are nonexistent, and a stateless person's fundamental human rights, which are inalienable, is often blurred, leaving the casual observer with the false impression that stateless people have no rights at all. Stateless people, including sovriens, *do* have legitimate and significant rights which exist apart from any citizen-state relationship.[20] The fact that a sovrien is entitled to no government protection of her fundamental human rights and that she may thus be vulnerable to human rights violations is a matter worthy of consideration. However, the suggestion that a sovrien has no rights at all, or no alternative means of protecting her rights, is false.

Having outlined the potential dangers of living without government protection of one's human rights, we must now recognize that the magnitude of this risk for any particular individual is dependent on several variables. Four variables deserve specific attention.

First, the magnitude of this risk depends in part on the extent to which a sovrien is able to protect her own human rights. Stateless persons are not, as the United Nations has described them, "defenceless beings."[21] One's physical, spiritual, mental, emotional, and material resources can be used in a variety of combinations to protect oneself against human rights violations. Protective options include control, persuasion, or transformation of the violator, simple conflict avoidance, physical self-defense, flight, tactical outwitting, noncooperation, and negotiation. If one has any personal resources or abilities to protect her own rights, the danger of having no government protection is reduced.

Second, the magnitude of this risk depends in part on the extent to which a sovrien can rely on third parties to protect her human rights. Assistance from family, friends, associates, communities, private businesses, nongovernmental organizations, etc. can be used to protect one's human rights via many of the options noted above.[22] If one can rely on any such assistance, the

danger of having no government protection is reduced. (We must note here that although the Office of the United Nations High Commissioner for Refugees (UNHCR) is committed to assisting stateless individuals under persecution, such assistance is offered on the presumption that a stateless individual would avail herself of a reasonable opportunity to secure citizenship status. Sovriens should be aware that assistance from UNHCR, or any similar state-based organization, may be conditioned upon forfeiting one's status as a sovrien.)[23]

Third, the magnitude of this risk depends in part on the extent to which a state is committed to protecting the human rights of its citizens. In a state that offers little protection to its citizens—the very people who support and pledge allegiance to the state—a sovrien might face serious human rights violations. Ironically, possession of citizenship in such a state would be unlikely to provide any meaningful advantage. In a state that has great commitment to protecting the human rights of its citizens, the social milieu which spawned this commitment would likely reduce the overall need for protection of human rights. Thus, even though a citizen in such a state would still be afforded greater protection than a stateless person, citizens and non-citizens alike would generally have less need for such protection. Under these circumstances, the danger of having no government protection is reduced. Furthermore, a sovrien living in a territory claimed by a state with great commitment to protecting human rights may occasionally be permitted access to certain protective services without participating in a citizen-state relationship with that state. Some states, for example, permit non-citizens at least minimal access to their courts.[24] While the sovrien clearly is not entitled to such services, she may be granted access to them nonetheless.

Fourth, the magnitude of this risk depends in part on the extent to which a state is able to protect the human rights of its citizens. Many states are genuinely committed to protecting the human rights of their citizens but, due to any variety of financial, logistical, and political constraints, these states are not able to provide comprehensive and effective protection. Invariably, the rights of certain people (typically minority and oppressed populations) remain vulnerable to violation. For these people, the

value of government protection is strictly limited, and the danger associated with not having such protection is, respectively, diminished. If a state's criminal justice system tends, in practice, to protect only certain rights, or only the rights of a certain segment of the state's citizenry, then those whose rights continue to be violated under such a system have little to lose by forgoing this alleged protection. Thus, to the degree that a state is not able to protect an individual from human rights violations, the danger to that individual of having no government protection is reduced.

These four variables suggest that the potential disadvantage of living without government protection of one's human rights is not necessarily catastrophic. Even if we assume that a state can deliver the protection it promises (a substantial assumption), one may not desire such protection, one may not need such protection, and one may have alternative means of protection. Stephen Legomsky's claim that "every individual needs one sovereign state to play the role of guardian angel"[25] is, frankly, false. Of course, certain states protect certain rights of certain individuals. But even within the allegedly safe confines of the citizen-state relationship, human rights violations of all proportions still happen with regularity. Citizenship provides no reliable guarantee that one's human rights will be protected. All this considered, we must conclude that, even though the sovrien faces potential dangers by forgoing government protection of human rights, she is not necessarily worse off than those who depend on the state's protection, nor is she destined to a life of eternal suffering.

C. No Government Assistance

The second potential disadvantage a sovrien faces is that she is entitled to no government assistance. Citizens, in time of need, generally can expect a minimal amount of aid from their respective governments. Medical, housing, educational, employment, and business assistance, legal services, social security, and welfare are commonly offered by states as a "safety net" into which citizens are entitled to fall. The reciprocal terms of the citizen-state relationship require that citizens provide alle-

giance, obedience, and taxes to the state and that the state, in return, provide essential support to its citizens in need. This promise of security is one of the touted benefits of citizenship. Sovriens, however, have no such safety net. Even if a sovrien were in dire need, she would not be entitled to government aid. Whereas the sovrien provides no support or allegiance to any state, no state is obliged to reciprocate with its assistance. Governments, like insurance companies, promise security and benefits only for a price. Citizens pay their premiums of taxes and allegiance in order to be eligible for government assistance. Sovriens, on the other hand, choose to pay no premiums and, thus, they are ineligible to claim any benefits. In sum, a sovrien cannot expect to receive government assistance since such assistance is a contractual right belonging solely to individuals who have entered into an agreement with a state.

Because a sovrien is not entitled to government assistance, such a person cannot reasonably regard this exclusion as unfair. However, if one happens to regard this exclusion as a potential disadvantage of being a sovrien, several variables exist that might minimize this risk. These variables are similar to those noted in the previous section.

First, the magnitude of this risk depends in part on the extent to which a sovrien may ultimately need the types of assistance a government can offer. One's physical, spiritual, mental, emotional, and material resources all serve to reduce one's need for government assistance. As one's need for government assistance diminishes, so does the danger of living without such assistance.

Second, the magnitude of this risk depends in part on the extent to which a sovrien can rely on third parties to provide the security and aid that a government typically promises to provide. Family, friends, associates, communities, private businesses, nongovernmental organizations, etc. can all serve to provide a safety net for people in need. To the extent that one can rely on such assistance from third parties, the danger of living without government assistance is reduced.

Third, the magnitude of this risk depends in part on the extent to which a state freely offers its aid to non-citizens. Although states may legitimately exclude non-citizens from their

public assistance programs, they retain the prerogative to grant aid to non-citizens as they see fit. For example, the United States offers limited assistance to non-citizens who legally reside within its claimed territory,[26] and states party to the *Convention Relating to the Status of Stateless Persons* grant stateless people much the same access to government assistance as citizens have.[27] To the extent that a state freely offers assistance to a sovrien, the sovrien's risk in living without entitlement to such assistance is reduced. (One may reasonably argue, of course, that a sovrien has an obligation not to rely on such aid without offering at least some reciprocal support.)[28]

Fourth, the magnitude of this risk depends in part on the extent to which a state is able to provide meaningful assistance to its citizens in need. If a government promises only meager assistance to its citizens in need (i.e., resources insufficient to generate any meaningful improvement in a citizen's life), then an individual risks little by forgoing such aid. Likewise, if a government promises meaningful assistance, but, for whatever reason, the government is ultimately unable to deliver such assistance, again, an individual risks little by forgoing this alleged security. The promise of government aid in time of need is a major lure for individuals to be obedient citizens. Unfortunately, as citizens across the globe know well (especially those in minority and oppressed populations), governments have great difficulty delivering the security they promise. Legal restrictions, financial shortfalls, logistical constraints, administrative ineptitude, political opposition, and de facto racist policies are among the most common reasons why governments fail to provide meaningful assistance to their citizens in need. Logically, if a state is unable to provide such assistance, then the danger of being a non-citizen is not as threatening as it otherwise might be. In other words, to the extent that a government's safety net is full of holes, one's risk in living without government assistance is reduced.

In sum, the potential disadvantage of having no entitlement to government assistance is not necessarily catastrophic. Even if we assume that states are able to provide meaningful assistance in time of need, one may have little need for such aid, one may not desire such aid, and one may have alternative

means of aid. Of course, many citizens find a great sense of security in being entitled to limited government assistance. The promise of even insufficient support in time of need is often comforting. However, as countless disenfranchised citizens will attest: despite government promises and despite the premiums exacted from citizens, citizenship provides no reliable guarantee that one will in fact be secure. Legal entitlement to assistance does not guarantee actual receipt of assistance. All this considered, we must conclude that, even though the sovrien is not entitled to government assistance in time of need, she is not necessarily worse off or less secure than those who are entitled to such aid.

D. Government Interference

The third potential disadvantage a sovrien faces is that she can expect government interference in her life regardless of her independent status. In other words, even though a sovrien does not participate in a citizen-state relationship, she can expect that governments will attempt to impose restrictions and requirements on her just as if she were a citizen. If an individual becomes or remains a sovrien for the purpose of eliminating government interference in her life, she can expect limited success in achieving this goal.

States, by their very nature, attempt to exercise sovereign rule. The legitimacy of such rule has been contested above and will not be reexamined here. The present concern is that, in practice, states consistently attempt to impose restrictions and requirements on all individuals within the jurisdictions over which they claim sovereign power. Of course, a state may rightly expect its citizens to submit to the restrictions and requirements it issues. To be fair, a citizen should not even regard such rule as "interference," since a citizen freely agrees to obey and support her government in exchange for the security and benefits it provides. On the other hand, a state may *not* rightfully expect noncitizens (i.e., foreign nationals and stateless persons) to submit to its rule. As we have noted above, no state is obliged to protect or provide benefits to any individual who is not one of its citizens,

and, likewise, no individual is obliged to submit to the restrictions and requirements imposed by a state with which she maintains no consensual relationship. If a citizen-state relationship does not exist between an individual and a state, neither party may rightfully impose on the other those duties which can exist only in the context of a citizen-state relationship.

Unfortunately, most states disregard this basic reciprocal principle. States openly interfere in the lives of individuals who are not their citizens. Their regulation of aliens is commonplace. They allege that if a non-citizen comes anywhere within the jurisdiction which a state has defined for itself, then the state is free to regulate the non-citizen in any way it deems fit. States impose restrictions and requirements, with brute force and threat of punishment, on people who have not consented to such rule, and they can recite many genuine state interests to rationalize their unauthorized interference in the lives of non-citizens. Curiously, the average state sees nothing inappropriate with unilaterally determining the geographical limits of its jurisdiction and then requiring that anyone who enters this self-proclaimed dominion be automatically subject to state rule. Although such a practice is logically and morally indefensible, states consistently observe it and, as a result, they consistently exceed their rightful domain (i.e., the lives of their respective citizens). The sovrien, therefore, can expect government interference in her life regardless of her independent status.

Specifically, a sovrien who resides in, passes through, or otherwise falls within the jurisdiction claimed by a state can expect to face all the restrictions and requirements which that state would normally impose on aliens. Although a sovrien differs from typical aliens in that she is not a foreign national, in the eyes of any given state she is an alien nonetheless. For better or for worse, many states have gone so far as to commit themselves formally, via the *Convention Relating to the Status of Stateless Persons*, to "accord to stateless persons the same treatment as is accorded to aliens generally."[29] Oppenheim notes, "In practice, stateless individuals are in most states treated more or less as though they were nationals of foreign states."[30]

Treatment as an alien, however, can mean several things. At one end of the spectrum, and under the most favorable

circumstances, a state could recognize a sovrien not only as an alien, but as the sovereign entity that she is. Thus, any restrictions and requirements that the state wished to impose on such a person would manifest themselves more as matters of diplomatic relations than as unnegotiable demands imposed by brute force. The likelihood seems small, though, that a state would recognize the sovereign nature of an individual, relinquish its alleged right to rule over that individual, and agree to interact with that individual on equal terms. At the other end of the spectrum, and under the least favorable circumstances, a state could regard a sovrien as nothing more than an independent and nonaligned alien who warrants swift defensive management in order to protect state interests. Insofar as a sovrien is accountable to no state, is under the protection of no state, is considered excludable by all states, and is seen as a potential threat to any state's alleged sovereignty, such a person might summarily be executed, banished, or subjected to severe restrictions by a threatened state. The likelihood of this type of treatment, again, seems small, unless the sovrien is exceptionally threatening or the state is exceptionally fearful. In the middle of the spectrum, and under the most likely circumstances, a state would regard a sovrien as it would any other foreign national, namely, as a non-citizen "guest" who is subject to whatever restrictions and requirements the "host" state deems appropriate. Under these terms, if a stateless person agreed to submit to the demands of the state, she could expect official toleration if not limited benefits. However, if a stateless person did not cooperate with the demands of the state, she would risk punishment, imprisonment, and the perennial threat to all aliens—deportation. Ultimately, regardless of how favorably a state treats a sovrien, that person will still be regarded as an alien and, as such, she will have little choice but to contend with government interference in her life.

Of course, a state may reasonably restrict any non-citizen (whether foreign national or stateless person) from receiving the benefits and enjoying the privileges that are legitimately the contractual rights of citizens. Specifically, a state may reserve its protective powers, assistance programs, and political processes for the exclusive benefit of its citizens. For example, even though the United States government generally grants resi-

dent aliens (including illegal aliens) access to its courts, the government reserves its right to limit the equal protection and due process of law which it accords to non-citizens. Likewise, in regard to federal assistance, despite the fact that the US government currently offers to its permanent resident aliens many of the same welfare benefits that it offers to its citizens, most non-citizens are prohibited from receiving such assistance. In regard to access to the state's political process, the US government exercises its prerogatives by generally prohibiting all non-citizens from voting, holding public office, and serving on a jury. Likewise, the government reserves the right to exclude non-citizens from public employment involving the formulation or execution of broad public policy.[31] As a rule, access to state protection, services, and political processes is a contractual right of individuals who have entered into a citizen-state relationship. Non-citizens have no legitimate claim to these benefits. Therefore, the restriction of such benefits by a state cannot reasonably be regarded as interference in the lives of non-citizens.

On the other hand, when a state exceeds its legitimate sphere of control and attempts to regulate the lives of non-citizens, the actions of the government can reasonably be regarded as interference. Non-citizens face at least three types of government interference in their lives.

First, governments might impose *illegitimate restrictions* on non-citizens. As we have just noted, a government may fairly restrict non-citizen access to state benefits which belong exclusively to citizens. However, when a government attempts to restrict a non-citizen's fundamental human rights (or any other rights that exist outside the parameters of a citizen-state relationship), the government unduly interferes in the life of an individual over whom it has no legitimate jurisdiction. For example, governments often attempt to restrict: non-citizen travel, place of residence, and passage across international borders; non-citizen employment opportunities, with particular restrictions on participation in certain trades and professions; non-citizen ownership, purchase, and sale of various property; non-citizen political activity; and non-citizen freedom of religion, expression, and assembly. When a government attempts to restrict such affairs of any individual with whom it has no consensual relationship, that

government unduly exceeds its sphere of control and unfairly interferes with that individual's free exercise of her basic human rights.

Second, governments might impose *illegitimate requirements* on non-citizens. For example, the United States government generally requires non-citizens who reside within the territory claimed by the state to: register with the government, be fingerprinted, and carry proof of registration at all times; pay temporary allegiance to the government; obey all laws; register for conscription into military service (if one is a young male); and pay the same taxes at the same rates as citizens.[32] Such demands might be acceptable if placed on an individual who participated in a consensual relationship with the demanding state, but for a government to require such actions of someone who is *not* one of its citizens is, logically, beyond the legitimate authority of that government.

Third, governments might impose *brute force*. If a non-citizen refuses to cooperate with the restrictions and requirements of a state, the state can wield its physical power. Deportation is the most well-known solution imposed on uncooperative non-citizens. Execution, while extreme, remains an option. Police force, imprisonment and other forms of control and punishment, however, lend themselves to the greatest ease of administration.

In sum, the non-citizen faces all manner of government interference in her life, from undue restrictions and regulations to the threat and imposition of brute force. The sovrien, as the quintessential alien, can expect nothing better.

Fortunately, the threat of government interference, like most threats to the sovrien, is regulated by at least several variables. For example, the extent to which a citizenry respects fundamental human rights, the extent to which a citizenry tolerates outsiders, the particular laws that a state has instituted regarding aliens, and the ability of the state to enforce such laws all directly affect how free a sovrien will be in any given land. Another critical variable is the extent to which a sovrien can reasonably avoid government interference. For example, if a sovrien is able to thwart border restrictions, avoid registration, or elude deportation, then the threat of government interference is

less significant. A sovrien's particular resources, abilities, and circumstances may enable her to circumvent restrictions, defy requirements, and generally defend herself against government attempts at interference. Favorable conditions in any of these areas will reduce the severity of government interference in a sovrien's life.

Furthermore, the relative significance of government interference in a sovrien's life is minimized by the fact that citizenship offers no substantial advantage. For example, the requirements a government imposes on citizens are largely comparable to those it imposes on non-citizens. Citizens and non-citizens alike are generally required to offer allegiance, obey all laws, and pay all taxes. Likewise, the restrictions a government imposes on citizens are hardly less numerous, burdensome, or intrusive than those it imposes on non-citizens. Governments everywhere are in the business of restricting the social, economic, religious, political, and personal affairs of their citizens. Even in regard to a state's application of brute force, citizens enjoy no appreciable advantage over non-citizens. Citizens who refuse to cooperate with government restrictions and requirements may be punished, imprisoned, and, in some states, banished or even executed. While the application of brute force to a citizen may be a little slower and legally more cumbersome than the application of such force to a non-citizen, in the end, any individual who refuses to cooperate with the government faces significant interference in her life. At best, a citizen has an advantage over a sovrien in that a citizen might be guaranteed some token voice in how the government interferes in her life. This meager consolation aside, citizens enjoy no significant benefit regarding government interference, and, therefore, the relative danger of being a sovrien is minimized.

In summary, as long as governments attempt to exercise sovereign rule, everyone—citizens and non-citizens alike—will be subject to government interference in their lives. Citizens freely accept this burden as part of the price of citizenship, and they may even enjoy some limited influence in shaping the nature of this burden. Non-citizens, on the other hand, are granted no power over the state, and they must contend with whatever interference the government chooses to impose. Foreign nation-

als can seek the refuge of their respective states, and unintentionally stateless persons can seek limited relief via domestic or international legal venues. The sovrien, however, is regarded as an alien everywhere, and, thus, she can expect treatment no better than that afforded to aliens in the land she presently occupies. The fact that many variables can work to reduce the severity of government interference in one's life may provide some substantive relief to the sovrien—but variables are not guarantees. Even under the most favorable circumstances, a sovrien cannot eliminate the threat of burdensome and undue government interference. Ironically, citizenship status offers little meaningful relief from a government's requirements, restrictions, and brute force. In brief, although sovriens can expect government interference in their lives, they are not substantially worse off than citizens in this regard, nor are they without means to thwart such interference.

E. Discrimination

The fourth potential disadvantage a sovrien faces is discrimination—specifically, prejudiced and unfair treatment arising from the social stigma of being an alien. McDougal, Lasswell, and Chen describe the problem frankly: "The stateless individual may be discriminated against in every territorial community because of his alienage; he is not properly recognized as a person and is thus denied respect."[33] Insofar as sovriens are regarded everywhere as alien, they can expect to suffer the discrimination which typically accompanies that status.

Discrimination against aliens is commonplace. I do not refer here to the justifiable restrictions that a state imposes on individuals who are not entitled to its protection and services. As we have noted, such restrictions are legitimate and constitute reasonable maintenance of the contractual rights associated with the citizen-state relationship. Rather, I refer to the unjust treatment—arising from fear, resentment, hatred, prejudice, and ignorance—that citizens and governments bestow upon noncitizens. Citizen discrimination against aliens includes the full range of unfair treatment that human beings can render, includ-

ing: exclusion from the community (by excluding aliens from employment, social circles, organizations, and the media); restriction of human necessities (by limiting alien access to adequate food, housing, and health care); and violation of fundamental human rights (by subjecting aliens to harassment, violence, coercion, and restraint). Government discrimination against aliens includes the full range of illegitimate restrictions, requirements, and brute force described in the previous section. Regarding such discrimination in the United States, David Weissbrodt comments:

> Historically, federal, like state restrictions on the activities of resident aliens have been substantial and severe. . . .
>
> Resident aliens can expect to suffer discrimination after immigration to this country. While technically the law guarantees treatment equal to that of citizens, such has never been the case. . . .
>
> Vis-a-vis the federal government, aliens have never been found to be deserving of significant protection and apparently can be disadvantaged with little or no justification.[34]

Moreover, popular stereotypes of aliens as dangerous, untrustworthy, and subversive increase the likelihood of government discrimination against non-citizens, especially when the welfare of the state is concerned. It is well-known that non-citizens can expect heightened restrictions on their freedom when rhetoric about "national security," "economic security," and "public order" is in the air.

The sovrien, as quintessential alien, is particularly vulnerable to all the aforementioned discrimination. Aliens who are foreign nationals can expect some relief from discrimination on account of their state affiliations. However, the sovrien can expect no relief due to her perpetual status as an alien. As the United Nations Department of Social Affairs observed, "The stateless person is treated more as an individual to be watched than as a man whose rights must be respected."[35] To compound the problem, the fact that a sovrien knowingly and willingly chooses to be an alien in the eyes of all states is, as far as many

citizens are concerned, downright offensive. Such people imagine that the sovrien lacks a sense of values, shirks moral responsibilities, is uncooperative, antisocial, mentally incompetent, possibly dangerous, or perhaps evil. Because of such misunderstandings, the sovrien risks greater discrimination than aliens who are simply foreign nationals. Seckler-Hudson notes: "To mention every injustice which the stateless person may suffer would be to exhaust the discriminations against the aliens in this country, and these, of course, are many. And the stateless individual must ever stand ready to accept even more discriminatory measures."[36]

The sovrien's risk of experiencing discrimination is fairly certain and, unfortunately, proactive options to avoid such discrimination are few. A sovrien with exceptional patience, endurance, or resources may find toleration of discrimination to be an acceptable option. If toleration is not realistic, the sovrien could try associating with different people, moving to a new community, or moving to a new land. Several other factors might minimize the risk of discrimination, but their applicability is limited. For example, if a sovrien is a former citizen of a given state, current citizens of that state might continue, out of habit, to treat the sovrien as respectfully and as fairly as they treat one another. However, citizens who view the sovrien's expatriation as a defection might discriminate against her more severely than they would against an alien who is simply a foreign national. Similarly, a sovrien might escape some discrimination if, on first appearance, she is indistinguishable from the citizens with whom she associates. In other words, if no physical, cultural, or linguistic characteristics of the sovrien immediately suggest that she is an alien (and if the situation were not one in which the sovrien should rightfully make her status known), then the sovrien might elude discrimination. Insofar as racism and xenophobia fuel the fires of discrimination against aliens, one would expect that the more ways in which a sovrien immediately resembles the citizens with whom she associates, the less likely she is to be subject to unfair treatment due to her status as a noncitizen. The factor which might afford a sovrien the greatest relief from discrimination is the extent to which her community generally respects fundamental human rights. More respectful

communities are, of course, more likely to afford fairer treatment to aliens than less respectful communities.

In sum, sovriens can expect to face discrimination. Whereas sovriens are regarded everywhere as alien, and whereas discrimination against aliens is commonplace, sovriens can expect to suffer unfair treatment. Such discrimination might be reduced if a sovrien is a former citizen, if she outwardly appears like a citizen, or if her community is particularly respectful of fundamental human rights. Beyond these limited possibilities for relief, the sovrien has little choice but to tolerate such discrimination or seek a more hospitable home. Because the likelihood is great that a sovrien will experience discrimination, because the severity of such discrimination depends on very uncertain factors, and because relief from such discrimination is difficult to attain, this potential disadvantage deserves particular consideration.

F. Difficulty Maintaining a Permanent Residence

The fifth potential disadvantage a sovrien faces is that she can expect difficulty maintaining a permanent residence. It has been suggested that "Every man has a right to live somewhere on the earth."[37] While reason appears to support this claim, many commentators are not persuaded. In response to this claim, McDougal, Lasswell, and Chen assert that "a stateless person, however, has no such right."[38] Likewise, Seckler-Hudson remarks, "The individual who is destitute of nationality may be forced to tolerate an existence, without hope of setting his foot upon land again."[39] Arendt observes that, during the mid-twentieth century, the international legal community struggled with the problem of where stateless people might live, and it concluded that "the only practical substitute for a nonexistent homeland was an internment camp. Indeed, as early as the thirties this was the only 'country' the world had to offer the stateless."[40]

Popular opinion regarding the rightful residence of sovriens has been shaped significantly by Edward E. Hale's 1863 short story *The Man Without a Country*.[41] In this patriotic clas-

sic, Philip Nolan, a fictional lieutenant in the United States army was tried for treason. At his court martial, when given the opportunity to exonerate himself, Nolan damned the United States and said he wished never to hear of the country again. The court granted Nolan's wish and sentenced him to spend the rest of his life on a vessel at sea. Nolan was forbidden to see the United States, to hear the name of the United States, or to read or hear anything about the United States. Over fifty years later, and with great remorse, Nolan died at sea. The story's implication persists today—"a man without a country" should be banished from the realm of nations. Popular opinion suggests that if an individual intentionally refuses to be a citizen of any state, then that individual has no right to live in any land claimed by a state. In other words, it is alleged, a sovrien may only reside where states stake no claim—on the high seas, in outer space, or in worlds beyond this mortal sphere.

A citizen, on the other hand, can expect to maintain a permanent residence in the land controlled by her respective state. Typically, a state claims and defends some portion of the earth's landmass for the exclusive use of its citizens. Regardless of whether or not such a practice is justifiable, it is customary and, thus, it stands as an enticement for individuals to become or remain citizens. A central element of most citizen-state relationships is that if a citizen provides allegiance and support to a state, then the state, in return, will grant the citizen a legal right to reside within the territory it claims. Even if the citizen chooses to reside abroad for an extended period, so long as she maintains her citizenship status, she typically retains the legal right to reside permanently in the land claimed by her home state. The sovrien, however, is party to no citizen-state relationship and, thus, may have difficulty maintaining a permanent residence.

The sovrien's predicament is the logical consequence of four clashing circumstances. First, states have claimed sovereign rule over all habitable places on earth. As the UN Department of Social Affairs bluntly noted, "To leave one country means to enter another."[42] No reasonable place exists where a sovrien can establish a permanent residence outside the grasp of state rule. Second, every state believes it has the right to prevent non-citizens, especially those who might pose a problem, from re-

siding within the land it claims. Because the notion of territorial sovereignty is widely accepted, states allege that they have the right to exclude any non-citizen who might interfere with their rule. Third, the sovrien, by definition, is regarded by every state as a non-citizen. Fourth, the sovrien is generally regarded as "a problem." As we have noted, it is widely believed that sovriens threaten morals, social order, the sovereign rule of states, and even the existence of states. At the intersection of these four circumstances is the dilemma: whereas the sovrien is likely to be excluded from all state-controlled territories as a vexatious alien, and whereas all habitable lands on earth are state-controlled, the sovrien may end up with no place to live. Specifically, a sovrien, as known alien and presumed antagonist, can generally expect to be denied permission to reside in any state-controlled land, prevented from crossing the border into any state-controlled land, expelled from any state-controlled land in which she manages to take-up residence, and imprisoned or otherwise punished if the state cannot manage to expel her. As Gary Endelman suggests, "statelessness is seen as the ultimate exile."[43]

Even if a sovrien previously participated in a citizen-state relationship with a given state, that state retains no contractual duty on account of the former relationship to admit the sovrien or to tolerate her presence within its borders. Weis notes:

> It is doubtful if the [state's] duty of readmission can be held to persist in case of loss of nationality by unilateral action of the national, *i.e.*, by voluntary expatriation.
>
> . . . [A]t present no rule of universal customary international law can be proved to exist which binds States to admit former nationals who have not acquired another nationality.[44]

Unless the state is beholden to some treaty, agreement, or moral obligation to the contrary, the ex-citizen would be as susceptible to expulsion as any other alien. This possibility of being barred from the land of one's home, family, friends, history, and culture is a grave concern which the sovrien must face squarely.

We must also note that even the *Convention Relating to the Status of Stateless Persons* does little to guarantee sovriens a

stable residence. States party to this convention have clearly retained the option to expel a stateless person "on grounds of national security or public order," and, in the course of such expulsion, the option to abort due process of law when required by "compelling reasons of national security."[45] In light of the traditionally broad interpretation afforded to terms like "national security" and "public order," especially when a state is dealing with undesirable aliens, sovriens cannot rely on this convention to ensure a stable residence.

Despite the intimidating prospects of eternal banishment, the risk that a sovrien would have difficulty maintaining a permanent residence is minimized by at least four factors. First, the risk is minimized by the possibility that a sovrien could make habitable some unclaimed place. In other words, a sovrien could attempt to establish her residence on the high seas, in neutral airspace, or in outer space. By reasonable standards, these places are not suitable for permanent human residence. However, in light of existing knowledge, resources, and continuing advancements in technology, one cannot dismiss the possibility of life on a boat, in an undersea vessel, on an aircraft, in a spaceship, or in some artificial biosphere built underwater or in outer space. Of course, we must acknowledge that this possibility is not a realistic option for the average person. In today's world, only the most fit, daring, and wealthy people could consider such a venture. Nonetheless, the possibility exists and deserves to be noted.

Second, the risk of not being able to maintain a permanent residence is minimized by the possibility that a sovrien could live in a state-controlled land and, over the course of time, manage to evade expulsion. A sovrien might succeed in maintaining a residence if she is able to elude the long arm of the law. Any number of techniques may be useful for this purpose. Specifically, a sovrien could: refuse to cooperate with alien registration laws; forgo overt political activity; avoid international travel via traditional means and routes; refrain from participation in government programs; avoid activities that the government attempts to license or regulate; avoid flagrant violation of laws; live in a part of the land that is removed from pervasive government oversight (e.g., rural or wilderness areas); live in one's ancestral land (in order to avoid apprehension resulting from

racism or xenophobia); keep a low social profile; and generally limit one's interaction with and provocation of the government. For some sovriens, these measures would be more oppressive than expulsion itself. For others, the possibility of maintaining a permanent residence would be worth such self-imposed restrictions.

Third, the risk of not being able to maintain a permanent residence is minimized by the possibility that certain states may be willing to tolerate the presence of sovriens within their borders. A state might tolerate a sovrien's presence for reasons such as: avoidance of international conflict, vested interest, moral obligation, legal obligation, and convenience.

Avoidance of international conflict. A state might be willing to tolerate a sovrien's presence within its borders in order to avoid conflict with other states. Naturally, if a state wished to expel a sovrien and some other state agreed to receive that person, then the first state would be able to deport the sovrien to the second state without causing an international conflict. However, if a state wished to expel a sovrien and no other state agreed to receive that person, then the burdened state could not deport the sovrien to another land without violating the alleged territorial sovereignty of the state that controls that land. In order to avoid such a conflict, the burdened state is left with two alternatives: it could either tolerate the sovrien's presence within its own borders or it could resort to extreme measures such as executing the sovrien or banishing her to some uninhabitable frontier. Presumably, toleration would be the preferred option.

Especially if a sovrien is a former citizen of a given state, that particular state might be willing to tolerate the sovrien's presence. Although it is doubtful that a state has any obligation under international law to grant admission or residence to its expatriates,[46] a state might be willing, in order to minimize international friction, to serve as a residence-of-last-resort for its stateless expatriates. For example, the United States established a policy in 1987 that would admit for residence an intentionally stateless person who previously was a US citizen if (1) that person were ordered by a foreign country to be deported and (2) that person's presence in the US would not adversely affect signifi-

cant US interests.[47] The individual would be admitted only as an alien under a special parole status.[48] Because this status is laden with conditions and can be revoked at the discretion of the government, it leaves the individual particularly vulnerable to further government action including detention and expulsion. Nonetheless, the individual would be permitted by the government to reside indefinitely within state-controlled lands. The US established this policy not for humanitarian or moral reasons but "because the previous policy of generally refusing repatriation of stateless renunciants had generated acrimony and long-term irritants in our relations with other countries and because there would be serious adverse implications for the United States if other countries were to adopt the former U.S. policy."[49] Even though the US judiciary has held that a citizen who intentionally expatriates into statelessness becomes an alien and, as such, is subject to all laws regarding the exclusion of aliens,[50] the US government apparently will bend this principle in order to avoid international conflict.

Vested interest. A state might be willing to tolerate a sovrien's presence within its borders if the state or its citizens are likely to benefit from that person's presence. For example, if the sovrien is an accomplished scholar, artist, engineer, scientist, or is in some other way a known asset to society, the state might be willing to condone her presence. Even if the sovrien is not particularly accomplished but is likely to improve the community by supplying certain talents, skills, or services, the state might be willing to permit that person to reside within its borders. If the sovrien is well-known and well-regarded, the state might tolerate that individual's presence simply as a public relations tool. Although a sovrien cannot expect to maintain a permanent residence in any state-controlled land, if such a person contributes in some way to the well-being of her community, the state may feel less compelled to pursue expulsion.[51]

Moral obligation. A state might be willing to tolerate a sovrien's presence within its borders if the state recognizes some moral obligation not to expel that person. This option is limited because a state's belief in the notion of territorial sovereignty is apt to override any moral concerns to the contrary (e.g., the religious belief that land cannot be claimed for the exclusive use of

any particular party, or the ethical concern that forced relocation violates several fundamental human rights). The most likely moral obligation that a state might recognize is the popular secular and religious tenet that one should bring no harm upon another. The harm associated with banishment from one's homeland is clear. If a state has any humanitarian inclinations, it might feel morally obliged not to expel a sovrien and to tolerate such a person's presence within its borders.

Legal obligation. A state might be willing to tolerate a sovrien's presence within its borders if the state is legally obliged to domicile that person. Such an obligation could exist if a state were party to an international agreement requiring such action. Notably, the *Convention Relating to the Status of Stateless Persons* requires that "The Contracting States shall not expel a stateless person lawfully in their territory save on grounds of national security or public order."[52] Also, a state could be obliged under international law to domicile a sovrien in the event that it could find no other state to which it could deport such a person. Insofar as the international legal doctrine of territorial sovereignty prohibits a state from expelling a stateless person into the jurisdiction of another state without the latter's permission, if no potential destination state agreed to receive the sovrien then the burdened state might legally be obliged to domicile that person indefinitely. A state's obligation to domicile a sovrien could even arise from a loophole in the vast array of a state's laws regarding human rights, citizenship, aliens, refugees, asylum, immigration, and deportation. Consider, for example, Earl Warren's musing that, under a strict interpretation of the law, the US government's power to deport aliens might not apply to American-born expatriates.[53]

Convenience. A state might be willing to tolerate a sovrien's presence within its borders if the state feels that it would be unnecessarily inconvenienced by expelling that person. The process of expelling a sovrien involves time, money, lawyers, staff, the cooperation of some destination state, the risk of antagonizing certain international relations, the risk of unfavorable political publicity, and the risk of abandoning certain moral obligations. If a state determines that the actual threat posed by the presence of a sovrien within its borders is less problematic than

the process of expelling that person, the state might choose, as a simple matter of convenience, to tolerate the sovrien's presence.

To review this third mitigating factor, we note that a state might be willing to tolerate the presence of a sovrien within its borders for reasons such as convenience, legal obligation, moral obligation, vested interest, and avoidance of international conflict. Because states might be willing to extend such toleration, a sovrien has some chance of maintaining a permanent residence in a state-controlled land. The sovrien cannot expect, however, that a state will readily cede its claim to sovereign rule. Regardless of whatever particular reason a state might have for domiciling a sovrien, the sovrien must expect to endure all the restrictions and requirements that the state imposes on aliens in general and, potentially, to suffer unique restrictions such as those imposed by the US parole status. If the sovrien does not cooperate with state rule, she may end up being expelled despite the state's apparent interests or obligations.

The fourth element that minimizes a sovrien's risk of not being able to maintain a permanent residence is the fact that citizenship, as an alternative to statelessness, provides no guarantee of permanent residence. A citizen can certainly expect to live in the land controlled by her state, but official permission to live in a particular place does not mean that the place is reasonably or perpetually habitable. Many citizens across the globe have difficulty maintaining a permanent residence for reasons such as unsuitable climatic conditions, natural disasters, war, political oppression, and lack of economic opportunity. The vast number of citizens who are simultaneously refugees painfully proves that citizenship does not protect one against upheaval and displacement. Because citizenship provides no guarantee of permanent residence, the relative danger of being a sovrien is reduced.

In summary, a sovrien can expect difficulty maintaining a permanent residence. Whereas a sovrien is regarded as an alien by every state, such a person risks exclusion or expulsion from every state-controlled land—i.e., from every reasonably habitable land on earth. In theory, the sovrien in search of a place to live risks execution, perpetual imprisonment, and banishment to uninhabitable frontiers. In practice, the sovrien should be able to

avoid such dramatic consequences. She must be prepared, however, to face other grave risks, including: forced relocation to distant lands; periodic relocation as states deem necessary; and, perhaps most importantly, forced separation from one's family, friends, culture, and homeland. Fortunately, several mitigating factors may provide the sovrien with relief from such burdens, including: the possibility of making habitable some unclaimed place; the possibility of living in a state-controlled land while managing, over time, to evade expulsion; and the possibility of living in a state-controlled land with the state's tacit or express permission. The risk of not being able to maintain a permanent residence is also tempered by the fact that citizenship, as an alternative to statelessness, provides no guarantee against forced relocation or separation from one's home and people. In brief, while a sovrien can expect difficulty maintaining a permanent residence, she is not inevitably worse off than citizens, nor is she without options for relief.

G. Difficulty in International Travel

The sixth potential disadvantage a sovrien faces is that she can expect difficulty in international travel. Specifically, a sovrien can expect to be physically prevented from crossing any international border. The average citizen who desires to travel can expect to traverse most international borders with the usual bureaucratic impediments (e.g., visa requirements, border inspections, and entry taxes). On the other hand, the sovrien who desires to travel can expect to be prevented from entering, and even prevented from leaving, any state-controlled land.

The sovrien is susceptible to this disadvantage for several reasons. Most obviously, the sovrien is regarded by every state as an alien and, since every state believes it has the right to prevent aliens from entering its claimed territory, the sovrien may be turned away at any international border. The likelihood that a state would try to prevent a sovrien from travelling into its claimed territory is heightened by the fact that sovriens are presumed to threaten morals, social order, the sovereign rule of states, and the very existence of states. The United States, for

example, will exclude any alien who is expected to engage in unlawful activity, who might threaten the security of the state, or who might provoke adverse foreign policy consequences.[54] Especially since a sovrien has neither a home state to which she can easily be deported, nor any other state which is legally obliged to receive her, it is understandable that a state would actively work to prevent such a person from entering into its claimed jurisdiction. Furthermore, a sovrien can expect difficulty in international travel because certain states restrict the conditions under which an alien will be permitted to leave state-controlled territory. For example, US law dictates that "Unless otherwise ordered by the President, it shall be unlawful . . . for any alien to depart from . . . or attempt to depart from . . . the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe."[55] Finally, a sovrien can expect difficulty in international travel because she would not likely possess (or even desire to possess) a valid state-issued passport. For lack of a passport, she also would be unlikely to acquire an entrance visa into any state-controlled land. Without such state-approved travel documents, the sovrien can expect to be detained, harassed, and typically excluded at any port of entry. As one commentator suggests, "In a world built on nationality, one simply cannot leave home without it."[56]

Despite these potential problems, the risk that a sovrien will experience difficulty in international travel is minimized by at least four factors. First, this risk is reduced by the possibility that a sovrien could travel without being detected by state authorities. If a segment of an international border is unguarded or poorly guarded, a sovrien might be able to cross that border with little problem. For example, one might be able to avoid detection by resorting to such traditional means as traveling under cover of night, tunneling, or stowing away in a vehicle, vessel, or aircraft. Furthermore, if a state has expansive borders and limited resources, it probably cannot provide a continuous and impenetrable guard along its entire perimeter. In lieu of a comprehensive guard, a state may periodically patrol selected segments of its border. But, intermittent patrols afford the resourceful traveler regular opportunities for unimpeded pas-

sage. Likewise, in lieu of a comprehensive guard, a state may install barricades (e.g., fences, walls, barbed wire, and alarms) in selected segments of its border. Such deterrents, however, are not insurmountable. Many states, for lack of resources, simply leave selected segments of their borders entirely unguarded. Segments that are far removed from traditional travel routes (e.g., wilderness areas) and segments that provide the traveler with some sort of geographical impediment (e.g., mountains, canyons, rivers, lakes, and oceans) are regularly left unguarded, based on the assumption that sheer inconvenience will protect the state from unauthorized crossings in these areas. However, the persistent migration of "illegal aliens" indicates that unguarded borders, regardless of inconvenience, can be crossed. Because many states have such weaknesses in their perimeter security, a sovrien can expect to have at least some chance of crossing international borders. Travel under such circumstances is often dangerous, time consuming, and inconvenient, and the possibility persists that one could be apprehended even after one is well inside a state's borders. However, to the extent that a sovrien can travel via nontraditional routes, cross borders at nontraditional points, and generally elude the watchful eye of border guards, she may be able to proceed with her plans for international travel.

Second, the risk of difficulty in international travel is reduced by the possibility that a sovrien could be granted conditional travel privileges by cooperative states. For example, a state might permit a sovrien to travel within its borders under one or more of the following conditions: (a) the sovrien agrees to abide by all laws governing nonimmigrant aliens; (b) the sovrien's travel would be restricted to a limited period of time and perhaps to limited places; (c) another state guarantees that it will admit the sovrien upon the conclusion of travel or upon the termination of travel privileges in the present state; (d) the sovrien's presence within the state's borders would serve some vested interest of the state; or (e) the state has some moral obligation to admit the sovrien, such as an obligation to permit freedom of movement, to allow family visits, or to provide safe haven from persecution. Of course, some sovriens would regard these or any other conditions for travel as unacceptable restraints

on human freedom. Such people are free to negotiate more lenient terms, but they cannot reasonably expect that a state would grant an alien unconditional travel privileges. Other sovriens might be willing to agree to such conditions in order to accomplish their desired travel plans. The sovrien who fulfills state conditions for international travel might even be granted official travel documents,[57] especially if she is associated with a state party to the *Convention Relating to the Status of Stateless People*.[58]

Third, the risk of difficulty in international travel is reduced by the possibility that a sovrien might be permitted to travel freely across the globe as a "citizen of the world." As we noted above, many cosmopolitans desire formal legal status as world citizens, with all the corresponding rights, obligations, and institutions that such a status would entail. While there is some theoretical basis for formal world citizenship, the concept remains largely undeveloped. Nonetheless, in light of the evolving nature and parameters of world citizenship, a discussion of rights that might be associated with this status is not unreasonable. Specifically, in regard to the matter of international travel, the notion of world citizenship raises a provocative question: In light of the generally accepted principle that citizens should enjoy freedom of movement within their respective lands, can we conclude that world citizens should enjoy freedom of movement across the globe? Reason suggests that a world citizen has a legitimate right to travel freely throughout the world. However, since this matter is unsettled in international law, the sovrien who claims to be a world citizen cannot expect to travel freely or to acquire some carte blanche that will facilitate her entry into any state-controlled land. The idea, though, has its proponents.

The most well-known venture to secure global travel rights for world citizens has been conducted by Garry Davis, the founder and World Coordinator of the World Government of World Citizens. On May 25, 1948, Davis expatriated from the United States and became stateless.[59] His intent was to establish himself as a citizen of the world. Several years later, on September 4, 1953, Davis founded the World Government of World Citizens and, in 1954, he created the organization's administrative agency, the World Service Authority (WSA). Since 1954,

the WSA has maintained a registry of "World Citizens" and has issued documents such as the "World Identity Card," the "World Birth Certificate," the "World Marriage Certificate," and most notably, the "World Passport." According to WSA literature, the WSA passport has been issued to many thousands of people worldwide, the passport has received de jure recognition by six states (Togo, Mauritania, Ecuador, Zambia, Tanzania, and Burkina Faso), and it has received de facto recognition by more than 150 states (as evidenced by the imprints of official visa, entry, and exit stamps in WSA passports). The popularity of the WSA passport may be attributed in part to the fact that one can acquire this document without renouncing any state citizenship and without surrendering any state-issued passports. In other words, one does not have to be stateless in order to acquire a WSA passport or to become a member of the World Government of World Citizens.[60]

While the WSA passport may, under certain circumstances, facilitate international travel for a sovrien, three concerns are worth noting. First, most states do not officially recognize the WSA passport. Despite its remarkable record of de facto recognition, the WSA passport can be rejected by most states at any time as an invalid travel document. Anyone who relies solely on the WSA passport to facilitate international travel must be prepared to be treated as an excludable alien. Second, the issuance and use of documents such as the WSA passport and identity card may lead some to believe that a person cannot be a genuine sovrien without such documentation. Since the act of being intentionally stateless is an act of volition and is not dependent on the permission or approval of another party, we must be clear that one need not register with any organization nor possess any official papers in order to be a sovrien. While sovriens are free to form associations, and such associations are free to issue official documents to their members, we must be clear that such associations have no power to assign or deny sovrien status. Third, organizations such as the WSA may bear characteristics of traditional states, thereby opposing the independent and sovereign status of sovriens. For example, the WSA "Credo of a World Citizen" declares:

> [A] World Citizen accepts a sanctioning institution of representative government, expressing the general and individual sovereign will in order to establish and maintain a system of just and equitable world law with appropriate legislative, judiciary and enforcement bodies.[61]

The WSA "Affirmation," which must be signed by those registering as World Citizens, reads in part:

> I, the undersigned, do hereby, willingly and consciously, declare myself to be a Citizen of the World. As a World Citizen, I affirm my planetary civic commitment to WORLD GOVERNMENT . . . . As a World Citizen I acknowledge the WORLD GOVERNMENT as having the right and duty to represent me in all that concerns the General Good of humankind and the Good of All.[62]

Sovriens of anarchist persuasion would, undoubtedly, have misgivings with signing such an affirmation and registering for such citizenship. Sovriens open to the notion of world government, on the other hand, may find such principles acceptable. In sum, while the WSA passport may provide sovriens with an option for travel, the above three concerns may limit its desirability.

The fourth factor that reduces the risk of difficulty in international travel is the possibility that a sovrien could avoid such travel altogether. Ordinarily, international travel is not an essential element of human existence. It cannot even be counted among the necessities for a modest quality of life. (The need for international travel that arises from persecution is an obvious exception. However, it appears that most international travel is not for the purpose of acquiring temporary asylum from persecution, but for the purpose of elective pursuits in business, education, or pleasure.) To the extent that a sovrien can freely opt to avoid international travel, the difficulties associated with such travel can be avoided as well.

In summary, the sovrien can expect difficulty in international travel. Specifically, she can expect to be prevented by state authorities from crossing any international border and from

entering or leaving any state-controlled land. This potential disadvantage is minimized by at least four factors: (1) the possibility that a sovrien could travel without being detected by state authorities, (2) the possibility that a sovrien could be granted conditional travel privileges by cooperative states, (3) the possibility that a sovrien might be permitted to travel freely across the globe as a "citizen of the world," and (4) the possibility that a sovrien could avoid international travel altogether.

H. Permanence of Status

The seventh potential disadvantage a sovrien faces is that her status as a stateless person could be permanent. In other words, when an individual chooses to be stateless, she risks, from that moment forward, denial of any subsequent opportunity to become a citizen. This risk is noteworthy because it means that a sovrien might have to endure all the aforementioned potential disadvantages for the duration of her life. Even if such disadvantages become burdensome or downright intolerable, and even if the sovrien changes her mind and decides that she no longer wants to be stateless, the option to subsequently become a citizen is not assured.

This risk exists because a stateless person is regarded by every state as an alien and, insofar as no state is ultimately obliged to enter into a citizen-state relationship with any alien, a stateless person has no guarantee that she will ever be permitted to become a citizen anywhere. The likelihood that an individual who chose to be stateless would subsequently find a partner state is diminished by the fact that many states would be wary of naturalizing a person who previously spurned citizenship everywhere. Even if a sovrien is a former citizen of a given state, that state has no lingering obligation to reestablish a relationship with the individual. Moreover, such a state may well regard the ex-citizen as a turncoat or deserter—one unworthy of reconsideration for the status of citizen. Thus, the sovrien risks remaining stateless permanently.

Although the risk of being stateless permanently is a serious concern and a genuine possibility for the sovrien, the

probability that such a person would subsequently be denied every opportunity to enter a citizen-state relationship is only moderate. If a sovrien decides that she no longer wants to be stateless, that she wants, instead, to be a citizen of some state, and that she is willing to abide by a state's requirements for naturalization, then options for acquiring citizenship may exist. While no state is ultimately obliged to enter into a citizen-state relationship with a stateless person, any state is free to incorporate a stateless person into its citizenry, just as it is free to incorporate any other alien. A state may be particularly open to naturalizing a stateless person if it has some vested interest in doing so, if it feels some moral or humanitarian obligation to do so, or if the stateless person appears that she will make a genuine attempt to be a responsible citizen. Also, some states have obliged themselves, via international agreement, to naturalize certain stateless people. For example, a state party to the *Convention on the Reduction of Statelessness* agrees, under limited circumstances, to naturalize any stateless person who was born in the territory claimed by that state or who was born to parents who, at the time of the person's birth, were nationals of that state.[63] A state party to the *Convention Relating to the Status of Stateless Persons* agrees that it shall "as far as possible facilitate the assimilation and naturalization of stateless persons. . . . [and] in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."[64] An individual who has difficulty shedding her status as a stateless person would also be eligible for assistance from the Office of the United Nations High Commissioner for Refugees.[65]

We can note incidentally a relevant provision in United States nationality law. The US government will disregard certain expatriative acts committed by a minor if the minor, within six months after attaining the age of majority, asserts an official claim to US citizenship.[66] In other words, under limited circumstances, a US citizen who expatriates into statelessness as a minor can expect to be, in effect, "repatriated" if she stakes her claim to US citizenship within the prescribed parameters. While this provision is extra-ordinary, it does provide certain young sovriens an opportunity to regain citizenship. In general, how-

ever, the individual who expatriates into statelessness cannot expect to repatriate with such ease.

In sum, when a person becomes a sovrien, she risks being stateless permanently. The risk is only moderate, but it must be highlighted because of the many potential disadvantages which statelessness bears. Although no state is ultimately obliged to naturalize a stateless person, many states will do so for moral, political, or legal reasons. The stateless person who desires to become a citizen must be prepared to meet all the requirements that any other alien seeking citizenship would have to meet. In short, one who chooses to be stateless must accept the possibility that, regardless of any personal suffering or inconvenience, she could be stateless for life. If the sovrien subsequently changes her mind, however, she is not prohibited from pursuing a new citizen-state relationship.

I. Conclusion

The potential disadvantages of being a sovrien, as we have seen, are significant. The individual who chooses to be stateless minimally risks: living without government protection of her human rights; living without government assistance in time of need; enduring government interference in her life regardless of her independent status; enduring the full range of discrimination arising from the social stigma of being an alien; having difficulty maintaining a permanent residence; having difficulty in international travel; and living with all these potential disadvantages for the duration of her life. Anyone who chooses to be stateless must be prepared to suffer these risks.

On the other hand, risks are not certainties. Although the sovrien must be prepared to face many possible disadvantages, she can expect the range of probable disadvantages to be somewhat limited. As we have seen, the risks associated with being a sovrien are minimized by many factors, including: a state's inability to wield total control over an individual; an individual's ability to elude restrictions and requirements imposed by states; an individual's ability to defend her own rights; an individual's physical, mental, spiritual, emotional, material, and communal

resources; a state's moral and legal obligations; a state's utilitarian, political, and humanitarian interests; and the possibility of negotiated agreements between the sovrien and sympathetic states. Furthermore, many of the potential disadvantages of being a sovrien are minimized by the fact that citizenship, as an alternative to statelessness, may offer little meaningful improvement to one's situation: citizenship obliges one to forfeit individual sovereignty, subjects one to a host of restrictions and requirements, and can leave one substantially lacking the benefits and security which a state has promised.

We must reiterate, for the sake of emphasis, that the risks associated with being a sovrien are heightened for people who are routinely subject to discrimination and oppression. When one is denied legitimacy, freedom, resources, access to power, and fair treatment as a human being, many of life's dangers are magnified—including the dangers associated with being a sovrien. Conversely, when one enjoys privilege, as is currently the case with those who are fair-skinned, heterosexual, able-bodied, educated, and male, the dangers of life, including the dangers associated with being a sovrien, are reduced. Most of the mitigating factors described in this chapter will afford greater relief to those who enjoy an unfair advantage in life than to those who are discriminated against and oppressed.

In conclusion, while we can acknowledge that the potential disadvantages of being a sovrien are significant and worthy of consideration, we must also acknowledge that these disadvantages are not necessarily catastrophic—they are risks, not certainties. Moreover, due to the presence of various mitigating factors, one might sanely regard many of these risks as reasonable. In light of the potential advantages of being a sovrien, one might even regard these potential disadvantages as ultimately tolerable.

Notes

[1] UN International Law Commission 1954, Preamble.
[2] See, e.g., *Convention Relating to the Status of Stateless Persons* 1954.
[3] See Chapter 4, Section G.
[4] Endelman 1996, 4.
[5] Kolson 1968, 330.
[6] UN International Law Commission 1954, Preamble.
[7] *Perez v. Brownell*, 356 US 44, 64 (note omitted) (1958) (Warren et al. dissenting).
[8] Lauterpacht 1945, 126.
[9] Oppenheim 1992, § 376 at 849, § 397 at 886 (note omitted).
[10] Mutharika 1989, xix.
[11] Weis 1979, 162.
[12] *Trop v. Dulles*, 356 US 86, 101 note 33 (1958), quoting Chief Judge Clark's opinion in *Trop v. Dulles*, 239 F2d 527, 530 (1956).
[13] Oppenheim 1992, § 376 at 849 (notes omitted).
[14] *Perez v. Brownell*, 356 US 44, 64 (1958) (Warren et al. dissenting).
[15] Lauterpacht 1945, 126.
[16] *US ex rel. Dickson Car Wheel Co. v. Mexico*, 6 Annual Digest 228, 230 note 1 (1931).
[17] Seckler-Hudson 1934, 248.
[18] *Trop v. Dulles*, 356 US 86, 102 (1958).
[19] Weis 1979, 245.
[20] See Chapter 8.
[21] UN Department of Social Affairs 1949, 10.
[22] Scholars observe that individuals and communities around the world are increasingly relying on nongovernmental bodies for the services and protection traditionally supplied by states. See generally: Spiro 1999; Jacobson 1997; Soysal 1994.
[23] See generally: UN High Commissioner for Refugees 1992; *Convention Relating to the Status of Refugees* 1951; UN General Assembly 1950.
[24] See *Immigration Law and Procedure* 2002, § 6.08 (reviewing US policy regarding alien access to courts). See also Greiper 1985 (reviewing how stateless people generally lack access to courts).
[25] Legomsky 1994, 300.

[26] See *Immigration Law and Procedure* 2002, § 6.07 (reviewing US policy regarding alien access to welfare benefits).
[27] *Convention Relating to the Status of Stateless Persons* 1954, Articles 20-24.
[28] See Chapter 9, Section D.
[29] *Convention Relating to the Status of Stateless Persons* 1954, Article 7.1.
[30] Oppenheim 1992, § 397 at 886 (note omitted).
[31] See generally *Immigration Law and Procedure* 2002, § 6 (reviewing US policy regarding aliens' rights, privileges, and liabilities).
[32] Ibid.
[33] McDougal, Lasswell, and Chen 1980, 921.
[34] Weissbrodt 1998, 417, 428-429.
[35] UN Department of Social Affairs 1949, 33.
[36] Seckler-Hudson 1934, 248 (note omitted).
[37] Seckler-Hudson attributes this statement to Thomas Jefferson, citing specifically his Presidential Address of 1801. Seckler-Hudson 1934, 248. Upon review of both of Jefferson's inaugural addresses (1801,1805) and all eight of his annual messages to congress (1801-1808), I could not verify this statement. James D. Richardson ed. 1897, *A Compilation of the Messages and Papers of the Presidents* (Bureau of National Literature) Vol. 1, 309-444. However, this sentiment is expressed by Jefferson in his "First Annual Message to Congress" on December 8, 1801 when, in the course of suggesting that Congress relax its naturalization laws, he remarked, "Shall oppressed humanity find no asylum on this globe?" Ibid. at 319.
[38] McDougal, Lasswell, and Chen 1980, 921.
[39] Seckler-Hudson 1934, 248.
[40] Arendt 1973, 284 (note omitted). See also ibid. at 279.
[41] Hale 1863.
[42] UN Department of Social Affairs 1949, 21.
[43] Endelman 1996, 5.
[44] Weis 1979, 53, 57.
[45] *Convention Relating to the Status of Stateless Persons* 1954, Article 31.
[46] Weis 1979, 53-57.
[47] US Department of State Circular Telegram #386507 (December 12, 1987). See Leich 1988 (reporting the contents of this telegram).

[48] 8 USC § 1182(d)(5) (2002); 8 CFR § 212.5 (2002); See *Immigration Law and Procedure* 2002, § 62.

[49] US Department of State Circular Telegram #386507 (December 12, 1987), ¶ 5; Leich 1988, 337.

[50] *Davis v. District Director, INS*, 481 FSupp 1178 (D DC 1979).

[51] For example, US law provides that an alien may be paroled into the country on the grounds that such an act would provide a "significant public benefit." 8 USC § 1182(d)(5)(A) (2002); 8 CFR § 212.5 (2002). The letter of this law is not particularly favorable to sovriens, but the spirit of the law shows that the state will make exceptions if it stands to benefit.

[52] *Convention Relating to the Status of Stateless Persons* 1954, Article 31.1.

[53] *Perez v. Brownell*, 356 US 44, 65 note 6 (1958) (Warren et al. dissenting).

[54] 8 USC § 1182(a)(3) (2002).

[55] 8 USC § 1185(a)(1) (2002). Current regulations authorize the detention of any alien whose departure from the US would be prejudicial to the interests of the US, including any alien who is a "fugitive from justice," who is a witness in or party to a criminal case, who is needed for any governmental investigation (national, state, or local), or whose departure would threaten the national defense or security of the US or of any of its allies. See 8 CFR § 215 and 22 CFR § 46 (2002).

[56] Legomsky 1994, 299.

[57] See Weis 1979, 223-224. After World War I, several travel documents, notably the "Nansen passport," were developed for use by stateless refugees. These documents enjoyed broad recognition, and they provide one example of how states could contend with a stateless person's right to travel. UN Department of Social Affairs 1949, 41-43, 54.

[58] *Convention Relating to the Status of Stateless Persons* 1954, Article 28.

[59] *Davis v. District Director, INS*, 481 FSupp 1178 (D DC 1979).

[60] Information about Garry Davis, the World Passport, and the World Government of World Citizens is available from: World Service Authority, Suite 1106, 1012 14th Street, NW, Washington, DC 20005 USA (Phone: 202-638-2662) (Internet: www.worldservice.org) (2002). See Davis 1992 (providing a detailed history of the World Passport).

[61] World Service Authority 2001, *Application for a World Citizen Registration Card* (Washington, DC).
[62] Ibid.
[63] *Convention on the Reduction of Statelessness* 1961, Articles 1 and 4.
[64] *Convention Relating to the Status of Stateless Persons* 1954, Article 32.
[65] See generally: UN High Commissioner for Refugees 1992; *Convention Relating to the Status of Refugees* 1951; UN General Assembly 1950.
[66] 8 USC § 1483(b) (2002).

6

Exercising the Right to Be Stateless

A. Introduction

Our exploration thus far can be summarized in four points. First, one can reasonably claim that human beings have a fundamental human right to be stateless, that is, a right to be a sovrien. Second, like most weighty choices in life, the choice to be a sovrien bears potential disadvantages, some of which are significant and deserve careful consideration. Third, the choice to be a sovrien also bears potential advantages, some of which are also significant. Fourth, individuals who determine that the potential benefits of being a sovrien outweigh the potential risks may view the choice to be stateless as reasonable, if not compelling. In light of these four circumstances, the question now arises: How does one exercise the right to be stateless? How does one become a sovrien? If there exists a fundamental human right to be stateless, then any individual should be able to exercise that right at his or her discretion.

The purpose of this chapter is to clarify what one must do in order to exercise the right to be stateless. Four elements

appear to be sufficient and necessary: (1) the individual must choose to be stateless, (2) the individual must act voluntarily, (3) the individual must act knowingly, and (4) the individual must act intentionally. Although some overlap exists between these elements, distinguishing them permits us to be thorough. We will also examine a fifth and optional element: (5) the individual may publicly express her choice.

B. The Choice to Be Stateless

The first and central element of exercising the right to be stateless is the need for the individual to choose to be stateless. This choice, ultimately, is a simple act of exercising one's volition. As we have noted above, the citizen-state relationship is contingent upon the consent of the individual, and consent, by definition, is predicated upon one's free will, feelings, intuition, and volition. Thus, in order to be a sovrien, an individual simply must choose to withhold her consent to all citizen-state relationships. Despite the many ramifications that being a sovrien entails, attaining such status merely requires an act of will.

Depending on one's current citizenship status, the choice to be stateless will vary in its form and effect. For example, if one's current status is "unintentionally stateless"—i.e., one is already stateless, though one had not intended to be so—then in order to become a sovrien, one only needs to choose to maintain her stateless status. In effect, this choice does not change one's position as a stateless person. The choice does mean, however, that regardless of whether or not any state subsequently views the individual as a citizen, the individual now intentionally refuses to consent to participate in any citizen-state relationship.

On the other hand, if, like most people, one currently participates in a citizen-state relationship, the form and effect of this choice are somewhat different. If one is a citizen and one desires to be a sovrien, one needs to decide that, effective some specific time, she will no longer offer allegiance and support to any state. At the very moment one withholds consent to participation in citizen-state relationships, one becomes a sovrien. In other words, as soon as one removes her portion of the mutual

consent that is required for a citizen-state relationship to exist, one's status as a citizen necessarily evaporates.

If one chooses to move from citizenship to statelessness, that choice necessarily and simultaneously incorporates the act of expatriation. In other words, a citizen who exercises her right to be stateless also exercises her right to expatriate. Although the right to expatriate is generally recognized and the right to be stateless is reasonably established, states go to great lengths to encumber these rights. (We will review examples in Chapter 7.) We must note that such restrictions are ineffectual because a state has no practical means to control one's will, volition, or intent. A state is ultimately powerless to prevent an individual from withholding consent and thereby dissolving the ties of citizenship.

In sum, regardless of whether one is unintentionally stateless or one is a citizen, if one desires to exercise her right to be stateless, she must choose to be stateless. In other words, she must choose to withhold her consent to all citizen-state relationships. Due to the nature of consent, this choice is solely within the prerogative of the individual, and it cannot be restricted or prevented by any government action.

C. Voluntary Action

The second element of exercising the right to be stateless is the need for the individual to act voluntarily. When choosing to be a sovrien, the individual must act on her own free will. She must not act under duress, and her choice must not be compelled or otherwise forced. The individual must be mentally competent, that is, she must have no incapacity negating a free choice. The individual's choice to be a sovrien must be conscious and intended, not accidental. This element not only relieves any concern of inadvertent action, but it also preserves the individual's fundamental right to self-determination.

D. Knowing Action

The third element of exercising the right to be stateless is the need for the individual to act knowingly. When choosing to be a sovrien, the individual must reasonably understand the meaning and consequences of her action. The individual's choice cannot be unwitting, based on misinformation, or made with ignorance of the essential facts. This element is necessary due to the significant risks associated with the sovrien life.

The essential facts that a potential sovrien must understand can be summarized briefly. First, if one chooses to be a sovrien, this means that she will be a citizen nowhere. She will owe no allegiance or support to any state, and no state will owe her protection or services. Second, if one chooses to be a sovrien, she will face several potential disadvantages. Specifically, she risks: no government protection of her human rights, no government assistance in time of need, government interference in her life, discrimination on account of her status, difficulty maintaining a permanent residence, difficulty in international travel, and the possibility that her status as a stateless person may be permanent. Third, if one chooses to be a sovrien, she may possibly, though not necessarily, enjoy certain advantages. Specifically, she might enjoy greater integrity, more adventure, more political freedom, formal neutrality in international relations, and the opportunity to participate in social transformation.

In regard to an individual's ability to act knowingly, two situations deserve special note. First, young people who have not yet reached some arbitrary "age of maturity" are often regarded as incompetent to act knowingly about significant life choices. Likewise, those who have been diagnosed with a mental disability or mental illness are sometimes regarded as lacking such competence. Whether or not individuals in these situations are able to act knowingly is a matter of dispute beyond our scope. We can note, however, that questions of psychological maturity and competence apply to the exercise of all rights, not just the right to be stateless. For our purposes, a fair resolution of these questions would not alter the general principles forwarded here.

E. Intentional Action

The fourth element of exercising the right to be stateless is the need for the individual to act intentionally. When choosing to be a sovrien, the individual must act with resolve, purpose, and determination. Her choice cannot be uncertain or happenstance—it must be deliberate. The individual must have some motive to be a sovrien. Regardless of the specific nature of the motive (e.g., philosophical principles or spiritual beliefs), the individual must somehow feel moved to be stateless.[1] She must have some sense that the potential advantages of statelessness outweigh the potential disadvantages. By definition, to become a sovrien is to become stateless with intent.

F. Public Expression

In order to exercise the right to be stateless, one must choose to be stateless and one must do so voluntarily, knowingly, and intentionally. These four conditions, by nature, are strictly personal and interior actions. They require no element of public expression for their effectiveness or validity. To choose, to act voluntarily, to act knowingly, and to act intentionally are all mental functions. Thus, the right to be stateless can be exercised in pure silence and solitude.

An optional element of exercising the right to be stateless is that the individual may publicly express her choice to be a sovrien. Although public expression is not necessary, it is desirable for three reasons. First, public expression permits one's family, friends, associates, and community to recognize and respond appropriately to one's new status as a sovrien. If others are aware that one is exercising the right to be stateless, then there is a greater likelihood that they will understand one's refusal to accept state protection and services, one's refusal to provide allegiance and support to a state, and one's refusal to submit to state demands.

Second, in the likely event that one's exercise of the right to be stateless includes an act of expatriation, public expression serves to inform the affected state that one is dissolving the citizen-state relationship. Of course, anyone who opts to dissolve a significant relationship—whether it be with an individual, a community, an organization, or even a state—should have the courtesy to inform the affected party. Moreover, unless one informs the state that she is exercising her right to be stateless, she can expect that the state will continue to regard her as one of its citizens. For example, the United States government is unlikely to recognize an individual's act of expatriation unless the individual's intent to relinquish citizenship is "expressed in words or is found as a fair inference from proved conduct."[2] If one has any hope that a state will cease imposing on her the restrictions and requirements that it imposes on its citizenry, she must at least inform the state that she is no longer a citizen.

Third, public expression provides a means to verify that one has exercised the right to be stateless. Hudson notes that, "Statelessness, as a negative fact, is difficult to prove. Stateless persons are often unable to obtain documentary evidence of loss of nationality from the authorities of the country of their former nationality."[3] Public expression, however, will usually result in some form of documentation or witnesses. In the event that some party subsequently claims that one is still a citizen, these resources can be used to verify that one has indeed exercised the right to be stateless.

Since public expression is not an essential element of exercising the right to be stateless, there is no necessary form which such expression must take. However, if one intends public expression to serve any of the purposes just described, such expression will be more effective if it meets the following conditions. (1) The action conveys as clearly as possible that one meets the essential requirements for exercising the right to be stateless. In other words, the action elucidates the central claim: "I voluntarily, knowingly, and intentionally choose to be stateless." (2) The action is explicit and unambiguous. (3) The action is deliberate and premeditated. (4) The action is solemn and formal.

Below are several means to publicly express the fact that one is exercising the right to be stateless. One could:

- Deliver a verbal or written statement to inform others regarding: one's choice to be a sovrien; the effective time of this choice; the voluntary nature of this choice; one's understanding of the critical issues involved in this choice; the reasons why one feels moved to make this choice; and one's hopes and expectations in pursuing this option.
- Inform one's personal community by presenting one's statement to family members, friends, colleagues, and the organizations in which one participates.
- Inform the broader community by presenting one's statement to the media.
- Inform relevant governments by presenting one's statement to officials in the state from which one has expatriated and, if different, to officials in the state which claims authority over the land where one currently resides.
- Perform a symbolic act.
- Artistically express one's choice through song, dance, poetry, painting, or performance.
- Throw a celebration party.
- Hold a ceremony.
- Return or destroy one's passport, identification card, or other documents which a government uses to identify one as a citizen.
- Expatriate in accordance with whatever forms or restrictions the state desires to impose, but acquire no subsequent citizenship elsewhere.
- Arrange for written, audio, video, or media documentation of one's public expression.
- Arrange for witnesses who would be willing to verify that one has indeed exercised the right to be stateless.

The most meaningful form of publicly expressing one's choice to be a sovrien is for one to live in accordance with the implications of that choice. A sovrien who intends to live with integrity will strive to act consistently with the status of being

stateless and refrain from activity inconsistent with sovereignty. For example, a sovrien generally ought to:

- Identify oneself as a sovrien whenever such status should rightfully be made known (e.g., when responding to a question regarding one's citizenship status, or when participating in a matter where one's citizenship status is relevant).
- Refuse to be identified, explicitly or implicitly, as a citizen.
- Refuse to be represented by a state official in any matter.
- Refrain from using citizen identification numbers.
- Refrain from using passports or other state-issued documents which suggest that one is a citizen.
- Refrain from calling upon state forces (e.g., police, courts, and diplomats) for protection against adversaries.
- Refrain from seeking state assistance in time of need (e.g., medical, housing, employment, education, and old-age benefits).
- Refrain from using government services unless one makes fair compensation for such services.
- Refrain from voting in elections or holding a government office.
- Refrain from performing military or civilian service.
- Refrain from paying taxes, paying fines, buying bonds, or otherwise financially supporting the state.
- Refrain from participating in the rites of patriotism (e.g., celebrating national holidays, reciting a pledge of allegiance, standing for a national anthem, standing for a courtroom entry of a judge, honoring a flag or other symbols of the state).
- In one's dealings with states, carry oneself in a manner befitting a sovereign entity.

While a sovrien will have opportunity to engage in many such actions over time, she may also select a particular action (e.g., refusing to be drafted into military service) that will simultaneously inaugurate and publicly express her choice to be stateless.

G. Conclusion

In summary, in order for one to exercise the right to be stateless, one must meet four conditions: one must choose to be stateless, and one must do so voluntarily, knowingly, and intentionally. Because these four conditions, by nature, are strictly personal and interior actions, the right to be stateless can be exercised effectively without any element of public expression. Public expression, however, serves several important functions that deserve consideration. If one intends that her choice to be a sovrien not be perceived as frivolous, involuntary, unintentional, ill-conceived, or even non-existent, then one should somehow express to others, in an explicit and unambiguous manner, the fact that she is exercising her right to be stateless.

Regardless of the inherently personal nature of one's choice to be stateless, states still attempt to restrict this choice. Even if an individual meets the essential conditions described above, unless she satisfies state conditions as well, most states will refuse to recognize the individual's status as a sovrien. However, whereas a fundamental human right to be stateless exists, and whereas the elements necessary to exercise this right are, by nature, personal and beyond the reach of a state's attempted restrictions, one can become a sovrien simply by making a choice.

Notes

[1] A United States court of appeals has suggested that the specific motive behind the act of expatriation is, ultimately, irrelevant. "[A] person's free choice to renounce United States citizenship is effective whatever the motivation. Whether it is done in order to make more money, to advance a career or other relationship, to gain someone's hand in marriage, or to participate in the political process in the country to which he has moved, a United States citizen's free choice to renounce his citizenship results in the loss of that citizenship." *Richards v. Secretary of State*, 752 F2d 1413, 1421 (9th Cir 1985).

[2] *Vance v. Terrazas*, 444 US 252, 260 (1980).

[3] Hudson 1952, 22.

7

Restrictions on the Right to Be Stateless

A. Introduction

The *Convention Relating to the Status of Stateless Persons* declares that "it is desirable to regulate . . . the status of stateless persons."[1] Most states support this principle, including its application to individuals who intend to exercise their right to be stateless. Despite the fact that people have a fundamental human right to be stateless, and the fact that states have no real power to prevent the exercise of this right, most states still attempt to limit where, when, why, and how a person may become stateless. Before examining the specific methods which states use, I will review the primary options for restricting the right to be stateless and the key problems associated with these options.

Primary options for restricting the right to be stateless.

From a state's point of view, the primary means for restricting an individual from exercising her right to be stateless is the rule of law. In international law, the *Convention Relating to*

the Status of Stateless Persons requires that "The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons."[2] The *Convention on the Reduction of Statelessness* goes further by enumerating a variety of methods which contracting states are required to employ in order to reduce, if not eliminate, the specific means by which individuals can become stateless.[3] These international accords are designed primarily to reduce the occurrence of unintentional statelessness, but they also bear provisions intended to prevent people from becoming sovriens. Likewise, in domestic law, each state has its own regulations designed to prevent individuals from living outside a citizen-state relationship.[4]

States typically attempt to restrict the right to be stateless by placing conditions on the component right to expatriate. From a state's point of view, this tactic is desirable for two reasons. First, insofar as the right to be stateless is generally unknown or misunderstood, and insofar as states benefit by perpetuating this situation, it is in a state's interest to address matters of intentional statelessness indirectly. Second, despite the widely-accepted principle that human beings have a fundamental right to expatriate, popular opinion has not objected to state attempts to restrict this right. By regulating the right to expatriate, states enjoy a quiet and effective means to deter people from exercising their right to be stateless.

For example, the United States attempts to restrict the right to be stateless by means of its expatriation statute. This law asserts that an individual cannot dissolve the citizen-state relationship unless she performs at least one of the following acts: (1) obtain citizenship in a foreign state; (2) declare allegiance to a foreign state; (3) serve in the armed forces of a foreign state; (4) accept employment by the government of a foreign state, when such employment involves acquisition of citizenship or declaration of allegiance; (5) formally renounce one's citizenship under the conditions that (a) one is in a foreign state, (b) one is before a US diplomat, and (c) one uses the form prescribed by the US government; (6) formally renounce one's citizenship under the conditions that (a) the US is in a state of war, (b) one uses the form prescribed by the US government, and (c) the US Attorney General grants permission; or (7) commit and be con-

victed of an act of treason, sedition, or violent insurrection against the US government.[5]

Laws such as these are common among states. Just as common is the unfounded belief among citizens that the right to expatriate and the right to be stateless are subject to such laws. As we have seen, an individual only needs to make a voluntary, knowing, and intentional choice in order to exercise the right to be stateless and its component right to expatriate. The choice, by nature, is not contingent upon the demands, desires, or consent of any other party. Thus, any legislative attempt to restrict either of these rights is, logically, impertinent.

Nonetheless, a state that desires to impair the right to be stateless has three options at its disposal. First, a state can attempt to prevent an individual from exercising her right to be stateless by trying to persuade her that exercising this right requires more than just a voluntary, knowing, and intentional choice. Depending on a state's particular interests, it might try to persuade the individual that one or more conditions must be met in order for her act to be valid and effective. For example, a state might demand that a potential expatriate adhere to the state's bureaucratic requirements for expatriation, or that she receive the state's permission, or that she cease residing in the territory claimed by the state. Unfortunately for the state, an individual's disregard of such conditions in no way affects that individual's power to expatriate. States, of course, are at liberty to persuade individuals to believe otherwise and, to the extent that they are successful in doing so, the right to be stateless is impaired.

Second, a state can attempt to prevent an individual from exercising her right to be stateless by threatening or imposing brute force. Specifically, a state can threaten or impose banishment, imprisonment, torture, or even execution. Insofar as an individual is deterred by such threats, the state has an effective means to impair this right. Logically, however, mere threats cannot prevent one from expatriating or becoming stateless, and even the actual imposition of brutality (except for execution) fails to preclude these actions.

Third, a state that acknowledges its inability to restrict an individual from exercising her right to be stateless still retains the option to not recognize an act of expatriation when it occurs.

To the extent that a state can continue to treat an expatriate as a citizen, the state has the ability to impair some of the effectiveness (although not the validity) of the individual's choice.

In this chapter, we will examine the specific methods by which states attempt to restrict the right to be stateless. As the reader will note, these methods always reduce to three primary options: persuasion, brute force, and nonrecognition.

Primary problems with restricting the right to be stateless.

Any attempt to restrict an individual's right to be stateless faces five primary problems. These problems, detailed in previous chapters, are summarized as follows.

First, the liberty to be stateless is reasonably classified as a fundamental human right. A state cannot restrict or deny this right without violating essential human freedoms.

Second, the liberty to expatriate—the primary target of attempted restrictions on the right to be stateless—is also reasonably classified as a fundamental human right. Any denial or restriction of this right also violates essential human freedoms. The United States Supreme Court, in its landmark case *Afroyim v. Rusk*, notes that the US Congress initially refrained from setting any conditions on expatriation. The court quotes the Chair of the House Committee on Foreign Affairs which drafted the Expatriation Act of 1868: "[Expatriation] is a subject which, in our opinion, ought not to be legislated upon. . . . [T]his comes within the scope and character of natural rights which no Government has the right to control and which no Government can confer."[6] Lauterpacht suggests that when a state refuses its citizens the right to expatriate, "there is an assertion of power violative of human freedom and dignity."[7]

Third, a state has no rights which supersede an individual's right to be stateless. Rights to social order, territorial sovereignty, and state existence are frequently alleged to override the right to be stateless. However, as we have seen, these alleged rights do not exist in any meaningful way, and to the extent that they do exist, they fail to outweigh the fundamental human rights which undergird the right to be stateless. A state may have significant interests in imposing restrictions and requirements,

exacting money and labor, and prescribing its vision for social order, but such interests fail to give the state legitimate authority to restrict an individual's right to be stateless.

Fourth, as a simple matter of reciprocity, state restrictions on the right to be stateless are unfair. A state believes that it has the prerogative to dissolve a citizen-state relationship under whatever conditions it sees fit (via denationalization laws) and the prerogative to impose on individuals the conditions under which they may dissolve a citizen-state relationship (via expatriation laws). Of course, states deny that individuals have any reciprocal prerogatives: individuals are denied the freedom to opt out of citizen-state relationships as they see fit and individuals cannot impose on states conditions for denationalization. This contrived inequity, which disproportionately affords one party more freedom than the other in the dissolution of their relationship, is patently dismissed in the context of other human relations. It must be dismissed in the context of the citizen-state relationship as well.

Fifth, the right to be stateless, by its very nature, is not susceptible to restriction. As we have seen, the citizen-state relationship is contingent upon the consent of the individual. If the individual voluntarily, knowingly, and intentionally chooses to withdraw this consent, the citizen-state relationship is necessarily dissolved and the individual becomes stateless. A state may attempt to persuade an individual to consent, or it may punish an individual who refuses to consent, but a state is powerless to force an individual to consent. As the US Supreme Court noted in *Vance v. Terrazas*, "In the last analysis, expatriation depends on the will of the citizen rather than on the will of Congress and its assessment of his conduct."[8] Because volition, allegiance, and consent are all solely within the prerogative of the individual, citizenship cannot be imposed, and the choice to be stateless cannot be prevented.

In addition to these five primary problems, other concerns will be noted as we proceed. We will now consider the specific methods by which states attempt to restrict the right to be stateless. Not all states use all of these methods, and some states use other methods, but the ones noted below are predominant.

B. Age and Mental Competence

A state might attempt to restrict an individual's right to be stateless by persuading the individual (and her legal guardians, if any) that her act of expatriation will be invalid if she has not yet reached a certain legal "age of maturity" or if she has been diagnosed with a mental disability or mental illness. As we have noted above, in order for an individual to exercise the right to be stateless, she must make a voluntary, knowing, and intentional choice. If a state can prove beyond a reasonable doubt that an individual cannot meet one or more of these criteria, then it might be justified in refusing to recognize the individual's choice to expatriate into statelessness. However, the assumption is overreaching that anyone who has not yet reached some arbitrary age or anyone who has been diagnosed with a mental impairment cannot act voluntarily, knowingly, and intentionally. Many young adults and many individuals with mental impairment are quite competent to make voluntary, knowing, and intentional choices. Unfortunately, the bias against youth and mental impairment arises in many areas of life and is not unique to the matter of expatriation. The larger question—When, if ever, should an individual's actions be disregarded on account of her age or degree of mental competence?—deserves attention in a more appropriate forum. A fair resolution of this question might serve as a reasonable parameter for state recognition of the right to be stateless.

The United States government's approach to this matter is surprisingly moderate. The statute restricting formal renunciation of US citizenship specifies no minimum age requirement.[9] The US Department of State observes an arbitrary limit of age fourteen under which a child's understanding must be proven by substantial evidence, and an arbitrary limit of age seven under which a child is presumed to be incapable of understanding.[10] Moreover, any individual who formally renounces her citizenship under the above statute before turning age eighteen can nullify her decision any time up to six months after turning age eighteen.[11] In regard to the question of mental competence, the Department of State indicates that it presumes competency un-

less there is a preponderance of evidence proving that a person is incapable of understanding the nature or consequences of renunciation.[12]

C. Official Permission

A state might attempt to restrict an individual's right to be stateless by persuading the individual that she must receive the state's official permission in order for her act of expatriation to be valid. Typically, this permission must be express and formal, as when a state issues an expatriation permit or certificate. If a state manages to persuade an individual that such permission is necessary, then the individual mistakenly believes that she must continue to participate in the citizen-state relationship until the state decides otherwise. Although, as we have seen, the individual has the power to expatriate at will, the state achieves its purpose if the individual is persuaded to believe the contrary.

In theory, the principle that an individual can expatriate without the permission of her partner state is widely accepted. As one US court declared, "The rule with regard to expatriation prior to [the Expatriation Act of 1868] . . . was that the allegiance of a citizen could not be thrown off without the consent of the government. That is not the rule now."[13] In practice, however, the various conditions which states attempt to impose on potential expatriates are, effectively, prerequisites for official permission to expatriate. Even if a state does not demand that an expatriating citizen acquire express permission via some permit or certificate, it is likely to demand that the citizen acquire de facto permission by satisfaction of certain prerequisites (e.g., self-banishment, the performance of military service, or the acquisition of subsequent citizenship elsewhere).

If a state demands that an individual acquire official permission in order to opt out of the citizen-state relationship, it is flirting with totalitarianism. In light of the five primary problems described above, such a requirement would be violative, unfair, and, ultimately, ineffective.

One exception exists. If an individual expressly agreed to certain limits on her right to expatriate, then she would have a

contractual (not to mention moral) obligation to honor her word and abide by those limits. For example, an individual might agree to such limits in order to acquire citizenship status from a particular state. Whereas a state is free to set any conditions it sees fit for the admission of new members to its association, a state could legitimately require that a potential citizen agree that any subsequent act of expatriation would be contingent upon factors such as payment of outstanding tax liabilities, performance of a period of military service, or acquisition of formal permission from a specified government official. If the individual did not approve of any such condition, she would be free to forgo establishing a citizen-state relationship with that particular state. However, if the individual, in her desire to become a citizen of that state, expressly agreed to any such condition, then the state could legitimately expect the individual to abide by that condition. Under this circumstance, an individual waives her right to expatriate without the state's permission. Of course, the suggestion that all individuals tacitly waive this right—due to some abstract and elusive "social contract"—cannot be substantiated. The myth of an implicit social contract is insufficient to justify a state's demand that one acquire official permission in order to expatriate. This demand is reasonable only if an individual freely, knowingly, and expressly agrees to such a limit.

D. Bureaucratic Form

A state might attempt to restrict an individual's right to be stateless by persuading the individual that her act of expatriation will be invalid unless she adheres to the "proper" bureaucratic form. Administrative requirements such as filling out a government-specified form, making a statement using government-specified language, paying a fee, or having a government-approved witness are commonly imposed on potential expatriates. For example, under ordinary circumstances, if a United States citizen intends to expatriate into statelessness, the US government expects her to "[make] a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by

the Secretary of State."[14] Rainer Bauböck, specifically citing former Yugoslav republics, observes that "States which do allow for expatriation often try to deter their citizens from leaving by raising high fees."[15] If the individual is persuaded that such expectations are legitimate, then her right to be stateless is restricted.

States typically claim two reasons why they need to restrict the right to be stateless by bureaucratic form. First, some states allege that they have a humanitarian obligation to impose bureaucratic restrictions in order to protect individuals from unintentionally relinquishing their citizenship and, thus, from suffering the hardships of unintentional statelessness. In other words, these states allege that if people are permitted to exercise the right to be stateless without any limitations, some might end up exercising that right unintentionally and they would suffer the potential disadvantages of being stateless. By requiring every individual who desires to expatriate to sign a particular form, to make a particular statement, or to have a particular witness, a state suggests that it can ensure that only people who are making a voluntary, knowing, and intentional choice would become stateless. Of course, this alleged benevolence is suspicious due to the many vested interests which a state has in controlling expatriation. Moreover, if a state is genuinely interested in protecting individuals from the potential disadvantages of unintentional statelessness, it has a less restrictive and more focused means at its disposal: namely, its prerogative to offer citizenship status to any individual who is unintentionally stateless. Lastly, even if a state did have some humanitarian obligation to protect individuals from becoming unintentionally stateless, such an obligation would not warrant restrictions on individuals who want to become sovriens. There is no risk of becoming intentionally stateless unintentionally. This alleged obligation, therefore, fails to justify the imposition of bureaucratic restrictions on the right to be stateless.

The second reason states allege a need to impose bureaucratic restrictions is to maintain accurate citizenship roles. A state has a legitimate need to know who is and who is not one of its citizens. Since citizenship status determines what benefits, services, and protection a state is obliged to provide to an indi-

vidual, and it determines what allegiance and support a state can expect from an individual, a state needs to know whether or not one is member of its political association. By requiring any citizen who intends to expatriate to exercise her right in a manner established by the government, the state can keep better record of who is a citizen, who is a foreign national, and who is stateless. Of course, a state has several non-restrictive options for determining who has expatriated from its citizenry. Notably, a state can reasonably expect that any individual who exercises the right to expatriate will, on her own initiative, inform the state of this action. Although an individual has no formal obligation to do so, informing the state of one's expatriation is ultimately to the individual's benefit and, if nothing else, is a matter of courtesy. Likewise, as a matter of courtesy, no sovrien should object to answering a few pertinent questions posed by any state to clarify her citizenship status. A sovrien should be quite willing to confirm that she has made a voluntary, knowing, and intentional choice to become stateless effective on some specified date. If a state wants to know whether or not an individual has expatriated, it should simply ask her. Furthermore, states have easy access to many information sources which are useful in determining one's citizenship status (e.g., tax records, social security records, education records, employment records, military records, and one's use of a government identification number, passport, or other official documentation). Except under rare circumstances, a state should have no difficulty determining whether or not one of its citizens has exercised her right to expatriate. Because non-restrictive options exist for a state to determine this information, bureaucratic restrictions on the right to expatriate and the right to be stateless are not justified.

Although a state may attempt to persuade an individual that she cannot perform a valid act of expatriation without adhering to bureaucratic restrictions, an individual is quite free to ignore such persuasion and may expatriate effectively without yielding to such demands. The five primary problems described above assure this individual freedom. Perhaps the most amusing indictment against bureaucratic restrictions is their impertinence. If an individual expatriates—thereby withdrawing her allegiance, support, and consent—and if the state refuses to recog-

nize this concrete change in circumstances simply on the grounds that the individual did not follow some administrative process, then the state appears foolish for continuing to regard the individual as a citizen in full standing. Although states may have genuine interests in imposing bureaucratic restrictions, the right to be stateless eludes such limits.

E. Wartime Restrictions

A state might attempt to restrict an individual's right to be stateless by persuading the individual that her act of expatriation during time of war will be invalid unless she meets certain conditions. For example, if a United States citizen intends to expatriate while the US government is officially at war, the government expects her to "[make] in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense."[16]

A state typically claims two reasons for wartime restrictions on the right to expatriate. First, a state fears that its pool of potential military conscripts will shrink substantially if individuals are free to renounce their citizenship at will. Second, a state fears that an unrestricted liberty to expatriate during wartime could increase the occurrence of treasonous behavior. While these fears may be realistic, a state's military preparedness and internal affairs have no bearing on the fundamental human right to expatriate. Although a state has many interests that can be served by restricting expatriation, the five primary problems described above assure that state interests, even during wartime, do not impair one's right to be stateless.

F. Denationalization

A state might attempt to restrict an individual's right to be stateless by persuading the individual that if she refuses to comply with other limits on expatriation, she still has the option to relinquish her citizenship by committing some act which would result in her denationalization. Typically, this would require the commission of some fundamental crime against the state such as an act of treason, sedition, or violent insurrection. For example, United States law specifies that a citizen who intends to relinquish citizenship can do so by voluntarily

> committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States, violating or conspiring to violate any of the provisions of section 2383 of title 18 [rebellion and insurrection], or willfully performing any act in violation of section 2385 of title 18 [advocating the overthrow of the government by force or violence], or violating section 2384 of title 18 [seditious conspiracy] by engaging in a conspiracy to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, if and when he is convicted thereof by a court martial or by a court of competent jurisdiction.[17]

Of course, a statute such as this one is not intended to be simply another government-approved means of expatriation, even though it serves that purpose. Rather, it is designed to protect a state's right to denationalize. If an individual who desires to exercise her right to be stateless has a vengeful streak or a penchant for drama, such means may seem appropriate. We can fairly assume, though, that most potential expatriates would view the violence and treason specified above as either tactically inappropriate or morally repugnant.

In the end, this attempted limit on expatriation is impertinent. If one wants to exercise the right to be stateless, but refuses to comply with a state's usual array of restrictions on expatriation, one does not need to resort to deceit, violence, or

crimes against the state. Expatriation only requires a voluntary, knowing, and intentional choice to withdraw consent. The suggestion that one must choose among state options, such as committing an act which results in denationalization, is thwarted by the five primary problems described above.

G. Subsequent Citizenship

A state might attempt to restrict an individual's right to be stateless by persuading the individual that her act of expatriation will be invalid unless she subsequently acquires citizenship in some other state. This restriction, known in international law as the principle of continuity of nationality,[18] is the most focused technique used by governments to curb the occurrence of statelessness. By predicating the act of expatriation on the act of entering some new citizen-state relationship, states not only attempt to limit the right to expatriate, but they attempt to eliminate the right to be stateless as well. This restriction has a long-standing presence in international law,[19] culminating in the *Convention on the Reduction of Statelessness*, which declares: "If the law of a Contracting State entails loss or renunciation of nationality, such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality."[20]

States argue that they are justified in demanding potential expatriates to acquire subsequent citizenship elsewhere because such a requirement protects individuals from becoming unintentionally stateless. Conveniently, this requirement also protects state interests in exercising sovereign rule over all people. This attempted restriction is thwarted by a variety of problems. As with the previous restrictions, this one violates several fundamental human rights, it fails to meet standards of reason and fairness, and it lacks the power to prevent the volitional act of becoming stateless. Two additional problems deserve note.

First, if a state attempts to impose subsequent citizenship, not only would it violate rights of the individual, but it would violate rights of at least one other state as well. The establishment of a citizen-state relationship is the exclusive pre-

rogative of the individual and the state who intend to relate. Just as this relationship cannot be imposed on an individual without violating her fundamental human rights, neither can this relationship be imposed on a state without violating the fundamental human rights of those people who constitute the state. It is a recognized principle in international law that one state cannot impose the nationality of another state on an individual.[21] Thus, any alleged *requirement* that an expatriate acquire subsequent citizenship elsewhere would be classified more accurately as a *request*.

Second, expatriation, according to its precise definition, is not contingent upon the acquisition of citizenship elsewhere. Although, the verb *to expatriate* is sometimes misconstrued as *to change one's citizenship*, it's precise definition is *to renounce one's citizenship* or *to opt out of a citizen-state relationship*. If the notion of expatriation is to retain any substance, it cannot be reduced simply to a change of nationality. As Mutharika suggests, "If one accepts the right of expatriation as an absolute right, then one inevitably comes to the conclusion that it can not be made conditional upon the acquisition of some other nationality."[22]

We may note that the United States government does not require a potential expatriate to acquire subsequent citizenship elsewhere. (However, four out of the seven statutory means of expatriation from the US require an individual to have an official relationship with some other state—by acquiring citizenship, taking an oath of allegiance, serving in the military, or serving in a political office.)[23] Even the *Convention on the Reduction of Statelessness* leaves open a small possibility that a contracting state could denationalize an individual into statelessness if that individual showed "definite evidence of his determination to repudiate his allegiance to the Contracting State."[24]

H. Banishment

A state might attempt to restrict an individual's right to be stateless by threatening to banish the expatriate from the territory claimed by the state, or by persuading the individual that

her act of expatriation will not be valid unless she voluntarily leaves the territory claimed by the state. States often insist that expatriation (the act of renouncing one's citizenship) be accompanied by emigration (the act of leaving one's homeland). Typically, this demand is not an issue, since most people who expatriate desire to enter into a citizen-state relationship with another state and they desire to relocate to the territory claimed by that state. For the individual who wants to be a sovrien, however, subsequent citizenship is inherently not desired, and relocation—which would almost certainly mean moving to a territory under the rule of some other state—is unlikely to have any appeal, at least as far as citizenship matters are concerned. The demand for a sovrien to emigrate is significant not only because it amounts to banishment from one's homeland, but because it could result in territorial homelessness as well.

For example, under normal circumstances, if a United States citizen wants to expatriate into statelessness, the US government expects her to "[make] a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state."[25] Likewise, the US government generally insists that "no national of the United States can lose United States nationality . . . while within the United States or any of its outlying possessions" and that one must take up a residence outside the United States before it will recognize an act of expatriation.[26] The presumption that expatriation "should be conditioned upon actual departure from the country" is an early tradition in US legal theory.[27] Given this demand, a US citizen who wants to be a sovrien is led to believe that she cannot become stateless unless she physically removes herself from her homeland, family, friends, and community.

The motivation for a state to demand banishment is not surprising. If an individual is compelled to exercise her right to be stateless in a foreign land, then the state is relieved of the concerns typically associated with sovriens. Specifically, the state can set aside its fears regarding disruptions to social order and challenges to sovereign rule. If the state manages to persuade the sovrien to banish herself, it is even relieved of the distasteful act of deportation.

In addition to the five primary problems which plague all attempts at restricting the right to be stateless, two additional problems arise in regard to the matter of banishment. First, the existence of any right to territorial sovereignty is dubious.[28] There is no persuasive argument that a state has legitimate authority to prevent any individual from residing in, visiting, or traveling through any particular geographical area on the planet. If a state has no right to territorial sovereignty, then it has no legitimate authority to expel an individual from the territory it desires to control. Oppenheim suggests: "It cannot be considered maltreatment if a state compels individuals destitute of nationality either to become naturalised or to leave the country."[29] Because the notion of territorial sovereignty is indefensible, this view is false.

Second, if, perchance, a state did have some right to territorial sovereignty, the demand for banishment would result in an offense to another state's sovereignty. If a state required that an individual be outside of its territory before she could exercise her right to be stateless, the individual would, in essence, be required to expatriate within the territory of some other state (unless she happened to exercise her right while on the high seas or in outer space). Unless the second state was fully aware of and consented to the individual expatriating within its territory, the first state could be held responsible for causing the second state to have an alien stateless person within its borders. For example, an individual who desires to be recognized in her state of origin as a sovrien, may, because of state requirements, feel obliged to expatriate in some foreign land. Thus, she would travel to that foreign land, still as a citizen of the state of origin. Once at her destination, she expatriates and is now a stateless alien in that foreign land. The state which rules that foreign land may consider that its sovereignty has been violated not only by the individual, but also by the state that required that she must go abroad before it would recognize her act of expatriation. Because the foreign state admitted the individual on the warranty that the state of origin would receive her back, if the state of origin refused to do so then the foreign state's sovereignty would be violated. States generally agree that an individual cannot be deported to some other state without that state's consent. The

requirement that an individual go to another state before she can exercise her right to be stateless effectively violates this principle.

Finally, we may note that banishment cannot, in itself, restrict the volitional act of expatriation. Banishment may serve as a political punishment, or as a state's method for coping with its inability to exercise total sovereign rule. But banishment cannot prevent one from expatriating into statelessness. If anything, banishment is the state's way of acknowledging that an act of expatriation has in fact occurred.

I. Imprisonment, Torture, and Execution

A state might attempt to restrict an individual's right to be stateless by imprisonment, torture, or execution. The mere threat of these extreme measures will deter some individuals from exercising their right to be stateless and, to that extent, the state has an effective means of restricting this right. If an individual is not moved by such threats, only execution can functionally prevent that person from exercising the right. Imprisonment, torture, and execution each fail to overcome the five primary problems which plague all attempts to restrict the right to be stateless. Moreover, if humane relations or fundamental human rights are even a minimal consideration, these tactics must be dismissed.

J. Nonrecognition

In 1898, Chief Justice Fuller of the US Supreme Court declared that "the existence of a man without a country is not recognized."[30] The most effective means a state has for limiting an individual's right to be stateless is simple nonrecognition of the fact that an individual has exercised this right. By ignoring an individual's choice to dissolve the citizen-state relationship, the state intends to continue business as usual: imposing restrictions and requirements on the individual while demanding her

allegiance and support. By continuing to offer benefits and services to the expatriate, the state creates the appearance that the citizen-state relationship has not been dissolved. This appearance is useful for persuading third parties to continue regarding the individual as a citizen as well. While nonrecognition cannot prevent one from exercising her right to be stateless, it effectively interferes with several advantages that accompany the sovrien status.

A state can refuse to recognize an individual's expatriation into statelessness in two distinct ways. First, the state can define the essential terms of discourse in a way which fails to acknowledge the truth. For example, states routinely define the term *expatriation* as a renunciation of citizenship contingent upon conditions determined by the state. For example, states typically assert that expatriation cannot occur unless the individual receives the permission of the state, complies with state bureaucratic formalities, arranges for subsequent citizenship status elsewhere, or leaves the territory. However, expatriation accurately defined requires nothing more than an individual's withdrawal of consent from the citizen-state relationship. It bears the same unencumbered nature as a state's right to denationalize. Just as a state has the right to unilaterally dissolve a citizen-state relationship without meeting any conditions established by the individual, so the individual has the right to unilaterally dissolve a citizen-state relationship without meeting any conditions set by the state. States clearly benefit by persuading people that the very definition of expatriation requires an individual to meet state conditions before her expatriation is valid. Insofar as people accept this erroneous definition, states maintain the ability to limit the right to be stateless.

Similarly, states limit expatriation into statelessness by misdefining the term *statelessness*. The most frequently cited definition is the one suggested by the United Nations in the *Convention Relating to the Status of Stateless Persons*. This document defines a stateless individual as "a person who is not considered as a national by any State under the operation of its law."[31] Defining statelessness in this way eliminates the possibility that an individual could become stateless apart from what any nation "considers." If an individual accepts this definition,

she would logically assume that whether or not she wants to be stateless is irrelevant. The only thing that matters, apparently, is whether or not a state considers her as one of its citizens. The individual's will and interests have no bearing on the matter. However, if, as I have shown, citizenship is a relationship contingent upon the consent of the individual, then statelessness will in fact occur whenever an individual refuses to ally with any state. The UN definition, therefore, is incorrect. Nonetheless, insofar as people accept the falsehood that states have the exclusive ability to determine who is and who is not stateless, states will maintain some ability to limit the right to be stateless.

In sum, by misdefining essential terms such as *expatriation* and *statelessness*, a state can refuse to recognize an individual's exercise of the right to be stateless, and it can do so in a manner which, on first appearance, seems legitimate. However, when these essential terms are defined accurately, a state's refusal to recognize an individual's expatriation into statelessness is patently unfair and without basis.

The second way a state can refuse to recognize an individual's expatriation into statelessness is by continuing to treat the individual as if the citizen-state relationship still existed. In other words, the state can simply deny the fact that the individual removed her consent from the citizen-state relationship, and it can continue to treat her as if nothing changed. For example, a state might continue to offer the expatriate medical, housing, educational, employment, and business assistance, and it might continue to offer welfare and old age benefits. The state might continue to extend to the expatriate legal rights which are reserved for citizens. It might continue to allow the expatriate to enter and leave the country on a state passport. Of course, one must expect that the state would continue to treat the expatriate as a citizen in other ways as well: exacting allegiance and taxes, demanding obedience to all laws, and imposing punishment for violation of laws. The extent to which a state is able to continue treating a sovrien as one of its citizens depends on: (1) the state's ability to impose such treatment, (2) the individual's willingness to cooperate with such treatment, and (3) the willingness of third parties to condone and cooperate with such treatment. To the

degree that these factors are operative, the state impairs an individual's liberty to be stateless.

Despite the potential usefulness of nonrecognition as a means to interfere with an individual's right to be stateless, this method still fails to prevent one from actually exercising that right. A state can make life difficult for a sovrien, and it may even persuade others to do likewise, but, due to the volitional nature of expatriation, a state is still powerless to prevent an individual from becoming a sovrien.

Moreover, refusal to recognize an individual's act of expatriation makes a state appear foolish. Why would a participant in an allegedly free association be held on the membership roles, be offered all the rights of membership, and be expected to meet all the obligations of membership even after she has disavowed the association, declared her secession, and withdrawn her support, allegiance, and commitment from the association? For the association to continue regarding such an individual as one of its members is absurd and it reduces the value and meaning of others' membership in the association. Citizens are rightfully embarrassed and outraged if their partner state refuses to recognize an act of expatriation.

K. Conclusion

States have devised a variety of attempted restrictions on the right to be stateless and particularly on its component right to expatriate. As Maxey notes, "It has been suggested that the restrictions have become so onerous as to obscure the right."[32] These attempted restrictions distill to three basic methods: (1) the persuasion of the potential expatriate to comply with certain conditions for expatriation, (2) the use of brute force to discourage or prevent a potential expatriate from actually expatriating, and (3) the refusal to recognize that an individual has expatriated. As we have seen, these methods fail to withstand ethical and logical scrutiny: they violate fundamental human rights, they deny the reality that citizenship is contingent upon the consent of the individual, and they deny the reality that expatriation—due to its volitional nature—cannot ultimately be

restricted. Nonetheless, we must conclude with McDougal, Lasswell, and Chen:

> Many states still do not recognize that an individual has the right, without condition, voluntarily to withdraw his nationality and to sever his ties with the country which claims him. So many conditions are commonly imposed that "conditional," rather than "voluntary," expatriation would appear to be the appropriate descriptive label. In a world in which people are still important bases of power, states are understandably reluctant to yield their controls.[33]

In light of these circumstances, the individual who intends to exercise her right to be stateless must be prepared for the obstacles which states will place in her way.

Notes

[1] *Convention Relating to the Status of Stateless Persons* 1954, Preamble.
[2] Ibid., Article 32.
[3] See generally, *Convention on the Reduction of Statelessness* 1961.
[4] See: Mutharika 1989; UN Secretariat 1954 (both providing compendia of domestic nationality laws).
[5] 8 USC § 1481(a) (2002). See generally 8 USC §§ 1481-1489 (2002) for US statutes regarding expatriation.
[6] *Afroyim v. Rusk*, 387 US 253, 265 note 20 (1967) *quoting* Congressional Globe, 40th Congress, 2nd Session, 2316 (1868) (statement of Representative Banks of Massachusetts).
[7] Lauterpacht 1945, 130.
[8] *Vance v. Terrazas*, 444 US 252, 260 (1980).
[9] 8 USC § 1481(a)(5)-(6) (2002); US Department of State 2002, *Foreign Affairs Manual*, Vol.7 § 1254.1.a.
[10] US Department of State 2002, *Foreign Affairs Manual*, Vol.7 § 1254.1.a.
[11] 8 USC § 1483(b) (2002).
[12] US Department of State 2002, *Foreign Affairs Manual*, Vol.7 § 1254.2.
[13] *US ex rel. Wrona v. Karnuth*, 14 FSupp 770, 771 (WD NY 1936).
[14] 8 USC § 1481(a)(5) (2002). See 22 CFR §§ 50.40 - 50.51 (2002) for related regulations.
[15] Bauböck 1994, 123.
[16] 8 USC § 1481(a)(6) (2002).
[17] 8 USC § 1481(a)(7) (2002).
[18] Weis 1979, 123.
[19] See Mutharika 1989, 101-106.
[20] *Convention on the Reduction of Statelessness* 1961, Article 7.1.a.
[21] Weis 1979, 126-127.
[22] Mutharika 1989, 104.
[23] 8 USC § 1481(a)(1)-(4) (2002).
[24] *Convention on the Reduction of Statelessness* 1961, Article 8.3.b. See also Article 7.1.b.
[25] 8 USC § 1481(a)(5) (2002).
[26] 8 USC § 1483(a) (2002).

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[27] *Comitis v. Parkerson et al.*, 56 F 556, 561 (see generally 559-561) (CC ED LA 1893).
[28] See Chapter 4, Section C.
[29] Oppenheim 1992, § 397 at 886 note 3.
[30] *US v. Wong Kim Ark*, 169 US 649, 720 (1898) (Fuller dissenting).
[31] *Convention Relating to the Status of Stateless Persons* 1954, Article 1.1.
[32] Maxey 1962, 156 note 35 (references omitted).
[33] McDougal, Lasswell, and Chen 1980, 892 (note omitted).

8

Rights of the Sovrien

A. Introduction

If an individual chooses to be a sovrien, she necessarily retains certain rights, forgoes certain rights, and acquires certain rights. Specifically, the sovrien retains all fundamental human rights, she forgoes the legal rights which attach to citizenship, she may acquire certain legal rights which a state extends to aliens in general, and she acquires certain rights which exist exclusively for those who exercise their right to be stateless. This chapter will briefly examine each of these four categories.

B. Fundamental Human Rights

Sovriens, as human beings, retain all the rights that are inherently human. In other words, by choosing to be stateless, one does not relinquish any of one's fundamental human rights. While no universally recognized enumeration of fundamental human rights exists, many rosters have been suggested. The

United Nations *Universal Declaration of Human Rights* is widely regarded as the international standard for fundamental human rights.[1] The United Nations *Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live* provides a similar roster intended specifically to protect the fundamental rights of those who bear alien status.[2] Rosters of fundamental human rights are also found in state constitutions and legislation (e.g., the US Bill of Rights). Many religious and academic institutions have also proposed enumerations. Some rosters, such as those found in certain state constitutions, omit rights which are widely regarded as fundamentally human (e.g. the right to freedom of movement). Conversely, some rosters, such as the *Universal Declaration of Human Rights*, include rights which should be designated more appropriately as legal rights (e.g., the right to periodic holidays with pay).[3] From a broad perspective, however, several items recur in most rosters. These alleged rights appear to meet all of the criteria presented above in Chapter 2 and, thus, we can reasonably regard them as fundamentally human. These rights include:

- The right not to be murdered.
- The right to be free from compulsion, enslavement, and torture.
- The right to be free from interference with one's privacy.
- The right to self-determination.
- The right to freedom of movement.
- The right to freedom of association.
- The right to freedom of thought, conscience, and religion.

This roster might require some modification in content or wording, but the point here is that whatever rights we regard as fundamentally human are rights that a sovrien always retains.

Many believe that, unless one participates in a citizen-state relationship, one effectively forfeits her fundamental human rights. Because these rights are commonly recognized in light of the protections afforded by international law,[4] and because citizenship is viewed as the principle link between individuals and international law,[5] fundamental human rights are often correlated with citizenship status. Moreover, because states

typically proclaim that their primary purpose is to protect the fundamental human rights of their citizens (notwithstanding historical evidence to the contrary), many people infer that fundamental human rights do not meaningfully exist outside the citizen-state relationship. This myth is immortalized by the US Supreme Court dictum that the stateless person has "lost the right to have rights."[6] However, by definition, fundamental human rights are inherent to every human being and they must exist for every person regardless of his or her participation in a citizen-state relationship. Perpetuating the falsehood that fundamental human rights cannot exist outside the citizen-state relationship is an effective means for governments to persuade individuals to become or remain citizens. We must remember, though, that all people—including sovriens—retain their fundamental human rights regardless of any relationship they have or do not have with states.

C. The Legal Rights Which Attach to Citizenship

A citizen is exclusively entitled to enjoy the legal rights which accompany participation in a citizen-state relationship. Such legal rights are reserved for individuals who agree to provide allegiance and support to the state and whom the state agrees to protect and serve. In a sense, these rights can be regarded as contractual rights. They are liberties that one contracting party (the state) has the capability of granting to another contracting party (the individual) within the context of their mutual agreement (the citizen-state relationship). The legal rights of citizens vary from state to state, but representative examples include: the right to receive government services and benefits; the right to receive government protection (domestically and internationally); the right to vote; the right to hold public office; the right to participate fully in the state's political process; and the right to exercise all civil, political, and economic liberties which the state's constitution permits.

The sovrien necessarily forgoes the above legal rights. When one chooses to be stateless, one refuses to participate in any citizen-state relationship and, thus, one cannot expect to en-

joy the contractual benefits which legitimately and exclusively belong to those who participate in such a relationship. If one refuses to be a member of an association, one cannot expect or demand to be treated as a member.

Small exceptions to this rule exist. For example, states party to the *Convention Relating to the Status of Stateless Persons* agree to grant stateless individuals several legal rights which are typically regarded as ones exclusively belonging to citizens, including: the protection of artistic, intellectual, and design rights (Article 14); access to courts (Article 16); receipt of rationed supplies (Article 20); access to public elementary education (Article 22); access to public relief and assistance (Article 23); and the protection of various labor rights (Article 24). States party to this convention even oblige themselves under certain circumstances to provide stateless persons within their territories with identification papers (Article 27), travel documents (Article 28), and other documents and assistance which a stateless person might require when "the exercise of a right by a stateless person would normally require the assistance of authorities of a foreign country to whom he cannot have recourse" (Article 25). While such legal rights may be attractive to a sovrien, we must note that states party to this convention explicitly retain the prerogative to deny a stateless person any of these rights if such denial is in their interest (Articles 9 and 31). Thus, the rule stands that a sovrien necessarily forgoes the legal rights of citizens, and any legal rights that a sovrien is permitted to enjoy exist solely at the discretion of the state offering them.

D. The Legal Rights Which a State Extends to Aliens

Although a sovrien generally cannot enjoy the legal rights which belong to citizens, she may enjoy certain legal rights on account of her status as an alien. Aliens, whether stateless or not, typically enjoy at least a few legal rights for two reasons. First, it would be logistically impractical for a state to grant certain legal rights (such as the right to freedom of movement within territorial boundaries) to citizens but not to aliens. Thus, the state simply extends such rights to aliens. Second, a

state may feel some humanitarian obligation to extend certain legal rights (such as the right to equal protection under the law) to everyone within its alleged jurisdiction.

At times, states distinguish between an alien who is stateless and an alien who is a national of another state. Under such circumstances, the stateless person may not be offered the same legal rights as the foreign national. Many states, however, broadly observe the principles set forth in the United Nations *Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live*. This declaration does not distinguish stateless persons from other aliens, rather it treats "any individual who is not a national of the State in which he or she is present" as one who deserves to enjoy certain rights.[7] Specifically, this declaration calls upon states to accord to all aliens, including stateless individuals, a broad range of legal rights, such as: protection against illegal interference in one's personal life, fair treatment in legal proceedings, protection against arbitrary expulsion, freedom of religion, freedom of movement, freedom of expression, and freedom of peaceable assembly.

States party to the *Convention Relating to the Status of Stateless Persons* make a formal commitment to provide stateless persons with many of the legal rights that foreign nationals enjoy. This convention specifies that contracting states shall at minimum "accord to stateless persons the same treatment as is accorded to aliens generally."[8] In addition to granting stateless persons several legal rights which are typically reserved for citizens, states party to this convention also agree to treat stateless persons no less favorably than aliens in areas such as: property rights (Article 13), rights of association (Article 15), employment rights (Articles 17-19), housing rights (Article 21), rights to higher education (Article 22), and rights to freedom of movement and place of residence (Article 26).

In sum, since states bear no fundamental obligation to serve individuals other than their citizens, a sovrien cannot ultimately expect a state to accord her any legal rights at all. However, a sovrien might be permitted to enjoy certain legal rights, especially those rights typically accorded to aliens, and those rights which serve a state's vested or humanitarian interests.

E. Exclusive Rights

An individual who exercises her right to be stateless can claim certain rights that citizens cannot claim. Specifically, a sovrien has exclusive rights to (1) be treated as a sovereign entity, (2) withhold allegiance and support from all states, and (3) be free from all state-imposed restrictions, requirements, and brute force. These rights are simply concrete applications or extensions of the fundamental rights which all human beings may claim. While these three rights could be enjoyed by every human being, most people choose to waive them in exchange for the benefits they enjoy by submitting to a citizen-state relationship. The sovrien, on the other hand, forgoes the benefits of citizenship in exchange for the freedom to exercise these rights. Technically, these rights are not ones which a sovrien "acquires" but ones which a sovrien opts to retain. Likewise, a citizen does not "lose" these rights but merely relinquishes them for as long as she chooses to participate in a citizen-state relationship.

Understandably, most states deny that a sovrien has these three rights. These rights stand in direct opposition to a state's treasured powers, namely, its powers to exercise sovereign rule and to appropriate the resources of individuals within its sphere of influence. In the eyes of the state, a sovrien is simply another alien, subject to all the restrictions and requirements that a state generally attempts to impose on foreign nationals. In the eyes of the sovrien, however, a state is simply another association of individuals, with no legitimate authority or power to exact one's allegiance, support, or cooperation. If we acknowledge fundamental human rights to self-determination, freedom from compulsion, and freedom of association, the perspective of the sovrien stands as the more accurate view.

The right to be treated as a sovereign entity. Citizens are obliged to relinquish a significant portion of their individual sovereignty to their partner states in exchange for the benefits of citizenship. However, when one exercises the right to be stateless, one retains the right to be treated as a sovereign entity. Because a sovrien does not participate in a citizen-state relationship with any state, she retains her fundamental human rights to be

free from compulsion, enslavement, and interference. Thus, the sovrien can reasonably expect others, including those who associate as states, to respect her individual sovereignty. If any state has a concern to raise with a sovrien, it ought to engage her with the consideration it typically shows to any other sovereign entity. In contemporary world affairs, this means that a sovrien should not be treated as a stray alien who lacks standing because she is not associated with some state. Rather, a sovrien should be regarded as a distinct political entity who bears adequate standing in the world arena solely by virtue of her fundamental human rights. In other words, the sovrien should be treated more like a state than an alien.

The right to withhold allegiance and support from all states. Citizens are obliged to provide allegiance and support to their respective states in exchange for the benefits of citizenship. However, when one exercises the right to be stateless, one retains the right to withhold allegiance and support from all states. Specifically, a sovrien has no obligation to show loyalty, devotion, or fidelity to any state. Likewise, a sovrien has the right to refuse any state demands for labor support (e.g., civil and military service) and financial support (e.g., fines and taxes). Whereas a sovrien has fundamental human rights to self-determination and freedom of association, and whereas she opts to exercise these rights by not participating in a citizen-state relationship, the sovrien is at liberty to withhold her allegiance, labor, and money from all states.

The right to be free from all state-imposed restrictions, requirements, and brute force. Citizens are obliged to submit to the restrictions, requirements, and brute force of their respective states in exchange for the benefits of citizenship. However, when one exercises the right to be stateless, one retains the right to be free from all such impositions. Specifically, a sovrien has the right to live free from the demands of state law. She has the right to live as she sees fit, regardless of state restrictions and requirements imposed on the many aspects of life. For example, laws regulating personal relations, expression, movement, assembly, association, employment, personal property, political activity, and religious activity have no bearing on the life of a sovrien. Of particular note, a sovrien has the right to travel freely

across the globe, the right to cross any boundaries which states contrive, and the right to establish residence in any land, regardless of state restrictions and requirements which attempt to limit such freedoms.

In addition to being free from such restrictions and requirements, the sovrien also has the right to be free from the brute force which a states uses to coerce compliance or punish non-compliance with its laws. Specifically, a sovrien has the right to be free from arrest, prosecution, imprisonment, deportation, torture, and execution. If a state applies brute force to a person who does not consent to the systematic application of such force, it does so in violation of the individual's fundamental human rights.

The right to be free from all state-imposed restrictions, requirements, and brute force is, understandably, controversial—it comprehensively denies a state any legitimate power over a sovrien. Moreover, many people automatically equate such freedom from the state with unbridled irresponsibility. These concerns are mitigated by three factors discussed elsewhere in this essay. First, the right to freedom from state rule does not logically cause a person to become less responsible.[9] Second, sovriens have a particular responsibility to exercise greater self-regulation than citizens.[10] And third, this right to freedom from state rule does not deny a community its conventional battery of social control techniques.[11]

F. Conclusion

In summary, when an individual exercises her right to be stateless, she forgoes the legal rights which legitimately and exclusively belong to citizens (e.g., the right to vote, the right to hold public office, and the right to receive state protection and services). However, she may enjoy certain legal rights which would typically be reserved for citizens (e.g., access to courts, access to public elementary education, and access to international travel documents) if the respective state has some interest in offering these rights, and especially if the state is party to the *Convention Relating to the Status of Stateless Persons*. More

likely, a sovrien would only be granted the legal rights which a state typically extends to aliens. One must remember, however, that any legal right extended to a sovrien exists solely at the will of the state and, thus, can be rescinded at any time. Finally, when an individual exercises her right to be stateless, she invariably retains all her fundamental human rights (e.g., rights to self-determination, freedom of association, and freedom from compulsion). By fully exercising these rights—an option which citizens relinquish—the sovrien exclusively enjoys the right to be treated as a sovereign entity, the right to withhold allegiance and support from all states, and the right to be free from all state-imposed restrictions, requirements, and brute force.

Notes

[1] UN General Assembly 1948.
[2] UN General Assembly 1985.
[3] UN General Assembly 1948, Article 24.
[4] Oppenheim 1992, § 377 at 849.
[5] Ibid., § 379 at 857.
[6] *Trop v. Dulles*, 356 US 86, 102 (1958).
[7] UN General Assembly 1985, Article 1.
[8] *Convention Relating to the Status of Stateless Persons* 1954, Article 7.1.
[9] See Chapter 4, Section B.
[10] See Chapter 9, Section D.
[11] See Chapter 4, Section B.

9

Responsibilities of the Sovrien

A. Introduction

If an individual chooses to be a sovrien, she necessarily becomes free of certain responsibilities, she retains certain responsibilities, and she acquires certain responsibilities. Specifically, the sovrien is exempt from the legal responsibilities which attach to citizenship, she retains the fundamental responsibilities which come with being a human, and she bears certain responsibilities which exist exclusively for those who exercise their right to be stateless. This chapter will briefly examine each of these three categories.

For the individual who is contemplating becoming a sovrien, the issues raised in this chapter are more important than any others raised in this essay. Although freedom typically involves exemption from certain responsibilities, anyone who intends to maintain or increase personal freedom must diligently perform certain other responsibilities in order to create the space for that freedom to exist.

When one's freedom is restricted, one's sense of responsibility to others frequently diminishes. This psychological dynamic is evident throughout political history and it is a primary concern raised by anarchist philosophers. Unfortunately, as one's freedom increases, there is no inverse psychological dynamic which causes one's sense of responsibility to automatically increase. Rather, humans must exert significant will power and effort to develop the responsibility which corresponds to the freedom they have. This task is especially difficult in light of Western commercial attitudes which falsely, but persuasively, suggest that freedom means the absence of responsibility.

As individual freedom increases, individual responsibility must increase proportionately. This direct relationship exists for two reasons. First, freedom without responsibility leads to human suffering, social chaos, and environmental destruction. If human existence is to persist in any tolerable, let alone worthwhile, fashion, we simply cannot ride roughshod over our neighbors, our communities, and our environment just because we have the freedom to do so. Even anarchist theorists (except for the small percentage of outlandish ones) seek the abolition of external rule only in the context of heightened personal responsibility. Any type of individual freedom, including the freedom that accompanies the sovrien life, requires a proportionate amount of individual responsibility in order to avert social and environmental disaster.

The second reason responsibility must increase proportionately with freedom is that, otherwise, people who are affected adversely by an individual's lack of responsibility are likely to impose social controls on that individual regardless of any legal or moral considerations. In other words, if one exercises one's freedom with disregard, then one can expect to be reined in. Individual freedom may well be justified by logic, ethics, or law, but if it is not exercised within the broad parameters of community norms, that freedom will be squelched. In a nutshell, if a free person fails to exercise self-discipline, then her freedom will be restricted, fairly or not, by others.

The right to be stateless is meaningless without recognition of the responsibilities which attach to it. In theory, as preceding arguments have shown, the right to be stateless can be

justified by linear thinking. In practice, however, the right to be stateless is justified only by the circular logic of daily life: one's freedom is valid only to the extent that one exercises it responsibly and with self-restraint.

B. The Legal Responsibilities Which Attach to Citizenship

A citizen bears certain legal responsibilities. By definition, the citizen-state relationship requires a citizen to provide allegiance and support to the state in exchange for protection and services. In practice, this means that a citizen is obliged to submit to the restrictions and requirements which a state places into law. Citizens rightly bear a host of legal responsibilities, from the incidental (e.g., following the speed limit) to the substantial (e.g., performing a period of service to the state).

The sovrien, on the contrary, bears none of the legal responsibilities which attach to citizenship. Because the sovrien is party to no citizen-state relationship, the sovrien has no legal responsibility to any state. The terms of the contractual relationship which exists between a state and its citizens simply do not apply to non-participating parties. By definition, therefore, the sovrien is outside the purview of any legal obligations which a state wishes to impose.

A state typically attempts to override this sovrien liberty by claiming a right to territorial sovereignty. A state argues that any alien—sovriens included—present in the state's claimed territory bears legal responsibilities to the state. These responsibilities are often the same as those which attach to citizenship (obeying the law, owing at least a limited allegiance to the government, paying taxes, etc.).[1] Of course, these responsibilities do not carry with them the corresponding rights of citizenship (i.e., the full level of services and protection which citizens are entitled to enjoy). The notion that aliens in general, and stateless people in particular, bear legal responsibilities to the state in which they are present is widely accepted. Even the *Convention Relating to the Status of Stateless Persons* declares that, "Every stateless person has duties to the country in which he finds himself, which require in particular that he conform to its laws and

regulations as well as to measures taken for the maintenance of public order."[2] However, whereas the principle of territorial sovereignty is not justified,[3] sovrien freedom from legal responsibilities remains intact.

It is necessary to emphasize here that this freedom does not mean that a sovrien will be more interested or more likely than a citizen to violate the social norms, mores, and practices which enable a community to enjoy peace and order. For example, even though a sovrien has no legal responsibility to obey the speed limit while driving, she is apt to observe this limit for other reasons: a sense of fundamental responsibility not to endanger fellow human beings, a self-interest in reducing the risk of harm to oneself and one's neighbors, and a common-sense willingness to participate in a benign social norm that facilitates safe and timely transportation. The same principle holds true for more substantive issues (e.g., cheating, polluting, and murdering) where a sovrien is likely to have reasons apart from legal responsibility that prevent her from straying outside broadly defined community standards. (Citizens will note with chagrin that status as a "citizen" has little power to keep people from straying outside social norms. Many citizens regularly and vigorously abandon legal and moral responsibilities on the grounds of anger, fear, anxiety, ignorance, and selfishness.)

In sum, because a sovrien is not party to any citizen-state relationship, she does not bear any of the legal responsibilities which citizens bear. Although a sovrien might choose, for reasons such as convenience, common sense, or morality, to abide by certain standards which a state has legislated, she does not have any legal obligation to do so.

C. Fundamental Human Responsibilities

Sovriens, as human beings, retain all the responsibilities that are inherently human. Although the choice to be stateless exempts one from legal responsibility to others, it does not exempt one from the basic responsibilities one bears as a member of the human race.

No universally recognized roster of fundamental human responsibilities exists. Curiously, the task of identifying fundamental responsibilities is more treacherous than the task of identifying fundamental rights. While humans tend to share some modicum of common ground when it comes to talking about how individuals minimally deserve to be treated, when the discussion inverts, the responsibilities which correspond to those fundamental human rights elude similar agreement. For example, the principle of self-determination garners wide acceptance as a fundamental human right, but its corresponding responsibility—the obligation to permit others the freedom to shape their own lives—is fraught with reservations and exceptions. Despite this tendency, and despite the difficulty of accounting for cultural bias in any claim about social standards, several broad assertions about fundamental human responsibilities seem in order.

If fundamental human responsibilities exist at all, the following four seem likely to be among them. I do not propose that human beings necessarily bear the following obligations. Rather, I propose that these are the kinds of responsibilities which human beings would not escape by opting out of participation in a citizen-state relationship. My purpose here is not to be definitive, but representative. The sovrien life clearly exempts one from obligation to the state, but it does not exempt one from more universal obligations. Thus, I suggest four broad responsibilities which a sovrien would retain solely on the grounds that he or she is a human being.

First, if fundamental human rights exist at all, then, logically, their correlative obligations must exist as well. The prime example, in light of our previous analysis, is that every human being has a fundamental human right to non-interference. Correlatively, every human being has a fundamental responsibility to refrain from interfering with any essential aspect of another's humanity (e.g., one's body, thought, expression, movement, or associations). Specifically, every person has the responsibility to refrain from actions such as physical harm, confinement, compulsion, brainwashing, censorship, coercing or preventing associations, and intruding upon the personal matters of another's life. One's choice to be a sovrien would not relieve an individual from this correlative responsibility of non-interference.

Second, if non-human species bear any inherent value which could be construed as a fundamental right to exist, then human beings would have a correlative obligation not to interfere with their existence. This responsibility rests on the premise that other members of the natural world have some legitimate entitlement to existence, and even though the source of this entitlement may not be fully comprehensible by humans, we are obliged to respect it. If some version of this premise is true, as is widely suggested, then every human being has a fundamental responsibility to refrain from activity which substantially threatens or harms other species. One's choice to be a sovrien would not relieve one from the responsibilities which come with being part of the larger natural order.

Third, it appears that if the human race is to survive in any meaningful way, then human beings must bear some fundamental responsibility to contribute to the common good. The basic day-to-day functioning of a world full of people cannot be sustained unless human beings invest personal time and resources to support the life of the community. This potential obligation is met in many ways, such as working to improve the well-being of community members in need (e.g. people with disabilities and elders), contributing to the community's cultural and aesthetic needs (e.g., via education and the arts), and sharing in cooperative efforts to address large-scale concerns (e.g., via health care projects and mass transit projects). While many people feel that they contribute sufficiently to the common good simply by performing the legal obligations of citizenship, others feel it is necessary to work in the public sector or the nonprofit sector, and others feel it is necessary to volunteer time or make charitable contributions. Of course, such civic activity should not be confused with the political status of citizenship.[4] Many full-fledged citizens fail to engage in any civic activity other than making grudging and under-calculated payments of the taxes which their government demands on threat of punishment. Status as a citizen is neither a necessary nor sufficient condition for engaging in civic activity. In brief, if contributing to the common good is a fundamental human responsibility, we must be clear that one does not need to be a citizen in order to fulfill this re-

sponsibility and, moreover, one's choice to be a sovrien would not relieve one from this responsibility.

Fourth, if the religious traditions of the world bear some kernel of truth, then human beings would appear to have certain fundamental moral responsibilities. Such responsibilities rest on the premise that there are standards other than logic and nature—for example, standards which proceed from some body of wisdom or a divine source—which humans are obliged to observe. If this premise is true, certain moral standards might be regarded as fundamental human responsibilities. For example, most religious traditions converge on the need for humans to offer respect, exercise understanding, show compassion, practice generosity, and assist people in need. If these or similar practices are in fact essential to human existence, one's choice to be a sovrien would not relieve one from such responsibilities.

In sum, even though a universally recognized roster of fundamental human responsibilities does not exist, several broad types of responsibilities warrant consideration as being fundamentally human. In particular, it seems that humans have responsibilities to: (1) refrain from critical interference in the lives of other human beings, (2) refrain from substantially threatening or harming other species, (3) make some contribution to the common good, and (4) abide by basic moral standards calling for respect, understanding, compassion, generosity, and charity. Although the specific wording of these obligations is arguable, the existence of such types of obligations seems certain. Without them, our world would quickly dissolve in human suffering, environmental destruction, social chaos, and ill will. If fundamental human responsibilities exist, their "fundamental" character would necessitate that they exist apart from any modern human construct such as citizenship. One's choice to live as a sovrien, therefore, would not relieve one from such responsibilities.

D. Exclusive Responsibilities

An individual who exercises her right to be stateless has certain responsibilities which citizens do not have. Specifically, a sovrien bears responsibility to (1) inform one's partner state of

one's choice to expatriate, (2) act as a sovereign entity, and (3) exercise exceptional self-regulation.

The responsibility to inform one's partner state of one's choice to expatriate. Strictly as a matter of courtesy, any individual who chooses to withdraw her consent from a citizen-state relationship has a responsibility to inform her partner state that she is dissolving the relationship. This courtesy reasonably includes the issuance of some formal notification to an appropriate state official and the willingness to respond to a few pertinent questions posed by the state in order to confirm that one has indeed made a voluntary, knowing, and intentional choice to expatriate effective some specified date. Although the sovrien is not logically required to contact the state in order to expatriate, anyone who opts to dissolve a significant relationship, whether it be with an individual, a community, an organization, or even a state, should have the courtesy to inform the affected party.

The responsibility to act as a sovereign entity. A citizen chooses to relinquish a significant portion of her individual sovereignty to her partner state in exchange for the benefits of citizenship. Conversely, a sovrien chooses to retain the full measure of her individual sovereignty in order to enjoy the right to be treated as a sovereign entity. If a sovrien wants others to respect this sovereign status, however, she must accept all the consequences which accompany individual sovereignty—not just the freedoms, but the disenfranchisement as well. In other words, as a matter of integrity, a sovrien bears the responsibility to act consistently with her status as a sovereign entity, especially under circumstances where she might enjoy benefits which are legitimately reserved for citizens. Three duties deserve note.

First, as a matter of integrity, a sovrien bears responsibility as a sovereign entity to correct any outward appearance of being a citizen. This task minimally requires that a sovrien:

- Identify oneself as a sovrien whenever such status should rightfully be made known (e.g., when responding to a question regarding one's citizenship status, or when participating in a matter where one's citizenship status is relevant).
- Refuse to be identified, explicitly or implicitly, as a citizen.

- Refrain from using citizen identification numbers.
- Refrain from using passports or other state-issued documents which suggest that one is a citizen.
- Refrain from participating in the rites of patriotism (e.g., celebrating national holidays, reciting a pledge of allegiance, standing for a national anthem, standing for a courtroom entry of a judge, honoring a flag or other symbols of the state).
- Carry oneself in a manner befitting a sovereign entity in one's dealings with states.

Second, as a matter of integrity, a sovrien bears responsibility as a sovereign entity to forgo state benefits which are legitimately reserved for citizens. This task minimally requires that a sovrien:

- Refrain from calling upon state forces (e.g., police, courts, and diplomats) for protection against adversaries.
- Refrain from seeking state assistance in time of need (e.g., medical, housing, employment, education, and old-age benefits).
- Refrain from voting in elections or holding a government office.

Third, a sovrien bears responsibility as a sovereign entity to make fair compensation for state benefits of which she partakes but to which she is not entitled. Because a sovrien is likely to live in a territory where a state operates, she may have opportunity to enjoy certain benefits that are intended solely for citizens but, due to logistical necessity, are accessible to anyone in that territory. For example a sovrien may easily enjoy state services such as government operated libraries, museums, roads, utilities, and transportation systems. Because these services are commissioned and paid for by citizens, they may be legitimately reserved for the use of citizens and their guests. Unless the state implements some method of ensuring that these benefits are available only to people who are entitled to their use (e.g., by inspecting citizenship credentials or charging user fees), then such benefits are, by necessity, open to enjoyment by sovriens.

Logically, if the state is willing to offer its benefits freely, then the sovrien has no formal obligation to pay for enjoying them. However, if the sovrien acknowledges elementary principles of reciprocity, fairness, and integrity, she must accept responsibility to make some reasonable contribution in exchange for her enjoyment of these benefits.

In particular, if a sovrien relies on a state to provide a service (i.e., she would seek out another provider for this service if she could not depend on the state to provide it), or if she regularly makes use of some state resource, she has a responsibility to make a fair contribution toward the perpetuation and maintenance of these benefits. The fulfillment of this responsibility does not require that a sovrien pay the state cash, although cash could be paid in the form of a user fee or an outright donation. Alternatively, the sovrien could pay certain taxes or provide an in-kind contribution of goods or services. Even though a state is unlikely to acknowledge any compensation other than full payment of all the taxes which it says the individual owes, any contribution which provides fair consideration for the benefits enjoyed is sufficient to meet this responsibility.

The responsibility to make fair compensation is mitigated by at least two factors. First, if a sovrien does not want and does not avail herself of a particular service (e.g., police presence in the community), even though she might reap some indirect benefit by the mere existence of that service, the sovrien cannot reasonably be held responsible for any reciprocal compensation. Second, to the extent that a state violates a sovrien's fundamental human rights (e.g., by imposing restrictions, requirements, punishment, and brute force), a sovrien might be justified in enjoying state benefits, to whatever extent she is able, as token restitution for the rights violations. The application of this principle in any given situation is a subjective call and is susceptible to abuse. Nonetheless, the basic principle is not unreasonable and deserves consideration.

The responsibility to exercise exceptional self-regulation. All human beings must exercise self-regulation, but sovriens need to exercise more of it than citizens. This condition exists for two reasons.

First, a sovrien, as one who lives apart from the rule of the state, must exercise exceptional self-regulation in order to live peaceably within her community. It is an axiom of human relations that if an individual is unwilling to regulate oneself within broadly defined social parameters, then people within the community will pressure the individual to move within tolerable limits. Everyone faces this pressure regardless of citizenship status. In an attempt to make this pressure predictable and fair, citizens authorize their state to systematize how and when such pressure will be applied. Specifically, citizens authorize their state to monitor their lives and to intervene if their actions exceed tolerable limits. Sovriens, on the other hand, do not consent to any state regulation of their actions and, thus, they must exercise more self-regulation than citizens. This self-regulation is as much a practical necessity as it is a responsibility because if the sovrien does not moderate herself, she will be reined in by one means or another. We must be clear, though, that a sovrien does not exercise self-regulation simply in order to avoid state coercion or punishment. Such behavior would defeat the purpose of being a sovrien because one would still effectively live under the burden of state rule. Rather, a sovrien exercises self-regulation in order to exist within the social fabric of the community where she desires to live. A sovrien must enjoy a minimal level of social integration in her local community if she intends to live apart from the rule of the state in any effective and sustainable way.

The second reason why a sovrien must exercise exceptional self-regulation is to share in the work of averting social and environmental disasters. In order to prevent such disasters, human beings must observe limits. Citizens observe limits by authorizing the state to establish and enforce laws. They suggest that disasters will be avoided so long as individuals submit to the restrictions, requirements, and enforcement powers of the state. Although the success of this strategy is debatable, citizens offer this plan as their good faith effort to steer clear from social and environmental ruin. Sovriens, on the other hand, observe limits by exercising exceptional self-regulation. They suggest that the levels of responsibility established by the state are inadequate, and that individuals must far exceed these levels if disasters are

to be avoided. In order for sovriens—who are not limited by state law—to match or surpass the level of responsibility that citizens are required to meet, they must exercise more self-regulation than citizens. If sovriens fail to exercise responsibility commensurate with the level of freedom they enjoy, disaster will loom.

The essential elements of self-regulation are straightforward. A sovrien must meet or exceed one's fundamental human responsibilities. She must act with integrity as a sovereign entity. And she must exercise self-control in all affairs, particularly: moderation in consumption of resources, toleration in relating with others of differing views and customs, and diligence in minimizing the demands one places on others. By observing these broad parameters, the sovrien creates a space for life apart from state rule.

E. Conclusion

In summary, because the sovrien does not consent to the rule of states, she is exempt from the legal responsibilities which attach to citizenship. Because the sovrien is a human being, she retains all the responsibilities that are inherently human. Because the sovrien is a sovereign entity, she bears the responsibility to act consistently with that status, especially by declining the benefits of citizenship. And because the sovrien lives apart from state rule, she is obliged to exercise exceptional self-regulation.

Some argue that human nature precludes any practical observance of the right to be stateless because human beings will not rise to meet the responsibilities which accompany being a sovrien. However, just as there is no evidence indicating that being a citizen increases one's wisdom, compassion, generosity, or integrity, likewise there is no evidence indicating that being a sovrien increases one's ignorance, malice, selfishness, or corruption. Human responsibility is not a function of citizenship status. Neither is it a function of state coercion. If we human beings need limits in order to live with each other, we must impose these limits on ourselves. Only then will we strive to abide by them. If limits are imposed by others, we simply resist and

struggle to be free. Citizens choose to impose limits on themselves by authorizing the state to define and enforce such limits. This is their prerogative. Sovriens, on the other hand, choose to regulate themselves and, although such self-regulation requires more discipline and restraint than that required of citizens, it is the sovrien's prerogative to choose this course.

Notes

[1] It is ironic that one US court declared that the principle of expatriation establishes that "a citizen may voluntarily surrender his citizenship along with the panoply of rights and obligations that attach thereto." *Davis v. District Director, INS*, 481 FSupp 1178, 1180 (D DC 1979). If a citizen's duties to obey the law, owe allegiance, pay taxes, and the like are not included in this panoply of obligations, one wonders what obligations the court had in mind.

[2] *Convention Relating to the Status of Stateless Persons* 1954, Article 2.

[3] See Chapter 4, Section C.

[4] See generally: Kymlicka and Norman 1994; Mouffe 1992 (both analyzing how civic activity overlaps with, yet is distinguished from, the legal status of citizenship).

10

Conclusion

A. Summary

The right to be stateless provokes significant and competing claims regarding social order, state sovereignty, moral obligations, and fundamental human rights. My goal has been to clarify these claims and to substantiate the ones which seem most reasonable. The important elements of this analysis can be summarized in twelve points.

First, citizenship is a relationship between an individual and a state which cannot exist without the consent of both parties. Specifically, the individual must agree to pay allegiance to the state and to support the work of the state with labor, goods, or taxes. The state must agree to provide basic protection and services to the individual, such as military defense, police protection, a judicial system, primary education, and health care. If either party opts to withhold its consent, then citizenship does not exist. Evidence supports the claims that citizenship cannot reasonably be imposed, that citizenship cannot reasonably be regarded as innate, as an obligation, or as a fundamental human

right, and that citizenship without mutual consent is self-defeating. For these reasons, citizenship must be recognized as a relationship which can exist only when consent is supplied by both the state and the individual.

Second, human beings have a fundamental right to expatriate. In other words, every person has the right to renounce one's citizenship and to withdraw from any citizen-state relationship in which one participates. This right has been recognized throughout history, and it enjoys widespread recognition today by legislators, scholars, and human rights advocates alike.

Third, human beings have a fundamental right to be stateless. Nine criteria indicate that a liberty can reasonably be regarded as a fundamental human right: (1) it must be logically possible that the liberty in question could be universally exercised; (2) one qualifies to exercise the liberty in question solely by virtue of one's humanity; (3) the rationale used to establish the liberty in question as a fundamental human right does not require one to subscribe to a particular religious, philosophical, or cultural belief system; (4) if we were to restrict an individual from exercising the liberty in question, we would interfere with some essential aspect of that individual's humanity (e.g., one's body, thought, expression, movement, or associations); (5) an individual's exercise of the liberty in question would not inherently interfere with some essential aspect of another's humanity; (6) if the liberty in question were a right, it would not impose on others a corresponding obligation that would interfere with some essential aspect of their humanity; (7) the liberty in question would not inherently conflict with an existing right which is reasonably regarded as more significant; (8) the liberty in question would not inherently conflict with a universal moral obligation; and (9) if the liberty in question were a right, it would not inherently entitle one to more than one's proportionate share of social power, political power, economic power, or available resources. Because the liberty to be stateless meets these criteria, it can reasonably be regarded as a fundamental human right.

Fourth, the consensual nature of citizenship means that human beings always retain the liberty to be stateless. This claim is the logical result of two certainties: (1) citizenship, by definition, is contingent upon the consent of the individual; and

(2) consent, by definition, is an act of volition and, thus, it can be withheld under any circumstance, at any time, and for any reason. Because citizenship cannot exist without the individual's consent, and because the individual is always free to withhold such consent, the individual is forever at liberty to be a non-citizen by withholding consent to all potential citizen-state relationships. In other words, every human being always retains the liberty to be stateless. Since this liberty always exists, it is equivalent, in effect, to a right.

Fifth, all fundamental arguments against the existence of the right to be stateless are flawed and unpersuasive. There are six primary claims against the right to be stateless: (1) the competing right to social order, (2) the competing right to territorial sovereignty, (3) the competing right to establish and operate states, (4) the moral obligation to submit to the authority of the state, (5) the moral obligation to support one's community, and (6) the moral obligation to avoid self-threatening situations. Each of these claims fails to deny the right to be stateless for at least one of the following reasons: (a) the alleged right or obligation does not exist, (b) the alleged right or obligation does not conflict with the right to be stateless, and (c) the alleged right or obligation does not outweigh the fundamental human rights which undergird the right to be stateless. On account of these faults, the existence of the right to be stateless faces no persuasive refutation.

Sixth, a state's recognition of the right to be stateless would cause some sociopolitical disruption. Recognition of this right would oblige a state to abandon its efforts to exercise sovereign rule over every individual present within its claimed territory. Specifically, the state would need to cease imposing restrictions, requirements, and brute force on sovriens. It would need to revise laws and bureaucratic procedures to recognize the sovrien's right to be treated as a sovereign entity. And it would need to determine how it would restrict sovriens from receiving the protection and services which a state may legitimately reserve for its member citizens. The social disruptions which are most commonly feared, however, are least likely to arise. A state's recognition of the right to be stateless would be unlikely to increase the occurrence of immorality, irresponsibility, crimi-

nal activity, or social disintegration. Likewise, recognition of the right to be stateless would not prevent people from joining in cooperative ventures for self-regulation, mutual aid, physical protection, and societal improvement.

Seventh, the potential disadvantages of being a sovrien are significant. One who chooses to be stateless minimally risks: living without government protection of her human rights; living without government assistance in time of need; enduring government interference in her life regardless of her independent status; enduring the full range of discrimination arising from the social stigma of being an alien; having difficulty maintaining a permanent residence; having difficulty in international travel; and living with all these potential disadvantages for the duration of her life. These risks are exacerbated for people who are consistently subject to discrimination and oppression. Specifically, women, people of color, and others whose access to power is unfairly limited, face the dangers of statelessness with fewer resources, privileges, and options than white men. On the other hand, these risks are minimized by several factors, including: a state's inability to wield total control over an individual; an individual's ability to elude restrictions and requirements imposed by states; an individual's ability to defend her own rights; an individual's physical, mental, spiritual, emotional, material, and communal resources; a state's moral and legal obligations; a state's utilitarian, political, and humanitarian interests; and the possibility of negotiated agreements between the sovrien and sympathetic states. Furthermore, many of the potential disadvantages of being a sovrien are minimized by the fact that citizenship, as an alternative to statelessness, may offer little meaningful improvement to one's situation: citizenship obliges one to forfeit individual sovereignty, subjects one to a host of restrictions and requirements, and can leave one substantially lacking the benefits and security which a state has promised.

Eighth, the potential advantages of being a sovrien are significant. The sovrien enjoys five noteworthy benefits: (1) the opportunity to live with greater integrity, to the extent that being stateless enables one to live more consistently with one's conscience and beliefs; (2) the opportunity for greater adventure, insofar as one enjoys the challenges, uncertainties, and seren-

dipities which accompany life unregulated by the state; (3) the opportunity for greater political freedom, via the exercise of one's right to be a sovereign entity; (4) the opportunity to enjoy formal neutrality in international relations and the consequent qualification to provide neutral service in international conflicts; and (5) the opportunity to participate concretely in the development of a more free and responsible society.

Ninth, in order to exercise the right to be stateless, one only needs to make a voluntary, knowing, and intentional choice to be stateless. In other words, if one opts to withhold her consent to participation in all citizen-state relationships, and she does so on her own free will, with deliberateness and motivation, and with a reasonable understanding of the effects of her action, then one effectively exercises her right to be stateless. Because the above conditions are sufficient to effect statelessness and are, by nature, strictly personal and interior actions, the right to be stateless can be exercised without any element of public expression. Nonetheless, public expression of one's choice to be stateless is desirable for several reasons: it provides fair notice to the state from which one is expatriating; it increases the likelihood that one's friends, family, and associates will understand the consequent actions one takes; and it reduces the likelihood that others will view one's choice as frivolous, involuntary, unintentional, ill-conceived, or even nonexistent.

Tenth, attempted restrictions on the right to be stateless lack adequate justification. States attempt to restrict the right to be stateless, and particularly its component right to expatriate, in a variety of ways. For example, states commonly assert that one cannot expatriate unless one receives official permission, unless one arranges for subsequent citizenship elsewhere, or unless one emigrates. States attempt to impose such restrictions via three basic methods: (1) the persuasion of the potential expatriate to comply with certain conditions for expatriation, (2) the use of brute force to discourage or prevent the potential expatriate from actually expatriating, and (3) the refusal to recognize that an individual has expatriated. These methods, however, are ethically and logically unjustifiable: they violate fundamental human rights to self-determination, freedom from compulsion, and freedom of association; they ignore the reality that citizenship is

contingent upon the consent of the individual; and they ignore the reality that expatriation, due to its volitional nature, is not ultimately susceptible to restriction.

Eleventh, the sovrien retains certain rights which citizens choose to waive. Specifically, the sovrien retains the right to be treated as a sovereign entity, the right to withhold allegiance and support from all states, and the right to be free from all state-imposed restrictions, requirements, and brute force. These rights are simply concrete extensions of fundamental human rights which all human beings may claim. Most people choose to waive these rights in exchange for the benefits which accompany participation in a citizen-state relationship. The sovrien, however, forgoes the benefits of citizenship in order to retain her fundamental sovereignty and freedom.

Twelfth, the sovrien bears certain responsibilities which citizens do not have. Notably, the sovrien must act consistently with her status as a sovereign entity: she should correct any outward appearance of being a citizen; she should forgo state benefits which are legitimately reserved for citizens; and she should make fair compensation for any state benefits of which she partakes but to which she is not entitled. The sovrien must observe these practices in order to maintain a minimal level of integrity. Also, because the sovrien lives free from the regulation of the state, she must exercise exceptional self-regulation. This practice is necessary because any increase in individual freedom requires a proportionate increase in individual responsibility. Whereas freedom without responsibility leads to human suffering, social chaos, and environmental destruction, the sovrien is obliged to match her greater freedom with a commensurate measure of self-regulation.

B. Suggestions

Some may conclude from this essay that I am advocating the abolition of states. While I sympathize with certain anarchist analyses of the political landscape, my goal is not so broad. Others may conclude that I am advocating the abolition of the institution of citizenship. While there are reasons to consider this

option,[1] it is not a concern of mine. My primary interest is that states refrain from imposing their rule on individuals who do not expressly consent to such rule. In light of this emphasis, and in light of the conclusions drawn throughout this essay, I offer the following ten suggestions. (The first five are stated briefly since they proceed plainly from the forgoing analysis.)

First, advocates of freedom should dispel the myth that a state may fairly rule over an individual without the individual's consent. In particular, arguments which defend state rule on the grounds of brute force, divine right, inherent authority, or the decision of only a portion of the community, should be debunked and dismissed.

Second, the international legal community should explicitly recognize the fundamental human right to be stateless. Oppenheim argues that ". . . it is illogical that international law should permit a condition of statelessness, and the admissibility of statelessness must be regarded as a serious defect in this branch of international law."[2] Whereas a fundamental right to be stateless has been shown to exist, Oppenheim's view must be rejected.

Third, states should stop restricting individuals from exercising the right to be stateless and the right to expatriate.

Fourth, states should make the legislative and bureaucratic changes necessary in order to recognize sovriens as sovereign entities.

Fifth, sovriens should diligently perform the unique responsibilities which they bear as sovereign entities.

Sixth, every state should be able to prove that each individual it claims as a citizen has expressly consented to participating in a citizen-state relationship with that state. Express consent can be proved in various ways, the simplest being a brief signed statement to that effect. Preferably, the state and the individual would execute a contractual agreement which outlines the essential rights and responsibilities of both parties. Because government without consent is unacceptable, proof of express consent is necessary in order to clearly define the limits of a state's authority. By maintaining a registry of express consent, a state can easily determine from whom it can expect allegiance and support, to whom it owes protection and services, and over

whom it may legitimately rule. The maxim that "an individual cannot verify citizenship status without the final declaration of the State"[3] is true in the inverse as well: a state cannot verify citizenship status without the final declaration of the individual.

Seventh, every state should offer a simple and unencumbered method for citizens to expatriate. A brief interview or form, including appropriate notice of the actual and potential consequences of expatriation, would be sufficient. The method should not require the individual to relocate, to acquire state permission, or to acquire subsequent citizenship elsewhere. The method should bear no threat of deportation, imprisonment, or punishment. The method should amount to nothing more than one means by which an individual could inform the state that she is making a voluntary, knowing, and intentional choice to withdraw her consent from the citizen-state relationship and that she should no longer be regarded as a citizen. By offering such a method (which, of course, could be formulated with a variety of nuances),[4] a state not only gains a useful tool for maintaining an accurate registry of citizens, but it also provides essential recognition of individual rights to self-determination, freedom from compulsion, and freedom of association.

Eighth, individuals who reject the fundamental nature of the citizen-state relationship should become sovriens. As a matter of integrity, if one does not want to pay allegiance and support to a state in exchange for the protection and services it provides, then one should not maintain status as a citizen. If one desires this exchange but is unsatisfied with certain details, then one can negotiate as a citizen to improve the terms of the relationship. But, if one rejects the essential reciprocal arrangement, then one should relinquish the status and benefits of citizenship. For example, an anarchist, who by definition believes in life without state rule, should not retain status as a citizen. Rather, she should cast off any citizenship she maintains and take on the rights and responsibilities of being a sovrien. To retain status as a citizen is to consent to the fundamental nature of the citizen-state relationship. If one predominantly disagrees with participating in this type of relationship, then one ought to expatriate into statelessness.

Ninth, legislators and legal theorists should more clearly distinguish *unintentional statelessness* from *intentional statelessness*. At present, the two types are rarely distinguished. Because authorities typically use the general term *statelessness* when they are in fact referring only to the specific condition of unintentional statelessness, two serious problems arise. First, efforts to regulate unintentional statelessness are hampered by the human rights issues posed by the right to be stateless. Unintentional statelessness, with its attendant problems, may well deserve to be limited or abolished, but this task will always be made difficult if the right to be stateless is not fully recognized. Second, by not distinguishing between the two types of statelessness, the unique circumstances and rights associated with intentional statelessness are overlooked. Because the two types are routinely dealt with as one, intentional statelessness suffers from all the attacks made on unintentional statelessness. The purpose of this suggestion is to insure that the problems associated with unintentional statelessness can be addressed in a way that will not debilitate intentional statelessness. The popular yet undiscriminating opinion that "statelessness in all its aspects is an anomaly which can and must be abolished"[5] must be tempered by the reality that intentional statelessness, as a unique subset of statelessness, always needs to exist as an unrestricted option.

Tenth, and most importantly, as our political theories and practices evolve, we should give more careful consideration to the right to be stateless. The right to be stateless is traditionally defined by misstatement, exaggeration, and falsehood—the direct result of ignorance, fear, and ambition. This reckless methodology has not only created an ample supply of insults and unpersuasive arguments, but it has provoked romantic illusion as well. US Supreme Court Justice William Paterson, for example, portrays the citizen of the world as "a creature of the imagination, and far too refined for any republic of ancient or modern times."[6] If we do not want to betray reason and fairness, we must move beyond the Aristotelian dichotomy that the sovrien is either below humanity or above it—either a beast or a god. We must employ greater precision and higher standards of justification in examining this option to live apart from the state.

The choice to be a sovrien is unfamiliar and rarely exercised. Even though this choice is logically and ethically permissible and can be exercised for worthy reasons, it continues to face widespread restriction and contempt. However, as ethnic purity continues to dissipate, as movement across international borders increases, as global communication becomes more expansive and efficient, as social and commercial relationships multiply, and as international distinctions continue to blur, the option of being a sovrien calls for more careful consideration.

Notes

[1] See generally Legomsky 1994 (Legomsky does not support the abolition of citizenship, but he identifies several concerns that might fuel such an argument).
[2] Oppenheim 1992, § 398 at 887.
[3] Batchelor 1995, 257.
[4] See, e.g., Schuck and Smith 1985, 122-125.
[5] Lauterpacht 1945, 128.
[6] *Talbot v. Janson*, 3 US (3 Dallas) 133, 153 (1795).

Appendix

The *Convention Relating to the Status of Stateless Persons* is reprinted here for the convenience of the reader. (The Schedule referred to in Article 28, describing the model travel document, has been omitted.) In light of the concerns I have raised regarding this convention, its inclusion should not be perceived as an endorsement. As of February 5, 2002, fifty-four states were party to this convention. The United States was not among them.

Convention Relating to the Status of Stateless Persons

Adopted September 28, 1954. Entered into force June 6, 1960.
United Nations Treaty Series 360:117.

PREAMBLE

The High Contracting Parties,

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

Considering that the United Nations has, on various occasions, manifested its profound concern for stateless persons and endeavoured to assure stateless persons the widest possible exercise of these fundamental rights and freedoms,

Considering that only those stateless persons who are also refugees are covered by the Convention relating to the Status of Refugees of 28 July 1951, and that there are many stateless persons who are not covered by that Convention,

Considering that it is desirable to regulate and improve the status of stateless persons by an international agreement,

Have agreed as follows:

CHAPTER I — GENERAL PROVISIONS

Article 1 — Definition of the term "Stateless Person"

1. For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law.

2. This Convention shall not apply:

(i) To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance;

(ii) To persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country;

(iii) To persons with respect to whom there are serious reasons for considering that:

(a) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;

(b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country;

(c) They have been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2 — General obligations

Every stateless person has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3 — Non-discrimination

The Contracting States shall apply the provisions of this Convention to stateless persons without discrimination as to race, religion or country of origin.

Article 4 — Religion

The Contracting States shall accord to stateless persons within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

Article 5 — Rights granted apart from this Convention

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to stateless persons apart from this Convention.

Article 6 — The term "in the same circumstances"

For the purpose of this Convention, the term "in the same circumstances" implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a stateless person, must be fulfilled by him, with the exception of requirements which by their nature a stateless person is incapable of fulfilling.

Article 7 — Exemption from reciprocity

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to stateless persons the same treatment as is accorded to aliens generally.

2. After a period of three years' residence, all stateless persons shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.

3. Each Contracting State shall continue to accord to stateless persons the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

4. The Contracting States shall consider favourably the possibility of according to stateless persons, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to stateless persons who do not fulfil the conditions provided for in paragraphs 2 and 3.

5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

Article 8 — Exemption from exceptional measures

With regard to exceptional measures which may be taken against the person, property or interests of nationals or former nationals of a foreign State, the Contracting States shall not apply such measures to a stateless person solely on account of his having previously possessed the nationality of the foreign State in question. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article shall, in appropriate cases, grant exemptions in favour of such stateless persons.

Article 9 — Provisional measures

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a stateless person and that the continuance of such measures is necessary in his case in the interests of national security.

Article 10 — Continuity of residence

1. Where a stateless person has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

2. Where a stateless person has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Article 11 — Stateless seamen

In the case of stateless persons regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

CHAPTER II — JURIDICAL STATUS

Article 12 — Personal status

1. The personal status of a stateless person shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

2. Rights previously acquired by a stateless person and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become stateless.

Article 13 — Movable and immovable property

The Contracting States shall accord to a stateless person treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Article 14 — Artistic rights and industrial property

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a stateless person shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection

as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 15 — Right of association

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 16 — Access to Courts

1. A stateless person shall have free access to the Courts of Law on the territory of all Contracting States.

2. A stateless person shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi.*

3. A stateless person shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

CHAPTER III — GAINFUL EMPLOYMENT

Article 17 — Wage-earning employment

1. The Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable that that accorded to aliens generally in the same circumstances, as regards the right to engage in wage-earning employment.

2. The Contracting States shall give sympathetic consideration to assimilating the rights of all stateless persons with regard to wage-earning employment to those of nationals, and in particular of those stateless persons who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18 — Self-employment

The Contracting States shall accord to a stateless person lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19 — Liberal professions

Each Contracting State shall accord to stateless persons lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

CHAPTER IV — WELFARE

Article 20 — Rationing

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, stateless persons shall be accorded the same treatment as nationals.

Article 21 — Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22 — Public education

1. The Contracting States shall accord to stateless persons the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to stateless persons treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 23 — Public relief

The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24 — Labour legislation and social security

1. The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a stateless person resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to stateless persons the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to stateless persons so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

CHAPTER V — ADMINISTRATIVE MEASURES

Article 25 — Administrative assistance

1. When the exercise of a right by a stateless person would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting State in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to stateless persons such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this article shall be without prejudice to articles 27 and 28.

Article 26 — Freedom of movement

Each Contracting State shall accord to stateless persons lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

Article 27 — Identity papers

The Contracting States shall issue identity papers to any stateless person in their territory who does not possess a valid travel document.

Article 28 — Travel documents

The Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other stateless person in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence.

Article 29 — Fiscal charges

1. The Contracting States shall not impose upon stateless persons duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to stateless persons of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

Article 30 — Transfer of assets

1. A Contracting State shall, in conformity with its laws and regulations, permit stateless persons to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

2. A Contracting State shall give sympathetic consideration to the application of stateless persons for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Article 31 — Expulsion

1. The Contracting States shall not expel a stateless person lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a stateless person shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the stateless person shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a stateless person a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 32 — Naturalization

The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

CHAPTER VI — FINAL CLAUSES

Article 33 — Information on national legislation

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Article 34 — Settlement of disputes

Any dispute between parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 35 — Signature, ratification and accession

1. This Convention shall be open for signature at the Headquarters of the United Nations until 31 December 1955.

2. It shall be open for signature on behalf of:

(a) Any State Member of the United Nations;

(b) Any other State invited to attend the United Nations Conference on the Status of Stateless Persons; and

(c) Any State to which an invitation to sign or to accede may be addressed by the General Assembly of the United Nations.

3. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. It shall be open for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 36 — Territorial application clause

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article 37 — Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of states, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

Article 38 — Reservations

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1) and 33 to 42 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 39 — Entry into force

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

Article 40 — Denunciation

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.

3. Any State which has made a declaration or notification under article 36 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

Article 41 — Revision

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

Article 42 — Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform all Members of the United Nations and nonmember States referred to in article 35:

(a) Of signatures, ratifications and accessions in accordance with article 35;

(b) Of declarations and notifications in accordance with article 36;

(c) Of reservations and withdrawals in accordance with article 38;

(d) Of the date on which this Convention will come into force in accordance with article 39;

(e) Of denunciations and notifications in accordance with article 40;

(f) Of requests for revision in accordance with article 41.

IN FAITH WHEREOF the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

DONE at New York, this twenty-eighth day of September, one thousand nine hundred and fifty-four, in a single copy, of which the English, French and Spanish texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the nonmember States referred to in article 35.

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Index

The Sovrien
An Exploration of the Right to Be Stateless

Clark Hanjian

The pacifist, the anarchist, and the cosmopolitan all struggle with the demands of citizenship. Their hopes—for tolerance, nonviolent social change, and a society ordered by personal responsibility—are routinely dashed by civic obligations to support militarism, parochialism, and a society ordered by threat of force. Fortunately for these idealists, the institution of citizenship is under review. Alternatives such as global citizenship and post-national citizenship are enjoying renewed attention. Of particular interest is the option of statelessness.

To be stateless is to be a citizen of no country, a subject of no government, a member of no state. Statelessness exists in two forms. The unintentionally stateless person lacks citizenship status against her will. She is an alien in search of a state. The intentionally stateless person lacks citizenship status on purpose. She elects to be both sovereign and alien—she is a "sovrien." While scholars and jurists have extensively examined unintentional statelessness, they have all but ignored its counterpart. *The Sovrien* explores this void and considers the possibility that one might choose to live as a citizen of no country.

The Sovrien proposes that the choice to be stateless is a legitimate and reasonable option. This work examines: the arguments for and against the existence of a right to be stateless, the advantages and disadvantages of being a sovrien, the process of exercising one's right to be stateless, government attempts to restrict the right to be stateless, and the rights and responsibilities of sovriens.

Clark Hanjian renounced his US citizenship in 1985 and has remained stateless since that time. He received his BA from Lycoming College, performed graduate studies at Wesley Theological Seminary, and received a graduate certificate in Conflict Resolution from Columbia University. He provides freelance organizational services to nonprofits and small businesses.

Polyspire • PO Box 4594, Vineyard Haven, Massachusetts 02568