

Notes on “Sovereign Territory”

by Alfred Adask

I am convinced that the terms “The State” and “this state” signify two entirely different and mutually exclusive entities. I am increasingly aware that these two entities are two entirely different “venues”. As a result, my fascination with the concept of “venue” is growing.

The following notes on “sovereign territory” are based on that growing fascination.

These notes are simply my observations based on a Findlaw.com search of US Supreme Court cases that used the term “sovereign territory”.

As usual, I’ve exercised my annoying habit of highlighting the texts I read with various colors to signal what I regard as differing levels of credibility and importance in a document. For me, **red text** signals something worth noting; **red text highlighted in yellow** signals something *even more important*; and **red text in green** signals something that I think may be *crucially important*.

Pink text signals something I don’t understand or regard as probably false. If I amp up the pink text with yellow or green highlights, I’m only emphasizing my confusion or doubt.

If I **highlight anything with blue background**, I’m indicating something that I’d like to research further.

My own comments are inserted in **[bracketed, bold, blue text]**.

100522 Findlaw search USSC for “SOVEREIGN TERRITORY” and “TERRITORY OVER WHICH THE UNITED STATES IS SOVEREIGN”

1. [FindLaw: JOHNSON v. EISENTRAGER, 339 U.S. 763 \(1950\)](#)

<http://laws.findlaw.com/us/339/763.html>

... country implied [339 U.S. 763, 778] protection. No such basis can be invoked here, for these prisoners at no relevant time were within any territory over which the United States is sovereign, and the scenes [venues] of their offense, their capture, their trial and their punishment were all beyond the territorial jurisdiction of any court of the ...

2. [FindLaw: HELLENIC LINES v. RHODITIS, 398 U.S. 306 \(1970\)](#)

<http://laws.findlaw.com/us/398/306.html>

... [Footnote 1] The principle of deference to the law of the flag had its origins in the fiction that the vessel was an extension of the sovereign territory of the country whose ensign it flew. As Mr. Justice Jackson noted in Lauritzen, the principle draws strength from the practical necessity of ...

[OK—the marine “vessel” is an “extension” of the “sovereign territory” of which country’s flag it flew.

What about an automobile? Does the license plate with the word “TEXAS” on it constitute an “ensign” denoting that the automobile/vessel is an “extension” of the “sovereign territory” (just “territory”?) of “this state”?

What about the police officers wearing a gold-fringed, US flag on their uniforms. I doubt that those officers are deemed “territorial extensions” of the United States, but that flag must signal that they are officers, employees or agents of the United States—perhaps as a condition prerequisite for them exercising any powers “in this state”.]

3. [FindLaw: UNITED STATES v. VERDUGO-URQUIDEZ, 494 U.S. 259 \(1990\)](#)

<http://laws.findlaw.com/us/494/259.html>

... United States Government exercises its power. Indeed, we have **rejected** the claim that **aliens** are **entitled** to Fifth Amendment rights **outside** the **sovereign territory** of the United States. In *Johnson v. Eisentrager*, 339 U.S. 763 (1950), the Court held that enemy aliens arrested in China and imprisoned in ...

[“Aliens” to what? The United States. Which “United States”? Singular or several? Are the people of The State of Texas “aliens” to the singular “United States”?]

... [Footnote *] The Court's interesting historical discussion is simply irrelevant to the question whether an **alien lawfully within** the **sovereign territory** of the United States is entitled to the protection of our laws. Nor is comment on **illegal aliens'** **entitlement to the protections of the Fourth** ...

... *Johnson v. Eisentrager*, 339 U.S. 763 (1950), as having "rejected the claim that aliens are entitled to Fifth Amendment rights outside the **sovereign territory** of the United States." Ante, at 269. In *Johnson*, 21 German nationals were convicted of engaging in continued military activity against the United ...

4. [FindLaw: DURO v. REINA, 495 U.S. 676 \(1990\)](http://laws.findlaw.com/us/495/676.html)

<http://laws.findlaw.com/us/495/676.html>

... limited character." Id., at 323. **A basic attribute of full territorial sovereignty** is the **power to enforce laws against all who come within the sovereign's territory**, whether **citizens or aliens**. Oliphant recognized that the tribes can no longer be described as sovereigns in this sense. Rather, as our discussion in ...

[Great. Another wheel within the wheels.

We not only have “territorial sovereignty,” we also have “full territorial sovereignty”. Thus the gov-co of this state” might have “territorial sovereignty”

but not “full territorial sovereignty” and thus lack power to enforce laws against ALL within that “sovereign territory”.

If “full territorial sovereignty” bestows power to enforce against *everyone* (*both* “citizens or aliens”), then it might follow that mere “territorial sovereignty” would be sufficient to enforce against only one (“citizens”) or the other (“aliens”). I know an investigator from the Austin district attorneys office who has told me story after story of the Austin prosecutor’s office refusing to prosecute illegal aliens. These stories aren’t anecdotes, they are policy. I know of no similar policy for dismissing cases against “citizens”. Judging from the current inability of “states” (like TX or AZ) to enforce laws against illegal aliens, I’ll bet that ARIZONA (this state) has mere “territorial sovereignty” sufficient to enforce against its own citizens of “this state,” but not against the illegal aliens.

Wouldn’t that be one helluva note. The illegal aliens may have more freedom and liberty in “this state” than the citizens of “this state”. Perhaps the illegals can invade precisely because the “states” (this state) lack the “full territorial sovereignty” to enforce against both citizens and aliens.

If “this state” only has “territorial sovereignty” over its “territory,” who/what holds “full territorial sovereignty” over “this state”? Inquiring minds wanna know.]

... 326. I agree with the Court that “[a] basic attribute of **full territorial sovereignty** is the power to enforce laws against **all** who come within the **sovereign's territory**, whether citizens or aliens.” Ante, at 685. I disagree with the Court that *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 212 (1978), ...

5. [FindLaw: UNITED STATES v. ALVAREZ-MACHAIN, 504 U.S. 655 \(1992\)](http://laws.findlaw.com/us/504/655.html)

<http://laws.findlaw.com/us/504/655.html>

... is true in this case, as it was in *Cook*.³⁰ The Court's failure to **differentiate** between **private abductions** and **official invasions** of another **sovereign's territory**

also accounts for its **misplaced reliance on the 1935 proposal** made by the Advisory Committee on Research in International Law. See ante, at 10, and ...

[This excerpt is too short to be sure of what the court may have been talking about. Nevertheless, I'm fascinated to see that, in A.D. 1992, the Supremes apparently recognized that a "private abduction" (by a "privatized government"?) could be misconstrued to be an "official invasion" of a de jure government.]

6. [FindLaw: NEW JERSEY v. NEW YORK](#) (A.D. 1998??)

<http://laws.findlaw.com/us/523/767.html>

... state line intersects three buildings: the Main Building, the Baggage and Dormitory Building, and the Boathouse Building. **Thin strips** of New Jersey's **sovereign territory** separate New York from the ferry slip where boats operated by the City of New York have been delivering millions of visitors annually. By ending New ...

[Insofar as the issue in this case involves "thin strips," it appears that even 1 square foot of "sovereign territory" that is distinct from an adjacent square mile of some other "sovereign's territory" could be of enormous legal implication.

I.e., what would happen if you could prove that your home were built on the "sovereign territory" of The State of Texas or The State of Oregon? What laws would apply to your home? What enforcement powers would "this state" have relative to the "sovereign territory" on which your home was located?

What if the sidewalk in front of your house was a "thin strip" of the "sovereign territory" (if there is such thing) for "this state"?)

7. [FindLaw Case](#) ATKINSON TRADING CO., INC. v. SHIRLEY *et al.* (A.D. 2001)

<http://laws.findlaw.com/us/532/645.html>

... of Los Angeles, 441 U. S. 434, 445 (1979)). **Only full territorial sovereigns enjoy the "power to enforce laws against all** who come within

the **sovereign's territory**, whether citizens or aliens," and Indian tribes "can no longer be described as sovereigns in this sense." *Duro v. Reina*, supra, at 685. ...

8. [FindLaw Case](#) CHAVEZ v. MARTINEZ (A.D. 2003)

<http://laws.findlaw.com/us/538/760.html>

... the Clause in that context, id. , at 269 (noting the Court had "rejected the claim that **aliens** are entitled to Fifth Amendment rights **outside** the **sovereign territory** of the United States" (citing *Johnson v. Eisentrager*, 339 U. S. 763 (1950))). In any event, the decision cannot be read to support the ...

[Excerpts from Supreme Court cases dealing with individuals who are both 1) "aliens" and 2) "outside the sovereign territory of the United States" imply that there are two means by which an individual could claim constitutional protections:

1) If you claim to be a *citizen* of the United States, you may be able to claim constitutional protections for actions committed *both within and without* the sovereign territory of the United States.

2) If you are within the sovereign territory of the United States, you can claim constitutional protection even if you're an "alien".

This implication is interesting because it suggests that IF you are a "citizen of the United States," then 1) your *rights* under the Constitution may be protected even if you are "outside the sovereign territory of the United States" (which seems good); but also 2) your *duties* under the Constitution might also be enforced even if you are "outside the sovereign territory of the United States" (which seems bad). Thus, if you are a "citizen of the United States," you might be obligated to pay income taxes on whatever you earn while working "outside the sovereign territory of the United States".

So, suppose you were working in Australia. As a "citizen of the United States" you might still be obligated to file an income tax return on your Aussie earnings.

Hmph. That's annoying.

But suppose you were earning an income within the borders of "The State of Texas" or "The State of Oregon"? If the territory within those State borders is not "sovereign territory of the United States," then you might not have to pay income taxes. On the other hand, even if that State territory was outside the "sovereign territory of the United States," you might still be obligated to pay income tax if you were a "citizen of the United States".

This implies that if you were fighting off the IRS, it might not be enough to argue that either 1) you are an "alien" and thus not obligated to file income tax returns; or 2) that you are a non-resident ("outside the sovereign territory of the United States")—instead you might have to be able to prove both that you are 1) an "alien" to the United States (not a "citizen of the United States") and 2) that you are "outside the sovereign territory of the United States".

This dichotomy does not prove, but is consistent with, some researchers' conclusions that you must claim to be a "non-resident alien" to avoid paying income taxes.

But bear in mind that if a "non-resident alien" has no duty to pay income taxes, he also has no constitutional rights under The Constitution of the United States. This suggests that if you're going to argue the "non-resident alien" status to avoid income taxes, you'd better also be able to point to some alternative constitution under which you can claim various rights.

For example, if I were living and earning a living within the borders of The State of Texas (a member-State of the perpetual Unions styled "The United States of America"), I might claim to be a "non-resident alien" relative to the "United States" in order to avoid paying income taxes. But if the IRS came after me, what constitutional protections could I claim to defend against that assault?

As a self-declared "non-resident alien" relative to the "United States," I might not be able to claim any defenses under The Constitution of the United States.

If I couldn't claim under the federal Constitution, it follows that my only claim of rights might be found in The Constitution of The State of Texas. Thus, the non-resident alien (State citizen) had better be prepared to rely solely on the Constitution of whatever State of the Union he inhabited to defend against the IRS.

More, IF it were true that the "non-resident alien" could not claim any rights under The Constitution of the United States, what would happen if an alleged "non-resident alien" *did* inadvertently claim rights under the federal Constitution? What if he claimed a "First Amendment right" to freedom of religion, speech or assembly? What if he claimed the right to contract under Article 1.10.1? What if he claimed a defense provided under Title 26 (income tax) of the United States Code? Would his claim to rights under federal Constitution or federal law compromise, contradict or even defeat his other claim to be a "non-resident alien"?

I suspect the answer may be Yes.

If so, then if you're inclined to try the "non-resident alien" defense against the IRS, you might do well to insure that your entire defense flows from the Constitution of your State of the Union—and make sure that you make NO claims of rights under the Constitution, codes, or statutes of the United States.]

9. [FindLaw Case](#) RASUL *et al.* v. BUSH, PRESIDENT OF THE UNITED STATES, *et al.* (A.D. 2004)

<http://laws.findlaw.com/us/542/466.html>

The District Court construed the suits as habeas petitions and dismissed them for want of jurisdiction, holding that, under Johnson v. Eisentrager, 339 U. S. 763 , **aliens detained outside** United States **sovereign territory** may not invoke habeas relief. The Court of Appeals affirmed. *Held*: United States courts have jurisdiction to consider

challenges to the legality of the detention of foreign nationals captured abroad in connection with hostilities and incarcerated at Guantanamo Bay. Pp. 4-17.

[The Supremes are correct. The District Court misspoke or lied when it declared that under *Eisentrager*, “aliens detained outside United States sovereign territory may not invoke habeas relief.” If that were true, then the government could capture an American in Chicago and quickly ship him to some “place of detention” in a foreign country “outside United States sovereign territory” and thereby strip that American of any his “constitutional rights”.

In fact, in the *Eisentrager* case (item #1, *supra*), the Supremes declared, “No such basis can be invoked here, for these prisoners at no relevant time were within any territory over which the United States is sovereign, and the scenes of their offense, their capture, their trial and their punishment were all beyond the territorial jurisdiction of any court of the United States.” In other words, the *Eisentrager* case implicitly declared that if *any one* of the various “scenes” (venues) of the alleged crime, arrest, trial or punishment took place within “United States sovereign territory,” the alien defendants *could* claim rights under the federal Constitution; that the alien defendants could not claim rights under the federal Constitution **ONLY** if *every single* “scene” of their crime, arrest, trial and punishment took place outside “United States sovereign territory”.

The *Rasul* district court misinterpreted *Eisentrager* to say that if the aliens were merely “detained” outside “United State sovereign territory,” the aliens had no claim on habeas relief. Whether that misinterpretation was based on malice or ignorance is hard to say. The Supreme Court corrected that error.]

... jurisdiction. The court held, in reliance on our opinion in *Johnson v. Eisentrager*, 339 U. S. 763 (1950), that “aliens detained outside the **sovereign territory** of the United States [may not] invoc[e] a petition for a writ of habeas corpus.” 215 F. Supp. 2d 55, 68 (DC 2002). The Court of Appeals affirmed. ...

... the historical reach of the writ of habeas corpus. At common law, courts exercised habeas jurisdiction over the claims of aliens detained within **sovereign territory** of the **realm**, 11 as well as the claims of persons detained in the **so-called "exempt jurisdictions," where ordinary writs did not run**, 12 and all ...

... overrules Eisentrager; today's opinion, and **today's opinion alone**, extends the habeas statute, **for the first time**, to **aliens** held beyond the **sovereign territory** of the United States and beyond the territorial jurisdiction of its courts. No reasons are given for this result; no acknowledgment of its ...

[This sounds like an excerpt from a dissenting opinion.]

I haven't yet read the *Rasul* case, but I *suspect* the real basis for the Supreme's *Rasul* decision may not be that habeas relief be extended to all aliens, but merely that the trial court cannot deny an alien habeas relief based only on evidence that the alien was "detained" outside "United States sovereign territory".

In other words, I *suspect* that if the trial court record of the *Rasul* case included evidence that *Rasul* was detained outside the United State sovereign territory, but did not include evidence that *Rasul*'s crime(s), arrest, and trial were also completely outside US sovereign territory, then perhaps the trial court had insufficient evidence to presume that a man detained by the US government outside US sovereign territory had no right to habeas relief.

Perhaps the real import of the *Rasul* case is to declare that if you are held by the US government anywhere on this earth, you have a right to habeas corpus relief until evidence is introduced that at no time during your crime, arrest, trial or punishment, were you within US sovereign territory.

That conclusion is pure speculation, but if it's true, it sounds like a good thing to me. The implications of the *Rasul* scenario are reminiscent of complaints by American colonists that England would sometimes arrest defendants in the colonies and then transport them all the way to England for a trial where the

colonist would be inevitably convicted by an English jury. The colonists wanted to be tried locally by a local, colonial jury.

In this day of jet travel, you could be arrested in Chicago this morning and in an Egyptian jail this afternoon. God help you if you had no right to habeas corpus relief.]

... the "conduct of diplomatic and foreign affairs," Eisentrager , supra , at 789-- affirms that the lease and treaty do not render Guantanamo Bay the **sovereign territory** of the United States, see Brief for Respondents 21. The **Court does not explain how "complete jurisdiction and control" without sovereignty ...**

[This dissent is probably correct. The only way that the US gov-co can have "complete jurisdiction and control" over Guantanamo Bay and yet deny have "sovereignty" over that place is by a very sophisticated (and probably deceitful) use of treaty document language. If the US had sovereignty over Guantanamo Bay, then that place would be US sovereign territory and the prisoners would be entitled to habeas corpus. But, because Git-mo was not US sovereign territory, detainees could seemingly be held there indefinitely and without any hope of habeas corpus or other relief—even though the US military had "complete jurisdiction and control" over Git-mo.

Think about it. If the US had complete jurisdiction and control, but not "sovereignty" over Git-mo, who else could the detainees appeal to for relief from an unjust incarceration? Cuba? Russia? There would be no way to free the Git-mo detainees other than a military invasion to oust the US military and install some other force able to exert "complete jurisdiction and control" over Git-mo.

Git-mo had become a political no man's land where might made right, but there was no earthly sovereign to whom one might appeal. The whole concept is chilling. At Git-mo, a detainee could be held (punished) *forever* without ever

being tried, convicted or having any access to habeas corpus or appeal. This is so damned un-American, it is appalling.

I know some people think Git-mo is OK because we're only "doing it" to "alien terrorists". I guarantee that if we let the gov-co routinely subject alien terrorists to such injustice for a few years, the gov-co will soon be subjecting American dissidents and then even docile subjects to the same abuses.

Git-mo is a crime against American principles and values.]

... All of the **dominions** in the cases the Court cites--and all of the **territories** Blackstone lists as **dominions**, see 1 Blackstone *93-*106--are the **sovereign territory** of the Crown: colonies, acquisitions and conquests, and so on. It is an **enormous extension** of the term to apply it to installations **merely leased** ...

[Yes, it is an enormous extension to consider "leased" areas to be "US sovereign territories". But what else can you, should you, do if these "leases" prevent anyone detained within a US leased area from appealing to a "sovereign"?

The implication is that every defendant must have access to a "sovereign" court that is of greater authority than whatever entity is detaining that defendant. We can't allow the US gov-co to use a lease to acquire "complete jurisdiction and control" over a territory that's nevertheless outside "US sovereignty territory" without subjecting that same leased territory to the "sovereignty" of the US courts.

Leases cannot, by means of clever language, eliminate sovereignty.

More, while the *Rasul* court does not say so expressly, they seem to imply that "complete jurisdiction and control" must be deemed tantamount to "sovereignty"—even if some lease document includes clever language to the contrary.

Apparently, there must be some "sovereign" over every square foot of earthly territory to which the people can appeal.

I don't yet fully understand that notion, but I find it comforting.

I'm beginning to see that an ideal condition (from the point of view of the U.S. gov-co) and ultimate objective of the US gov-co would be to have territory where the gov-co had "complete jurisdiction and control" without any sovereignty. Sovereignty is the enemy of the fascists. Conversely, sovereignty is the hope and defender of the People.]

... Yi-Ching , 56 T. L. R. 3 (Vacation Ct. 1939), for the broad proposition that habeas corpus has been categorically unavailable to aliens held outside sovereign territory. Post, at 18. Ex parte Mwenya , however, casts considerable doubt on this narrow view of the territorial reach of the writ. See Ex parte ...

... Reading Eisentrager to hold that " 'the privilege of litigation' does not extend to aliens in military custody who have no presence in 'any territory over which the United States is sovereign,' " 321 F. 3d 1134, 1144 (CADC 2003) (quoting Eisentrager, 339 U. S., at 777 -778), it held that the District Court lacked jurisdiction over ...

... presence in the United States "implied protection," id ., at 777-778, whereas in Eisentrager "th[e] prisoners at no relevant time were within any territory over which the United States is sovereign," id., at 778. The Court next noted that the prisoners in Eisentrager "were actual enemies" of the United States, proven to be so at trial, and ...

... such a right, nor does anything in our statutes ." 339 U. S., at 768 (emphasis added). "[T]hese prisoners at no relevant time were within any territory over which the United States is sovereign, and the scenes of their offense, their capture, their trial and their punishment were all beyond the territorial jurisdiction of any court of the ...

... their **presence in the country implied protection**. No such basis can be invoked here, for **these prisoners at no relevant time were within any territory over which the United States is sovereign**, and the scenes of their offense, their capture, their trial and their punishment were all beyond the territorial jurisdiction of any court of the ...

[The Constitution of The States of Texas (A.D. 1876) grants and guarantees a right to habeas corpus. But that Constitution (of The State) only enforces that right within the “sovereign territory” of The State of Texas. Thus, if the territory of “this state” (STATE OF TEXAS or TX) was not the “sovereign territory” of The State of Texas, then I would have no right to a writ of habeas corpus under the authority of The Constitution of The State of Texas (A.D. 1876). This might explain why so many petitions for writ of HC are dismissed. Maybe it’s because the petitioners have failed to allege that they are being held within the sovereign territory of The State of Texas.

Maybe “this state” is similar to Guantanamo Bay in that there is no “sovereignty” in “this state” and therefore no superior authority to appeal to if you’ve been arrested and “detained” “in this state”. Perhaps “this state” signals a condition where “might makes right” and the gov-co has “complete jurisdiction and control” without any onerous “sovereignty” to restrain gov-co from doing any damn thing it pleases.

This speculation is a serious stretch, but it makes some sense. “Sovereignty” is, ultimately, “authority”. “Might makes right” is ultimately an exercise in power without regard to any superior “authority”. Again, this suggests that sovereignty is the enemy of government and enemy of “this state”.

Over the years, I’ve observed that the only thing our current governmental system fears is public exposure. This government does not recognize sovereignty and therefore does not recognize any superior “authority”—like the Constitutions established by the People in their *sovereign* capacity. But it does recognize (and fear) the possibility that the people (who are armed to the teeth) might one day

wake up, realize they're being enslaved and destroyed by their purported "government" and rise up and kill every governmental official and employee they can find. In fact, I'll bet that more than a few governmental officers lose a lot of sleep wondering *why* the people didn't revolt ten or twenty years ago, let alone today.

IF the territory of "this state" were "sovereign territory" of the United States, then detainees "in this state" might have right to a writ of habeas corpus under *federal* law if they expressly claimed to be held within the "sovereign territory" of the United States. But—while "this state" appears to be "a" territory—is it "*sovereign* territory" of the United States or The State of Texas, or what?

What if "this state" is purely a statutory creation of the Congress? Then the territory of "this state" might not even be "sovereign territory" of the United States. If not, then neither the constitution of the United States nor of The State of Texas would provide an authority for a writ of HC "in this state".

I find it hard to believe that, one way or another, the "territory of this state" is not at least within the "sovereign territory of the United States". But if that were true, then what "sovereign" if any would have real control over "this state"?

The UN?

God Almighty?

The People?

I'm beginning to sense that "this state" may be a "sovereignty void". If there is no sovereignty in "this state," then there is no authority—only power. If there is no authority, then everything would have to be done based on either consent or force.

I've understood for several years that virtually everything that happens to you "in this state" must be done based on your actual or presumed consent. If it's true that "this state" requires our consent to move against us, it follows that "this state" does not rely on authority. If all authority flows from sovereignty, then "this state" *is* a "sovereignty void".

More importantly, any concept of "sovereignty"—from States' rights to the individual's God-given, unalienable Rights—would be anathema to "this state".

Implication: If you can prove you're an individual "sovereign" (a man made in our Father YHWH Elohiym's image and endowed by your Creator with certain unalienable Rights) or even acting within the sovereign territory of a sovereign State (like "The State of Texas"), "this state" might not be able to lay a glove on you.

I'm not yet completely clear on this notion, but I'm increasingly inclined to believe that any form of "sovereignty" may be anathema to "this state". It's like garlic to vampires and water to the Wicked Witch of the West.

If you can prove "sovereignty," "this state" may run.]