

Wilhelm Stuckart and Hans Globke, “Civil Rights and the Natural Inequality of Man” (1936)

Abstract

Wilhelm Stuckart (1902–1953) and Hans Globke (1898–1973) were high-ranking Nazi lawyers and civil servants during the Third Reich. Here is their official legal commentary on (and justification for) the passage of the Reich Citizenship Law. One of the Nuremberg Laws, the Reich Citizenship Law was introduced in September 1935 and enacted two months later.

In this excerpt, Stuckart and Globke attack a fundamental component of liberalism and its understanding of citizenship: the importance of the individual. To do this, they first introduce the concept of the *Volk*. Primarily a racial concept, the *Volk* was a community of supposedly racially similar “comrades.” The point of the state, as such, was not to engage in a legal relationship with the individual. Rather, the state was supposed to express the will of the *Volk* community. (Note the ways in which the Nazi preoccupation with pseudo-biological understandings of race appears throughout the excerpt: the *Volk* community, for example, is described as an “organism.”) The state was portrayed as an exterior structure that passed laws to protect the Germanic race. Such imagery allowed the Nazis to depict Jews as an infectious and foreign “disease” within the *Volk* community and to further justify their desire to exclude or expel them from German society. There were no individuals with rights naturally bestowed upon them in German society; rather, there were members of the German race with specific qualities and duties that had to be developed and fulfilled over time.

Source

The political science of the past century regarded the state as an entity in itself, as an abstract juristic state-person. On the other hand, the fundamental political value of National Socialism is not the state as such, but the people. Here, perhaps, the deepest differences between the Germanic world of ideas and Romance (Latin) thought are manifest. In Germanic community thinking, the state consists of a system of communities—family, clan, an organized body of a hundred men, Volk community—each of which may encompass a number of more closely knit communities. The entire life of the individual comrade unfolds within these communities. Outside of these communities no human life exists in the legal sense, but only a biological, vegetative existence; thus anyone expelled from the community for a crime is an outlaw. Thus the state is not something “other” in contradistinction to the comrade or even something “above” the comrade. Rather, the comrades of the community in their totality constitute the state.

[...]

The Reich is the exterior structure of the law in which the ordered community of the Germans assumes an external appearance. It is the legal concept of German political unity. Consequently, the idea of the Third Reich has a profound constitutional importance. The Third Reich is the German Volk idea become a reality. It should, therefore, not be regarded as a special organism and as an abstract state personality above the people. Rather it is, and will increasingly become, the political-Volkish organization that fully harmonizes with the vital laws of the organism, the people. The Reich is the political and legally constituted Volk community within the German living space. Hence we no longer look upon the Reich as a self-sufficient, abstract state, existing by and for itself. Rather, for us the Reich is the community order of the totality of Volkish life—the highest organizational manifestation of the Volk community, bound by ties of blood, which gathers all the organizations and functions of the people into an active unity, into

public power. The Reich organization as such can no longer be considered to have an existence and purpose of its own, as is the case in the individualistic concept of the state. If, however, the state—not its apparatus, but the state in the Volkish-racial sense—derives from the nation, if it is the organization of the living organism, of the people, this, consequently, is also a clear expression of the fact that the state is not an insignificant entity. The people need an organizational structure suitable to their character, and the organizational framework must have its content, if the people are not to be an amorphous mass and the Reich a rigid, dead form. The repudiation of the abstract state personality, however, does not prevent the Reich—as the political-Volkish organization of the people—from being the vehicle of rights and duties; in other words, the Reich has full competence in all legal proceedings. The vehicle of this competence is no longer the abstract legal figure of the state, but the community of the Volk in its politically formed and legally ordered structure.

This conception of Volk and Reich also determines the relationship of the individual to the whole. As we have already emphasized, the liberalistic conception of the state put the individual and society in opposition to the state. It did this by emphasizing the individual's right to the greatest possible degree of unrestricted activity and by assuming that it was its duty to free the citizen from the fetters of an over-powerful state authority and to protect him from state interference. The individual was not looked upon as a member of a community, but as an opponent of the state. The relationship of the individual to the state was determined in terms of the person as such and favored the individual at the expense of society as a whole. According to the National Socialist conception, however, it is not individual human beings, but races, peoples, and nations that constitute the elements of the divinely willed order of this world. The individual is rooted in his Volkdom as a fate. The community of the Volk is the primary value in the life of the whole as well as of the individual. The individual human being can be conceived only as a member of a community of people to whom he is racially similar, from whom he inherits his physical and spiritual endowments (family, Volkdom). National Socialism does not recognize a separate individual sphere which, apart from the community, is to be painstakingly protected from any interference by the state. The moral personality can prove itself only within the community. Every activity of daily life has meaning and value only as a service to the whole. Thus the life of the individual can be developed to the full only in the service of the Volkish community. In the legal order, therefore, the position of the individual is no longer determined in terms of the person as such, but in terms of the community. From the standpoint of the public interest, as against that of a private person, the center of concern is no longer what the individual requires for the free development of his potentialities, or for the attainment of his personal goals, his striving for personal gain and possessions, and how much of this he can forgo for the sake of the community in times of emergency. Rather, on the basis of the highest responsibility to Volk and Reich, National Socialism poses the question: How much scope does the community grant to the rights of the individual? Thus a clear order of rank is created between the needs of the community and the justifiable aspirations of the individual. This does not mean the denial of the individual's civil rights, but his incorporation into a Volkish structure based on social justice and honor. He is evaluated as the smallest unit of the nation and as a part of the whole; he is protected by law for the sake of the whole. Civil rights and duties do not flow from the unrestrained personality of the individual being and from the legal relations between him and the state personality. Instead they derive from his own rank and position in the community. The individual is born as a member of his Volk. This membership creates for him rights and duties toward the Volk as a whole and all its other members. Hence the rights and duties of the individual do not owe their existence to a bilateral legal relationship between the individual person and the state person. Rather, they grow directly out of the individual's membership and position in the community.

Reich citizenship, the totality of all Reich citizens, is the people in its political configuration. Acquisition of citizenship places the racial comrade who belongs to the state in full possession of the rights and duties emanating from his membership in the Volk. The Reich Citizenship Law assigns the German national or citizen of kindred blood his proper place as a full member in the Volkish community. This

membership creates full political rights and duties.

The Reich Citizenship Law actualizes the Volkish ordering of the German people on the political level. Thus it has become the safeguarding and supporting foundation of the entire political Volk order of the Third Reich. No other legislation adopted since the National Socialist revolution has so completely rejected the intellectual attitude and the state concept of the past century. In the Reich Citizenship Law, National Socialism sets the doctrine of the equality of man and of the fundamentally restricted freedom of the individual vis-à-vis the state against the hard yet necessary fact of the natural inequality and disparate natures of men. From the dissimilarity of races, peoples, and human beings there follows a necessary differentiation in the rights and duties of the individual. This dissimilarity, based on life and on unalterable natural laws, is reflected in the Reich Citizenship Law in terms of the basic political organization of the German people. Thus, it differentiates between state subjects and Reich citizens. A state subject, according to Paragraph 1 of the Law, is one who is under the protection of the German Reich and who therefore is especially obligated to it. A Reich citizen, on the other hand, is a subject of German or of kindred blood who by his attitude proves that he is willing and able loyally to serve the German people and the Reich. The structure of the Volkish life and Volkish order, and of the leadership state based upon it, requires that state subjects be distinguished from foreigners and stateless persons and that the inner-political Reich right of citizenship be established as the qualification for the exercise of civil rights and duties. It was alien to liberal legal thinking to link the exercise of political rights and duties to the Volkish descent and membership of the individual. It follows from the National Socialist concept of the state that the National Socialist state, as a Volkish state, necessarily makes the exercise of civil rights dependent upon membership in the Volk. What is German, and what either benefits or harms the German people and the Reich, can be sensed, known, and hence determined only by those of German blood. Thus in addition to state citizenship, membership in, or racial kinship with, the German people is a prerequisite for Reich citizenship rights.

Thus the Reich Citizenship Law fulfills a basic demand of the National Socialist party platform:

Only he who is a racial comrade can be a citizen. Only one who is of German blood, no matter what his religious faith, can be a racial comrade. Therefore no Jew can be a racial comrade. Anyone who is not a citizen can live in Germany only as a guest and is subject to special legislation for foreigners. The right to determine the leadership and legislation of the state may be granted only to citizens. We demand, therefore, that every public office, regardless of its importance, and whether in the Reich, in the Land, or in the municipality, be occupied only by citizens.

The Reich Citizenship Law elevates the bearer of German or racially kindred blood above the rest of the state's subjects by according to him alone the right to assume full Reich citizenship. All persons of alien blood—hence, especially Jews—are automatically excluded from attaining Reich citizenship.

But citizenship is not automatically granted to a subject of German or of racially kindred blood. Rather, the Reich Citizenship Law demands from him the will and ability loyally to serve the German people and the Reich. Before assuming the right of citizenship, he must show by his attitude that he has fulfilled this precondition.

In principle, the subjective precondition for Reich citizenship—namely, the will to serve the German people and the Reich—can be assumed as fulfilled unless there is evidence to the contrary. For the Reich Citizenship Law by no means aims to restrict the exercise of political rights to a small fraction of the German people to the exclusion of all other racial comrades. However, it is the sense and purpose of Reich citizenship legislation not to admit indiscriminately every state subject to citizenship upon the attainment of a certain age, but to grant it only after an evaluation of the subject's worthiness and then by an act of sovereign power, namely, the issuance of a patent of citizenship. Consequently, the vast majority of all state subjects will be granted full Reich citizenship upon their attainment of a certain age.

On the other hand, by denying or even withdrawing citizenship it is possible to exclude misfits from having a voice in political matters. Crime, offenses against the state, violations of civic obligations, such as refusal or unworthiness to serve in the armed forces, loss of the right to hold public office, professional unworthiness, will exclude the state subject from Reich citizenship. [...]

A member of any minority group demonstrates his ability to serve the German Reich when, without surrendering membership in his own specific Volk group, he loyally carries out his civil duties to the Reich, such as service in the armed forces, etc. Reich citizenship is, therefore, open to racially kindred groups living in Germany, such as Poles, Danes, and others.

It is an altogether different matter with state subjects of alien blood and race. They do not fulfill the blood prerequisites for Reich citizenship. The Jews, who constitute an alien body among all European peoples, are especially characterized by racial foreignness. Jews therefore cannot be regarded as possessing the capability for service to the German people and the Reich. Hence they must remain excluded from Reich citizenship.

According to the law, the Reich citizen alone is the bearer of political rights. Only he can participate in the Reichstag elections or be a candidate in them; only he can take part in plebiscites, occupy honorary offices in state and municipality, or be nominated as a professional or honorary public servant. Hence, in the future no Jew can hold such public office.

In view of its far-reaching consequences and its supreme importance for the nation as well as for the individual, Reich citizenship can be granted only with the greatest prudence and only through the specially empowered offices of the Reich and party leadership. Thus, in accordance with the will of the Führer, the Reich citizenship patent will be the most valuable document that the nation has to bestow and the highest honor that a German citizen can ever earn. Therefore, it is obvious that Reich citizenship can be withdrawn if the prerequisites to it, especially conduct worthy of a citizen, no longer hold.

A German state subject does not gain full Reich citizenship simply through his ethnic origin or through activity in behalf of the German people, but only after an investigation of his worthiness and through an act of sovereign power by the grant of the citizenship patent. The necessary continuous examination of the German nation will lead to the exclusion from political life of all elements unfit for the continued development of the German people and the Reich. Thus, for all time, it will put the fate of the German nation into the hands of the bearers of good German heritage and German spirit.

[...]

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