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Advocate

May, 1996

Lawrence G. Wasden^{a1}

Deputy Chief of Staff, Office of the Attorney General, State of Idaho

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CONSTITUTIONALIST GROUPS MISREPRESENT BOTH FACT AND LAW

Overview

The violence at Ruby Ridge, Idaho and Waco, Texas has become the battle cry for groups claiming to have authority to create “common law” courts. These groups of “constitutionalists” are difficult to define and understand because they are not solidly unified, although they communicate with each other and use similar documents and tactics in their fight against the government. They tout a variety of themes and doctrines which are similar and come from common sources. But doctrines of some groups are irreconcilable and dissonant *9 with doctrines of other groups. The doctrines are hard to follow because they are inarticulate and do not proceed in a logical sequence.

They have a few basic themes. Each group claims the United States Constitution as the supreme law of the land. However, they choose to accept and apply only those constitutional principles which the particular group believes advance or enhance their cause. They discredit or ignore constitutional principles which are contrary to their cause and attempt to rewrite history or ignore facts in order to provide credibility to their doctrines and legal arguments.

In particular, they forget that our country operated under the Articles of Confederation. In fact, some groups interpret the Constitution to be a re-enactment of the Articles of Confederation. They also forget that we fought the Civil War over the issue of states' rights. The Union won; the confederacy lost and many Americans died.

Most of these groups believe the federal government has violated the basic concepts of the Constitution and, therefore, has forfeited its right to govern. At the very least, the groups believe that the federal government is pursuing some kind of national or global conspiracy to undermine the Constitution and attack American citizens.

The groups view most governmental actions to control weapons as a precursor to enslaving citizens. They do not view gun control in isolation, however; they view it as a part of the larger conspiracy to deprive citizens of their property and freedom. This conspiracy supposedly includes other kinds of governmental regulation such as driver's licenses, vehicle registration, business permits, occupational and professional licenses, taxation and similar regulation.

Many of the groups target current and former military and law enforcement personnel for recruitment. This is intended to enhance the paramilitary structure of their organization and to prepare for effective armed confrontation with current law enforcement.

The members of the groups often attempt to intimidate public officials, creditors or others by serving legalistic looking documents that have no legal force or effect and misrepresent both fact and law. They attempt to overload legal and administrative processes by deluging them with volumes of lengthy and irrational paperwork and by claiming all sorts of outmoded, repealed or misapplied common law doctrines and statutory procedures.

Many of the documents submitted by the groups indicate a belief that the civil and criminal justice systems operate on the basis of magic words or mystic documents and all that one must do to make the government or his opponent cease is to say the magic words or to send the mystic documents.

Jurisdiction

In Idaho, the district court is the court of general jurisdiction and has power to originally hear all matters arising under the laws of Idaho.¹ The magistrate court has limited jurisdiction to hear cases involving issues less than \$3,000, property, probate, misdemeanors, juvenile matters, preliminary hearings, warrants, and a variety of other matters.² The three traditional bases for personal jurisdiction are consent, residence, and domicile.³

The groups often object to jurisdiction of the court or an administrative body hearing a matter. However, their objections are difficult to understand because they do not use the term jurisdiction in its usual meaning. They often use the term “venue” instead of the term “jurisdiction.” They understand a challenge to venue to be a challenge to subject matter and personal jurisdiction. They argue that once they have challenged jurisdiction, the court or the administrative agency can no longer obtain jurisdiction. Therefore, they reject any court finding of jurisdiction and make repeated improper motions challenging both subject matter and personal jurisdiction.

They also confuse the issue of court jurisdiction with the power of an administrative body and often claim that the opposing party in a court action does not have jurisdiction and claim that they are not required to proceed in a court action until the opposing party proves the opposing party's jurisdiction.

They may base their jurisdictional challenges on a variety of doctrines. In large part those doctrines are claims that the courts have violated the Constitution and, therefore, have forfeited their right to sit as a court and can never obtain jurisdiction. They also claim that subject matter jurisdiction lies under federal maritime law under Article III, section 2 of the United States Constitution or under law merchant, which is a body of common law regarding commercial paper.⁴ The Uniform Commercial Code displaces the law merchant except where there is no explicit Uniform Commercial Code provision.⁵

Venue

Venue is proper in the county in which the matter arose. Typically, Idaho statutes provide for venue. For example, venue for income tax cases is in the county in which the taxpayer resides or has a principal place of business. For nonresidents, venue lies in Ada County.⁶ Criminal venue is nonjurisdictional, satisfied by a preponderance of the evidence and generally is in the county in which the offense was committed. There are special provisions for continuing crimes, crimes in more than one county, and similar circumstances.⁷

Constitutionalists do not use the term “venue” in that manner. In addition to using “venue” to mean “jurisdiction,” constitutionalists use “venue” to reject mail. Specifically, they claim that mail addressed to them cannot include a zip code and must include their judicial district or it has “improper venue.” (This concept really seems at odds with their claim that the court does not have personal jurisdiction.)

They also refuse mail and court pleadings in which their names are typed in all capital letters. They argue that typing in all capital letters signifies a corporation. They argue that a court has jurisdiction over a corporation because a corporation is a creature of the state. But, they are not a corporation and, according to them, typing their **names in all capital letters** is a fraudulent attempt to gain jurisdiction or venue over them. They often threaten criminal sanctions for such “fraudulent” behavior.

***10** Normally, the returned documents include a reference to [Uniform Commercial Code §§ 1-207 or 3-501](#) and include a “reservation of rights” or the term “without prejudice.” Their theory is that society operates on a social contract. In addition, they believe that “common law” courts are the only courts that function according to law. According to these groups, jurisdiction of federal and state courts and participation in society are based upon contract. Because the U.C.C. provides a structure for commercial contracts and society operates on a social contract, they argue that the U.C.C. governs almost all interactions and transactions in society. By refusing court documents or mail “without prejudice,” the groups suppose that they are eliminating their responsibility to respond and, therefore, are eliminating any criminal or civil liability.

Group members are encouraged to send a revocation or asseveration of contract. Such documents are an attempt to revoke or sever the “contract” between the individual and society. The revocations are based upon a variety of theories. The most popular is a claim that the social security system and the tax system were placed upon the public by fraud and coercion. They argue that participation in those systems is voluntary. In their view, voluntary means optional. As such, they opt out of those systems by submitting a revocation.

They also “revoke” their citizenship as an attempt to undermine any regulation by state or federal authority. The revocation documents are sent to state and federal taxing authorities, the congressional delegation, the governor, the attorney general, and a host of other government officials. Typically, the documents include a statement to the effect that failure of the government to respond is an admission of the correctness of the document.

Citizenship

A racist theory popular among the groups is the distinction between two “types” of citizenship. They suppose that there are *de jure* and *de facto* citizens. What they mean is that certain people (whites) are citizens by virtue of the United States Constitution as it was originally adopted. The Great Compromise provided for representation in the House of Representatives to be based upon population and representation in the Senate to be on an equal footing. In determining population for purposes of representation and taxation, slaves (African Americans) were counted as three-fifths of a person. Free persons (whites) were counted as whole persons and, therefore, are *de jure* citizens. Slaves were not whole persons and were not citizens. After the Civil War, slaves were made citizens by virtue of the Thirteenth, Fourteenth and Fifteenth Amendments. As such, non-whites are *de facto* citizens. *De facto* citizens are subject to the jurisdiction of the state and federal governments and are also subject to income tax by virtue of the Sixteenth Amendment. In light of this theory, members of the group claim to be “Free White Males or Females,” and often include the claim to be “Christian.” They file a variety of lengthy documents or affidavits to establish their “white” ancestry.

Constitutional Amendments

Some groups claim that the state of Ohio was never formally or properly admitted to the Union. Therefore, all constitutional amendments in which Ohio and all subsequent states participated in ratifying are void. Ohio participated in ratifying the Twelfth Amendment. Therefore, according to the theory, all amendments after the Eleventh are void.

These groups often also claim that all states admitted to the Union after Ohio were never properly admitted and, therefore, do not exist as states. Some groups claim that the Louisiana Purchase was defective and, therefore, western states were never properly admitted to the Union. As such, western lands are available for colonization.

Taxation

Most constitutionalists argue that the Sixteenth Amendment, ***11** which authorizes income taxation without apportionment, is inapplicable to them. Generally, they argue that the Sixteenth Amendment was never properly adopted because Ohio participated in ratification. Therefore, according to them, the Sixteenth Amendment does not exist and income taxation by federal or state governments is unconstitutional.

They also oppose income taxation by making a variety of other fallacious arguments. Often, they claim that they do not have a taxable year or that they do not have income because they have wages and, according to them, wages are not income. Both federal and Idaho statutes provide differently.

Also, they argue that only corporations are subject to tax and, because they are not a corporation, they are not subject to tax. Again, federal and Idaho statutes undermine that theory.

Some constitutionalists argue that compelling them, by a writ of mandate, to file a return violates their Fifth Amendment right against self-incrimination. The Idaho Supreme Court has held that a writ of mandate is a proper method for requiring a taxpayer to file returns and, on its face, such an action does not violate Fifth Amendment rights. The Idaho Court of Appeals has held that, "it is clear beyond cavil that income taxation by states is constitutional."

The length and variety of other fallacious arguments seems endless. In fact, one constitutionalist argued in district court that he was not a taxpayer because he was not personally named in the statute defining the term "taxpayer." The district court disagreed.

Allodial Title

Some groups claim allodial title in their real property. Some states recognize allodial title as ownership of lands which are held in "absolute and direct dominion, subject only to escheat in the event of failure of successors in ownership." According to constitutionalist theory, however, allodial title allows them to avoid paying property taxes. In conjunction with allodial title, constitutionalist propaganda discusses the right to kill law enforcement officers to resist unlawful arrest.

About the time of the Norman Conquest in England, the king was considered to own all real property. The king granted some subjects feudal title. This obligated the feudal lord to pay rent or provide service. Rent meant payment of money to the king. This was essentially a property tax. Service meant providing soldiers to defend the king. The king granted some subjects title to their property, which precluded their obligation to pay rent or to provide military service. Such a grant was called allodial title. This type of allodial title "largely disappeared from England after the Norman Conquest."

Despite the disappearance of allodial title long about five centuries before the colonization of the new world, constitutionalist theory holds that, in today's world, allodial title precludes the payment of property taxes. Constitutionalists claim to believe that they obtain allodial title by recording the original government patent. Generally, a government patent conveys fee simple title. Generally, the patent transferred a large parcel of property. Subsequent transfers of smaller portions of that parcel have divided ownership of the original parcel. As a consequence, a constitutionalist's re-recording a patent may cloud title of surrounding properties. Constitutionalists have refused to voluntarily resolve such problems.

Abatement

Abatement was a common law plea which was a motion for the overthrow of the entire suit either temporarily or permanently. A motion to dismiss is a comparable modern motion.⁸ Federal common law pleading was abolished by Rule 7(c) of the Federal Rules of Civil Procedure. State common law pleading was abolished by Rule 7(c) of the Idaho Rules of Civil Procedure.

Despite the abolition of common law pleas, constitutionalists advocate the use of abatements. They claim that simply filing an abatement requires all litigation to cease or requires all those in opposition to stop. Abatements are seen as having a mystical or magical power. They file abatements against public officials, creditors, neighbors and others.

Sovereignty

Some groups or members claim to be sovereign and, therefore, claim sovereign immunity. They base this claim on the Tenth and the Eleventh Amendments. The Tenth Amendment reserves powers not delegated to the federal government to the states or to the people. They argue that the federal government and the state governments are false and, therefore, not legitimately in power. Because they are not legitimate, the state and federal governments are not sovereign and, therefore, that power is reserved to the people. Therefore, as a person, they are the sovereign and are cloaked with sovereign immunity.

The Eleventh Amendment prohibits suits against a state by citizens of another state or subjects of any foreign state. According to constitutionalist theory, because Ohio and all subsequent states were not properly admitted to the Union, states do not have Eleventh Amendment protection. Some group members declare themselves, as individuals, to be a state or a republic and, therefore, believe they obtain Eleventh Amendment protection.

Liens

Constitutionalists claim the ability to file “common law liens” against public officials, creditors and others who oppose them. To create such liens they simply make up an amount, such *12 as \$100,000,000 and publish a legal notice in the local paper claiming the existence of a lien. Notices of this type have been given for the Attorney General, Alan Lance, Chief Bankruptcy Judge Jim Pappas, Fourth District Court Judges Deborah Bail and Daniel Eismann and a host of other public officials.

One tactic by constitutionalists is to provide a “forgiveness of debt” for all or a portion of the “lien” which is income to the “debtor.” The constitutionalist then submits a false 1099 statement to the State Tax Commission and the U.S. Internal Revenue Service. This is intended to cause tax problems for the public official or creditor.

Some liens purport to be recorded with the “IRS,” which is the Indiana Recording Service, not the Internal Revenue Service. The Indiana Recording Service is a “common law” repository for these types of documents. It has no presence in Idaho.

Some group members attempt to record such documents with the county recorder. The Kootenai County District Court recently ruled that the county clerk was not required to record such documents because they were not among the statutory documents for recording.⁹

Some groups send false documents they identify as U.C.C.'s to public officials or creditors for signature. Typically, the document indicates that after a specified time it will become effective without the “debtor's” signature. They also indicate that the document will be filed with the Secretary of State. Upon failure to pay the “debt” created by the document the “debtor” is sent a variety of threatening letters and orders to appear before the “common law court.” In order to deal with this situation, the Attorney General proposed House Bill 632, which provides a mechanism to remove common law liens, penalties for those creating such liens and allows recording officers to refuse to record or file the documents.

Constitutionalists have attempted to pay public as well as private debts with a document denominated a “certified bankers check,” “comptroller warrant” or “draft.” Normally, the check, warrant or draft is made out for approximately twice the amount of the underlying debt. However, the check, warrant or draft is not encoded and, further, is not a negotiable instrument under the Uniform Commercial Code.¹⁰ Generally, the documents include cashing instructions and demand for immediate refund of the excess payment. The documents claim that the check, warrant or draft is redeemable at the office of postmaster but may also require presentment to the comptroller of currency. The aim is to surreptitiously have the public agency or private creditor refund the overpayment. The constitutionalist pockets the refund and then sends the agency or the creditor a variety of documents from a “common law court” purporting to exclude the transaction from review by any state or federal court. The basis claimed for exclusion is the constitutionalist's status as a “freeman” or “de jure citizen.”

Common Law Courts

Constitutionalists claim to believe in the Constitution but claim authority under the Magna Carta to create “common law courts.” They claim that federal and state court judges have overstepped their constitutional authority and, therefore, have forfeited the power to hear cases. They charge judges with fraud by requiring jurors to follow the law in rendering a verdict. They create “common law courts” by organizing themselves, selecting justices and publishing their rules in a local paper. Their rules are internally inconsistent and lack the most basic concepts of due process.

A common law court has issued a “Notice of Felony” against Seventh District Judge Brent Moss and at least one other public official. The document charges two counts of criminal conduct. Count I alleges a violation of Fourth and Fifth Amendment rights by requiring the constitutionalist to file income tax returns. Count II alleges, “acts subversive to the United States.” The document describes the penalty for these alleged crimes as life imprisonment or death. The common law court has issued similar documents to Seventh District Magistrate Mark Rammell.

Security

Members of these groups have attempted to disrupt the orderly conduct of business in courtrooms around the state. Some appear in courtrooms and shout at counsel or the court and show other signs of disrespect. The trial court administrator and county sheriff should be advised of hearings where constitutionalists may be present, in order to provide appropriate security.

Conclusion

These groups need to be taken seriously. They pose security risks, especially in the confines of a closed court room. They also pose threats to the economic well being of public officials and anyone who may be a creditor. Their ideas border on anarchy and are illogical. Yet, constitutionalists possess fanatical zeal for their doctrines. Even though they hold the Constitution in one hand, they crush it with the other.

Footnotes

^{a1} Lawrence G. Wasden obtained his J.D. from the University of Idaho and was admitted to the Idaho State Bar in 1985. He served as a Canyon County Deputy Prosecutor and as the Owyhee County Prosecutor before his appointment as a Deputy Attorney General in 1989. Wasden was assigned to the State Tax Commission until August 1995 and now serves as the Deputy Chief of Staff for the Attorney General.

¹ Idaho Code § 1-701.

² Idaho Code § 1-2208

³ *Jonasson v. Gibson*, 108 Idaho 459, 700 P.2d 81 (1985).

⁴ 15A Am. Jur. 2d Common Law § 10 (1976).

⁵ 15A Am. Jur. 2d Commercial Code § 15 (1976).

⁶ Idaho Code § 63-3030A

⁷ Idaho Code § 19-302 et seq.

8 Black's Law Dictionary 4 (5th ed. 1979).

9 Leroy J. Murray v. Tom Taggart, Kootenai County Case Number CV 95000642.

10 Idaho Code § 28-3-104.

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