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# Our Nonconstitutional Legal System

Many recognize that the legal system today does not follow constitutional law or the common law, as it once did, but is now operating under some other law. While it is generally agreed that we are under a different law and legal system, its exact nature seems to be in dispute. It has been said that we are under admiralty law, equity law and procedure, administrative rules, public policy, emergency measures, bankruptcy law, the war powers, international law, or martial law.

In a sense, all of these concepts are in part correct, since aspects of each of them are being arbitrarily followed. But none of them specifically state or identify the legal problem and situation. While the cause or source of the current corrupt law and legal system is to be found in the spiritual sector, there is a legal explanation for what is transpiring in the government and courts.

## Constitutional Avoidance

The question many of us have often asked is, how can those who control the legal and judicial system avoid conflict with the constitution while implementing arbitrary and tyrannical laws and procedures?

The answer is that they make use of a concept known as "constitutional avoidance." By this basic concept it is never presumed that the legislature intended to act contrary to the Constitution or Bill of Rights, or that it "meant to exercise or usurp any unconstitutional authority."[1] Thus if a statute can be interpreted two ways, one which conflicts with the constitution, and one which does not, the courts will always adopt the interpretation that avoids constitutional conflict. They will also dispose of matters by some other means which does not involve the constitution if available.

> The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of.[2]
>
> Where a case in this court can be decided without reference to questions arising under the Federal Constitution, that course is usually pursued. . .[3]
>
> A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score.[4]

Thus a construction or decision which would be in conflict with the Constitution is to be avoided, if another is available that causes no conflict. In dealing with what it called a "nonconstitutional issue" the U.S. Supreme Court stated this rule of procedure:

> [T]he ordinary rule [is] that a federal court should not decide federal constitutional questions where a dispositive non-constitutional ground is available.[5]

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1 *United States v. Coombs,* 12 Peters (37 U.S.) 72, 75 (1838); *San Gabriel County Water Dist. v. Richardson,* 68 Cal. App. 297, 229 P. 1055, 1056 (1924).

2 *Ashwander v. Valley Authority,* 297 U.S. 288, 347 (1935).

3 *Siler v. Louisville & Nashville R.R. Co.,* 213 U.S. 175, 193 (1908); *Light v. United States,* 220 U.S. 523, 538 (1910).

4 *Panama R.R. Co. v. Johnson,* 264 U.S. 375, 390 (1923); *United States v. Standard Brewery,* 251 U.S. 210, 220 (1919).

5 *Hagans v. Lavine,* 415 U.S. 528, 547 (1973).

Suppose that a Federal statute required all farmers to sell their grain to certain designated grain mills. One farmer had a contract with one of these grain mills to sell his grain to them. When the law is passed he stops sending his grain to that mill in protest of the law which is obviously not authorized by the Federal Constitution. The grain mill thus sues the farmer and the farmer claims that the statute which the grain mill bases its claim upon is unconstitutional. But as the record shows that the farmer was under a contract to sell his grain, the court holds that the farmer is required to sell his grain to the mill, and the statute appears to be held valid.

That contract became the "other ground" or the "nonconstitutional ground" upon which the matter can be settled. Thus if a non-constitutional ground exists, as well as an unconstitutional one, the issue will be decided upon the nonconstitutional ground to avoid conflict with the Constitution, no matter how much the statute involved might conflict with the Constitution. If there was no contract and thus no "other ground" existed, the court still would see if the statute could be interpreted in some reasonable way so as to avoid the conflict.

The concept of constitutional avoidance is basic and somewhat logical and just; but those who are in control of the current legal system have taken this principle and have expanded upon it and made it the basis of the system we now have. They have intentionally created other "nonconstitutional grounds" and "issues" to circumvent the application of constitutional law. They have done this through legislative action by creating a host of boards, commissions, agencies, bureaus and trusts which make up a rather new concept of law and government called "administrative law." The legal status of these entities is much like that of a corporation, which is also created by statute.

> The powers granted to an administrative body may be such as to establish it as a legal entity, and, although not expressly declared to be a corporation, it may be considered a public-quasi corporation.[6]

> The interstate Commerce Commission is a body corporate, with legal capacity to be a party plaintiff or defendant in the Federal courts.[7]

When a government is created by a compact or constitution, it too is in a sense a legal entity, or corporate body, but one which exists by the decree of the people or by the common law. But these administrative agencies or bodies, being creatures of statute, have a different relationship to the people than do the legislative, executive and judicial bodies created by the constitution. This point is critical since the relationship to an entity determines the authority for the "law" it might make.

These agencies and commissions are not true constitutional entities and have no common law authority being that they are created by the legislature. But, like a corporation, they also are not unconstitutional. Rather they are "non-constitutional" in nature, which simply means their existence does not come from the constitution. Thus, the problems and conflicts citizens have with these "legal entities" can be decided on some ground other than a constitutional one. It becomes an issue that can be decided without reference to the Constitution, as they are not its creatures.

> No creature of the Constitution has power to question its authority or to hold inoperative any section or provision of it. [8]

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6 73 *Corpus Juris Secundum,* "Public Administrative Law and Procedure," § 10, p. 372, citing *Parker v. Unemployment Compensation Commission,* 214 S.W.2d 529, 358 Mo. 365.

7 *Texas & Pacific Railway v. Interstate Commerce Com.,* 162 U.S. 197 (1895). In 2 Am Jur 2d, "Administrative Law," § 32, p. 56, it states: "Some administrative agencies are corporate bodies with legal capacity to sue or be sued."

8 *Commonwealth v. Illinois Cent. R. Co.,* 170 S.W. 171, 175, 160 Ky. 745 (1914).

Artificial legal entities are creatures of the legislature, and are not "creatures of the constitution." Therefore they are not bound to the terms or limitations of the constitution, except as statute might make them. Thus when citizens have a conflict with these entities, the issue can be resolved upon a "nonconstitutional ground," not the constitution. The Internal Revenue Service is a typical example, as it is not a creature of the U.S. Constitution nor does it have common law powers. It is a mechanism created by government and thus any conflicts with it can be decided upon grounds other than the Constitution – nonconstitutional grounds.

The constitution with its requirements and limitations has been avoided by creating a *nonconstitutional* entity. The activities of such entities are generally immune from attack as being *unconstitutional.* This is especially so today with the adverse spiritual conditions that prevail in the land.

The Federal Reserve is another example of this, as it is an artificial legal entity created by Congress. While it is true its "Federal Reserve Notes" are not constitutional, since such things are obviously not specifically authorized by the U.S. Constitution, they also are not *unconstitutional,* since Congress is not printing or issuing the paper currency. Congress is clearly prohibited from doing such things since it is a constitutional entity and its actions are limited by the Constitution. But a corporation or trust is not. So to avoid constitutional conflict, certain lawyers got Congress to create an artificial legal entity and then let that entity issue the paper currency. It is no different if a corporation would print and issue its own "Monopoly" money. Such a measure is not unconstitutional because the corporation is not a constitutional entity. Thus all constitutional issues have been avoided with the creation of the Federal Reserve.

Whatever area these nonconstitutional legal entities have control over, they function to avoid conflict with the constitution and due process procedures. It is true that we are not legally bound to follow the laws of these entities, or to use or accept Federal Reserve Notes. Since the *powers that be* have avoided the Constitution, there must be a way in which we can legally avoid their nonconstitutional activities, rules and laws. This can be done by declaring a lack of authority and subject matter jurisdiction because of the lack of valid law from the Legislature or Congress.

Under the Christian republic of the past the problems associated with this "administrative law" would have been minimal or less severe. But America, and the world, has become plagued with an ungodly spiritual condition which has magnified these problems. Though this adverse spiritual problem is the source of the legal problems and dilemma we face today, the nature and reasons for it are beyond the scope of this treatise. But the spiritual realm does affect the legal realm, and it has made these legal entities created by statute a severe problem with regards to freedom and individual rights.

## Nonconstitutional Laws

A law is constitutional if it conforms to the written constitution of the state or nation; it is unconstitutional if it is repugnant to that constitution. But this is based upon the presumption that the law was enacted and passed by the constitutional body which is authorized to do so. In other words, the law comes from a "creature of the Constitution."

The commissions, committees, or revisors who drafted the codes and the comprehensive revised statutes in this country are not "creatures" of any constitution. They are a creation of the legislature or Congress and thus are creatures of statute. The "laws" they write are not subject to any constitution. Thus any conflict a citizen might have with their laws is not subject to a constitutional attack. As nonconstitutional entities there is no constitutional issue that can be raised. Thus

any constitutional issue raised will be avoided and the matter decided on other grounds.

Suppose the parliament of France passes a law that prohibits anyone from having over 200 dollars on them while in public, and any violation thereof shall be punished by 90 days imprisonment. That law cannot be called a constitutional law from the perspective of the U.S. Constitution, since it did not come from Congress. But it also cannot be called unconstitutional, no matter how oppressive it is or how contrary it is to the U.S. Constitution. Such a law could only be regarded as being "nonconstitutional" in nature.

Suppose now that you happen to be charged with violating this law by the Federal Government. In your defense you argue in court that this law violates your rights under the 4th and 5th Amendments, and is repugnant to the Constitution. The judge ignores your arguments and holds that the law is not "unconstitutional." The court would, of course, be correct but it would seem to you and everyone else that the court is corrupt and has no regard for the U.S. Constitution.

When the nature of this law is made known the decision of the court makes sense. The law was not a law of Congress, though it might have been presented as such, but rather was a law from another legal body. The clue should have been clear to all by the fact that the law in question did not have an enacting clause for Congress that said:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.*

The law in question was nonconstitutional because it came from a nonconstitutional source. This is because the French Parliament is not subject to the U.S. Constitution. While you are subject to certain laws that Congress can enact under the Constitution, you are not subject to laws of the French Parliament. But your failure to raise this fact of the non-constitutional law created the implication that you were subject to the law. Your position should have been that there is no valid law of Congress on the indictment, which makes the indictment insufficient, which causes a lack of subject matter jurisdiction of the court.

The French Parliament cannot pass any unconstitutional laws because their legislative authority does not come from the constitution, nor are they legally bound to its terms as is Congress. From our perspective in America, all laws passed by this assembly are nonconstitutional, that is, they have no relation to the U.S Constitution or any state constitution. But if one fails to point this matter out in court, such laws will be used against him.

This same situation is what is occurring with the current legal system. The laws we are being charged with violating are written by commissions and committees, and are held out to the public as being laws of the State or nation. But we are not required to follow these laws as they do not come from a constitutional source. Congress and the State legislatures have created these legal entities to write laws which are based upon laws they once passed, so as to make it appear they are laws of Congress or the Legislature.

If the California Legislature passes a law and then the Legislature of Texas copies that law verbatim and enacts it as a law, no one can look at what the Legislature of Texas wrote and enacted and say it is a California law. If a prosecutor in California had the Texas Statute book which contains this law and cited from it on a complaint, would that make a valid complaint? No, it wouldn't because the law is not a law of the California Legislature, as it does not have the enacting clause of the California Legislature. The fact that the California Legislature passed an identical law is irrelevant because that law is not referred to in the complaint. Likewise, the laws from the commissions and committees do not become

laws of the State Legislature just because they are similar to laws once passed by that Legislature. The laws of these entities do not have the enacting clause of the Legislature.

Let us look at another example of this problem. Suppose that General Motors corporation passed a regulation or by-law which prohibited anyone from parking their car in neutral gear. You are caught doing so and your car is towed away by the city, and you are charged for violating this regulation by the State. The complaint or indictment might cite the regulation as GMR 142.65, subd. c (GMR=General Motors Regulations).

If you argue that the law or regulation is a violation of the Bill of Rights, or is unconstitutional, you shall not prevail because General Motors cannot do anything unconstitutional, nor can they violate your rights of life, liberty and property as prescribed by the Bill of Rights. They can commit torts, trespasses, false imprisonments, thefts, and damages, but they can never write a rule, regulation or by-law which would violate your rights under the Constitution. As a corporation, General Motors is not subject to the limitations of the Constitution. Only duly constituted offices, departments or positions under the constitution, or which exist by the common law, are subject to the constitution. Only these entities can do something "unconstitutional." Thus your claim that the law violates your constitutional rights and exceeds the limits of the Constitution would be denied and held as frivolous.

It is true that the Regulation of General Motors (GMR 142.65, subd. c.) is not a constitutional law, but it also is not an unconstitutional law. It is a "nonconstitutional law," meaning it comes from a source outside the realm of the constitution, because General Motors is not a constitutional entity. The law passed by General Motors has no authority behind it which would make you obligated to follow it. The law contains no enacting clause showing that it comes from the State Legislature or some authority to which you are subject. There is no obligation on your part to follow the law because there is no legal relationship between you and General Motors. If one is an employee of General Motors the law might apply to him, since some manner of legal relationship then exists. But the law could not apply to employees of other companies.

## Creating an Issue for Trial

The issue of a trial or hearing exists when the plaintiff and defendant arrive at some specific point or matter in which one affirms and the other denies.[9] In a criminal matter this issue is that a law has or has not been violated. But if there is no valid law, or the accused is not subject to the law in question, no issue can legally exist as the basis for the point of contention does not legally exist.

The current corrupt legal system has actually sown its own seeds of destruction by arbitrarily forming codes and statute revisions. All complaints or indictments today cite laws from these codes and revised statute books which contain no enacting clauses. Any law which fails to have an enacting clause is not a law of the legislative body to which we are constitutionally subject. The laws from the U.S. Code or Revised Statutes of the State are from another legal entity, that being some commission or committee.

Since there are no valid laws on the complaint or indictment, there legally is no issue before the court. But the court system creates an issue by asking the accused how he pleads to the charges. The plea causes an issue to exist because it creates a controversy. The controversy relates to what is on the complaint or indictment because the plea acknowledges that it is a genuine document.

9 Black's Law Dictionary, 2d ed., West Publishing, 1910, p. 657.

> The very act of pleading to it [an indictment] admits its genuineness as a record.[10]

If there is a law on the complaint which is unconstitutional, or is from another state or other legal entity, the violation of that law can become a triable issue by way of the plea. Thus when one pleads to a false or invalid charge on the complaint, he establishes an issue which would not have otherwise existed.

> The plea forms the issue to be tried, without which there is nothing before the court or jury for trial.[11]

It is essential to a valid trial that in some way there should be an issue between the state and the accused, and without a plea, there could be no issue.[12] If you make a plea of "not guilty" to the charge of violating GMR 142.65, subd. c, or the law of the French Parliament, you have admitted or acknowledged that the law used in the complaint is genuine. It has now been established that there exists an issue which can be tried. When one is charged for violating a zoning ordinance, driving without a license, or failure to file an income tax return, and a plea of "not guilty" is made, one has in effect acquiesced to the validity of these laws. The only way one can prevail is by showing they did not commit them, or by showing they are unconstitutional. But since these are nonconstitutional laws of some committee or commission, such constitutional arguments will not work. The one thing that can stop this procedure is showing a lack of subject matter jurisdiction, which can be shown because the laws used have no enacting clauses and are thus void. It now is an issue of authority for that law to exist as a law of the state or Congress.

When you are charged with a violation of some "Code" of some committee, the court proceedings are in *equity* since your conflict is not with a constitutional source of law, or with a common law crime.

The legal system today does not recognize or proceed upon common law crimes, and thus the only things that are crimes are made so by statute (or rather code). A crime exists when a law exists which prohibits or commands an action. If there is no law, there can be no crime, and if there is no crime, there can be no subject-matter jurisdiction of the court to hear a matter. A nonconstitutional law has the same effect upon a complaint or indictment as does an unconstitutional law or a non-existent law. It renders the charging instrument void.

A nonconstitutional law is not a law to which we are subject, so doing what it prohibits cannot constitute a crime. Thus if General Motors passes a law requiring all persons to show up for work by 6:00 A.M. or they will lose their jobs, it is a nonconstitutional law. Unless one is an employee of General Motors, he is not subject to that law and so cannot be charged for violating it. Because it is a nonconstitutional law it is has no force and effect as a law over you and the court lacks subject matter jurisdiction to try the matter.

Only a constitutionally established government, or that which exists by the common law, (sheriffs, constables, coroners, mayors, etc.), can do something that is unconstitutional. Only the State Legislature is limited by the provisions of the State Constitution regarding laws enacted. Thus only the State Legislature can enact an unconstitutional law or statute. General Motors, Inc., or the Parliament of France, can pass all sorts of rules, regulations and laws, but none of them can ever be declared unconstitutional. But they are not valid laws which we are subject to, for we have no legal relationship to these entities. Likewise, we have no legal relationship to the commissions which drafted the modern-day "Codes" or "Revised Statutes."

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10 *Frisbie v. United States,* 157 U.S. 160, 165 (1894).

11 *Koscielski v. State,* 158 N.E. 902, 903 (Ind. 1927); *Andrews v. State,* 146 N.E. 817, 196 Ind. 12 (1925); *State v. Acton,* 160 Atl. 217, 218 (N.J. 1932).

12 *United States v. Aurandt,* 107 Pac. 1064, 1065 (N.M. 1910).

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# Conclusions and Comments

The comprehensive codes and revised statutes that exist today are but a clandestine means to subject citizens to some legal entity other than the State Legislature or Congress. They also serve as a clandestine means to bring laws into existence that are not limited to the confines of a constitution or the common law. While these codes were intended to solve the problem of massive amounts of law, they have created even bigger problems.

There is no way anyone can say that it was the intent of the framers of the Constitution, and the people who adopted it, to have all titles and enacting clauses stripped away from all the laws when they are published. Such a measure totally defeats the purpose for which these forms of law were intended and thus required in the State constitutions. In Washington it was held that the compilation entitled "Revised Code of Washington . . . is not the law."[1]

It has been repeatedly said that the comprehensive codes were done for the sake of "convenience." It also has been said that it would not be practicable to have the enacting clause or title precede every law within a revision or comprehensive code.[2] But note that nothing is ever raised or said about the constitutionality of such a measure. If those in government are free to do things based solely upon what they deem to be more practicable or convenient, then we truly live under an arbitrary and despotic government.

> The necessities of a particular case will not justify a departure from the organic law. It is by such insidious process and gradual encroachment that constitutional limitations and government by the people are weakened and eventually destroyed. It has been well said:
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> "One step taken by the Legislature or judiciary in enlarging the powers of government opens the door for another, which will be sure to follow, and so the process goes on until all respect for the fundamental law is lost, and the powers of government are just what those in authority please to make or call them." Oakley v. Aspinwall, 3 N.Y. 547, 568.[3]

Constitutions were written to prescribe certain ways of doing things, which means there will no doubt be other means of doing the same thing which are easier and more convenient. Governments naturally tend do that which is easier, more convenient and practical for their own sake. Whenever they do so they always transcend constitutional limitations and trespass on individual rights, and all of history attests that this is the result of arbitrary action.

The enacting clause acts as a sign or seal of constitutional authority of law. A king may have a seal which indicates his authority. All things that bear the seal of the king are recognized as existing by his authority. If a king's agent presents a document claiming it is from the king but has not his seal, many may believe it is by the authority of the king, though it is not. This is what the government has done with the codes and revised statutes. It has presented to the public a collection of statute books, claiming they are from the State Legislature or Congress, but the laws in them do not have the seal of authority upon them. They do not have the official enacting clause upon them to indicate they are laws from an authorized source. They thus are laws which no one needs to respect or obey.

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1 *In re Self v. Rhay*, 61 Wash. (2d) 261, 264, 265, 377 P. (2d) 885 (1963).

2 This argument is also not sound as the Illinois revised statutes had been compiled with titles and enacting clauses.

3 *Village of Ridgefield Park v. Bergen Co. Bd. of Tax.*, 162 A.2d 132, 134, 135, 62 N.J. Super. 133 (1960); citing *State v. Burrow*, 104 S.W. 526, 527, 119 Tenn. 376 (1907).