LIBERTY TREE

Vol. 16, No. 4 — April 2014

VOID *Ab Initio*

By Dick Greb

An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.

—Norton v. Shelby County, 118 U.S. 425, 442 (1886)

The principle of law that an unconstitutional act is as inoperative as though it had never been passed is one of long standing in the courts of our country. And even though the Supreme Court, in the *Norton* case cited to the right, didn't use the term *void ab initio*, it is the earliest case I found that lays out the principle so plainly. Earlier cases used the term in connection with various forms of contracts, deeds and such, but the *Norton* case applies it to unconstitutional acts of legislatures. The phrase "inoperative as though it had never been passed" is just a layman's version of *void ab initio*, or void from the beginning.

But like many other principles of law, the nice clean statement of it can never truly be realized. While the affected law may itself be inoperative, that's a far cry from an actual condition of being "as inoperative as though it had never been passed." In the *Norton* case, for example, the effect of declaring the law inoperative was to make worthless $300,000 worth of bearer bonds issued by the county commissioners of Shelby County,[1] in the hands of those who had bought them in good faith. On the other hand, had they not been held invalid, the funds to pay those bonds would have been forcibly extracted through taxation from the citizens and/or residents of the county. Obviously then, since the only way that everyone's interests could have been protected was for the bonds to have never been issued, time is of the essence when it comes to determining the constitutionality of legislation. However, as many of my previous articles have shown, the practices and policies of the Supreme Court virtually guarantee the untimeliness of any decision; that is, if a decision cannot be avoided altogether.[2] Indeed, the Supreme Court's decision in the *Norton* case occurred 17 years after the issuance of the bonds, and 14 years after their redemption date. The state cases which had originally found the statute purporting to authorize the issuance of the bonds unconstitutional, though filed within a month of the passage of the act in 1867, were still not finally decided until four years later.

The unconstitutional act does not appear to have made everyone a loser, however. After the lower state court dismissed the suit of the judges — whose jobs were being unlawfully conferred on the newly established commissioners — and while the appeal was pending, the bonds were issued and they (or the proceeds therefrom) were used to purchase $300,000 of stock in the Mississippi River Railroad Company. Now, the case report doesn't mention what, if anything, was done to remedy the wrongs done in this case (*i.e.,* the county obtaining valuable property in exchange for worthless paper, and the ultimate bondholders' inability to collect on their debt from the county), but even if restitution was made all around (years after the fact, and most likely putting the taxpayers back on the hook), the end result is certainly not the same as if the law had never been passed. Thus, you can never really avoid the substantial gap between the theoretical principle and the real-life application of the principle.

Another good example of this gap is the clearly unconstitutional registration and threatened gun confisca-

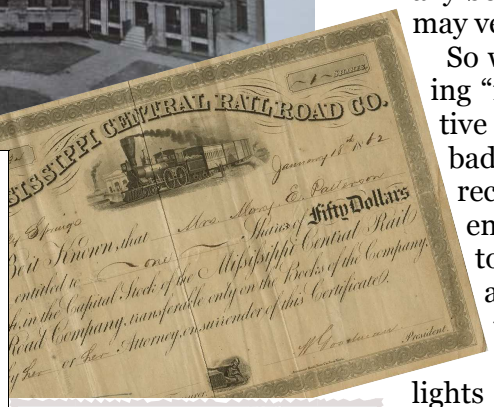
(Continued on page 2)

1. It was the creation of this group of county commissioners and endowing them with the powers of the constitutionally recognized chancery court that made the law unconstitutional.
2. See especially the *Steering Clear of the Constitution* series in the Nov. 2008, Jan. 2009, and Mar. 2009 issues of *Liberty Tree*.

 Telephone 410.857.4441 Post Office Box 91, Westminster, Md. 21158

(Continued from page 1)

tion currently taking place in Connecticut.[3] You have many people who acquiesced in the law and registered their firearms with the state government, which now has that information tucked safely away in its databases. Many of them undoubtedly complied against their wishes, but were unwilling to risk their immediate safety and security by refusing to comply (but all the while jeopardizing their future safety and security).




ATURDAY, MARCH 27,

FINANCIAL.

4,500,000

SEVEN PER CENT. GOLD BONDS,

THIRTY YEARS TO RUN,

ISSUED BY

The Lake Superior and Mississippi River Railroad Company.

THEY ARE A FIRST MORTGAGE SINKING FUND BOND,

Free of United States Tax,

SECURED BY

ONE MILLION SIX HUNDRED AND THIRTY-TWO THOUSAND ACRES OF CHOICE LANDS.

And by the Railroad, its Rolling Stock, and the Franchises of the Company.

A Double Security & First Class Investment

In every respect, yielding in Currency nearly

TEN PER CENT. PER ANNUM.

Present Price, Ninety-five and Interest.

TOP: Shelby County, Tenn. Courthouse as it stood in 1910. Tennessee passed an act in 1867 which formed a board of county commissioners. The board held a county court, subscribed to the stock of the Mississippi River Railroad Co., and issued bonds in payment therefor. The state supreme court found the act had unconstitutionally formed the commissioner offices, and the U.S. Supreme Court, in *Norton v. Shelby County,* further held that since the board had never existed lawfully, all the acts of the commissioners were invalid as a matter of law. **UPPER RIGHT:** Common stock issued for the Mississippi Central Railroad Co. in 1862. The latter half of the 19th century saw the construction of some 170,000 miles of track, much of it on millions of acres of land grants from Congress. **RIGHT:** 1869 advertisement in the *Pittsburgh Gazette* for Lake Superior and Mississippi River Railroad Co. bonds "Free of United States Tax" and secured by 1,632,000 acres of "choice lands, … the Railroad, its Rolling Stock and the Franchises of the Company."

Those who refused to register their weapons are risking their lives (and the lives of their family members as well), by literally putting themselves into the crosshairs of the state's uniformed enforcement thugs. After all, they've got all those militarized units and equipment they're just itching to use, like the armored personnel carriers (MRAPs) the federal government is giving away free to every town and hamlet, and the old standby HuRT and SWAT teams. Thus, the situation in Connecticut is a disaster in the making.

It's important to understand that these realities have already arisen from the enactment of this law, whether or not it is ever deemed to be unconstitutional. And any adjudication concerning its validity is undoubtedly a long way off — perhaps years away. Do you suppose that Connecticut is going to wait years to reap the fruit of its attempt to disarm its citizens? Not likely! In fact, the possibility that it might eventually be thwarted by a declaration of unconstitutionality may very well spur it to take action immediately.

So what happens when SWAT teams start confiscating "illegal" weapons? The news (at least the alternative media news) is full of stories of raids going badly, at least from the standpoint of those on the receiving end. They are by their very nature disorienting; indeed, they are planned and executed so as to make them so. The occupants are often asleep, and so are shocked awake by the destruction of their doors, flash-bang grenades, and hyper machine-gun-toting armored thugs shining bright lights into their eyes and screaming conflicting orders at them. Add to this the fact that to these hair-trigger stormtroopers, any movement whatsoever — including trying to comply with their demands — can be, and often will be, construed to be combative, resulting in them opening fire. And once they start spraying automatic gunfire around, nobody is safe — not you, not your wife, not your children, not even the other government goons.[4] How many casualties do you think will result from this type of scenario being repeated over and over throughout the state?

Even if the state managed to confiscate the "illegal" firearms without killing their rightful owners, what becomes of those weapons? Do you suppose the state will put all of those weapons in storage and maintain them in their current condition, so they could be restored to their owners if the law is shot down? Even if they did, who would pay the expense of obtaining, storing, maintaining, and returning all those weapons? The people of the state, of course! As always, since all state expenses are ultimately extracted by force from its citizens and residents, there is no down-side to the

(Continued on page 3)

3. See *Militia: the security of a free state & nation* in the February 2013 *Liberty Tree* for a short overview of the right to keep and bear arms.
4. Video taken of the gun confiscation raid on the Branch Davidians in Waco, Texas, for example, shows some of the jack-booted thugs cowering behind vehicles and, holding their weapons over their heads, firing blindly in the general direction of the building, even while others are on the roof of that same building and themselves cowering behind a wall, while holding their weapons out at arm's length and firing blindly into a 2nd floor window known to be part of the living quarters. Search online for Mike McNulty's excellent documentaries on the Waco massacres.

(Continued from page 2)

state. It literally pays nothing for its crimes![5] However, it should be obvious to any thinking person that the state will do no such thing. It will most likely destroy the confiscated weapons at the earliest opportunity, thereby making it impossible to return them to their rightful owners, and likewise making it impossible to ever restore the *status quo* to the condition "as though [the law] had never been passed"

> *Every citizen has a right to bear arms in defense of himself and the state.*
>
> **—Section 15, Declaration of Rights, Constitution of Connecticut**

Before moving on, let us consider the "best case scenario" — that being that the state goes no further with its schemes than it has already, the courts soon strike the law down, and so everything is back to "normal." But is it really? The state now has a database of gun owners and their weapons. Will they delete that database and forget everything that was in it? How could that ever be verified? The computer file of a database would most likely fit onto a flash drive, or even the data card from a digital camera. It could be copied, renamed, hidden, and/or distributed so easily that verification of non-existence is impossible. Suffice it to say that the information already collected will **never** be deleted nor forgotten. And so even in this best case scenario, the *status quo ante*[6] can never be fully realized.

The greatest hindrance to the *void ab initio* principle is the fact mentioned above — that the state never pays for its crimes. It always passes the price along to its unwilling victims. For the state, it's always a win-win proposition, and for the people, it's always lose-lose. The people have to pay the salaries of those who enact unconstitutional bills, pay for the enforcement of them, pay the personal price of compliance or non-compliance, pay to have the bills struck down, and pay any reparations resulting therefrom. Meanwhile, the state and its various agents proclaim immunity for themselves from any responsibility for their actions, and the courts (just another arm of the state, after all) give it their stamp of approval. It is this aspect which must be changed if we are to have any hope of preventing the manifold oppressions from unconstitutional enactments.

Clearly, the only way of truly manifesting the *void ab initio* principle is to prevent the unconstitutional laws from ever being enacted in the first place. And the only way to prevent unconstitutional laws is to make those who enact them, and those who carry them out, personally responsible for any damages as well as punishable for the crime of enacting or executing them.[7] If the fear of such punishment means that there would be far fewer laws enacted and enforced, then that would be a huge win for the people, because when the government fears the people, there is Liberty!

5. If the law is unconstitutional, then the taking and keeping of those arms, being without legal authority, is a crime.
6. That is, the state of things that existed before the unconstitutional law was passed.
7. If a government agent, given power by law to perform only a limited authority, exceeds his delegated power and performs unauthorized actions, then he is acting criminally.

Self-serving Affidavits

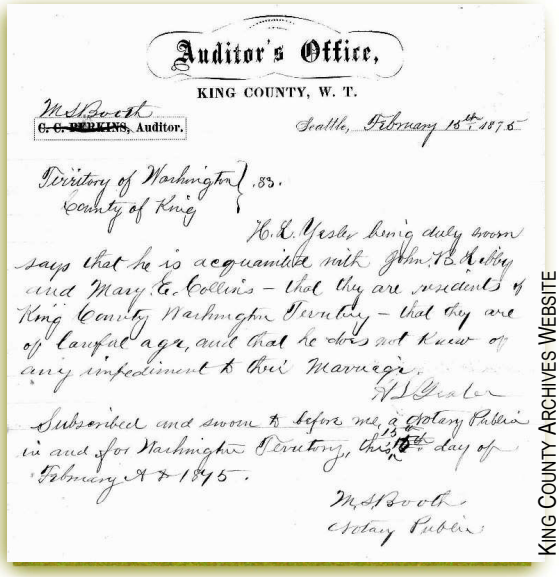
The thorny issue of social security numbers vis–à–vis driver's licenses continues to injure patriots. As discussed in the *Liberty Tree*, July 2012, most states have adopted "guidelines" for issuing licenses pursuant to the REAL ID ACT. The state laws often only prescribe license issuance for two classes of persons — those having SSNs, and those who are "ineligible" for SSNs.

Enter a young man who has no SSN and has never applied for one. He wants a driver's license, but the motor vehicle administration ("MVA") bureaucrats inform him that he must prove he has an SSN or obtain documentation that he is "ineligible" for an SSN. Since neither the state laws, nor the state regulations prescribe the "acceptable" types of documentation, the young man prepared one of the oldest and most common types of documentation — a self-serving affidavit.

An affidavit is a voluntary statement of facts by a witness, made in writing and under oath, and signed before an officer authorized to take oaths, such as a notary public. A "self-serving" affidavit is merely one made by a person for use in a matter pertaining to him, rather than for the cause of another. The use of such affidavits is centuries old, going back at least to the chancery courts of England.

Self-serving affidavits have been used since the beginning of America. They provide an evidentiary basis relied upon by the bureaucrat in such situations as issuing a license or placing a candidate's name on a ballot. Should it be later discovered that the statements relied upon were *false*, the person making them can be prosecuted for obtaining a privilege or benefit by fraud. Thus, affidavits make the applicant ultimately responsible for the statements he makes, relieving the bureaucrat from any responsibility with respect to actions he takes in reliance upon the applicant's statements.

In our young man's case, the MVA insists that his own affidavit — affirming that he has never applied for and is therefore ineligible for an SSN — is not acceptable documentation, and refuses to issue a license. Despite the fact that the MVA has *no* published regulations or public notices identifying acceptable documents, the pompous MVA low-lifes insist that they will only take a letter from the social security administration as "proof." (Note that such letter would not be sworn testimony nor even certification of the facts.)



Auditor's Office,
KING COUNTY, W. T.

M.S. Booth
~~C. C. PERKINS~~, Auditor. Seattle, February 18th 1875

Territory of Washington } ss.
County of King

H.D. Yesler being duly sworn says that he is acquainted with John Libby and Mary E. Collins – that they are residents of King County Washington Territory – that they are of lawful age, and that he does not know of any impediment to their Marriage.

H.D. Yesler

Subscribed and sworn to before me, a Notary Public in and for Washington Territory, this 18th day of February A.D. 1875.

M.S. Booth
Notary Public

KING COUNTY ARCHIVES WEBSITE

Handwritten witness affidavit from 1875, territory of Washington, for the purpose of obtaining a marriage license. Mr. Yesler swears that he is acquainted with John Libby and Mary Collins, that they are both residents of King County, of lawful age, and that he "does not know of any impediment to their marriage." M.S. Booth, Notary Public, states that Yesler subscribed and swore to those facts before him.

A century of increasing oppression (and theft) via the repeated sale of "permits" just to live, work, trade and travel in the U.S. has led to constant demands for "official" ID — that is, documents issued by the very bureaucracy demanding to see them, or those issued by other government agencies. By now, to a typical government thug, another bureaucrat's report about the citizen will be deemed "true," while the citizen's own sworn statement will be deemed merely "self-serving." In the infamous words of an MVA dullard: "Anyone can just write something down and sign it;[1] how can we know it's true?"[2] A lawyer the young man later consulted also opined: "Oh, judges would just consider your affidavit self-serving." Both the dullard and the lawyer used "self-serving" in its derogatory, common meaning: "serving one's own interests often in disregard of the truth or the interests of others."

Naturally, a self-serving affidavit serves the maker's own cause, just as statements made on a witness stand in his own case would. Legally, however, one's own affidavit is usually sufficient to establish the facts, unless and until it is rebutted by someone else's self-serving affidavit, which may raise issues that can only properly be decided at trial. The Fifth Circuit, for example, has stated: "[M]erely claiming that the evidence is self-serving does not mean we cannot consider it or that it is insufficient. Much evidence is self-serving and, to an extent, conclusional." The Sixth Circuit has said: "A court may not disregard evidence merely because it serves the interests of the party introducing it." Indeed, as the appeals court noted in an unpublished case: "If all 'self-serving' testimony were excluded from trials, they would be short indeed."[3]

Bureaucrats, as adversaries of freedom, naturally abhor the testimony of free persons. And as liars themselves, they cannot abide the truth. Nevertheless, an affidavit *is* acceptable documentation, particularly in the absence of any contrary evidence.

1. Any government agent can do this as well, presumably.
2. The MVA's job is to accept reasonable documentation, not to "know" if it is "true."
3. See *Rushing v. Kan. City S. Ry.,* 185 F.3d 496, 513 (5th Cir. 1999); *Harris v. J.B. Robinson Jewelers,* 627 F.3d 235, 239 (6th Cir. 2010); *Pittman v. National Fire Ins. Co. of Hartford,* No. 10-30950, 5th Cir., filed September 30, 2011.