

LIBERTY TREE

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Structured for THEFT



Middletown, Md. — On February 29, 2012, two Treasury Department employees invaded Randy Sowers' farm to serve a summons to testify before a Baltimore grand jury on April 3rd. The officials began interrogating the Sowerses about bank deposits of cash earned through their farmers' market business, South Mountain Creamery. About 45 minutes into the questioning, Sowers says, they suddenly informed him that the approximately 70,000 frns¹ then on deposit in the farm's PNC Bank account had *already* been seized, through a warrant executed the previous day.²

The "crime" Sowers and his daughter-in law Karen had allegedly committed is found at 31 USC §5324(a), which makes it a crime to "structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions" with the "purpose of evading the reporting requirements of section 5313(a) or 5325 or any regulation prescribed under any such section." The corresponding regulations for § 5313(a) make each cash deposit, withdrawal or payment in an amount greater than 10,000 frns reportable to the Treasury Department on a currency transaction report (CTR). The prescribed *criminal penalty* for "structuring" to "evade" the reporting requirement is a fine up to the amount involved in the alleged structured transaction, or five years in prison, or both,³ along with the forfeiture of all property "involved in the offense or traceable thereto."⁴

Liberty Tree readers may recall that in 2009, Kent Hovind, the founder of creationist theme park

Dinosaur Adventure Land, was sentenced under the structuring statutes for *withdrawing* cash from the bank in amounts under 10,000 frns. The money "involved" in the transactions was thus *criminally* forfeited to the United States government, and since it had been withdrawn and spent, the U.S. District Court substituted the theme park as the forfeit property, which was seized and sold to raise the 430,000 frns involved in the "crime."⁵ The Sowers' case involves *depositing* rather than withdrawing cash, and their money was seized well before a grand jury had even returned an indictment.

On April 19, 2012, again well before any possible indictment, Assistant U.S. Attorney Stefan D. Cassella filed a "verified complaint" for civil asset forfeiture against the money already seized: U.S. v. 62,936.04 in U.S. Currency. As part of the complaint, Baltimore cop Michael Aiosa claimed that on February 29th, the date he and Special Agent Tanisha Pryce "interviewed" Sowers at his farm, Sowers told them that although his weekly cash receipts from the farmers' market were 12,000 to 14,000 frns, he kept his deposits at or under 10,000 so as not to raise "red flags" after a bank

(Continued on page 2)

A LIMITED CONSENT

CONSENT OF THE GOVERNED: PART II

By Dick Greb

In last month's *Liberty Tree* I discussed the concept of *consent of the governed*, one of the guiding principles for the foundation of the United States, as recited in the Declaration of Independence. That article dealt with the principle mainly in the context of *overall* consent to be governed by such a very small group of representatives in the first place. This month I will consider it in the context of individual powers (the "just powers" referred to in the Declaration) exercised by the general government, purportedly by our consent.

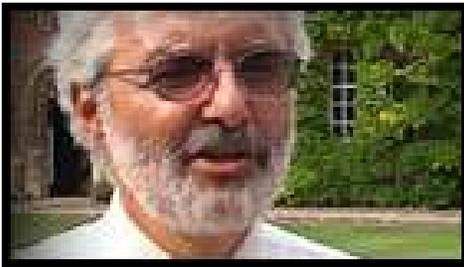
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1. Federal Reserve Notes, a.k.a. currency.
2. Sources for this article include the *Frederick News-Post*, Baltimore's *City Paper*, and court papers.
3. 31 USC § 5324(a)(3).
4. See 31 USC § 5324(d) and § 5317(c).
5. See September 2009 *Liberty Tree* at www.lwrn.net.

(Continued from page 1)

teller informed him that depositing over that amount at any one time would require him to fill out a form. Nevertheless, the Sowerses told reporters that they had never heard of the crime of structuring before February 29th: “We had no idea there was supposedly a law against it — we were just doing it the way we figured we were supposed to, making deposits every week ... We weren’t laundering money,” Sowers said. “We’re farmers, we struggle every day to pay bills. We don’t know what else to do. Now we just feel like putting [our cash] in a can somewhere.”⁶

Putting your cash in a can somewhere may seem like an option, but if one uses more than 10,000 frns at a time to pay one’s bills (or spreads such amount out over two or more “related” transactions), the “nonfinancial trade or business” receiving the cash must also file a CTR under 31 USC § 5331, and “structuring” to “evade” such reports is also a crime.⁷ That is, at least until cash is outlawed altogether.⁸



Devoted Thief: Stefan D. Casella has spent the better part of his life perfecting the “legal” theft of forfeiture, even writing federal statutes.

While many farm-freedom advocates suspect that Cassella and his DOJ partners in (real) crime are targeting small family farms and food freedom, it is likely that the ruination of small farms is merely a welcome adjunct to the *first goal* — to confiscate as much moolah as possible for the insatiable Treasury. As one observer put it thirteen years ago, “the crusade against [money] laundering has served as an excuse to criminalize a wide range of conduct ... in which none of the participants would in other respects be deemed criminal and no one is trying to ‘launder’ anything. Somewhere along the way, tax authorities discovered that anti-laundering rules were a highly useful weapon in the campaign against their age-old enemy, the economy’s unrecorded cash sector.”⁹ Thus, any small business dealing in substantial amounts of cash will be targeted — gas stations, farmers’ markets, liquor stores, used-car dealerships. Steven Levin, a former assistant U.S. attorney, told *City Paper* that anti-structuring enforcement is increasing, and “[t]he emphasis is on basically seizing money, whether it is legally or illegally earned ... It can lead to financial ruin for business owners.”

That financial ruin is specially facilitated by the legal structure called “civil asset forfeiture.” 31 USC § 5317(c)(2) states, “Any property involved in a violation of section 5313 ... or any conspiracy to commit any such violation, and any property traceable to any such violation or conspiracy, may be seized and forfeited to the United States in accordance with the procedures governing civil forfeitures in money laundering cases ...” In a civil case, the Treasury has only

to win by a “preponderance of the evidence” standard — *i.e.*, whether the evidence is just over 50 percent in the government’s favor — rather than the proof “beyond a reasonable doubt” standard. Another Treasury advantage is that seized funds inhibit defendants’ ability to hire a lawyer. So faced with a potential criminal trial, simultaneously with a civil forfeiture proceeding, the Sowerses understandably sought settlement, rather than to continue to be ruined. By May 30th, the Sowerses had agreed to give up 29,500 frns, in exchange for which the DOJ relinquished the remaining funds and agreed not to pursue them criminally (*this time*) or go after any more cash receipts from May 2011 through February 2012.

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Not a bad haul for Stefan D. Cassella, who literally wrote the book on asset forfeiture.¹⁰ A devoted thief, he holds himself a “leading expert” and has prosecuted federal forfeiture cases since the late 1980s. He is “principal author of much federal forfeiture legislation, including the Civil Asset Forfeiture Reform Act of 2000 ... and the applicable sections of the Federal Rules of Civil and Criminal Procedure.”¹¹

It’s no wonder, then, that Maryland federal forfeiture volume leads the nation. In a future issue, we will examine the legal fictions Cassella wields to eat out our substance.



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6. citypaper.com/news/cashed-out-1.1301518.

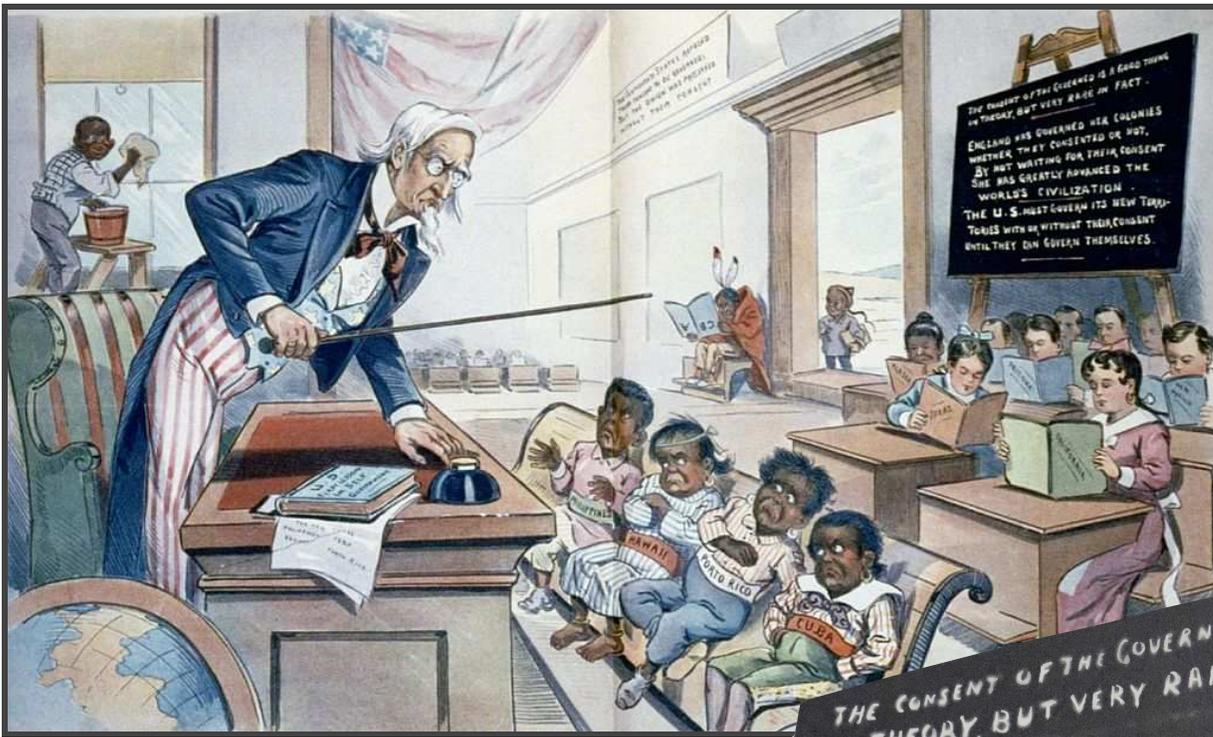
7. See 31 USC § 5324(b)(3).

8. Of course, once cash is outlawed, Treasury lawyers will simply retool, re-structure and introduce new laws and regulations to keep the revenues from asset forfeiture rolling in.

9. Walter Olson, “Lost in the Wash,” reason.com/archives/1999/03/01/lost-in-the-wash.

10. Published 2006; sells used for 4,600+ frns at amazon.com.

11. From his bio at www.amazon.com/Asset-Forfeiture-Law-United-States/dp/1929446993.

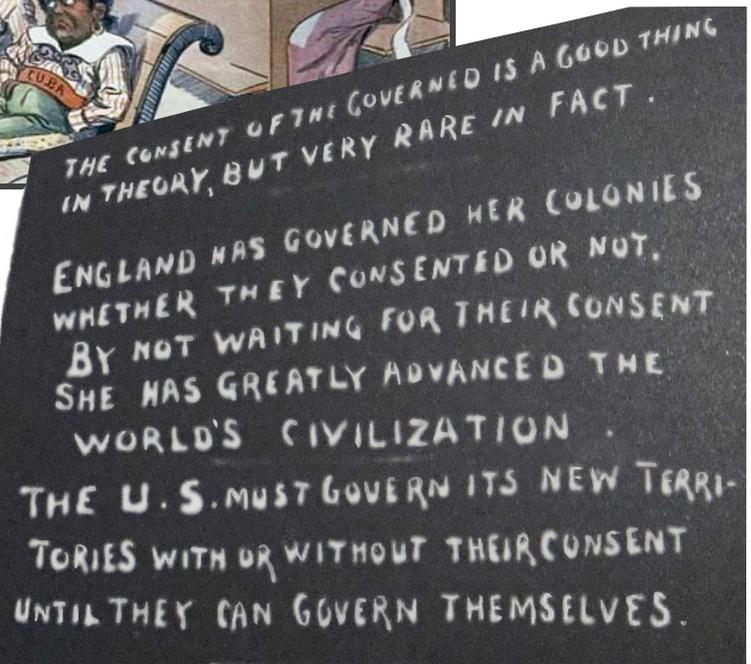


The enduring attitude of the 'ruling class' toward the governed is perfectly captured in this 1899 Dalrymple cartoon (*Puck* magazine). Uncle Sam lectures four new rebellious children — Philippines, Hawaii, Puerto Rico and Cuba* — on being governed whether they consent or not, while their previous classmates (the U.S. States) obediently read their books.

*The U.S. gained control of these territories from Spain in the 1898 Treaty of Paris (except Hawaii).

SCHOOL BEGINS. UNCLE SAM (to his new class in *Civilization*) — Now, children, you've got to learn these lessons whether you want to or not! But just take a look at the class ahead of you, and remember that, in a little while, you will feel as glad to be here as they are!

On the blackboard (see right), "THE CONSENT OF THE GOVERNED IS A GOOD THING IN THEORY, BUT VERY RARE IN FACT." The book on the desk: "U.S. — FIRST LESSONS IN SELF GOVERNMENT." The poster above the door: "THE CONFEDERATE STATES REFUSED THEIR CONSENT TO BE GOVERNED, BUT THE UNION WAS PRESERVED WITHOUT THEIR CONSENT." In the background, an American Indian holds his book upside down, a Chinese boy peers in at the door, and a Black boy listens while cleaning the window.



A LIMITED CONSENT (Continued from page 1)

Since the Constitution is the evidence of the people's consent,¹ the *just powers* will naturally be listed there, and indeed, they are found in Article I, §8. If you are not already familiar with this short list of powers, then you certainly need to pull out your copy of the Constitution and start studying! The reason the list of granted powers is a short one is discussed in some detail in my article "Government? Agents!"² and is bound up as well in the principle of consent. The structure of the federal government is a republic, whereby the granted powers are executed by representatives — that is, by agents. And these representatives, being agents for all of their constituents simultaneously, have a fiduciary duty to represent the interests of each and every one of them at the same time. The difficulty in being able to simultaneously further the

interests of all, while not undermining the interests of any, is why the list is so short. It would be foolish for a person to consent to grant a power to their agent which could easily be used to their own detriment. Instead, they would reserve such powers to themselves, as was done by the Tenth Amendment.

Although §8 of Article I lists the powers which the people consented to grant to the federal government, even those grants are not unconditional. The Preamble lays out the conditions of their consent:

in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity ...

Not only is the agent of government restricted to doing only those things specifically enumerated in §8, it is also restricted from doing even *those* things except that it furthers the purposes established in the Preamble. Thus, rather than the "general welfare" clause being a separate (and largely unlimited) power, as the statist like to claim,

(Continued on page 4)

1. For the purposes of this discussion, it will be presumed that the Constitution is sufficient for that purpose, notwithstanding the arguments presented last month against that position.

2. See www.libertyworksradionetwork.com/jml/index.php/opinions/dickgreb/121-government-agents.

it is really a restriction on the limited powers otherwise entrusted to Congress. The effect of the general restrictions is just like the more specific restrictions (again using the phrases “general welfare” and “common defence”³) found within the taxing power of §8, clause 1.⁴ They limit the *purposes* for which the granted powers can be exercised.

The bottom line is that the people have only consented to give their agents certain specified powers to be used for certain specified purposes, and the exercise of them for any other purpose, or the exercise of any other power is not only unjust, but illegal. And in this context at least (as opposed to the overall context discussed last month), there exists a semblance of redress, in that those affected by such criminal actions have the courts through which the wrongs might be righted.⁵ However, there is also a third context — also intertwined with the concept of an agent — in which consent comes into play as well.

When an agent is empowered to act on its principal's behalf, it has a fiduciary duty to that principal to represent its interests. The agent's failure to represent the interests of its principal is thus a breach of that duty. This duty then is a third limitation on the agent's exercise of granted powers. Not only is the agent limited by the consented powers, and by the consented purposes for which those powers can be used, but also by the actual interests of its principal — that is, his will. Indeed, the whole purpose of an agent is the convenience of having someone else do for you what you would otherwise do yourself. Thus, the exercise of a granted power, for a granted purpose, can still be invalid if it doesn't reflect the will of the principal. However, this limitation should rarely come into play, because the powers granted to a common agent (that is, a single agent for multiple principals) should already be limited to

only those which can be exercised to every principal's benefit (which is again why there are so few powers granted by our Constitution).

Yet, consider the TARP bailouts or so-called ObamaCare. Suppose Congress had been given the power to enact such legislation,⁶ but their constituents — in majority percentages — explicitly informed their representatives that they DID NOT WANT such laws passed. So, when Congress enacted them anyway, they obviously did so without consent, thereby violating their fiduciary duty to their principals. Any who did so should have been immediately removed from their positions, and if not done already, they should certainly be removed at the next election.

Perhaps a more accurate example would be in the state arena, with its fairly nebulous “police powers.”⁷ Under the guise of these powers, all manner of laws are enacted, especially the oxymoronic victimless crimes, such as those against prostitution or drug use or gambling. Gambling is an especially egregious example of hypocritical state action. Apparently, the vice of gambling is so detrimental to the public morals of the good people of Maryland that the legislature thereof found it necessary to prohibit lotteries in the entire state⁸ — except its own state lotteries, of course.⁹ The fact is that many people of the state want to gamble, whether on lotteries or horse racing or slot machines or good old-fashioned poker games. How can it be said then that they've consented to have the state prohibit them from doing just that? Similarly, with mandatory seat belt use laws, the fact that some people still prefer not to be strapped into their vehicles, despite the increasingly oppressive penalties for their refusal to comply, clearly indicates that they do not consent to those laws. Current estimates of national averages by the National Highway Traffic Safety Administration in 2011 of 84 percent¹⁰ make it seem like seat belt use is popular, but this excerpt from a 1996 NHTSA report to Congress gives a little insight into the dynamics of the situation:

While voluntary methods (*i.e.*, public information and education alone) increased national use to about 15 percent by 1984, *it was the enactment of state safety belt use laws that provided the increase to about 50 percent* by 1990. Without highly publicized enforcement, however, most state use rates stabilized at about 50 percent.¹¹ (emphases added)

Without the consent of the governed, legislatures derive no just powers, and any laws enacted pursuant to unjust powers are therefore invalid. This is especially so in cases like gambling where the government develops interests apart from the people who empowered it, and therefore starts to advance its separate interests over those of the people. And there are plenty of others who stand to benefit from the legal plunder of state operations, and those additional vested interests make it even tougher to get rid of bad laws. But somehow, we must work together to find ways, before such important principles as consent of the governed become nothing more than quaint phrases from antiquity.



3. As noted in my article “Government's Dirty Little Secret,” although these purposes “sound rather expansive, they are really just a general way of categorizing the other enumerated powers of Congress.” See www.libertyworksradionetwork.com/jml/images/pdfs/libtree_dec_2009.pdf.
4. I will address this limitation in more detail in a forthcoming article about the Supreme Court's decision on ObamaCare.
5. Of course, with your opponent being the judge of its own cause, your chances of prevailing are slim to none.
6. Although Congress has no such power, they acted on the basis that they did, so it's still a useful example.
7. **Police power.** ... The power of the State to place restraints on the personal freedom and property rights of persons for the protection of the public safety, health, and morals or the promotion of the public convenience and general prosperity. Police power ... is an essential attribute of government. (*Black's Law Dictionary*, 6th edition.) To my mind, such vague phrases as “promotion of public convenience and general prosperity” are nothing more than recipes for oppression.
8. See Maryland Code, Criminal Law Article, §12-203(a)(1).
9. See Maryland Code, Criminal Law Article, §12-202(b).
10. www.nrd.nhtsa.dot.gov/Pubs/811544.pdf.
11. www.nhtsa.gov/people/injury/airbags/208con2e.html#sec5. Thus, it took force to get even half of the people to comply.