A Lesson In Federal Territorial Jurisdiction

image credit: USDA-NRCS

by Dr. Eduardo M. Rivera
FEDERAL TERRITORIAL JURISDICTION

Determining that the United States of America’s federal territorial jurisdiction is limited to the land it owns should be a simple matter given the lengthy status of the United States of America as a nation/state, since February 6, 1778, when it was recognized as an independent state by France. At the time of France’s recognition, the Declaration of Independence of July 4, 1776 had been signed and delivered, but only Virginia, South Carolina and New York had ratified the Articles of Confederation of November 15, 1777. Anyone in the world could see by even a cursory examination of those two documents that the United States of America had no territory of its own and the Confederacy had no legislative power. The United States of America in its beginning did not appear to be the commercial power it has become. America was in fact a poor credit risk, but there were plans even then to make the government powerful.

The lack of its own territory and the power to rule it by legislation would change dramatically and that change would be reflected in its economy and political history. The political history could be accurately told in its last two official documents, the Northwest Ordinance of July 13, 1787 and the Constitution of September 17, 1787—the second half of its Organic Laws. The last two Organic Laws of the United States of America could also be read in a way that would overstate its assets as well as its power to tax.

 Territory is one of the three components crucial to any nation/state, however, the territory of a free nation/state may be in the complete and exclusive control of the people. The United States of America, as a Confederacy of free States, expressly retaining their “sovereignty, freedom and independence” needs no territory to represent its member States. The sovereignty claimed by the thirteen States was not of the proprietary nature enjoyed by the private property owners. State sovereignty delegated to the Confederacy was the basic duty to protect private property owners from invasion by foreign powers and encompassed the authority to conduct diplomatic negotiations.

The politicians of the thirteen United States reflecting their constituent’s desires were extremely cautious in their ratification of the Articles of Confederation, for fear of the loss of freedom. However, they were less concerned about the expansion of federal government power in the Constitution of September 17, 1787, when they might benefit. They saw the possibility of growth in State government, if they helped the federal government gain some power and prestige. The growing American political class led by George Washington were interested in creating the kind of government we have today—the kind that keeps growing. They knew that the American people would never knowingly return to the kind of government they knew under King George III, so the people would have to be deceived. The deception George Washington and the post Declaration of Independence Founding Fathers conjured up is still with us. Their scheme’s longevity can be attributed to the ease by which the words and phrases: United States, United States of America, district can be interchanged. Every county has a DA, District Attorney, and no one questions that officer’s authority.

The delegates to the May 25, 1787 Constitutional Convention who drafted the Constitution of September 17, 1787 are called the Framers of the Constitution. These Framers intentionally used the phrase “United States” to refer to the Confederacy, the “United States of America” and the
“United States” the States of the Northwest Territory: Ohio, Illinois, Indiana, Wisconsin, Michigan and part of Minnesota in order to cause confusion as to the meanings true meaning of the Constitution of September 17, 1787. That confusion has been resolved by the appropriate substitution of the word “district” for the territorial “United States” wherever “United States” and “United States of America” or their equivalents can be found in the same sentence.

Three examples:

1. Preamble to the Constitution for the United States of America: “We the People of the United States, 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, do ordain and establish this Constitution for the United States of America.”

2. Article I, Section 1 of the Constitution of September 17, 1787: “All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.”

3. Article I. Section 8 of the Constitution of September 17, 1787: “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all duties, Imposts and Excises shall be uniform throughout the United States”

The basis of all federal territorial jurisdiction is the land division called “district.” In Example No.1 the Preamble, “We the People of the United States” are from a place, the United States, which in the Resolution of April 23, 1784 were “distinct states.” The Northwest Territory, was proclaimed the “district” in the Northwest Ordinance of July 13, 1787, which repealed the Resolution of April 23, but had to confirm making the “distinct states” “for ever a part of this confederacy of the United States of America.” The United States, the “district” was the place where they cannot elect, so they must “ordain and establish this Constitution for the United States of America.” The United States of America can, in this context, only be the Confederacy formed by the Articles of Confederation.

In Example No. 2, “a Congress of the United States” is one of the two year Congresses which make laws for the United States, the districts of federal territory. The Confederacy, the United States of America, is the United States in Congress assembled under a new name, “a Senate,” which is always ready to convene in order to oversee the administration of the “District” and districts using its “Advice and Consent” power. “A Congress of the United States” consists of Senators and Representatives from the several States of the first Union and non-voting delegates from “districts.”

In Example No. 3, “The Congress” is the Senate, which is just the Confederacy, the United States in Congress assembled, under the Articles of Confederation. The Northwest Ordinance of July 13, 1787 in Article 4 clearly expressed the power of the Confederacy, the United States of America, to tax the settlers and inhabitants within the district, the Northwest Territory, which is referred to as the “United States.”
The Articles of Confederation of November 15, 1777, in Article II, discloses the lack of any federal territorial jurisdiction in the initiation of the United States of America as the Confederacy. The word “district” appears nowhere in the Articles of Confederation.

**TERRITORIAL DISTRICT JURISDICTION DATETIME**

The Declaration of Independence of July 4, 1776 refers to “Districts” as a feature of King George III’s tyrannical rule:

> He has refused to pass other Laws for the Accommodation of large Districts of People, unless those people would relinquish the right of Representation in the Legislature, a Right inestimable to them and formidable to Tyrants only.

The Articles of Confederation of November 15, 1777 does not contain the words “District” or “district.”

The April 23, 1784 Resolution of the United States in Congress assembled divided the ceded territory into “distinct states” which would forever remain a part of the Confederacy:

> RESOLVED,
> THAT so much of the territory ceded, or to be ceded by individual states, to the United States, as is already purchased, or shall be purchased, of the Indian inhabitants, and offered for sale by Congress, shall be divided into distinct states in the following manner,

The Northwest Ordinance of July 13, 1787, like the Resolution of April 23, 1784, formally recognized the Northwest Territory District as a part of the United States of America Confederacy. The Northwest Ordinance claimed repeal of the April 23, 1784 Resolution, created a real property law, and set up a temporary government for the Northwest Territory which was now called a district.

The Constitution of September 17, 1787, in Article I, Section 8, Clause 9 grants to “the Congress” the power “to constitute Tribunals inferior to the supreme Court.”

The Constitution of September 17, 1787 in Article IV recognizes the states of the April 23, 1784 Resolution including the States of the Northwest Territory, which were forever made a part of the Confederacy.

On June 21, 1788, the Constitution of September 17, 1787 becomes effective for the nine States which have ratified it.

On April 30, 1789, George Washington prevents the adoption of the Constitution of September 17, 1787 as permanent law for the United States of America, by taking the oral oath of office of the President of the United States.

In the Judiciary Act of September 24, 1789, “a Congress” creates a legislative Supreme Court inferior to the never ordained and established Article III supreme Court and thirteen district courts for the eleven States which have ratified the Constitution of September 17, 1787.
The Sixth Amendment of the Bill of Rights ratified December 15, 1791, directly recognizes territorial jurisdiction based on a district established by “a Congress,” from which jurors are to be selected.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

On June 25, 1948, “a Congress” enacts the Judiciary Act upon which Title 28 of the United States Code is based. The Office of the Law Revision Counsel adds this sentence to the “Historical and Revision Notes” appended to Chapter 5 of Title 28: “Sections 81-131 of this chapter show the territorial composition of districts and divisions by counties as of January 1, 1945.”

LESSON COMMENTARY

The Constitution of the United States is considered the centerpiece of American freedom, however, it is in fact, the tool by which government has enslaved Americans by binding them to its written law, while placing government out of their reach. This can be proven by the simple exercise of locating in the Constitution the two offices President George Washington held from April 6, 1789 to March 4, 1797.

George Washington is considered to be the first President of the United States (POTUS), however, there are at least fourteen men who were either known as POTUS or President of the United States of America (POTUSA). None of these Presidents ever took an oath or affirmation or subscribed an oath or affirmation to attain their offices, so when George Washington whispered the oral oath of office for the office of POTUS, everyone, as Washington had calculated, believed he had just become the fifteenth President of the United States of America. Washington had just taken the first step in joining the two offices of President of the United States and President of the United States of America into the mythical “Leader of the Free World.” The federal United States had also been expanded to the size of the geographical United States of America. This POTUS would become all powerful because practically everyone thought he was all powerful.

Washington was, of course, just the first POTUS to be self appointed, according to the appointments clause of the Constitution of September 17, 1787:

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such
inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Washington and every American President since have been elected by Presidential Electors now called the Electoral College. Americans register as citizens of the United States, so they can vote in federal elections for certain Presidential Electors committed to elect certain candidates for President. Most voters have no actual knowledge of the process of electing a President. Like the French, when they recognized the United States of America as an independent state, they believe the ideal and not the political fact.

George Washington, as both POTUS and POTUSA, was able to sign the Judiciary Act of September 24, 1789 and establish a federal judicial court system limited to the sparsely populated Northwest Territory and have it apply to the entirety of the mythical United States of America. Only the United States district court in Hawaii has been established by legislation as an Article III court, however, neither the district court in Hawaii nor any other United States district courts in the remaining states have Article III judicial power.

The failure to understand that federal trial courts must be confined to causes of action that arise under federal territorial law in federal territory causes unnecessary hardship to defendants. Ignorance of citizenship and the territorial composition of the federal courts permit federal grand and petit juries to be drawn from outside the federal territory that comprise the district or division. These juries are improperly constituted and without authority. In the long history of federal criminal trials, it is highly improbable that members of the grand juries that indicted were actual residents of the federal courts’ judicial districts.

There are few if any federal crimes that can be committed outside federal territory. Congressional insiders know Congress can punish few acts outside federal territory, so the federal territorial trial courts have been disguised as courts of justice for those who voluntarily submit themselves to federal prosecution. Among others, lawful users of medical marijuana and those who aid and assist them often find themselves federally charged with crimes that do not exist where they were alleged to have occurred.

ARTICLE III COURTS, HAWAII and PUERTO RICO

Based on no evidence at all, and a big fat lie about the United States district court in Puerto Rico, the entire American legal community is convinced that the federal trial courts in the several States exercise Article III judicial power everywhere within those States. Government has gone too far. Examination of all the statute law that created every United States district court reveals only one instance where Congress appeared to ordain and establish an Article III United States district court in any State. In 1959 the Congress created an Article III United States district court for Hawaii but made no provision for Article III judges by specifically precluding the President with executive power from appointing them. The Code specifically provides for territorial judges for the Hawaiian Article III court. Title 28 U.S.C.—Judiciary and Judicial Procedure has been enacted into positive law so the Code shows the same kinds of courts as are found in the statutes. Chapter 5 of Title 28 U.S.C.—District Courts consist of Sections 81
through 144. The names of all 50 states of the Union will found from Sections 81 to 131 and in addition in Section 88 will be found the District of Columbia and in Section 119 Puerto Rico.

The federal government is known for its complexity, so it is helpful to be able to compress an understanding of that government and its law into a few familiar words. Those words will be found on the first two pages of Chapter 5—District Courts of Title 28 U.S.C. of the federal government’s own Judiciary and Judicial Procedure Code book printed by the Government Printing Office are the most important pages of law in the federal government. On those two pages, Congress explains that the territorial composition of the United States district courts is only that area subject to the exclusive legislative power of Congress. The 50 United States are not subject to Congress’s lawmaking power. The inability to combine the 50 United States, Washington D.C. and Puerto Rico to form one nation is what explains and gives us the “territorial composition” of the districts and divisions found in Sections 81-131 of Title 28 U.S.C. In the rest of Chapter 5, Congress explains that only one district court in all of the 50 states, Hawaii, has been established as an Article III judicial court and explains why that court cannot function as a court exercising judicial power. If judicial power is to be exercised in the several states, it will have to be exercised by new state courts using English common law. The federal territorial government in the several States will consist of two government powers, since the federal courts have not been granted Article III, Section 2 judicial power. While one or two branches of government may be good enough to do government work, it takes all three to lawfully act upon a free inhabitant.

The nature of the complete federal government cannot be understood unless the reader understands all that begins with the caption “CHAPTER 5—DISTRICT COURTS” and ends with the paragraph below: “HISTORICAL AND REVISION NOTES.” The student should go there and read first §91 and then examine every other district court to confirm no others are ordained and established under Article III.

The federal trial courts are universally but erroneously thought to include all the territory in the counties that comprise districts and divisions of the United States district courts. This perception of the federal trial courts is the result of the quick read encouraged by those who favor a strong, large and powerful federal government. A Congress and the Office of the Legislative Counsel on the first two pages of Chapter 5, Title 28 USC, must state in its curiously cryptic way that the territorial composition of the district courts is only the federal territory subject to the exclusive legislative power of Congress because that is true. The statute law, beginning with the Judiciary Act of September 24, 1789, that establishes the federal district courts in the several states must confirm that the territorial composition of the district consists only of federal territory or Title 28 U.S.C. could not have been enacted into positive law.

“A Congress” established the only Article III court for a state of the Union in Hawaii. Hawaii appears in §91 as the only Article III court but that court is restricted to being staffed by territorial judges. That qualification precludes the exercise of Article III judicial power by any judge appointed to that court. Under the heading for § 91 Hawaii, “Court of the United States; District Judges,” will be found, Section 9 (a) of Pubic Law 86-3 which provides:
“The United States District Court for the District of Hawaii established by and existing under title 28 of the United States Code shall thence forth be a court of the United States with judicial power derived from article III, of the Constitution of the United States: Provided, however, that the terms of office of the district judges for the district of Hawaii then in office shall terminate upon the effective date of this section and the President, pursuant to sections 133 and 134 of title 28, United States Code, as amended by this Act, shall appoint, by and with the advice and consent of the Senate, two district judges for the said district who shall hold office during good behavior.”

Statute law is completely and totally made up by legislators. The statute law and the Constitution is the origin of all the titles of the United States Code. Nothing in these codes is for all time that is why January 1, 1945 is used as a reference to determine those federal areas in the several States subject to the exclusive Legislation of Congress.

Alaska and Hawaii are, today, States of the Union, but were territories on January 1, 1945. Washington D. C. is neither a territory nor a State, but it is the product of “Cession of particular States, and the Acceptance of Congress” and it is the seat of government. Although it is treated like a State it is the “District” subject to the exclusive Legislation of Congress, pursuant to Article I, Section 8, Clause 17. Puerto Rico is today and was on January 1, 1945 a possession of the United States and definitely not a State of the Union. Therefore, the correct answer to the question, What is the “territorial composition” of the districts and divisions by counties as of January 1, 1945, is: It is all the territory or other property owned by or subject to the exclusive jurisdiction of the United States of America including, pursuant to Article I, Section 8, Clause 17, “all Places purchased by the consent of the Legislature of the State in which the Same shall be.”

The Hawaii judicial district established in § 91 of the Judicial Code of 1948 was a territorial court. Section 9 (a) above clearly indicates that prior to the admission to statehood, the United States District Court of Hawaii was not a true United States court established under Article III of the Constitution, to administer the judicial power of the United States, Balzac v. Porto Rico, 258 U.S. 298, 312 (1922). In Balzac, Chief Justice William Howard Taft stated that United States District Court for Arecibo, Porto Rico, as Puerto Rico was known then, “created by virtue of the sovereign congressional faculty, granted under Article IV, § 3, of that instrument, of making all needful rules and regulations respecting the territory belonging to the United States.” Chief Justice Taft’s reference to “the sovereign congressional faculty” was to the proprietary power vested in “the Congress.”

Puerto Rico is the Commonwealth of Puerto Rico and it has not been incorporated into the United States though its inhabitants are United States citizens. The inclusion of Puerto Rico in Chapter 5 as § 119 does not make the district court for Puerto Rico an Article III court because Puerto Rico has not been incorporated into “the Union.” Puerto Rico fits comfortably among the names of the 50 states because the geographical areas are mini federal territories or federal enclaves.

If the student is having difficulty understanding the significance of “territorial composition,” there is a good reason for that. The federal government doesn’t want it understood. The federal
government will even lie in print to cover-up the “territorial composition” of the United States district courts. Several editions of the United States Government Manual available on the web falsely state that the United States district court for Puerto Rico is an Article III court. The court for Hawaii was so established and ordained in 1959, so the “Historical and Revision Notes” §119—Puerto Rico can be compared to §91—Hawaii to resolve the issue. The only territory that is common to both the several States, territory and possessions of the United States is federal territory within each. Those Notes show that the district court judges for Hawaii are to be selected pursuant to §§ 133 and 134 of Title 28 U.S.C., which is territorial law.

Those in federal litigation or who are contemplating that exercise should be aware that legal justice is available only from courts that have judicial power. Any litigant in any United States district court in any state of the Union is warned that these courts have no Article III, Section 2 judicial power, whatsoever. The United States district courts of the several States are not judicial courts and the judges that sit in those courts are not Article III judges. Judges of these courts are appointed for life terms, but they obtain judicial powers only when nominated, confirmed and appointed to judicial courts with Article III power. The court is the equivalent of an office. An office has power because the officer that occupies that office has duties to exercise in that office. District courts and district court judges of the United States have been mistaken for Article III courts and judges since the Judiciary Act of 1789. The mistaken belief that a court has jurisdiction is sufficient to confer it when everyone is equally mistaken, but that jurisdiction remains what it is and not what it is mistaken to be.

A federal trial court is not accurately described by the name of the state where it is located. The names of the federal trial courts in the several states are labels that are fully explained in the first sentence of the “Historical and Revision Notes” which are part of the law: “Sections 81—131 of this chapter show the territorial composition of districts and divisions by counties as of January 1, 1945.” Since the conclusion of the Civil War, the States of the Union are the federal territory within the state and the state officers who have taken an oath to support the Constitution of the United States.

The subject matter of Chapter 5 of Title 28 U.S.C. is the territorial composition of districts and divisions by counties as of January 1, 1945 of the courts named in Sections 81—131 which can only be the areas subject to the exclusive jurisdiction of the United States—federal territory. These areas consist of places like the National Parks, military bases, federal buildings and federal courthouses. Crimes that occur on or in these federal places are federal crimes and the federal courts for the district are the proper forums for trials of those crimes.

There is no room for legalistic interpretations of Chapter 5. On January 1, 1945, the judicial districts of United States district courts had only one thing in common—those judicial districts consisted of federal territory and some admiralty jurisdiction for some coastal courts. Those common characteristic have not changed since then and even if they had the January 1, 1945 date was to be used to reckon the federal territories existing on a given date. The January 1, 1945 date is critical to understanding the United States district courts territorial jurisdiction as consisting of federal territory as of a time in a span of time. The first day of 1945 forces the mind to focus on that which can change within geographical boundaries—federal territory, which can be increased by purchase and consent of the Legislature of the State.
The only legislation, since the first judiciary act on September 24, 1789, to create an Article III United States district court is found in §91 of Title 28 U.S.C. That section documents the change of a territorial court to an Article III court without actually giving the court Article III judicial power. Nothing can be done to change the nature of these courts in the several states without the direct intervention of “a Congress” by legislation. A judge without judicial power can do nothing to change the jurisdiction of the court where he presides. Any litigant or defendant in any federal court proceeding who attempts to have the United States district court consider the issues raised in this lesson should be aware that the American Law Institute’s Restatement of Judgments holds that such a litigant is bound by the court’s ruling. A federal judge sitting in a trial court in any United States district court is without judicial power. While such an official can be a life-tenured bureaucrat, such an official cannot be expected to rule other than administratively.

No United States district court in any State may lawfully exercise Article III court power. The lawful jurisdiction of the federal district court or courts is limited to those places where Congress has exclusive jurisdiction. It is also clear that federal judges and federal courts have been used in the past by the federal government to control those persons opposed to the usurpation of power by the national government. The federal courts known as United States District Courts are federal and territorial in that these courts implement administrative law on territory exclusively under the jurisdiction of the United States.

United States district courts are being used by Congress primarily to prevent the rendition of law and equity in national courts by masquerading as Article III courts. These courts are incapable of achieving justice because they are not Article III courts. Generally speaking, we have a federal government that consists of “a Congress of the United States,” “the Congress,” a President of the United States and United States district courts.

Congress has expressly provided that only Article IV territorial judges will be appointed to the United States district court for the district of Hawaii, so that court will never function as an Article III court. The district judges for the district of Hawaii are specifically to be appointed by the President pursuant to sections 133 and 134 of title 28, United States Code, as officers of the United States but not as judges of an Article III court. Those two sections are also to be used in appointing any of 7 judges of the Puerto Rico district should a vacancy occur there. It can be deduced that appointment pursuant to §§ 133 and 134 of Title 28, will always produce territorial judges.

**JURY DUTY**

Grand and petit jurors determine if they are citizens of the United States and whether they have resided in judicial district for a year. In 1968 Congress enacted the Jury Selection and Service Act that uses the nation’s voter registration system as the basis for jury selection in the federal courts. Not serving on a federal jury should be as easy as not registering to vote in any federal election.
Examinations of available jury selection plans the district courts have created and that have been approved by the federal courts of appeal reveal no knowledge of the true territorial composition of the United States district courts. The jury questionnaire in common use merely asks an applicant a half dozen questions beginning with, if he or she is a citizen of the United States and a resident of the judicial district for at least a year.

Very few Americans can prove that they are, indeed, citizens of the United States and practically no one understands that the Sixth Amendment requires that territorial composition be established prior to trial. For all of the states, district court vicinage is the federal territory within the counties that comprise the district. This is the only vicinage that satisfies the 6th Amendment command that the “district shall have been previously ascertained by law.” An individual juror’s impression of what constitutes the judicial district does not satisfy the Constitution.

All trial courts must have districts which shall have been previously ascertained by law. Venue and vicinage are being confused and the assumption is being universally made that the federal district courts are Article III courts and federal judges are Article III judges. Vicinage corresponds to territorial composition and describes where jurors come from. The areas from where Article III court jurors are to be drawn is the same as the territorial composition of the federal court. Federal jurors must be drawn from the same federal territory within a district comprised of named counties, but they are being drawn from outside the federal territory. Any grand and petit juror that resides outside a federal territory does not reside within the district and can successfully be challenged as unqualified.

CONCLUSION

The true nature of the government in the United States of America is libertarian. Very few of the “Posterity of the People” that ordained and established the Constitution are aware that the loose confederation of state governments that became the United States of America is a true libertarian government. The present intent of the federal government is to subject citizens of the several States and free inhabitants to its administration. Most, if not all people, who find themselves in a federal court are not aware that court has no Article III judicial power. Americans do not want to be in federal courts that cannot dispense justice. For more than 200 years Americans have been subjected to administrative law in courts they believed were dispensing the judicial power of the United States. Individuals appointed to United States district courts are permitted to believe that they are Article III judges because they are appointed for life. These individuals are actually urged by the other two branches of federal government to act like Article III judges. Disguised administrative courts are being used to subvert freedom. The federal district courts are administrative, legislative, non-judicial courts that are an extension of any administrative harassment caused by persons claiming to represent the national government.
The Thirteen Federal Judicial Circuits

[Map showing the United States with regions shaded in various colors representing the different judicial circuits.]