THE INTERNATIONALISATION OF PSEUDOLAW: THE GROWTH OF SOVEREIGN CITIZEN ARGUMENTS IN AUSTRALIA AND AOTEAROA NEW ZEALAND

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Pseudolaw refers to the phenomenon whereby adherents adopt the forms and structures of legal argumentation while substituting the substantive content and underlying principles for a distinct and parallel set of beliefs. In this article, we explore and catalogue the forms of pseudolegal claims made by a particular subset of adherents – the sovereign citizen movement – in one part of the common law world: courts in Australia and Aotearoa New Zealand. Our study demonstrates both the internationalisation of pseudolaw, and that the phenomenon adapts and evolves to suit local legal discourses. We conclude by offering suggestions to respond to pseudolaw.

I INTRODUCTION

The common law is accustomed to fringe legal movements.[1] The COVID-19 pandemic has drawn significant attention to legal conspiracy groups. Public health measures – lockdowns, vaccine mandates, masks, and capacity requirements – have resulted in many citizens confronting the coercive nature of the State for the first time.[2] A segment of the population that has perhaps never felt alienated from the law suddenly found their liberty and personal choice unaccustomedly constrained by public power. Some who pushed back employed techniques that

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1 In the wake of the American Revolution, for example, anti-lawyer sentiment fuelled a movement to replace the legal system with arbitration: Carli Conklin, 'Lost Options for Mutual Gain: The Lawyer, the Layperson, and Dispute Resolution in Early America' (2013) 28 *Ohio State Journal on Dispute Resolution* 581. For the more recent phenomenon of ordinary people purporting to secede and declare their own country, see Harry Hobbs and George Williams, *Micronations and the Search for Sovereignty* (Cambridge University Press, 2022) <https://doi.org/10.1017/9781009150132>.

2 See Harry Hobbs and George Williams, 'Australian Parliaments and the Pandemic' (2023) 46(4) *University of New South Wales Law Journal* 1314. Reports indicate that government responses to the COVID-19 pandemic designed to mitigate or minimise the risk of transmission have become fuel for the sovereign citizen movement: Max Matza, 'What Is the "Sovereign Citizen" Movement?', *BBC News* (online, 5 August 2020) <https://www.bbc.com/news/world-us-canada-53654318>.

reflect the phenomenon of 'pseudolaw' – where an adherent adopts the *form* of legal argument without the acceptable *substance* or content of legal argument.[3]

Australia and Aotearoa New Zealand have generated their own autochthonous pseudolegal discourses relying on misguided and spurious readings of domestic legal instruments. The growth and spread of the United States-born 'sovereign citizen' movement, however, has seen a dramatic shift in the tenor and extent of pseudolaw. While this influence first emerged around 2010, it intensified over the course of 2020 and 2021 at the height of public health restrictions. For those caught in its web, personal frustration or anger transformed into a political grievance and exploded into public protest.[4]

Pseudolaw generally, and the influence of sovereign citizen pseudolaw particularly, remain poorly studied in Australasian legal literature. Though these forms of argumentation have been appearing increasingly often in litigation, pseudolaw has largely remained an intellectual curio. This article responds to the emergent visibility of pseudolaw as a publicly recognisable phenomenon to map its 'doctrinal' contours in courts of Australia and Aotearoa New Zealand. In doing so, we track the form of pseudolegal argument that originated in North America and migrated to antipodean shores. We illustrate that as this form of argument has been internationalised, it has evolved, drawn upon and adapted to reflect local legal (and pseudolegal) discourses in other common law systems.

Our article is divided into five substantive parts. In Part II, we develop a conceptual framework to understand the distinct phenomenon of pseudolaw. We also outline the broad contours of the sovereign citizen movement and how it is distinguished from other pseudolaw adherents. In Part III, we provide a history of the sovereign citizen movement, sketching the intersection of four overlapping North American anti-government groups from which the modern movement emerged. We consider the tactics of the movement – through both legal institutions and more overtly political means – and note its arrival in Australia and Aotearoa New Zealand. In Part IV, the central contribution of this article, we describe the primary patterns of pseudolegal arguments made in Australia and Aotearoa New Zealand court cases. Our study reveals the increasing influence of United States ('US') sovereign citizen-inspired pseudolaw, a pattern that is reproduced across the common law world and, indeed, in some civil law countries.[5] In the final Part

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3 See, eg, the infamous 'Bunnings Karen': Sue Mitchell and Natasha Boddy, 'Bunnings Beefs Up Security against Anti-Maskers', *Australian Financial Review* (online, 27 July 2020) <https://www.afr.com/companies/retail/bunnings-beefs-up-security-against-anti-maskers-20200727-p55fvo>. For an earlier piece exploring the proliferation of pseudolegal argumentation in Aotearoa New Zealand, see Stephen Young, Harry Hobbs and Joe McIntyre, 'The Growth of Pseudolaw and Sovereign Citizens in Aotearoa New Zealand Courts' [2023] (February) *New Zealand Law Journal* 6. See also Joe McIntyre, 'What Is the Australian Merchant Navy Flag, the Red Ensign? And Why Do Anti-Government Groups Use It?', *The Conversation* (online, 12 November 2021) <https://theconversation.com/what-is-the-australian-merchant-navy-flag-the-red-ensign-and-why-do-anti-government-groups-use-it-170270>.

4 Eric Tlozek, 'COVID-19 Is Accelerating the Rise of Conspiracy and Sovereign Citizen Movements in Australia', *ABC News* (online, 21 August 2021) <https://www.abc.net.au/news/2021-08-21/covid-19-accelerating-rise-of-conspiracy-movements-in-australia/100393666>.

5 See, eg, Timothy Wright, 'Germany's New Mini-Reichs', *Los Angeles Review of Books* (Essay, 22 June 2019) <https://lareviewofbooks.org/article/germanys-new-mini-reichs/>; Florian Buchmayr,

V, we reflect on the relationship between law and pseudolaw, and consider how legal systems can respond.

Our study is motivated by the harms caused by these legal arguments. We hope to assist lawyers, judges and court officers who are increasingly confronted with pseudolegalese. We also hope to help litigants themselves. It is worth stating clearly: pseudolegal arguments do not work. Nevertheless, even if pseudolegal arguments are not successful in court, they have broader societal consequences. Pseudolaw has a tendency to transform routine and relatively simple legal issues into much more complex and harmful ones that can hurt litigants, their families (*whānau*) and friends, and, indeed, the legal system at large. Litigants waste time and money and forego the opportunity to obtain capable legal representation. It also creates opportunities for scammers and charlatans, who convert individuals to sovereign citizen causes for their own personal aggrandisement or benefit.[6] These legal arguments also represent the tip of the spear. It is well-known that sovereign citizens are politically motivated and, occasionally, violent.[7] The proliferation of sovereign citizen pseudolegal arguments reveals its international spread and mobilization across borders that likely acts as a bellwether of social discontent and, occasionally, deeper political-economic concerns.

II PSEUDOLAW AS A DISTINCT LEGAL PHENOMENON

Pseudolegal arguments do not work in courts of law. No courts accept these arguments, and no courts absolve the claimant (or defendant) from their legal obligations and responsibilities. Nevertheless, pseudolegal arguments are increasingly popular. They are frequently raised (and rejected) in courts across the world. Yet the phenomenon should not be dismissed as simply the domain of the ignorant and the vexatious. Rather, there is an internal coherence to the phenomena that justifies direct study. This Part offers a framework for understanding what is unique about pseudolaw.

You may be familiar with the style of argumentation. A litigant, ostensibly making legal claims appears – alas, fatally – to have instead 'misread, misconstrue[d], and misunderst[ood]' the law.[8] On closer inspection, however, the situation appears a little different. The litigant has not only relied on selective and spurious readings of

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'Denying the Geopolitical Reality: The Case of the German "Reich Citizens"' in Andreas Önnerfors and André Krouwel (eds), *Europe: Continent of Conspiracies* (Routledge, 2021) 97 <https://doi.org/10.4324/9781003048640>; Karoline Marko, '"The Rulebook – Our Constitution": A Study of the "Austrian Commonwealth's" Language Use and the Creation of Identity Through Ideological In- and Out-Group Presentation and Legitimation' (2021) 18(5) *Critical Discourse Studies* 565 <https://doi.org/10.1080/17405904.2020.1779765>.

6 Joseph Tsidulko, 'The Sovereign Citizen Scam' (2013) 18(3) *Skeptic Magazine* 12; Natasha Wallace, '"Messiah-Like Figure" Is Doing Own Harvesting', *The Sydney Morning Herald* (online, 15 January 2011) <https://www.smh.com.au/world/messiahlike-figure-is-doing-own-harvesting-20110114-19r9v.html>.

7 Christine M Sarteschi, *Sovereign Citizens: A Psychological and Criminological Analysis* (Springer, 2020) <https://doi.org/10.1007/978-3-030-45851-5>.

8 Caesar Kalinowski IV, 'A Legal Response to the Sovereign Citizen Movement' (2019) 80(2) *Montana Law Review* 153, 154 <https://doi.org/10.2139/ssrn.3238417>.

legal texts to contest state authority and assert their own claims but has drawn from an impressive (and eclectic) breadth of sources. They may have invoked ancient, historical, and international legal instruments like the *United States Constitution*, the Magna Carta, the English *Bill of Rights 1688*, the United Nations *Universal Declaration of Human Rights*, the Bible,[9] divine law, God's law, and, of course, the common law.[10] While elements of these instruments may have uses in contemporary legal systems,[11] the litigant has not properly invoked those laws as authority for their claims. They have done something different. That might be pseudolaw.

The term 'pseudolaw' refers to a distinct phenomenon whereby 'a collection of legal-sounding but false rules that purport to be law' are deployed.[12] Pseudolaw 'superficially appears to be law, or related to law, and usually uses legal or legal-sounding language, but is otherwise spurious'.[13] For this reason, it is regularly described by courts as nothing more than 'obvious nonsense',[14] legal 'gibberish',[15] or 'gobbledygook'.[16] However, while pseudolaw is 'largely incoherent, if not incomprehensible',[17] and impenetrable to outsiders, it is not just a misunderstood and misapplied collection of doctrines, instruments, and rules. Pseudolaw is an 'integrated and separate legal apparatus' with its own confounding legal theories.[18] Much of the source material is originally drawn from conventional law and legal sources, but it constitutes an 'alternative legal universe'.[19]

Our description of pseudolaw as a fanciful *legal* universe is intentional. In two foundational pieces, Susan P Koniak argued that what we call 'pseudolaw' is, actually, a form of 'law'.[20] Just like our society operates under the common law, pseudolaw adherents have their own system of interpretation based on known

9 *National Australia Bank Ltd v Norman* [2012] VSC 14, [4] (Judd J) ('*Norman*'); *Zeqaj v Deputy Commissioner of Taxation* [2020] FCA 1270, [15]; *R v Warman* [2001] BCCA 510, [9] (Hollinrake J).

10 See *Smith v Keenan* [2022] NZHC 618, [26] (Paulsen J).

11 See, eg, *Ellis v R* [2011] NZCA 90, [33] (Glazebrook, Arnold and Randerson JJ). It explains that portions of the Magna Carta apply in Aotearoa New Zealand by virtue of section 3 of the *Imperial Laws Application Act 1988* (NZ).

12 Donald J Netolitzky, 'A Rebellion of Furious Paper: Pseudolaw as a Revolutionary System' (Conference Paper, Sovereign Citizens in Canada Symposium, Centre d'expertise et de formation sur les intégrismes religieux et la radicalisation, 3 May 2018) 1 <https://doi.org/10.2139/ssrn.3177484> ('A Rebellion of Furious Paper').

13 Donald J Netolitzky, 'Lawyers and Court Representation of Organized Pseudolegal Commercial Argument [OPCA] Litigants in Canada' (2018) 51(2) *UBC Law Review* 419, 420 <https://doi.org/10.29173/alr2485> ('Lawyers and Court Representation of OPCA Litigants').

14 *Bradley v The Crown* [2020] QCA 252, [1] (Sofronoff P).

15 *Meads v Meads* [2012] ABQB 571, [40] (Rooke ACJ) ('*Meads*').

16 *Deputy Commissioner of Taxation v Casley* [2017] WASC 161, [15] (Le Miere J) ('*Casley*').

17 *R v Sweet* [2021] QDC 216, [3] (Cash DCJ).

18 Netolitzky, 'A Rebellion of Furious Paper' (n 12) 4; Susan P Koniak, 'When Law Risks Madness' (1996) 8(1) *Cardozo Studies in Law and Literature* 65, 87–9, 106 <https://doi.org/10.1525/lal.1996.8.1.02a00040>; Donald J Netolitzky, 'After the Hammer: Six Years of *Meads v Meads*' (2019) 56(4) *Alberta Law Review* 1167, 1184 <https://doi.org/10.29173/alr2548> ('After the Hammer').

19 Colin McRoberts, 'Tinfoil Hats and Powdered Wigs: Thoughts on Pseudolaw' (2019) 58(3) *Washburn Law Review* 637, 643.

20 See generally Susan P Koniak, 'The Chosen People in Our Wilderness' (1997) 95(6) *Michigan Law Review* 1761.

legal instruments they refer to – confusingly for us – as 'Common Law'.[21] The pseudolegal universe is simply based on different (phantastic) legal interpretations of common instruments, supported with distinct narratives or stories.[22] Donald Netolitzky, perhaps the world's foremost expert on pseudolaw, concurs. In a series of comprehensive investigations into Canadian manifestations of pseudolaw,[23] Netolitzky explains that pseudolaw is a unique legal system, supported by a story that challenges 'regular' law; it has a clear purpose and social function as an anti-authority 'tool' to obtain certain objectives.[24] Similarly, in a recent study, David Griffin has highlighted the language adopted by pseudolaw adherents in legal filings. Griffin's analysis suggests that the use of archaic and obscure terminology is aimed at presenting the author as 'the wielder[s] of true legal authority'.[25]

Drawing these accounts together suggests pseudolaw comprises three core elements:

1. **Co-opted Form**: Pseudolaw borrows legal *language* and the *form* of legal argument to appear like accepted legal reasoning.[26] Superficially, the arguments are made in a way that reflects traditional legal methods. Pseudolaw litigants will rely upon statutes and judicial decisions to provide a source-based form of reasoning that, to the untrained eye, appears to mirror 'normal' legal argumentation.[27] As Glen Cash notes, 'ritual and ceremony have long been at the heart of pseudolaw ideology',[28] and to a large extent that ritual follows the form of mainstream legal methods. Because it employs some formal rituals of mainstream legality, pseudolaw raises unique challenges for judicial systems. For instance, it is not immediately clear how pseudolaw differs from novel argumentation developed from precedent or simple incorrect assertions of the law. But there are reasons why pseudolegal arguments will not be accepted in law.

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21 Koniak, 'When Law Risks Madness' (n 18) 70–1.

22 Ibid. See further Donald J Netolitzky, 'The Perfect Weed for this Spoiling Soil: The Ideology, Orientation, Organization, Cohesion, Social Control, and Deleterious Effects of Pseudolaw Social Constructs' (2023) 6 *International Journal of Coercion, Abuse, and Manipulation* 1, 4–6 <https://doi.org/10.54208/1000/0006/001> ('The Perfect Weed for this Spoiling Soil').

23 See, eg, Netolitzky, 'A Rebellion of Furious Paper' (n 12); Netolitzky, 'Lawyers and Court Representation of OPCA Litigants' (n 13); Netolitzky, 'After the Hammer' (n 18); Donald J Netolitzky, 'The History of Organized Pseudolegal Commercial Argument Phenomenon in Canada' (2016) 53(3) *Alberta Law Review* 609 <https://doi.org/10.29173/alr422>; Donald J Netolitzky, 'The Dead Sleep Quiet: History of the Organized Pseudolegal Commercial Argument Phenomenon in Canada – Part II' (2023) 60(3) *Alberta Law Review* 795 <https://doi.org/10.2139/ssrn.4213830>; Donald J Netolitzky, 'New Hosts for an Old Disease: History of the Organized Pseudolegal Commercial Argument Phenomenon in Canada – Part III' (2023) 60(4) *Alberta Law Review* 971 <https://doi.org/10.2139/ssrn.4213830>.

24 Netolitzky, 'The Perfect Weed for this Spoiling Soil' (n 22) 1–9.

25 David Griffin, '"I Hereby and Herein Claim Liberties": Identity and Power in Sovereign Citizen Pseudolegal Courtroom Filings' (2023) 6 *International Journal of Coercion, Abuse, and Manipulation* 1, 16 <https://doi.org/10.54208/1000/0006/007>.

26 Netolitzky, 'A Rebellion of Furious Paper' (n 12).

27 On the nature of 'source based' reasoning in law, see Joe McIntyre, *The Judicial Function: Fundamental Principles of Contemporary Judging* (Springer, 2019) 104 ('*The Judicial Function*').

28 Glen Cash, 'A Kind of Magic: The Origins and Culture of "Pseudolaw"' (Conference Paper, Queensland Magistrates' State Conference, 26 May 2022) 9.

2. **Contra-Narratives**: To understand why pseudolaw differs from mere novel arguments, it is necessary to appreciate that pseudolaw aims to provide substitute contra-narratives that create an alternative substantive and normative legal universe.[29] When analysed from an internal perspective, pseudolaw might share common instruments without engaging with the substantive norms, principles, or methods of orthodox domestic or international legal reasoning.[30] Instead, pseudolaw relies on its own substantive norms and principles that underlie arguments in a given discrete case. We discuss these dominant substantive doctrines of the sovereign citizen movement in antipodean courts below in Part IV.

   The core distinction between novel legal arguments and pseudolegal arguments is that the former occurs within the conventional legal universe of substantive, coherent norms, while the latter occurs within a parallel and conspiratorial alternate legal universe consisting of fundamentally distinct substantive norms.[31] The two approaches bear a superficial similarity, and it may not be possible to draw a clear line between them given the common forms and language. However, the underlying substance is wholly divergent.

3. **Internalised Beliefs**: Adherents of pseudolaw movements present themselves as genuinely believing that their doctrines represent the *true* position of the law. For the believer, it is the mainstream law that has departed from that 'legal truth', and they possess the single correct legal answer or approach – a type of legal Protestantism. In a sense, believers possess an almost endearing commitment to legality and the rule of law.[32] However, these arguments are, to those with any modicum of understanding of the legal system, entirely without foundation.[33] Edelman J has, for example, described the hypothetical sovereign citizen litigant as one who would argue by 'genuinely and honestly raising a claim that is utterly hopeless'.[34]

   This element helps explain the attractiveness of pseudolegalism: it allows adherents to simultaneously disregard existing legal norms and disempower state actors, while retaining a self-conception of lawfulness and righteousness.

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29 Koniak, 'When Law Risks Madness' (n 18) 70–1; Netolitzky, 'The Perfect Weed for this Spoiling Soil' (n 22) 4–6.

30 For a discussion and overview of this methodology, see McIntyre, *The Judicial Function* (n 27) pt 3.

31 See, eg, Netolitzky, 'The Perfect Weed for this Spoiling Soil' (n 22) 4–7.

32 Chief Justice Peter Quinlan, 'The Rule of Law in a Social Media Age' (Speech, Sir Francis Burt Oration 2022, 3 November 2022) 19 <https://www.supremecourt.wa.gov.au/_files/Speeches/2022/TheRuleofLawinaSocialMediaAgeSirFrancisBurtOration2022.pdf>:

> Significantly, and in something of a paradox, the sovereign citizen almost always has a fervent belief in the importance of the 'rule of law' as they see it. Indeed, the sovereign citizen is deeply committed to the rule of law. It is simply that the 'law' for them happens to be the idiosyncratic subjective opinions that they hold …

33 *Sill v City of Wodonga* [2018] VSCA 195.

34 Transcript of Proceedings, *Citta Hobart Pty Ltd v Cawthorn* [2022] HCATrans 1, [960] (Edelman J).

These three components together help to distinguish pseudolaw from other fringe law and law-adjacent movements. For example, Kate Leader highlights the prevalence of conspiracy theories amongst litigants in-person – including the use of fake judicial templates, accusations of shadowy Freemasons and other cults infiltrating the judiciary, and antisemitic conspiracies.[35] While adherents of these conspiracies tend to have a strong internalised belief and a clear contra-narrative, such argumentation lacks the co-opting of legal forms common to pseudolaw. In a similar way, pseudolaw can be distinguished from the well-intentioned but misinformed litigant in-person, who attempts to utilise legal forms and structures but, without the requisite legal training, creates arguments that are substantively nonsense. Such a litigant may believe in their argument and may (to their eyes) be using the appropriate forms and structure, but they do not have the contra-narrative of the pseudolaw adherent.

Finally, we can also conceive of the *mala fides* actor who adopts the forms of legal argumentation with the content of a contra-narrative to undermine judicial proceedings – out of anger, nihilism or despair. However, while it may be appealing to place all pseudolaw adherents in this category, the contrast is revealing. These are not necessarily bad faith actors trying to destroy or undermine the legal system (though of course, some may be). Rather, many seem deeply misguided in their attempts to restore the 'true law' from corrupt modern interpretation. Pseudolaw adherents are nostalgic for a time when the law was right and good.

The pseudolaw movement has been thrust into the mainstream through the rise of sovereign citizens during the pandemic. It is important to recognise, however, that this is just one movement that employs pseudolaw.[36] The branches of that broader pseudolaw tree have not been comprehensively examined but seem to include sovereign citizens, freemen-on-the-land, micronations, the 'Detaxers', 'Moorish Sovereign Citizens', and certain species of anti-vaxxers and the anti-tax protestor movement. Other similar groups may also exist. Perhaps because pseudolaw is clearly not law, there have 'been relatively few attempts to seriously manage or even study the ecosystem of harmful, false legal beliefs'.[37] Nevertheless, over the last few years, legal scholars have begun to examine the use and misuse of pseudolaw, particularly its invocation by sovereign citizens, freemen-on-the-land, tax protestors and other like groups. Given that these movements emerged in the US in the mid-to-late 20th century, most of this scholarship centres on North America. But the sovereign citizen variant of pseudolaw has become internationalised. It has migrated across the world and 'developed a firm presence in Australia and New Zealand'.[38] What is surprising is that despite 'a wealth of reported decisions', 'no substantive academic review'

35 Kate Leader, 'Conspiracy!: Or When Bad Things Happen to Good Litigants in Person' (Paper, Faculty of Law, University of York, 15 November 2022) 4–9 <https://doi.org/10.2139/ssrn.4277751>. See also Netolitzky, 'The Perfect Weed for this Spoiling Soil' (n 22) 10.

36 Donald Netolitzky, 'A Pathogen Astride the Minds of Men: The Epidemiological History of Pseudolaw' (Conference Paper, Sovereign Citizens in Canada Symposium, Centre d'expertise et de formation sur les intégrismes religieux et la radicalisation, 3 May 2018) <https://doi.org/10.2139/ssrn.3177472> ('A Pathogen Astride the Minds of Men'); Cash (n 28) 6.

37 McRoberts (n 19) 638.

38 Netolitzky, 'A Pathogen Astride the Minds of Men' (n 36) 17.

of pseudolaw arguments – and sovereign citizen-style pseudolegal arguments in particular – in Australia and Aotearoa New Zealand exists.[39]

III THE SOVEREIGN CITIZEN MOVEMENT

The US sovereign citizen movement is a group of loosely affiliated individuals who are connected by a shared antagonism towards government, and a convoluted and conspiratorial interpretation of the law.[40] Self-identifying 'sovereign citizens' believe that they possess an uncorrupted and true understanding of the legal system. According to this conception, individuals are 'sovereign' and not bound by the laws of the country in which they live unless they waive those rights by accepting a contract with the government. Similar to conspiracy theory ideation, with which it shares much in common, the movement is decentralised and somewhat amorphous: there is no single leader, central doctrine or consolidated collection of documents.[41] There is, however, a shared common set of beliefs as to the capacity of the individual to utilise certain legal forms and language to allow themselves to lawfully avoid the application of state law. For example, there is a common belief that by reciting certain phrases (such as 'I am a living being' or 'I do not consent') they can *lawfully* avoid any obligation to obey laws and regulations. These phrases purport to deploy a talisman of legal immunity – like a cross presented to a vampire, state actors melt away, immunising the bearer from the need to wear masks, to pay taxes, or to hold a driver's licence.[42]

Given the amorphous nature of the movement, adherents relate to and borrow from other anti-government groups. While there are some differences between these movements, distinctions seem to be based on national origins or cultural divides rather than the pseudolegal theories that underlie their prominence or the methodologies and tactics they employ.[43] Indeed, as the internationalisation of sovereign citizen-inspired pseudolaw illustrates, there is evidence of pollination and cross-fertilisation; the various pseudolaw movements are akin to 'islands that

39 Ibid. Cf Cash (n 28). Robert Sudy, a former adherent to organised pseudolegal theories, has compiled an invaluable, comprehensive online resource that catalogues the protagonists, methods and spread of these arguments in Australian courts: Robert R Sudy, 'Freeman Delusion: The Organised Pseudolegal Commercial Argument in Australia' (Web Page) <https://freemandelusion.com/>.

40 For more on the sovereign citizen movement, see Hobbs and Williams (n 1) 65–72; Francis X Sullivan, 'The "Usurping Octopus of Jurisdictional/Authority": The Legal Theories of the Sovereign Citizen Movement' [1999] 4 *Wisconsin Law Review* 785, 786; James Evans, 'The "Flesh and Blood" Defense' (2012) 53(4) *William and Mary Quarterly* 1361; Joshua Weir, 'Sovereign Citizens: A Reasoned Response to the Madness' (2015) 19(3) *Lewis and Clark Law Review* 829; Kalinowski IV (n 8); Koniak, 'When Law Risks Madness' (n 18). Though note that there are several highly organised pseudolaw groups.

41 Kalinowski IV (n 8) 155.

42 Netolitzky, 'A Pathogen Astride the Minds of Men' (n 36) 15. We thank Donald Netolitzky for this vibrant metaphor: Personal Communication from Donald J Netolitzky, 5 December 2022 (copy on file with authors).

43 For an exploration of various pseudolegal movements in Canada, see *Meads* (n 15) [168]–[198] (Rooke ACJ). See further Stephen A Kent, 'Freemen, Sovereign Citizens, and the Challenge to Public Order in British Heritage Countries' (2015) 6 *International Journal of Cultic Studies* 1, 1.

share a degree of "radio transmissions" back and forth'.[44] In this Part, we provide a brief history of the sovereign citizen movement, describe its methods, and note the growing presence of this variant in Australia and Aotearoa New Zealand. The pseudolegal theories that members of these groups employ will be explored in more detail in Part IV.

A The Origin of the Sovereign Citizen Movement

The sovereign citizen movement evolved out of a confluence of several overlapping groups within the US in the 1990s.[45] The first of these is the Posse Comitatus movement, a radical right-wing Christian Identity sect that arose in the American West in the late 1960s. Literally 'the power of the county', Posse Comitatus rejected all state authority higher than the county sheriff. Reflecting their own connections and origins to the white supremacist Christian Identity movement, members believe the US federal government is controlled by a shadowy Jewish conspiracy. They attracted support from farmers facing bankruptcy and foreclosure in the American Midwest in the 1970s and '80s.[46]

Secondly, sovereign citizens are also connected to more loosely organised right-wing Patriot or militia movements. Members of these groups may be willing to accept state-level authority but also believe that the federal government is illegitimate. On this basis, federal instruments protecting the environment, regulating gun ownership, and imposing taxation interfere with fundamental liberties and amount to tyrannical rule.[47]

A third overlapping group is the 'common law' court movement that emerged in the 1990s. Proclaiming a 'radical version of social contract theory',[48] individuals acting within this group purport to withdraw their consent to government and establish their own local judicial systems – or 'metaphorical order'[49] – guided by their understanding of the common law. Francis X Sullivan notes that while some of these courts appear to be 'sincere attempts by members to implement their beliefs by freeing themselves from state tyranny and holding public officials accountable to the people', others are more accurately seen as simple 'instruments of harassment'.[50] 'Common law' courts regularly indict and try public officials (generally in absentia), place liens on their property and otherwise hound people through spurious court procedures.

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44 We thank the anonymous reviewer for this phrase.

45 Material in this paragraph is drawn from Hobbs and Williams (n 1) 66.

46 See Evelyn Schlatter, *Aryan Cowboys: White Supremacists and the Search for a New Frontier, 1970–2000* (University of Texas Press, 2006) <https://doi.org/10.7560/714212>.

47 See also Wilson Huhn, 'Political Alienation in America and the Legal Premises of the Patriot Movement' (1999) 34(3) *Gonzaga Law Review* 417.

48 Daniel Lessard Levin and Michael W Mitchell, 'A Law unto Themselves: The Ideology of the Common Law Court Movement' (1999) 44(1) *South Dakota Law Review* 9, 12.

49 Calum Lister Matheson, 'Psyschotic Discourse: The Rhetoric of the Sovereign Citizen Movement' (2018) 48(2) *Rhetoric Society Quarterly* 187, 188–9 <https://doi.org/10.1080/02773945.2017.1306876>.

50 Sullivan (n 40) 792.

The fourth group from which sovereign citizens emerged is the anti-tax protestor movement.[51] While people have protested tax throughout US history, the modern anti-tax movement arose in the mid-to-late twentieth century. In courts across the country, tax protestors claimed that federal income tax was unconstitutional on a range of frivolous grounds.[52] Among other arguments, claimants contended the Sixteenth Amendment to the *United States Constitution*, which allows the federal government to levy an income tax, was improperly passed and thus invalid.[53] As the US District Court for the Northern District of Texas noted in 1977, the goal of these groups 'is to do away with federal income taxation by making the burden so heavy on the IRS [Internal Revenue Service] and the federal courts that the government will have to yield'.[54] Sovereign citizens have adapted arguments made by tax protestors to develop their own pseudolegal theories. In their accounts, it is not simply taxation that is unconstitutional, but the entire federal government.

The sovereign citizen movement appears to have prospered in recent years. While it is impossible to state with accuracy the precise number of adherents due to their decentralised nature and lack of organisational hierarchy, various estimates paint a concerning picture. In 2010, the Southern Poverty Law Center estimated that around 100,000 Americans were 'hard-core sovereign believers' and another 200,000 were 'starting out by testing sovereign techniques for resisting everything from speeding tickets to drug charges'.[55] The methodology employed to reach this number is questionable,[56] but groups tracking the movement have noted an upsurge in activity as a result of the COVID-19 pandemic. In 2022, reports suggested that up to 500,000 Americans were sovereign citizens.[57]

B Sovereign Citizens in Domestic Courts – 'The Spell Effect'

One of the most striking aspects of the sovereign citizen movement is the willingness of the adherents to advance their beliefs through courts. In litigation, adherents proffer an approach that the recitation of certain words and forms compel judicial confirmation of magical results – for example, immunity from criminal law, or removal of any obligation to pay taxes.

Unsurprisingly, courts are often befuddled and surprised by pseudolegal claims when made in judicial proceedings. In a magisterial review of pseudolegal arguments, Rooke ACJ of the Alberta Court of Queen's Bench admitted that

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51 JM Berger, 'Without Prejudice: What Sovereign Citizens Believe' (Paper, George Washington University Project on Extremism, June 2016) 10–11.

52 Daniel B Evan, 'Tax Protestor FAQ', *Evans Legal* (Web Page, 27 February 2011) <https://evans-legal.com/dan/tpfaq.html>.

53 See, eg, *Porth v Broderick*, 214 F 2d 925 (10th Cir, 1954).

54 *Ex parte Tammen*, 438 F Supp 349, 356 (ND Tex, 1977).

55 JJ MacNab, '"Sovereign" Citizen Kane' (1 August 2010) *Intelligence Report* <https://www.splcenter.org/fighting-hate/intelligence-report/2010/sovereign-citizen-kane>.

56 Michelle M Mallek, 'Uncommon Law: Understanding and Quantifying the Sovereign Citizen Movement' (MA Thesis, Naval Postgraduate School, 2016) 61–7.

57 Kevin Krause, 'What Are Sovereign Citizens and What Do They Believe?', *The Dallas Morning News* (online, 6 September 2022) <https://www.dallasnews.com/news/politics/2022/09/06/what-is-a-sovereign-citizen-and-what-do-they-believe/>.

following their reasoning is difficult: 'I would describe how these documents have the intended effect, except that the … material I have reviewed has never made any sense, so I can only observe the "ingredients" and describe the intended "spell effect".'[58] Judd J of the Supreme Court of Victoria noted in a 2012 case that pseudolegal arguments are often 'comprised of random, almost incomprehensible, statements, propositions, quotations, argument and references to other material … lifted from other documents and randomly pasted into the pleading'.[59] In another case, Toogood J of the High Court of New Zealand noted:

> There is absolutely no merit in this application and it represents a gross abuse of the Court's procedure … Incomprehensible statements about birthright and being a natural person not susceptible to the laws of this country are regularly and properly rejected by the Courts …[60]

Courts today are more familiar with this 'technical legal rubbish' and 'the hackneyed argument about the limit of [state] sovereignty which has been rejected summarily so often'.[61] Nevertheless, this does not prevent the recurrence of pseudolegal claims.

Sovereign citizens may contest state authority, but they are confident using the legal system to pursue their opponents. Taking advantage of the peculiar lien process in the US, some members have filed false liens, fake letters of credit, or fabricated tax reports alleging that their 'enemies' have not accurately reported their income to harass public officials and ruin their credit. These and similar tactics have been described as 'paper terrorism'.[62] These practices can cause significant stress and anxiety. Innocent victims are forced to hire lawyers at significant personal expense to prove they own their property and clear away bogus legal challenges.[63] For instance, in 2009 Thomas and Lisa Eilerston filed more than USD250 billion in liens, demands for compensation and other claims against more than a dozen public officials in Hennepin County, Minnesota.[64] One of the Eilertson's victims, Sheriff Richard Stanek, explained '[i]t affects your credit rating, it affected my wife, it affected my children … We spent countless hours trying to undo it'.[65]

C Sovereign Citizens Beyond the Courts

Sovereign citizens may use the court system or their own 'courts' to harass people they see as enemies. However, others are far more dangerous. According

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58 *Meads* (n 15) [536] (Rooke ACJ).

59 *Norman* (n 9) [4] (Judd J).

60 *Martin v Chief Executive of the Department of Corrections* [2016] NZHC 2811, [19]–[20] ('*Martin*').

61 Justice Peter W Young, 'Current Issues: Flood of Litigation' (2004) 78(12) *Australian Law Journal* 763, 767.

62 Robert Chamberlain and Donald P Haider-Markel, '"Lien on Me": State Policy Innovation in Response to Paper Terrorism' (2005) 58(3) *Political Research Quarterly* 449 <https://doi.org/10.2307/3595614>; 'Paper Terrorism' (8 August 2017) *Intelligence Report* <https://www.splcenter.org/fighting-hate/intelligence-report/2017/paper-terrorism>.

63 Anti-Defamation League, *The Lawless Ones: The Resurgence of the Sovereign Citizen Movement* (Special Report No 2, 2012) 16; Michael Mastrony, 'Common-Sense Responses to Radical Practices: Stifling Sovereign Citizens in Connecticut' (2016) 48(3) *Connecticut Law Review* 1013, 1027.

64 Erica Goode, 'In Paper War, Flood of Liens Is the Weapon', *The New York Times*, (online, 23 August 2012) <https://www.nytimes.com/2013/08/24/us/citizens-without-a-country-wage-battle-with-liens.html>.

65 Ibid.

to the US Federal Bureau of Investigation ('FBI'), sovereign citizens are 'anti-government extremists'[66] and the movement is a 'domestic terrorist threat'.[67] The New South Wales ('NSW') Police Force has also described sovereign citizens as a potential terrorist threat.[68] The FBI Reports that members

> commit murder and physical assault; threaten judges, law enforcement professionals, and government personnel; impersonate police officers and diplomats; use fake currency, passports, license plates, and driver's licenses; and engineer various white-collar scams.[69]

When confronted, sovereign citizens can turn violent. US criminologist Christine Sarteschi has followed the movement for several years and has 'amassed at least 250 cases of violence, including arson, child abuse, rape, sexual assault, attempted kidnapping, mass shootings, and homicides'.[70] The most infamous sovereign citizen is Terry Nichols, Timothy McVeigh's co-conspirator in the truck bombing of the Alfred P Murrah Federal Building in Oklahoma City in 1995, which killed 168 people.

The picture that emerges is of a movement that combines extreme individualism with a belief structure that allows adherents to maintain that their actions remain lawful, despite contradicting all orthodox conceptions of legality. This dangerous alloy of perceived lawfulness and ability to pick and choose the applicability of legal norms promotes a righteousness and moral quality to the disregard of social norms. There is a direct line from magical legal argumentation in judicial proceedings, to disregard of public health measures, violent protests and, potentially, domestic terrorism. That progression is inherent, though perhaps latent, in much pseudolegal thinking. Over the last 25 years, that progression has been travelled the furthest by sovereign citizens.

D Antipodean Sovereign Citizens

The influence of sovereign citizen pseudolaw is global. In the 2010s, American sovereign citizens engaged on speaking tours throughout Australia and Aotearoa New Zealand to 'teach' attendees how to opt out of law.[71] In 2015, the NSW Counter Terrorism and Special Tactics Command estimated 'that there were as many as 300

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66 Federal Bureau of Investigation, 'Domestic Terrorism: The Sovereign Citizen Movement' (Web Page, 13 April 2010) <https://perma.cc/L8SQ-2K42>.

67 Ibid.

68 James Thomas and Jeanavive McGregor, 'Sovereign Citizens: Terrorism Assessment Warns of Rising Threat from Anti-government Extremists', *ABC News* (online, 30 November 2015) <https://www.abc.net.au/news/2015-11-30/australias-sovereign-citizen-terrorism-threat/6981114>.

69 Federal Bureau of Investigation (n 66).

70 Christine Sarteschi, 'Sovereign Citizens: More than Paper Terrorists', *Just Security* (Web Page, 5 July 2021) <https://www.justsecurity.org/77328/sovereign-citizens-more-than-paper-terrorists/>; Christine Sarteschi, 'Sovereign Citizens: A Narrative Review with Implications of Violence towards Law Enforcement' (2021) 60 *Aggression and Violent Behaviour* 101509 <https://doi.org/10.1016/j.avb.2020.101509>.

71 Kent (n 43) 11. See further the appearances of David Wynn Miller in several cases during this period: *Wollongong City Council v Falamaki* [2010] NSWLEC 66; *Wollongong City Council v Falamaki* [2009] FMCA 1204; *APD Property Developments Ltd v Papakura District Council* [2009] NZHC 1677. We thank the anonymous reviewer for bringing these cases to our attention.

sovereign citizens in NSW'.[72] Numbers are also unclear in Aotearoa New Zealand, but researchers agree the movement is 'apparent' throughout the country.[73]

Numbers have grown since the start of the pandemic. Many people will have become familiar with sovereign citizens (or aspects of the movement) through their political activities during the health emergency. They may have seen mobile phone videos filmed and uploaded online by adherents confronting police officers requesting to see their licence or staff of private businesses requesting they put on a mask before entering the store.[74] These videos are common throughout the globe.

Migration has prompted the evolution of pseudolaw as it adapts to local legal discourses. One concerning aspect in Australia and Aotearoa New Zealand is the growing connection between sovereign citizens and some Indigenous activists. In December 2021, a group of Indigenous and non-Indigenous Australians calling themselves the 'Original Sovereigns' (part of a larger group called the Original Sovereign Tribal Federation) set up camp outside Old Parliament House in Canberra, alongside the Aboriginal Tent Embassy. Believing Old Parliament House remains 'the seat of power in Australia', the group called their site 'Muckudda Camp', which means 'Storm Coming', an 'apparent reference to the QAnon conspiracy'.[75] On 21 and 30 December, protests turned violent with several members of the Original Sovereigns setting the front door of Old Parliament House on fire.[76] In 2020, the Tribal Federation had signed a memorandum of understanding with former Senator Rod Culleton's Great Australian Party. In a press release, both parties agreed that 'the current state and federal governments of Australia are operating without license'.[77] Despite not making an explicit reference to the sovereign citizen movement, the influence is clear.

Similar events have occurred in Aotearoa New Zealand. In November 2021, a months-long anti-vaccine mandate protest and occupation began outside the Parliament in Wellington. Although not all the protestors were conspiracy theorists, many drew inspiration from QAnon and believed 'the virus is a hoax, that a UN agenda conspiracy is out to get us all, [and] that new Nuremberg

72 Daniel Baldino and Kosta Lucas, 'Anti-Government Rage: Understanding, Identifying and Responding to the Sovereign Citizen Movement in Australia' (2019) 14(3) *Journal of Policing, Intelligence and Counter Terrorism* 245, 251 <https://doi.org/10.1080/18335330.2019.1663443>.

73 Paul Spoonley, 'The Extremism Visible at the Parliament Protest Has Been Growing in NZ for Years: Is Enough Being Done?', *The Conversation* (online, 2 March 2022) <https://theconversation.com/the-extremism-visible-at-the-parliament-protest-has-been-growing-in-nz-for-years-is-enough-being-done-177831>.

74 Mitchell and Boddy (n 3).

75 Jack Latimore and Rachael Dexter, 'Protestors Condemned by First Nations Elders as Police Confront Parliament House Rally', *The Age* (online, 13 January 2022) <https://www.theage.com.au/national/act/protesters-condemned-by-first-nations-elders-as-police-confront-parliament-house-rally-20220113-p59nuk.html>.

76 Australian Associated Press, 'Aboriginal Tent Embassy Condemns Protesters Who Lit Fire at Old Parliament House', *The Guardian* (online, 30 December 2021) <https://www.theguardian.com/australia-news/2021/dec/30/fire-at-old-parliament-house-damages-entrance-to-historic-canberra-building>.

77 Toni Hassan, 'Who Are the 'Original Sovereigns' Who Were Camped Out at Old Parliament House and What Are Their Aims?', *The Conversation* (online, 17 January 2022) <https://theconversation.com/who-are-the-original-sovereigns-who-were-camped-out-at-old-parliament-house-and-what-are-their-aims-174694>.

trials were coming'.[78] While inconvenient for many, this protest was uniquely problematic for Māori people. Although some protestors were Māori, many who were not appropriated strategies used by Māori activists, undermining the customary authority of Māori polities. For instance, protestors rejected the request of one *iwi* (Māori tribe), Ngāti Toa, to stop using their famous haka, Ka Mate, to 'promote anti-Covid-19 vaccination messages'.[79] In late February 2022, protestors invaded a *marae* (meeting house), prompting *iwi* leaders to issue a united message condemning protestors who illegitimately claimed *mana whenua* (authority over the land).[80] The following month, the protestors lit fires outside Parliament and clashed with police in riot gear. Māori leaders again urged the protestors to go home, chastising them for the 'flagrant disrespect of *tikanga* [custom]'.[81] In turn, protestors claimed that Māori leaders and journalists were nothing more than 'sell outs and paid puppets'.[82]

The adaptation seen in Australia and Aotearoa New Zealand is concerning. The unsavoury incidents outside Old Parliament House in Canberra and the Parliament in Wellington reveals how non-Indigenous individuals and some Indigenous supporters have appropriated the language of Indigenous sovereignty to support conspiracy theorist movements and extreme political ideologies.[83] They are also indicative, more generally, of increasing social dissatisfaction, stratification, and alienation. As these protests suggest, the growing sovereign citizen influence funnels legitimate Indigenous political claims into spurious pseudolegal arguments that can be quickly and summarily dismissed. This only increases alienation, anger, and potentially confrontation and violence. While worthy of study, the focus of this article is not on the political activities of sovereign citizens, but on their use of pseudolegal argumentation in court proceedings. We turn to that now.

IV PATTERNS OF SOVEREIGN CITIZEN PSEUDOLAW ARGUMENTATION

The absence of any central leader or unifying doctrine means that articulating the precise beliefs of sovereign citizens and pseudolaw adherents is difficult. They tend to borrow ideas from 'gurus', themselves converts,[84] who spread their

78 Toby Manhire, 'The Protest That Revealed a New, Ugly, Dangerous Side to Our Country', *The Spinoff* (online, 10 November 2021) <https://thespinoff.co.nz/society/10-11-2021/protest-covid-vaccine-wellington>.

79 'Maori Tribe Tells Anti-Vaccine Protestors to Stop Using Popular Haka', *BBC News* (online, 15 November 2021) <https://www.bbc.com/news/world-asia-59286563>.

80 Glenn McConnell, 'Iwi Take Unprecedented Stand Against "Abusive" Protesters Who Invaded Marae', *Stuff* (online, 28 February 2022) <https://www.stuff.co.nz/pou-tiaki/127904988/iwi-take-unprecedented-stand-against-abusive-protesters-who-invaded-marae>.

81 Ibid.

82 Manhire (n 78).

83 Kata Hannah, Sanjana Hattotuwa and Kayli Taylor, 'Mis- and Disinformation in Aotearoa New Zealand from 17 August to 5 November 2021' (Working Paper, The Disinformation Project, November 2021) 9.

84 Donald J Netolitzky, 'Organized Pseudolegal Commercial Arguments as Magic and Ceremony' (2018) 55(4) *Alberta Law Review* 1045, 1046 <https://doi.org/10.29173/alr2485> ('Organized Pseudolegal Commercial Arguments'); Tsidulko (n 6) 14–15.

idiosyncratic messages online. Adherents thus gain 'their information through nebulous webpages' or videos on YouTube, TikTok and Facebook.[85] Pseudolaw adherents are also demographically diverse, ranging from 'educated professionals to retired senior citizens' and consisting of both the wealthy and the poor;[86] the phenomenon has no geographic boundaries. However, even if sovereign citizen pseudolegal arguments are byzantine and jumbled, we can track their emergence and influence across the world through their similar tactics and patterns of legal argument; indeed, they are 'surprisingly unified by their methodology and objectives'.[87] By tracking one tactic in particular – in our case, the arguments raised in judicial proceedings – it is possible to construct a relatively accurate picture of those patterns in Australia and Aotearoa New Zealand.

In the following section, we attempt to understand pseudolegal argumentation through doctrinal legal research. At its most general, doctrinal legal research is 'research into the law and legal concepts',[88] that invites a 'synthesis of various rules, principles, norms, interpretive guidelines and values' and aims to explain, make coherent or justify a segment of the law as part of a larger system.[89] While pseudolaw is *not* law, pseudolegal arguments draw on similar and comparable themes and bases allowing for doctrinal study.

The most significant doctrinal study of pseudolaw comes from the Canadian province of Alberta. In the influential family law case of *Meads v Meads* ('*Meads*'),[90] Rooke ACJ analysed nearly 150 cases to identify the themes and forms of pseudolegal argumentation deployed in Canada. In subsequent scholarship, Netolitzky (who was involved in the case) drew from *Meads* to conduct a doctrinal review of Canadian case law, which he then compared to pseudolegal variants in the US, Germany and elsewhere.[91] Through comparative analyses, Netolitzky identified six 'core concepts' that operate in a 'pseudolaw memeplex'.[92]

We set out to understand where Australasian pseudolaw was similar to and different from its North American versions. To construct our typology of pseudolegal cases in Australia and Aotearoa New Zealand, we used key terms and cross-referencing from the pseudolaw memeplex to identify cases in the major case databases.[93] We also utilised the database of cases constructed by Robert Sudy, a former pseudolaw adherent turned anti-pseudolaw campaigner, who tracks pseudolaw cases in Australia.[94] We identified more than 200 published cases from

85 Kalinowski IV (n 8) 155.
86 *Meads* (n 15) [68] (Rooke ACJ).
87 Ibid.
88 Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17(1) *Deakin Law Review* 83, 85 <https://doi.org/10.21153/dlr2012vol17no1art70>.
89 Trischa Mann (ed), *Australian Law Dictionary* (Oxford University Press, 3rd ed, 2017) 305.
90 *Meads* (n 15).
91 Ibid. See also Netolitzky, 'Organized Pseudolegal Commercial Arguments' (n 84) 1046–7.
92 Netolitzky, 'A Pathogen Astride the Minds of Men' (n 36).
93 AustLII, NZLII, LexisNexis and Westlaw.
94 Sudy (n 39).

1980 onwards. Clearly, pseudolaw has 'spread both internationally and within countries into new but culturally distinct populations'.[95]

Once the dataset was identified, we reviewed the cases to identify key themes and forms of legal argument relied upon by sovereign citizen adherents in litigation. The purpose of this analysis was to identify dominant themes of legal argumentation, rather than to exhaustively map a particular subset of cases. This reflective practice of analysis involved identification of common forms of argument and the synthesis together of these into themes. The cases discussed below are illustrative of the major themes and forms. To date, Australia and Aotearoa New Zealand lack a comprehensive judicial survey, like the one Rooke ACJ provided in *Meads*.[96] As such, our approach allowed us to develop a rough typology of the prominent patterns of argument raised in courts in Australia and Aotearoa New Zealand. Similar studies should be conducted in other jurisdictions.

Of course, the construction of this typology is an inherently constrained undertaking. It has not been the objective of this study to undertake an exhaustive empirical analysis of Australian and Aotearoa New Zealand pseudolegal cases. This study does not, for example, claim to have identified all sovereign citizen cases filed in that time frame, to comprehensively map the cases that raise the three principal arguments identified below, nor the pseudolegal cases that depart from them. Those are worthy topics of subsequent research. Rather, this research seeks to identify the dominant (that is, most common) forms of legal argumentation, and to demonstrate that there are specific themes that are distinct to this context.

We found that pseudolaw in Australia and Aotearoa New Zealand generally exhibits the six core concepts that Netolizky identified as constituting the pseudolaw memeplex. However, three principal forms recurred most often, namely:

1. **The Strawman Argument**: the law does not apply to them because it applies only to 'artificial' persons who possess a separate legal personality – the strawman duality;
2. **Absence of Individual Consent**: government authority is illegitimate in the absence of individual consent, and they did not consent to the law operating upon them – everything is a contract; and/or
3. **State Law is Defective**: the law was invalidly enacted and is of no legal effect – state authority is defective or limited.[97]

Our review finds the first two patterns of pseudolegal argument have been clearly influenced by the US sovereign citizen-style of pseudolaw. The third argument, however, largely predates that influence. Nevertheless, several media reports and cases indicate that sovereign citizen-inspired arguments on this point are becoming more prevalent. This indicates that, even if there are unique forms of pseudolaw in Australia and Aotearoa New Zealand, US sovereign citizen-style pseudolegal arguments have become internationalised.

95 Netolitzky, 'A Rebellion of Furious Paper' (n 12) 4.

96 *Meads* (n 15).

97 There is another type of claim that is present in Australia called the 'book entry credit', but it is not as widespread as these other patterns. See also Netolitzky, 'After the Hammer' (n 18) 1175–82.

Given the idiosyncratic beliefs of proponents and their flexibility in adopting and adapting pseudolegal claims, it is important to note that the precise arguments made are more fluid than our typology suggests. Nonetheless, it remains a valuable framing device. In this Part, we explain the core common content of these three forms of argumentation and provide illustrative examples of their use in discrete cases.

A The Strawman Argument: Artificial and Natural Persons

The 'strawman' or 'split-person' argument is the most prominent argument made by sovereign citizens. This claim asserts that there are real, natural individuals that are different from fictional or 'artificial' legal persons.[98] Like the arguments below, on consent and defective state authority, there is some theoretical basis that could be unpacked about natural and fictive personalities in law.[99] The argument maintains a certain 'esoteric and spiritual dimension', but as the Supreme Court of Queensland concluded in *Borleis v Wacol Correctional Centre*, it 'does not find any reflection in any provision of our law'.[100]

Adherents believe that individuals are born sovereign, with natural and inalienable rights. Reflecting the origin of this legal theory, the US *Declaration of Independence*, alongside the United Nation's *Universal Declaration of Human Rights*, seem to be authority for the belief that all humans have inalienable rights. Putting aside that neither has direct legal force in any jurisdiction – let alone Australia and Aotearoa New Zealand – adherents claim that governments must assert their authority over that natural person (also described as a 'flesh and blood' person) to make them subjects or slaves. Subject formation occurs when governments issue a birth certificate, a social security number or a bank account, trapping people without their knowledge by apparently routine paperwork.[101] When that subject is formed, it creates a legal fiction, an 'artificial' person or 'strawman', that also provides the government with jurisdiction over the subject.

As governments use these legal processes to make natural bodies into legal subjects, sovereign citizens argue that they can use the same legal processes to de-subjectify their natural bodies from those governments. The theory leads to a number of attractive propositions for the believer. As Le Miere J explained: 'The idea is that an individual's debts, liabilities, taxes and legal responsibilities belong to the straw man rather than the physical individual who incurred those obligations, conveniently allowing one to escape their debts and responsibilities.'[102]

Sovereign citizens point to different legal instruments to justify their theory.[103] In Australia, adherents commonly rely upon the fact that birth certificates typically

98 Kalinowski IV (n 8) 156, 158–64; Sullivan (n 40) 809–11.

99 Stephen Young, 'Our Legal Borders: Interrelated Construction of Individual and Political Bodies' (2023) 34 *Law and Critique* 207 <https://doi.org/10.1007/s10978-022-09325-2>.

100 [2011] QSC 232, [8].

101 We thank the anonymous reviewer for the emphasis that this is a concealed process.

102 *Casley* (n 16) [15] (Le Miere J).

103 In the United States, the most popular account holds that artificial persons were created under the Fourteenth Amendment of the *United States Constitution*, which is said to have established a federal United States citizenship.

spell out the baby's name in all capitals, insisting that the act of registration creates a legal duplicate person. For example, JANE CITIZEN is the name of the strawman or legal person, while Jane Citizen is the flesh and blood or natural person. Once again, litigants are eclectic, drawing on an assortment of different legal identifiers or documents, including driver's licences or bank accounts.[104] The sources and precise claims adapt to reflect local legal discourses, the peculiarities of the claimant and the idiosyncrasies of the guru they have learned from.

To demonstrate that they do not recognise the state's claim to authority, sovereign citizens often write their name or identifier on legal documents in non-standard ways. This is supposed to represent that their natural self is distinguishable from their artificial personality. They may include capitalisation, inappropriate punctuation, and obscure or obsolete legal, quasi-legal or Latin terminology. As such, court documents sometimes unwittingly fuel these theories. Because submissions, motions and judgments spell out parties' names in capital letters, sovereign citizens argue that the court has jurisdiction over only the artificial legal person and not the natural living man or living woman.[105] In *Van den Hoorn v Ellis*, for instance, the appellant distinguished between his natural and artificial personalities in appealing against a conviction and sentence for driving without a valid licence, registration, or insurance.[106] He explained that he was 'Sovereign Freeman JOHAN' appearing as agent on behalf of and as the 'owner of the created fictions known as JOHAN HENDRICK VAN DEN HOORN and JOHN HENRY VAN DEN HOORN, being created fictions fraudulently owned and controlled by legal fictions'.[107] Mr Van den Hoorn was unsuccessful.

Similar attempts have been made in Aotearoa New Zealand. As Mr Smith was awaiting sentencing from a drug conviction, he applied for a writ of habeas corpus alleging that he was unlawfully detained.[108] The New Zealand Court of Appeal did the best it could to piece his arguments together, finding that

> its essence appears to be that the warrants were both for the detention of Geoffrey Smith, but the person detained, and the applicant to the High Court on both the successive occasions, was not Mr Smith but rather 'S-I-R-Crown; 1953150853, in body, Sovereign/Crown/Living Man'.[109]

It is not clear exactly what 'S-I-R-Crown; 1953150853' means, but Geoffrey Smith was attempting to identify and distance his natural identity from his legal personality. Similarly, in *Larsen v New Zealand Police*, the Court heard an appeal against conviction and sentence.[110] Initially, it was not clear who was appealing, however. As the Court described: 'The "living sovereign man scott-william of the house of larsen" appeals the conviction and sentence of Scott William Larsen (Mr Larsen) in respect of two criminal charges, on the grounds of fraud and perjury.'[111]

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104 *Martin* (n 60).
105 See, eg, *United States v Washington*, 947 F Supp 87, 92 (SDNY, 1996).
106 [2010] QDC 451.
107 Ibid [2] (Dorney QC DCJ).
108 *Smith v Chief Executive of the Department of Corrections* [2019] NZCA 362 ('*Smith*').
109 Ibid [10] (Gilbert, Courtney and Wild JJ).
110 [2020] NZHC 2520.
111 Ibid [1] (Cull J).

The living sovereign man explained that 'the "corporate name" of Larsen that the courts are using is a reference to an "artificial entity created through the use of artificial construct by all Crown representatives and forcefully against the will of the living man: scott-william"'.[112] Neither 'S-I-R-Crown; 1953150853' nor 'scott-william of the house of larsen' were successful. In both cases, the Court found that the natural person was identifiable according to the legal name.

This strawman argument is also commonly made against tax claims or payment of fees to the government. As we will see, this overlaps with the second pattern involving consent, and gestures towards the third, involving defects in state law. As an example of the second, in *Niwa v Commissioner of Inland Revenue*, Mr Niwa sought judicial review to challenge the basis of a tax assessment, as he had not paid penalties that the Commission of Inland Revenue sought to enforce.[113] Mr Niwa attempted to distinguish '"Donald-James: of the family Niwa" and DONALD NIWA™' to argue that the judge failed to ask whether the living individual 'would accept role as "Defendant"'.[114] Mr Niwa claimed that he did not consent. He did not succeed.

In Australia and Aotearoa New Zealand, these arguments can coincide with, as well as undermine, Indigenous sovereignty claims. It is important to be clear that Indigenous peoples' right to sovereignty is grounded in their status as distinct political communities composed of individuals united by identity and a long history of operating as a distinct society, with a unique economic, religious, and spiritual relationship to their land.[115] Indigenous peoples' have customary and traditional forms of political authority and law, which has been recognised at common law and in international law.[116] Nevertheless, it is becoming more common for courts to be presented with claims that mix sovereign citizen-style pseudolegal argument with Indigenous sovereignty claims. For instance, on appeal to the New Zealand High Court, Mr Jay Maui Wallace filed an 'affidavit of identity' alongside his writ of habeas corpus challenging his conviction and incarceration.[117] The affidavit Mr Wallace filed was issued by a company registered in New Zealand, called the Māori Chief Registrar of Maunga Hikurangi Koporeihana Māori.[118] According to the Court, the affidavit stated:

> 1. That My Christian name is Jay Maui: with the initial letters capitalised as required by the Rules of English Grammar for the writing of names of

112 Ibid [2].

113 [2019] NZHC 853, [3] (Ellis J) ('*Niwa* [2019]'), citing *Commissioner of Inland Revenue v Niwa* [2016] NZDC 14075 ('*Niwa* [2016]').

114 *Niwa* [2019] (n 113) [5], citing *Niwa* [2016] (n 113).

115 Erica-Irene A Daes, 'An Overview of the History of Indigenous Peoples: Self-Determination and the United Nations' (2008) 21(1) *Cambridge Review of International Affairs* 7, 13 <https://doi.org/10.1080/09557570701828386>. For the distinction between micronations and Indigenous nations, see Harry Hobbs and George Williams, 'The Demise of the "Second Largest Country in Australia": Micronations and Australian Exceptionalism' (2021) 56(2) *Australian Journal of Political Science* 206 <https://doi.org/10.1080/10361146.2021.1935450>.

116 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) arts 3–5.

117 *Warahi v Chief Executive of the Department of Corrections* [2020] NZHC 2917, [23] (Muir J) ('*Warahi*').

118 Ibid [23]–[24].

sovereign soul flesh and blood people. My patronymic or family name of Wallace with the initial letters capitalised.
2. That the name JAY MAUI WALLACE or any other drivitation [sic] of that name is a dead fictitious foreign situs trust or quasi corporation/legal entity not the sovereign soul flesh and blood Mari [sic] that I am.
3. That I am a free will flesh and blood Suri Juris sovereign man and as such I am private, non resident, non domestic, non person, non citizen, non individual and not subject to real or imaginary statutory acts, rules, regulations or quasi laws.
4. That I am who I say that I am NOT who the overt or covert agents of the State say that I am.
5. That I do not knowingly, willingly, intentionally, or voluntarily surrender my sovereign inalienable rights according to the law of nature.
6. That the state has no legal jurisdiction or sovereign authority justified in origin to hear this matter.[119]

Mr Wallace's case is a typical strawman argument asserting split personalities, but it also challenges the authority of the state from an Indigenous basis, as indicated by the Māori corporation registered under Aotearoa New Zealand law. There are reasons why these arguments should be treated with care. When Indigenous sovereignty issues are inflected with sovereign citizen-style pseudolegal argumentation it can diminish the seriousness of Indigenous claims.

B I Do Not Consent to this Contract

At the core of the strawman argument is the notion that the law does not apply to the claimant but to some legal entity. A similar but distinct argument revolves around the idea of consent. This form of argument begins from the position that all legislation or authority is a form of contract or predicated on contractual relations. Because a sovereign citizen has not agreed to that contract, they have not consented to the authority of the jurisdiction. Therefore, the law does not apply to them. There is more to unpack here about 'consent', consent theory, or the social contract as a normative basis or political justification for legitimate government. But here, we limit ourselves to unpacking how the argument is made and, ultimately, rejected.

In the US, sovereign citizens argue that individuals are only subject to state or government authority if they consent to federal citizenship. The corollary is that individuals – when they apparently learn about the 'law' – can renounce their federal citizenship and divest from or killoff their fictitious legal duplicate. This grants them freedom from federal authority to live under 'common law'. They become sovereign citizens, who no longer must comply with federal or other corrupted laws. A similar type of argument is a 'freeman-on-the-land' argument, which postulates that the claimant is not a subject of all government authority unless they have explicitly consented to that legislation.[120]

119 Ibid [25].
120 *Serious Fraud Office v Smith* [2019] NZDC 3068, [11] (Burns J).

For some, this position is based upon a misunderstanding of clause 39 of the Magna Carta. The clause reads that 'no freeman shall be taken or imprisoned or disseised [dispossessed of property] … or exiled or in any way destroyed … except … by the law of the land'.[121] For others, it is a misreading of a Latin maxim recorded in an early edition of the American *Black's Law Dictionary* dealing with rules of pleading. The maxim *qui non negat fatetur* translates as 'he who does not deny, admits'. Sovereign citizens claim that this means contracts can be imposed upon people. Of course, as Cash notes, this is nonsensical, for the rules of pleadings have no connection to the law of contract.[122] Whatever the precise basis for the sovereign citizen's claim, courts across the common law world are unimpressed.[123]

In Australia and Aotearoa New Zealand, the consent line of argumentation is often – though not always – connected to local legal discourses and instruments. For example, some Australian pseudolaw adherents claim that state constitutions constitute original contracts and the formation of the Commonwealth of Australia has somehow breached those contracts. In *Shaw v Attorney-General (WA)*, the Supreme Court of Western Australia was confronted with this contention:

> I must confess, with all due respect to the plaintiffs, that I have no idea what is intended by these pleas. The assertion that the *Constitution Act* constitutes a contract is plainly not intended to be understood in the sense that the concept of a social contract between rulers and ruled was used by the 17th century philosopher John Locke and the other social contract theorists. It is clearly intended to plead a contract enforceable by law in the courts, presumably by any member of the public, although the parties to the contract are not identified in the pleading.
>
> The plea is plainly misconceived. The *Constitution Act* is a statute and has effect as such. It does not give rise to contractual rights or obligations on the part of the first defendant or anyone else. It is also manifestly plain that the 'content and intent' of the *Constitution Act* could not be altered through the actions of the defendants, whether in alleged collusion or otherwise.[124]

Aotearoa New Zealand is a unitary state with an unentrenched (non-written) constitution. As such, the 'consent' argument is more directly applied. Our friend who wanted to be identified as 'S-I-R-Crown; 1953150853, in body, Sovereign/Crown/Living Man' (Geoffrey Smith) argued that a 'contract between the living and the Court to exercise its jurisdiction [is] required and [has] not been produced'.[125] Another claimant asserted that he 'did not give his consent to the name used in the charging documents before me, and he did not consent to the name shown on his birth certificate'.[126] Yet another claimant who filed a habeas writ asserted 'that he could not be compelled to enter into any contract'.[127] In response, the Court inferred 'that he regards the authority of the court as a matter of consent by him

121 *Magna Carta* (1215) 17 John, c 39, quoted in Cash (n 28) 11.
122 Cash (n 28) 9.
123 In *Augustinowicz v Nevelson* (D NH, No 10-CV-564-PB, 16 December 2011), for instance, the New Hampshire District Court dismissed a sovereign citizen's argument that property taxes cannot be imposed without the taxpayer's consent as defying common sense and 'foreclosed by New Hampshire case law'.
124 [2004] WASC 144, [11]–[12] (Master Newnes) ('*Shaw*').
125 *Smith* (n 108) [17] (Wild J).
126 *Martin* (n 60) [18].
127 *Simon v Chief Executive of the Department of Corrections* [2022] NZCA 222, [4] (Courtney J).

and that since he does [not] consent to be bound by the authority of the Court, the warrant is not a valid basis on which to detain him'.[128] All three were unsuccessful. At one level, these arguments involve an overinflated notion or literal application of contractualism or the social contract. The central problem with this type of argument is no one needs to explicitly and affirmatively consent to the authority of a jurisdiction to be subject to it, especially for purposes of tax or criminal law.

Reflecting the convoluted legal theories in which these claims develop, the consent argument often overlaps with both the strawman and the defective state authority arguments, particularly in relation to driving offences. In *Christie v Commissioner of Police*, for instance, Michael Christie sought an extension of time to file a notice of appeal against a conviction for a speeding offence.[129] In advancement of his case, Christie asserted that he was not bound by the laws of Queensland because he is 'a human being' merely 'occupying or inhabiting an area of land named or known as Queensland' and as a human being 'has no contract or agreement with representatives or agents or principal or anyone acting on behalf of the Queensland Police Service'.[130] A similar argument was made in *James v New Zealand Police*.[131] James appealed against an infringement notice issued under the *Land Transport Act 1998* (NZ) for operating a vehicle without registration and failing to produce a driver's licence.[132] James submitted that as a freeman-on-the-land he had not consented to the Act and was not bound by it.[133] The Court struck out his claim as 'an abuse of process'.[134] Everyone who operates a vehicle on public roads must comply with legislation regulating the operation of vehicles. The operation of a vehicle on a public road implies the willing consent of the individual.

C State Law is Defective

The third major pattern of pseudolegal argumentation in Australia and Aotearoa New Zealand is a contention that the relevant law is invalidly enacted or defective and thus without legal effect. We have found that this pattern of pseudolaw argument has a longer history in Australia and Aotearoa New Zealand than the other two arguments we have explored, demonstrating that pseudolaw has been percolating in these jurisdictions for some time. The internationalisation of sovereign citizen pseudolaw has prompted change and adaption in this area.

The most prevalent impact that we have seen involves the intersection of Indigenous sovereignty claims with sovereign citizen-style pseudolaw. For generations, Indigenous peoples in Australia and Aotearoa New Zealand have challenged the legitimacy of the States that claim their traditional lands. In *Coe v Commonwealth*, for example, Wiradjeri activist Paul Coe asserted that Aboriginal

128 Ibid.
129 [2014] QDC 70.
130 Ibid 6 (Jones J).
131 [2019] NZHC 462.
132 Ibid [5] (Cooke J).
133 Ibid [4]–[6].
134 Ibid [2].

sovereignty survives within Australia,[135] while many cases in Aotearoa New Zealand have contended the State is unlawful or illegitimate because it has breached He Whakaputanga or Te Tiriti o Waitangi.[136] These cases are not associated with the sovereign citizen movement.[137] However, as the protests outside the Parliament in Wellington suggest and more recent cases, like *Warahi v Chief Executive of the Department of Corrections* demonstrate, that troubling connection is increasingly visible.[138] Similar developments are occurring in Australia.[139] The swelling intersections between sovereign citizen-style pseudolaw and some Indigenous activists discussed in Part III(D) above suggest that this is an area to watch – and watch out for.

Prior to the emergence of sovereign citizen-inflected pseudolaw in Australia and Aotearoa New Zealand, proponents posited defects in state law in various (creative) ways. In some cases, proponents argue that a fatal flaw has affected the validity of *all* legislation passed after a certain date. Persistent litigants have identified various flaws, ranging from apparent failures to affix a seal in the correct place,[140] that the presence of the Royal Coat of Arms above the bench means that English common law supersedes Australian statutory law,[141] to the ineffectual introduction of decimal currency. On the latter point, Peter Gargan, a serial filer and declared vexatious litigant,[142] has consistently maintained that because section 3 of the *Australian Constitution* provides that the Governor-General shall be paid in pounds, 'no legislation since 1966 has been legitimately approved by any Governor-General because none of them have been paid in legitimate currency'.[143]

Many of these claims are raised to avoid tax. Wayne Levick persistently submitted that the commission of a Governor-General lapses at the death of the Monarch.[144] On this basis, it seems that Lord Gowrie had no authority to give assent to the *Income Tax Assessment Act 1936* (Cth) given that assent was granted after King George V had passed but before King Edward VI had reappointed him. Alas, courts have been clear: the office of the Governor-General survives the death of a

135 *Coe v Commonwealth* (1979) 53 ALJR 403.

136 See, eg, *R v McKinnon* (2004) 20 CRNZ 708, [9]–[21] (Wylie J), citing *Berkett v Tauranga District Court* [1992] 3 NZLR 206, [211]–[213] (Fisher J) and quoting *R v Miru* [2000] BCL 526, [9]–[11], [13]–[17] (Williams J) (finding that *Te Ture Whenua Māori Act 1993* (NZ) [*Maori Land Act*] does not grant jurisdiction to a Māori incorporation); *Delamere v A-G* [2022] NZHC 699, [2] (Gendall J); *Mainwaring v Mortgage Holding Trust Co Ltd* [2010] NZCA 599, [150] (Glazebrook, Arnold and Harrison JJ).

137 See, eg, *Phillips v R* [2011] NZCA 225 (invoking the Magna Carta and Māori sovereignty, but not sovereign citizenship).

138 *Warahi* (n 117).

139 *Cole v Rigby* [2023] NTSC 20, [2] (Grant CJ).

140 Cash (n 28) 10.

141 *Koteska v Magistrate Manthey* [2013] QCA 105, [15] (Martin J).

142 *Lohe v Gargan* [2000] QSC 140; *Official Trustee in Bankruptcy v Gargan [No 2]* [2009] FCA 398; *A-G (Vic) v Gargan* [2013] VSC 19.

143 Joshua Robertson, 'Rod Culleton and the Associates Who Claim 50 Years of Australian Laws Are Invalid', *The Guardian* (online, 24 November 2016) <https://www.theguardian.com/australia-news/2016/nov/24/rod-culleton-and-the-associates-who-claim-50-years-of-australian-laws-are-invalid>; *Walter v Mackay Regional Council* [2015] FCCA 351.

144 See *Deputy Commissioner of Taxation v Levick* (1999) 168 ALR 783.

sovereign.[145] These and other unorthodox legal claims have a superficial cogency but – once again – betray a misunderstanding of law and legal instruments. In this section, we explore some of the more prominent threads. We note that because this pattern pre-exists the recent internationalisation of sovereign citizen argumentation, it is in these forms of argument 'where pseudolaw theory shows significant regional variation'.[146]

1 Magna Carta

One of the most common organised pseudolegal claims under this form of argument is that the relevant law violates the Magna Carta. The Magna Carta was a peace treaty. Issued by King John of England in June 1215 at Runnymede, outside London, the Great Charter was designed to end the conflict between the King and a group of rebel barons. To secure peace, the Charter promised a suite of legal protections, many of which had been included in royal charters issued as early as 1100.[147] It is easy to see the significance of the Charter to concepts such as the rule of law. Clause 39 guaranteed the right of a freeman to trial by his peers before imprisonment as well as swift access to justice, while Clause 40 placed limits on the feudal payments that the King could demand from his barons. However, it also included several now outdated provisions. Clause 54, for example, provided that 'no one is to be arrested or imprisoned on the appeal of a woman for the death of any person except her husband'.[148]

The Magna Carta had a short life. On King John's request, the Charter was annulled by Pope Innocent III in August 1215 and England descended into civil war. Following the monarch's death from illness in October 1216, his nine-year-old son Henry III took the throne. A revised Charter (without several clauses from the 1215 Charter) was issued in the young King's name. In 1225, when Henry III achieved majority, it was issued again. The version that eventually became part of England's statute books was issued by Edward I in 1297.[149]

As befitting a document drafted in the thirteenth century to govern relations between the King and his barons, many of its clauses have fallen into obsolescence or have been superseded. By 1969, the whole Charter, save three provisions, had been repealed.[150] In Australia, only the prohibition on imprisonment without trial and the guarantee of swift justice survives in the law of each state and territory.[151] As early as 1905, the High Court of Australia confirmed: 'The contention that a

145 Ibid [31] (Hill J); *McKewins Hairdressing and Beauty Supplies (in liq) v Deputy Commissioner of Taxation* (2000) 203 CLR 662.

146 Cash (n 28) 10.

147 See Judith A Green, '"A Lasting Memorial": The Charter of Liberties of Henry I' in Marie Therese Flanagan and Judith A Green (eds), *Charters and Charter Scholarship in Britain and Ireland* (Palgrave Macmillan, 2005) 53 <https://doi.org/10.1057/9780230523050>.

148 *Magna Carta* (n 121) c 54, quoted in Cash (n 28) 11.

149 Anthony Arlidge and Igor Judge, *Magna Carta Uncovered* (Hart Publishing, 2014) xii–xv.

150 Ibid 163–7.

151 See David Clark, 'The Icon of Liberty: The Status and Role of Magna Carta in Australian and New Zealand Law' (2000) 24(3) *Melbourne University Law Review* 866; Justice Steven Rares, 'Why Magna Carta Still Matters' (Speech, Judicial Conference of Australia Colloquium, 9 October 2015).

law of the Commonwealth is invalid because it is not in conformity with [the] Magna Charta [sic] is not one for serious refutation'.[152] More recently, former Chief Justice of the Supreme Court of NSW James Spigelman explained that the Magna Carta has become 'a "myth", in the sense that it has been invested with a scope and with purposes that none of its progenitors could ever have envisaged'.[153] Of course, it is sometime legitimately invoked in litigation.[154]

More common, however, is its use in pseudolaw. Perhaps because of its mythic status, the Magna Carta is frequently invoked to avoid the ordinary operation of the law. In *Bishop v Australian Taxation Department*, for example, the appellant appealed against his conviction for failing to provide tax returns for three financial years.[155] Among other submissions, the appellant contended that 'capital gains tax is an unjust exaction forbidden by Magna Carta'.[156] In both *Arnold v State Bank of South Australia* and *Fisher v Westpac Banking Corporation*, the appellants sought a declaration that they did not need to pay their mortgage because the Magna Carta guaranteed their rights 'to their matrimonial home'.[157] In the latter case, French J noted the plea discloses 'no legally tenable cause of action'.[158]

Nevertheless, Magna Carta claims continue to be raised. The apparent guarantee of due process in clause 39 is perhaps invoked most frequently. Clause 39 provides:

> No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.

Litigants have drawn on this clause to argue that they cannot be convicted of an offence without a trial by jury. A whole gamut of potential jury trials must be required. In *MacDonald v County Court of Victoria*, the court dismissed the submission that the Magna Carta prohibits the imposition of a speeding fine based 'merely on a photograph and in the absence of evidence from witnesses'.[159] In *Essenberg v The Queen*, the High Court of Australia dismissed an application for special leave to appeal against a conviction under the *Weapons Act 1990* (Qld) in the absence of a jury trial.[160] McHugh J patiently explained that the Magna Carta does not bind Australian parliaments but is 'really more a statement of political ideals'.[161] Alas, even if Clause 39 had legal effect in Australia, the NSW Supreme Court in *Flowers v New South Wales [No 5]* noted that it allows conviction in two

152 *Chia Gee v Martin* (1905) 3 CLR 649, 653 (Griffith CJ).
153 James Spigelman, 'Magna Carta: The Rule of Law and Liberty' (2015) 40 *Australian Bar Review* 212, 220.
154 *Westco Lagan Ltd v A-G* [2001] 1 NZLR 40.
155 (1996) 32 ATR 644.
156 Ibid 645.
157 *Arnold v State Bank of South Australia* (1992) 38 FCR 484, 484 (Burchett, Hill and Drummond JJ); *Fisher v Westpac Banking Corporation* [1992] FCA 390, [14] ('*Fisher*').
158 *Fisher* (n 157) [21].
159 [2013] VSC 109, [38] (Emerton J).
160 (2000) 21(13) Leg Rep C3e.
161 Ibid 3 (McHugh J).

circumstances: 'by the lawful judgment of his equals *or* by the law of the land'.[162] Similar claims have been dismissed in Aotearoa New Zealand.[163]

2 Australian Independence

Many pseudolegal arguments assert some fatal defect in the peculiar political and legal development of Australia as an independent nation. Again, this pseudolegal argument pre-exists the internationalisation of sovereign citizen pseudolaw. Formally, the *Australian Constitution* is an Act of the United Kingdom Parliament, but in several cases the High Court of Australia has held that sovereignty rests with the people of Australia.[164] Pseudolegal arguments have been made in an effort to pry open the apparent inconsistency between the distinct bases of political sovereignty and supreme legislative authority – though, as Hayne J has noted, precisely why this should lead to the invalidating of State and Commonwealth legislation is never 'spelled out clearly'.[165]

One common tactic centres on the *Australia Acts* of 1986, including the *Australia Act 1986* (Cth) and the *Australia Act 1986* (UK). The *Australia Acts* were passed to resolve a strange 'constitutional anomaly'.[166] Although the Commonwealth of Australia had full legislative, executive and judicial power, and was rightfully regarded internationally as independent and sovereign, the Australian States formally 'remained dependencies of the British Crown'.[167] This meant that State laws were invalid if repugnant to British laws that applied to the States by paramount force, and that the Queen of the United Kingdom – and not the Queen of Australia – appointed State Governors and gave Royal Assent to State laws. It also meant that the Queen of the United Kingdom could disallow State laws within two years of their passage, and that the Queen of the United Kingdom acted on the advice of British – rather than Australian – Ministers when fulfilling her constitutional obligations. As Anne Twomey has demonstrated, British Ministers 'took seriously' their responsibilities, advising the Queen from time to time to act inconsistently with the wishes of the States.[168]

Constitutional and political requirements necessitated a complex flurry of legislative activity.[169] Each state parliament enacted a law requesting the Commonwealth and United Kingdom parliaments to pass their own legislation 'in,

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162 [2021] NSWSC 887, [69] (Rothman J) (emphasis in original).

163 See, eg, *Hong v New Zealand Lawyers and Conveyancers Disciplinary Tribunal* [2021] NZCA 611; *Kiwi Party Inc v A-G* [2020] 2 NZLR 224; *Riddiford v A-G* [2010] NZCA 539.

164 See, eg, *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1, 70 (Deane and Toohey JJ); *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106, 138 (Mason CJ).

165 *Joosse v Australian Securities and Investment Commission* (1998) 159 ALR 260, 263 [12] (Hayne J) ('*Joosse*').

166 Anne Twomey, *The Australia Acts 1986: Australia's Statutes of Independence* (Federation Press, 2010) 2 ('*The Australia Acts 1986*').

167 Ibid.

168 Ibid 3.

169 Ibid 386–412; Anne Twomey, 'Independence' in Cheryl Saunders and Adrienne Stone (eds), *The Oxford Handbook of the Australian Constitution* (Oxford University Press, 2018) 96, 111 <https://doi.org/10.1093/law/9780198738435.003.0005>.

or substantially in, the terms' set out in the State Act,[170] while the Commonwealth also passed an Act requesting the United Kingdom Parliament to do likewise.[171] Following these requests, the *Australia Acts* were passed. The final remaining constitutional links between Australia and the United Kingdom were terminated, acknowledging Australia's status as a 'sovereign, independent and federal nation'.[172]

Or were they? In a series of cases from the early 2000s, litigants argued that the request Acts passed by State Parliaments were invalid and that this affects the validity of the entire enterprise, such that the *Australia Acts* are of no legal effect. The apparent consequence of this 'audacious submission' is that all laws enacted after 3 March 1986 lack any constitutional foundation.[173] In *Sharples v Arnison*,[174] the argument was put in the following terms. Section 53 of the *Constitution Act 1867* (Qld) provides that any Bill that either 'expressly or impliedly' alters the office of the Governor of Queensland requires a referendum. The *Australia Acts (Request) Act 1985* (Qld) anticipated alterations to the office of Governor. It was not preceded by a referendum and is therefore invalid. The Queensland Court of Appeal dismissed the submission, finding that the Act did not alter the office of Governor, but rather requested the Commonwealth and United Kingdom Parliaments do so.[175] Attempts to relitigate the decision have failed in Queensland,[176] Western Australia,[177] and in the Federal Court of Australia.[178] Cash notes that the argument is less frequently ventilated today.[179]

Other apparent inconsistencies have also been raised. In *Joosse v Australian Securities and Investment Commission*, the applicant pointed to the fact that references in the Constitution to the Queen, refer to the Queen 'in the sovereignty of the United Kingdom'.[180] Following the passage of the *Royal Style and Titles Act 1973* (Cth), however, the Queen is the Queen of Australia. The applicant submitted that without amendment to the Constitution, no legislation has been validly enacted since that date.[181] The submission was dismissed. Still others are even harder to comprehend. In *Helljay Investments v Deputy Commissioner of Taxation*,[182] the High Court of Australia heard a submission that Australia became an independent sovereign state upon signing and ratifying the *Treaty of Versailles* in 1919. This act also had the (apparent) effect of invalidating all existing British laws – including the *Australian Constitution*. In the absence of a referendum or plebiscite clearly demonstrating the support of the Australian people, all existing authorities – such

170 See, eg, *Australia Acts (Request) Act 1985* (NSW) ss 3–5.
171 *Australia (Request and Consent) Act 1985* (Cth).
172 *Australia Act 1986* (Cth) preamble.
173 *Kosteska v Magistrate Manthey* [2013] QCA 105, [18] (Martin J) ('*Kosteska*').
174 [2002] 2 Qd R 444.
175 Ibid 456 [21] (McPherson JA). See also Twomey, *The Australia Acts 1986* (n 166) 368.
176 *Kosteska* (n 173).
177 *Shaw* (n 124); *Glew v Governor of Western Australia* [2009] WASCA 123.
178 *Kelly v Campbell* [2002] FCA 1125.
179 Cash (n 28) 11.
180 *Joosse* (n 165) 263 [12] (Hayne J). See *Australian Constitution* s 2.
181 *Joosse* (n 165) 263 [12].
182 (1999) 166 ALR 302.

as the Parliament, the Judiciary and, perhaps crucially, the Australian Tax Office – have no legal force. Hayne J was unimpressed.

3 The Currency Argument

Prior to the internationalisation of sovereign citizen pseudolaw, one of the more 'unique' pseudolaw theories was popularised by Alan Skyring. In the early 1980s, Skyring became convinced that Australia's monetary system is an unconstitutional violation of section 115 of the *Australian Constitution*. Skyring argued – repeatedly – that Australian law is inoperative 'because the only valid currency is gold and silver coins'.[183] The *Australian Constitution* empowers the federal Parliament with the authority to make laws on 'currency, coinage, and legal tender',[184] as well as banking (subject to some exceptions) and the issue of paper money.[185] Section 115 of the *Australian Constitution* provides further that '[a] State shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts'. The Commonwealth Parliament has made several laws confirming that notes and coins are legal tender. Section 36(1) of the *Reserve Bank Act 1959* (Cth) provides that 'Australian notes are a legal tender throughout Australia'. Section 16 of the *Currency Act 1965* (Cth) ('*Currency Act*') confirms that coins made and issued under the Act are also legal tender. However, there are some restrictions on how much can be paid in coins: payment in 5c, 10c, 20c and 50c coins is only legal tender up to $5; while payment in $1 and $2 coins is only valid if not exceeding 10 times the value of the coin.

In 1983, Skyring challenged his income tax assessment in the Queensland Supreme Court on two grounds. His first claim was that the *Income Tax Assessment Act 1936* (Cth) was contrary to the Magna Carta and therefore invalid. His second claim, equally tenuous, was that he could not pay his income tax because the *Currency Act* was itself invalid, as section 115 of the *Australian Constitution* allegedly prevented the issuing of paper money as legal tender. McPherson J dismissed the argument, noting that section 115 'creates simply a prohibition against the issuing of currency by State governments',[186] and does not prevent a person discharging their liability via legal tender. The Queensland Court of Appeal described Skyring's submissions as an 'interesting and informative argument' but noted that they did not appear to 'touch the validity of the judgment'.[187] His appeal was dismissed with costs.[188]

In the same year, Skyring launched several proceedings against Telecom Australia. He chose not to pay his phone bill on the basis that coins, and not paper money, may only be used to discharge a maximum of $20, which prompted Telecom

183 Netolitzky (n 36) 16; Cash (n 28) 7.
184 *Australian Constitution* s 51(xii).
185 Ibid s 51(xiii).
186 *Skyring v Commissioner of Taxation* (Supreme Court of Queensland, McPherson J, 19 August 1983) 4.
187 *Skyring v Commissioner of Taxation* (2007) 244 ALR 505, 507 [10] (Greenwood J).
188 *Skyring v Commissioner of Taxation* (Queensland Court of Appeal, Smithers, Northrop and Beaumont JJ, 18 April 1984) 29 [10], cited in *Skyring v Commissioner of Taxation* (2007) 244 ALR 505, 507 [10] (Greenwood J). With thanks to Robert Sudy for locating these materials.

Australia to disconnect his service. His claims failed. As an aside, Spender J noted that Skyring's wife 'tendered a sufficient number of notes or coins constituting legal tender within section 16 of the *Currency Act* to enable the telephone service not to be disconnected'.[189] An application to the High Court of Australia to issue six writs to various Commonwealth Ministers and Spender J was dismissed by a single Justice. Deane J noted 'there is no substance in the argument that there is a constitutional bar against the issue by the Commonwealth of paper money as legal tender'.[190]

Deane J's ruling did not prevent Skyring from repeatedly attempting to challenge Australia's monetary system through other means. In 1988, a bid in the Social Security Appeal Tribunal failed after it found that his employer's failure to compensate him in 'bullion, or coin' did not mean his salary was illegal, and thus he was not 'unemployed' and not a valid recipient of unemployment compensation.[191] In the 1990s, he launched several election-related challenges again aimed at upending Australia's monetary system.[192] By the time the High Court of Australia declared him a vexatious litigant in 1992, he had made at least 22 applications to the Court and obtained 11 judgments, which all confirmed the constitutionality of paper money as legal tender.[193] The Supreme Court of Queensland,[194] and the Federal Court of Australia,[195] subsequently joined the High Court of Australia and declared Skyring a vexatious litigant. Once again, this does not appear to have inhibited Skyring's activities. Sudy has collected countless applications made by Skyring seeking leave to commence proceedings in Queensland and federal courts.[196] In 2014, an article reported that Skyring had filed more than 50 proceedings – all of which had been dismissed by courts.[197] Regrettably, Skyring's obstinacy appears to have resulted in his bankruptcy.[198] Perhaps this is the reason why, alarmingly, Skyring began to 'assist' others in filing these fruitless claims.[199]

More recently, in a series of cases before the Queensland courts,[200] Leonard Clampett has claimed that section 115 of the *Australian Constitution* prevents him from paying his debts. Clampett has repeatedly submitted that the meaning of this

189 *Skyring v Telecom Australia* (Federal Court of Australia, Spender J, 18 October 1984) 3.

190 *Re Skyring's Application [No 2]* (1985) 59 ALJR 561, 561 (Deane J).

191 *Skyring v Secretary to the Department of Social Security* [1988] FCA 189.

192 Transcript of Proceedings, *Re A-G (Cth); Ex parte Skyring* (High Court of Australia, B102/1996, B103/1996, B105/1996, Kirby J, 26 February 1996); *Re A-G (Cth); Ex parte Skyring* (1996) 135 ALR 29. See also Transcript of Proceedings, *Re Skyring* (High Court of Australia, B106/1996, Gaudron J, 3 May 1996).

193 *Jones v Skyring* (1992) 109 ALR 303, 309 (Toohey J).

194 *Re Skyring* [1995] QSC 55.

195 *Ramsey v Skyring* (1999) 164 ALR 378.

196 Robert Sudy, 'Alan Skyring', *Freeman Delusion: The Organised Pseudolegal Commercial Argument in Australia* (Web Page) <https://freemandelusion.com/2020/06/23/alan-skyring/>.

197 'Forty Year Banknote Crusade Fails for 50th Time', *Queensland Business and Property Lawyers* (Blog Post, 3 July 2014) <https://qldbusinesspropertylawyers.com.au/blog/serial-litigant-barred-50th-time-banknote-argument/>.

198 Ibid.

199 See *Kosteska v Phillips* [2011] QCA 266.

200 *Clampett v Hill* [2007] QCA 394; *Clampett v Kerslake (Electoral Commissioner of Queensland)* [2009] QCA 104; *Clampett v Magistrate Cornack* [2012] QSC 123 ('*Cornack*'); *Clampett v Magistrate Cornack*

provision is 'fairly simple'; 'a state … cannot compel you to pay in other than gold and silver coin' and, 'because there's no gold and silver coin in common circulation', it is not possible to pay.[201] In a proceeding challenging a speeding fine, Clampett explained that his legal reading has been good to him:

> I haven't been able to pay a lot of things over the years. Fifteen years I haven't paid any income tax because it's not possible to pay it. I haven't paid, for instance, a couple of companies. I haven't paid Crown Law Queensland $12,500 they claimed from me, because of section 115 of the Commonwealth Constitution.[202]

Unsurprisingly, courts disagree.[203] And yet, this does not stop these claims or their evolution.

In 2022, it was reported that a pseudolaw adherent in Aotearoa New Zealand claimed that 'he was a "living man who presides within himself", and that police owed him $6,000 – to be paid in gold bullion – for the time they had detained him'.[204] The case reveals an overlap of the strawman argument with the currency argument, an indication of greater sovereign citizen influence. The man was unsuccessful. Courts in Australia and Aotearoa New Zealand that see these or similar arguments have been as consistent as their proponents have been persistent: 'there is no prospect of success at all in any of these contentions'.[205]

V RESPONDING TO PSEUDOLAW

Claims that the State is illegitimate, that the law does not apply in the absence of consent, or that it applies to a separate legally fictitious person distinct from the natural person are unlikely to be successful. Such claims do not involve any legally recognised basis for defending against tax or criminal prosecution. Courts do not and will not accept those arguments. This does not mean the State is unquestionable, that laws are unproblematic, that there are no such things as legal fictions, or that individuals, communities or peoples do not have legitimate gripes. But the role of the judiciary is limited.

Courts enforce rights and obligations that are cognisable under legal authority. This means they consider the laws that are valid and authoritative for that dispute – as considered from *within* the viewpoint of the legal system itself. In almost every case, this does not involve foundational legal instruments or natural law concepts. And it certainly does not involve the application of external contra-narratives of the form favoured by pseudolaw adherents. Given the persistence and apparent growth of these arguments, however, how should we respond to pseudolaw?

[2013] QCA 2. See further Judy Lattas, 'DIY Sovereignty and the Popular Right in Australia' (Conference Paper, Conference of the Centre for Research on Social Inclusion, 27 September 2004) 1, 8.

201 *Cornack* (n 200) [2] (Daubney J).

202 Ibid.

203 *Clampett v Kerslake (Electoral Commissioner of Queensland)* [2010] HCASL 280.

204 Guy Williams, 'Man Demands $6000 From Police in Bizarre "Sovereign Citizen" Argument', *Otago Daily Times* (online, 12 November 2022) <https://www.odt.co.nz/regions/queenstown/man-demands-6000-police-bizarre-sovereign-citizen-argument>.

205 *Krysiak v McDonagh* [2012] WASC 270, [46] (Heenan J).

A The Role of Judges

Many pseudolaw adherents may simply be looking for a fight. Others are akin to mercenaries who use pseudolaw because they believe it might work for them and discard it when it does not. But some 'genuinely believe that their arguments represent the correct and true form' of legal argumentation that *ought* to be followed by the legal system.[206] These are not definitionally *mala fides* actors, but rather individuals who misunderstand critical elements in our legal system, such as the idea that legislation is not contractual. Given the fact that many adherents hold sincere but misinformed beliefs, courts should respond carefully when dealing with such litigants. Responses should be guided by a more structured form of engagement, instead of the mockery and minimalisation that may initially seem justified.[207]

There are strong reasons for courts to quickly dismiss pseudolegal submissions. In *Wnuck v Commissioner of Internal Revenue* ('*Wnuck*'), Gustafson J noted that 'addressing frivolous anti-tax arguments risks dignifying them'[208] and wastes limited court resources.[209] Equally, however, research suggests that there is value in providing a 'thorough and explicit [rejection]' of these sorts of arguments.[210] Colin McRoberts notes that the *Meads* judgment has identified procedural approaches to deterring such claims and influenced the public (including potential pseudolegal adherents) by providing a practical and readable explanation for why pseudolaw will not succeed, contributing to the decline of the movement in Canada.[211] While issues surrounding judicial economy will persist, judgments written 'with an eye to the wider context' have proven effective in creating resources that can disarm the attractiveness of pseudolaw.[212]

In cases where these arguments have been dismissed without substantial discussion, overwhelmingly judges still tend to treat these litigants fairly and carefully.[213] This is commendable even if the litigant will not see it as meaningful. It reveals that judges regularly uphold their oath '[to] do right by all persons, without fear or favour, affection or ill-will'[214] in the most challenging of circumstances. In rare cases, judges have attempted to engage with adherents directly. Occasionally this has succeeded. Sudy, a former adherent, records that it was the patient judgment of New South Wales Magistrate, David Heilpern, that pulled him out of this dangerous ideology.[215] Magistrate Heilpern's actions are admirable. This form of direct engagement is justified and appropriate in dealing with non-violent pseudolaw

206 Young, Hobbs and McIntyre (n 3).
207 Note that courts in Australia and Aotearoa New Zealand are increasingly attempting to respond to pseudolaw by making substantive and informed rebuttals, particularly to strawman arguments.
208 *Wnuck v Commissioner of Internal Revenue*, 136 TC 498, 512 (Tax Ct, 2011) ('*Wnuck*').
209 Ibid 510.
210 McRoberts (n 19) 664.
211 Ibid 664–5.
212 Ibid 665.
213 See also Young, Hobbs and McIntyre (n 3).
214 *High Court of Australia Act 1979* (Cth) s 11. See Justice John Toohey, '"Without Fear or Favour, Affection or Ill-Will": The Role of Courts in the Community' (1991) 28(1) *Western Australia Law Review* 1, 2, where Toohey J traces the judicial oath to a statute passed in England in 1346: *Ordinance for the Justices* (1346), 20 Edw 3, c 1.
215 Sudy (n 39).

adherents, not simply because of the general obligations of the judge to all litigants, but specifically because of the nature of this species of belief. Additionally, judges may also be best positioned to educate and act as an authority on law.

There are also practical reasons for judges to engage slowly. Although it is understandable that judicial officers may grow tired of fossicking through legal gibberish, it is important that they engage carefully. Legitimate legal claims and complaints can be buried under pseudolegal argument. In a 2022 case from the New Zealand High Court, Isac J observed that the plaintiff's claims were 'steeped in sovereign citizen theory', but from that was able to excavate a claim for breach of contract. The plaintiff explained to the Court they could not afford to hire competent legal counsel.[216] Another risk is that a judge gets tired of hearing that the defendant is a flesh and blood person, lets them leave the hearing and then rules on the issue, only to have it overturned on appeal.[217]

B The Role of Courts

There is no guarantee that a patient and thorough rebuttal will work. As noted in *Wnuck*, 'the litigant who presses the frivolous [pseudolegal] … argument often fails to hear its refutation'.[218] By the time a pseudolaw litigant is in front of a judge it may already be too late; their opposition and orientation may have crystallised. This suggests room for procedural responses or litigation management that may deter adherents.

The Alberta Court of King's Bench in Canada, for example, has made a list of 'stereotypic and unique pseudolaw motifs' like weird name formatting and ink fingerprints.[219] Following the *Meads* decision, the Court issued an order allowing clerks to reject filings with any of those motifs if they return it to the litigant and 'circle the prohibited defect on a list'.[220] In *Re Gauthier*, Rooke ACJ explained the rationale behind the order:

> The Master Order is designed to intercept OPCA [Organised Pseudolegal Commercial Arguments] litigation at the earliest possible point so that persons attempting to file such are directed to *Meads v Meads*, given notice of the irregular and legally incorrect nature of OPCA schemes, and then have the opportunity to abandon pseudolegal concepts before those misconceptions lead to unnecessary, abusive, and futile litigation, and the expenditure of litigant and court resources.[221]

The order has been successful. The Court found that quickly rejecting these documents and asking them to refile them correctly can put an end to potentially abusive litigation without much hassle. Indeed, 'unpublished data suggests that "90% of the persons who had their documents rejected this way never returned"'.[222]

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216 *Republic Arms Ltd v Corporation Trading as New Zealand Police [No 2]* [2022] NZHC 3185, [6].
217 *Hainaut v Queensland Police Service* [2019] QDC 223.
218 *Wnuck* (n 208) 504–5.
219 Personal Communication from Donald J Netolitzky, 5 December 2022 (copy on file with the authors).
220 Ibid.
221 *Re Gauthier* [2017] ABQB 555, [6] (Rooke ACJ).
222 McRoberts (n 19) 659, citing Email from Donald J Netolitzky, 1 March 2019.

C The Role of the Legal Profession

Procedural responses like this are valuable, but there is also a role for the broader legal profession. Anxious, stressed or socially isolated individuals will not always be able to seek reputable legal advice. Instead, they may choose to do their own research online. There they will find readily available misinformation purporting to explain how to resist state law. In part, this may explain the resilience of pseudolaw. Once the adherent has fallen down the rabbit hole and imbibed pseudolegal argument, they will believe they have found solutions to their problems. At that point, some may not be willing to listen to credible legal authorities or legal institutions.

Many websites and lawyers make pseudolaw claims online. Preying on the false hope of individuals, they charge thousands of dollars for legal advice that purports to get people off speeding fines or help them avoid having to pay their mortgage or council rates.[223] Sometimes, their clients end up losing their homes.[224] Law societies and other professional associations should make clear that these people are selling snake oil. If they are a lawyer, their entitlement to practice should be reviewed.

D The Need for a Broader Response

Pseudolaw magnifies problems for the individual. Most commonly, pseudolegal argumentation will extend the time, energy and costs incurred by the adherent.[225] These arguments also increase societal costs. While costs to the administration of justice are the most obvious,[226] there are other social costs. Individuals have their own reasons for adopting pseudolegal argumentation, but the spread of these arguments is indicative of growing social problems, including social unrest, dissatisfaction, disaffection, stratification and inequality. The sovereign citizen movement was born, in part, out of right-wing extremism. The spread of these arguments may indicate not just increasing social alienation, but potential support for those movements.

Responding to pseudolaw thus requires a more comprehensive approach. There is reason to believe that the growth of pseudolaw – at least in some part – is a consequence of the nature, structures and decisions of our legal systems. Leader notes that many litigants in person are exposed to advice networks that advance conspiracist ideation on the internet because of the 'absence of formal and accessible legal advice'.[227] In fact, Leader argues that some litigants (particularly those with certain cognitive biases in favour of conspiratorial narratives)

223 See, eg, *Aussie Speeding Fines* (Web Page) <https://aussiespeedingfines.com>.

224 Emily Baker, 'This Man Advises His Clients that Elections, Rates and Mortgages Are Invalid', *ABC News* (online, 2 May 2023) <https://www.abc.net.au/news/2023-05-02/man-advises-clients-elections-rates-mortgages-are-invalid/102274956>.

225 See, eg, *Rossiter v Adelaide City Council* [2020] SASC 61, [52] (Livesey J).

226 See, eg, *Re Skyring* [2014] QSC 166, [20] (Wilson J).

227 Leader (n 35) 35.

developed conspiracy ideation when engaging with the court system.[228] They came to believe that their arguments were rejected or minimised, not because they had bad information, but because the legal system operates behind closed doors in shadowy cabals and elitist institutions.[229]

Our legal systems increasingly alienate the population from meaningful engagement with legal advocates, the judiciary and judicial resolution, yet fails to recognise and redress the damage this alienation can cause. It is entirely foreseeable that when individuals predisposed to this belief system are unable to access good quality information and advice (or even just basic assistance and sympathy), they will interpret their negative experiences as being symptomatic of something more malevolent.[230] Pseudolegal arguments are, arguably, to some extent a consequence of the conduct of judicial systems and not a purely external imposition.

Sovereign citizen pseudolegal theories are attractive to people looking for a way out of a crisis. The pandemic and the associated health orders prohibited protest, suspended ordinary parliamentary procedures, and put many people's economic livelihoods at risk. These necessary but dramatic responses were imposed on the back of nearly 40 years of neoliberal policies that have cut back the regulatory state throughout the common law world. Legal education is too costly. Legal scholarship is behind paywalls. Legal representation requires funding. Pseudolegal forms are often free or relatively cheap to download online. Pseudolegal communities are insular but supportive on social media and are embedded in an even broader conspiratorial alternative shadow world. It is time to take pseudolaw seriously.

228 See also Donald J Netolitzky, 'Organized Pseudolegal Commercial Arguments in Canada; An Attack on the Legal System' (2016) 10 *Journal of Parliamentary and Political Law* 137.

229 Note that studies suggest pseudolegal adherents are not mentally ill but hold and express unorthodox law as an aspect of their pre-existing extremist political beliefs: see, eg, Jennifer Pytyck and Gary A Chaimowitz, 'The Sovereign Citizen Movement and Fitness to Stand Trial' (2013) 12(2) *International Journal of Forensic Mental Health* 149 <https://doi.org/10.1080/14999013.2013.796329>. We thank the anonymous reviewer for this point.

230 Leader (n 35) 37.