

RULE BY MAN OR GOD?

“A people who will not be ruled by God are destined to be ruled by tyrants.” -- William Penn.

16th American Jurisprudence, second Edition: - *“Jurisprudence, by which all judges are bound by oath, is the science of the law. By science here, is understood that connection of truths which is founded on principles either evident in themselves, or capable of demonstration; a collection of truths of the same kind, arranged in methodical order. In a more confined sense, jurisprudence is the practical science of giving a wise interpretation to the laws, and making a just application of them to all cases as they arise. In this sense, it is the habit of judging the same questions in the same manner, and by this course of judgments forming precedents”¹.* In Short Jurisprudence is the philosophy of common law.

The jurisdiction of a court falls under two categories (1) courts of record, and (2) courts not of record; a court of record is a court of law² which proceeds according to the course of the common law; whereas courts not of record are nisi prius courts³ that proceed according to statutes.⁴ A court of record is a "superior court." a court not of record is an "inferior court." "Inferior courts" are those whose jurisdiction is limited and special and whose proceedings are not according to the course of the common law.

“Any court proceeding according to statutory law is not a court of record (which only proceeds according to common law); it is an inferior court. Acts and judicial proceedings of courts of record are enrolled, or recorded, for a perpetual memory and testimony, and which have power to fine or imprison for contempt. Courts not of record are those of inferior dignity, which have no power to fine or imprison, and in which the proceedings are not enrolled or recorded”⁵. A court not of record has such power to punish for a civil contempt as is specifically granted to it by statute, since there is no authority (People) for such power all such legislation is null and void and a violation of due process.

CORAM IPSO REGE (Blacks 4th) Before the King Himself, under our founding documents that would be the Governor of the Universe, a court for the People and by the People through a Jury aka the King's (God's) Bench under common law which is self-evident truths founded on Biblical principles and virtues.

A "court of record" is a judicial tribunal (jury) having attributes and exercising functions independently of the person of the magistrate designated generally to hold it, and proceeding according to the course of common law, its acts and proceedings being enrolled for a perpetual memorial.⁶

*“The decisions of a superior court may only be challenged in a court of appeal. **The decisions of an inferior court are subject to collateral attack. In other words, in a superior court one may sue an inferior court directly, rather than resort to appeal to an appellate court.** Decision of a court of record may not be appealed. It is binding on ALL other courts. However, no statutory or constitutional court (whether it be an appellate or supreme court) can second guess the judgment of a court of record. “The judgment of a court of*

¹ 1 Ayl. Pand. 3 Toull. Dr. Civ. Fr. tit. prel. s. 1, n. 1, 12, 99; Merl. Rep. h. t.; 19 Amer. Jurist, 3.

² **COURT OF LAW** (Blacks 4th) a court proceeding according to the course of the common law and governed by its rules and principles, as contrasted with a "court of equity."

³ **NISI PRIUS COURT** "Nisi prius" is a Latin term (Black's 5th) "Prius" means "first." "Nisi" means "unless." A "nisi prius" procedure is a procedure to which a party FIRST agrees UNLESS he objects. A rule of procedure in courts is that if a party fails to object to something, then it means he agrees to it. A nisi procedure is a procedure to which a person has failed to object A "nisi prius court" is a court which will proceed unless a party objects. The agreement to proceed is obtained from the parties first.

⁴ **NISI PRIUS.** (Bouvier's Law) Where courts bearing this name exist in the United States, they are instituted by statutory provision.

⁵ 3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton, 52 Cal 225; Erwin v. U.S., D.C.Ga., 37 F. 488, 2 L.R.A. 229; Heininger v. Davis, 96 Ohio St. 205, 117 N.E. 229, 231.

⁶ Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte Gladhill, 8 Metc. Mass., 171, per Shaw, C.J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689.7 Cal Jur 571 California Jurisprudence, Bancroft Whitney (1922), Page 580-581 Courts of Record

*record whose jurisdiction is final, is as conclusive on all the world as the judgment of this court would be. It is as conclusive on this court as it is on other courts. It puts an end to inquiry concerning the fact, by deciding it."*⁷

LAW (Blacks 4th) is generally divided into four principle classes, namely;

- 1) natural law (*common law*),
- 2) the law of nations,
- 3) public law, and
- 4) private or civil law.

COURT OF EQUITY A court which has jurisdiction in equity, which administers justice and decides controversies in accordance with the rules, principles, and precedents of equity, and which follows the forms and procedure of chancery; as distinguished from a court having the jurisdiction, rules, principles, and practice of the common law.⁸

COURT OF CHANCERY - A court having the jurisdiction of a chancellor. A court administering equity and proceeding according to the forms and principles of equity. In England, prior to the judicature acts, the style of the court possessing the largest equitable powers and jurisdiction was the "high court of chancery." In some of the United States, the title "court of chancery" is applied to a court possessing general equity powers, distinct from the courts of common law.⁹

The terms "equity" and "chancery," "court of equity" and "court of chancery," are constantly used as synonymous in the United States. It is presumed that this custom arises from the circumstance that the equity jurisdiction which is exercised by the courts of the various states is assimilated to that possessed by the English courts of chancery. Indeed, in some of the states it is made identical therewith by statute, so far as conformable to our institutions.¹⁰

CHANCELLOR (Blacks 4th) the Lord high In England, the highest judicial functionary in the kingdom (above the People and therefor repugnant to our Constitution). He exercises many functions and powers over and above the jurisdiction which he exercises in his judicial capacity in the supreme court of judicature, of which he is the head. Wharton.; In American law, this is the name given in some states to the de facto¹¹ judge (or the presiding judge) of a de facto court¹² of chancery.

Equity courts and law courts (Blacks 4th) The former being such as possess the jurisdiction of a chancellor, apply the rules and principles of chancery law, and follow the procedure in equity; the latter, such as have no equitable powers, but administer justice according to the rules and practice of the common law. Courts of Chancery lack competent jurisdiction because it lacks power and authority¹³ under the United States

⁷ Ex parte Watkins, 3 Pet., at 202-203. [cited by SCHNECKLOTH v. BUSTAMONTE, 412 U.S. 218, 255 (1973)]

⁸ Thomas v. Phillips, 4 Smedes & M., Miss., 423

⁹ Parmeter v. Bourne, 8 Wash. 45, 35 P. 586; Bull v. International Power Co., 84 N.J.Eq. 209, 93 A. 86, 88

¹⁰ Wagner v. Armstrong, 93 Ohio St. 443, 113 N.E. 397, 401

¹¹ **DE FACTO** "An officer, king, or government de facto is one who is in actual possession of the office or supreme power, but by usurpation, or without lawful title." 4 Bl.Comm. 77, 78. MacLeod v. United States, 229 U.S. 416, 33 S.Ct. 955, 57 L.Ed. 1260; Wheatley v. Consolidated Lumber Co., 167 Cal. 441, 139 P. 1057, 1059.

¹² **De facto court.** One established, organized, and exercising its judicial functions under authority of a statute apparently valid, though such statute may be in fact unconstitutional and may be afterwards so adjudged; or a court established and acting under the authority of a de facto government. 1 Bl. Judgm. § 173; In re Manning, 139 U.S. 504, 11 S.Ct. 624, 35 L.Ed. 264; Gildemeister V. Lindsay, 212 Mich, 299, 180 N.W. 633, 635.

¹³ **Court of competent jurisdiction.** One having power and authority of law at the time of acting to do the particular act. Ex parte Plaistridge, 68 Okl. 256, 173 P. 646, 647.; One having jurisdiction under the state Constitution and laws to determine the question in controversy. Texas Employers' Ins. Ass'n v. Nunamaker, Tex.Civ.App., 267 S. W. 749, 751.

Constitution, it is a de facto court subject to collateral damage because it violates due process and is a fraud¹⁴.

When considered in relation to its ORIGIN, it is Statute law or Common law. When examined as to its different systems it is divided into civil law, common law, canon law. When applied to objects, it is civil, criminal, or penal. It is also divided into natural law and positive law. Into written law, *lex scripta* and unwritten law, *lex non scripta*; into law merchant, martial law, municipal law and foreign law. When considered as to their duration, laws are immutable and arbitrary or positive; when as their effect, they are prospective and retrospective.

In America, We the People have ordained only courts' of law and equity¹⁵ arising under this Constitution including admiralty and maritime jurisdictions¹⁶; both courts' of law and equity¹⁷ are to proceed under the law of the land¹⁸ and therefore under the rules of common law. The only difference between the two is that courts' of law proceed under common law and are decided by a tribunal of twelve jurists that cannot be appealed; whereas equity courts' proceed under common law and are decided by a tribunal of one jurist (judge) elected by the people (*appointed in the federal*) that can be appealed. The judges of the latter courts are bound by oath to apply the law of the land under Article VI and continue¹⁹ holding their office so long as they are in good behavior²⁰ which means conduct that is authorized by law, actions outside the law would be a felony under the color of law²¹.

Common law can be traced back to 1600 BC also known as Mosaic Law and was brought to England by the Anglo Saxons about 400 AD and was called the "Great Charter" in the Magna Carta:

CONFIRMATIO CARTARUM - October 10, 1297 - EDWARD, by the grace of God, King of England, Lord of Ireland, and Duke of Guian, to all those that these present letters shall hear or see, greeting. Know ye that we, to the honour of God and of Holy Church, and to the profit of our realm, have granted for us and our heirs, that the Charter of liberties, and

¹⁴ Proceedings in courts of chancery are said not to be, strictly speaking, records; but they are so considered. *Gresley, Ev.* 101. And see 8 *Mart. La. N. S.* 303; 1 *Rawle, Penn.* 381; 8 *Yorg. Tenn.* 142; 1 *Pet. C. C.* 352.

¹⁵ **COURT OF EQUITY** (Blacks 4th) A court which has jurisdiction in equity, which administers justice and decides controversies in accordance with the rules, principles, and precedents of equity, and which follows the forms and procedure of chancery; as distinguished from a court having the jurisdiction, rules, principles, and practice of the common law. *Thomas v. Phillips*, 4 *Smedes & M., Miss.*, 423.

¹⁶ **ARTICLE III SECTION 2** The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;-- to controversies to which the United States shall be a party;--to controversies between two or more states;-- between a state and citizens of another state;-- between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

¹⁷ **EQUITY** (Blacks 4th) Equity is a body of jurisprudence, or field of jurisdiction, differing in its origin, theory, and methods from the common law. *Laird v. Union Traction Co.*, 208 *Pa.* 574, 57 *A.* 987.; In its broadest and most general signification, this term denotes the spirit and the habit of fairness, justness, and right dealing which would regulate the intercourse of men with men, ---the rule of doing to all others as we desire them to do to us; or, as it is expressed by Justinian, "to live honestly, to harm nobody, to render to every man his due." *Inst.* 1, 1, 3. It is therefore the synonym of natural right or justice. But in this sense its obligation is ethical rather than jural, and its discussion belongs to the sphere of morals. It is grounded in the precepts of the conscience, not in any sanction of positive law.

¹⁸ **ARTICLE VI** This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

¹⁹ **ARTICLE III SECTION 1** THE JUDICIAL POWER OF THE UNITED STATES shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior.

²⁰ **GOOD BEHAVIOR** The term "good behavior" means conduct that is authorized by law, and "bad behavior" means conduct such as the law will punish. *State v. Hardin*, 183 *N.C.* 815, 112 *S.E.* 593, 594. Orderly and lawful conduct; *Huyser v. Com.*, 25 *Ky.L. Rep.* 608, 76 *S.W.* 175; In re *Spenser*, 22 *Fed.Cas.* 921. "Good behavior," means merely conduct conformable to law, or to the particular law theretofore breached. *Ex parte Hamm*, 24 *N.M.* 33, 172 *P.* 190, 191, *L.R. A.*1918D, 694; *Baker v. Commonwealth*, 181 *Ky.* 437, 205 *S.W.* 399, 401.

²¹ **COLOR OF LAW** [Black's 4th] The appearance or semblance, without the substance, of legal right. [*State v. Brechler*, 185 *Wis.* 599, 202 *N.W.* 144, 148] Misuse of power, possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state, is action taken under "color of state law." (*Atkins v. Lanning*, 415 *F. Supp.* 186, 188)

the Charter of the forest, which were made by common assent of all the realm, in the time of King Henry our father, shall be kept in every point without breach. And we will that the same charters shall be sent under our seal, as well to our justices of the forest, as to others, and to all sheriffs of shires, and to all our other officers, and to all our cities throughout the realm, together with our writs, in the which it shall be contained, that they cause the foresaid charters to be published, and to declare to the people that we have confirmed them in all points; and that our justices, sheriffs, mayors, and other ministers, which under us have the laws of our land to guide, shall allow the said charters pleaded before them in judgement in all their points, that is to wit, **the Great Charter as the common law** and the Charter of the forest, for the wealth of our realm.

Our founding documents undeniably established common law as the law of the land and are the very fabric of America that makes us uniquely different from any other nation before or since.

Federalist Papers pg 284; “In civil actions between citizens of different States, **every issue of fact, arising in actions at common law, may be tried by a jury if the parties, or either of them request it;**” uncontested in debate.

Federalist Papers pg 383 It has been erroneously insinuated. with regard to the **court of chancery**, that this court generally tries disputed facts by a jury. **The truth is, that references to a jury in that court rarely happen;** uncontested in debate.

Anti-Federalist Papers pg 128 - If a federal town be necessary for the residence of congress and the public officers, it ought to be a small one, and the **government of it fixed on republican and common law principles**, carefully enumerated and established by the constitution. It is true, **the states**, when they shall cede (*surrender*) places, may stipulate that the laws and government of congress in them **shall always be formed on such principles;** uncontested in debate and resulted in the Bill of Rights

Anti-Federalist Papers pg 138 - "The **trial by jury remain inviolate forever;** that no acts of attainder shall be passed by the legislature of this State for crimes other than those committed before the termination of the present war. And that **the legislature shall at no time hereafter institute any new courts but such as shall proceed according to the course of the common law;**" uncontested in debate and realized in the Bill of Rights.

AMENDMENT VII In suits at **common law**, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Amendment VI All criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury.

The Common-Law Record consists of;

- 1) the Process, (*system of jurisprudence administered by the purely secular tribunals*)
- 2) the Pleadings, (*papers and affidavits*)
- 3) the Verdict, and (*by jury*)
- 4) the Judgment. (*by jury*)

After Judgment, such Errors were Reviewable by Writ of Error. Errors which occurred at the Trial were not part of the Common-Law Record, and could be Reviewed by a Motion for a New Trial, after Verdict and before Judgment.

JURISDICTION – *cannot be assumed it must be proven to exist.*²² *"Trial court acts without jurisdiction when it acts without inherent or common law authority."*²³ *"No judicial process, whatever form it may assume, can have any lawful authority outside of the limits of the jurisdiction of the court or judge by whom it is issued; and an attempt to enforce it beyond these boundaries is nothing less than lawless violence."*²⁴ *"The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings."*²⁵ *"If any tribunal finds absence of proof of jurisdiction over person and subject matter, the case must be dismissed."*²⁶ *"Civil action for deprivation of rights, 28 U.S.C 1343, gives U.S. District court original jurisdiction. When it clearly appears that the court lacks jurisdiction, the court has no authority to reach the merits. In such a situation the action should be dismissed for want of jurisdiction."*²⁷ *"However late this objection has been made, or may be made in any cause, in an inferior or appellate court of the United States, it must be considered and decided, before any court can move one further step in the cause; as any movement is necessarily the exercise of jurisdiction"*²⁸. *"Judgment made when the court lacks subject matter jurisdiction is void."*²⁹

16th American Jurisprudence, 2nd Section 177 - The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void, and ineffective for any purpose; since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it. An unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted. Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection, and justifies no acts performed under it ... A void act cannot be legally consistent with a valid one. An unconstitutional law cannot operate to supersede any existing valid law. Indeed, insofar as a statute runs counter to the fundamental law of the land, it is superseded thereby.

16th American Jurisprudence 2d, Section 177 late 2nd, section 256 - "No one is bound to obey an unconstitutional law and no courts are bound to enforce it. The general rule is that an unconstitutional statute, though having the form and the name of law, is in reality no law, but is wholly void, and ineffective for any purpose, since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it."

CONCLUSION: Common Law is the law of the land, anything to the contrary notwithstanding.

²² "Once challenged, jurisdiction cannot be 'assumed', it must be proved to exist." [Stuck v. Medical Examiners, 94 Ca2d 751.211 P2s 389] "Jurisdiction, once challenged, cannot be assumed and must be decided." [Maine v. Thiboutot, 100 S. Ct. 250] "No sanction can be imposed absent proof of jurisdiction" [Stanard v. Olesen, 74 S. Ct.768] "The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings" [Hagans v. Lavine, 415 U.S. 528] Other cases also such as McNutt v. G.M., 56 S. Ct. 789,80 L. Ed. 1135, Griffin v. Mathews, 310 Supp. 341, 423 F. 2d 272, Basso v. U.P.L., 495 F 2d. 906, Thomson v. Gaskiel, 62 S. Ct. 673, 83 L. Ed. 111, and Albrecht v U.S., 273 U.S. 1, also all confirm, that, when challenged, jurisdiction must be documented, shown, and proven, to lawfully exist before a cause may lawfully proceed in the courts.

²³ State v. Rodriguez, 725 A.2d 635, 125 Md.App 428, cert den 731 A.2d 971,354 Md. 573 (1999)

²⁴ Ableman v. Booth, 21 Howard 506 (1859)

²⁵ Hagans v. Lavine, 415 U.S. 528

²⁶ Louisville R.R. Civil Rights

²⁷ Melo v. US, 505 F2d 1026, 1030

²⁸ Rhode Island v. Massachusetts, 37 U.S. 657, 718, 9L.Ed. 1233 (1838)

²⁹ Clark v. State, 727 N.E.2d 18, transfer denied 741 N.E.2d 1247 (2000)